



Reasons for Decision and Stated Case

1. On February 4, 2013, I made the following order:

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.
2. My reasons for making the order, including the facts on which the order is based, are set out below, together with the facts for the stated case pursuant to s. 30(1) of the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sch. 6.
 3. I have also appended the documentary evidence on which my factual findings are based to these reasons.

Background

The Commission

4. On June 23, 2012, the Algo Centre Mall in Elliot Lake, Ontario collapsed, resulting in two deaths and numerous injuries.
5. On July 19, 2012, I was appointed by Order in Council 1097/2012 to conduct an inquiry to:
 - 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 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 in Elliot Lake, Ontario;
- c. Review 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 in Elliot Lake, Ontario.

Bob, Levon and Irene Nazarian

- 6. Robert Nazarian (“Bob”) is a director, president, owner and operator of Eastwood Mall Inc. (“Eastwood”). Eastwood Mall has owned the Algo Centre Mall since 2005. It owned the Algo Centre Mall on the date of the collapse.
- 7. Bob is also:
 - (a) a director and president of Yorkdale Group Inc. From the documents available to the Commission, it appears that Yorkdale Group Inc. was the entity that retained the engineering firm to perform the work that led to a lien being registered on title. In addition, as I noted in my ruling on standing and funding, dated November 8, 2012, Eastwood and Yorkdale Group Inc. appear to be interconnected financially (though the relationship between the two entities was never made clear in Eastwood’s funding application); and
 - (b) president of Algo Hotel Inc., the owner of the hotel that formed part of the Algo Centre Mall.
- 8. Levon Nazarian (“Levon”) is Bob’s son. Levon worked for Eastwood as an independent contractor and administrator, and oversaw the administration of Eastwood’s business transactions, including assisting with the leases and retaining contractors and engineers.
- 9. On November 8, 2012, I granted standing to all of Eastwood, Bob and Levon for Part 1 of the inquiry (which relates to the events prior to the collapse). However, I denied their request for funding because they provided insufficient evidence to suggest that they would not otherwise be able to participate in the inquiry in the absence of receiving such funding.
- 10. Irene Nazarian (“Irene”) is Bob’s wife and Levon’s mother. Although Irene is not a party with standing at the Commission, for the reasons set out below, the Commission is of the view that she has documents in her possession, power or control that are relevant to my mandate.

The Summonses Issued to Bob, Levon and Irene

The Initial Summonses

- 11. On September 6, 2012, I issued two summonses to produce documents, pursuant to s. 10(1)(b) of the *Public Inquiries Act, 2009*, to Bob in his capacity as president of

Eastwood and as president of Yorkdale Group Inc. The summonses required Bob to produce a series of documents to the Commission by September 20, 2012.

12. That day, on September 6, 2012, Commission Counsel wrote to Derrick Fulton of Steinberg Morton Hope & Israel LLP, who was counsel to Eastwood and Yorkdale Group Inc., enclosing the summonses. Commission Counsel asked Mr. Fulton if he would accept service of the summonses on behalf of Bob.
13. Mr. Fulton responded that day, stating: "Once I have instructions, I will be in touch."
14. On September 13, 2012, I issued a third summons to produce documents, pursuant to s. 10(1)(b) of the *Public Inquiries Act, 2009*, to Bob, this time in his capacity as director of Algo Hotel Inc. The summons required Bob to produce a series of documents to the Commission by September 27, 2012.
15. That day, on September 13, 2012, Commission Counsel wrote to Mr. Fulton, enclosing the third summons. As with his earlier letter, Commission Counsel asked Mr. Fulton to confirm if he would accept service of the summons on behalf of Bob.
16. The Commission did not hear from Mr. Fulton. Accordingly, on September 18, 2012, the Commission served Bob directly with the three summonses.
17. On September 24, 2012, Commission Counsel spoke with Mr. Fulton about the timing of delivery of the materials in response to the summonses that were served on Bob. Mr. Fulton advised Commission Counsel that his office was working on it, and that the Commission could expect to receive the documents in two weeks. He further advised that his clients had approximately 90 to 100 bankers' boxes of materials at the office of Antoine-René Fabris (Eastwood's solicitor) in Elliot Lake, and that Mr. Fulton had another couple boxes in his office. Mr. Fulton also asked Commission Counsel about the summons to Yorkdale Group Inc., which Mr. Fulton said had no interest in the Algo Centre Mall. Commission Counsel advised him about the construction lien, which indicated that Yorkdale Group Inc. had retained the lienholder to do work on the mall. Accordingly, Commission Counsel believed that Yorkdale Group Inc. had information about the mall. Mr. Fulton indicated that he would look into the matter.
18. On September 27, 2012, I issued a summons to produce documents, pursuant to s. 10(1)(b) of the *Public Inquiries Act, 2009*, to Levon. The summons required Levon to produce a series of documents to the Commission by October 12, 2012.
19. The next day, on September 28, 2012, Commission Counsel wrote to Levon and enclosed the summons. The letter and summons were served on Levon on October 1, 2012.

