

ONTARIO
COMMISSION OF INQUIRY

THE ELLIOT LAKE COMMISSION OF INQUIRY

ELLIOT LAKE MALL ACTION COMMITTEE
REVISED INCREASED RESOURCE REQUEST

April 26, 2013

R. Douglas Elliott, Roy Elliott O'Connor LLP
Jeff Broadbent, Feifel Broadbent Gualazzi LLP
Roland Aubé, LLB

1. On November 8, 2012, the Commissioner granted full standing to ELMAC as follows:

“Being the only broad-based community group seeking standing before this Commission, it is evident that ELMAC has a clear and important interest in the issues raised by the Order in Council. It meets the criteria for **full standing, which is granted.**”
2. Funding was recommended as requested as follows:

“I am satisfied that without funding, they could not properly participate in the work of this inquiry. I recommend to the Attorney General that funding for one senior and one junior counsel be provided in accordance with the *Guidelines for Reimbursement of Legal Fees and Disbursements*, on the understanding that the senior counsel position will alternate between Messrs. R. Douglas Elliott, Jeff Broadbent and Roland Aubé.”
3. This funding was approved by the Attorney General of Ontario.
4. We now seek additional resources for ELMAC.
5. We seek an increase from one senior counsel to two senior counsel.
6. We seek an increase from one junior counsel to two junior counsel.
7. The reasons for the changes requested are as follows.
8. Simply put, our team grossly underestimated the burden that this Inquiry would place on us.
9. We did not know anything about the schedule planned until we arrived in Elliot Lake. The volume of material, the rapid succession of witnesses and the pace has been significant and at times overwhelming. As the Commissioner noted in his ruling on increased funding for the City of Elliot Lake:

“It is beyond contention that the pace of the hearing had been unrelenting and intense without any interruption anticipated before mid-June of 2013. Document production to participants has been voluminous and continues unabated to this day.”

10. The schedule continues to shift frequently.
11. There has been little time for the out of town members of our team to return to their homes and practices. Contrary to our team’s prior experiences, the Inquiry is not taking one week off in every four or five.
12. 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 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. The toll it takes as we strive to provide competent service to our client, and indeed to the Commission, is considerable.
13. All 3 of our available senior counsel have been working hard on this file. We have regularly exceeded the 10 hour maximum and have indeed exceeded 20 hours of time per day collectively in this past month. We had to recruit an additional senior lawyer from Roy Elliott O’Connor, Mr. Roy, when Mr. Elliott was called away. We are not permitted to bill for any of the time in excess of 10 hours of senior counsel time daily, unless an increase to two senior counsel is recommended by the Commissioner and approved by the Government.

14. This is putting an undue strain on our practices (we are all in small firms) and on our personal lives (only one of us lives in Elliot Lake).
15. We are being forced to forgo other work that offers more attractive hourly rates in order to meet the demands of this Inquiry. Apart from the brief suspension of our services, we have been involved in the cross examination of every witness. We bring the perspective of citizens of Elliot Lake to bear on issues, which is critical for this Inquiry. We have also assisted by suggesting additional documents and witnesses. We take pride in the quality of our work, which we hope assists the Commissioner.
16. Our counsel group represents community based participants that include many persons directly impacted by the mall collapse. The only other participants who were similarly affected are represented by Mr. Oatley. Although Mr. Oatley does not receive public funding, he has not yet attended the hearings. His associate attended the first day with an opening statement. This has meant that the burden of representing those directly impacted has been shouldered so far solely by our team.
17. The City of Elliot Lake has also played a key role, however, they have the advantage of having a client with full time staff and infrastructure. Representing lay people with few resources and with little experience of legal proceedings is much more time consuming than representing well-resourced clients who are experienced in dealing with the legal process and who often have permanent staff to assist. ELMAC, a community based organization is completely operated by volunteers.
18. Since we are so closely connected with the community, we also find that members of the community are approaching us frequently with new information and witnesses for the Commission. SAGE consumed a certain amount of time, which is no longer a pressure point, but it was a small fraction of the time demands on our team in Phase 1.

Moreover, the time taken by SAGE was time needed and taken from Phase I. It will be time needed for Phase II. We still have many documents to chase and review for Phase II. We are not yet halfway through Phase I and remain under limitations owing to constricted resources. It is affecting our ability to provide effective service to the client and commission. If it turns out that Phase II is less consuming, we will use less resources.

19. Because the community is small, and each of our senior counsel has ties to the community, we are frequently running into situations where we have to juggle and re-assign witnesses as we learn of potential difficulties for counsel examining witnesses. These are generally not true conflicts, but rather situations in which we believe that it would be inappropriate for certain of our senior counsel to examine a particular witness. 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.

20. If we were to be given increased resources, to two senior counsel and two junior counsel, we would be able to follow the same approach as the Commission counsel. One team would be in the hearing room and another team would be preparing for future witnesses outside the hearing room. We would propose to follow the example of the City of Elliot Lake and sometimes use an articling student instead of a junior lawyer.

R. Douglas Elliott per [signature]

R. Douglas Elliott

Jeff Broadbent per [signature]

Jeff Broadbent

Roland Aubé per [signature]

Roland Aubé