

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, established by Order in Council 1097/2012 dated July 19,
2012

AND IN THE MATTER OF James W. Keywan

FACTUM OF JAMES W. KEYWAN

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PART I

1. This is a motion by James W. Keywan for an order granting him the right to introduce rebuttal evidence at the Inquiry pursuant to Rule 31 of the Rules of Procedure and Section 17.1(b) of the *Public Inquiries Act, 2009* by means of an expert report prepared by Allan Larden, Architect dated May 14, 2013, or in the alternative for leave for counsel for James W. Keywan to examine Allan Larden, Architect as a witness under Rule 38 of the Rules of Procedure.

PART II - THE FACTS

2. James W. Keywan (“Keywan”) was from April 4, 1952, until his retirement on January 6, 1992, an architect and a member of the Ontario Association of Architects and accordingly entitled to practice architecture under the various *Architects Acts* that were in force from time to time.
3. In or about the year 1976, Keywan was engaged to provide limited and partial architectural services by Algocen Realty Holdings Limited (“Algocen”) with respect to the design of the Elliot Lake Commercial Centre (now known as the Algo Mall).
4. The architectural services were limited to the preparation of preliminary and working drawings which were intended to govern some of the architectural elements of the construction of the Algo Mall.
5. On February 14, 2013, Commission Counsel gave notice to Keywan under Section 17.(1) of the *Public Inquiries Act, 2009* of a possible finding of misconduct and a summary of the evidence in support thereof arising out of Keywan’s design of the Algo Mall.

6. On May 24, 2013, Commission Counsel provided a supplementary notice to Keywan under Section 17.(1) of the *Public Inquiries Act, 2009*, as to a potential finding of misconduct and a summary of the evidence supporting the same with respect to the execution of a document dated August 5, 1980 (Inquiry Exhibit No. 275).
7. Keywan gave evidence at the Inquiry on March 11, 2013.
8. On March 13, 2013, the Commission posted to its website and subsequently introduced into evidence a report by Norr Architects Engineers Planners (“Norr”) dated March 8, 2013. (Inquiry Exhibit No. 3007)
9. In Section 4.1.6 of the Norr report dated March 8, 2013, (p.67) under the heading “Final Note on Building Envelope Design Compliance”, Norr states as follows:

“It is Norr’s opinion that a duty of care required in the design and construction of this roof was not exercised.”
10. Norr’s opinion that there had been a breach of a duty of care by Keywan in the design and construction of the roof was in response to its instructions from the Ontario Provincial Police as set out in Norr’s letter dated July 16, 2012, (Document No. NL_P000000200) which *inter alia* stated the following:

“Norr’s role will be to direct a forensic examination of the site to determine the underlying cause of the accident and to provide impartial technical advice and expert witness or other services to the O.P.P. as may be required. Our scope includes but is not limited to:

- Review existing plans and technical data and condition assessment reports and take a view on liability and possible negligence
- Provide qualified expert testimony to support the findings as required either for a Public Inquiry or possibly in criminal proceedings.”

Evidence of Dr. Safarini, p.12553, l.5 to l.9

11. On March 27, 2013, counsel for Keywan advised Commission Counsel that he had retained an expert (subsequently identified as Allan Larden) on behalf of Keywan to address the opinion expressed by Norr that there had been a breach of duty on the part of Keywan. Counsel proposed at the time that the expert report be filed without the necessity of calling the author as a witness unless one or more of the participants or others were interested in cross-examining the author of the report.

Affidavit of Mario Delgado sworn June 19, 2013, para. 3, Motion Record Tab 2, and Exhibit B thereto, Motion Record, Tab 2B

12. On May 15, 2013, Commission Counsel requested the submission of the expert report no later than May 21, 2013, and this was done on May 16, 2013.

