

IN THE MATTER of the *Public Inquiries Act*, 2009, S.O. 2009, c.33 Sched. 6

AND IN THE MATTER of the Elliot Lake Commission of Inquiry, Order in Council 1097/2012

AND IN THE MATTER of a request brought by the Association of Professional Engineers Ontario (PEO) for an Order under s.10 (4) Public Inquiries Act, 2009

AND IN THE MATTER of a request by Greg Saunders. P.Eng, for clarification and direction with respect to the disclosed and produced documents and information

AND IN THE MATTER of an Application on behalf of **Greg Saunders, P.Eng.**

BRIEF OF AUTHORITIES OF GREGORY J. SAUNDERS

TAB(S)

1. *Public Inquiries Act*, 2009 S.O. 2009, Chapter 33, Schedule 6 s. 12(1), s. 12(2) and s. 14(3) 1
2. The Elliot Lake Commission of Inquiry *Rules of Procedure* (Revised November 8, 2012) 2

DATED: December 7, 2012

BISCEGLIA DUMANSKI
ROMANO & JOHNSON LLP
Barristers and Solicitors
747 Queen Street East
Suite 202
Sault Ste. Marie, ON P6A 2A8

(Joseph A. Bisceglia)
LSUC: 13407S

Phone: (705) 942-5856
Fax: (705) 942-6493

(Solicitor Mr. Gregory J. Saunders)

TO: Elliot Lake Commission of Inquiry
1300 Blair Place, 6th Floor
Ottawa, ON K1J 9B8

Phone: (613) 749-4028
Fax: (613) 749-5250

TAB 1



Français

Public Inquiries Act, 2009

S.O. 2009, CHAPTER 33 SCHEDULE 6

Consolidation Period: From June 1, 2011 to the e-Laws currency date.

No Amendments.

SKIP TABLE OF CONTENTS

CONTENTS

	<u>PURPOSE AND INTERPRETATION</u>
<u>1.</u>	Purpose
<u>2.</u>	Definitions
	<u>ESTABLISHING A COMMISSION</u>
<u>3.</u>	Commission
<u>4.</u>	Joint commission
	<u>DUTIES AND POWERS OF A COMMISSION</u>
<u>5.</u>	Duties of commission
<u>6.</u>	Commission activities
<u>7.</u>	Power to make rules
	<u>INFORMATION AND EVIDENCE</u>
<u>8.</u>	Admissible information
<u>9.</u>	Matters to be relied on
<u>10.</u>	Power to compel witnesses and disclosure
<u>11.</u>	Appearance fees and expenses
<u>12.</u>	Deemed undertaking
	<u>SEARCH POWERS</u>
<u>13.</u>	Application for search warrant
	<u>HEARINGS</u>
<u>14.</u>	Holding a hearing
	<u>PARTICIPATION AT A PUBLIC INQUIRY</u>
<u>15.</u>	Determination of participation
	<u>PROTECTION OF PARTICIPANTS AND WITNESSES</u>
<u>16.</u>	Immunities
<u>17.</u>	Rights of persons before misconduct found
<u>18.</u>	No intimidation by employer
	<u>DISCLOSURE BY THE CROWN</u>
<u>19.</u>	Privilege not waived
	<u>REPORT OF COMMISSION</u>
<u>20.</u>	Commission's report
	<u>LANGUAGES</u>
<u>21.</u>	Languages of order
	<u>PROTECTION OF THE COMMISSION</u>
<u>22.</u>	Protection against compulsion
<u>23.</u>	Protection from action
<u>24.</u>	Review of decisions
	<u>FINANCIAL AND ADMINISTRATIVE MATTERS</u>
<u>25.</u>	Commission budget
<u>26.</u>	Commission staff
<u>27.</u>	Administrative information
	<u>ENFORCEMENT OF PROCESS</u>
<u>28.</u>	Power to maintain order
<u>29.</u>	Failure to comply with order
<u>30.</u>	Contempt proceedings

		<u>RECORDS</u>
<u>31.</u>	Power to record hearings	
		<u>TRANSITIONAL MATTERS</u>
<u>32.</u>	Continuation of inquiries under former Act	
		<u>PROCEDURES UNDER OTHER ACTS</u>
<u>33.</u>	Former Part II inquiries	
<u>34.</u>	Special procedure under other Acts	
		<u>PENALTIES</u>
<u>35.</u>	Penalties	
		<u>REGULATIONS</u>
<u>36.</u>	Regulations	

PURPOSE AND INTERPRETATION

Purpose

1. The purpose of this Act is to establish an effective and accountable process for public inquiries where there is a public interest to,

- (a) independently inquire into facts or matters;
- (b) make recommendations regarding those facts or matters. 2009, c. 33, Sched. 6, s. 1.

Definitions

2. In this Act,

“commission” means a commission, including a joint commission, established under section 3; (“commission”)

“commissioner” means a commissioner appointed under section 3; (“commissaire”)

“Minister” means the Attorney General or such other Minister as may be made responsible for a public inquiry in the order under section 3; (“ministre”)

“public inquiry” means a public inquiry conducted by a commission under this Act, but does not include an inquiry or other proceeding under section 33 or 34; (“enquête publique”)

“witness” means a person who gives testimony or provides information, a document or thing in a public inquiry. (“témoin”) 2009, c. 33, Sched. 6, s. 2.

ESTABLISHING A COMMISSION

Commission

3. (1) The Lieutenant Governor in Council may by order establish a commission to conduct a public inquiry into a matter that the Lieutenant Governor in Council considers to be in the public interest. 2009, c. 33, Sched. 6, s. 3 (1).

Preliminary recommendations

(2) If there are matters to be determined before a public inquiry is commenced, the Lieutenant Governor in Council may, by order, appoint a person to make recommendations on how the public inquiry should be conducted, including the commission’s terms of reference and other matters as may be appropriate. 2009, c. 33, Sched. 6, s. 3 (2).

Content of order

- (3) The Lieutenant Governor in Council shall, in the order establishing a commission,
- (a) appoint one or more persons as commissioners and, if more than one commissioner is appointed, assign roles and responsibilities to the commissioners;
 - (b) set out the terms of reference for the public inquiry;
 - (c) set out any special provisions respecting the manner in which the public inquiry is to proceed;
 - (d) fix the date for the delivery of the commission’s report;
 - (e) provide for any matters required if an agreement is made under section 4 to establish a joint

commission; and

- (f) if the Attorney General is not to be responsible for the public inquiry, designate the Minister who is to be responsible. 2009, c. 33, Sched. 6, s. 3 (3).

