

**IN THE MATTER OF THE ELLIOT LAKE COMMISSION OF INQUIRY  
The Honourable Paul R. Bélanger, Commissioner**

**AND IN THE MATTER OF an Application by Eastwood Mall Inc., Robert Nazarian,  
and Levon Nazarian for an Order under Section 10(4) of the *Public Inquiries Act***

BETWEEN:

THE ELLIOT LAKE INQUIRY

- and -

EASTWOOD MALL INC.

- and -

ROBERT NAZARIAN

- and -

LEVON NAZARIAN

---

**SUBMISSIONS OF REJEAN AYLWIN, RACHELLE AYLWIN, STEPHANE AYLWIN,  
TERESA PERIZZOLO and CINDY LEE ALLAN**

---

**OATLEY, VIGMOND**  
Personal Injury Lawyers  
200-151 Ferris Lane  
Barrie, Ontario  
L4M 6C1

**Roger G. Oatley**  
**Shenthuran Subramaniam**

Telephone: (705) 726-9021  
Facsimile: (705) 726-2132

**IN THE MATTER OF THE ELLIOT LAKE PUBLIC INQUIRY  
The Honourable Paul R. Bélanger, Commissioner**

**AND IN THE MATTER OF an Application by Eastwood Mall Inc., Robert Nazarian,  
and Levon Nazarian for an Order under Section 10(4) of the *Public Inquiries Act***

B E T W E E N:

THE ELLIOT LAKE INQUIRY

- and –

EASTWOOD MALL INC.

- and –

ROBERT NAZARIAN

- and –

LEVON NAZARIAN

**SUBMISSIONS**

**INTRODUCTION**

1. The Honourable Mr. Justice Paul R. Bélanger has been appointed as the Commissioner of the Elliot Lake Commission of Inquiry (“the Elliot Lake Inquiry”). Pursuant to the terms of its Mandate, the Commission will inquire into and report on events surrounding the collapse on June 23, 2012, of the Algo Centre Mall in Elliot Lake (“the collapse”), the deaths of Lucie Aylwin and Doloris Perizzolo and the injuries to other individuals as well as the emergency management and response.

2. Rejean Aylwin, Rachelle Aylwin, Stephane Alywin, Teresa Perizzolo, and Cindy Lee Allan are the family members of the two individuals who died in the collapse, namely Lucie Alywin and Doloris Perizzolo (“the Families”). These deaths will be examined by the Commission.

3. The Families submit that Eastwood Mall Inc.’s, Robert Nazarian’s, and Levon Nazarian’s (“Eastwood Mall Inc. and the Nazarians”) request for an Order under Section 10(4) and 14(3) of the *Public Inquiries Act* (“PIA”) should be denied based on the following submissions:

1. The very nature of public inquiries requires open and public disclosure of all relevant information.
2. The materials that Eastwood Mall Inc. and the Nazarians seek to withhold from the public are relevant to the Mandate of the Commission and, therefore, ought to be disclosed to the public in the course of the Elliot Lake Inquiry.
3. Sections 22 and 23 of the *Public Inquiries Act* operate to protect the impugned documents from being disclosed or used for any purpose other than for the purposes of this public inquiry.
4. Finally, the Commission is required to give the public access to all relevant information pursuant to subsection 14(2) of the *Public Inquiries Act*.