The Documents Received from Mr. Fulton and Mr. Fabris

20. On October 3, 2012, Mr. Fabris (solicitor for Eastwood) wrote to Commission Counsel respecting the summons that was issued to Levon. Mr. Fabris stated:

Unfortunately all documents that were in the possession of both Levon Nazarian and Robert Nazarian have been seized by the police.

These include each and every file since the date of the purchase including purchase documents that were in their possession. The documents were seized by the police through a valid search warrant and are now in the OPP's possession.

The purpose of this letter is to inform you 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.

21. On October 10, 2012, Mr. Fulton emailed Yvette Bula, of esi Specialists Inc., with a copy to Commission Counsel. Commission Counsel had retained Ms. Bula to assist with the data management process. In his email to Ms. Bula, Mr. Fulton advised that they had completed the copying of their productions, and only needed "a couple more days". Mr. Fulton further advised that they had "about two banker boxes of material", and that the balance of the materials had been seized by the OPP.
22. That day, Commission Counsel also spoke with Mr. Fulton, who advised that his clients' documents would be produced in two days' time.
23. By October 29, 2012, however, the Commission still had not received any documents from Bob or Levon. Accordingly, that day, Commission Counsel wrote to Mr. Fulton requesting an explanation as to why the production had not yet taken place, and when the Commission would be provided with the documents.
24. On November 7, 2012, Commission Counsel spoke with Mr. Fulton, who advised that his clients' documents were ready to go to the Commission.
25. On or about November 8, 2012, the Commission received one banker's box of documents and one CD containing electronic documents in response to the summonses issued to Bob and Levon. The documents that were produced appeared to have emanated from Mr. Fulton's files.
26. By this time, the Commission appeared to have received conflicting information from Bob and Levon's lawyers (Mr. Fulton and Mr. Fabris) respecting the amount of documents that Bob and Levon had in their possession, power or control, and where those documents were located. In order to ensure that the Commission had all relevant documents in the possession, custody or control of Bob and Levon's lawyers, on November 21, 2012, I issued summonses to produce documents and information, pursuant to s. 10(1)(b) of the *Public Inquiries Act, 2009*, to Mr. Fulton and Mr. Fabris.
27. On November 30, 2012, Mr. Fulton responded to the summons, and confirmed that his office had produced to the Commission all documents in their possession or control.
28. On December 5, 2012, Mr. Fabris produced all documents in his possession that were responsive to the summons. In total, Mr. Fabris produced 84 files from his office to the Commission.

The Documents Received from the OPP

29. Before I issued the initial summonses to Bob or Levon, the Ontario Provincial Police (“OPP”) had executed search warrants on the Algo Centre Mall, as well as Bob’s residence and business, as part of its investigation into the Algo Centre Mall collapse.
30. The Commission believed that the documents seized by the OPP pursuant to the search warrants were likely relevant to the matters at issue in this public inquiry. Accordingly, on August 29, 2012, I issued a summons, pursuant to s. 10(1)(b) of the *Public Inquiries Act, 2009*, to Commissioner Chris D. Lewis of the OPP to produce (among other things) the documents that the OPP had obtained in connection with its investigation into the Algo Centre Mall collapse.
31. The Commission received documents in response to the summons from the OPP. The documents included data retrieved from three computers that were seized from Bob’s residence and one computer from his business.

