



Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

REPORT

The Honourable Eileen E. Gillese
Commissioner

Volume 1 – Executive Summary and Consolidated Recommendations

Volume 2 – A Systemic Inquiry into the Offences

Volume 3 – A Strategy for Safety

Volume 4 – The Inquiry Process



Ontario

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This Report consists of four volumes:

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4. The Inquiry Process

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Contents

VOLUME 1: Executive Summary and Consolidated Recommendations

VOLUME 2: A Systemic Inquiry into the Offences

VOLUME 3: A Strategy for Safety

VOLUME 4: The Inquiry Process

Chapter 20: Part 1 of the Inquiry Process	1
Chapter 21: Part 2 of the Inquiry Process	33
Appendices	43
Appendix H – News Release – Long-Term Care Homes Inquiry to hold news conference on August 3, 2017	45
Appendix I – News Release – Public Inquiry to hold Community Meetings	46
Appendix J – Newspaper Advertisement for the Community Meetings	48
Appendix K – Commissioner’s Opening Remarks at the Community Meetings	49
Appendix L – Confidentiality Undertaking for Counsel and Contact Persons	63
Appendix M – Confidentiality Undertaking for Participants, Potential Witnesses and Experts	64
Appendix N – Commissioner’s Opening Remarks at the Participation Hearings	65
Appendix O – Newspaper advertisement for Participation Hearings ..	76
Appendix P – News Release – Call for Applications to Participate	77

Appendix Q – Application to Participate	79
Appendix R – Important Information for Applicants to Participate (Standing)	83
Appendix S – Important Information for Applicants Seeking Funding	86
Appendix T – Ruling on Participation	90
Appendix U – Addendum to Ruling on Participation	109
Appendix V – Funding Recommendations.....	110
Appendix W – Further Funding Recommendations	119
Appendix X – Rules of Procedure for the Public Hearings	127
Appendix Y – Release of the Rules of Procedure to Govern the Public Hearings – Commissioner’s Remarks	142
Appendix Z – Ruling on a Motion to compel Elizabeth Wettlaufer to testify at the Public Hearings	146
Appendix AA – Ruling on a Procedural Motion [productions, redactions].....	162
Appendix BB – Protocol for Calling and Examination of Witnesses	167
Appendix CC – Protocol for Closing Submissions for Part 1	172
Appendix DD – Hearing Room Seating Plan	174
Appendix EE – Newspaper advertisement for the Inquiry’s Public Hearings	175
Appendix FF – News Release – Inquiry’s Public Hearings to begin June 5, 2018	176
Appendix GG – Media Information for the Public Hearings	179
Appendix HH – Confidentiality Undertaking for Media.....	182
Appendix II – Commissioner’s Opening Remarks at the Public Hearings (amended).....	186
Appendix JJ – Public Hearings – Witness Appearance List.....	198
Appendix KK – Commissioner’s Closing Remarks at the Public Hearings.....	201
Appendix LL – Ruling on a Motion Requesting the Issuance of Summonses	212
Commissioner and Inquiry Staff	233

Part 1 of the Inquiry Process

I.	Designing the Inquiry Process	3
	A. The Inquiry Mandate and Purposes	3
	B. Dividing the Inquiry Process into Parts 1 and 2	4
	C. Guiding Principles	6
II.	Setting Up the Commission	6
	A. Establishing a Team	6
	1. Legal Staff.....	6
	2. Office Staff	8
	B. Offices and Infrastructure	9
	C. Communicating with the Public	10
	1. Communications	10
	2. The Website	11
III.	First Things First	12
	A. Meetings with the Victim, and the Victims’ Families and Loved Ones	12
	B. Establishing Counselling Support	13
	C. Community Meetings	14
IV.	The Investigations	15
	A. Introduction	15
	B. Document Production and Management	16
	C. Witnesses	17
V.	The Right to Participate and Funding Recommendations	17
	A. What Is Participation?	17
	B. Making Funding Recommendations	19

C. The Participation Hearing	19
1. Introduction	19
2. Advertising the Participation Hearing	20
3. The Application Process	20
4. Amicus	20
D. Those Given the Right to Participate	21
E. Funding Recommendations	22
VI. Work Before the Public Hearings	22
A. The Rules of Procedure for the Public Hearings	22
B. All-Counsel Meetings	24
C. The Procedural Motions	24
D. Streamlining the Public Hearings	25
1. The Protocols	25
2. Overview Reports and Foundational Documents	25
VII. The Public Hearings	26
A. Operations	26
1. Dates and Location	26
2. Public Access to the Hearings	27
3. Media	28
4. Running an Electronic Hearing	29
B. The Public Hearings Begin	29
C. Witnesses	30
D. Expert and Technical Evidence	30
E. Closing Submissions	32

I. Designing the Inquiry Process

The design of a public inquiry's process is absolutely crucial if the inquiry is to fulfill its mandate; meet its procedural fairness obligations; and be completed on time. Unfortunately, there is no manual that tells a Commissioner what process to follow. Reference to the *Public Inquiries Act, 2009*¹ (PIA 2009) is of little assistance in this regard. The PIA 2009 confers important powers and responsibilities on the Commission and Commissioner, but it offers no direct guidance on how the inquiry process should unfold. This is not surprising because, while we can learn from prior inquiries, each inquiry's process is as unique as its mandate.

In designing this Inquiry's process, I began with a consideration of its mandate and purposes.

A. The Inquiry Mandate and Purposes

The Commission mandate is set out in paragraph 2 of Order in Council 1549/2017 (OIC), which established the Inquiry. (The OIC is Appendix A to Volume 2.) It reads as follows:

2. ... the Commission shall inquire into:
 - a. the events which led to the Offences;
 - b. the circumstances and contributing factors allowing these events to occur, including the effect, if any, of relevant policies, procedures, practices and accountability and oversight mechanisms; and
 - c. other relevant matters that the Commissioner considers necessary to avoid similar tragedies.

However, the *Commission* mandate is not the same thing as the *Inquiry* mandate. The Inquiry mandate includes the obligations imposed by the OIC on me, as Commissioner. The most significant of these obligations is to make recommendations on how to avoid such tragedies in the future. This obligation is evident in the following preamble to the OIC:

AND WHEREAS it is considered desirable and in the public interest for the Ontario Government to *appoint a person to identify and make recommendations to address systemic failings in Ontario's long-term care homes system that may have occurred in connection with the Offences;*
[Emphasis added.]

¹ SO 2009, c 33, Schedule 6.

My obligation as Commissioner to make such recommendations is reinforced by paragraph 14 of the OIC, which places on me the duty to deliver a final report to the Attorney General by July 31, 2019. In describing that report, paragraph 14 dictates that I deliver a report “summarizing [my] activities and including any recommendations.”

It will be readily apparent that in designing the Inquiry process, it was necessary to take into account the totality of the obligations created by the OIC – that is, both the Commission mandate and my overarching obligations as Commissioner. However, while critical, those matters are not exhaustive of the considerations that went into the design of the Inquiry process. In my view, in designing the process, one must consider also the purpose for which the Inquiry was established. I discuss this concept in Chapter 1 and will not repeat that discussion here. Suffice to say that, like most public inquiries, this Inquiry was called in response to tragic events of substantial public interest. It was established to serve a broader social function, in addition to its investigative, educational, and informative roles. This broader purpose – or function – was to help restore public confidence in the long-term care system.

B. Dividing the Inquiry Process into Parts 1 and 2

After considering the Commission mandate, my overarching obligation to make recommendations to ensure the safety and security of those in the long-term care system, and the broader purpose the Inquiry was to serve, I divided the work of the Inquiry into two parts.

It is tempting to think of part 1 of the Inquiry process as only investigative in nature, designed to complete the tasks set out in paragraph 2 of the OIC – to inquire into the events of the Offences and uncover the truth of what happened. However, this neglects to recognize the Inquiry’s broader purpose, discussed above. That purpose demanded that a “human perspective” inform the work of the Commission and the Inquiry. Thus, as an important first step in the part 1 process, I met with those most directly affected by the Offences – the surviving victim,² and the victims’ families and loved ones. I wanted to hear from them and to show respect for what they were suffering as a result of the Offences. Next in the part 1 process were the town hall meetings in the

² I had been advised that the other surviving victim was not capable of meeting with me, due to age-related dementia.

communities most directly affected by the Offences. The Commission team members were at the community meetings and, through those meetings, we acquired insight into the devastation wrought by the Offences. It was only after these meetings were completed that the part 1 investigations began.

The long-term care system is complex and multifaceted, making it challenging to design a system-wide investigation into the Offences and relevant surrounding circumstances. Later in this chapter, I describe, in outline form, the enormity of Commission counsel's work in conducting those investigations. Part 1 of the Inquiry process culminated in the Inquiry's public hearings, which were held at the Elgin County courthouse in St. Thomas, Ontario (the St. Thomas courthouse), and ran for 10 weeks between June and September 2018. Through the public hearings, the Commission presented to the people of Ontario the results of its investigations, as well as relevant expert and technical evidence. The public hearings are also described later in this chapter.

Part 2 of the Inquiry process is described in the following chapter. It was designed to develop recommendations on how to avoid similar tragedies in the future. It consisted of research and policy development, consultations with stakeholders in the long-term care system, the development of recommendations, and the preparation of this Report.

The work of parts 1 and 2 was not sequential, however. Work on part 2 began in January 2018 and had an impact on the work of part 1. For example, research in part 2 quickly revealed that healthcare providers in other countries had also killed those under their care, often through insulin overdoses – the same method that Wettlaufer used to commit the Offences. This information was important because it led us to address the Offences not as the isolated crimes of a single individual but, rather, as one example of a widespread, longstanding phenomenon of healthcare serial killers (HCSKs). It quickly became clear that the Inquiry had to learn more about the HCSK phenomenon and what can be done to guard against it. To this end, the Commission retained Professor Beatrice Crofts Yorker, a widely recognized expert in the area of HCSKs. Her expertise informed our part 1 inquiries and became part of the expert and technical evidence presented at the Inquiry's public hearings.

C. Guiding Principles

The design of this Inquiry process was also informed by four guiding principles that the Commission adopted, as discussed in Chapter 2 of the Report. Those principles are:

- **thoroughness** – a commitment to examining all relevant issues with care, so there can be no doubt that the questions raised by the Inquiry mandate were explored and answered;
- **timeliness** – a commitment to conducting our work in a timely fashion, to engender public confidence, remain relevant, and meet our deadline;
- **transparency** – a commitment to ensuring that the Inquiry proceedings and processes were as open and available to the public as reasonably possible; and
- **fairness** – a commitment to ensuring that the public interest in finding out what happened was properly balanced with the rights of those involved to be treated fairly.

In this chapter, after describing how the Commission was set up, I explore what took place in part 1 of the Inquiry process.

II. Setting Up the Commission

The Inquiry was given a two-year life span, beginning on August 1, 2017, and ending on July 31, 2019, with the delivery of the final report to the Ontario government. Given the magnitude of what had to be accomplished in that two-year period, it was imperative that the Commission quickly become operational. Three tasks were paramount in achieving that: hiring key legal staff and an executive director; finding and outfitting suitable space in which to house the Commission; and establishing lines of communication with the public.

A. Establishing a Team

1. Legal Staff

My core legal team was in place on August 1, 2017, the first day of the Inquiry. It consisted of: Will McDowell, co-lead Commission counsel; Liz Hewitt, senior Commission counsel; Megan Stephens, Commission counsel; and

Rebecca Jones, Commission counsel. On November 15, 2017, Lara Kinkartz joined these lawyers as associate Commission counsel. This group of five lawyers bore primary responsibility for the part 1 investigations, and the presentation of the results of those investigations at the public hearings.

A second group of lawyers joined the team early in 2018. Ida Bianchi, Commission counsel, began working with me to develop the process of part 2 of the Inquiry's work, described in the following chapter. Lindsay Merrifield, staff lawyer, joined the London office to assist Liz Hewitt. Liz was responsible for investigating the long-term care homes in which Wettlaufer had worked in her 20 years as a registered nurse. In the fall of 2017, it became clear that Liz needed the support of an experienced junior lawyer to work through the sheer volume of documentation produced by the homes and facilities in response to the Inquiry's summonses, and to help interview the relevant people.

Around the same time, the Commission welcomed Étienne Lacombe, Greg Furmaniuk, and Sean Pierce. These three recent law graduates were hired to assist Megan Stephens, Commission counsel responsible for investigating the role played by the Ministry of Health and Long-Term Care in overseeing long-term care homes. The Ministry was producing staggering numbers of documents and, under Megan's leadership, these three members of the team helped review, organize, and analyze those materials. They also helped Megan prepare to interview Ministry staff. They stayed with the Commission until the early summer of 2018, when they left to begin jobs as articling students. Lara also worked closely with Megan and assumed responsibility for investigating the role of the Local Health Integration Networks (LHINs) in overseeing the provision of publicly funded home care.