## THE PURPOSE OF A PUBLIC INQUIRY

4. The Families submit that the Elliot Lake Inquiry is meant to be open and transparent. Its purpose is to inform the public of facts concerning a shocking incident that occurred in the Elliot Lake Community. The comments made by the Ontario Court of Appeal in *Re The Children's Aid Society of the County of York*<sup>1</sup> are especially helpful. Mr. Justice Mulock commented on the Commissioner's duty to avail himself of all reasonable sources of information:

**. . . in answering the questions submitted it might be advisable to point out the nature of the inquiry in question. It is one to bring to light evidence or information touching matters referred to the Commissioner. . . . The Commissioner should avail himself of all reasonable sources of information, giving a wide scope to the inquiry. If, for example, some person were to inform the Commissioner where useful documents or other evidence could be obtained, it would seem reasonable that he avail himself of such a source of information. . . . It is for the Commissioner, from all available sources, to bring to light such evidence as may have a bearing on the matters referred to him.<sup>2</sup>**

5. Further, the remarks of the eminent Ontario jurist, Mr. Justice Riddell in the same proceeding are still equally applicable today:

**A Royal Commission is not for the purpose of trying a case or a charge against anyone, any person or any institution -- but for the purpose of informing the people concerning the facts of the matter to be enquired into.<sup>3</sup>**

6. And finally, the helpful comments of Mr. Justice Middleton:

**. . . It is an inquiry not governed by the same rules as are applicable to the trial of an accused person. The public, for whose service this Society was formed, is entitled to full knowledge of what has been done by it and by those who are its agents and officers and manage its affairs. What has been done in the exercise of its power and in discharge of its duties is that which the Commissioner is to find out; so that any abuse, if abuse exist, may be remedied and misconduct, if misconduct exist, may be put an end to and be punished, not by the Commissioner, but by appropriate proceedings against any offending individual.**

---

<sup>1</sup> *Re The Children's Aid Society of the County of York*, [1934] OJ No. 78

<sup>2</sup> *Ibid* at para 8

<sup>3</sup> *Ibid* at para 12

**This is a matter in which the fullest inquiry should be permitted. All documents should be produced, and all witnesses should be heard, and the fullest right to cross-examine should be permitted. Only in this way can the truth be disclosed.<sup>4</sup>**

7. In *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*<sup>5</sup>, Cory J. held that open hearings “function as a means of restoring the public confidence”<sup>6</sup> and act as a “type of healing therapy for a community shocked and angered by a tragedy.”<sup>7</sup> He described the purpose of public inquiries and emphasized the importance of their “open and public nature”:

**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.<sup>8</sup>**

8. The Families submit that the very nature of the Elliot Lake Inquiry is to apprise the Canadian public of the events pertaining to this shocking incident. The public needs to be involved and be a part of the recommendations aimed to resolve the problem. The purpose of the Elliot Lake Inquiry is to restore public confidence in those involved in the collapse and in the government process as a whole. This will not be accomplished with secrecy and the non-disclosure of important and relevant documents.

---

<sup>4</sup> Ibid at paras 17-18

<sup>5</sup> *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97

<sup>6</sup> Ibid at para 117

<sup>7</sup> Ibid

<sup>8</sup> Ibid at para 62

## **MATERIALS ARE RELEVANT TO THE MANDATE OF THE COMMISSION**

9. The Families further submit that the materials to which Eastwood Mall Inc. and the Nazarians are claiming confidentiality are relevant to the business of the inquiry. The materials contain information pertinent to the Mandate of the Commission, specifically the Commission is “to inquire into and report on events surrounding the collapse...of the Algo Centre Mall in Elliot Lake.” Eastwood Mall Inc. is a corporation that has owned the Algo Centre Mall from 2005 to the present date, inclusive of the date of the collapse. Robert Nazarian is the owner and operator of Eastwood Mall Inc. and Levon Nazarian is Robert Nazarian’s son and contractor.

10. At direct issue in this inquiry is the maintenance of the Algo Centre Mall. The financial ability of the owners of the building is entirely relevant to their ability to maintain the building in a good state of repair. Withholding such information from the public would be wholly wrong and inappropriate given the Commission’s Mandate and purpose.

11. Eastwood Mall Inc. and the Nazarians filed their financial statements with the Commission. They are asking for public funding which, by its very essence, is funded by the public. The public, therefore, is entitled to know the extent of Eastwood Mall Inc.’s and the Nazarians’ financial need and the basis of the Commissioner’s decision to either approve or deny such a request.

