

THE ELLIOT LAKE COMMISSION OF INQUIRY

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S T A N D I N G H E A R I N G S
BEFORE THE HONOURABLE JUSTICE P. BÉLANGER

15

On October 26, 2012

at the Hampton Inn, Maple Room

in ELLIOT LAKE, Ontario

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Opening Remarks - Commissioner Bélanger

FRIDAY, OCTOBER 26, 2012

MR. COMMISSIONNER: Thank you and good morning and welcome to the first formal session of the Elliot Lake Inquiry.

I will be repeating these comments in French immediately after I have completed my comments in English.

Je vais répéter mes commantaires en français immédiatement à la suite des commantaires que je vais faire ce matin en anglais.

As many of you know, I am a retired judge of the Ontario Court of Justice and I have been appointed Commissioner of this independent inquiry and I thank you all for coming this morning and it is a pleasure to be back in Elliot Lake. The sun was shining yesterday when we came we got a glorious fall welcome in your beautiful city.

As you may recall, my team and I were here in August to meet informally with the residents of Elliot Lake to hear directly from them about the impact that the events of June 23 and the following days had on them.

We met publicly with these folks and privately and our meetings involved approximately 40 individuals.

Opening Remarks - Commissioner Bélanger

5 I can tell you that we all left with a clear understanding of how emotional the issues that we are investigating are to this community, and we left with a clear understanding of the devastating impact of the collapse of the Algo Centre Mall has had on the people of Elliot Lake and the surrounding community and as we continue our work, we will most certainly keep these sentiments in mind as we remember the two 10 citizens who perished in this tragedy.

15 I think it is important again to reiterate what I said in August about the role of a public inquiry, what it is and what it is not. A public inquiry investigates and reports on matters of substantial public interest to a community. A public inquiry is not a trial. No one is charged with any criminal offence, nor is anybody being sued through the commission process. A public 20 inquiry must be conducted with scrupulous fairness and impartiality.

25 I am pleased to report that much has been accomplished since we were last here. I have assembled a full team of lawyers, investigators and support staff to assist us in our work and I can assure you that they are highly skilled and devoted to the important work ahead. You met our lead counsel at our August session and 30 information about the rest of the team is on our Website.

Opening Remarks - Commissioner Bélanger

5 We have set up offices here in Elliot Lake and in
Ottawa where I and my counsel are based and we
are nearing completion of the hearing room at the
old White Mountain Academy of the Arts that has
not been in use for a number of years. We will
have significant seating for the public there and
it will also be possible to view the proceedings
on a large screen elsewhere in the Academy. I
understand as well that the city library, Service
10 Canada and some other institutions are also
setting up at the Academy. As I indicated in
August, all of our proceedings will be broadcast
live on the Internet. The local cable company is
looking at the possibility of broadcasting the
15 proceedings as well and we are setting up a media
room so that local, regional and national media
can cover the proceedings.

20 We have secured accommodations here in Elliot
Lake for my team when we move up here for the
hearings, which I hope will begin early in the
new year.

25 The first part of our work involves conducting
our own investigation into the issues that I have
been directed to inquire into by my ordering
counsel. I must emphasize, however, that our
investigation is separate from any of the other
investigations currently underway into this
30 tragedy. Now, to this end we have served summons
on more than 60 individual companies and
organizations to obtain documents relevant to our

Opening Remarks - Commissioner Bélanger

investigation.

5 We have so far received, and I can't give you an exact number, but hundreds of thousands of documents and my team is diligently reviewing and sifting through them. It is truly an impressive and daunting amount of documentary material.

10 My investigators, who were here as late as yesterday, have already interviewed approximately 50 people and we expect to interview many more in the coming days.

15 As well, we have published our Rules of Standing and Funding and our Rules of Procedure and they are on the Commission's Web site at www.elliottlakeinquiry.ca. Each public inquiry establishes its own rules. We have drafted our Rules in a way that makes sure that the process we plan to follow is open, that it is transparent and fair to everyone involved and we've also tried to draft the rules in relatively plain language.

25 Once I have determined which parties have standing, we will be inviting comments from the parties about our rules if there is any perceived need to refine or change or in some way accommodate specific requests for amendment.

30 So while much has already been accomplished, clearly there is a great deal of work still ahead

Opening Remarks - Commissioner Bélanger

5 of us and, of course, I am mindful of the July 20 order-in-council establishing the Commission, which directs me to report at the latest within 18 months from the month of July and I take this opportunity to say that I wish to assure you and all of the people of Ontario that my staff and I are keenly aware that we are spending taxpayers' money and we will ensure that we will conduct these hearings and all our work in a manner that is fair to all involved and respectful of the current economic climate.

10 But we have been appointed by the Government of Ontario to get answers to this tragedy and we will get those answers. The answers are of course important for the people of this community but they are also important for all of the people of Ontario to ensure that a tragedy like this does not occur again.

15 Just one final point. While important aspects of our mandate require me to inquire into the events surrounding the collapse of the mall and the emergency management and response to it, I have also been directed to review legislation, regulations, practices relating to the structural integrity of buildings and emergency management generally.

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30 Now, I have yet to devise the exact mechanisms through which we will deal with this aspect of the mandate. Some commissions in the past have

Opening Remarks - Commissioner Bélanger

5 carried out their policy reviews through the creation of expert panels, others through round table discussions and others still have invited experts to provide the commission with written submissions and I take this opportunity to invite all parties directly or through counsel discuss with commission counsel your views on how we can best achieve this policy objective.

10 While our primary focus until now has been the gathering of information, I have also asked Commission Counsel to research best practices in other jurisdictions in areas such as, and these are merely examples, professional qualifications, construction engineering and inspection and emergency response. When that information has been collected and properly edited, I propose to make it available to all participants in the inquiry and I look forward to your collaboration on this important aspect of our work.

25 The purpose of today's hearings is to determine who will have standing to participate in the work of the Commission. The test for standing is whether the person or organization has a "substantial and direct interest" in the work of the Commission. Those persons or organizations granted standing can take an active part in the proceedings of the inquiry.

30 In addition, I will, as previous commissions have done, consider the following: First, the nature

Opening Remarks - Commissioner Bélanger

5 of the party's interest and proposed involvement in the inquiry; second, whether the party has an established record of concern for, and a demonstrated commitment to, the interest it seeks to represent; third, whether the party has special experience or expertise with respect to the Commission's mandate; and finally whether the party can reasonably be included in a group with other of similar interests.

10 As you will see from the Rules we have published, we have divided our work into two phases; one dealing with the events prior to the collapse of the Mall on the 23rd of June 2012, and the other dealing with events on or after that date.

15 While these of course are not iron-clad compartments, they will help us to better organize our work. Some groups or individuals, therefore, may receive standing and/or funding for one phase but not necessarily for the other.

20 Based on the written submissions I have received, I have already indicated that I did not require a number of applicants to appear here today.

25 However, this morning I will hear brief submissions from those who have been invited to attend.

30 On the issue of funding, I must emphasize that my mandate only permits me to make recommendations

Opening Remarks - Commissioner Bélanger

5 to the Attorney General on which groups or individuals should receive funding for their participation in the work of the Commission and in that respect the test is whether these individuals or groups "would not otherwise be able to participate in the inquiry without such funding."

10 Now, may I introduce Commission Counsel who are here this morning, Mr. Peter Doody you have met before, Mr. Mark Wallace next to Mr. Doody and maître Nadia Effendi and as well I simply wish to point out that there are other members of the Commission present here this morning. Of course, 15 our media consultant, Mr. Peter Rehak, has been here on quite a number of occasions organizing a great many things, particularly involving the media; Madame Suzanne Labbé who is the executive director of the Commission and who is really the boss and who runs everything and runs everything 20 extremely well but she has been here before as well. One individual who has not been here before is Mr. Steve Bindman who is here for the first time. He is a special advisor to the Commission. He is a journalist by profession. 25 He is seconded from the Wrongful Convictions Canada sub-directorate. He is a professor at the University of Ottawa. He is a lay bencher of the Law Society of Upper Canada and holds 30 postgraduate degrees in the area of public law.

Those are my first comments. Commission Counsel,

Opening Remarks - Commissioner Bélanger

anything that you wish to add, Mr. Doody? But just before Mr. Doody, I'm sorry, may I repeat my comments in French and then I will hear from you?

5 Alors, comme j'ai dit en anglais, bonjour et bienvenue à la première séance officielle de la Commission d'enquête Elliot Lake. Je m'appelle Paul Bélanger. Je suis juge à la retraite de la Cour de justice de l'Ontario et j'ai été nommé commissaire de cette enquête indépendante.

10 Je vous remercie d'être ici ce matin et c'est un plaisir pour moi de revenir à Elliot Lake.

15 Vous vous rappellerez que mon équipe et moi étions ici en août pour rencontrer de manière informelle les résidents d'Elliot Lake et entendre leurs points de vue quant aux répercussions des événements du 23 juin et des jours suivants.

20 Nous avons rencontré, en public et en privé, une quarantaine de personnes et je peux vous dire que nous sommes tous repartis en comprenant
25 clairement à quel point les questions faisant l'objet de notre enquête suscitent l'émotion dans cette communauté. Nous avons aussi compris que l'effondrement du centre commercial Algo a été absolument dévastateur pour la population
30 d'Elliot Lake et sa région. En poursuivant notre travail, nous tiendrons sûrement ces sentiments à l'esprit et nous gardons le souvenir des deux

Opening Remarks - Commissioner Bélanger

citoyennes qui ont péri la vie dans cette tragédie.