In the spring of 2018, Nicolas Rouleau began work as the Inquiry's director of research, and Alexandra Campbell and Kat Owens joined as staff lawyers. While Kat's primary responsibility was to support the Inquiry's work in part 2, Alex helped Megan with interviewing and preparing the results of the Ministry investigation for presentation at the public hearings. Unfortunately, Will became ill in early 2018, so in March, Mark Zigler took on the role of co-lead Commission counsel. I am happy to report Will is fully recovered.

I cannot begin to describe the commitment, dedication, and hard work that each and every one of these lawyers brought to the Inquiry. Throughout, they acted in the best traditions of the bar. Their work was uniformly thorough, careful, balanced, and fair. And, no matter the stresses and strains, they were always professional, respectful, and collegial.

Importantly, the lawyers and office staff operated as a team. They worked collaboratively and supported one another. For example, during the Inquiry's public hearings, you would often find all the lawyers – not just the one presenting evidence the following day – as well as the staff members working until midnight to get documents and evidence ready for the following day's hearing.

It is doubtless a truism but it bears repeating: a public inquiry is an all-consuming process that requires more work than can reasonably be expected to be completed in the allotted time. Each member of the team must work intensely and closely with the other team members. It is critical that all members of the legal team bring their undivided attention to the Inquiry immediately, be committed to its work, have boundless energy and optimism, and be motivated by a commitment to public service.

2. Office Staff

Hiring an executive director early in the process is essential. I was lucky that Andrea Barton agreed to accept that role and was in place less than a month after the Commission came into being.

As executive director, Andrea was responsible for ensuring that the Commission operated efficiently and effectively. She made sure that the necessary computers, phones, furniture, equipment, and infrastructure were in place in the Commission's Toronto and London offices. In addition, under my general direction, Andrea was responsible for managing the content on the Inquiry webpage; hiring office staff; locating and overseeing service providers such as the webmaster; performing the record management and retention functions and ensuring that they met the requirements of Archives Ontario; and assisting in the production of the final report. In all these things – and more – Andrea excelled.

Andrea also played a key role in preparing the Inquiry's draft budget. Section 25 of the PIA 2009 requires the Attorney General, in consultation with the Commission, to set a budget for the conduct of the Inquiry. Within days of my appointment as Commissioner, I met with government officials to discuss the budget in general terms and the financial parameters within which the Inquiry had to operate. Working from a template provided by the Ministry of the Attorney General, Andrea prepared the draft budget. She researched and forecast all potential costs the Inquiry would incur over its mandate, making sure that it met the Ministry's requirements.

Andrea also performed two types of work not found on the standard job description for an executive director. First, she served as the Inquiry's registrar. As such, she was the gatekeeper for all documents, including all correspondence to and from the Participants in the public hearings. Second, in part 2 of the Inquiry, we drew on Andrea's policy background in our stakeholder consultations and the development of recommendations.

Carla Novakovic, executive assistant, and Nazma Dusoruth, receptionist, rounded out the Commission's office staff. Carla's strong financial background enabled her to take responsibility for the Commission's financial affairs. She also has excellent organizational skills, which served the Commission well during the public hearings and the Plenary session. Carla saw that Commission counsel had functional office space at the St. Thomas courthouse for the public hearings, and she made sure that the ever-changing line-up of Commission counsel and staff had food and accommodation. The Plenary capped the consultation process. Again, Carla made sure that the operational side of the Plenary worked seamlessly. She also played an invaluable role in the production of this Report. In addition to her duties as receptionist, Nazma pitched in to help Andrea and Carla with all kinds of office duties.

Put simply, the administrative staff were critical to the Inquiry's functioning and ability to fulfill its mandate.

B. Offices and Infrastructure

On August 1, 2017, the day the Commission was "born," it had no physical existence. The burning question was how to convert the notion of a Commission into a reality. Thankfully, the Ministry of the Attorney General provides support for this through the coordinator of public inquiries, Laureen Moran. Laureen has supported many prior public inquiries and so brings a wealth of experience to the task.

Laureen began by working with those responsible for government office space in Toronto to find what space was available on short notice. She arranged for viewings of the various locations – and arrived at them with the necessary IT folks in tow. This was invaluable because I had determined that it would be necessary to use an electronic environment for the public hearings and that those hearings would be held in southwestern Ontario, where the Offences had been committed. I also anticipated that document management software would be required to deal with what I expected would be voluminous documentary disclosure. It was vital that the Commission office

space could support an appropriate information technology system. Within days, we had secured office space and, by month's end, the Commission's Toronto office was up and running.

During August, when the Commission had no physical home, Laureen was also the Inquiry's "point person" for the public. Questions about the Inquiry, applications to work for it, and offers of help poured in from across the province by way of mail, emails, and voicemail messages – to a variety of government ministries and agencies. All of this was forwarded to Laureen. Under my direction, Laureen responded to the communications, catalogued them, and provided them to the Commission once it was operational.

Laureen also helped establish the Inquiry's satellite office in London, Ontario. Because the Offences had been committed in southwestern Ontario, I felt it was important to establish and maintain a Commission presence in the region, and not just during the public hearings. The London office provided workspace for the senior Commission counsel, Liz Hewitt, and staff lawyer, Lindsay Merrifield. All members of the Commission made use of this office to hold meetings, interviews, and consultations in southwestern Ontario, making attendance more convenient and less intimidating for many affected individuals.

Laureen continued to provide critical support for the Inquiry's duration. She understood and respected the need for the Inquiry to be fully independent of the government. However, there were still myriad administrative and operational matters on which we needed advice – everything from how to get bills paid to meeting the province's archiving requirements. Laureen was the Commission's point of contact with the government on all such matters.

C. Communicating with the Public

1. Communications

On August 3, 2017, co-lead Commission counsel and senior Commission counsel held a news conference in London, Ontario, to formally announce the Inquiry's launch. This enabled the Inquiry to publicly announce its plan of action, in general terms, and answer questions from the media. The news release for the conference is located at Appendix H to this volume.

In having Commission counsel announce the Inquiry's launch, I acted deliberately. I had Commission counsel make all press announcements and handle all media questions and interviews throughout the Inquiry

because, even though I was on leave from the Court of Appeal to serve as Commissioner, I felt it was not appropriate for me, as a sitting judge, to engage directly with the media.

Although the Commission office was not in place until the end of August 2017, it was essential that the public have a means of communicating with the Inquiry immediately after it was established. To achieve this, a toll-free 1-800 number and a generic info email account were promptly put in place. The generic email account was used throughout the life of the Inquiry, providing the public with an easy means to reach it with questions, concerns, and suggestions. This account was busiest in the early days following the establishment of the Inquiry.

I wish to stress how important it is to have a communications plan for the period before a Commission office is operational. The plan needs to clearly set out who is to monitor the 1-800 voicemail account and the info email account and when; how all communications are to be stored; who is to respond to such communications and when; and how and when all communications are to be shared with the Commissioner. The plan must also include directions on how the communications are to be transferred to the Commission staff when the Commission office is operational. Finally, the plan should specify how the communications, once received, should be disseminated among Commission staff, both legal and administrative. A large volume of communications from the public flowed in after the Inquiry was established but before it had its own office space. Without a communication plan such as this, it is all too possible for communications to be lost or for the Inquiry to fail to respond to them in a timely way.

2. The Website

A website is critical for communicating with, educating, and engaging the public. It also provides the public with easy access to up-to-date and authoritative information generated by the Inquiry. A basic website was set up within days of the Commission's establishment. For this, I thank Peter Rehak, who established the Inquiry's original website and also managed its media relations.

In October 2017, the executive director oversaw the development of a more robust website. The site was managed by a website vendor with Inquiry experience, the capacity to upload large amounts of new content on short notice, in both official languages, and who offered Commission staff the necessary technical support.

Because the website was the Inquiry's primary vehicle for communicating with the public, a website plan was needed to ensure that all relevant information was uploaded in a timely fashion. The website was regularly updated with new content such as legal information, media releases, rulings, and copies of my speeches and remarks. The homepage was used for announcements and to give notice of upcoming Inquiry events. During the public hearings, exhibits and transcripts were posted overnight. As well, the hearings were webcast and, through the website, the public could "attend" and watch the hearings electronically.

III. First Things First

A. Meetings with the Victim, and the Victims' Families and Loved Ones

My first act as Commissioner was to write to one of the victims and each of the victims' families and ask to meet with them. I did this as a sign of respect for the victims, and to acknowledge the suffering that the Offences had caused their loved ones. I will refer to these as the family meetings and to those who attended as the family members.

I arranged for the family meetings to be held in locations that were convenient to the family members. They took place over a two-week period in September 2017, in hotels in Woodstock, London, St. Thomas, and Brantford. Some family members came alone, others came in groups. In all, I had 16 meetings. Senior Commission counsel attended the family meetings with me. The meetings were transcribed so that I was free to listen, rather than take notes. However, as I promised those who attended the meetings, I alone had access to the transcripts of those meetings. To protect their privacy, the family meetings were not made public in any way: there was no information about the meetings on the Inquiry website, and none was given to the hotels in which the meetings were held.

The purpose of the family meetings was not to gather information about Wettlaufer, the Offences, or the care their loved ones received in the long-term care system. To embark on discussions of this nature could have raised procedural fairness concerns, given the private nature of the meetings.

Instead, I encouraged those at the family meetings to tell me about their loved ones whom Wettlaufer had harmed, and how they had been affected by the Offences. I also asked them to share their thoughts on areas the Commission should focus on during its investigations and to offer suggestions on how such tragedies might be avoided in the future. Further, I described the steps that the Inquiry would follow, so that they were prepared for what was to come and what that might mean for them, including in terms of media attention. As well, I wanted to explain how they could be involved in the Inquiry process, should they wish to be.

The magnitude of suffering the Offences caused the victim, and the victims' family members and loved ones, cannot be overstated. (A more complete discussion of this issue and the broader impact of the Offences can be found in Chapter 1.) Its enduring nature is linked to a sense of guilt for having placed their loved ones in long-term care. Despite the obvious pain it caused the family members to talk with me, they were warm, welcoming, and committed to assisting the Inquiry. Many went on to become Participants in the Inquiry process, discussed below. As they repeatedly said, they would do whatever they could to help, in the hope that no one else would suffer as they had. It is my sincere hope that each has found some healing through the Inquiry process, and that all take comfort from the Report and its recommendations, knowing that their suffering has been a catalyst for improvements to long-term care in Ontario.

B. Establishing Counselling Support

In our meetings, the family members described their experiences with depression, anxiety, withdrawal from family and friends, intrusive thoughts, anger, distractedness, difficulty eating, health problems caused by stress, and sleepless nights. Some had arranged for private counselling through insurance programs but were nearing the end of their coverage. Others had not sought counselling, often for financial reasons. I immediately took steps to arrange for private one-on-one counselling for any victim, family member, or loved one who wished that support, to be paid for by the Inquiry.

In October 2017, Al Gayed became the Inquiry's director of counselling. Al is a registered clinical social worker with over 30 years' experience, including experience counselling people connected to public inquiries and similar processes. He is based in London, Ontario. I wrote to each person who had attended a family meeting, telling them that confidential counselling services were being made available, at no cost to them. Al matched those who wished

counselling services with a qualified service provider in the geographic area of their choice. If a suitable service provider could not be arranged, AI provided counselling directly.

I understand from AI that those who chose to engage in counselling have benefited. He tells me that, because their grief is complex, they may need counselling for several years. Others may come to realize they need counselling after this Report is released. As noted in Chapter 1 of this Report, I recommend that the Ministry of the Attorney General make counselling services available to the victim, and the victims' families and loved ones, at no cost to the recipients, for a period of two years following the Inquiry's conclusion on July 31, 2019.

C. Community Meetings

After I completed the family meetings, I held three community meetings – two in Woodstock, Ontario, and one in London, Ontario. The meetings in Woodstock took place on October 18, 2017, one in the afternoon and the other in the evening. The community meeting in London took place on the evening of October 19, 2017. All three meetings were well attended. They were transcribed.

For two weeks before the community meetings were held, they were advertised on local radio stations, in local and national newspapers, and through the Inquiry's website. Appendix I is the news release for the community meetings. Appendix J is a copy of a newspaper advertisement for them.

The purpose of these meetings was to give members of the communities in which the Offences had been committed an opportunity to speak about the impact the Offences had on their lives. Wettlaufer had lived for all but a year in southwestern Ontario, where she committed the Offences. Many in these communities knew her or had worked alongside her. They were deeply affected when they learned that she committed the Offences while serving as a trusted caregiver and registered nurse. I wanted to give those in the affected communities the opportunity to share their thoughts, comments, and suggestions with me and the other members of the Inquiry team. I also wanted to introduce myself and my team to the communities. As the investigations took place, it was important that they knew who from the Commission would be in their communities and what they would be doing.

I began by making opening remarks (see Appendix K to this volume). A question and answer session, moderated by Commission counsel, followed my remarks. In this session, we heard an outpouring of stories, information, and suggestions for the Inquiry's consideration. Some spoke of the experiences of their loved ones in long-term care, including in homes in which Wettlaufer had worked. Others were themselves healthcare providers in the long-term care system who wanted to share information about the challenges and privileges that came with their work. Some knew victims of the Offences. It was clear the communities were deeply affected by the Offences and had high hopes the Inquiry would make meaningful recommendations to improve long-term care in Ontario.