Resignation

(4) A person appointed under this Act may resign by giving written notice to the Lieutenant Governor in Council. 2009, c. 33, Sched. 6, s. 3 (4).

Joint commission

4. The Lieutenant Governor in Council may enter into an agreement with the governments of one or more other jurisdictions about jointly establishing a commission and how the public inquiry is to be conducted by the joint commission. 2009, c. 33, Sched. 6, s. 4.

DUTIES AND POWERS OF A COMMISSION

Duties of commission

5. A commission shall,

- (a) conduct its public inquiry faithfully, honestly and impartially in accordance with its terms of reference;
- (b) ensure that its public inquiry is conducted effectively, expeditiously, and in accordance with the principle of proportionality; and
- (c) ensure that it is financially responsible and operates within its budget. 2009, c. 33, Sched. 6, s. 5.

Commission activities

6. Subject to the order establishing it, a commission may engage in any activity appropriate to fulfilling its duties, including,

- (a) conducting research and collecting information, including conducting interviews and undertaking surveys;
- (b) consulting, in private or in public, with persons or groups, including consulting prior to making its rules or determining who may participate in the public inquiry;
- (c) consulting with the general public;
- (d) receiving oral and written submissions; and
- (e) holding public hearings. 2009, c. 33, Sched. 6, s. 6.

Power to make rules

7. (1) Subject to this Act and the order establishing it, a commission has the power to control its own processes and may make rules governing its practice and procedure. 2009, c. 33, Sched. 6, s. 7 (1).

Examples of rules

(2) As examples of matters that may be dealt with in rules made under subsection (1), a commission may make rules with respect to the following:

1. The scheduling of activities for the conduct of the public inquiry, including dividing the public inquiry into phases or parts.
2. Processes for determining who may participate in the public inquiry and the scope of any participation in the public inquiry.
3. Time limits applicable to any of its proceedings and the extension or abridgement of time limits applicable to any of its proceedings.
4. The service of notices and other documents.
5. Adjournments.

6. The transcription and recording of meetings and hearings.
7. The collection, submission and receipt of information.
8. Processes for determining any privilege claimed in respect of information.
9. Fees and expenses payable to witnesses and participants. 2009, c. 33, Sched. 6, s. 7 (2).

Rules for different persons or classes of persons

- (3) A commission may, for different persons or different classes of persons,
- (a) make different rules; and
 - (b) waive or modify the application of one or more of its rules. 2009, c. 33, Sched. 6, s. 7 (3).

Rules publicly available

- (4) A commission shall ensure that its rules are made available to the public. 2009, c. 33, Sched. 6, s. 7 (4).

Exemption under *Legislation Act, 2006*

- (5) Part III (Regulations) of the *Legislation Act, 2006* does not apply to rules made by a commission. 2009, c. 33, Sched. 6, s. 7 (5).

INFORMATION AND EVIDENCE**Admissible information**

8. (1) A commission may collect and receive information that it considers relevant and appropriate, whether or not the information would be admissible in a court and in whatever form the information takes, and may accept the information as evidence at the public inquiry. 2009, c. 33, Sched. 6, s. 8 (1).

Exclusion of information

- (2) A commission may exclude information that the commission considers is unduly repetitious or does not meet such standards of proof as are commonly relied on by reasonably prudent persons in the conduct of their affairs. 2009, c. 33, Sched. 6, s. 8 (2).

Privilege preserved

- (3) Despite subsection (1), no information may be received and accepted by a commission that would be inadmissible in a court by reason of any privilege under the law of evidence. 2009, c. 33, Sched. 6, s. 8 (3).

Matters to be relied on

9. (1) Subject to section 8, a commission shall, as much as practicable and appropriate, refer to and rely on,
- (a) any public transcript or record of any proceeding before any court or statutory tribunal;
 - (b) any medical, professional, social science and background information related to the subject matter of the public inquiry;
 - (c) any existing records or reports relevant to the subject matter of the public inquiry;
 - (d) any agreed statements of facts prepared by commission counsel or the participants;
 - (e) the testimony of a representative witness of a participant in the public inquiry; and
 - (f) any other document or information, if referral to and reliance on the document or information would promote the efficient and expeditious conduct of the public inquiry. 2009, c. 33, Sched. 6, s. 9 (1).

Same

- (2) A commission may rely on a record or report in lieu of calling witnesses. 2009, c. 33, Sched. 6, s. 9 (2).

Reliance on other commissioner's decision or information

(3) Subject to the order establishing the commission, where more than one commissioner is appointed or a commissioner is replaced, a commissioner may rely on any decision made and information collected or received by any former or current commissioner. 2009, c. 33, Sched. 6, s. 9 (3).

Power to compel witnesses and disclosure

10. (1) A commission may serve a summons requiring a person to,

- (a) attend the public inquiry, in person or by electronic means, to provide testimony on oath or affirmation or in another manner; and
- (b) produce for the public inquiry any information, document or thing under the person's power or control. 2009, c. 33, Sched. 6, s. 10 (1).

Attendance not necessary

(2) In requiring production under clause (1) (b), the commission may or may not require that a person attend with the information, document or thing. 2009, c. 33, Sched. 6, s. 10 (2).

Confidential information

(3) Subject to the order establishing it and despite any other Act, 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. 2009, c. 33, Sched. 6, s. 10 (3).

Protection of confidential information

(4) A commission may impose conditions on the disclosure of information at a public inquiry to protect the confidentiality of that information. 2009, c. 33, Sched. 6, s. 10 (4).

Appearance fees and expenses

11. (1) A commission may,

- (a) if a person is summoned to appear before the commission at the request of a participant, order the participant to pay appearance fees and expenses reasonably and necessarily incurred by the person summoned, other than fees and expenses incurred by the person in respect of legal representation, advice or services; and
- (b) in any case, pay appearance fees and expenses reasonably and necessarily incurred by a person summoned to appear before the commission, other than fees and expenses incurred by the person in respect of legal representation, advice or services. 2009, c. 33, Sched. 6, s. 11 (1).

Apportioning fees and expenses

(2) A commission may apportion fees and expenses under subsection (1) between two or more participants or between one or more participants and the commission. 2009, c. 33, Sched. 6, s. 11 (2).