5 Il m'apparaît important de réitérer ce que j'ai dit en août au sujet du rôle d'une commission d'enquête publique, ce qu'elle est et ce qu'elle n'est pas. Une commission d'enquête mène une enquête sur un sujet présentant un intérêt public important pour une collectivité. Une commission d'enquête n'est pas un procès. Aucune personne n'est inculpée d'une infraction criminelle et personne n'est poursuivi. Une enquête publique doit être menée de façon scrupuleusement équitable et impartiale.

10 Je suis heureux de pouvoir rapporter que nous avons beaucoup accompli depuis notre dernier séjour ici. J'ai constitué une équipe complète d'avocats, d'enquêteurs et d'employés de soutien pour aider à l'exécution de notre tâche et je peux vous assurer qu'il s'agit de personnes extrêmement compétentes et dévouées à l'importante mission qui nous attend. Vous avez rencontré nos procureurs principaux lors de la séance au mois d'août. Des renseignements sur les autres membres de l'équipe se trouvent sur notre site Web.

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30 Nous avons ouvert des bureaux ici à Elliot Lake et à Ottawa où mes procureurs et moi sommes établis. Nous achevons l'aménagement de la salle d'audience à l'ancienne White Mountain Academy of

5 the Arts, qui était inutilisée depuis des années. Cette salle comprendra des places pour le public, et il y aura aussi la possibilité de suivre les travaux de la Commission sur un grand écran fixé dans un autre endroit de l'Académie.

10 Je crois savoir que la bibliothèque municipale, Service Canada et d'autres institutions sont aussi en voie de s'installer dans l'Académie.

15 Comme je l'ai indiqué en août, toutes nos audiences seront diffusées en direct sur l'Internet. L'entreprise locale de câblodistribution examine aussi la possibilité de diffuser les audiences, et nous sommes en train d'aménager une salle des médias afin que les journalistes locaux, régionaux et nationaux puissent les suivre.

20 Nous avons pris les dispositions pour héberger mon équipe lorsque nous nous installerons ici pour les audiences qui, j'espère bien, commenceront tôt l'an prochain.

25 La première partie de notre travail consiste à mener notre propre enquête sur les questions dont j'ai été chargé d'enquêter. Je dois toutefois insister que notre enquête est distincte des autres enquêtes déjà en cours sur cette tragédie. Dans cette optique nous avons signifié à plus de 30 60 personnes, entreprises et organisations des assignations en vue d'obtenir des documents pertinents dans le cadre de notre enquête; nous

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avons jusqu'à présent reçu des centaines de milles de documents, je n'ai pas le nombre précis ce matin, et mon équipe les examine et les trie avec diligence. C'est une tâche faramineuse et difficiles. Mes enquêteurs ont déjà eu des entretiens avec environ 50 personnes, et devraient en rencontrer de nombreuses autres dans les jours à venir.

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Par ailleurs, nous avons publié nos Règles sur la qualité pour agir et l'aide financière ainsi que nos Règles de procédure. Elles se trouvent sur le site Web de la Commission, à www.elliottlakeinquiry.ca. Chaque commission d'enquête publique établit ses propres règles. Nous avons rédigé les nôtres de sorte que notre démarche soit ouverte, transparente et équitable pour tous concernés. Nous avons aussi essayé d'adopter un langage clair et un langage simple.

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Lorsque j'aurai décidé quelles parties auront la qualité pour agir, j'inviterai des commentaires et des suggestions au sujet de nos règles.

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Nous avons beaucoup accompli, mais il en reste évidemment aussi beaucoup à faire. Je ne perds pas de vue le décret du 20 juillet établissant la Commission, qui me charge de faire un rapport dans un délai au plus 18 mois.

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Je tiens à vous assurer, ainsi que la population de l'Ontario, que mon personnel et moi sommes

5 éminemment sensibles au fait que nous dépensons les fonds des contribuables. Nous veillerons à mener ces audiences et tout notre travail d'une façon qui soit équitable pour tous et efficace tout en tenant compte de la conjoncture économique actuelle.

10 Toutefois, nous avons été nommés par le gouvernement de l'Ontario pour trouver des réponses quant à cette tragédie et nous obtiendrons ces réponses. Les réponses sont évidemment importantes pour la population de cette collectivité mais aussi pour toute la population de l'Ontario afin d'éviter qu'une autre tragédie semblable se produise.

15 J'aimerais aborder un dernier point qui est suivant. Bien que des aspects importants de mon mandat exigent que j'enquête sur les circonstances de l'effondrement du centre commercial et sur les mesures d'urgence mises en oeuvre en conséquence, j'ai aussi été chargé d'examiner les lois, les règlements et les pratiques en ce qui concerne l'intégrité structurelle des bâtiments et la gestion des urgences en général.

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30 Alors, il me reste à mettre au point les mécanismes précis qui nous permettront d'aborder cet aspect du mandat.

Certaines commissions ont procédé à leurs examens

des politiques en créant des groupes d'experts, et d'autres, en recourant à des tables rondes. D'autres encore ont invité des experts à soumettre des observations par écrit.

À ce propos, j'invite tous les participants et leur procureurs à discuter avec les procureurs de la Commission leurs opinions sur la meilleure façon dont nous pouvons réaliser cet objectif.

Nous nous sommes jusqu'à présent surtout attardés à recueillir de l'information, mais j'ai aussi demandé aux procureurs de la Commission de mener des recherches sur les normes de pratiques dans d'autres administrations en ce qui concerne les compétences professionnelles, par exemple, l'ingénierie et les inspections de la construction, ainsi que les interventions en cas d'urgence. Quand cette information aura été recueillie et mise en forme, je me propose de la mettre à la disposition de tous les participants à cette enquête et j'espère pouvoir compter sur votre collaboration dans cet important volet de notre travail.

L'audience aujourd'hui vise à déterminer qui aura la qualité pour agir dans le cadre des travaux de la Commission. Le critère pertinent est de savoir si une personne ou organisation a et je cite, "un intérêt important et direct" dans les travaux de la Commission. Les personnes et organisations recevant la qualité pour agir

peuvent participer activement aux travaux de l'enquête.

5 Je prendrai aussi en compte, comme l'ont fait des commissions précédentes, des éléments suivants: premièrement, la nature de l'intérêt du requérant et de sa participation proposée à l'enquête; deuxièmement, la question de savoir si le requérant a démontré une préoccupation et un engagement à l'égard de l'intérêt qu'il cherche à représenter; troisièmement, la question de savoir si le requérant a une expérience ou une expertise particulière à l'égard du mandat de la Commission; et finalement, la question de savoir si le requérant a cherché de former un groupe avec d'autres personnes ayant des intérêts semblables.

10 Comme vous le constaterez d'après les règles que nous avons publiées, nous avons prévu que les audiences se dérouleront en deux volets: l'un traitant des événements précédant l'effondrement du centre commercial Algo le 23 juin 2012, et l'autre traitant des événements survenus à cette date et par la suite.

15 Bien qu'il ne s'agisse pas de compartiments absolument étanches, cette division nous permettra de mieux organiser notre travail. Certains groupes ou personnes pourront ainsi recevoir la qualité pour agir et une aide financière à l'égard d'un volet, mais pas

nécessairement à l'égard de l'autre.

5 À la lumière des observations écrites que j'ai
reçues, j'ai déjà indiqué à un certain nombre de
requérants qu'il n'était pas nécessaire qu'ils
soient présents aujourd'hui.

Aujourd'hui, je recevrai de brèves observations
de ceux qui ont été invités à cette audience.

10 En ce qui concerne l'aide financière, je dois
insister que mon mandat me permet seulement de
faire des recommandations au procureur général en
ce qui concerne les groupes ou personnes qui
15 devraient recevoir des fonds pour leur
participation aux travaux de la Commission. Le
critère déterminant est la mesure dans laquelle
ces personnes ou groupes, et je cite encore, "ne
seraient par ailleurs pas en mesure de participer
20 à l'enquête sans ces fonds".

J'ai déjà présenté les procureurs en langue
anglaise. Je ne crois pas que ça soit nécessaire
de les ré-introduire en langue française mais je
demande si les procureurs de la Commission
25 désirent ajouter quelque chose. M. Doody?

MR. DOODY: Thank you, Mr. Commissioner. Just
briefly, Mr. Commissioner, I would expect, and I
can indicate that we have had communications with
30 many of the parties that you will be hearing from
this morning and you may expect that those
applying for standing who you have asked to hear

Mr. Doody

5 from will expected to deal with the issues set
out in the statute and in the remarks you have
made this morning and in particular, whether
their clients, or for those who are representing
themselves, whether they or their organization
have a substantial and direct interest in the
subject matter of this public inquiry, whether
the applicants are likely to be identified as
somebody respected from whom there is a potential
10 finding of misconduct, whether the person's
participation will further the conduct of the
public inquiry and whether the person's
participation could contribute to the openness
and the fairness of this public inquiry. I
15 expect as well that some participants will
address whether they could be part of a coalition
or group of participants whose interests were
similar and on the issue of appropriateness for
granting standing, also important in my
20 submission, is completing this inquiry thoroughly
and expeditiously. With respect to those who are
seeking a recommendation from you to the Attorney
General that funding be granted for their
appearances before this Commission, you may
25 expect to hear submissions as to why the
applicants for funding would not otherwise be
able to participate in the inquiry without such
funding and you may also hear from those who are
seeking for funding for more than one lawyer and
30 as to why, in their submission, it would be
appropriate to grant funding to more than one
lawyer. I can also indicate, Mr. Commissioner,

Mr. Doody
Peter Unfried

5 that there may be submissions as to the nature of
the evidentiary basis for the submissions in
respect of funding and subject to any questions
you may have, Mr. Commissioner, those are all the
submissions I have at this time.