IV. The Investigations

A. Introduction

In part 1 of the Inquiry process, Commission counsel conducted investigations into five areas:

- the police investigation into the Offences and subsequent criminal proceedings, culminating in Wettlaufer's sentencing;
- the homes and home care agencies that employed Wettlaufer when she committed the Offences;
- the College of Nurses of Ontario, the regulatory body governing all registered nurses in Ontario, including Wettlaufer;
- the Office of the Chief Coroner and the Ontario Forensic Pathology Service, which is responsible for death investigations in Ontario; and
- the Ministry of Health and Long-Term Care and the Local Health Integrated Networks, both of which play a role in overseeing long-term care homes and publicly funded home care.

Commission counsel began their investigations in September 2017 with the issuance of summonses. The investigative phase concluded with the public hearings, when the results of the investigations were publicly presented.

B. Document Production and Management

Commission counsel issued dozens of summonses to different organizations and individuals. In response, more than 42,000 documents were produced to the Commission, comprising some 400,000 pages. Documents continued to be produced to the Commission throughout the public hearings.

The Commission retained an external document management service to organize and manage the massive volume of documents and to enable evidence to be presented at the public hearings electronically. Christina Shiels-Singh, a law clerk at a Toronto law firm, was instrumental in all aspects of the document management system. I cannot stress enough the importance of having someone like Ms. Shiels-Singh to manage this process. Ms. Shiels-Singh had a wealth of prior experience dealing with large volumes of electronic discovery, as well as an outstanding level of skill, knowledge, and dedication. It is important that the document service provider have previous public inquiry experience.

Among other things, the document service provider had to:

- process tens of thousands of documents in both native and non-native form, received on a rolling basis from multiple parties;
- host a user-friendly database on a secure, web-based platform;
- code, organize, and remove duplicate documents;
- extract a subset of documents from documents initially processed as a single record;
- use analytics on existing and new production tranches to provide concept, document type, and keyword clustering for use by counsel;
- provide ongoing technical support to Commission counsel and Participants' counsel;
- perform redactions;
- provide multi-level permission for Participants' access to the database and/or to specific document collections, and/or to redacted versions of records; and
- at the Inquiry's conclusion, remit the materials in the database in a format compliant with Archives Ontario requirements.

Many of the documents that were produced to the Commission included personal health information, medical records, and other confidential personal information. Because of this, an exhaustive redaction process was required, involving both the document service provider and Commission counsel.

In early 2018, the secure database was made accessible online to only the Commission team.³ By mid-March, as discussed below, the database was made available to the Participants. Before being given access to the database, the Participants, their counsel, and experts were all required to sign confidentiality undertakings, copies of which are at Appendices L and M to this volume. When the consultations in part 2 of the Inquiry process were complete, Participant access to the database was revoked.

C. Witnesses

Commission counsel identified and interviewed dozens of individuals they believed could provide relevant information at the public hearings. After deciding which individuals they would call as witnesses at the public hearings, Commission counsel prepared witness statements or affidavits summarizing the anticipated evidence of each witness. The witness statements or affidavits were circulated to the Participants before witnesses were called to testify at the public hearings, along with a list of the documents that counsel anticipated raising with the witness during his or her testimony.

V. The Right to Participate and Funding Recommendations

A. What Is Participation?

Previous public inquiries in Ontario have framed the rights of third parties to be involved in the work of the inquiry – particularly its public hearings – as “standing.” I did not. The PIA 2009 does not address *standing* in a public inquiry. Instead, it speaks of *participation* in the public inquiry. Accordingly, I approached the rights of third parties to be involved in the work of the inquiry as a matter of the right to participate.

³ I did not have access to the database before the public hearings because of my fact-finding role in those hearings.

Participation in a public inquiry is governed by section 15 of the PIA 2009. Section 15(1) provides that, subject to the order establishing the commission, a commission shall determine:

- (a) whether a person can participate in the public inquiry; (b) the manner and scope of the participation of different participants or different classes of participants; (c) the rights and responsibilities of ... different participants ... ; and (d) any limits or conditions on the participation of different participants ...

Before making a decision under section 15(1), section 15(2) requires the commission to consider:

- (a) whether a person has a substantial and direct interest in the subject matter of the public inquiry;
- (b) whether a person is likely to be notified of a possible finding of misconduct under section 17 [of the Act];
- (c) whether a person's participation would further the conduct of the public inquiry; and
- (d) whether a person's participation would contribute to the openness and fairness of the public inquiry.

Section 15(3) gives a person who is permitted to participate the right to do so on their own behalf, to be represented by a lawyer, or, with leave of the commission, to be represented by an agent.

While section 15 speaks of participation in the public *inquiry*, in my view the intent is that it is to apply also to participation in the inquiry's public *hearings*. Accordingly, I issued a call for applications to participate in the public hearings, and those given the right to participate I called the Participants. Before the PIA 2009, the Participants would have been described as parties with standing. By these comments, I do not suggest that the right to participate automatically attracts the rights associated with standing. On my reading of section 15, the manner and scope of a person's participation; whether some participants are to be grouped into classes; and the rights, responsibilities, limits, and conditions of different participants and classes of participants must be determined. Put another way, none of these matters and none of the rights traditionally associated with standing automatically follow from being given the right to participate.

In addition to the wording of the PIA 2009, there is another reason that I chose to use the language of participation rather than standing. Standing is a technical legal word, typically associated with traditional court proceedings such as trials. A public inquiry is different from court proceedings, which

are adversarial in nature. Those who participate in a public inquiry are not adversaries: they are committed to the goals to be achieved through the inquiry. In this Inquiry, the Participants had a shared commitment to the safety and well-being of residents in Ontario's long-term care system. Using the language of "participation," as opposed to standing, served as a constant reminder that we were working together.

B. Making Funding Recommendations

Section 13 of the Order in Council establishing this Inquiry authorizes me, as Commissioner, to make recommendations to the Attorney General regarding funding to participants "to the extent of the participant's interest where, in [my] view, the participants would not otherwise be able to participate in the Inquiry without such funding."

In deciding whether to recommend to the Attorney General that a Participant receive funding, in my view, one must also take into consideration section 5 of the PIA 2009. Section 5 requires a commission to, among other things, ensure that its public inquiry is conducted effectively, expeditiously, and in accordance with the principle of proportionality, and that it is financially responsible and operates within its budget.

C. The Participation Hearing

1. Introduction

The Participation hearing was held on December 12, 2017, at the St. Thomas courthouse. I had four reasons for holding this hearing.

- First, because of the significance of the right to participate, it was important that the public be able to see the process through which participation was decided. Members of the public were invited to attend the hearings in person. Media were also welcomed. The proceedings were transcribed and a transcript was posted on the Inquiry's website, for the same reason.
- Second, the hearing gave each applicant the opportunity to explain the basis for their request to participate in the public hearings.
- Third, the hearing gave me the opportunity to ask applicants about their applications.

- Fourth, for applicants who sought funding recommendations, the hearing gave them the opportunity to speak to that matter and answer any questions I might have.

Appendix N contains my Opening Remarks at the Participation hearing.

2. Advertising the Participation Hearing

Approximately six weeks before the Participation hearing, the Commission issued a public call for applications to participate at the public hearings. The call included information about seeking a funding recommendation. It was advertised on local radio stations, and in local and national newspapers (see Appendix O). A news release was also issued and posted on the Inquiry website (see Appendix P).

3. The Application Process

The application form was posted on the Inquiry website on October 25, 2017, and remained available until 4 p.m. on November 24, 2017 (see Appendix Q). Applicants could submit their completed application form directly from our website to our generic email account or they could mail the application to the Inquiry's Toronto office. Those who wanted to participate in the public hearings were asked to both complete the written application form and appear in person at the Participation hearing.

Information was posted on the website for those seeking to participate and those seeking a funding recommendation. (See Appendix R for Important Information for Applicants to Participate and Appendix S for Important Information for Applicants Seeking Funding.) To determine whether a participant "would not otherwise be able to participate in the inquiry without funding," I needed to understand the applicant's financial circumstances. Consequently, each applicant who sought funding was asked to bring an affidavit outlining their financial circumstances to the Participation hearing.

Almost 50 people and organizations applied to participate in the public hearings.

4. Amicus

At the Participation hearing, each applicant was given an opportunity to explain the basis on which they sought to participate, and to answer any questions I had about their application and request for a funding recommendation, if one had been made.

As I have explained, applicants seeking a funding recommendation were required to provide affidavit evidence of their financial circumstances. I anticipated that some applicants might be unable to swear their affidavits before the Participation hearing. To assist self-represented applicants, I arranged for an *amicus curiae* (i.e., friend of the court) to attend at the Participation hearing. The role of amicus is to serve as an independent, non-partisan advisor to the court. Because of Commission counsel's role in the process, I am of the view that they cannot fill this role. For those self-represented applicants who wished assistance, amicus helped them to understand how the Participation hearing would unfold and what matters they should address in their oral submissions. Amicus also assisted in the swearing of affidavits, after appropriately verifying the validity of the financial information contained in them.

It was useful to have amicus present for the Participation hearing. It helped the hearing to run more efficiently. Importantly, it also gave self-represented applicants assistance, if they wished it, in making the case that they be permitted to participate in the public hearings. For those self-represented applicants who sought a funding recommendation, it also aided them in understanding what they needed to demonstrate to meet the requirements for such a recommendation.

D. Those Given the Right to Participate

After reviewing the written applications and hearing from the applicants at the Participation hearing, I considered each application in light of the framework in section 15 of the Act. I ruled that 17 applicants – some of which were groups of individuals – had the right to participate in the public hearings. These applicants fell into three broad categories. The first category consisted of three groups of different victims' family members and close friends; one group included a victim. Each group was given a single grant of participation. Thus, each group was treated as a Participant. The second category included those with a direct and substantial interest in the subject matter of the Inquiry. In this category were Her Majesty the Queen in Right of Ontario; the three long-term care homes in which the Offences were committed; and the College of Nurses of Ontario. The third category included organizations working directly in Ontario's long-term care system.

My ruling on participation is located at Appendix T. Included in it is a complete list of those given the right to participate in the public hearings. Appendix U is my amended ruling on participation, which reduced the number of

Participants to 16. The amendment reflects a change in legal representation that occurred shortly after the public hearings began.

E. Funding Recommendations

Of those granted the right to participate, six requested funding recommendations. Three were the Participants in the first category, described above. The other three were organizations in the third category: the Ontario Association of Residents' Councils; the Registered Nurses' Association of Ontario; and the Registered Practical Nurses Association of Ontario. All six requested funding for legal counsel to represent them and their interests at the public hearings.

I was satisfied that the six Participants would not otherwise be able to participate in the public hearings without funding for legal counsel, and I made funding recommendations to the Attorney General in their favour. The recommendations were subject to strict parameters and specified maximum amounts for legal fees. However, I also provided that, in certain circumstances, the Participants could apply to me to review the ceiling limits and seek recommendations for increased funding. My funding recommendations can be found at Appendix V. The Attorney General accepted these recommendations.

During the public hearings, three Participants applied to have their ceiling limits reviewed. Based on their written submissions, and in light of significant changes in their circumstances, which were relevant to funding, I made further recommendations to the Attorney General for increases in funding. These, too, were accepted. My further funding recommendations can be found at Appendix W.

VI. Work Before the Public Hearings

A. The Rules of Procedure for the Public Hearings

Part 1 of the Inquiry culminated in the public hearings. The public hearings play a crucial role in the work of many public inquiries, and this Inquiry was no exception. Through the public hearings, Commission counsel publicly presented the results of their investigations, and the Participants were given the opportunity to examine, challenge, and add to the results of those investigations, which serves an important public accountability function.

As well, if there were shortcomings in the investigations, these would be revealed through the public hearings. Moreover, enabling the Participants to test the investigative results was important for procedural fairness reasons and so I could be assured of a sound factual foundation on which to develop recommendations.

For the public hearings to be effective and expeditious, it was vital that “ground rules” be established and communicated. This led to the preparation of the Rules of Procedure to Govern the Public Hearings (the Rules). The Rules dictated how the public hearings would be conducted; set out the responsibilities and rights of those taking part in the public hearings; and ensured that the public hearings operated smoothly, effectively, efficiently, and fairly.

In developing the Rules, I reviewed examples from past inquiries and consulted with the Participants. The Participants were given draft Rules on February 1, 2018, and asked to provide me with their written comments and suggestions by February 15, 2018. Commission counsel met with counsel and contact persons for the Participants on February 5, 2018, to discuss the draft Rules and answer any questions. After considering the Participants’ written comments and suggestion, I finalized the Rules. Copies of the Rules were then sent to Participants and posted on the Inquiry website.