Deemed undertaking

12. (1) Subject to this section, all participants and their lawyers or agents are deemed to undertake not to use information obtained from another participant or collected or received by the commission for any purpose other than that of the public inquiry in which it was obtained. 2009, c. 33, Sched. 6, s. 12 (1).

Exceptions

(2) Subsection (1) does not prohibit the following:

1. A use to which the person who disclosed the information consents.
2. The use, for any purpose, of information that is disclosed to the public.
3. The use, for any purpose, of information that is provided or referred to during a hearing.
4. The use, for any purpose, of information obtained from information referred to in paragraph 2 or 3.

5. The use of information to impeach the testimony of a person in another proceeding or for a prosecution for perjury in respect of that testimony. 2009, c. 33, Sched. 6, s. 12 (2).

Court order

(3) If satisfied that the interests of justice outweigh any prejudice that would result to a party who disclosed evidence, a court may order that subsection (1) does not apply to the information, and may impose such terms and give such directions as are just. 2009, c. 33, Sched. 6, s. 12 (3).

SEARCH POWERS

Application for search warrant

13. (1) Where authorized in the order establishing the commission, a commission may apply, or authorize a person to apply, to a justice of the peace for a warrant to enter a place and conduct a search of the place, if there are reasonable grounds for believing that there are in any building, receptacle or place, including a dwelling house, any documents or things relevant to the subject matter of the public inquiry. 2009, c. 33, Sched. 6, s. 13 (1).

Same

(2) Upon application under subsection (1), a justice of the peace may issue a warrant, if he or she is satisfied on information under oath or affirmation that the warrant is necessary for the purposes specified in the application. 2009, c. 33, Sched. 6, s. 13 (2).

Powers

(3) The warrant may authorize a peace officer or person named in the warrant, upon producing the warrant and identification,

- (a) to enter any place specified in the warrant, including a dwelling house; and
- (b) to do any of the things specified in the warrant. 2009, c. 33, Sched. 6, s. 13 (3).

Conditions on search warrant

(4) The warrant shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2009, c. 33, Sched. 6, s. 13 (4).

Time of execution

(5) Any entry under the warrant shall be made at such reasonable times as may be specified in the warrant. 2009, c. 33, Sched. 6, s. 13 (5).

Expiry of warrant

(6) The warrant shall expire on the date of expiry specified in the warrant, which shall be no later than 15 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 15 days, upon application without notice by the person named in the warrant. 2009, c. 33, Sched. 6, s. 13 (6).

Use of force

(7) The person authorized to execute the warrant may call upon peace officers for assistance in executing the warrant and a peace officer may use whatever force is reasonably necessary to execute the warrant. 2009, c. 33, Sched. 6, s. 13 (7).

Obligation to produce and assist

(8) On request by a peace officer or the person authorized to execute the warrant, a person shall produce all documents or things required under the warrant and provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2009, c. 33, Sched. 6, s. 13 (8).

Return of removed things

(9) A person executing a warrant who removes any document or thing from a place shall,

- (a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person authorized to execute the warrant; and
- (b) return it to the person from whom it was removed within a reasonable time. 2009, c. 33, Sched. 6, s. 13 (9).

Obstruction prohibited

(10) No person shall obstruct or hinder a person in the execution of a warrant issued under this section. 2009, c. 33, Sched. 6, s. 13 (10).

HEARINGS

Holding a hearing

14. (1) A commission shall hold a hearing during the public inquiry only if authorized in the order establishing the commission. 2009, c. 33, Sched. 6, s. 14 (1).

Hearings open to the public

- (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. 2009, c. 33, Sched. 6, s. 14 (2).

Exclusion of public

(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 interest. 2009, c. 33, Sched. 6, s. 14 (3).

Limitations on examinations

(4) A commission may reasonably limit examination and cross-examination of a witness where the commission is satisfied that it has been sufficient to disclose fully and fairly the facts in relation to which the witness has given evidence. 2009, c. 33, Sched. 6, s. 14 (4).

PARTICIPATION AT A PUBLIC INQUIRY

Determination of participation

15. (1) Subject to the order establishing the commission, a commission shall determine,
- (a) whether a person can participate in the public inquiry;
 - (b) the manner and scope of the participation of different participants or different classes of participants;
 - (c) the rights and responsibilities, if any, of different participants or different classes of participants; and
 - (d) any limits or conditions on the participation of different participants or different classes of participants. 2009, c. 33, Sched. 6, s. 15 (1).

Considerations

- (2) Before making a decision under subsection (1), the commission shall consider,

- (a) whether a person has a substantial and direct interest in the subject matter of the public inquiry;
- (b) whether a person is likely to be notified of a possible finding of misconduct under section 17;
- (c) whether a person's participation would further the conduct of the public inquiry; and
- (d) whether a person's participation would contribute to the openness and fairness of the public inquiry. 2009, c. 33, Sched. 6, s. 15 (2).

Representation

- (3) A person who is permitted to participate in a public inquiry,
- (a) may participate on their own behalf;
 - (b) may be represented by a lawyer; or
 - (c) may, with the leave of the commission, be represented by an agent. 2009, c. 33, Sched. 6, s. 15 (3).

PROTECTION OF PARTICIPANTS AND WITNESSES

Immunities

16. Participants and witnesses,
- (a) have the same immunities as a witness who appears before a court; and
 - (b) are considered to have objected to answering any question that may,
 - (i) incriminate him or her in a criminal proceeding, or
 - (ii) establish his or her liability in a civil proceeding. 2009, c. 33, Sched. 6, s. 16.

Rights of persons before misconduct found

17. (1) A commission shall not find misconduct by a person unless,
- (a) reasonable notice of the possible finding and a summary of the evidence supporting the possible finding have been given to that person; and
 - (b) the person has been given a reasonable opportunity to respond. 2009, c. 33, Sched. 6, s. 17 (1).

Representation

(2) Subsection 15 (3) applies with necessary modifications with respect to a person who has been given an opportunity to respond under subsection (1). 2009, c. 33, Sched. 6, s. 17 (2).

No intimidation by employer

18. (1) No employer, employers' organization or person acting on behalf of an employer or employers' organization shall,

- (a) refuse to employ or continue to employ a person;
- (b) threaten dismissal or otherwise threaten a person;
- (c) discriminate against a person in regard to employment or a term or condition of employment; or
- (d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that the person may provide information, a document or thing in a public inquiry or because the person has made or is about to make a disclosure that may be required in a public inquiry or has participated in or is about to participate in a public inquiry. 2009, c. 33, Sched. 6, s. 18 (1).