The Additional Summonses

32. The Commission reviewed the documents received from Mr. Fulton’s office, Mr. Fabris’ office and the OPP. In the course of that review, the Commission identified numerous email accounts and smartphones that were apparently used by Bob, Irene and Levon to conduct business relating to the Algo Centre Mall.
33. In particular, a review of the available materials revealed:
 - (a) over 4,500 email messages that were sent to and received from (among other email addresses) nazariani@rogers.com;
 - (b) use of webmail user accounts with the following email addresses:
 - bob@yorkdalegroup.com
 - levon@levon-pm.com
 - levon@remaxinfinite.com
 - nazarianb@rogers.com

However, because the email accounts were webmail accounts, the email messages from these accounts were not stored on the computers. As a result, although the Commission was able to identify that the webmail addresses were used, Commission staff were unable to access the emails from those accounts; and

- (c) use of several smartphones (Blackberry and Android). Again, while the Commission was able to identify that smartphones were used, Commission staff were unable to access the data that was sent to or received from those devices.

34. As a result of the foregoing, it became apparent to me that Bob and Levon had relevant documents in their possession, power or control that had not been produced, in contravention of the initial summonses that I had issued to them. In addition, the Commission's review of the emails that it was able to retrieve suggested that Irene did work for Eastwood, including paperwork and human resources related tasks for the company.
35. Accordingly, on December 6, 2012, I issued further summonses to produce documents, pursuant to s. 10(1)(b) of the *Public Inquiries Act, 2009*, to Bob, Irene and Levon (the "Additional Summonses"). The Additional Summonses required Bob, Irene and Levon to produce the following (among other things) by December 14, 2012:
 1. All emails, including attachments, relating to the Algo Centre Mall, including but not limited to emails sent or received to the following email and/or webmail addresses:
 - a. bob@yorkdalegroup.com;
 - b. levon@remaxinfinite.com;
 - c. levon@levon-pm.com;
 - d. nazarianb@rogers.com;
 - e. nazariani@rogers.com.
 2. All emails, including attachments, and documents relating to the Algo Centre Mall, including but not limited to emails or messages sent or received using the following smartphones:
 - a. HTC Android Phone; and
 - b. RIM Blackberry.
36. The Commission served the Additional Summonses on Bob and Irene on December 11, 2012, and on Levon on December 12, 2012.
37. On December 12, 2012, Commission Counsel wrote to Michael Title, Mr. Fulton's partner at Steinberg Morton Hope & Israel LLP. In the letter, Commission Counsel provided some context for the Additional Summonses. With respect to the request for emails, Commission Counsel noted that, while Mr. Title's clients no longer had possession of the computers they used, they should be able to obtain copies of the emails through their webmail accounts and/or through their service providers.
38. The next day, December 13, 2012, Mr. Fulton wrote to Commission Counsel, indicating that the deadline of December 14, 2012 was "certainly unreasonable and near impossible, particularly given the fact that we need to make requests from third parties".
39. The following day, December 14, 2012, Commission Counsel responded to Mr. Fulton's letter. In the letter, Commission Counsel indicated that the Commission was prepared to

extend the deadline for delivery of the documents to December 21, 2012, “as long as you provide us, today, with a copy of your requests to the third parties seeking the documents which are the subject of the Summonses”.