The Rules addressed such matters as:

- the Inquiry’s guiding principles;
- the dates, times, and locations of the public hearings;
- the process for the disclosure and production of documents;
- the nature of the information the Commission would provide to the Participants in advance of the public hearings;
- the manner in which the Participants could respond to that information and raise any concerns;
- the method by which the Participants could seek to introduce evidence at the public hearings;
- an outline of how evidence would be led at the public hearings;
- procedural safeguards; and
- guidance on the scope of the Participants’ closing submissions.

The Rules are at Appendix X and my remarks on their release are at Appendix Y.

B. All-Counsel Meetings

Once my ruling on participation was delivered, co-lead Commission counsel arranged a telephone conference meeting of all counsel. For participants without counsel, a designated contact person took part. For ease of reference, I will refer to the meetings of Commission counsel, Participants' counsel, and contact persons as "all-counsel" meetings.

In May 2018, in the lead-up to the public hearings, co-lead Commission counsel held weekly all-counsel meetings, in which important information about how the public hearings would be conducted was shared, including the sequence in which evidence would be called, the anticipated witnesses, and the time allotted to each Participant to cross-examine witnesses. These meetings were important in fostering a co-operative and collaborative environment and providing regular opportunities for Commission counsel and the Participants to work through issues relating to the public hearings as they arose.

C. The Procedural Motions

The Rules provided for motions to be brought on unresolved procedural matters related to the public hearings. There are three key points to be made about the Rules governing the procedural motions.

First, the Rules required only streamlined materials to be filed on the motions. For example, a Participant seeking to bring a motion needed only to serve notice of its intention that included "the gist of the motion to be brought." Second, the timelines for everyone were tight. The Rules required that Participants give notice of their intention to bring a procedural motion by May 18, 2018, and specified that the procedural motions would be heard "on or about May 23 and 24, 2018," in Toronto. The Rules further provided that I would issue any "necessary" rulings by June 4, 2018, before the public hearings commenced. Third, the Rules specified that an all-counsel meeting would follow immediately after the procedural motions were heard. In this way, if complications arose from the motions, there was a built-in opportunity to resolve them – before the commencement of the public hearings.

The Participants brought four procedural motions, including one that sought an order to compel Wettlaufer's attendance at the public hearings to testify. I issued rulings on the procedural motions on May 29, 2018. Those rulings can

be found at Appendices Z and AA. The resolution of these procedural motions before the public hearings played a critical role in enabling us to complete the hearings within their allotted time.

D. Streamlining the Public Hearings

In addition to the Rules, two other things were crucial to completing the public hearings in the 10 weeks allotted for them: the protocols developed by co-lead Commission counsel; and the Overview Reports and foundational documents prepared by Commission counsel.

1. The Protocols

Before the start of the public hearings, co-lead Commission counsel created a protocol for calling and examining witnesses in the public hearings. The protocol set out the number of hearing days in the public hearings and the hours of hearing time for each day. It also grouped together Participants with similar interests and set out a time allocation for each group for each stage of the hearings. Those within each group had to determine among themselves how to share the time. The evidence Participants wished to call and the questions they wished to ask of witnesses had to be completed in the allotted time. The protocol can be found at Appendix BB.

Co-lead Commission counsel also developed a protocol to govern closing submissions at the public hearings. The protocol limited the Participants to written closing submissions of a maximum of 40 pages in length. Those Participants who filed written closing submissions were given the opportunity to make time-limited oral submissions in the final week of the public hearings. A copy of this protocol is at Appendix CC.

2. Overview Reports and Foundational Documents

Paragraph 5 of the Order in Council establishing the Inquiry directs the Commission to rely, wherever possible, on Overview Reports submitted to or created or written by the Inquiry. It goes on to provide that the Commission may consider such reports and records in lieu of calling witnesses.

The information contained in the hundreds of thousands of pages of documents that Commission counsel reviewed during their investigations could not reasonably be presented at the public hearings through witnesses. Instead, in accordance with paragraph 5 of the Order in Council and the Rules,

Commission counsel prepared Overview Reports and compiled foundational documents which summarized the results of their investigations and constituted the bulk of the Commission's evidence at the public hearings. These Overview Reports and foundational documents were filed as exhibits at the outset of the public hearings and, like all other exhibits, were made available on the Inquiry website.

Each Overview Report included a chronology specific to the area of inquiry; the source documents for each event listed in the chronology; a list of the relevant legislation and regulations; and a list of the relevant policies, procedures, protocols, guidelines, standards, and training materials. In total, the four Overview Reports consisted of nearly 1,000 pages, referencing thousands of source documents.

The four foundational documents were:

- the Agreed Statement of Facts from the criminal proceedings against Wettlaufer, which includes her handwritten, signed confession, transcripts of her interviews with the police, and her release document from the Centre for Addiction and Mental Health;
- the Reasons for Sentence following her convictions;
- a timeline showing the key events related to the Offences; and
- a legislative brief with the most relevant pieces of legislation and amendments for the time period in which the Offences were committed.

To ensure the Overview Reports and foundational documents were accurate, the Rules created a process through which the Participants reviewed drafts of the Overview Reports and foundational documents and identified any items they wished to dispute. The Rules went on to provide a method for resolving such disputes.

VII. The Public Hearings

A. Operations

1. Dates and Location

The public hearings took place over 10 weeks, between the beginning of June and the end of September 2018. With one exception, the hearings were held in the St. Thomas courthouse. The exception was the three days of public

hearings devoted to hearing expert and technical evidence, which took place in Toronto.

I chose to conduct the public hearings in the St. Thomas courthouse because it is located in southwestern Ontario, where the Offences were committed. I felt it was important that the people and communities most directly affected by the Offences could more easily attend the public hearings in person, so that they could see and hear the results of the Commission investigations.

Courtroom 201 in the St. Thomas courthouse was the main hearing room. Throughout the hearings, the first two rows of public seating were reserved for the victim, and victims' families and loved ones. Another space in the courtroom was designated for the media.

The courtroom could accommodate about 22 counsel. In addition to Commission counsel, there were 16 Participants, some of whom often had two counsel present, leaving insufficient space for all counsel at counsel tables. Thus, for each stage of the public hearings, a new seating arrangement for counsel was prepared to ensure counsel most closely associated with the evidence being called could sit in the front row of counsel tables. Those not able to sit at counsel table could find seating in the jury box or in the gallery of the courtroom. See Appendix DD for a sample seating chart.

2. Public Access to the Hearings

It was important that the public be able to see the results of the Commission's investigations. This meant they needed access to the public hearings, where the results of those investigations were presented.

Advertising for the public hearings started early, through the website, and, a week before the hearings began, advertisements were run on local radio stations and in local and national newspapers. (Appendix EE is a newspaper advertisement for the public hearings.) The information posted on the website and the advertisements encouraged the public to attend the hearings, either in person or by watching the live webcast.

There was space in the courtroom for the public to see and watch the hearings. As well, there was an overflow room in the courthouse, for the public, with a live feed of the hearings. A live webcast of the hearings was accessible through the website, making it possible for people to watch the public hearings without having to attend in person. The recordings remained on the website until January 2019. Transcripts of the day's proceedings were

posted on the website early the following morning. Exhibits admitted into evidence were uploaded daily to the website. When an exhibit was referred to during the hearings, the document management company would pull it up from the database and project it onto a large screen in the courtroom, and onto monitors on counsel tables, the witness stand, and the dais. The webcast simultaneously displayed that document so that those watching the webcast could follow the line of questioning. Each Friday evening preceding a week in which the hearings would be held, a list of the anticipated witnesses for the coming week was posted on the website. This practice enabled the Participants, the public, and the media to plan their attendance, either in person or by means of the webcast.

The expert and technical evidence component of the public hearings was held at the offices of Neesons Court Reporting in Toronto. Apart from the change in location, all other aspects of the hearings were the same – the proceedings were open to the public and the media in the same ways as at the St. Thomas courthouse; transcripts of the testimony continued to be posted on the website daily, as were all exhibits entered into evidence; and, the proceedings were webcast, with the webcast being available through the Inquiry website.

3. Media

A week before the public hearings began, the Inquiry issued a news release (at Appendix FF) and posted a document with information for the media on the website. This document was designed to give the media a single spot in which to find all pertinent information about the public hearings. It set out the purpose of the public hearings and information on the dates, times, and locations of the hearings. It explained how the media could see a list of the anticipated witnesses for each week and access the exhibits, webcast, and transcripts. It also set out the rules governing photography, audio and video recording, and the use of electronic communication devices in the courthouse and hearing room. The media information sheet can be found at Appendix GG.

A separate media room was set up at the courthouse for the duration of the public hearings. It was equipped with wi-fi and a live feed from the hearing room.

To support accurate and timely reporting, early each morning of the public hearings, the members of the media were given the exhibits that counsel anticipated introducing that day. This was done on the condition that the media members first executed an undertaking in which they agreed not to

disclose any exhibit (in part or in whole) or the information contained in it before it had been admitted into evidence. Appendix HH is a copy of the media confidentiality undertaking.

4. Running an Electronic Hearing

The St. Thomas courthouse was fully modernized a few years ago, which enabled the Commission to run an electronic hearing. The courtroom in which the hearings were conducted had a large screen visible to all in the courtroom, with individual monitors on each counsel table, the witness stand, and the dais. Every day, a representative from the document management company was present in the courtroom. When counsel wanted to refer to a document, he or she would provide the representative with the document identification number so that it could be pulled up from the database. Once the document was accessed in the database, it was projected onto the screen and the monitors in the hearing room.

To ensure the hearings could function electronically, each night during the public hearings, Commission counsel and the Participants had to submit to one another and to the document management representative a list of the documents to which they intended to refer the following day. Thus the appropriate documents were able to be displayed on the courtroom screens within seconds of counsel referring to them. These lists also helped to ensure that those documents were appropriately redacted before they were displayed publicly. Before any document was displayed in the courtroom or entered as an exhibit, Commission counsel and the Participants had to indicate if they felt the document required redaction; no document was posted on the website until the necessary redactions were complete.

B. The Public Hearings Begin

June 5, 2018, was the first day of the public hearings. I began the proceedings with opening remarks (Appendix II). Co-lead Commission counsel then delivered his opening statement. After that, the foundational documents and Overview Reports were introduced and admitted into evidence as the first eight exhibits. Together, these exhibits served as the basis for the evidence that Commission counsel would lead in the balance of the public hearings.

C. Witnesses

A total of 50 witnesses were called at the public hearings. Appendix JJ lists those witnesses.

Evidence was called at the public hearings in five stages:

- evidence about the long-term care homes and agencies which employed Wettlaufer when she committed the Offences – the weeks of June 5, 11, 18, 25, 2018;
- evidence about the Office of the Chief Coroner and Ontario Forensic Pathology Service – the week of July 16, 2018;
- evidence about the College of Nurses of Ontario – the week of July 23, 2018;
- evidence about the Ministry of Health and Long-Term Care and the Local Health Integration Networks – the weeks of July 30 and August 7, 2018; and
- expert and technical evidence – September 12, 13, and 14, 2018.

The Overview Reports were essential to completing the public hearings within the allotted time. Commission counsel were able to call witnesses without spending valuable time establishing the factual foundation laid out in the Overview Reports. Because the Rules required Commission counsel and the Participants to agree on the contents of each Overview Report (and provided a method for resolving any disputes with respect to them before the hearings began), no time was lost to disputes over the factual information included in the Overview Reports. Further, for almost every witness called by Commission counsel, a sworn affidavit of their evidence was entered when the witness was first called. In this way, Commission counsel could efficiently take the witness through his or her affidavit and streamline the examinations. It also assisted the Participants by highlighting for them the areas in which the witness would testify.

D. Expert and Technical Evidence

The Inquiry commissioned expert reports from Professor Beatrice Crofts Yorcker and Ms. Julie Greenall. Dr. Michael Hillmer provided technical expertise. The expert and technical evidence was presented at the public hearings in Toronto on September 12, 13, and 14, 2018.

Professor Beatrice Crofts Yorker was retained to provide expert evidence on the phenomenon of healthcare serial killers, discussed in Chapter 16. She obtained a BSc in nursing in 1975, MSc in child psychiatric nursing in 1978, and a Juris Doctorate in 1988. Professor Crofts Yorker is a professor of nursing, criminal justice, and criminalistics at California State University, Los Angeles. Previously she was dean of the College of Health and Human Services and director of the School of Nursing at San Francisco State University.

Professor Crofts Yorker has served as a consultant for prosecutors, law enforcement, defence attorneys, and legal teams on cases involving nurses investigated for serial murder of patients in their care in healthcare settings. She has researched and published over 40 articles in refereed journals on Munchausen by proxy, serial murder in healthcare, and other forensic nursing topics.

Ms. Julie Greenall was retained to offer expert evidence on best practices in safe medication storage, administration, and auditing / tracking, discussed in Chapter 17. Ms. Greenall is a registered pharmacist in Ontario, originally licensed to practise in 1982. She holds BScPhm and MHSc (Bioethics) degrees, both from the University of Toronto, obtained in 1981 and 2006, respectively. Over the course of her career, she has worked in community pharmacy, long-term care for people with developmental disabilities, and hospital pharmacy. Ms. Greenall is the director of projects and education at the Institute for Safe Medication Practices (ISMP) Canada.