Application

(2) This section applies despite any other Act and the oath of office of a public servant sworn or affirmed under the *Public Service of Ontario Act, 2006* is not breached where information is provided in a public inquiry. 2009, c. 33, Sched. 6, s. 18 (2).

Remedies

(3) An employee who believes that an employer, employers' organization or other person has contravened subsection (1) may,

- (a) have the matter dealt with by final and binding settlement by arbitration under any applicable collective agreement;
- (b) file a complaint with the Ontario Labour Relations Board; or
- (c) have the matter dealt with under the *Police Services Act*, if the employee is subject to a rule or code of discipline under that Act, 2009, c. 33, Sched. 6, s. 18 (3).

Inquiry by Ontario Labour Relations Board

(4) The following apply if the employee files a complaint under clause (3) (b) with the Ontario Labour Relations Board:

1. The Ontario Labour Relations Board may inquire into the complaint, including a complaint by a public servant within the meaning of the *Public Service of Ontario Act, 2006*.
2. The provisions of section 96, except subsection (5), and sections 104 to 109, 110, 111, 112, 114, 116 and 117 of the *Labour Relations Act, 1995* apply to the complaint with all necessary modifications.
3. The employer, employers' organization or other person against whom the complaint is made has the burden of proving that he, she or it did not act contrary to subsection (1).
4. The Ontario Labour Relations Board may impose such penalty for a contravention of subsection (1) as the Board considers just and reasonable in all the circumstances, subject to any applicable contract of employment or collective agreement. 2009, c. 33, Sched. 6, s. 18 (4).

DISCLOSURE BY THE CROWN

Privilege not waived

19. (1) If the Government of Ontario discloses to a commission, either voluntarily or in response to a request, summons or search warrant, any information over which the Government asserts privilege or immunity, the privilege or immunity is not waived or defeated for any other purposes by the disclosure. 2009, c. 33, Sched. 6, s. 19 (1).

Disclosure not waiving privilege for other purposes

(2) If a commission determines that it is necessary to disclose information over which the Government of Ontario asserts privilege or immunity, the privilege or immunity is not waived or defeated for any other purposes by the disclosure. 2009, c. 33, Sched. 6, s. 19 (2).

REPORT OF COMMISSION

Commission's report

20. (1) A commission shall deliver its report in writing to the Minister on or before the date fixed in the order establishing the commission for the delivery of its report. 2009, c. 33, Sched. 6, s. 20 (1).

Interim report

(2) A commission may prepare and deliver an interim report if the commission considers it to be appropriate for the public inquiry. 2009, c. 33, Sched. 6, s. 20 (2).

Attachment of orders

(3) Each order made by the Lieutenant Governor in Council under this Act must be included in or appended to the commission's report. 2009, c. 33, Sched. 6, s. 20 (3).

Note: Subsection (4) comes into force on a day to be named by proclamation of the Lieutenant Governor. See: 2009, c. 33, Sched. 6, s. 92.

Unfinished report

(4) If a commission does not for any reason deliver its report, the Minister may publish any unfinished work of the commission, and that work shall be treated as if it had been published by the commission. 2009, c. 33, Sched. 6, s. 20 (4).

LANGUAGES

Languages of order

21. (1) Each order made by the Lieutenant Governor in Council under this Act must be made in both English and French. 2009, c. 33, Sched. 6, s. 21 (1).

Exception

(2) Where an order is not ready in both English and French at the same time and the Lieutenant Governor in Council determines that the health or safety of the public would not be served by waiting, the order may be made in one language and the version in the other language shall be made as soon as practicable. 2009, c. 33, Sched. 6, s. 21 (2).

Languages of report

(3) The commission's report shall be delivered, in accordance with the order establishing the commission, in both English and French at the same time. 2009, c. 33, Sched. 6, s. 21 (3).

Simultaneous public release

(4) Where the commission's report is made available to the public, it shall be released in both English and French at the same time. 2009, c. 33, Sched. 6, s. 21 (4).

Exception

(5) Where the commission's report is not ready in both English and French at the same time and the Lieutenant Governor in Council determines that the health or safety of the public would not be served by waiting, the Lieutenant Governor in Council may, by order,

- (a) allow one version of the report to be delivered or released at a time later than the other version;
- (b) allow one version of the report to be delivered after the date required for its delivery; and
- (c) provide that the Government of Ontario will translate the delayed version of the report, and that version shall be considered to be the official report of the commission for all purposes. 2009, c. 33, Sched. 6, s. 21 (5).

PROTECTION OF THE COMMISSION

Protection against compulsion

22. (1) No commissioner or any person acting on behalf of or under the direction of a commission is a competent or compellable witness in a proceeding concerning anything done under this Act, other than a proceeding under the *Criminal Code* (Canada). 2009, c. 33, Sched. 6, s. 22 (1).

Confidentiality

- (2) No commissioner or any person acting on behalf of or under the direction of a commission shall,
- (a) disclose to any person during the public inquiry any information obtained in the public inquiry, except for the purposes of the public inquiry; and
 - (b) disclose to any person after the delivery of the commission's report any information obtained in the public inquiry, except information otherwise available to the public. 2009, c. 33, Sched. 6, s. 22 (2).

Exception

(3) Subsection (2) does not apply if the disclosure is in relation to any action, application or other legal proceeding to which the commission is a party. 2009, c. 33, Sched. 6, s. 22 (3).

Protection from action

23. (1) No action or other proceeding lies or shall be instituted against a commission, a commissioner, a person acting on behalf of or under the direction of a commission or any other person acting pursuant to this Act for any act done in good faith in the exercise or performance or the intended exercise or performance of any power or duty under this Act or for neglect or default in the good faith exercise or performance of such power or duty. 2009, c. 33, Sched. 6, s. 23 (1).

Crown not relieved of liability

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability for the acts or omissions of a minister of the Crown, a public servant, a commission, a commissioner, a person acting on behalf of or under the direction of a commission or any other person acting pursuant to this Act to which it would otherwise be subject and the Crown is liable under that Act as if subsection (1) had not been enacted. 2009, c. 33, Sched. 6, s. 23 (2).