40. The Commission did not receive any response to this letter.
41. On January 3, 2013, Commission Counsel spoke with Mr. Title. They discussed, among other things, the failure by Mr. Title’s clients to comply with their legal obligations, and in particular, their lack of response to the Additional Summonses. Commission Counsel and Mr. Title discussed ways to resolve the issue, including by having the data management company that the Commission had retained search Bob, Levon and Irene’s emails for relevant keywords.
42. In the meantime, the Commission continued with its review of the documents that it had received from Mr. Fulton’s office, Mr. Fabris’ office and the OPP, including the emails that were recovered from the seized computers. In the course of that review, the Commission identified additional email accounts that were used by employees of Eastwood. On December 19 and 20, 2012, I issued summonses to those employees to produce all relevant documents, including emails from the email accounts that were identified. The employees responded, however, that they no longer had access to their respective email accounts.
43. Accordingly, on January 8, 2013, Commission Counsel wrote to Mr. Title as follows:

Since issuing the three Summonses against Robert, Levon and Irene Nazarian on December 6, 2012, it has come to the attention of the Commission that the following additional email and/or webmail addresses were also used by employees of Eastwood Mall Inc.

- eastwood.mall@yahoo.ca;
- pam@algotremall.com;
- gwen@algotremall.com;
- ann@algotremall.com;
- shannon@algotinn.com;
- rhonda@algotremall.

In this regard, the Commission has served Summonses on Pam Folkes, Gwendlyn (Gwen) Goulet, Ann Sabourin, Shannon Brown and Rhonda Lendt. We have been advised by Ms. Folkes, Ms. Sabourin, Ms. Brown and Ms. Lendt that they no longer have access to their respective email addresses above. We understand that the domain name @algotremall.com is owned by your client Levon Nazarian, as per the GoDaddy WHOIS information attached.

Similarly to the email and/or webmail addresses outline[d] in the December 6, 2012 Summonses, the Commission requires your clients to produce all emails, including

attachments, sent or received to the above-noted email and/or webmail addresses and any other email and/or webmail addresses of any other employee of Eastwood Mall Inc. in relation to the Algo Centre Mall. Production of these emails is required by the Summonses which were served on your clients, which required production of all emails in the possession, power and control of your clients in relation to the Algo Centre Mall.

Should you have any questions, please do not hesitate to contact me.

44. The Commission received no response to this letter.
45. On January 25, 2013, Commission Counsel wrote again to Mr. Title respecting his clients' non-compliance with the summonses that were issued to them. Commission Counsel indicated that if the documents were not produced by February 1, 2013, they would consider all of their options, including an application to the Commissioner for an order pursuant to s. 29(b) of the *Public Inquiries Act, 2009*.

46. On January 31, 2013, Mr. Fulton responded. He wrote:

We have a dedicated Articling Student on this matter and she is currently and actively still gathering up the requested information. This process is taking significantly longer than we ever expected. This request is not simply to hand over documents in our possession. These are documents with third party service providers and we are finding this process less than straightforward. We would like to give you a certain date as to when you will have this information but unfortunately we cannot. We are working on it as fast as we can and we will contact you by next Wednesday to provide an update.

47. The next day, February 1, 2013, Commission Counsel responded to Mr. Fulton's letter. Commission Counsel made the following request:

We would ask that you immediately provide us with copies of the documents that you have gathered so far and the written requests that you, or your clients, have made to the third party service providers requesting the documents sought by the Commission. I note that I had asked you, on December 14, 2012, for a copy of these requests. You never provided them to the Commission. If I do not receive, by the end of the day today, the documents you have so far gathered and the requests to third parties, we will consider our options as outlined in my letter of January 25, 2013.

48. The Commission did not receive a response to this letter.

Reasons and Facts for Stated Case

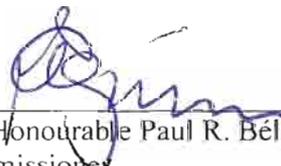
49. In light of these facts and Bob, Levon and Irene's continued non-compliance with the summonses that were issued to them, on February 4, 2013, I made the order set out above, pursuant to s. 29(b) of the *Public Inquiries Act, 2009*.
50. There is no question that Bob and Levon are essential participants in this public inquiry. As I stated in my ruling on standing and funding, dated November 8, 2012:

Eastwood Mall Inc. owned the Algo Centre Mall from 2005 to the present date, including on the date of the collapse. The Notice of Application and accompanying submissions assert that Robert Nazarian is a director, President, owner and operator of Eastwood Mall Inc.; Levon Nazarian, his son, worked for Eastwood Mall Inc. as an independent contractor and administrator; and Levon Nazarian oversaw the administration of Eastwood Mall Inc.'s business transactions, including assisting with the leases and retaining contractors and engineers.