Affidavit of Mario Delgado sworn June 19, 2013, para. 4, Motion Record, Tab 2 and Exhibit C thereto, Motion Record, Tab 2C

13. On May 24, 2013, Commission Counsel confirmed an agreement that the Allan Larden (“Larden”) report dated May 14, 2013, would be entered into Relativity and that participants and Section 17 of the *Public Inquiries Act, 2009*, recipients would be notified that it had been added to the data base and that these persons be asked to advise the Commission if they intended to cross-examine Larden on his report with Commission Counsel also having an opportunity to do so. If no one wished to cross-examine Larden then the report would form part of the evidentiary record of the Commission without the requirement of the attendance of Larden or alternatively if cross-examination was requested, that a date be set for this purpose.

Affidavit of Mario Delgado sworn June 19, 2013, paras. 6 and 7, Motion Record Tab 2, and Exhibits E and F thereto, Motion Record, Tabs 2E and 2F

14. Subsequently, Commission Counsel advised that by reason of an objection received from one of the participants, the agreement of May 24, 2013, between counsel could not be carried forward and that leave of the Commissioner to have the Larden report dated May 14, 2013, admitted into evidence and to call Larden as a witness would have to be obtained under Rule 31 of the Rules of Procedure.

**Affidavit of Mario Delgado sworn June 19, 2013, paras. 8 and 9,
Motion Record Tab 2, and Exhibit G thereto, Motion Record, Tab
2G**

15. Keywan is now seeking a reasonable opportunity to respond to the opinion expressed in the Norr report and specifically adduce rebuttal evidence with respect thereto by means of the filing of the Larden report, or alternatively for leave to examine Larden as a witness before the Inquiry. It is respectfully submitted that without the Larden report or alternatively his evidence before the Inquiry, Keywan will not have a reasonable opportunity to respond by meaningful and independent evidence to the opinion expressed in the Norr report that he breached his duty of care in the design and construction of the roof.

PART III - THE LAW

The Jurisdiction of the Commissioner

16. The mandate of the Commissioner is set out in Section 3 of the Order in Council 1097/2012 dated July 19, 2012, which provides as follows:

“The Commission shall perform its duties without expressing any conclusion or recommendations regarding the potential civil or criminal liability of any person or organization.”

Order in Council 1097/2012 dated July 19, 2012

17. Section 17 of the *Public Inquiries Act, 2009* however, implicitly recognizes the right of a Commission to find “misconduct” on the part of a person. Sections 17.(1)(a) and (b) state that:

“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.”

18. While the term “misconduct” is not defined either in the *Public Inquiries Act, 2009* or the Order in Council, this subject was addressed by the Supreme Court of Canada in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada - Krever Commission)* (hereinafter referred to as the “*Krever Commission Judicial Review*”).

Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada - Krever Commission) [1997] 3 S.C.R. 440 (S.C.C.)

19. The court adopted the Concise Oxford Dictionary definition of misconduct as “improper or unprofessional behaviour or bad management”.

Krever Commission Judicial Inquiry, (supra) para. 40

20. Although the primary role of a public inquiry is to investigate matters and to make findings of fact, the Commissioner is entitled to assess and make findings as to credibility of witnesses and draw conclusions as to whether there has been misconduct and who appears to be responsible for it. The Commissioner however should avoid making evaluations or findings of fact in terms that are the same as those used by courts to express findings of civil liability or to avoid language that is so equivocal that it appears to be a finding of civil liability.

Krever Commission Judicial Review, (supra) para. 52

21. A Public Inquiry was never intended to be used as a means of finding civil liability.

Krever Commission Judicial Review, (supra) para. 53

22. Specifically the court cautioned that a Commissioner should not make findings as to a breach of duty of care.

“Further, while many of the notices come close to alleging all of the necessary elements of civil liability, none of them appear to

exceed the Commissioner's jurisdiction. For example, if his factual findings led him to conclude that the Red Cross and its doctors failed to supervise adequately the Blood Transfusion Service and Blood Donor Recruitment, it would be appropriate and within his mandate to reach that conclusion. Some of the appellants object to the use of the word 'failure' in the notices; I do not share their concern. As the Court of Appeal pointed out, there are many different types of normative standards including moral, scientific and professional-ethical. To state that a person 'failed' to do something that should have been done does not necessarily mean that the person breached a criminal or civil standard of conduct. The same is true of the word 'responsible'. Unless there is something more to indicate that the recipient of the notice is legally responsible there is no reason why this should be presumed....