Review of decisions

24. (1) A decision or an action taken by a commission is final and conclusive for all purposes and,
(a) shall not be challenged, reviewed, prohibited, restrained or quashed in any court; and
(b) is not subject to any proceedings or process in court. 2009, c. 33, Sched. 6, s. 24 (1).

Standard of review

(2) In any judicial review of a decision of a commission or of any matter involving a commission, the decision of the commission or any action or inaction of the commission in respect of any other matter shall not be altered or set aside unless it is unreasonable. 2009, c. 33, Sched. 6, s. 24 (2).

Limitation period

(3) No application for judicial review may be brought more than 14 days after the date the decision or matter for which judicial review is being sought occurred, and any application for judicial review after that period shall, in the absence of evidence to the contrary, be presumed to result in substantial prejudice or hardship within the meaning of section 5 of the *Judicial Review Procedure Act*. 2009, c. 33, Sched. 6, s. 24 (3).

FINANCIAL AND ADMINISTRATIVE MATTERS**Commission budget**

25. (1) The Minister shall, in consultation with the commission, set a budget for the conduct of a public inquiry. 2009, c. 33, Sched. 6, s. 25 (1).

Staffing

(2) The Minister may, in consultation with the commission,
(a) establish fees and rates of pay for persons engaged by the commission under subsection 26 (1); and
(b) provide for the secondment of public servants to assist the commission. 2009, c. 33, Sched. 6, s. 25 (2).

Revised budget

(3) The Minister may, in consultation with the commission, revise the budget for the commission to accommodate any change in circumstances. 2009, c. 33, Sched. 6, s. 25 (3).

Future financial commitments

(4) A commission has no capacity to make any financial commitments for expenditures in respect of activities after the date for the delivery of the commission's report. 2009, c. 33, Sched. 6, s. 25 (4).

Exception, legal proceedings

(5) Subsection (4) does not apply to expenditures arising from any action, application or other legal proceeding to which the commission is a party. 2009, c. 33, Sched. 6, s. 25 (5).

Funding information not privileged, confidential

(6) No privilege or confidentiality applies to information on any funding provided to a participant by the Government of Ontario, including the existence of any funding and its nature, rate and amount. 2009, c. 33, Sched. 6, s. 25 (6).

Funding information not personal information

(7) Despite the *Freedom of Information and Protection of Privacy Act*, the information described in subsection (6) is not personal information within the meaning of that Act. 2009, c. 33, Sched. 6, s. 25 (7).

Commission staff

26. (1) A commission may engage the services of,

- (a) one or more lawyers to act as its counsel;
- (b) clerks, reporters and assistants; and
- (c) other persons having special technical or other expertise or knowledge. 2009, c. 33, Sched. 6, s. 26 (1).

Public Service of Ontario Act, 2006

(2) The *Public Service of Ontario Act, 2006* does not apply to a person engaged under subsection (1) but does apply to any public servant seconded to the commission. 2009, c. 33, Sched. 6, s. 26 (2).

Administrative information

27. (1) A commission and the Minister may at any time, or shall on the request of either, share with each other administrative information relating to the commission and the public inquiry, including information respecting,

- (a) the budget for the commission;
- (b) the commission's actual and projected expenditures;
- (c) the timing and progress of the public inquiry; and
- (d) the production and delivery of the commission's report. 2009, c. 33, Sched. 6, s. 27 (1).

Excluded information

(2) Nothing in subsection (1) authorizes the provision of information respecting the substance of the deliberations of the commission in the public inquiry or the contents of the commission's report. 2009, c. 33, Sched. 6, s. 27 (2).

ENFORCEMENT OF PROCESS**Power to maintain order**

28. (1) A commission may make such orders or give such directions at a public inquiry as it considers proper to maintain order and to prevent the abuse of the commission's processes. 2009, c. 33, Sched. 6, s. 28 (1).

Enforcement of order or direction

(2) A peace officer called upon to enforce a commission's order or direction may take any action that is necessary to do so and may use such force as is reasonably required for that purpose. 2009, c. 33, Sched. 6, s. 28 (2).

Failure to comply with order

29. Without limiting any other power of enforcement, if a person fails to comply with an order, directive or rule of a commission, the commission may, after giving notice to the person,

- (a) continue with the public inquiry and make a finding or recommendation based on the information before it, with or without providing an opportunity for submissions from that person; or
- (b) make any order necessary for the purpose of enforcing its orders, directives or rules. 2009,

c. 33, Sched. 6, s. 29.

Contempt proceedings

30. (1) A commission may, on its own motion or on the motion of a participant to the public inquiry, state a case to the Divisional Court setting out the facts where any person without lawful excuse,

- (a) fails to attend the public inquiry after being duly summoned as a witness;
- (b) obstructs or hinders a person in the execution of a duly issued warrant;
- (c) being a witness or otherwise participating in a public inquiry,
 - (i) refuses to take an oath or to make an affirmation legally required by the commission to be taken or made,
 - (ii) refuses to produce any information, document or thing in his or her power or control legally required by the commission to be produced by him or her, or
 - (iii) refuses to answer any question to which the commission may legally require an answer; or
- (d) does any other thing that, if the commission had been a court of law having power to commit for contempt, would have been contempt of that court. 2009, c. 33, Sched. 6, s. 30 (1).

Actions of the court

(2) In the stated case, the Divisional Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of the person in like manner as if he or she had been guilty of contempt of the court. 2009, c. 33, Sched. 6, s. 30 (2).

RECORDS

Power to record hearings

31. (1) A commission may transcribe or record its meetings and shall transcribe or record its hearings. 2009, c. 33, Sched. 6, s. 31 (1).

Transcription or recording considered correct

(2) The transcription or recording of a meeting or hearing is deemed to be correct and to constitute part of the record of the meeting or hearing. 2009, c. 33, Sched. 6, s. 31 (2).

Validity not affected

(3) The validity of the meeting or hearing is not affected if, by a mechanical or human failure or an accident, the transcription or recording of a meeting or hearing is destroyed, interrupted or incomplete. 2009, c. 33, Sched. 6, s. 31 (3).

TRANSITIONAL MATTERS

Continuation of inquiries under former Act

32. (1) Where a commission has commenced, but not concluded, an inquiry under the former Act before this Act comes into force,

- (a) the former Act continues to apply to the inquiry; and
- (b) the persons appointed to conduct the inquiry continue to hold office until the inquiry is concluded. 2009, c. 33, Sched. 6, s. 32 (1).