This corporation and these individuals are directly connected to the ownership and management of the Mall at the time of the collapse. They are the object of a number of investigations. They submit that they anticipate receiving notices pursuant to Section 17 of the *Public Inquiries Act, 2009*. They clearly have a significant, substantial and direct interest. They have requested standing in relation to **Part 1** of the Inquiry and standing is **granted** as requested.

51. The public hearings in this inquiry commenced on March 4, 2013. The documents at issue are relevant, if not essential, to the fulfillment of my mandate and the efficient conduct of the public hearings.
52. Having applied for and obtained standing at this inquiry, it is incumbent upon Bob and Levon to comply with the summonses issued to them. In the Additional Summonses and subsequent correspondence, the Commission identified a series of email accounts that are in the possession, power or control of Bob and Levon. Despite numerous requests, Bob and Levon have not produced the emails relating to the Algo Centre Mall from those email accounts. Nor have they produced any evidence to the Commission to confirm that the requests for emails from third party service providers have even been made. Instead, throughout the documentary production process, they have shown disregard for the timelines set out in the summonses that I have issued, the reasonable requests of Commission Counsel, and now, my order of February 4, 2013. They appear to be of the view that they can produce what they want, when they want.
53. While Irene is not a party with standing at this inquiry, for the reasons set out above, the Commission is of the view that she has possession, power or control of the documents identified in the summons dated December 6, 2012 (and in particular, emails from her Rogers email account), all of which are relevant to my mandate. Indeed, the Commission received no indication from Irene or her counsel to suggest otherwise.
54. For the reasons set out above, on February 4, 2013, I made the order requiring production "forthwith" of the documents identified in the various summonses described above.

ISSUED at Ottawa, Ontario, this 6th day of March, 2013.


The Honourable Paul R. Bélanger
Commissioner

Appendices to Reasons for Decision and Stated Case

TAB	DOCUMENT
A	Summons to Produce Documents to Commissioner Chris D. Lewis, Ontario Provincial Police, dated August 29, 2013
B	Letter from Commission Counsel to Derrick Fulton, dated September 6, 2012, enclosing: <ul style="list-style-type: none"> • Summons to Produce Documents to Robert Nazarian, President, Eastwood Mall Inc., dated September 6, 2012 • Summons to Produce Documents to Robert Nazarian, President, Yorkdale Group Inc., dated September 6, 2012
C	Emails between Peter Doody and Derrick Fulton, dated September 6, 2012
D	Letter from Commission Counsel to Derrick Fulton, dated September 13, 2012, enclosing: <ul style="list-style-type: none"> • Summons to Produce Documents to Robert Nazarian, Director, Algo Hotel Inc., dated September 13, 2012
E	Affidavit of Service of Gaetano T. Pampalone, sworn September 21, 2012
F	Letter from Commission Counsel to Levon Nazarian, dated September 28, 2012, enclosing: <ul style="list-style-type: none"> • Summons to Produce Documents to Levon Nazarian, dated September 27, 2012
G	Affidavit of Service of Leo Pereira, sworn October 3, 2012
H	Letter from Antoine-René Fabris to Commission Counsel, dated October 3, 2012
I	Emails between Yvette Bula, Peter Doody and Derrick Fulton, dated September 24 and October 10, 2012
J	Letter from Commission Counsel to Derrick Fulton, dated October 29, 2012
K	Emails between Derrick Fulton and Mark Wallace, dated November 7 and 8, 2012
L	Letter from Derrick Fulton to Commission Counsel, c/o of esi Specialists Inc., dated November 8, 2012
M	Letter from Commission Counsel to Derrick Fulton, dated November 8, 2012