MR. COMMISSIONER: Thank you very much, Mr.

Doody. We are going to, I believe everybody has
received an order of proceedings this morning.

10 In any event, on my order of proceedings I had
indicated that we would first hear from Eastwood
Mall's Robert Nazarian and Levon Nazarian but I
have had a request from Mr. Peter Unfried who is
here this morning, I believe, and I understand,
sir, that you have engagements coming up soon.

15 So, I will let you go out of order and make your
comments first.

MR. UNFRIED: Thank you, Mr. Commissioner.

MR. COMMISSIONER: Would you come forward, sir,
please?

20 MR. UNFRIED: Okay.

MR. COMMISSIONER: We have to record everything
that you say.

MR. UNFRIED: Sorry about that.

25 MR. COMMISSIONER: This is Mr. Peter Unfried for
the record. Thank you. Yes, sir.

30 MR. UNFRIED: Yes, after a brief meeting
yesterday with Mr. Elliott, it occurred to me
that he is representing a group with similar
interests and my appearance would probably
redundant. So, I have accepted that he would
represent my interests and the questions that I
have in the inquiry and therefore, I would

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

withdraw my application for both standing and
funding at this time.

MR. COMMISSIONER: Thank you very much, Mr.
Unfried.

MR. UNFRIED: Okay.

MR. COMMISSIONER: Have a good day, sir.

MR. UNFRIED: Thank you.

MR. COMMISSIONER: Thank you. I will now hear
from counsel for Eastwood Mall, Robert Nazarian
and Levon Nazarian and again for the record, sir,
you are Mr. Pradeep Chang?

MR. CHANG: Yes. That is correct, Mr.
Commissioner. I am Pradeep Chang and I am one of
three counsel representing Mr. Nazarian, Robert
Nazarian, Levon Nazarian and Eastwood Mall Inc.
at this public inquiry.

MR. COMMISSIONER: Is it intended that more than
one counsel would address me this morning?

MR. CHANG: It's intended that only one counsel
will address you with respect to what's contained
in the procedural order of October 19, 2012.
That is the issue of funding. If the issue of
confidentiality needs to be addressed, my
colleague, Mr. Peter Thorning, will address you
in that regard.

MR. COMMISSIONER: All right. I think you
understand, Mr. Chang, that we are concerned
about standing this morning...

MR. CHANG: That's correct.

MR. COMMISSIONER: ...but funding is the issue
and perhaps confidentiality is the issue...

MR. CHANG: That's correct.

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

MR. COMMISSIONER: ...we are concerned with?

MR. CHANG: That's correct.

MR. COMMISSIONER: Thank you. Go ahead.

MR. CHANG: Now, Mr. Commissioner, just to
confirm, we have obviously served the Commission
counsel with a number of materials. Just to
ensure that you have a copy of all of the
materials that I'll be relying on, as part of my
submissions for funding, we have a book of
documents related to our confidentiality
submissions.

MR. COMMISSIONER: Just a moment. Number?

MS. EFFENDI: Three 'B'.

MR. COMMISSIONER: Three 'B'. Okay. I'm sorry.

MR. CHANG: No problem.

MR. COMMISSIONER: Yes, go ahead. I do have
them. Yes, go ahead.

MR. CHANG: Yes. And just to be clear, just to
be clear, it's a multi-page tab booklet and if
counsel require, that is Commission counsel
require a copy, this is the document that
contains our submissions with respect to
confidentiality as well as the financial
disclosure from the applicants.

MR. DOODY: A hard copy was delivered this
morning, Commissioner and I had thought one was
given to you but perhaps Mr. Chang...

MR. COMMISSIONER: No. I don't have it.

MR. DOODY: ...could give you a copy.

MR. CHANG: Most certainly.

MR. COMMISSIONER: Thank you. And is this a
copy? Are there additional materials from what

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

we received by email previously? Is it the same thing?

5 MR. CHANG: Well, all of, to be clear, Mr. Commissioner, all of the materials have in fact been provided to Commission counsel and I'll go through them in detail but as I've indicated, the tabbed booklet that we've just provided you relates to the cover letter that our office prepared to Commission counsel together with the 10 confidentiality submissions and again the financial disclosure as it relates to the applicants.

15 MR. COMMISSIONER: I don't see.... Correct me if I'm wrong, I've read these briefly. I was on the road all day yesterday and I think I saw the electronic version of these documents quite late the preceding evening and so really, I haven't had a chance to go through these but my preliminary observations, Mr. Chang, as I see no 20 certification or affidavits in here, a lot of documents but nothing else.

25 MR. CHANG: Yes, indeed. Mr. Commissioner, it is, as I indicated, it is a cover letter together with our submissions and documents. There is no affidavit in that particular book of documents. I can advise Mr. Commissioner that there are some additional documents that I'll be relying upon in my submissions and that is the application for standing and funding, which I believe was served on Commission counsel. 30

MR. COMMISSIONER: Yes.

MR. CHANG: With that application for standing

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

and funding, there is an affidavit from Oliver Fonseca which is a company that that application for standing and funding and I can also advise....

5 MR. COMMISSIONER: Can I just interject? If my memory serves me right, essentially he is merely repeating in that affidavit that he has been informed that.... Is he doing anything beyond that in the affidavit?

10 MR. CHANG: Well, I think the document speaks for itself. This is information that was passed on to the individual who swore the affidavit and the information as contained therein.

MR. COMMISSIONER: All right.

15 MR. CHANG: Okay. I can also advise, Mr. Commissioner, that we are receipt, as of this morning, a letter, two letters I should say, from Mr. Michael Title. We have received recent correspondence from....

20 MR. COMMISSIONER: Would you spell that name for me?

MR. CHANG: Yes. It is last name T-I-T-L-E and the first name is Michael.

MR. COMMISSIONER: Thank you.

25 MR. CHAND: Mr. Title is a counsel at the firm of Steinberg Morton Hope and Israel in Toronto and he has written two letters in response to correspondence from Commission counsel in respect of whether or not the applicants would be able to obtain funding for the public inquiry through their insurer and at this time, if you'll permit me, I'll provide you with these two letters, Mr.

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Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

Commissioner.

MR. COMMISSIONER: We have copies. Do we need to be making these exhibits?

MR. CHANG: Yes. I would ask that these documents be made exhibits, Mr. Commissioner.

MR. COMMISSIONER: I will mark them preliminarily as exhibits one and two.

EXHIBIT NUMBER ONE - Letter from Steinberg Morton Hope and Israel - Produced and Marked.

EXHIBIT NUMBER TWO - Letter from Steinberg Morton Hope and Israel - Produced and Marked.

MR. CHANG: And should Commission counsel or any....

MR. COMMISSIONER: Mr. Doody, you were rising?

MR. DOODY: Yes. So, we know which is which, exhibit one would be the letter which reads, "We received confirmation that the Algo Mall insurance policy...

MR. COMMISSIONER: Yes.

MR. DOODY: ...is not continually covered for legal costs", and exhibit two would be the one, "We further confirm the insurer is not....".

MR. COMMISSIONER: That is the way I have marked them.

MR. DOODY: Thank you.

MR. CHANG: Thank you. With that said, Mr. Commissioner, I understand from the procedural order that was issued by yourself on October 19 that you requested our submissions to be centered on the issue of funding and that's what I will do so this morning. To begin, Mr. Commissioner, the Rules of Standing and Funding and the terms of

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

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reference state that or provide that the Commission may make recommendations to the Attorney General of Ontario regarding funding to parties who have been granted standing to the extent that the parties' interest where the Commissions view the party would not otherwise be able to participate in the inquiry without funding. With respect to the rules, there are two specific rules in the Rules of Standing and Funding that relate to the funding applications. Specifically paragraph 21 of the Rules of Standing and Funding which outlines what applications for funding should include and secondly, paragraph 23 of the Rules of Standing and Funding further specifies, that in making your funding recommendation, what factors you ought to consider and just for....

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MR. COMMISSIONER: These are essentially the same as those I iterated in my opening remarks.

MR. CHANG: That's correct. Yes.

MR. COMMISSIONER: Yes.

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MR. CHANG: Just for my submissions purposes, I just want to go through them in detail. The first one is the nature of the of the applicant's interest and/or proposed involvement at this inquiry. With respect to this first factor, Mr. Commissioner, it is our respectful submission that the applicant's interest, their importance with respect to the Commission's mandate and their consolidation at times have already been thoroughly canvassed in our application as it relates to standing. Particulars related to each

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

of our client's involvement and direct and substantial interest are detailed throughout our application for standing as well.

MR. COMMISSIONER: I don't think you need, for my purposes, to elaborate in any great detail about that. I accept that.

MR. CHANG: Thank you. With respect to part 'B' of paragraph 23, which speaks to whether the applicant has an established record of concerns for a demonstrated commitment to the interest it seeks to represent. I think it's quite clear that the applicants are persons whom a finding of misconduct may be made by the Commission.