Ms. Greenall has led numerous medication system reviews, root cause analyses of critical medication incidents, and proactive risk assessment projects in a variety of sectors, including long-term care. In 2008–09 she was involved in a project funded by the Ontario Ministry of Health and Long-Term Care that informed the development of the current regulations for medication management in long-term care homes.

Dr. Michael Hillmer provided technical evidence on work under way in the Ministry of Health and Long-Term Care on data analytics and trend analysis for mortality rates in long-term care homes, discussed in Chapter 18. Dr. Hillmer obtained a PhD in epidemiology from the University of Toronto in 2007. Since then, he has worked in the Ministry of Health and Long-Term Care.

A. Closing Submissions

Closing submissions at the public hearings were governed by a protocol, as described above. A key feature of the closing submissions was the invitation for the Participants to include their written suggestions on how similar offences might be avoided in the future. This request was designed to transition the Inquiry into part 2 and to focus the Participants' attention on how to remedy what they perceived as shortcomings in the long-term care system, as revealed through the public hearings.

The protocol limited the Participants to written closing submissions of a maximum of 40 pages in length. Those Participants who filed written closing submissions were given the opportunity to make time-limited oral submissions in the final week of the public hearings at the St. Thomas courthouse.

The week in which oral closing submissions were heard began with statements by the victim, and members of the victims' families and loved ones who wished to speak. In total, four individuals spoke and two statements were read in by counsel. The Participants then made their oral closing submissions. Closing remarks at the public hearings gave me the opportunity to thank the many people who had contributed to the Inquiry's work to that point. (A copy of those remarks is at Appendix KK.)

Part 2 of the Inquiry Process

I.	Introduction	34
II.	The Consultations	35
	A. The Consultation Process	35
	B. The Consultation Brief	36
III.	The Plenary Session	37
	A. Day 1	37
	B. Day 2	37
IV.	A Late Development in the Inquiry Process	39
	A. Overview	39
	B. A Procedural Challenge	40
V.	Conclusion	41

I. Introduction

The goals of part 1 of the Inquiry were very different from those of part 2. Consequently, the processes were as well.

As I describe in Chapter 20, the goal of part 1 was to inquire into both the events that led to the Offences and the circumstances and contributing factors that allowed them to be committed. Part 1 was, of necessity, investigative in nature and “backward-looking.” It culminated in the public hearings in which Commission counsel presented the results of their investigations and the Participants tested the validity of that evidence.

The public hearings played an important role in the part 1 process because they enabled me – and all Ontarians – to gain a full, factual understanding of the circumstances in which the Offences were committed. However, the public hearings had an adversarial component to them that could be seen, for example, in the Participants’ cross-examinations of witnesses. Testing evidence is a healthy and necessary part of the truth-seeking function that a public inquiry serves. However, as I have noted, it imports an adversarial quality to the process.

The goal of part 2 of the Inquiry process was very different: its purpose was to develop recommendations on how to avoid similar tragedies in the long-term care (LTC) system. Where part 1 was backward-looking, part 2 looked forward. As in past public inquiries, part 2 involved extensive research. In this Inquiry, the research was directed at the broad systemic issues I saw emerging in part 1 – issues such as the healthcare serial killer phenomenon, how the medication management system in long-term care homes could be strengthened, and the role that technology could play in deterring and detecting intentional wrongdoing in those homes. The work of part 2 also involved consulting with experts on those systemic issues. The experts prepared reports and gave evidence at the public hearings in September 2018.

While research and the work of experts were necessary components of the part 2 process, they were not sufficient to fulfill the goal of recommendation development. As part 1 unfolded, it became clear that to develop effective, workable recommendations, I needed to engage directly with those who live in LTC homes and those who work in the many components of the long-term care system. Thus, consultations became a key component of the part 2 process.

II. The Consultations

A. The Consultation Process

Between October 10 and November 2, 2018, I held 19 intensive stakeholder consultations in the Toronto and London Inquiry offices. Five were full-day consultations, and the remaining 14 each ran for approximately four hours. In addition to consulting with each of the Participants from part 1, I held consultations with representatives from the Advisory Group for Regulatory Excellence, the Alzheimer Society of Ontario, the College of Physicians and Surgeons of Ontario, Elder Abuse Ontario, Family Councils Ontario, the Ontario College of Pharmacists, and Saint Elizabeth Health Care. I also consulted with the Ontario Personal Support Workers Association, which had status as a Participant but had chosen not to be active in part 1. A list of the Participants in the public hearings is included in Appendix T to this volume, amended by Appendix U.

The consultation process was intended to encourage consensus-building and buy-in from the stakeholders and so required careful structuring. I met with many stakeholders individually to help build trust in the process, waiting to convene meetings of larger groups until later in the consultation process. I started each consultation with opening remarks tailored to the particular stakeholder during which I explained, among other things, what I hoped to achieve in the consultation, and how the stakeholder could continue to provide me with information after the session. I also made it clear that comments made during the consultations were recorded without attribution.

The consultations were labour intensive. It took hours of preparation to create individualized consultation briefs (discussed below) and to prepare for the consultations themselves. However, the stakeholders put in at least as much time as we did. Each one came to the consultation ready to contribute actively and delve into the issues raised by the briefs. During the consultations, the stakeholders also told us where we could find additional information and resources that they felt would be beneficial in drafting recommendations. After the consultations, the stakeholders frequently followed up, providing additional information, answers to questions they had further reflected on, and thoughts on issues on which they had sought additional input from colleagues within their organizations. This open dialogue continued right up until the Plenary, discussed below. The value of the consultations was enormous.

Initially, I had planned to hold a one-day mini-plenary in November after the individual and small-group consultations were complete. I found that the mini-plenary was unnecessary and, instead, held a one-hour teleconference on November 13, 2018, for all who had participated in the consultations. In the teleconference, I told those in attendance about:

- the areas of emerging consensus in respect of the systemic issues; and
- the areas we had identified as requiring further research and/or follow-up consultations.

B. The Consultation Brief

A week in advance of each consultation, we sent the stakeholder a detailed consultation brief. In addition to instructions on how to prepare for the consultation, the consultation brief contained:

- a series of overview statements;
- an outline of four systemic issues and questions that addressed possible responses (recommendations) to address them;
- stakeholder-specific action questions; and
- background reading explaining each of the overview statements. The background reading was particularly important for those who had not participated in the public hearings because it gave them context for the issues to be discussed in the consultation.

The consultation brief also explained why, if we are to improve the safety and security of residents in the LTC system, both systemic and specific responses are required of stakeholders in that system.

The information on the systemic issues and their associated questions was the same for all attendees. For each systemic issue, a series of factual statements was followed by questions for discussion. Some of the questions were narrow; others were broad and required considerable reflection and discussion by the stakeholders *before* they came to the consultations.

However, the stakeholder-specific action component of the consultation brief was tailored to each stakeholder and, therefore, was different for each consultation. Unlike the systemic issues, the stakeholder-specific action questions were pointed questions for the particular stakeholder.

III. The Plenary Session

The part 2 consultations concluded with a two-day Plenary session in late January 2019 in Toronto. On the first day of the Plenary, I explored specific issues relevant to specific stakeholders in the long-term care system. I used the second day to address the systemic issues of prevention, deterrence, and detection of intentional wrongdoing by healthcare providers.

A. Day 1

On day 1 of the Plenary, I held five separate small-group meetings to discuss issues that had arisen in respect of draft recommendations concerning stakeholder-specific actions. In the small-group meetings, I brought together stakeholders with different perspectives on the issues under discussion. For example, in one meeting, representatives from the LTC homes, the Ministry of Health and Long-Term Care, and various associations in the long-term care sector discussed the LTC homes' reporting obligations, staff training and education, and the use of bridging and laddering programs in staff development. In another meeting, representatives from the College of Nurses of Ontario, the Ontario Nurses' Association, the Registered Nurses' Association of Ontario, the Registered Practical Nurses Association of Ontario, the Institute for Safe Medication Practices Canada, the Chief Provincial Nursing Officer, and counsel for the family groups discussed issues arising from possible recommendations on nursing practices in long-term care.

B. Day 2

All those who had participated in the part 2 consultations were invited to attend day 2 of the Plenary, a full day of interactive sessions and roundtable discussions. For those Participants who were represented by counsel, both the Participant and counsel were invited.

The Plenary marked the end of the Inquiry's formal stakeholder engagement, and day 2 was the last time the Commission team and I would meet, as a group, with the Participants and other stakeholders. Day 2 provided an opportunity to reflect on the significant work in which we had all been so deeply immersed during the previous 18 months. It also gave me a chance to publicly thank and acknowledge those in attendance for the crucial role they had played in the work of the Inquiry.

Day 2 consisted of three principal sessions:

- Session 1 was devoted to information-sharing and information-gathering. In terms of information-sharing, I described how our approach to the systemic issues had evolved following the consultations in October and November. As I candidly admitted in that session, one of the systemic issues had evolved to the point that it was virtually unrecognizable from its form in the fall consultations. In my view, this evolution proves the value of those consultations.

For information-gathering, I distributed clickers – an interactive tool. On a screen at the front of the room, I put up a series of questions about three of the systemic issues. For each question, attendees chose from a series of answers and used their clickers to record their answers. The answers were immediately tabulated and the results of the “voting” displayed on the screen. No one’s individual answer was shown. The clicker technology enabled me to ask pointed questions of the full group and determine the degree of consensus on key elements of each of the three systemic issues. Although the individual responses were anonymous within the room, following the session I was able to see which person had submitted which response. (I made sure to tell the group that I would have this information after the session, why I wanted it, and how I would use it.) This information allowed me and my team to follow up with specific people and organizations, as necessary.

- Session 2 consisted of roundtable discussions on the fourth systemic issue: how to build excellence and capacity in the long-term care system. To ensure different perspectives on every matter under discussion, each person who attended day 2 had been asked to sit at a designated table. One member of the Commission team sat at each of the 10 tables, distributed a handout with set questions that served to focus the discussions, and reported back to the group as a whole. Students from Osgoode Hall Law School kindly volunteered to serve as note-takers so that the facilitators could focus on active listening and discussion with those at their tables.
- Session 3 was my closing speech entitled “What’s Next?” There were two main components to these remarks. First, I described some of the changes to long-term care that stakeholders had implemented during the Inquiry, many of which flowed from the October–November consultations. Rather than sitting back and waiting to see what recommendations were made in this Report, many had taken immediate steps to implement changes

to address the stakeholder-specific actions we had raised with them. As I said in my closing speech, there is enormous significance to this proactive approach to improving the long-term care system. The willingness and capability of the stakeholders to take quick and immediate action on matters within their control demonstrates both the powerful leadership in the long-term care system and the strength of the stakeholders' commitment to improving it.

The second matter I discussed in my closing remarks was why fundamental change to the long-term care system requires a systemic response. It was a call to excellence to those in the room and an explanation for why that could be achieved only through system-wide co-operation, communication, and collaboration.

Like the other consultative parts of the Inquiry process, the Plenary sessions were invaluable.

IV. A Late Development in the Inquiry Process

A. Overview

Work on the recommendations and this Report came to a halt in late February 2019 when the Ontario Association of Residents' Councils (OARC) brought a motion (Motion) asking that I issue summonses to the Woodstock Police Service, the London Police Service, and the Ontario Provincial Police. The requested summonses were to require those police services to provide information relating to a statement that Wettlaufer made about harming other residents in LTC homes. Wettlaufer made the statement on January 5, 2018 (Statement), to correctional staff at the Grand Valley Institution for Women where she was imprisoned as a result of having committed the Offences.

I was told about the Statement shortly after Wettlaufer made it. However, at the same time, I was told that the police were conducting investigations into the alleged further wrongdoing. I took no steps in relation to the Statement because paragraph 3 of the Order in Council (Appendix A to Volume 2) prohibits that. Paragraph 3 required me to "ensure that the conduct of the inquiry does not in any way interfere or conflict with any ongoing investigation or legal proceeding related to these matters." Even to publicly acknowledge the Statement would have been a breach of that prohibition.

In December 2018, the Commission learned that the police investigations into the Statement were complete and that no further charges would be laid against Wettlaufer. Shortly afterward, the media reported on the Statement. One of the families implicated in the Statement began legal proceedings to obtain disclosure of the relevant police records. OARC then brought the Motion asking that I compel production of the police records through the issuance of summonses and then produce the information obtained by the summonses to the Participants.

I dismissed the Motion because I found that granting it would be clearly contrary to my obligations, under section 5 of the *Public Inquiries Act, 2009*, to conduct the Inquiry expeditiously and in accordance with the principle of proportionality. Those interested in why I reached this conclusion are directed to my Ruling on a Motion Requesting the Issuance of Summonses at Appendix LL to this volume.