TAB	DOCUMENT
N	<p>Letter from Commission Counsel Derrick Fulton, dated November 21, 2012, enclosing:</p> <ul style="list-style-type: none"> • Summons to Produce Documents and Information to Derrick Fulton, dated November 21, 2012
O	<p>Letter from Commission Counsel to Antoine-René Fabris, dated November 21, 2012, enclosing:</p> <ul style="list-style-type: none"> • Summons to Produce Documents and Information to Antoine-René Fabris, dated November 21, 2012
P	<p>Letter from Derrick Fulton to Commission Counsel, dated November 30, 2012</p>
Q	<p>Letter from Antoine-René Fabris to Commission Counsel, dated December 5, 2012, enclosing:</p> <ul style="list-style-type: none"> • Index of Documents Produced by Brown & Fabris Law Office • Statutory Declaration of Antoine-René Fabris, dated December 5, 2012
R	<p>Letter from Commission Counsel to Michael Title, dated December 12, 2012, enclosing:</p> <ul style="list-style-type: none"> • Summons to Produce Documents to Robert Nazarian, dated December 6, 2012 • Summons to Produce Documents to Levon Nazarian, dated December 6, 2012 • Summons to Produce Documents to Irene Nazarian, dated December 6, 2012 • Letter from Darrell Kloeze to Eastwood Mall Inc., dated October 24, 2012 • Printouts from webmail inboxes for bob@yorkdalegroup.com, levon@remaxinfinite.com, and levon@levon-pm.com
S	<p>Affidavits of Service of Guy Pampalone, sworn December 13, 2012</p>
T	<p>Letter from Derrick Fulton to Commission Counsel, dated December 13, 2012</p>
U	<p>Letter from Commission Counsel to Derrick Fulton, dated December 14, 2012</p>
V	<p>Letter from Commission Counsel to Derrick Fulton, dated December 18, 2012</p>

TAB	DOCUMENT
W	Letter from Commission Counsel to Rhonda Lendt, dated December 19, 2012, enclosing: <ul style="list-style-type: none"> • Summons to Produce Documents to Rhonda Lendt, dated December 19, 2012
X	Letter from Commission Counsel to Shannon Brown, dated December 19, 2012, enclosing: <ul style="list-style-type: none"> • Summons to Produce Documents to Shannon Brown, dated December 19, 2012
Y	Letter from Commission Counsel to Ann Sabourin, dated December 20, 2012, enclosing: <ul style="list-style-type: none"> • Summons to Produce Documents to Ann Sabourin, dated December 20, 2012
Z	Letter from Commission Counsel to Gwendlyn Goulet, dated December 20, 2012, enclosing: <ul style="list-style-type: none"> • Summons to Produce Documents to Gwendlyn Goulet, dated December 20, 2012
AA	Letter from Commission Counsel to Pam Folkes, dated December 20, 2012, enclosing: <ul style="list-style-type: none"> • Summons to Produce Documents to Pam Folkes, dated December 20, 2012
BB	Email from Ann Sabourin to Peter Doody, dated December 27, 2012
CC	Email from Pamela Folkes to Elliot Lake Commission of Inquiry, dated December 31, 2012
DD	Email from Shannon Brown to Peter Doody, dated January 1, 2013
EE	Email from Rhonda Lendt to Yvette Bula, dated January 3, 2013
FF	Letter from Commission Counsel to Michael Title, dated January 3, 2013
GG	Letter from Commission Counsel to Michael Title, dated January 8, 2013, with enclosure
HH	Email from Gwendlyn Reed to Elliot Lake Commission of Inquiry, dated January 9, 2013
II	Letter from Commission Counsel to Michael Title, dated January 25, 2013

TAB	DOCUMENT
JJ	Letter from Derrick Fulton to Commission Counsel, dated January 31, 2013
KK	Letter from Commission Counsel to Derrick Fulton, dated February 1, 2013

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