Furthermore, these are persons or individuals that are contemplated under Section 17 of the *Public Inquiry's Act* in paragraph 11 of the inquiry's Rules on Standing and Funding as persons "likely to be notified of a possible finding of misconduct under Section 17 of the *Public Inquiry's Act*". With respect to section 'C' of paragraph 23, that is whether the applicant has special experience or expertise with respect to the Commission's mandate. It is my respectful submission that there cannot be any doubt that the applicant's participation would further the public inquiry and would certainly, in my respectful submission, contribute to the openness and fairness of this public inquiry. In addition, Mr. Commissioner, as owners and administrators of the Algo Centre Mall, which is obviously at the center of this inquiry and the inquiry's mandate, the applicants have a unique

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

5 knowledge and insight into the issues crucial to
the Commission's mandate. The applicants'
knowledge, accounts and recollection of the
events relating to this inquiry are vital to its
success and mandatory, in my respectful
submission, for the success and satisfaction of
the mandate. The importance of the evidence
which could be provided by the applicants is
evidence by the fact that they've been subpoenaed
10 to testify at this inquiry. Furthermore, for the
purpose....

MR. COMMISSIONER: Is that correct, that they
have been subpoenaed to testify?

15 MR. DOODY: A summons has been issued, Mr.
Commissioner, so I'm required under these
documents, no summons has yet been issued to
anybody requiring them to testify.

MR. CHANG: I apologize. That is....

MR. COMMISSIONER: Minor point but....

20 MR. CHANG: I apologize and I stand to correct
myself. With respect to, I can also advise, Mr.
Commissioner, that search warrants have been
executed with respect to Mr. Levon Nazarian's
business, Robert Nazarian's home and the
25 Nazarians and Eastwood Mall's solicitor's
offices. Many documents have been seized that
were in the possession of the applicants.

MR. COMMISSIONER: Just to be clear, those search
warrants were issued for execution by the Ontario
30 Provincial Police or at the request of the OPP in
their criminal investigation.

MR. CHANG: That is the information that we have

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

at this point, Mr. Commissioner.

MR. COMMISSIONER: Yes. I just wanted to make that clear...

MR. CHANG: Yes.

MR. COMMISSIONER: ...for the record. Thank you.

MR. CHANG: Now lastly, with regards to the last factor under paragraph 23 of the rules and that is the issue of consolidation. Mr. Commissioner, this is an issue that's obviously been canvassed in our portion on standing and as specifically indicated on page 13 but that being said, the applicants have joined their applications in order to consolidate and in order to contribute in making these proceedings more expeditious.

Furthermore, the applicants have also attempted to locate any other parties that may have an interest, which is aligned with those of the applicants. Unfortunately, that has not been successful. With regards to paragraph 21 of the rules, specifically as it relates to evidence that demonstrates.... Sorry, paragraph 21 talks about or outlines a list of expectations of what applications for funding ought to include.

Specifically, 'C' under paragraph 21 relates to evidence that demonstrates that a person does not have adequate financial resources that enables it to represent its interest at the public inquiry.

I just want to talk a little bit about that aspect as it relates to our application for standing and funding. First and foremost, Eastwood Mall Inc.'s sole source of income ceased on the collapse of the mall on June 23rd, 2012.

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

Eastwood Mall Inc. was a significant source of
income for Mr. Levon Nazarian.

MR. COMMISSIONER: All right. Now, you say that.
It's a bare assertion. Is that evidence?

MR. CHANG: It is evidence and it's contained in
the materials related to the financial disclosure
that we've requested you, Mr. Commissioner, to
put a seal on until the submissions are heard and
there's a proper disposition of the
confidentiality order.

MR. COMMISSIONER: Well, I know the paper is
there.

MR. CHANG: Yes.

MR. COMMISSIONER: But it's just paper.

MR. CHANG: That is correct. With that said, I
think everyone needs to understand and I've told
this to Mr. Doody that we've done our best to get
the materials in on time. The materials speak
for themselves. I mean the materials do
specifically indicate that Mr. Levon Nazarian's
sole source of income was Eastwood Mall.

MR. COMMISSIONER: But does Levon say it?

MR. CHANG: Yes. It's....

MR. COMMISSIONER: Let me go back just one step
and tell you what I understand, what I was
understood to be evidence, a simple word, sworn
evidence in the witness box viva voce by a
witness, affidavit evidence, some kind of formal
certification that the court can accept either
through an exception or the application of the
Evidence Act. I see no evidence before me. I
see a lot of paper but I see no evidence before

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

me. I've heard no evidence and so while this material may appear *prima facie* to be relevant to the issues before the Commission. Is it evidence?

5 MR. CHANG: It would be my respectful submission that the documents are in fact evidence and, under the circumstances should Mr. Commissioner request an affidavit be produced, that would certainly be something that we could do but we have done our best to provide the necessary financial disclosure that has been requested by Commission counsel to us.

10 MR. COMMISSIONER: But these rules were published, Mr. Chang, back in September if I recall, the 26th of September. Our directives required the material to be produced by the 17th of October and to the best of my knowledge, these materials were only received two days ago and, I mean they may be important. So, would a copy of the Mona Lisa but they may not be relevant without my ability to gauge whether this is evidence that a tribunal can properly consider. Who am I to say, who is anyone to say that these are authentic documents, for example? Who can say, apart from Mr. Levon Nazarian, that indeed his sole source of income is what you have indicated? All I have is your say so and that is not evidence. You are counsel, I respect that, but it's not evidence.

25 MR. CHANG: Well, in response to what you've indicated. I think that as I've indicated at the outset that the applicants are seeking a sealing

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Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

order with respect to the documents that we've provided.

MR. COMMISSIONER: That's a separate issue. That's a separate issue and I am certainly willing to hear you on that but....

MR. CHANG: Yes. Now, with that said, I'd certainly take your point with respect to the affidavit or accompanying evidence to those documents. In the event that, Mr. Commissioner, you do request an affidavit, we will certainly make best efforts to produce, have our clients produce a sworn affidavit as it relates to the financial disclosure that we've provided under seal to the Commission. I just want to also point out, Mr. Commissioner, that under the *Public Inquiry's Act*, specifically Section 8 that deals with admissibility of information, it does indicate that a Commission may collect and receive information that it considers relevant and appropriate whether or not that information would be admissible in a court...

MR. COMMISSIONER: I understand.

MR. CHANG: ...and in whatever form that takes.

MR. COMMISSIONER: I understand that but the fact remains that what you have produced to me is in no way authenticated. I mean in a criminal court, for example, where I normally preside, that material would be summarily rejected as being, as not meeting the lowest possible threshold for the purposes of admissibility.

MR. CHANG: Well, that being said....

MR. COMMISSIONER: And if you are going to ask

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

that, excuse me but let me just complete my thought, that I lower that threshold, you are going to have to tell me why.

MR. CHANG: I think....

5 MR. COMMISSIONER: In circumstances where it seems to me that you have had a full month and ample opportunity to get your respective clients to certify, swear under oath, to produce documents certified perhaps by their accountants, 10 their lawyers, that would give the Commission some confidence as to the authenticity of what it is you seek to produce.

MR. CHANG: Well, in response to that, I've already pointed out what's indicated in the 15 *Public Inquiry's Act* and as you eloquently indicated at the outset this is not a criminal court. With that being said, in the event that further affidavit materials need to be produce or ought to be produced under the circumstances to 20 accompany the financial documentation that we provided, that is something that we would have to speak to our clients to have them produced.

MR. COMMISSIONER: Let me tell you what my preliminary thoughts are.

25 MR. CHANG: Sure.

MR. COMMISSIONER: At this point, I don't think you are at first base in relation to the production of what all of us, any of us, would consider to be evidence. I want, however, to be 30 fair, I recognize that there may be circumstances that made it difficult for you to produce this material a *benicio* at the very beginning and I am

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

willing to give you some time, some very short time. You will understand that we have timelines and we are bound by them, bound by the OIC and by statute to provide them by those timelines.

5 MR. CHANG: Yes.

MR. COMMISSIONER: And so, I say to you first, that unless I get authenticated material, the risks that you run that the Commission will recommend to the province to pay for your clients' legal expenses are rather low. I would propose, unless there is strong objections from Commission counsel, I would be surprised if there were, to give you a week to provide me with that material. We are already well into a month since the rules were published on Standing and Funding. How would that sound to you, sir?

10 MR. CHANG: That would sound certainly acceptable for me, Mr. Commissioner.

MR. COMMISSIONER: All right. So, let me indicate to you that I would expect these materials to be provided to the Commission no later than noon on Friday next, all right, in acceptable format. I will need originals. Commission will need originals. Now, that being said, I take it that you are asking that in the interim these materials be kept sealed.

15 MR. CHANG: That's correct.

MR. COMMISSIONER: And unless, again, there are objections being voiced I have no substantive difficulties with that, understanding that the delicate, potentially delicate nature of the material contained in those documents and so, I

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Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

am prepared to order that until next Friday at
noon the materials provided so far to the
Commission be kept sealed and not be published.

Is that satisfactory?

5 MR. CHANG: It is certainly....

MR. COMMISSIONER: And do you have further
submissions to make about that aspect of it?

MR. CHANG: I do not have any further submissions
to...

10 MR. COMMISSIONER: All right.

MR. CHANG: ...to the financial disclosure.

MR. COMMISSIONER: The two other points that you
might wish to canvass and think about in the
coming week. One is justification. I gather you
are asking that I recommend to the province
funding for loans.

MR. CHANG: No.

MR. COMMISSIONER: Or is that changed?