B. A Procedural Challenge

The Motion came late in the Inquiry and posed procedural challenges. Although the Rules of Procedure for the Public Hearings (Rules) set out a process for hearing procedural motions in advance of the public hearings and during the hearings themselves, they did not allow for motions to be brought after the conclusion of the hearings. (The Rules are at Appendix X to this volume.) Because the Motion was brought many months after those hearings had concluded, the question was: At that late point in the Inquiry process, what process should I follow to decide it?

I thought it wisest to follow, as much as possible, the process governing procedural motions found in the Rules because they had been developed with input from the Participants. With those Rules as the framework, I advised the Participants of the following process for hearing the Motion:

- Participants were to file written submissions, along with any documentation or case law on which they intended to rely, by March 8, 2019;
- Commission counsel were to advise all Participants of their position on the Motion, in writing, by March 11, 2019;
- any Participants wishing to respond to the submissions of the other Participants or the position of Commission counsel were to do so in writing, by March 12, 2019;

- any Participants wishing to speak to the Motion were to inform the Inquiry's executive director by March 13, 2019; and
- Oral argument on the motion would be heard on March 14, 2019.

It soon became clear that scheduling conflicts meant oral argument on the Motion could not be heard until the end of March. Because of the pressing deadline for completion of this Report, it was imperative that the Motion be heard and decided promptly. Accordingly, I advised the Participants that the Motion would be heard in writing only. In light of that, I extended the deadline for the Participants' response submissions to March 13, 2019, but all other aspects of the process remained as set out above. With the co-operation of all, the Motion was heard and decided, through written reasons, by March 19, 2019.

V. Conclusion

I conclude this chapter by stating the obvious: writing and producing a final report for a public inquiry is highly challenging. The following teams of dedicated professionals played a starring role in meeting this challenge. They all had prior experience with inquiry reports, which was vital because they came to the project knowing they would have to work with the others and also knowing how to perform their tasks despite the many "moving parts."

The editing team of Shipton, McDougall Maude Associates – Rosemary Shipton, Mary McDougall Maude, and Dan Liebman – were not only the best possible editors but also invaluable sources of guidance and wisdom. Larrass Translations Inc. gets a gold star for its translation of the Report into French. Larrass produced an excellent translation and, despite time pressures, all members of its team showed nothing but patience and professionalism. H3Creative Inc., the design company, used a collaborative approach in its creative services, making it a true pleasure to work with them. Their goal (and mine) was to make the Report accessible, clear, and effective – and they fully realized that goal. Webcom, a Division of Marquis Book Printing Inc., made sure the Report was printed with quality – and on time. I am so fortunate to have had these dedicated teams of professionals to guide the creation and production of the Report.

On July 31, 2019, the deadline specified in the Order in Council, I plan to deliver English and French versions of this Report, in electronic and printed versions, to the Attorney General of Ontario. That same day, I will publicly release the report in Woodstock, Ontario, where the majority of the Offences were committed.

I hope that the Report's release marks the beginning of real and lasting change in the long-term care system in Ontario – and renewed public confidence in it.

Volume 4 Appendices

Appendix H – News Release – Long-Term Care Homes Inquiry to hold news conference on August 3, 2017	45
Appendix I – News Release – Public Inquiry to hold Community Meetings	46
Appendix J – Newspaper Advertisement for the Community Meetings	48
Appendix K – Commissioner’s Opening Remarks at the Community Meetings	49
Appendix L – Confidentiality Undertaking for Counsel and Contact Persons	63
Appendix M – Confidentiality Undertaking for Participants, Potential Witnesses and Experts	64
Appendix N – Commissioner’s Opening Remarks at the Participation Hearings	65
Appendix O – Newspaper advertisement for Participation Hearings	76
Appendix P – News Release – Call for Applications to Participate ..	77
Appendix Q – Application to Participate	79
Appendix R – Important Information for Applicants to Participate (Standing)	83
Appendix S – Important Information for Applicants Seeking Funding	86
Appendix T – Ruling on Participation	90
Appendix U – Addendum to Ruling on Participation	109
Appendix V – Funding Recommendations	110
Appendix W – Further Funding Recommendations	119

Appendix X – Rules of Procedure for the Public Hearings	127
Appendix Y – Release of the Rules of Procedure to Govern the Public Hearings – Commissioner’s Remarks	142
Appendix Z – Ruling on a Motion to compel Elizabeth Wettlaufer to testify at the Public Hearings	146
Appendix AA – Ruling on a Procedural Motion [productions, redactions]	162
Appendix BB – Protocol for Calling and Examination of Witnesses	167
Appendix CC – Protocol for Closing Submissions for Part 1	172
Appendix DD – Hearing Room Seating Plan	174
Appendix EE – Newspaper advertisement for the Inquiry’s Public Hearings	175
Appendix FF – News Release – Inquiry’s Public Hearings to begin June 5, 2018	176
Appendix GG – Media Information for the Public Hearings	179
Appendix HH – Confidentiality Undertaking for Media	182
Appendix II – Commissioner’s Opening Remarks at the Public Hearings (amended)	186
Appendix JJ – Public Hearings – Witness Appearance List	198
Appendix KK – Commissioner’s Closing Remarks at the Public Hearings	201
Appendix LL – Ruling on a Motion Requesting the Issuance of Summonses	212

Appendix H – News Release – Long-Term Care Homes Inquiry to hold news conference on August 3, 2017

News Conference - Long Term Care Homes Inquiry to hold news conference on August 3, 2017 at 1 p.m. in London, ON

TORONTO, Aug. 1, 2017 /CNW/ - William C. McDowell, Lead Counsel of the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System, and Elizabeth Hewitt, the Inquiry's London based Senior Counsel, will hold a news conference in London, Ontario, at 1 p.m. on Thursday, August 3, 2017 to outline the plans of the Inquiry and answer questions from media.

The media conference will be held in the Queen Victoria Room at the DoubleTree Hotel, 300 King Street, in London, Ont.

The Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System was established on August 1, 2017 by the Government of Ontario under the Public Inquiries Act, 2009. Its mandate is to inquire into the events which led to the offences committed by Elizabeth Wettlaufer who pled guilty to and was convicted of eight counts of first degree murder, four counts of attempted murder and two counts of aggravated assault. Additionally, the Inquiry is directed to inquire into the circumstances and contributing factors allowing these events to occur, including the effect, if any, of relevant policies, procedures, practices and accountability and oversight mechanisms.

www.longtermcareinquiry.ca

SOURCE The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

For further information: Peter Rehak, the Inquiry's Communications Officer, (416) 992-0679, peter.rehak@sympatico.ca

Appendix I – News Release – Public Inquiry to hold Community Meetings



Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System to hold Community Meetings in Woodstock and London, Ont. [Français](#)

NEWS PROVIDED BY

The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

Sep 29, 2017, 13:27 ET

TORONTO, Sept. 29, 2017 /CNW/ - The Honourable Justice Eileen E. Gillese, Commissioner of the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System, will hold community meetings in Woodstock and London, Ontario, on October 18 and 19, 2017.

Two meetings will be held in Woodstock at the Holiday Inn, 510 Norwich Avenue, from 2 to 4 p.m. and from 6 to 8 p.m. The meeting in London will be held at the DoubleTree Hilton Hotel, 300 King Street from 5 to 7 p.m.

The purpose of the community meetings is to give members of the communities most directly affected by these tragedies an opportunity to learn more about the Inquiry. Individual residents will be given a chance to speak about the impact these tragedies have had on their lives and to ask questions about the Inquiry.

"It is important that the Inquiry hear from residents in the communities most directly affected by these tragedies. Understanding the human impact at the outset of the Inquiry will provide an important perspective," said Commissioner Gillese.

At the community meetings, the Commissioner will introduce the Inquiry's counsel who will assist her in her work. She will also explain the Inquiry's mandate and the process the Inquiry will follow.

Time will be reserved at the end of the meetings for questions from the media.

The government of Ontario established the Inquiry shortly after Elizabeth Wettlaufer was sentenced to life imprisonment following her guilty pleas to eight counts of first degree murder, four counts of attempted murder and two counts of aggravated assault. All of these offences were committed while she was working as a registered nurse in Southwestern Ontario.

The Inquiry will investigate the events which led to these offences, the circumstances and contributing factors allowing these events to occur, including the effect, if any, of policies, procedures, practices and oversight mechanisms. The Inquiry also has the ability to consider other relevant matters that the Commissioner considers

necessary to avoid similar tragedies. The Inquiry is required to report by July 31, 2019.

The Inquiry's website is at www.longtermcareinquiry.ca

Order in Council <http://www.longtermcareinquiry.ca/li/pdf/OIC.pdf>

SOURCE The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

For further information: Peter Rehak, peter.rehak@longtermcareinquiry.ca, Telephone (cell) 437-776-4123

Organization Profile



The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

Also from this source:

[News Conference - Long Term Care Homes Inquiry to hold news conference on...](#)

[Long-Term Care Homes Inquiry Announces Counsel](#)

Appendix J – Newspaper Advertisement for the Community Meetings

PUBLIC INQUIRY INTO THE SAFETY AND SECURITY OF RESIDENTS IN THE LONG-TERM CARE HOMES SYSTEM

The Honourable Eileen E. Gillese
Commissioner



COMMISSION D'ENQUÊTE PUBLIQUE SUR LA SÉCURITÉ DES RÉSIDENTS DES FOYERS DE SOINS DE LONGUE DURÉE

L'honorable Eileen E. Gillese
Commissaire

AN INVITATION TO COMMUNITY MEETINGS FROM THE PUBLIC INQUIRY INTO THE SAFETY AND SECURITY OF RESIDENTS IN THE LONG-TERM CARE HOMES SYSTEM

The Honourable Justice Eileen E. Gillese, Commissioner of the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System, will hold Community Meetings in Woodstock and London, Ontario, on October 18 and 19, 2017. The Long-Term Care Homes Public Inquiry was called to investigate the events which led to the serious offences committed by Elizabeth Wettlaufer in communities in southwestern Ontario.

Location and Timing of the Community Meetings:

- October 18, 2017, 2-4 pm, Holiday Inn, 510 Norwich Avenue, Woodstock
- October 18, 2017, 6-8 pm, Holiday Inn, 510 Norwich Avenue, Woodstock
- October 19, 2017, 5-7 pm, DoubleTree Hilton Hotel, 300 King Street, London

The Commissioner will introduce herself and the Inquiry team and explain the Inquiry's mandate and process. Community residents will have an opportunity to speak and to ask questions.

For further information see www.longtermcareinquiry.ca or call 1-844-280-9970. Questions can also be sent by email (info@longtermcareinquiry.ca) or in writing to The Long-Term Care Homes Public Inquiry, 400 University Avenue, Suite 1800C, Toronto, ON M7A 2R9.

INVITATION DE LA COMMISSION D'ENQUÊTE PUBLIQUE SUR LA SÉCURITÉ DES RÉSIDENTS DES FOYERS DE SOINS DE LONGUE DURÉE À DES RÉUNIONS COMMUNAUTAIRES

L'honorable juge Eileen E. Gillese, commissaire de l'Enquête publique sur la sécurité des résidents des foyers de soins de longue durée, tiendra des réunions communautaires à Woodstock et London (Ontario), les 18 et 19 octobre 2017. L'enquête publique sur les foyers de soins de longue durée a été constituée pour examiner les événements qui ont conduit aux infractions graves commises par Elizabeth Wettlaufer dans les communautés du Sud-Ouest de l'Ontario.

Dates et lieux des réunions communautaires :

- 18 octobre 2017, 14 h – 16 h, Holiday Inn, 510, av. Norwich, Woodstock
- 18 octobre 2017, 18 h – 20 h, Holiday Inn, 510, av. Norwich, Woodstock
- 19 octobre 2017, 17 h – 19 h, DoubleTreeHiltonHotel, 300, rue King, London

La commissaire se présentera et présentera l'équipe de la Commission d'enquête. Elle expliquera le mandat de la Commission d'enquête et le processus qu'elle suivra. Les résidents locaux auront la possibilité de poser des questions et de faire des commentaires.

Pour de plus amples renseignements, consultez le site Web www.longtermcareinquiry.ca ou composez le 1 844 280-9970. Des questions peuvent aussi être envoyées par courriel (info@longtermcareinquiry.ca) ou par écrit à la Commission d'enquête publique sur les foyers de soins de longue durée, 400, avenue University, bureau 1800C, Toronto (Ontario) M7A 2R9.

Appendix K – Commissioner's Opening Remarks at the Community Meetings

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese Commissioner



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese Commissaire

Commissioner's Opening Remarks

Community Meetings

October 18 and 19, 2017

Woodstock and London, Ontario

Introduction

- Good afternoon [evening]. Thank you for taking the time to come here today for this Community Meeting.
- I called these Community Meetings for four reasons.
- First, I want to acknowledge how difficult it must be for everyone in the community to deal with the knowledge that Elizabeth Wettlaufer committed these serious offences while working here, as a trusted caregiver and registered nurse. We understand that many community members have suffered as a result of those offences. The members of my Team and I are sincerely sorry for your suffering.