12. Further, the Families submit that this public funding is sought in order for Eastwood Mall Inc. and the Nazarians to participate in a public inquiry. These financial statements were not submitted for some personal objective. Eastwood Mall Inc. and the Nazarians intend to participate in a highly public forum and fund such participation with public funds. This does not demonstrate a desire to withhold their financial documents from public scrutiny. Commissioner Goudge recognized the lowered expectation of privacy for individuals who apply for standing and funding in a public inquiry in his *Ruling on request for non-publication orders*<sup>9</sup>:

**...all of these adults have all sought standing and funding to participate in this Commission and cannot be surprised to find themselves involved in a process which must be conducted in public if possible.**<sup>10</sup>

### **SECTION 22 AND 23 OF THE PUBLIC INQUIRIES ACT AFFORDS EASTWOOD MALL INC. AND THE NAZARIANS WITH SUFFICIENT PROTECTION**

13. The Families submit that sections 22 and 23 of the PIA afford Eastwood Mall Inc. and the Nazarians with sufficient protection in relation to the confidentiality of the impugned documents. Eastwood Mall Inc. and the Nazarians are not compellable witnesses in a proceeding concerning anything done under this Act, other than a proceeding under the Criminal Code.

14. In addition, the Commissioner or any person acting on behalf or under the direction of the commission shall not disclose to any person during the public inquiry any information obtained in the public inquiry, except for the purposes of the public inquiry.

---

<sup>9</sup> *Ruling by Commissioner Goudge on request for non-publication orders*, November 1, 2007 (Appendix 22 to volume 4 of the Goudge Rreport)

<sup>10</sup> *Ibid* at page 13

15. Lastly, no action or other proceeding shall be instituted against any person acting pursuant to the PIA for any act done in good faith in the exercise or performance of any power or duty under the PIA.

16. Therefore, the Families submit that the impugned documents will only be used in relation to the inquiry. They will not be disclosed for any other purpose.

**COMMISSION REQUIRED TO GIVE THE PUBLIC ACCESS TO RELEVANT INFORMATION UNDER SUBSECTION 14(2) OF THE PUBLIC INQUIRIES ACT**

17. Finally, the Families submit that the Commission is required to give the public access to the information collected or received in relation to a hearing under subsection 14(2) of the PIA.

18. The Families submit that subsection 14(3) is only applicable if the public 's interest in the public inquiry is outweighed by the need to prevent the disclosure of information that could reasonably be expected to be injurious to the administration of justice, law enforcement, national security, or a person's privacy, security or financial interest. The public's interest is not outweighed by any of these factors in this case. The Families submit that the public interest in such a shocking tragedy is extremely high and that the administration of justice requires a high level of public scrutiny.

19. The Families further submit that Eastwood Mall Inc. and the Nazarians carry a heavy burden. As was articulated in the recent Court of Appeal case of *M.E.H. v Williams*<sup>11</sup>, “the centrality of freedom of expression and the open court principle to both Canadian democracy and individual freedoms in Canada demands that a party seeking to limit freedom of expression and the openness of the courts carry a significant legal and evidentiary burden.”<sup>12</sup>

## **CONCLUSION**

20. The Families submit that the Commission must ensure the open and public nature of the Elliot Lake Inquiry. The public should be apprised of all relevant facts pertaining to the collapse. The Families submit that this is a matter in which the fullest inquiry should be permitted. All documents should be produced and disclosed to the public. In the words of Mr. Justice Middleton, “only in this way can the truth be disclosed.”

21. The Families further submit that these documents are relevant and must be disclosed to the public by virtue of subsection 14(2) of the PIA. Sufficient protection is afforded to these documents under sections 22 and 23.

---

<sup>11</sup> *M.E.H. v Williams*, [2012] OJ No. 525

<sup>12</sup> *Ibid* at para 34