Legal proceedings

(2) Any action, application or other legal proceeding or any remedy that was commenced, immediately before this Act comes into force, by or against a commission, a person appointed to conduct an inquiry, a person acting on behalf of or under the direction of a commission or any other person acting pursuant to the former Act may be continued as if the former Act were in force. 2009, c. 33, Sched. 6, s. 32 (2).

Definition of “former Act”

(3) In this section,

“former Act” means the *Public Inquiries Act*, as it read immediately before its repeal by section 37. 2009, c. 33, Sched. 6, s. 32 (3).

PROCEDURES UNDER OTHER ACTS

Former Part II inquiries**Definition**

33. (1) In this section,

“inquiry” includes a determination, examination, hearing, inquiry, investigation, review or other activity to which this section is applicable. 2009, c. 33, Sched. 6, s. 33 (1).

Standard procedure

(2) This section applies where another Act or a regulation confers on a person or body the power to conduct an inquiry in accordance with this section or certain provisions of this section. 2009, c. 33, Sched. 6, s. 33 (2).

Power to summon witnesses, papers, etc.

(3) The person or body conducting the inquiry may require any person by summons,

- (a) to give evidence on oath or affirmation at the inquiry; or
- (b) to produce in evidence at the inquiry such documents and things as the person or body conducting the inquiry may specify,

relevant to the subject matter of the inquiry and not inadmissible in evidence under subsection (13). 2009, c. 33, Sched. 6, s. 33 (3).

Form and service of summons

(4) A summons issued under subsection (3) shall be in either the English or French version of the form prescribed by the regulations and shall be served personally on the person summoned and he or she shall be paid at the time of service the like fees and allowances for attendance as a witness before the person or body conducting the inquiry as are paid for the attendance of a witness summoned to attend before the Superior Court of Justice. 2009, c. 33, Sched. 6, s. 33 (4).

Stated case for contempt for failure to attend hearing, etc.

(5) Where any person without lawful excuse,

- (a) on being duly summoned under subsection (3) as a witness at an inquiry makes default in attending at the inquiry; or
- (b) being in attendance as a witness at an inquiry, refuses to take an oath or to make an affirmation legally required by the person or body conducting the inquiry to be taken or made, or to produce any document or thing in his or her power or control legally required by the person or body conducting the inquiry to be produced, or to answer any question to which the person or body conducting the inquiry may legally require an answer; or
- (c) does any other thing that, if the person or body conducting the inquiry had been a court of law having power to commit for contempt, would have been contempt of that court,

the person or body conducting the inquiry may state a case to the Divisional Court setting out the facts and that court may, on the application of the person or body conducting the inquiry or of the Attorney General, inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he or she had been guilty of contempt of the court. 2009, c. 33, Sched. 6, s. 33 (5).

Protection of witnesses

(6) A witness at an inquiry shall be deemed to have objected to answer any question asked him or her upon the ground that his or her answer may tend to criminate the witness or may tend to establish his or her liability to civil proceedings at the instance of the Crown or of any person, and no answer given by a witness at an inquiry shall be used or be receivable in evidence against him or her in any trial or other proceedings against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence. 2009, c. 33, Sched. 6, s. 33 (6).

Right to object

(7) A witness shall be informed by the person or body conducting the inquiry of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*. 2009, c. 33, Sched. 6, s. 33 (7).

No discipline of employees

(8) No adverse employment action shall be taken against any employee of any person because the employee, acting in good faith, has made representations as a party or has disclosed information either in evidence or otherwise to a person or body conducting the inquiry under the applicable Act or to the staff of a person or body conducting the inquiry. 2009, c. 33, Sched. 6, s. 33 (8).

Offence

(9) Any person who, contrary to subsection (8), takes adverse employment action against an employee is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. 2009, c. 33, Sched. 6, s. 33 (9).

Application

(10) This section applies despite any other Act and the oath of office of a public servant within the meaning of the *Public Service of Ontario Act, 2006* is not breached where information is disclosed as described in subsection (8). 2009, c. 33, Sched. 6, s. 33 (10).

Effective date

(11) This section applies to representations made, and information disclosed, on or after June 12, 2000. 2009, c. 33, Sched. 6, s. 33 (1).

Unsworn evidence admissible

(12) A person or body conducting the inquiry may admit at an inquiry evidence not given under oath or affirmation. 2009, c. 33, Sched. 6, s. 33 (12).

Privilege

(13) Nothing is admissible in evidence at an inquiry that would be inadmissible in a court by reason of any privilege under the law of evidence. 2009, c. 33, Sched. 6, s. 33 (13).

Release of documents

(14) Documents and things produced in evidence at an inquiry shall, upon request of the person who produced them or the person entitled thereto, be released to the person by the person or body conducting the inquiry within a reasonable time. 2009, c. 33, Sched. 6, s. 33 (14).

Photocopies of documents

(15) Where a document has been produced in evidence before a person or body conducting the inquiry, the person or body conducting the inquiry may or the person producing it may with the leave of the person or body conducting the inquiry, cause the document to be photocopied and the photocopy may be filed in evidence in the place of the document produced, and a copy of a document produced in evidence, certified to be a true copy thereof by the person or body conducting the inquiry, is admissible in evidence in proceedings in which the document produced is admissible, as evidence of the document produced. 2009, c. 33, Sched. 6, s. 33 (15).

Power to administer oaths and require evidence under oath

(16) A person or body conducting an inquiry has power to administer oaths and affirmations for the

purpose of the inquiry and may require evidence to be given under oath or affirmation. 2009, c. 33, Sched. 6, s. 33 (16).

Powers of multiple appointees

(17) Where two or more persons are appointed to make an inquiry, any one of them may exercise the powers conferred by subsection (3), (4), (14), (15) or (16). 2009, c. 33, Sched. 6, s. 33 (17).

Special procedure under other Acts

Definition

34. (1) In this section,

“inquiry” includes an inquiry or other activity to which this section is applicable. 2009, c. 33, Sched. 6, s. 34 (1).

Application

(2) This section applies to,

- (a) an inquiry conducted under subsections 160 (2) and 169 (2) of the *City of Toronto Act, 2006*;
- (b) an inquiry conducted under subsection 31 (2) of the *Members' Integrity Act, 1994*;
- (c) an inquiry conducted under subsections 223.4 (2) and 223.12 (2) of the *Municipal Act, 2001*; and
- (d) a person acting under subsection 51 (11.1) of the *Law Society Act*, to the extent applicable under subsection 51 (11.2) of that Act. 2009, c. 33, Sched. 6, s. 34 (2).