While the court in *Rocois* was concerned only with facts, I believe the same principle can be applied to conclusions of fault based on standards of conduct. Unless there is something to show that the standard applied is a legal one, no conclusion of law can be said to have been reached.

There are phrases which, if used, might indicate a legal standard had been applied, such as a finding that someone 'breached a duty of care'... None of these words has been used by the Commissioner. The potential findings as set out in the notices may imply civil liability, but the Commissioner has stated that he will not make a finding of legal liability, and I am sure he will not.:

(Underlining for emphasis)

Krever Commission Judicial Review, (supra) paras. 62-63

23. It is respectfully submitted that both the Ontario Court of Appeal and the Supreme Court of Canada have stated that the legal standard of care for professional negligence is that of the reasonably competent professional.
24. In *Folland v. Reardon* the Court put the matter in this way:

“I see no justification in departing from the reasonableness standard. That standard has proven to be sufficiently flexible and fact sensitive to be effectively applied to a myriad of situations in which allegations of negligence arise out of the delicate exercise of

judgment by a professional...

In accepting the reasonably competent lawyer standard, I do not detract from the often repeated caution against characterizing errors in judgment as negligence. Lawyers make many decisions in the course of a law suit. Those decisions require the exercise of judgment. Inevitably, some of those decisions, when viewed with the benefit of hindsight, will be seen as unwise. The reasonable lawyer standard does not call for an assessment of the sagacity of the decision made by the lawyer. The standard demands that the lawyer brings to the exercise of his or her judgment the effort, knowledge and insight of the reasonably competent lawyer. If the lawyer has met the standard, his or her duty to the client is discharged, even if the decision proves to be disastrous.”

***Folland v. Reardon* [2005] O.J. No. 216 (Ont. C.A.), paras. 41 and 44**

25. In *Hill v. Hamilton-Wentworth Regional Police Services Board*, the Supreme Court of Canada speaking through McLachlin, C.J., in a case involving a police officer, said the following at paras. 69, 72 and 73:

“...The general rule is that the standard of care in negligence is that of the reasonable person in similar circumstances. In cases of professional negligence, this rule is qualified by an addition principal: where the defendant has special skills and experience, the defendant must ‘live up’ to the standards possessed by persons with reasonable skill and experience in that calling.”

At para. 72:

“The preponderance of case law dealing with professionals has applied the standard of the reasonably competent professional in like circumstances.”

And at para. 73:

I conclude that the appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances. This standard should be applied in the manner that gives due recognition to the discretion inherent to a police investigation. Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided they stay within the bounds

of reasonableness. The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer judged in the circumstances prevailing at the time the decision was made—circumstances that may include urgency and deficiency of information. The law of negligence does not require perfection of professionals; nor does it guarantee desired results. Rather, it accepts that police officers, like other professionals, may make minor errors or errors in judgment which cause unfortunate results, without breaching the standard of care. The law distinguishes between unreasonable mistakes breaching the standard of care and mere “errors in judgment” which any reasonable professional might have made and therefore, which do not breach the standard of care.”

***Hill v. Hamilton-Wentworth Regional Police Services Board* [2007]
S.C.J. No.41 (S.C.C.), paras. 69, 72 and 73**

26. It is submitted that Norr’s opinion that Keywan breached a duty of care required in the design and construction of the roof was in response to the instructions it received from the Ontario Provincial Police to “take a view on liability and possible negligence”. It is submitted that it is beyond the Commissioner’s mandate and indeed his jurisdiction to express any conclusions or opinions regarding potential civil liability and specifically as to whether Keywan may have breached a legal standard (duty of care), yet this is precisely Norr’s opinion as articulated in its report dated March 8, 2013.

