

**THE ELLIOT LAKE  
COMMISSION OF INQUIRY**

The Honourable Paul R. Bélanger,  
Commissioner



**LA COMMISSION  
D'ENQUÊTE ELLIOT LAKE**

L'honorable Paul R. Bélanger,  
Commissaire

**Supplementary Ruling on Funding – Elliot Lake Mall Action Committee**

1. On 3 April 2013, the Applicants, the Elliot Lake Mall Action Committee (“ELMAC”) along with the Seniors Action Group of Elliot Lake (“SAGE”) applied to the Commission requesting a recommendation for increased funding for counsel. Specifically, they asked for a recommendation increasing funding to two Senior Counsel and two Junior Counsel. One of each had been recommended in my original Standing and Funding ruling of 8 November 2012.
2. A dispute arose between ELMAC and SAGE and counsel unilaterally withdrew their services from SAGE leaving that organization without standing or representation.
3. On 26 April 2013, I granted standing and recommended limited funding to SAGE.
4. On the same day, ELMAC submitted a “revised increased resource request” to the Commission re-iterating a request for a funding recommendation for one additional Senior and one additional Junior Counsel. Both applications can be found on the Commission’s website.
5. In the application, counsel for ELMAC refer to the number of Commission Counsel and state:

*“Members of the Commission counsel team are able to spell off each other and keep the witnesses flowing. They have a team of 8 lawyers at least, plus an articling student, while we have a budgeted team of 2 lawyers struggling to keep up as best we can. Despite the significant difference in team size between commission counsels’ team and ours, we [have] what approaches a similar workload. We need to meet witnesses, investigate, research, and certainly, pick through the some 55,000 documents in the Relativity database. We have a similar workload, but substantially dissimilar resources.”*

6. In my opinion, it is incorrect to say that ELMAC’s counsel have a similar workload to that of Commission Counsel. Commission Counsel have had to: determine the appropriate recipients of summonses; arrange for receipt of documents from the custodians; review claims of privilege with respect to those documents and manage that process; review the tens of thousands of documents received for relevance determine the witnesses to whom each

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document is relevant; interview all potential witnesses; prepare will say statements for each witness to be called; review the will say statements with each witness and make any necessary changes before distributing it to participants; ensure that all participants are advised of the documents which Commission Counsel believe relate to each witness' testimony so that participants are able to prepare properly for each witness; prepare section 17 notices in appropriate circumstances; prepare for and conduct full examinations of all relevant facts with each witness; and ensure that each witness and participant is treated fairly. Counsel for ELMAC needs to prepare for cross-examination of each witness. This requires that they ask questions not already asked that are important to their clients. They do not have the obligations to the public and other participants that Commission Counsel have, and do not have the workload of Commission Counsel.

7. None of the individuals who are members of ELMAC are or are likely to be the subject of notices under section 17 of the *Public Inquiries Act, 2009*. None of them have been identified to Commission Counsel as individuals who should be called as witnesses. However, if they are called, their evidence will be limited to the consequences of the tragedy on their individual lives. They will have played no role leading to the collapse of the Mall and their responsibilities in that respect will not be the subject of examination.
8. Counsel for ELMAC have modified their submission relating to the timely production of will-say statements and relevant documents. In their original submission of 3 April 2013, they stated: "*Often, because we receive the "will say" statements and the relevant documents just on the eve of witness evidence, the changes at our end have to be made very hastily and in difficult circumstances*". In their 26 April 2013 submission, they state: "*The helpful "will say" statements and the relevant documents are provided with advance notice that ranges from moderate to very short, though not unusual at a Commission of Inquiry. This interacts with the shifting schedule to require frequent reorganizing of tasks assigned on our team. The changes at our end have to be made very hastily and in difficult circumstances. Greater resources would enable us to cope with this unavoidable reality more effectively*".
9. Counsel for the Commission have filed as Exhibit 2350 a "Schedule of Witnesses, Will-Says and Documents" showing the dates of production of the will-say statements and documents and the dates of the witness' testimony. In my view, the great majority of will-say statements and documents were produced in timely fashion well in advance of the date of the witness' testimony before the Commission.
10. In its original application for increased funding, ELMAC stated: "*While we agreed to take on the SAGE organization at the suggestion of Commission counsel, their demands on our time have exceeded our expectations. Despite our best efforts for them, they remain somewhat dissatisfied with the amount of time that we have been able to offer them. We do not wish to have them unrepresented, but if we do not obtain additional resources we will have to look at ways to limit the demands on our time.*" Obviously, this burden has now been removed.
11. Two minor points made by ELMAC require correction. They are not particularly significant but require comment. First, the statement that "*we have been involved in the cross-examination of every witness*". That is not strictly accurate. ELMAC did not cross-examine

Remy Iamónico, Warwick Perrin, Paul Meyer, Jeff Truman, Rhona Guertin, or Chris Clouthier. Some of that cross-examination has been very brief (I do not wish this observation to be construed as being in any way critical - I merely state it as a fact). Further, in relation to Mr. Oatley, the applicant states: "*He has not yet attended the hearings*". In fact, Mr. Oatley has attended and has cross-examined Syl Allard on April 29.

12. When making funding recommendations, I am very mindful of the Commission's responsibility of being a prudent steward of the use of public funds. Governments very rarely refuse to accede to funding recommendations, particularly in light of the importance of the Commission's real and perceived independence. That responsibility weighs heavily in any consideration of an application for funding.
13. I know that the pace of the Inquiry has so far been more intense than originally anticipated and that document production is an ongoing and incomplete process. Illustrative of that fact is the anticipated production of the final report of the Ministry of Labour's investigative engineer report which, despite the approaching one year anniversary of the tragedy, has yet to be delivered. It will be an important and likely complex document. However, the Commission's mandate is time limited.
14. I am also conscious of the fact that ELMAC's counsel are members of separate relatively small firms from different locations in the Province and represent a large group (50+) of individuals who were seriously impacted by the collapse of the Algo Mall. The complexities arising from those realities are discussed in the application, and I do not take issue with them. I cannot, in addition, overlook the reality that the Government's funding rates for Senior and Junior counsel are singularly modest.
15. Bearing in mind the matters outlined above, I have come to the conclusion that a recommendation for funding of one additional senior counsel for ELMAC is justified. I therefore recommend to the Attorney General that funding for one additional senior counsel be provided to ELMAC in accordance with the *Guidelines for Reimbursement of Legal Fees and Disbursements* and that this additional funding be provided effective 3 April 2013, the date of the first application for increased funding for counsel.
16. However, should that recommendation create logistical, resource or other practical difficulties for the separate firms representing ELMAC, as an alternative recommendation, I am prepared to substitute funding for two additional junior counsel instead of the one additional senior counsel mentioned above, at the applicant's discretion.

ISSUED at Elliot Lake, Ontario, this 8<sup>th</sup> day of May, 2013.

  
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The Honourable Paul R. Bélanger,  
Commissioner