Procedure

(3) Subject to subsections (4) and (5), the conduct of and the procedure to be followed on an inquiry is under the control and direction of the person or body conducting the inquiry. 2009, c. 33, Sched. 6, s. 34 (3).

Hearings to be open, exceptions

(4) 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. 33, Sched. 6, s. 34 (4).

Rights of persons interested

(5) A person or body conducting the inquiry shall accord to any person who satisfies the person or body that the person has a substantial and direct interest in the subject matter of the inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by counsel on evidence relevant to the person's interest. 2009, c. 33, Sched. 6, s. 34 (5).

Rights of persons before misconduct found

(6) No finding of misconduct on the part of any person shall be made against the person in any report of a person or body conducting the inquiry after the inquiry unless that person had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the inquiry to be heard in person or by counsel. 2009, c. 33, Sched. 6, s. 34 (6).

Stated case

(7) Where the authority to appoint a person or body under an Act referred to in subsection (2) or the

authority of the person or body to do any act or thing proposed to be done or done in the course of the inquiry is called into question by a person affected, the person or body conducting the inquiry may of its own motion or upon the request of such person or body state a case in writing to the Divisional Court setting forth the material facts and the grounds upon which the authority to appoint the person or body or their authority to do the act or thing are questioned. 2009, c. 33, Sched. 6, s. 34 (7).

Order directing stated case

(8) If the person or body conducting the inquiry refuses to state a case under subsection (7), the person requesting it may apply to the Divisional Court for an order directing the person or body to state such a case. 2009, c. 33, Sched. 6, s. 34 (8).

Court to hear and determine stated case

(9) Where a case is stated under this section, the Divisional Court shall hear and determine in a summary manner the question raised. 2009, c. 33, Sched. 6, s. 34 (9).

Proceedings stayed

(10) Pending the decision of the Divisional Court on a case stated under this section, no further proceedings shall be taken by the person or body conducting the inquiry with respect to the subject matter of the stated case, but the person or body may continue the inquiry into matters not in issue in the stated case. 2009, c. 33, Sched. 6, s. 34 (10).

Languages of final reports

(11) The final report of a person or body conducting the inquiry shall be submitted in both English and French at the same time. 2009, c. 33, Sched. 6, s. 34 (11).

Same

(12) When the final report is made available to the public, it shall be released in both English and French at the same time. 2009, c. 33, Sched. 6, s. 34 (12).

Exception

(13) The Lieutenant Governor in Council may order that subsection (11), subsection (12) or both subsections do not apply to a final report if, in the opinion of the Lieutenant Governor in Council, the health or safety of the public would not be served by delaying the submission, release or both because only one language version is ready. 2009, c. 33, Sched. 6, s. 34 (13).

Same

(14) If an order is made under subsection (13), the other language version shall be submitted, released or both, as the case may be, as soon as possible. 2009, c. 33, Sched. 6, s. 34 (14).

PENALTIES

Penalties

35. Every person or employers' organization that contravenes subsection 13 (8) or (10), 18 (1) or 22 (2) is guilty of an offence and on conviction is liable,

- (a) if an individual, to a fine of not more than \$5,000; or
- (b) if a corporation or employers' organization, to a fine of not more than \$25,000. 2009, c. 33, Sched. 6, s. 35.

REGULATIONS

Regulations

36. The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary or advisable for carrying out the intent and purposes of this Act, including regulations respecting forms used for the purposes of this Act. 2009, c. 33, Sched. 6, s. 36.

37.-91. Omitted (amends, repeals or revokes other legislation). 2009, c. 33, Sched. 6, ss. 37-91.

92. Omitted (provides for coming into force of provisions of this Act). 2009, c. 33, Sched. 6, s. 92.

93. Omitted (enacts short title of this Act). 2009, c. 33, Sched. 6, s. 93.

[Français](#)

[Back to top](#)

TAB 2

THE ELLIOT LAKE
COMMISSION OF INQUIRY

The Honourable Paul R. Bélanger,
Commissioner

info@elliottinquiry.ca



LA COMMISSION
D'ENQUETE ELLIOT LAKE

L'honorable Paul R. Bélanger,
Commissaire

info@elliottinquiry.ca

RULES OF PROCEDURE

(REVISED NOVEMBER 8, 2012)

General

1. These Rules of Procedure (“Rules”) apply to the Elliot Lake Commission of Inquiry (the “Commission” or “Inquiry”), established pursuant to the *Public Inquiries Act*, 2009, S.O. 2009 c.33, sched. 6 (the “Act”) and Order in Council 1097/2012 (the “Terms of Reference”).
2. Subject to the *Act*, the conduct of, and procedure to be followed at, the Inquiry is under the control and discretion of the Honourable Paul R. Bélanger (the “Commissioner”).
3. The Commissioner may amend these Rules or dispense with compliance with these Rules as he deems necessary to ensure that the Inquiry is thorough, fair and timely.
4. All participants, witnesses and their counsel shall be deemed to undertake to adhere to these Rules and may raise any issue of non-compliance with the Commissioner.
5. The Commissioner may deal with any non-compliance with these Rules as he deems appropriate, including by revoking the standing of a participant or imposing restrictions on a participant.
6. In these Rules,
 - a. “person” refers to individuals, groups, governments, agencies, institutions or any other entity;
 - b. “participant” refers to a person who has been granted standing to participate in the Commission pursuant to the Revised Rules of Standing and Funding; and
 - c. “document” is intended to have a broad meaning, and includes the following forms: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.

Investigation

7. The Inquiry will commence with an investigation by Commission Counsel. The goal of the investigation, in part, will be to identify the core and background facts and to identify witnesses.
8. The investigation will consist primarily of document review, consultation with interested persons, and witness interviews by Commission staff and Commission Counsel.