MR. CHANG: No. Mr. Commissioner, I should point
out and I should have done this at the outset of
my submissions. There have been some changes
with respect to our application for standing and
funding since we filed it. This application is
being made on behalf of the applicants only from
our firm and that is the firm of Brauti Thorning
Zibarras and we're asking for funding two senior
counsel and one junior counsel...

MR. COMMISSIONER: Two seniors and one junior?

MR. CHANG: ...for a total of three counsel.

MR. COMMISSIONER: All right. Okay. The other
point which is something that may come later that
I want you to think about now, is my obligation

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

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in relation to sealing, eventually, obviously
this week is not a problem, but eventually the
question that crosses my mind is whether, once
we've determined who all of the participants are,
whether I have an obligation under the current
jurisprudence to advise the public including
members of the applicants that represent the
Province of Ontario, for example, the people of
the province to make representations on the
question of confidentiality. I am not asking for
you to address that now but I will certainly be
asking you to address it later on in the event
that you pursue a request for confidentiality
after noon on Friday of next week. Do you
understand the questions?

MR. CHANG: Yes. I certainly understand that,
Mr. Commissioner.

MR. COMMISSIONER: All right. Okay.

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MR. CHANG: I'll just simply carry on with the
information as it relates outside of the
financial disclosure that we provided. What's
pointed out in our materials, that being the
application for standing and funding, Eastwood
Mall Inc. and Mr. Robert Nazarian are currently
the subject of three lawsuits that we're aware of
at this time. I understand that there is a class
action lawsuit that's under way and the amount is
approximately 30 million dollars. Similarly,
there are two wrongful death claims of
approximately 2.25 million each. Now, with that
said, it's our respectful submission that this
public inquiry will be a very lengthy and

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

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expensive process. As you pointed out, Mr. Commissioner, there's currently 60 witnesses that are slated to give evidence, approximately 60 witnesses that are slated to give evidence at this public inquiry and there is certainly the possibility of more as the evidence unfolds. With the number of parties at this inquiry along with the number of witnesses, it's likely that this inquiry can go on for many months. That being said, there's not very many people in the Province of Ontario, let alone in this country, that would be able to sustain paying for lawyers' fees over the course of these many months. The legal bill would be astronomical for anyone under the circumstances to endure. With that said, this is a public inquiry that's been called by the Province of Ontario. Mr. Nazarian is no doubt probably one of the most central figures at this public inquiry. He didn't call this public inquiry, the Province of Ontario did. He's going to play a very critical and pivotal role at this inquiry. In fact, if he's slated to give evidence at this inquiry, it is estimated that his evidence would likely be over the course of many days. He requires legal representation to protect his interest at this inquiry.

MR. COMMISSIONER: I have no difficulty with that statement. The only issue is funding.

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MR. CHANG: Of course. I just want to point out just a few last remarks, Mr. Commissioner. With regards to the insurance, I know that I've had discussions with Mr. Doody, one of the Commission

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

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counsel. He certainly requested some information as it relates to insurance. I can advise that as late as this morning we have received confirmation that Mr. Title who is dealing with the insurance side of the case on behalf of the applicants, that the insurance policy will not cover legal representation at this public inquiry and furthermore, the insurance company will not provide any *ex gratia* payments in respect of legal representation and/or attendance at this inquiry. I also want....

MR. COMMISSIONER: That is the kind of information I'd like to get formal...

MR. CHANG: Of course.

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MR. COMMISSIONER: ...guarantees about.

MR. CHANG: Of course. Now, with that being said, there was an error that was contained in our materials and that error is found at paragraph 40 of our application for standing and funding, specifically page 15, paragraph 40 of our materials, Mr. Commissioner.

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MR. COMMISSIONER: I'm sorry. I'm looking at the wrong one.

MS. EFFENDI: Commissioner, if I may? It's at tab 3B.

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MR. COMMISSIONER: Three 'B'.

MR. CHANG: And that paragraph, I'll let you come to...

MR. COMMISSIONER: Yes. If you would just give me a moment please.

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MR. CHANG: ...the section, Mr. Commissioner.

MR. COMMISSIONER: Paragraph?

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

MR. CHANG: Paragraph 40.

MR. COMMISSIONER: Yes. I have it and I've seen that. Yes.

MR. CHANG: It's a one-line sentence. It reads,
"Insurance proceeds are being held in trust
pending the result of any liability claims." I
can advise that this was submitted in error and
in order for our materials to be congruent with
that of Mr. Fabris who was anticipated to be co-
counsel at this public inquiry but is no longer.
I can advise that I have now confirmed with our
clients and can confirm that they have not
received any insurance proceeds and that there
are no monies that my clients are aware of that
are currently being held in trust in any lawyer's
account.

MR. COMMISSIONER: Is there any expectation that
there will be payments in relation to liability?

MR. CHANG: I can say that at this stage that
there is no payment that's been provided.

Obviously, anything as it relates to insurance is
outside of the scope of what we have been
retained for and in the event that that changes,
obviously we would provide information to the
Commission.

MR. COMMISSIONER: I understand that the funds
may not have been received, any kind of insurance
compensation but if there is an expectation that
some will be received eventually, that would be a
material factor to be eluded to in the materials
that you will be producing within the week.

MR. CHANG: Most certainly.

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

MR. COMMISSIONER: Yes.

MR. CHANG: Now, I just want to lastly just discuss with regards to Mr. Nazarian, Levon Nazarian, sorry, Robert Nazarian, Levon Nazarian and Eastwood Mall's reputational interest at this public inquiry as well. I have eluded to this in my materials, specifically at paragraph 22, page 12. As you're abundantly aware, Mr.

Commissioner, there's been a number of media reports that have arisen as a relation to this inquiry. There have been, there's no doubt, based on these media reports, that the reputations of these applicants have already been affected negatively and as a result of the inquiry proceeding it's possible that their reputation will continue to be impacted one way or the other. So, our respectful submission that participating fully both with standing and funding is critical to safeguarding the applicants' reputational interest at this inquiry. With respect to the particulars of standing and funding, we would like to just say that we adopt the submissions that are contained in our materials. The particulars as they relate to funding are set out in the latter half of our materials, specifically, I believe, at pages 16, 17 and 18 of our materials and subject to any questions that you may have, those are my respectful submissions, Mr. Commissioner.

MR. COMMISSIONER: All right. Thank you. Are these numbered? You referred to page numbers 16, 17 and 18?

Eastwood Mall Inc., Robert Nazarian, Levon Nazarian
Pradeep Chang, Counsel

5 MR. CHANG: No. No. Mr. Commissioner, I was relating to my application for standing and funding. My application for standing and funding does provide particulars of the nature and scope...

MR. COMMISSIONER: I understand.

MR. CHANG: ...of funding that we're requesting.

10 MR. COMMISSIONER: Okay. And do other counsel representing the same interest wish to make further comments? I take it not at this point?

15 MR. CHANG: At this point, at this point, given your remarks and given the deadline that you've imposed, we will certainly, in the event that there's further submissions to be made in respect of those documents they will certainly be made at a later date.

20 MR. COMMISSIONER: All right. Do Commission counsel have concerns they would wish me to address with Mr. Chang at this point?

MR. DOODY: Our concerns have been addressed through your remarks, Mr. Commissioner, nothing further to add.

MR. COMMISSIONER: All right. Well, thank you very much.

25 MR. CHANG: Thank you, Mr. Commissioner.

MR. COMMISSIONER: All right. Next on my list then is the City of Elliot Lake. And you are Mr. Cassan, I understand?

MR. CASSAN: I am Mr. Cassan...

30 MR. COMMISSIONER: All right.

MR. CASSAN: ...Mr. Commissioner and I am counsel for the City of Elliot Lake. I'd like to

City of Elliot Lake
Paul Cassan, Counsel

introduce, I've got Mr. Rob DeBortoli here as well. He's the CAO of the City.

MR. COMMISSIONER: Thank you.

MR. CASSAN: Mr. Commissioner, I understand that you're not asking us to make comments with respect to standing and I presume that that's because it's clear that the City is interested in all of the aspects of the inquiry.

MR. COMMISSIONER: Absolutely. The only, it's clear that the interest of the City are central and foremost and no arguments need be made about that aspect. Funding, I'll hear you.

MR. CASSAN: Yes. On funding, pursuant to Section 20, Mr. Commissioner, of the revised Rules of Standing and Funding, what I'm asking for today is an extension of time to file the application for the City. I'm not sure if you, Mr. Commissioner, are aware of the confusion that has occurred with respect to representation of the City.

MR. COMMISSIONER: I've been forewarned but I think you ought to make those clear for the record.

MR. CASSAN: Okay. Thank you. I can indicate to you, sir, that my firm has been acting for the City for a lengthy period of time and with respect to the collapse of the mall since immediately after the collapse and following and I can indicate for the purposes of the record that we were somewhat surprised to see a firm called Walker Thompson file an application originally for standing and funding on behalf of

City of Elliot Lake
Paul Cassan, Counsel

5 the City and then withdraw the application for
funding purporting to be funded by the insurance
company. It has come to pass, sir, that at 5:30
p.m. on October 23rd, Tuesday of this week, it's
been confirmed that there is absolutely no
insurance coverage for the municipality and as a
result of that Mr. Walker withdrew his
representation and has passed it on to myself and
my firm. And so, I will be filing or I am
10 respectfully requesting an opportunity to file on
behalf of my client an application for funding to
participate in the inquiry and when you drive
into town you'll see that this is a fairly small
community that has already spent in excess of
15 \$270,000.00 of unbudgeted funds as a result of
the collapse of the mall and I think it's
incumbent on me to put forward the best
application forward and to provide information to
yourself and Commission counsel about why this is
20 a different situation than previous inquiries
with respect to funding a municipality. It will
clearly be based on the fact that one of the
economic engines of the City was taken out by
this collapse. And so, I'm asking for you to
grant me until Friday next week.