- Second, I believe it is important that the members of the communities in which these offences took place know something about the people who are doing the work of the Inquiry. To that end, in a moment, I will briefly introduce the members of the Inquiry Team and tell you something about my own background.
- Third, public inquiries are not common and how they operate is not always well understood. So, after introducing the Inquiry Team, I will talk briefly about public inquiries in general and then explain the goals of this Inquiry and how we intend to achieve those goals.
- Fourth and very importantly, my Team and I are here today to hear from you. I will keep my remarks brief so that there is time for you to ask any questions that you might have and to discuss the impact these offences may have had on you. We also hope you will offer suggestions as to matters that the Inquiry should consider. We welcome your thoughts, comments and suggestions.
- As Will has already mentioned, after hearing from you, we will take questions from the media.

An Introduction to the Inquiry Team

- I'd like to begin by telling you a little bit about my background. I am currently a judge on the Ontario Court of Appeal, which is Ontario's highest court. I have served on the Court of Appeal for over 15 years. I have taken a 2-year leave of absence from the Court in order to devote my full time efforts to this Inquiry.

- My husband Rob and I moved to London, Ontario in July 1983 from Alberta. Our four children were born and raised in London where I was a Professor and later Dean of the Faculty of Law at the University of Western Ontario. It was while I was serving as Dean that I was appointed to the Superior Court of Justice for the Southwest Ontario region. I served as a trial judge for three years. While my home base was the London courthouse, I heard cases as a trial judge for the whole of southwestern Ontario, from Woodstock to Windsor.
- I would like to now introduce the other members of the Inquiry team.
- To my left is Will McDowell. Will is the first person you heard from today and he is moderating today's meeting. Will is the Lead Commission Counsel. Will has been a lawyer in Ontario since 1988. He is currently a partner at Lenczner Slaght LLP and has many years of experience both in private practice and in government. He spent three years as the Associate Deputy Minister of Justice where he both supervised the design of several federal public inquiries, and worked to implement the recommendations made by other Commissions. He acted as Chief Commission Counsel to the Mississauga Inquiry, which delivered its report in 2011.
- Next to Will is Liz Hewitt, Senior Commission Counsel. Liz has been a lawyer in Ontario since 1990. She lives in London, Ontario. Liz has many years of experience in employment law but, for the past 15 years, Liz has focused her legal practice on workplace investigations, including in the healthcare sector. As an independent, external investigator, Liz investigates claims of workplace abuse, harassment, and violence. She also provides training for organizations on how to

conduct fair internal investigations and ensure compliance with applicable legislation.

- Next to Liz is Rebecca Jones, Commission Counsel. Rebecca has been a lawyer since 2003 and is a partner at Lenczner Slaght LLP, where she represents both public and private sector clients in a wide range of matters. Rebecca has extensive experience in matters relating to the regulation of healthcare professionals including nurses and doctors.
- Next to Rebecca – at the far end of the table – is Megan Stephens, Commission Counsel. Megan clerked for both the Ontario Court of Appeal and for the Chief Justice of the Supreme Court of Canada. Megan has been a lawyer since 2003, and has worked as Crown Counsel at the Crown Law Office – Criminal since 2006. She has also been involved in policy development, both at the provincial level and, before she went to law school, for the federal government.
- I would also like to introduce Andrea Barton, the Executive Director for the Inquiry. Andrea, who grew up just down the road in Paris, Ontario, has worked in various policy positions in the Ontario Public Service since 2011. She came to us from her most recent position as Policy Advisor in the Cabinet Office to the Ministries of Health and Long-Term Care and Seniors Affairs.
- Finally, I wish to introduce Peter Rehak, our Media Relations and Communications Officer. Peter is seasoned in this role, having served in that capacity on almost every Ontario Inquiry beginning with the Walkerton Inquiry in 2000.

- If you are interested, you can find out more about each member of the Inquiry team by visiting the Inquiry website.

A Brief Introduction to Public Inquiries

- Before discussing the work of this Inquiry, it is helpful to understand a little about the work of public inquiries generally.
- Governments establish public inquiries to investigate and report on matters of substantial public interest. In some cases – like this Inquiry and other public inquiries such as the Walkerton Inquiry and the Elliot Lake Inquiry – there was a specific tragic event or events that led the government to call the public inquiry.
- Every public inquiry is given a unique mandate, which is set out in its Terms of Reference. Because every public inquiry has a different mandate, the process that each follows must be tailored to meet its unique needs and often differs from the processes followed by other public inquiries.
- What is common to all public inquiries, however, is that they are independent. Public inquiries are led by a Commissioner – typically a judge or an expert in the field. While the government chooses the Commissioner, it is the Commissioner who chooses the members of the Inquiry team.
- The work of a public inquiry is conducted in offices physically separate from the government. Moreover, a public inquiry operates independently of the government. While the government is expected

to cooperate with the public inquiry – including with the inquiry’s investigations – the government does not have a say in how the inquiry’s work is done. It is the inquiry team that decides what investigations to undertake, how those investigations are conducted, and which processes the inquiry will follow to achieve its goals.

- Public inquiries are meant to help develop and strengthen public policy by gathering information, analyzing it, and providing recommendations to the government. The work of a public inquiry culminates in a report to the government which describes the events under scrutiny and makes recommendations on how to prevent such events from happening again in the future.
- Because public inquiries are independent of government, no public inquiry can force the government to implement its recommendations. It is for the government of the day to decide which recommendations made by a public inquiry will be implemented.

What is this Inquiry’s Mandate?

- The mandate of the Long-Term Care Homes Public Inquiry is set out in its Terms of Reference, issued by the Order in Council on July 26, 2017. You can see this Order in Council in full on our website – www.longtermcareinquiry.ca. As Will has indicated, there are cards on the table near the water with the Inquiry contact information.
- The Inquiry’s mandate is to inquire into:
 - a. the events which led to the offences;

- b. the circumstances and contributing factors allowing these events to occur, including the effect, if any, of relevant policies, procedures, practices, and accountability and oversight mechanisms; and
 - c. other relevant matters that the Commissioner considers necessary to avoid similar tragedies.
- This Inquiry will consist of two parts.
- The first part of the Inquiry's mandate directs me to inquire into the specific events which led to the Wettlaufer offences. It is important to recognize that the Inquiry's mandate is broadly worded and requires it to consider also the circumstances and contributing factors that allowed Ms. Wettlaufer to continue offending for almost a decade and while employed by a number of institutions. This mandate further obliges the Inquiry to inquire into the effect, if any, of government and regulatory policies, procedures and practices, and the issues of accountability and oversight.
- The second part of the Inquiry's mandate empowers me, as the Commissioner, to consider other relevant matters.
- Through both parts of the Inquiry, we will develop recommendations for the government. The recommendations will be targeted at preventing similar tragedies in the future, thereby, helping to restore public confidence in the safety and security of residents in Ontario Long-Term Care Homes.

What process will this Inquiry follow?

- This Inquiry began on August 1, 2017, some two and a half months ago. Since then, it has built a team of 7 dedicated, hard-working people, each with his or her own special strengths. It has also done all that is necessary for the Inquiry to become operational, including acquiring and outfitting office space, and designing and implementing the necessary infrastructure.
- As I have explained, the first part of this Inquiry's work is investigative in nature. We must investigate the specific events of the Wettlaufer offences and the surrounding circumstances and contributing factors that allowed those offences to be committed. As you will readily appreciate, this first part of the Inquiry's work is crucial. The investigations lay the foundation for the Inquiry's formal Public Hearings.
- What may not be readily apparent, however, is the extent of the investigations that are required to fulfill the Inquiry's mandate. The Wettlaufer offences were committed over a period of almost ten years, while she worked for a number of different employers in a number of different settings. The investigations must consider all relevant aspects of that time period and they must be conducted in a way that ensures fairness to all.
- The Inquiry Team has already issued summons (commonly known as subpoenas) to obtain documents from relevant organizations and agencies. I expect that we will have to review hundreds of thousands of documents in the course of the investigations, including documents from the criminal investigation, various long-term care home facilities and home care agencies, the Ontario College of Nurses, and the Ministry of Health and Long-Term Care. My team will also interview relevant witnesses and tour relevant facilities.

- The members of the Inquiry Team work collaboratively. However, each member of the Inquiry team has been assigned responsibility for heading up one area of investigation:
 - Will McDowell is responsible for reviewing the work done by the Crown and police in their extensive criminal investigation into the Wettlaufer offences.
 - Liz Hewitt heads up the investigation into the facilities and agencies where Ms. Wettlaufer worked and where she committed her offences.
 - Rebecca Jones is responsible for investigating the training, licensing and regulatory supervision of Ms. Wettlaufer, as a registered nurse.
 - Megan Stephens is heading up the investigation into the work of the Ministry of Health and Long-Term Care during the relevant period, including both the legislative framework and the Ministry's oversight mechanisms for long-term care homes and home care providers.
- There are three public steps in the first part of the Inquiry's work: 1. these Community meetings; 2. Participation Hearings; and 3. the formal Public Hearings.

- The first public step in part 1 of the Inquiry process, as I have said, are these Community Meetings. We have chosen to begin the public aspect of the Inquiry by these Community meetings because, in our view, it is important that the Inquiry's work be informed, from the beginning, by the views of those in the communities in which these tragedies took place.
- The second public step in the Inquiry process is the Participation Hearings – what has traditionally been called Standing Hearings. The Participation (Standing) Hearings are a necessary precursor to the Inquiry's formal Public Hearings, which is the third public step in the Inquiry process. It is largely through the Participation (Standing) Hearings that the Inquiry decides who will participate in its Public Hearings.
- As the Commissioner, it is my task to decide who can participate in the Public Hearings and to also decide what form that participation will take. A person who is granted the right to participate will generally be allowed to call witnesses to testify and to make submissions at the Public Hearing. The participants will also have certain obligations, such as the obligation to produce to the Inquiry all relevant documents.
- Those wishing to participate in the Inquiry's formal Public Hearings must submit a written application to participate and appear at the Participation (Standing) Hearings. The Participation (Standing) Hearings will be held in December 2017 at the Elgin County Courthouse in St. Thomas.

- Please keep an eye on the Inquiry website for information about the Participation (Standing) Hearing. You do not need to have a lawyer to apply to participate.
- There may be people who wish to share information, thoughts, or recommendations with the Inquiry but do not want to formally participate in the Public Hearings. We encourage involvement of this sort through written communications to the Inquiry. Again, I would direct you to the Inquiry's website where more information about this process will be set out in the coming weeks.
- The third public component to the first part of the Inquiry's work, as I have explained, are the Inquiry's formal Public Hearings. It is likely that the Inquiry's formal Public Hearings will begin in June 2018. At this point, we anticipate that the Public Hearings will also take place at the Elgin County Courthouse in St. Thomas.
- The Public Hearings will look something like a trial - evidence will be called through witnesses and exhibits. Commission counsel will lead evidence and ask questions, but so too will some of the participants. The focus of the Public Hearings will be to finalize the Inquiry's understanding of the events that led to the Wettlaufer offences and the circumstances and contributing factors that allowed those offences to take place.
- The Public Hearings will be open to the public – everyone is welcome to attend. We will webcast the Public Hearings so that those who are not able to attend in person will still be able to follow the proceedings.

- Thus far, I have described the first part of the Inquiry process. You will recall, however, that I explained that there are two parts to the Inquiry. In the second part of the Inquiry process, we will consider other relevant matters necessary to avoid similar tragedies. It is likely that the second part of the Inquiry process will involve further research, a consideration of best practices both in Ontario and other jurisdictions, and consultations with key stakeholders and sector experts.
- The Inquiry's final report, which will draw on the work from both parts of the Inquiry, will be delivered to the provincial government on July 31, 2019, in both official languages.
- The Inquiry's report and recommendations will be made public.
- The Inquiry team takes seriously the need to conduct its work in an open, fair, transparent and public fashion. As part of meeting that obligation, we will regularly post information on the Inquiry website.

Today's Meetings

- These Community Meetings, which are taking place today and tomorrow in Woodstock and London, are not part of the Inquiry's investigative or fact finding process. The fact finding process is one that is governed by rules of procedure – and must be for reasons of fairness.
- I invite you to share with us today any considerations you feel will help me and the Inquiry team better understand the impact these events

have had on you, your loved ones and your community. This will help set the foundation for the investigative work to come. As well, we hope that you will share with us your thoughts and suggestions for the work of the Inquiry. Please also feel free to ask any questions that you might have about the Inquiry process.

- Let me end with two things.
- First, it is an honour to have been chosen to lead this public Inquiry. Each and every member of my Team and I are committed to doing everything in our power to fulfill the Inquiry's mandate. We hope that the recommendations we make will not only ensure that tragedies such as these do not occur again but also help this community to heal and to restore our collective faith and trust in the Long-Term Care Homes in this province.
- Second, I thank you for coming to this meeting today. I appreciate your engagement with the Inquiry process and hope that you will continue to work with us to help find the answers that are needed. We ask for your continued cooperation, patience, understanding and assistance throughout the Inquiry process.
- I look forward to hearing your thoughts, comments and suggestions on this matter which is so very important to us all.
- I will now turn the floor over to Will, who will moderate the discussions this afternoon [evening].

