

**THE ELLIOT LAKE
COMMISSION OF INQUIRY**

The Honourable Paul R. Bélanger,
Commissioner



**LA COMMISSION
D'ENQUÊTE ELLIOT LAKE**

L'honorable Paul R. Bélanger,
Commissaire

Order

WHEREAS two summonses were issued to Robert Nazarian on September 6, 2012 requiring him to produce relevant documents as described therein;

AND WHEREAS those summonses were sent to Derrick Fulton, Robert Nazarian's lawyer, on September 6, 2012, by email, with a request that he accept service on behalf of his client;

AND WHEREAS a third summons was issued to Robert Nazarian on September 13, 2012 requiring him to produce relevant documents as described therein;

AND WHEREAS that summons was sent to Derrick Fulton, Robert and Levon Nazarian's lawyer, on September 13, 2012, with a request that he accept service on behalf of his client;

AND WHEREAS no acceptance of service being given, Robert Nazarian was served with the three summonses on September 18, 2012;

AND WHEREAS on September 24, 2012, Commission counsel spoke to Derrick Fulton and was advised that the Commission could expect to receive material in response to the summons in two weeks' time, that they had printed all the emails, and that they intended to deliver them in paper form, and Commission counsel confirmed those intentions in an email delivered the same day;

AND WHEREAS on September 27, 2012, a summons was issued to Levon Nazarian requiring him to produce documents as described therein and that summons was served on Levon Nazarian on October 1, 2012;

AND WHEREAS on October 3, 2012, Commission counsel received a letter from Antoine-Rene Fabris, another lawyer for Robert and Levon Nazarian, advising that all documents that were in the possession of Robert and Levon Nazarian had been seized by the police, including "each and every file since the date of the purchase including purchase documents that were in their possession" and that " while my clients wish to concede to the order, they are unable to and certainly do not wish to face any possible repercussions for not abiding by their terms";

AND WHEREAS on October 3, 2012, Commission counsel was advised by Derrick Fulton that, while he had earlier indicated that his client had between 90 and 100 boxes of documents that would be delivered pursuant to the summonses, those boxes had all been seized by the O.P.P., and he had only two boxes which would be delivered;

AND WHEREAS on October 10, 2012, Derrick Fulton sent an email to Commission counsel advising that he was in possession of about two bankers' boxes of material which had been delivered to his office from the principals of Eastwood Mall, which principals include Robert Nazarian, and that those materials would be listed "so as to assist in their organization" in "a couple more days"; on the same day, Derrick Fulton spoke to Commission counsel and told him that the documents would be delivered to the Commission in two days' time;

AND WHEREAS on October 29, 2012, Commission counsel sent a letter to Derrick Fulton reminding him of the conversation of October 10, 2012 and asking him to advise why no production had taken place and when the Commission would be provided with the documents;

AND WHEREAS on November 7, 2012, Commission counsel spoke with Derrick Fulton and was told that the documents from his clients were ready to go to the Commission;

AND WHEREAS on November 9, 2012, the Commission received one bankers' box of documents and one CD containing electronic documents in response to the summonses issued to Robert and Levon Nazarian;

AND WHEREAS Commission counsel determined from examination of documents produced that email and webmail accounts had been used to conduct matters relating to the Algo Centre Mall by Robert, Levon, and Irene Nazarian, and no emails from these accounts had been produced by Robert or Levon Nazarian; in consequence, on December 6, 2012, the Commission issued three additional summonses, one to each of Robert Nazarian, Levon Nazarian, and Irene Nazarian, requiring them to produce by December 14, 2012 a copy of all such emails, together with financial information with respect to Eastwood Mall Inc., Yorkdale Group Inc., and Yorkdale Centres Inc.;

AND WHEREAS these additional summonses were served on Robert Nazarian, Levon Nazarian, and Irene Nazarian on December 11 and 12, 2012;

AND WHEREAS Derrick Fulton wrote to Commission counsel on December 13, 2012, asking for an extension of time so that his clients would not be required to produce the documents referred to in the additional summonses on December 14, and by letter that same day Commission counsel agreed to provide an extension of time until December 21, 2012, if Mr. Fulton provided, by the end of the day on December 14, a copy of his requests to third parties seeking the documents which were the subject of the summonses;

AND WHEREAS no response was received to that letter of December 13 from Commission counsel to Derrick Fulton;

AND WHEREAS on January 8, 2013, Commission counsel wrote to Michael Title, Derrick Fulton's law partner, who is also counsel for Robert, Irene, and Levon Nazarian, and advised him that the Commission staff had recently learned of more email addresses used by Robert, Levon, and Irene Nazarian to conduct matters with respect to the Algo Centre Mall, and advised him that production of emails from those providers was required by the summonses already served;

AND WHEREAS no response was received to that letter of January 8, 2013;

AND WHEREAS on January 25, 2013, Commission counsel wrote to Michael Title, setting out the history of the attempts by the Commission to obtain relevant documents from his clients and stating: "As of this date, your clients have failed to comply with the Original and Additional Summonses issued by the Commission and you continue to ignore our communications. If we do not receive the documents that remain to be produced from your clients by February 1, 2013, we will consider all of our options in this regard, including an application to the Commissioner for an order pursuant to subsection 29(b) of the *Public Inquiries Act, 2009*":

AND WHEREAS on January 31, 2013, Derrick Fulton responded to the letter to Michael Title, advising that the firm had a dedicated articling student on the matter and she was currently and actively still gathering up the requested information; that the process was taking significantly longer than expected; that they would like to give the commission a certain date as to when they would have the information but that they could not; that they were working on it as fast as they could and that they would contact Commission counsel by the following Wednesday, February 6 to provide an update;

AND WHEREAS on February 1, 2013, Commission counsel replied to Derrick Fulton's letter of January 31, stating that the documents in issue were first required on September 6, 2012, and not even acknowledged to have existed by his clients until the additional summonses were issued on December 6, 2012; and asking him to immediately provide the Commission with the documents already obtained by him, and copies of all requests that he or his clients had made to third party providers requesting the documents (as had previously been requested on December 13, 2012); and that if the Commission did not receive, by the end of the day on February 1, 2013, these documents, the Commission would consider its options as outlined in her letter of January 25, 2013;

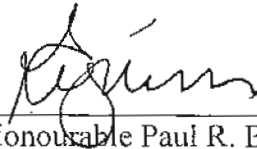
AND WHEREAS no further documents, and no copies of the requests made by Robert Nazarian, Levon Nazarian, or Irene Nazarian to third parties for production of the documents described in the summonses were produced;

AND WHEREAS s. 29(b) of the *Public Inquiries Act, 2009*, provides that, before stating a case to the Divisional Court under s. 30 of that statute, the Commission may make any order necessary;

THIS COMMISSION ORDERS THAT:

1. Robert Nazarian produce to the Commission, forthwith, all documents within his possession, power, or control, described in the summonses to him dated September 6, 2012; September 13, 2012; and December 13, 2012;
2. Levon Nazarian produce to the Commission, forthwith, all documents within his possession, power, or control, described in the summonses to him dated September 27, 2012 and December 13, 2012; and
3. Irene Nazarian produce to the Commission, forthwith, all documents within her possession, power, or control, described in the summons to her dated December 13, 2012.

ORDERED at Ottawa this 4th day of February, 2013.



The Honourable Paul R. Bélanger
Commissioner