27. The allegation that there was a breach of duty of care in the design and construction of the roof is an allegation that there was a breach of a legal standard of professional negligence which respectfully cannot be the subject of any comments, observations, opinions or conclusions on the part of the Commissioner under the terms of his mandate and jurisdiction.


28. Keywan therefore submits that the Commissioner should now rule that he will not express any opinions, conclusions or observations that Keywan may have breached a duty of care with respect to the design of the roof of the Algo Mall. To do so would be tantamount to expressing an opinion that he breached the standard of care of professional negligence, the legal standard articulated by both the Ontario Court of Appeal and the Supreme Court of Canada. If the Commissioner now so rules that this is beyond his mandate and jurisdiction, then the Larden report dated May 14, 2013, is not required in order to give Keywan a reasonable opportunity to respond to the opinion expressed in the Norr report.
29. In the alternative, if the Commissioner should find that it is open to him to express an opinion or make observations with respect to Norr's statement that Keywan breached a duty of care in the design and construction of the roof, then it is submitted that as a matter of fairness, he must be given the opportunity to submit the Larden report dated May 14, 2013, into evidence in order to rebut by meaningful and independent evidence the opinion expressed by Norr. Alternatively, counsel should be given leave to examine Larden as a witness under Rule 38 of the Rules of Procedure for this purpose.
30. It is submitted that the most efficient and time saving procedure for the submission of the Larden report is the one that was articulated by Commission Counsel in his letter dated May 24, 2013, namely that the same be entered into Relativity as well as the Commission's data base and that all participants and Section 17 recipients be given the right to cross-examine Larden on his report if they choose to do so, failing which the report will form part of the evidentiary record of the Commission without the requirement for Larden to attend at the Inquiry.
31. It is further submitted that if the Commissioner should rule that rather than filing the Larden report as proposed, leave be given to counsel for Keywan to examine Larden, that

his examination be scheduled on or before July 16, 2013, as Larden is unable to attend the Inquiry between July 17, 2013, and July 31, 2013.

PART IV - STATEMENT OF THE ORDER THAT THE COMMISSIONER IS ASKED TO MAKE

32. It is respectfully submitted that the Commissioner rule that his mandate and jurisdiction does not extend to making any observations, findings or conclusions that Keywan breached a duty of care in the design and construction of the roof of the Algo Mall and that accordingly the Larden report dated May 14, 2013, or his evidence is not necessary in order to give Keywan a meaningful and independent opportunity to respond to the opinion expressed in the Norr report. In the alternative, it is submitted that Keywan should be given the right to file the Larden report dated May 14, 2013, with the right of all participants and Section 17 recipients, as well as Commission counsel to cross-examine Larden on his report or in the alternative that leave be granted to counsel for Keywan to examine Larden as a witness under Rule 38 of the Rules of Procedure on a date on or before July 16, 2013.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,



P. JOHN BRUNNER
Counsel for James W. Keywan (Moving Party)

SCHEDULE "A"

INDEX OF AUTHORITIES

1. *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada - Krever Commission)* [1997] 3 S.C.R. 440 (S.C.C.), paras. 62-63
 2. *Folland v. Reardon* [2005] O.J. No. 216 (Ont. C.A.), paras. 41 and 44
 3. *Hill v. Hamilton-Wentworth Regional Police Services Board* [2007] S.C.J. No.41 (S.C.C.), paras. 69, 72 and 73
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SCHEDULE "B"

**LIST OF RELEVANT ORDER IN COUNCIL, STATUTE
AND RULES OF PROCEDURE**

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1. Order in Council 1097/2012 dated July 19, 2012
 2. *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6, Section 17.(1)
 3. Rules of Procedure, Rules 31 and 38 (Revised December 20, 2012)
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Ontario

**Order in Council
Décret**

Executive Council

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

WHEREAS under the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6, the Lieutenant Governor in Council may appoint a person to inquire into any matter of public interest;