Document Production

9. Copies of all relevant documents must be produced to the Commission by any participant or recipient of a summons by the Commission at the earliest opportunity, in a format acceptable to the Commission. Prior to taking part in the Commission, each participant or summons recipient, if a natural person, or the chief executive officer of each participant or summons recipient, if a corporation, must certify in writing that this obligation has been complied with.
10. Production to the Commission by a participant or summons recipient will not constitute a waiver of any claim to privilege, including solicitor-client privilege, which a participant or summons recipient may wish to assert. Participants or summons recipients are, however, requested to identify to Commission Counsel, within a reasonable time period, in accordance with the procedure set out in paragraph 11, any documents over which they intend to assert a claim of privilege.
11. Where a participant or summons recipient objects to the production of any document, or part thereof, on the grounds of privilege, pursuant to subsection 8(3) of the *Act*, the following procedures will apply:
 - a. The participant or summons recipient shall deliver to Commission Counsel a list setting out pertinent details of the document(s), or part thereof, over which claims for privilege are being asserted. This shall include the date, author, recipient and a brief description of the document(s), and may include additional material, such as an affidavit, to support its claims;
 - b. Commission Counsel shall review the list and decide if they will recommend to the Commissioner that he accept the claim for privilege;
 - c. If Commission Counsel are not prepared to recommend to the Commissioner that he accept the claim for privilege, the list and any further material filed by the participant or summons recipient shall be submitted forthwith, together with Commission Counsel's written submissions, to the Commissioner or, at the Commissioner's option, to the Honourable Stephen T. Goudge, Justice of the Ontario Court of Appeal, for determination. If the Commissioner or Justice Goudge is unable to make a determination based on the record before them, they may request a copy of the disputed document(s) for inspection; and

- d. If the claim for privilege is dismissed, the document(s) shall be produced to Commission Counsel forthwith.
12. Originals of relevant documents are to be provided to Commission Counsel only upon their request and where doing so would not interfere with any potential or ongoing investigation or legal proceeding. The participants will otherwise preserve originals of relevant documents until such time as the Commissioner has fulfilled his mandate or has ordered otherwise.
 13. Counsel to the participants and witnesses will be provided with documents and information, including statements of anticipated evidence, only upon executing a written undertaking that all such documents and information will be used solely for the purposes of the Inquiry.
 14. Counsel 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 written undertakings to the same effect.
 15. These undertakings will be of no force or effect if any of the conditions of s. 12(2) or 12(3) of the *Act* are met.
 16. The Commission may require that the documents provided, and all copies made, be returned to the Commission if not tendered in evidence.
 17. Where a participant or summons recipient objects to the disclosure of a document or information to other participants and/or to the public at the hearing or otherwise on the grounds of confidentiality, and seeks an order pursuant to subsections 10(4) or 14(3) of the *Act*, a copy of the document and/or the information in issue will be produced in an unedited form to the Commission. The participant or summons recipient shall provide, in writing, a submission setting out the order requested and the reasons for it. In determining whether to make the order, the Commissioner will consider, among other things, the duty of procedural fairness to the other participants and his obligation pursuant to section 17 of the *Act*.
 - 17A. Rules 10, 11 and 17 apply, with necessary modifications, to persons who have had documents seized by the Ontario Provincial Police or the Ministry of Labour in the course of their respective investigations, and whose documents were then delivered to the Commission by the Ontario Provincial Police or the Ministry of Labour pursuant to a summons issued by the Commission.

Evidence

(i) General

18. The Commission may collect and receive information that it considers relevant and appropriate, whether or not the information would be admissible in a court of law and in whatever form the information takes, and may accept the information as evidence at the Inquiry. However, pursuant to section 8(3) of the *Act*, nothing is admissible in evidence at the Inquiry that would be inadmissible in a court by reason of any privilege under the law of evidence.
19. In accordance with sections 4 and 5 of the Terms of Reference and section 9 of the *Act*, the Commission may prepare Overview Reports which may contain core or background facts.
20. Commission Counsel will provide an opportunity to the participants, in advance of the filing of Overview Reports as evidence, to comment on the accuracy of the Overview Reports, and the Commission may modify the Overview Reports in response. Participants may also, pursuant to Rule 31, propose witnesses to be called to support, challenge, comment upon or supplement the Overview Reports in ways that are likely to significantly contribute to an understanding of the issues relevant to this Inquiry.
21. The Overview Reports may be used to assist in identifying systemic issues relevant to the Inquiry, to make findings of fact and to enable recommendations to be made, but the Overview Reports will not be used in a manner precluded by section 3 of the Terms of Reference.
22. The Commission will rely, wherever possible, on the Overview Reports and may consider such reports instead of calling witnesses.
23. Commission Counsel may call witnesses or experts, who may, among other things, support, comment upon or supplement the Overview Reports.
24. Evidence may be received at the Inquiry from one or more panels of expert witnesses.
25. The Commissioner may modify these Rules as may be appropriate for the disclosure of documents and the questioning of panelists by the participants.

(ii) Oral Hearings and Witnesses

26. The Commissioner will conduct hearings as set out in these Rules.
27. The Commissioner will set the dates, hours and place of the hearings.

40. Counsel for a witness, regardless of whether he or she is also representing a participant, will examine after the other participants have concluded their cross-examinations. If he or she has adduced the evidence of the witness in chief, he or she will have a right to re-examine the witness. If, however, that counsel for the witness intends to adduce evidence in chief not adduced by Commission Counsel, he or she will examine the witness immediately following Commission Counsel and will then have a right to re-examine the witness following the cross-examinations by the other participants.
41. Commission Counsel has the right to re-examine any witness at the conclusion of his or her evidence.
42. The Commissioner may set time allocations for the conduct of examinations and cross-examinations.

Use of Documents at Hearing

43. In advance of the testimony of a witness, Commission Counsel will endeavour to provide the participants with reasonable notice of the subject matter of the anticipated evidence in chief and a list of the documents associated with that evidence.
44. In cases where counsel other than Commission Counsel is intending to lead the evidence in chief of a witness, they will provide the participants with reasonable notice of the subject matter and a list of documents associated with that evidence.
45. Neither participants 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 Commissioner.
46. Participants, who intend to cross-examine a witness, will provide reasonable notice of any documents to which they intend to refer during their cross-examination, other than those documents for which notice has previously been provided pursuant to Rules 43 or 44.
47. For the purpose of these Rules, the Commissioner will have discretion to determine what constitutes "reasonable notice" or "at the earliest opportunity" in all of the circumstances.
48. The Commissioner may grant Commission Counsel or counsel for a participant or witness leave to introduce a document to a witness at any point during the hearing upon such terms as are just and fair.

Dated October 9, 2012. Revised November 8, 2012.