

**THE ELLIOT LAKE
COMMISSION OF INQUIRY**

The Honourable Paul R. Bélanger,
Commissioner

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**LA COMMISSION
D'ENQUETE ELLIOT LAKE**

L'honorable Paul R. Bélanger,
Commissaire

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RULES OF PROCEDURE

(REVISED DECEMBER 20, 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 the written undertaking at Appendix "A" 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 the written undertaking at Appendix "B" to the same effect.
 - 14.1 Potential witnesses or participants who are unrepresented will also be entitled to receive documents or information relevant to their testimony after having entered into the written undertaking at Appendix "C".
 - 14.2 The Commission orders that each person who has entered into a written undertaking in the form set out at Appendix "A", "B" or "C" comply with its terms. Failure to do so will be a breach of an order of the Commission.
 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 a reasonable 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.

28. The Commission anticipates that the hearings will take place in two parts, one dealing with events prior to the collapse of the Algo Centre Mall in Elliot Lake on June 23, 2012, and the other dealing with events on and after that date. The Commission further anticipates that each part will include two distinct phases, namely:
- 1) Part 1 will include
 - a) an inquiry into the events prior to the collapse of the Algo Centre Mall, the cause of the collapse, and a review of the relevant legislation, regulations and bylaws 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; and
 - b) consideration of the policy issues that arise with respect to the issues explored in the first phase;
 - 2) Part 2 will include
 - a) an inquiry into the events surrounding the collapse of the Algo Centre Mall and the emergency management and response, and a review of the relevant legislation, regulations and bylaws 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; and
 - b) consideration of the policy issues that arise with respect to the issues explored in the first phase.
- 28.1 In due course, the Commission will issue a procedural order establishing the process by which it will consider the policy issues referred to in Rule 28.
29. The Commissioner may make such orders or give such directions as he considers proper to maintain order and to prevent the abuse of the Commission's process.
30. Participants may propose witnesses to be called as part of the Inquiry. Participants will provide to Commission Counsel the names and addresses of all witnesses they believe ought to be heard and will provide Commission Counsel, where applicable, with copies of all relevant documents, including statements of anticipated evidence, at the earliest opportunity.
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.

32. Anyone interviewed by or on behalf of Commission Counsel, is entitled, but not required, to have counsel present for the interview to represent his or her interests.
33. Witnesses who are not represented by counsel for participants are entitled to have their own counsel present while they testify. Counsel for the witness will be permitted to make appropriate objections during the testimony of that witness.
34. Witnesses may be called more than once.
35. Witnesses will give their evidence at a hearing under oath or affirmation.

Rules of Examination

36. In the ordinary course, Commission Counsel will call and question witnesses who testify at the Inquiry. Except as otherwise directed by the Commissioner, Commission Counsel are entitled to adduce evidence by way of both leading and non-leading questions.
37. Participants will have an opportunity to cross-examine the witness, to the extent of their interest, as determined by the Commissioner. The Commissioner will determine the order of cross-examinations.
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.
39. The Commissioner may direct any counsel whose client shares a commonality of interest with the witness only to adduce evidence through non-leading questions.
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. Revised December 20, 2012.

APPENDIX “A”

Confidentiality Undertaking
for Counsel to Participants or Potential Witnesses in the
Elliot Lake Commission of Inquiry

For the purpose of this Undertaking, the term “document” is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Elliot Lake Commission of Inquiry (the “Inquiry” or “Commission”), including without limitation, any and all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device and any other information pertaining to the Inquiry, irrespective of whether such information or documentation has been identified as confidential, and includes all other material prepared containing or based, in whole or in part, on any information included in the foregoing, including will-say statements referred to in Rule 45 above.

I, _____, undertake to the Elliot Lake Commission of Inquiry that any and all documents which are produced to me in connection with the Commission’s proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such documents to anyone for whom I do not act or who has not been retained as an expert for the purposes of the Inquiry. In respect of anyone for whom I act, or any witness, or any expert retained for the purposes of the Inquiry, I further undertake that I will only disclose such documents upon the individual in question giving the written undertaking annexed as Appendix “B” to the *Rules of Procedures* (revised December 20, 2012).

I understand that this undertaking has no force or effect with respect to any document which has become part of the public proceedings of the Commission, or to the extent that the Commissioner has provided a written release to me from the undertaking with respect to any document. For greater certainty, a document is only part of the public proceedings once the document is made an exhibit at the Inquiry.

With respect to those documents which remain subject to this undertaking at the end of the Inquiry, I undertake to either destroy those documents, and provide a certificate of destruction to the Commission, or to return those documents to the Commission for destruction. I further

undertake to collect for destruction such documents from anyone to whom I have disclosed any documents which were produced to me in connection with the Commission's proceedings.

I understand that a breach of any of the provisions of this Undertaking is a breach of an order made by the Commission.

Signature

Witness

Print Name:

Print Name:

Date

Date

APPENDIX “B”

Confidentiality Undertaking for Participants and Potential Witnesses with Counsel to the Elliot Lake Commission of Inquiry

For the purpose of this Undertaking, the term “document” is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Elliot Lake Commission of Inquiry (the “Inquiry” or “Commission”), including without limitation, any and all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device and any other information pertaining to the Inquiry, irrespective of whether such information or documentation has been identified as confidential, and includes all other material prepared containing or based, in whole or in part, on any information included in the foregoing, including will-say statements referred to in Rule 45 above.

I, _____, undertake to the Elliot Lake Commission of Inquiry that any and all documents which are produced to me in connection with the Commission’s proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such documents to anyone.

I understand that this undertaking has no force or effect with respect to any document which has become part of the public proceedings of the Commission, or to the extent that the Commissioner has provided a written release to me from the undertaking with respect to any document. For greater certainty, a document is only part of the public proceedings once the document is made an exhibit at the Inquiry.

With respect to those documents which remain subject to this undertaking at the end of the Inquiry, I further understand that such documents will be collected from me by the person acting as my counsel who disclosed them to me.

I understand that a breach of any of the provisions of this Undertaking is a breach of an order made by the Commission.

Signature

Witness

Print Name:

Print Name:

Date

Date

APPENDIX “C”

**Confidentiality Undertaking
for Potential Witnesses or Participants with No Counsel to
the Elliot Lake Commission of Inquiry**

For the purpose of this Undertaking, the term “document” is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Elliot Lake Commission of Inquiry (the “Inquiry” or “Commission”), including without limitation, any and all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device and any other information pertaining to the Inquiry, irrespective of whether such information or documentation has been identified as confidential, and includes all other material prepared containing or based, in whole or in part, on any information included in the foregoing, including will-say statement referred to in Rule 45 above.

I, _____, undertake to the Elliot Lake Commission of Inquiry that any and all documents which are produced to me in connection with the Commission’s proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such documents to anyone.

I understand that this undertaking has no force or effect with respect to any document which has become part of the public proceedings of the Commission, or to the extent that the Commissioner has provided a written release to me from the undertaking with respect to any document. For greater certainty, a document is only part of the public proceedings once the document is made an exhibit at the Inquiry.

With respect to those documents which remain subject to this undertaking at the end of the Inquiry, I further understand that such documents will be collected from me by Commission Counsel or a person designated by the Commission Counsel who disclosed them to me.

I understand that a breach of any of the provisions of this Undertaking is a breach of an order made by the Commission.

Signature

Witness

Print Name:

Print Name:

Date

Date