25 MR. COMMISSIONER: So, will the same timeline I
provided Mr. Nazarian and Eastwood Mall be
satisfactory for your purposes?

MR. CASSAN: Absolutely. It would, sir.

30 MR. COMMISSIONER: It will give you exactly one
week, nearly to the hour.

MR. CASSAN: Sure.

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

MR. COMMISSIONER: Commission counsel have any problem with that?

MR. DOODY: No problems at all, Mr. Commissioner.

MR. COMMISSIONER: All right. Do you wish to make further comments at this point? I propose to grant your application for adjournment.

MR. CASSAN: Thank you. Those are the submissions I wish to make at this point.

MR. COMMISSIONER: Thank you very much then, Mr. Cassan.

MR. CASSAN: Thank you.

MR. COMMISSIONER: Then next of my list, Mr. Aubé and the Elliot Lake Mall Action Committee. Mr. Elliott?

MR. ELLIOTT: Yes. Good morning, Mr. Commissioner.

MR. COMMISSIONER: Good morning.

MR. ELLIOTT: My name is Douglas Elliott and I'm counsel for the Elliot Lake Mall Action Committee. I'm here this morning with my colleague, mon collègue, maître Rolland Aubé...

MR. COMMISSIONER: Bonjour, M. Aubé.

MR. ELLIOTT: ...et maître Aubé va vous présenter quelques membres du comité ELMAC ce matin. Maître Aubé?

MR. COMMISSIONER: Maître Aubé.

MAÎTRE AUBÉ: Merci M. Elliott. M. le commissaire, comme vous le savez, la demande de représentation et de fonds provient du comité qui s'appelle Elliot Lake Mall Action Committee. Nous avons essayé de traduire en français et puis on se ramasse avec le mot "CAMEL", comité

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

d'action sur le mall d'Elliot Lake. Donc on l'a
laissé en anglais.

MR. COMMISSIONER: Peut être mieux de le laisser
en anglais.

Maître Aubé: De le laisser en anglais. Nous
avons ici, le comité représente quelque 69 ou 70
personnes donc une soixantaine on permet leur nom
d'être publié et nous avons ici aujourd'hui M.
Jean Louis Pomerleau, le president du comité.

MR. COMMISSIONER: M. Pomerleau.

MAÎTRE AUBÉ: Nous avons Mme Colinda Montpellier
qui est une des membres du comité et nous avons
aussi deux des membres du groupe, Jack and Elaine
Quinte qui sont assit en avant qui sont aussi
comme les autres, des personnes qui ont été
affecté par l'effondrement du mall à Elliot
Lake. Nous avons aussi sur le comité un de mes
vieux amis, Claude Morisset qui était à quelques
pieds du bord du trou à l'effondrement du mall.

MR. COMMISSIONER: Du gouffre, oui.

MAÎTRE AUBÉ: Vous allez avoir l'occasion de le
rencontrer. Il n'est pas en bonne santé ces
jours-ci mais le tout pour vous dire que nous
sommes ici avec M. Elliott pour faire nos
demandes de fonds et pour représenter ce groupe
là et M. Elliott va conclure nos commantaires.
Le tout pour vous dire que nous sommes en mesure
de représenter ces gens là dans les deux langues
officielles et que, de ma part parce que je suis
un des residents, un des avocats qui reside ici à
Elliot Lake, je vais être en mesure d'assister le
comité comme j'ai essayé de faire dans ces

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

affaires locales et puis nous sommes à votre disposition si on peut vous aider au-delà des représentations que nous allons faire pour le comité.

5 MR. COMMISSIONER: Merci bien, Maître Aubé. Mr. Elliott?

10 MR. ELLIOTT: Yes, thank you, Mr. Commissioner. I think it should be apparent from our written submission to you that what our group seeks to do is give voice to the citizens who have suffered from this tragedy and we thank you for the recognition that this group does have a substantial and direct interest in these tragic events, indeed a significant interest in the words of Justice O'Connor. As Mr. Unfried noted 15 this morning, you can add Mr. Unfried's name to the list of persons who are now participating in our committee. He was, like a number of our members, had a small business that was wiped out by the collapse of the mall roof. Mr. 20 Commissioner, we've also had discussions with a group that will be appearing later this morning, the SAGE group about possible cooperation and joint representation of our legal team on behalf of that group as well as ELMAC and I am pleased 25 to report that it appears that those discussions have been fruitful. They have not quite crystallized yet, Your Honour. We will need just a few days to work out the details. As Your Honour can appreciate, and it's been made clear 30 by some previous commissioners and it's in the rules, that when you're representing a coalition

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

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or a different interest, you have ensure there's
no conflict of interest and that that will be
managed appropriately and that's really the issue
that we're trying to make sure we have properly
documented before we proceed. I would also like
to point out with respect to the nature of the
interest we represent, Mr. Commissioner, that on
Appendix 2 of our submissions, Number 44 on our
list of members is Ms. Roberta Rayburn. Ms.
Rayburn is....

MR. COMMISSIONER: Excuse me for a minute.

MS. EFFENDI: Tab 16, Commissioner.

MR. COMMISSIONER: Tab 16?

MS. EFFENDI: Yes.

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MR. ELLIOTT: Yes. Tab 16.

MR. COMMISSIONER: I'm sorry. Just give me a
moment, please.

MR. ELLIOTT: No problem, Mr. Commissioner.

MR. COMMISSIONER: Yes, sir, and which
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specific....

MR. ELLIOTT: That's at Appendix 2.

MR. COMMISSIONER: Appendix 2, yes.

MR. ELLIOTT: You should have a list of our
members...

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MR. COMMISSIONER: I do.

MR. ELLIOTT: ...and if you look at number 44 is
Ms. Roberta Rayburn...

MR. COMMISSIONER: Yes.

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MR. ELLIOTT: ...and Ms. Rayburn is one of the
daughters of the late Ms. Doloris Perizzolo. So,
she is one of those most significantly impacted
by these tragic events. We've also given you in

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

5 the appendices, Mr. Commissioner, some examples
of some of the people who have been affected,
people who have been injured physically and
psychologically such as Lorie Contant, Yves Audet
and Claude Morisset Mr. Aubé was speaking a
little while ago. We have people who have lost
their small businesses like Mr. and Mrs. Quinte
who are here this morning, Mr. Unfried who was
also here this morning and the Roys who are
10 described, who had a cleaning service that's
described in our materials and we should not also
forget, Your Honour, the people, the employees
who have lost their jobs as a result of these
tragic events such as Mr. Woolhead. So, it is
15 very important for these people to be able to
participate in this process and to participate in
this process effectively and in our respectful
submission, given the great burden and short
timelines and the nature of the mandate that the
20 Commission has, it's important for our clients to
have the assistance of counsel to participate
effectively in what is after all, though it's not
a criminal trial or civil trial, it is a legal
process and it's difficult for lay people to
25 participate effectively in a legal process
without the assistance of counsel. I would also
note, Mr. Commissioner, as you observed earlier,
that one part of your mandate is examining laws
and regulations and making recommendations about
30 improving those laws and regulations and that
really is a task that cannot be effectively
completed by lay people without the assistance of

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

counsel. I note it's my understanding from reviewing the other applications, Mr. Commissioner, that our group is the only group that what has been characterized in other Commissions of Inquiry as a victims group although it's not a term that our people particularly like. We are the only such group that is seeking funding before the Commission. I believe we have assembled a strong legal team including a very imminent local counsel and that we can provide bilingual services. There is precedent that we have provided to you from the Cornwall inquiry and the Walkerton inquiry where victims groups were given funding to have the assistance of counsel. I would also draw to your attention, Mr. Commissioner, the precedence in the Air India case where Justice Major gave a victims group full standing and funding so they could participate and the Krever Inquiry, which is well known to me, where several victims groups including the Canadian Aid Society that I had the honor to represent were given funding in addition to standing. We have provided you, Mr. Commissioner, with an affidavit from Mr. Pomerleau who is the chair of the steering committee to indicate that our group is composed of individuals who have been financially crippled if not ruined by the collapse of the mall. Ironically, it is the tragedy itself that has deprived them of the means to be able to retain counsel and to effectively participate. We do say and we are here to assist our clients, Mr.