AND WHEREAS Lucie Aylwin and Doloris Perizzolo tragically died and a number of other individuals were injured as a result of the collapse of the Algo Centre Mall in the City of Elliot Lake, Ontario;

AND WHEREAS it is considered desirable and in the public interest to establish an independent process to examine the circumstances surrounding the collapse of the Algo Centre Mall and the emergency management and response subsequent to that collapse;

AND WHEREAS it is considered advisable to set out the terms of reference for such a process;

THEREFORE, pursuant to the *Public Inquiries Act, 2009*:

Establishment of the Commission

1. The Honourable Paul R. Bélanger is appointed effective July 20, 2012 a Commissioner.

Mandate

2. Having regard to section 5 of the *Public Inquiries Act, 2009*, the Commission shall:

Conseil exécutif

Sur la recommandation de la personne soussignée, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

ATTENDU QU'en vertu de la *Loi de 2009 sur les enquêtes publiques*, qui constitue l'annexe 6 du chap. 33 des Lois de l'Ontario de 2009, le lieutenant-gouverneur en conseil peut nommer une personne pour effectuer une enquête sur toute question d'intérêt public;

ATTENDU QUE Lucie Aylwin et Doloris Perizzolo ont tragiquement perdu la vie et que plusieurs autres personnes ont été blessées à la suite de l'effondrement du centre commercial Algo dans la ville d'Elliot Lake, en Ontario;

ATTENDU QU'il est souhaitable et dans l'intérêt public d'instaurer un processus indépendant afin d'étudier les circonstances de l'effondrement du centre commercial Algo ainsi que les mesures de gestion des urgences et les interventions d'urgence consécutives à cet effondrement;

ATTENDU QU'il y a lieu de fixer le cadre d'un tel processus;

EN CONSÉQUENCE, conformément à la *Loi de 2009 sur les enquêtes publiques* :

Constitution de la commission

1. L'honorable Paul R. Bélanger est nommé commissaire à compter du 20 juillet 2012.

Mandat

2. Compte tenu de l'article 5 de la *Loi de 2009 sur les enquêtes publiques*, la commission a pour mandat :

O.C./Décret 1097/2012

a. Inquire into and report on events surrounding the collapse of the Algo Centre Mall in Elliot Lake, Ontario, the deaths of Lucie Aylwin and Doloris Perizzolo and the injuries to other individuals in attendance at the mall and the emergency management and response by responsible bodies and individuals subsequent to the collapse;

b. Review relevant legislation, regulations and by-laws and relevant policies, processes and procedures of provincial and municipal governments and other parties with respect to the structural integrity and safety of the Algo Centre Mall in Elliot Lake, Ontario;

c. Review relevant legislation, regulations and by-laws and relevant policies, processes and procedures of provincial and municipal governments and other parties with respect to the emergency management and response to the collapse of the Algo Centre Mall in Elliot Lake, Ontario.

3. The Commission shall perform its duties without expressing any conclusion or recommendations regarding the potential civil or criminal liability of any person or organization. The Commission shall further ensure that the conduct of the inquiry does not in any way interfere or conflict with any ongoing investigation or proceeding related to these matters.

4. Where the Commissioner considers it essential and at his discretion, he may engage in any activity appropriate to fulfilling his duties, including:

a. Conducting research and collecting information, including conducting interviews and undertaking surveys;

b. Conducting inter-jurisdictional research to identify practices and successes in other jurisdictions that are relevant to the Ontario experience;

c. Consulting with or seeking submissions from key stakeholders and sector experts;

a. d'effectuer une enquête et de faire rapport, d'une part, sur les circonstances de l'effondrement du centre commercial Algo à Elliot Lake, en Ontario, le décès de Lucie Aylwin et de Doloris Perizzolo et les blessures subies par d'autres personnes présentes dans le centre commercial et, d'autre part, sur les mesures de gestion des urgences et les interventions d'urgence mises en œuvre consécutivement à l'effondrement par les organismes et particuliers responsables;

