

**THE ELLIOT LAKE
COMMISSION OF INQUIRY**

The Honourable Paul R. Bélanger,
Commissioner



**LA COMMISSION
D'ENQUÊTE ELLIOT LAKE**

L'honorable Paul R. Bélanger,
Commissaire

DELIVERED BY COURIER

June 6, 2013

The Honourable Stephen T. Goudge J.A.
Osgoode Hall
130 Queen St. West
Toronto ON M5H 2N5

**Re: Elliot Lake Commission of Inquiry
Determination of Claim for Privilege by Eastwood Mall Inc., Robert
Nazarian, Irene Nazarian and Levon Nazarian**

Dear Justice Goudge,

I am writing to you as Commission counsel of the Elliot Lake Commission of Inquiry. Enclosed herewith are the materials associated with a determination that the Commission is requesting you to make under Rule 11 (c) of the Commission's *Rules of Procedure*, as revised December 20, 2012.

As you know, the Commission's *Rules of Procedure* allow for a claim for privilege to be determined by you in the event that Commission counsel is not prepared to recommend to the Commissioner that he accept a claim for privilege. Specifically, Rule 11 reads:

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.

I would like to draw your attention to subsection (c), which anticipates a determination by you of a claim for privilege if Commission counsel are not satisfied with the claim in question. Subsection (c) requires that the list of documents over which privilege is claimed as well as Commission counsel's written submissions be submitted to you, along with any material filed by the summons recipient.

In this case, Commission counsel has received a claim for privilege for which it is not prepared to recommend to the Commissioner that he accept. The Commissioner has opted for you to make the final determination of the privilege claim, in accordance with Rule 11 (c) above.

As such, please find the following materials of Commission counsel enclosed herein:

1. Memorandum of Argument;
2. Application Record, which includes all of the material provided to the Commission by the summons recipient as well as additional documents provided by Commission counsel; and
3. Book of Authorities.

A copy of this letter and the materials enclosed have been served on Mr. Title, counsel for the Respondents. His address is noted below:

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A copy of the Affidavit of Service is enclosed.

Please note that the documents over which privilege is claimed are relevant to the evidence to be given by Mr. Bob Nazarian and Mr. Levon Nazarian, who are scheduled to testify starting on July 12, 2013. The Rules of Procedure require Commission counsel to file their materials a reasonable time in advance of their evidence, in fairness to the other participants in this inquiry.

The Rules of Procedure also give you discretion as to the process to follow in arriving at your determination. In this regard, we await your direction.

Yours very truly,


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Encl.

cc: Michael Title