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

Commissioner, but we believe we are also here to assist you and your staff in your task. We have experience. Many of our members have long had businesses in the mall or worked as employees in the mall and they can share information that will assist the Commission. We are prepared to abide by the rules and regulations for funding. We understand them. I've had experience working with them during Krever Inquiry and we will work in an effective and efficient manner mindful that the public purse is supporting our efforts. I do want to clarify two practical points with respect to the budget that we're proposing just to be absolutely clear. The first is with respect to the counsel team that we are proposing. What we are proposing to do is to have one junior counsel who will be present consistently. Throughout the inquiry it will be the same person and that person of course will be subject to the normal ten-hour daily limit. We have a team of three different senior counsel and those would appear on a rotating basis. I didn't want the Commission to be left with the impression that we're expecting to have four lawyers present. What we are expecting to have is two lawyers working on the file at any given time. What we're looking for is a budget of 20 hours a day, ten at the junior counsel rate and ten at the senior counsel rate but the identity of that senior counsel may be different depending on where we're at in the inquiry but you are not going to see Mr. Aubé, myself and two other

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

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lawyers showing up. So, that's with respect to the legal aspect and I believe that with two, with the junior and senior counsel, based on my experience at the Krever Inquiry, that's the type of configuration we have. I believe we can do an effective job for our clients and for the commission. The second small point, Mr. Commissioner, is with respect accommodation. I am currently investigating rental accommodation because our junior counsel and myself do live in Toronto and with all due respect to this lovely hotel, it will be cheaper for the public person, I think more realistic, if we secure rental accommodation for the time of the inquiry rather than appearing in a hotel.

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MR. COMMISSIONER: I am not entirely confident of the extent of my ability to make very specific recommendations of the nature that you describe. You've got more experience doing commissions than I do. This is my first one. You have certainly done more than I have. Is it expected that I should do more than simply make a recommendation for funding involving counsel? I think they expect me to but do they expect, would the government normally expect me to make recommendations on issues like retroactivity, accommodation, transportation, that kind of thing?

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MR. ELLIOTT: Well, I do see from the, in my experience with the Krever Inquiry was that there was input sought from the Commissioner but ultimately the decision is made independently. I

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

5 think it's important that you're not involved in
approving fees or anything of that nature but I
think you can be of assistance to the government
in understanding what the local conditions are
and what is reasonable and appropriate. I did
look at the regulations and regarding
accommodation it says that if your in one
10 location away from your home for a long period of
time and you can secure rental accommodation
cheaper than hotel accommodation then it's
possible to do it but it has to be approved in
advance. And so, we will be seeking that
approval.

15 MR. COMMISSIONER: All I'm saying is this a
matter between once I say funding is approved, if
I do, then is the matter negotiating about what
exactly that it involves something between
counsel and the Ministry of the Attorney General.

20 MR. ELLIOTT: Yes. I think all we're looking for
from you, Mr. Commissioner, is to indicate that,
and I think your staff has had some experience
with this, that given the mandate of the
Commission and the circumstances that exist in
Elliot Lake, the proposal that rental
25 accommodation be used as opposed to hotel
accommodation is a reasonable one and....

MR. COMMISSIONER: It makes a lot of sense to me.
That's what we're doing...

MR. ELLIOTT: Yes.

30 MR. COMMISSIONER: ...because obviously we are
going to be here for some time and there is
another practical aspect and that's the

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

unavailability of accommodation space in this facility. It is going to be a pretty busy place.

MR. ELLIOTT: Absolutely. Well, and again it's ironic that one of the reasons we face a shortfall of hotel rooms is because of the tragedy itself. So, unless you have any further questions for me, Mr. Commissioner....

MR. COMMISSIONER: Just as couple of minor points. I'm not certain if it's because of what Mr. Aubé said. There was some issue about non-identification of certain members of the group that you represent.

MR. ELLIOTT: Right. So, the initial group that came to see us and asked us to represent them, when we had our communications with them we said that we collected their and we told them that they would be submitted to the Commission on a confidential basis. We were then advised by Commission counsel that that in principle could not be accepted that the people had to identify themselves. So, we had gone back to all of those initial people and told them that they must identify themselves. A few people have indicated that they are unwilling to do so but there is a group of people, Mr. Commissioner, whom we just have not been able to reach.

MR. COMMISSIONER: Yes.

MR. ELLIOTT: So, that list that you have may be incomplete but I can assure Your Honour they are all individuals. There is no corporations or that sort of thing but that is the group for now.

MR. COMMISSIONER: It just seems to me in

Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

addition that the rules, and I'm a little fuzzy in terms of my memory, requires undertakings in terms of confidentiality and of course identification of the individuals is important...

5 MR. ELLIOTT: Right.

MR. COMMISSIONER: ...for the purposes of obtaining undertakings about confidentiality of materials received.

10 MR. ELLIOTT: Right.

MR. COMMISSIONER: Then maybe you will have proposals for us on how to deal with that.

MR. ELLIOTT: Absolutely but I think it was just we had created an expectation of confidentiality. Nothing to do with the Commission.

15 MR. COMMISSIONER: No. No.

MR. ELLIOTT: It was just something between us and our clients and so we're trying to clear that up but I think we have a very substantial proportion of the original group has agreed to publicly identify themselves and I think sufficient to give us a reasonable critical mass and a diversity of types of impact to say that we fairly represent the original group.

20 MR. COMMISSIONER: Okay. But there a couple of little 'T's to be crossed and 'I's to be dotted.

25 MR. ELLIOTT: Yes. There will be some more people probably who will want to identify themselves as part of the group. We will provide that information to the Commission and with respect to the representation of the SAGE group, again I appreciate that you are under some time pressures, Mr. Commissioner, and we'll endeavor

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Elliot Lake Mall Action Committee
Doug Elliott/Rolland Aubé, Counsel

to clarify that as quickly as we can.

MR. COMMISSIONER: Yes. And that is certainly
the very strong recommendation of the
Commissioner, bearing in mind the financial
realities of the province that we've spoken about
before...

MR. ELLIOTT: Absolutely.

MR. COMMISSIONER: ...and also the necessity or
at least I would say the desirability of having
experienced counsel participating and making
representations and in that respect, I see that I
have the Victim Services of Algoma to hear from a
little after you as a matter of fact. Have you
been approached or have you approached those
individuals?

MR. ELLIOTT: Not at all.

MR. COMMISSIONER: No.

MR. ELLIOTT: I don't think that they were, the
group that we've initially represented are all
people who were either housed in the mall or who
happened to be in the mall that day...

MR. COMMISSIONER: Yes.

MR. ELLIOTT: ...and so I have had no discussions
with them. Happy to do so if you wish.

MR. COMMISSIONER: Thank you.

MR. ELLIOTT: Thank you.

MR. COMMISSIONER: Just before you go, Mr.
Elliott, that ought....

MR. ELLIOTT: Yes. I'm sorry.

MR. DOODY: The only possible issue, Mr.
Commissioner, would be with respect to the
arrangements which are hopefully going to be

Seniors' Action Group of Elliot Lake (SAGE)
Charles Myles

5 reached with the SAGE group. I wonder if it would be appropriate to ask that there be a eye or nay on that by the same deadline you asked for the other materials so that we will know as of noon next Friday.

MR. COMMISSIONER: Sure. Is that satisfactory, sir?

MR. ELLIOTT: Absolutely, Mr. Commissioner.

MR. COMMISSIONER: And the representatives of SAGE are Mr. Myles and Mr. Moyer.

MR. ELLIOTT: They are here.

MR. COMMISSIONER: They are here this morning?

MR. ELLIOTT: They are indeed, Mr. Commissioner.

MR. COMMISSIONER: All right. And is that satisfactory, gentlemen, that we put this matter over one week so that you can have your discussions with Mr. Elliott, then so be it.

MR. ELLIOTT: Thank you very much. Merci beaucoup.

MR. COMMISSIONER: We will give you a week for it. Merci beaucoup. Okay. Well, do I need to hear from SAGE at this point in time or has it all been said? I am certainly willing to hear you. You are Mr. Myles I take it?

MR. MYLES: I'm Chuck Myles. Yes.

MR. COMMISSIONER: Yes, sir.

MR. MYLES: I have with me the vice-president of SAGE and his wife, Keith and Ms. Moyer, and executive members, Dawn and his, Mr. and Mrs. Nichols.

MR. COMMISSIONER: All right.

MR. MYLES: And I brought moral support with me.

Seniors' Action Group of Elliot Lake (SAGE)

Charles Myles

5 This is D. Hiley, a member at large. We're in
negotiation and understand what the request was
for grouping. If everything works the way we
plan it to work and we're both satisfied,
although we have very diverse goals, we think we
can work together and I think we meet the
10 qualifications of Section 11, substantial and
direct interest. We represent the citizens of
Elliot Lake. We're primarily looking at the
emergency management program of Elliot Lake of
which I spoke on behalf of the City to the
citizens to introduce them to this program. So,
I'm well versed with the program. It has far
reaching effects with your mandate, which is
15 tremendous and I think this is the first inquiry
that has looked into emergency management.
Elliot Lake could be the target in memory of the
two that we lost, two of our citizens, which
would benefit I think the rest of the province
and possibly across Canada, particularly with
20 control and command through various legislations
including the federal government if they would
have come in. How did they fit into the program?
I think our participation would help the inquiry
tremendously and openness and fairness to the
25 inquiry. Perhaps the point that we're
negotiating, for your information, is Section 16
that we want to be guaranteed all of these
rights, if they're rights, other things that we
can negotiate through Mr. Elliott that we have
30 these things addressed. In that respect, I see
no hang up that we cannot come to terms. In the

Victim Services of Algoma

Robin Kerr

5 case that Mr. Elliott gets his funding that would mean that we would withdraw our application for funding and I think that's about everything we have to say about this. It's going very well in negotiations and thank you for that suggestion.

10 MR. COMMISSIONER: Thank you very much, sir, and it is certainly something, Mr. Myles that I strongly recommend but we'll see. You are certainly in good hands if that's the decision you eventually adopt. Thank you for being here this morning.

MR. MYLES: Thank you.