b. d'examiner les lois, les règlements et les règlements municipaux pertinents, ainsi que les politiques, méthodes et processus pertinents mis en œuvre par le gouvernement provincial, les municipalités et d'autres parties en ce qui concerne l'intégrité structurelle et la sécurité du centre commercial Algo à Elliot Lake, en Ontario;

c. d'examiner les lois, les règlements et les règlements municipaux pertinents, ainsi que les politiques, méthodes et processus pertinents mis en œuvre par le gouvernement provincial, les municipalités et d'autres parties en ce qui concerne la gestion des urgences et les interventions d'urgence consécutives à l'effondrement du centre commercial Algo à Elliot Lake, en Ontario.

3. La commission s'acquittera de ses fonctions sans formuler de conclusions ou de recommandations quant à l'éventuelle responsabilité civile ou criminelle de toute personne ou de tout organisme. La commission veillera par ailleurs à ce que la conduite de l'enquête n'interfère ou n'entre en conflit d'aucune façon avec toute enquête ou toute instance en cours ayant trait à ces questions.

4. S'il l'estime nécessaire, et à sa discrétion, le commissaire pourra exercer les activités qui lui permettent de s'acquitter de ses fonctions, notamment :

a. effectuer des recherches et recueillir des renseignements, y compris mener des entrevues et entreprendre des sondages;

b. mener des recherches auprès d'autres territoires pour y repérer d'éventuelles pratiques et expériences réussies qui seraient pertinentes dans le contexte ontarien;

c. consulter des intervenants clés et des spécialistes du domaine ou les inviter à lui faire part de leurs observations;

d. Consulting with the general public, including consulting prior to making its rules or determining who may participate in the public inquiry; and

e. Receiving oral and written submissions.

5. The Commission shall, as much as practicable and appropriate, refer to and rely on the matters set out in section 9 of the *Public Inquiries Act, 2009*.

6. Pursuant to section 14 of the *Public Inquiries Act, 2009*, the Commission shall hold public hearings as necessary to fulfill its mandate and may exercise the powers provided for in section 13 of the *Public Inquiries Act, 2009*.

Resources

7. The Attorney General shall, in consultation with the Commission, set a budget for the conduct of the public inquiry. The Attorney General may, in consultation with the Commission, establish fees and rates of pay for persons engaged by the Commission.

8. In engaging the services of lawyers to act as its counsel, clerks, reporters and assistants, and other persons having special technical or other expertise or knowledge or in obtaining other services and goods it considers necessary in the performance of its duties, the Commission shall follow Management Board of Cabinet directives and guidelines and other applicable government policies unless, in the Commissioner's view, it is not possible to follow them.

9. All ministries and all boards, agencies, and commissions of the government of Ontario shall, subject to any necessary privilege or other legal restrictions, assist the Commission to the fullest extent possible, including producing documents in a timely manner, so that the Commission may carry out its duties.

10. The Commission shall promote accessibility and transparency to the public through the use of technology, including by establishing and maintaining a website.

d. consulter le grand public et notamment engager des consultations avant d'établir ses règles ou de décider des participants à l'enquête publique;

e. recevoir des observations orales et écrites.

5. La commission se reportera aux documents mentionnés à l'article 9 de la *Loi de 2009 sur les enquêtes publiques* et se fondera sur eux lorsqu'il sera possible et approprié de le faire.

6. Conformément à l'article 14 de la *Loi de 2009 sur les enquêtes publiques*, la commission tiendra les audiences publiques qu'elle estimera nécessaires dans l'exercice de son mandat et pourra exercer les pouvoirs prévus à l'article 13 de la Loi.

Ressources

7. Le procureur général établira, en consultation avec la commission, un budget pour la conduite de l'enquête publique. Par ailleurs, le procureur général pourra, en consultation avec la commission, fixer les honoraires et les taux de salaire des personnes dont les services seront retenus par la commission.