15 MR. COMMISSIONER: And that leaves us with number six. Is that correct, counsel? Victim Services of Algoma?

MR. DOODY: I think that's correct, Mr. Commissioner.

MR. COMMISSIONER: Good morning, Madam.

20 MS. KERR: Good morning. My name is Robin Kerr. I'm the executive director with Victim Services of Algoma. Victim Services of Algoma is a volunteer based not for profit Transfer Agency which responds to calls for local police services and emergency services to assist victims of crime and tragic circumstance. We are funded by the
25 Ministry of Attorney General through the Victims Justice Fund. Our program is under the victims and vulnerable persons division umbrella of that Ministry. Through calls from the local emergency
30 services, volunteer crisis responders attend to offer emotional support, practical assistance, information and referral. The goal of the

Victim Services of Algoma

Robin Kerr

5 program is to lessen the impact of the crime
and/or tragedy and research shows that our
program does assist in doing this, that if a
victim receives immediate assistance at that time
it assists them in accessing longer term services
to work towards recovery. There are currently 52
victim service programs across the province.
Victim Services of Algoma is requesting standing
in regards to item 'A' listed on the inquiry's
10 terms of reference, specifically in regards to
emergency management and response by responsible
bodies and individuals subsequent to the
collapse. As stated in my motion, Victim
Services of Algoma was called by the Ontario
15 Provincial Police to respond to the Collins Hall
on Saturday, June 23rd. Victim Services of
Algoma volunteer crisis responders and myself
staffed the Collins Hall as an information center
for the City of Elliot Lake from June 23rd until
20 we transitioned the hall over to longer term
agencies for the individuals on June 26. During
those four days, we were the lead agency for the
residents of Elliot Lake who were at the Collins
Hall. Victim Services of Algoma was available to
25 all residents to assist with their immediate
needs. We called in the Red Cross to assist with
distributing their care kits. We worked with
Elliot Lake City staff, ensuring that there was
food and beverages available at the hall. We
30 contacted crisis counselors to meet with
residents as needed and we offered care and
comfort for those who stayed at the hall during

Victim Services of Algoma

Robin Kerr

5 this time. There were always approximately 10 to
15 residents at the hall continuously during
those days. As Victim Services of Algoma played
an integral part in assisting the victims,
specifically the families of Doloris Perizzolo
and Lucie Aylwin but also the residents of the
community, we believe this gives us a direct
interest in the subject matter of this inquiry.
10 The outcomes and recommendations made by the
inquiry could have significant impact on how
victims in similar situations are dealt with in
the future. We believe that by being granted
standing we may be able to learn how the
situation unfolded and how we and all victim
15 service sites across the province could be better
prepared if a tragedy similar to this was to
occur again. More importantly, we believe we
play an integral role in the inquiry in terms of
being able to voice in representing from a first
20 hand perspective how emergency management and
response bodies dealt with all of Elliot Lake
residents but particularly the Perizzolo and
Aylwin families as we were present when the
Ontario Provincial Police interacted with the
25 immediate family members. Our first hand
observations coupled with our expertise puts
Victim Services of Algoma in a unique position of
being able to present first hand information
regarding how emergency management and response
30 bodies dealt with the families and where
improvements in this regard can be made. Victim
Services of Algoma would be willing to share the

Victim Services of Algoma

Robin Kerr

5 knowledge we gained with all of the other victim
service sites across the province. During the
four days that we staffed the information centre
at the Collins Hall we spent a great deal of time
with the Perizzolo and the Aylwin family and
10 friends. We worked tirelessly in insuring that
they had a voice, sometimes to no avail. We feel
that our presence at the inquiry would allow us
to raise questions given our connections to those
families at that time and ensure that the panel
received the fullest perspective into those days
15 following the collapse and the response to the
families. We believe the inquiry will give us a
better insight into the operational workings of
first responders and allow us to better tailor
our approach to provide the best service not only
to victims but to the first responders as well.
20 During the immediate aftermath of the mall
collapse we were being asked questions that we
could not answer. By having involvement in the
inquiry, we will learn why things were done the
way they were and we'll be able to answer those
25 questions. This will be of benefit to the first
responders when they know that we, Victim
Services of Algoma, is working with those
affected and we're receiving accurate and
reliable information. The goal of our
30 involvement in this inquiry is twofold. One, to
ensure that all the rights of the victims were
addressed in those hours and days following the
mall collapse and if those rights weren't
addressed then to ensure that they are in similar

Victim Services of Algoma

Robin Kerr

tragedies in the future and two, to learn what we as victim service providers can do better to assist victims and first responders when major occurrences like this happen. Thank you.

5 MR. COMMISSIONER: Your proposed participation, Ms. Kerr, would it be equally valuable if you or others in your organization were called as witnesses as opposed to being granted full participation rights in that second aspect of our inquiry?

10 MS. KERR: It may very well be provided. We just really want to be sure we are able to access the information so that we can do our jobs better in the future.

15 MR. COMMISSIONER: And who would you be proposing as the person participating in representing Victim Services? Would it be yourself?

MS. KERR: It would be myself.

20 MR. COMMISSIONER: All right. And I take it you are not asking for funding. You would not propose having legal representation. Is that correct?

MS. KERR: Correct.

25 MR. COMMISSIONER: Okay. And you've provided a significant amount of material to the Commission. Are there other aspects that counsel think ought to be addressed by Ms. Kerr at this time before we make out ultimate decision?

MR. DOODY: No, Mr. Commissioner.

30 MR. COMMISSIONER: All right. Tell me counsel if you would and for Ms. Kerr's satisfaction, is it eventually the intention of counsel to call

Victim Services of Algoma - Robin Kerr
Closing Remarks - Commissioner Bélanger

people like Ms. Kerr and others in her organization, witnesses, to the events subsequent to the collapse?

MR. DOODY: Mr. Commissioner, I can tell you based on the information that I received from Ms. Kerr earlier, it was for some number of weeks now, it's my intention that she would be called as a witness.

MS. KERR: Okay.

MR. COMMISSIONER: All right. I take it that would go some distance to ensuring that your voice is heard and your concerns are heard.

MS. KERR: Absolutely.

MR. COMMISSIONER: Yes.

MS. KERR: Yes.

MR. COMMISSIONER: Okay. Well, I thank you very much for being here.

MS. KERR: Thank you.

MR. COMMISSIONER: We will take your submissions under advice.

MS. KERR: Thank you.

MR. COMMISSIONER: Thank you.

MR. DOODY: I believe that completes the matters before you this morning, Mr. Commissioner.

MR. COMMISSIONER: Yes. Just give me a moment as I hunt through my materials and see whether I am supposed to add something else. I thank all of you who have been here this morning for your submissions. Obviously, bearing in mind the delay that we have spoken about this morning, it is going to be a bit longer before I release my ruling on who will receive standing and my

Closing Remarks - Commissioner Bélanger

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recommendations on who will receive funding but we will do our very best to make everybody aware of our decision, my decision, just as humanly possible as we can.

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I'm not yet in a position to announce the date for the start of the public hearings because before we begin, we have to be sure that we have gathered all of the information, that we have interviewed all of those who may be helpful, and that we have organized everything for the hearings, so that the information can be presented in an understandable and efficient way and unfortunately that takes time. It is my hope
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is that we will be in a position to start the hearings early in the new year, that we have tremendous progress being made on the hearing room at the academy. We have had a lot of good expert help and that is not going to delay the commencement of proceeding. However, I encourage
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you, we will attempt to keep our website very current and up to date, I encourage you to check check it. It is easy to access and you will get regular updates about the Commission's schedule and all other pertinent events. I will repeat my
25
comments en français.

30
Je vous remercie tous pour vos observations. Je suis conscient du délai donc on a discuté ce matin. Ça va retarder quelque peu la décision mais soyez assuré que je rendrai aussitôt que possible cette décision sur ceux qui recevront la

Closing Remarks - Commissioner Bélanger

qualité d'agir ainsi que mes recommandations en matière d'aide financière.

Je ne suis pas encore en mesure d'annoncer la date du début des audiences publiques.

Auparavant, nous devons nous assurer d'avoir réuni toute l'information, d'avoir interrogé toutes les personnes pertinentes et d'avoir tout organisé pour les audiences de sorte que

l'information puisse être présentée d'une façon compréhensible et efficace. Comme je disais en

anglais, les facilitées qui nous sont offertes ici progresse très bien. La salle d'audience et c'est pas ça qui vont nous retarder lorsque nous

serons en mesure de commencer mais il ya a un baggage d'information qui est absolument

époustouflant. Il faut regarder chaque morceau de papier. Il faut en faire examen, décider de

leur pertinence et leur importance et c'est toute une tâche.

Alors, comme je disais, le tout exige du temps.

Cependant, je suis quand même optimiste et

confiant qu'ont pourra commencer les audiences au début de la nouvelle année. Cependant, ceux qui

veulent être informé du progrès de la Commission n'ont qu'à consulter notre site Web pour trouver

des mises à jour sur le calendrier des travaux et des activités de la Commission.

Je vous remercie tous d'avoir été ici ce matin.

Thank you all for being here this morning.

Form 2

FORM 2

5

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

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I, Janet Ayotte, certify that this document is a true and accurate transcript of the recording of the Standing Hearings, at the Hampton Inn, Maple Room, held at Elliot Lake, Ontario, on October 26, 2012, taken from Recording No. 0121-LAPTOP1-20121026-085056, which has been certified in Form 1.

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(Date)

Janet Ayotte
(Signature of authorized person(s))

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