8. Lorsqu'elle retiendra les services d'avocats pour la conseiller, de greffiers, de sténographes et de collaborateurs et d'autres personnes ayant une expertise ou des connaissances particulières ou lorsqu'elle se procurera les autres biens et services qu'elle estimera nécessaires dans l'exercice de ses fonctions, la commission suivra les directives et les lignes directrices du Conseil de gestion du gouvernement ainsi que les autres politiques gouvernementales applicables, à moins que, de l'avis du commissaire, il ne soit pas possible de les suivre.

9. Sous réserve de tout privilège ou de toute autre restriction légale, tous les ministères et tous les conseils, organismes et commissions du gouvernement de l'Ontario prêteront sans réserve leur concours à la commission, notamment en produisant les documents en temps opportun, de façon que celle-ci puisse s'acquitter de ses fonctions.

10. La commission favorisera l'accessibilité et la transparence en ayant recours à la technologie, notamment en créant un site Web et en le mettant à jour.

Funding

11. The Commission may make recommendations to the Attorney General regarding funding to participants in the inquiry, to the extent of that participant's interest where, in the Commissioner's view, the participants would not otherwise be able to participate in the inquiry without such funding. Such funding shall be in accordance with applicable Management Board of Cabinet directives and guidelines.

Report and Recommendations

12. The Commission shall endeavour to deliver a final report containing its findings, conclusions and recommendations to the Attorney General within 12 months, but in any event no later than 18 months, after the commencement of the inquiry.

13. During the course of its work, the Commissioner shall convey to the provincial government for its immediate consideration any interim measures the Commissioner identifies that, in his opinion, could be adopted that might improve any matters falling within its mandate.

14. The Commission shall be responsible for translation and printing and shall ensure that the final report is delivered in both English and French in electronic and printed versions and available in sufficient quantities for public release.

15. The Attorney General shall table the report with the Legislature and make the report available to the public.

Versement de fonds

11. La commission pourra faire des recommandations au procureur général en ce qui concerne le versement de fonds à des participants à l'enquête, dans la mesure de leur intérêt, si le commissaire est d'avis que ces participants ne seraient par ailleurs pas en mesure de participer à l'enquête sans ces fonds. De telles recommandations devront être conformes aux directives et lignes directrices applicables du Conseil de gestion du gouvernement.

Rapport et recommandations

12. La commission s'efforcera de remettre au procureur général son rapport final comportant ses constatations, conclusions et recommandations dans un délai de 12 mois, et en aucun cas plus de 18 mois après le début de l'enquête.

13. Dans le cadre de ses travaux, le commissaire proposera au gouvernement provincial, aux fins d'examen immédiat, les mesures provisoires qui, selon lui, pourraient être prises pour améliorer toute question relevant de son mandat.

14. La commission sera responsable de la traduction et de l'impression de son rapport final, qui sera publié en français et en anglais, sur support électronique et papier, et en nombre d'exemplaires suffisant pour sa diffusion publique.

15. Le procureur général déposera le rapport devant l'Assemblée et le rendra public.

Recommandé par : Le procureur général,



Recommended

Attorney General

Approuvé et décrété le

Approved and Ordered JUL 19 2012

Date

Appuyé par : Le président du Conseil des ministres,

Concurred 
Chair of Cabinet

Le lieutenant-gouverneur,


Lieutenant Governor

Public Inquiries Act, 2009, S.O. 2009, c. 33, Sched. 6

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).

Rules of Procedure (Revised December 20, 2012)

31. Commission Counsel will have discretion to refuse to call or present evidence proposed by a participant. A participant may, however, apply to the Commissioner for leave to call a witness whom the participant believes has information relevant to the Commission's mandate. If the Commissioner is satisfied that the information of the witness is required, Commission Counsel will call the witness subject to Rule 38.

38. Counsel for a participant may apply to the Commissioner to examine a particular witness in chief. If counsel is granted the right to do so, examination will be confined to the normal rules governing the examination of one's own witness.

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FACTUM
OF JAMES W. KEYWAN

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