A handwritten signature in black ink, reading "Eileen E. Gillese". The signature is written in a cursive style with a large initial "E".

Commissioner Eileen E. Gillese

October 18 and 19, 2017

Woodstock and London, ON.

Appendix L – Confidentiality Undertaking for Counsel and Contact Persons

APPENDIX “A”

Confidentiality Undertaking for Counsel and Contact Persons in the Long-Term Care Homes Public Inquiry

For the purpose of this undertaking, the word “Document” is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Long-Term Care Homes Public Inquiry (the “Commission”) including, without limitation, all records, files, sound recordings, videotapes, communications, correspondence, notes, medical records, charts, data, memoranda, statements, reports, email, text (or any other form of electronic communication), photographs and Overview Reports, stored in any manner, including data and information in electronic or digital form, or stored by means of any device, and any other information pertaining to the Commission (collectively referred to as “Documents”), irrespective of whether such Documents have been identified as confidential, and includes all other material prepared, containing or based, in whole or in part, on any information included in the foregoing, including information contained in Overview Reports prepared by Commission counsel.

I, _____, undertake to the Commission that any and all Documents that are produced to me by the Commission will not be used by me for any purpose other than these proceedings. I further undertake that I will only disclose any Documents or the contents of them to those for whom I act (or, in the case of Contact Persons, to up to five individuals within my organization with whom I will consult and whose identities I will disclose to Lead Commission Counsel), witnesses or potential witnesses (and their counsel), or an expert retained for the purposes of this public inquiry. In respect of those individuals, I further undertake that I will only disclose such Documents or the contents of any such Documents upon receiving from the individual in question a duly executed written undertaking in the form attached as Appendix “B” to these Rules.

I understand that under no circumstances shall I give anyone, including, without limitation, those providing instruction or those whom I consult, access to the Database.

I understand that this undertaking has no force or effect with respect to any Document that has been entered into evidence at the Public Hearings, or to the extent that the Commissioner has provided me with a written release from this undertaking with respect to any Document. For greater certainty, a Document is only entered into evidence at the Public Hearings when the Document is made an exhibit at them.

With respect to Documents that remain subject to this undertaking at the end of the Inquiry, I undertake to either destroy the Documents and provide a certificate of destruction to the Commission, or to return the Documents to the Commission for destruction. I further undertake to collect for destruction such Documents from anyone to whom I have disclosed any Documents that were produced to me in connection with the Commission’s proceedings.

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

_____ Signature

_____ Witness

_____ Date

_____ Date

Appendix M – Confidentiality Undertaking for Participants, Potential Witnesses and Experts

APPENDIX “B”

Confidentiality Undertaking for Participants, Potential Witnesses, and Experts in the Long-Term Care Homes Public Inquiry

For the purpose of this undertaking, the word “Document” is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Long-Term Care Homes Public Inquiry (the “Commission”), including without limitation, all records, files, sound recordings, videotapes, communications, correspondence, notes, medical records, charts, data, memoranda, statements, reports, email, text (or any other form of electronic communication), photographs and Overview Reports, stored in any manner, including data and information in electronic or digital form, or stored by means of any device, and any other information pertaining to the Commission (collectively referred to as “Documents”), irrespective of whether such Documents have been identified as confidential, and includes all other material prepared, containing or based, in whole or in part, on any information included in the foregoing, including information contained in Overview Reports prepared by Commission counsel.

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

I understand that this undertaking has no force or effect with respect to any Document that has been entered into evidence at the Public Hearings, or to the extent that the Commissioner has provided me with a written release from the undertaking with respect to any Document. For greater certainty, a Document is only entered into evidence at the Public Hearings when the Document is made an exhibit at them.

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

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

_____ Signature

_____ Witness

_____ Date

_____ Date

Appendix N – Commissioner's Opening Remarks at the Participation Hearings

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

LTCI PARTICIPATION (STANDING) HEARINGS OPENING REMARKS

Commissioner Gillese
Dec. 12-13, 2017
St. Thomas, ON

Introduction

Good morning. My name is Eileen Gillese and I am the Commissioner of the Long-Term Care Inquiry.

Thank you for coming to the Inquiry's Participation (Standing) Hearings and for your interest in the safety and security of residents of Ontario's long-term care homes.

Before I call on those who have applied to participate in the Inquiry's Public Hearings, I will make some opening remarks. I anticipate my remarks will take approximately 20 minutes.

The Inquiry's Public Hearings are planned to begin in June 2018 and will take place here in this courtroom. The Participation (Standing) Hearings play a vital role in ensuring that the Public Hearings are conducted effectively and expeditiously. Thus, I will begin my Opening Remarks by discussing the Public Hearings and what will take place during them. After that, I will:

400 University Avenue
Suite 1800C
Toronto, Ontario M7A 2R9
info@longtermcareinquiry.ca

400 Avenue University
Bureau 1800C
Toronto (Ontario) M7A 2R9
info@longtermcareinquiry.ca

- Describe the process for determining who can participate in the Public Hearings and who will be recommended for government funding of their participation;
- Explain why these hearings are being held; and
- Conclude by explaining the “mechanics” of these hearings – in other words, who does what and when.

1. The Public Hearings

As you are aware, this Inquiry was established in the wake of the offences committed by Elizabeth Wettlaufer. The victims, and the family members and friends of those whom Ms. Wettlaufer harmed and killed, demanded answers. So, too, did the broader public. The need to ensure safe and secure accommodation for those in long term care is of vital concern to us all. This sense of outrage and urgency cried out for a public and independent scrutiny of Ontario’s long-term care homes system in order to prevent tragedies of this nature from happening again. The government responded by establishing this Inquiry.

The Inquiry was given a mandate to inquire into the events which led to the offences and the circumstances and contributing factors allowing these events to occur. The Inquiry is also charged with preparing a report with recommendations for what can be done to prevent such tragedies from being repeated.

Every public inquiry is unique. Each must establish procedures that best enable it to achieve its purposes. In establishing those procedures – and, indeed, in all its work – the Inquiry team has been guided by the following principles (the “Guiding Principles”):

1. **thoroughness** – we will examine all relevant issues with care so that there can be no doubt that the questions raised by the Inquiry mandate are explored and answered;

2. **timeliness** – we must proceed in a timely fashion to engender public confidence, remain relevant, and meet our deadline;
3. **transparency** – the Inquiry proceedings and processes must be as open and available to the public as is reasonably possible; and
4. **fairness** – the Inquiry must balance the interests of the public in finding out what happened with the rights of those involved to be treated fairly.

The Inquiry must also conduct its work in accordance with the duties imposed on it by s. 5 of the **Public Inquiries Act, 2009**, S.O. 2009, c. 33, Sched. 6 (the "**Act**"). Section 5 requires us to conduct the Inquiry faithfully, honestly and impartially, in accordance with the Inquiry's terms of reference. (The Terms of Reference are set out in the Order in Council that established the Inquiry.) Section 5 of the **Act** also requires the Inquiry to be conducted effectively, expeditiously, and "in accordance with the principles of proportionality". Further, s. 5 requires the Inquiry to operate in a manner that is financially responsible and within its budget.

Bearing in mind the Guiding Principles and the dictates of s. 5 of the **Act**, we divided the Inquiry's work into two parts. The first part of the Inquiry is backward looking whereas the second part of the Inquiry is forward looking.

In the first part of the Inquiry, the Inquiry Team is conducting investigations into the events that occurred and the surrounding conditions and circumstances which allowed the events to occur. The results of these investigations will be presented at the Public Hearings.

The Public Hearings will give the public the opportunity to see the results of the Inquiry investigations. The Public Hearings also enable the participants to examine and challenge the investigative results. As will be readily apparent, the Public Hearings are crucial to ensuring that the factual foundation on which the Inquiry builds its recommendations is sound.

While I have set out what will take place in the Public Hearings, it is important to understand what the Public Hearings are not.

The Public Hearings are not an investigation. It is the job of the Inquiry team to conduct the necessary investigations, in advance of the Public Hearings.

The Public Hearings are not a trial in which fault or liability is established.

Further, the Public Hearings are not the primary vehicle by which the Inquiry will develop recommendations.

In the second part of the Inquiry, using the results of the Public Hearings as a foundation, the Inquiry will gather information, perform research and engage in public consultations, all in aid of developing meaningful and viable recommendations on what can and should be done to prevent such tragedies from being repeated.

2. How Participation in the Public Hearings will be Decided

Section 15 of the **Act** empowers me, as Commissioner, to decide whether a person can participate in the inquiry. Before making that decision, the Act requires that I consider whether:

- the person has a substantial and direct interest in the subject matter of the inquiry;
- the person is likely to be notified of a possible finding of misconduct under s. 17 of the **Act**;
- the person's participation would further the conduct of the public inquiry; and
- the person's participation would contribute to the openness and fairness of the inquiry.

In addition to these criteria for determining participation, there are two other important matters I wish to draw to your attention.

1. There is no automatic right to participate in the Public Hearings.

Even if an applicant satisfies one or more of the criteria, that applicant does not automatically get the right to participate in the Public Hearings. As the Commissioner, I must decide who gets to participate, provided that before making that decision I carefully consider the criteria set out above.

You may ask why I do not simply give all those who want to participate that right.

The answer to that question lies in the obligation placed on the Inquiry by s. 5 of the **Act** to conduct its work effectively, expeditiously, in accordance with the principle of proportionality, and in a manner that is financially responsible.

Almost 50 people and organizations have applied to participate. While it is important to allow for participation in the Public Hearings by a variety of people and organizations with different perspectives, this important objective must be balanced with the obligations placed on the Inquiry by s. 5 of the **Act**.

These competing considerations make the work of these Participation Hearings both important and challenging.

2. Participation is not simply a question of deciding who may participate.

Section 15 of the **Act** gives me an additional responsibility. It requires me to also decide: the manner and scope of a person's participation; whether some participants should be grouped into classes; and, whether any limits or conditions should be placed on

different participants or different classes of participants. This means that I must consider whether, and to what extent, time and resources are to be devoted to the examination of a given area.

These additional responsibilities and powers enable the Inquiry to conduct the Public Hearings in a manner that satisfies its s. 5 duties to conduct its work efficiently, expeditiously, and in a financially responsible manner. Further, and importantly, the power to put limits and conditions on participants and different classes of participants enables the Inquiry to discharge its obligation under s. 5 to conduct its work in accordance with the principles of proportionality.

I hasten to add that limiting the extent of participation rights in a public inquiry is not unusual. In past public inquiries, limits have been placed on such matters as the right to call evidence, the type of evidence that can be called, and the right to cross-examine witnesses.

I wish to conclude on the matter of participation by stressing that if an applicant is not granted the right to participate in the Public Hearings, it does not mean that the applicant is unable to contribute to the Inquiry's work. The Inquiry welcomes written submissions from all those interested in its mandate. Further, there may be opportunities for input during the consultations which the Inquiry anticipates conducting in the second part of the Inquiry.

3. How Funding Recommendations will be Made

I must begin a discussion of funding recommendations with this important point: I do not have the power to grant anyone funding. I have the power to decide who may participate in the Public Hearings but I do not have the power to order funding for anyone. It is the Attorney General who decides who will be given funding. My only power is to make recommendations to

the Attorney General about who should be given funding and for what purposes.

I turn now to the process by which I will make funding recommendations.

Section 13 of the Order in Council that established this Inquiry authorizes me to make funding recommendations. It also sets out the basis on which I can make such recommendations. It specifies that such recommendations depend on the extent of a participant's interest and whether the participant would not otherwise be able to participate in the Inquiry without such funding.

I am bound by the Order in Council and must make funding recommendations in accordance with its dictates.

In addition to the constraints imposed by s. 13, I add this important consideration. Funding for participants will come from the public purse – in other words, from you and me and the rest of Ontario's taxpayers. Spending public money must be done in a financially responsible way – just as s. 5 of the **Act** requires.

For these reasons, I have asked that everyone who has applied for funding bring with them today affidavit evidence to support their claim that they would not be able to participate in the inquiry without such funding.

The Inquiry has arranged for a lawyer who is not part of the Inquiry team (and is called an *amicus*) to be present today to help applicants who are here without their own legal counsel to swear their affidavits. There is no cost to the applicants for this service.

Finally, it is very important to note that those who are granted funding are subject to the Government of Ontario Guidelines for reimbursement of legal fees and disbursements. Those Guidelines are on the Inquiry website.

4. Why these Hearings are being held

As a first step, every person who wanted to participate in the Inquiry's Public Hearings had to complete an application form explaining how they meet the criteria for participation and, if they were seeking funding, why they would not be able to participate without funding. Information on the Inquiry website explains the criteria for participation and funding recommendations and other relevant information.

Given the requirement for a written application, you may ask why these public Participation Hearings are being held. There are three important reasons for holding these Hearings before I make my decisions on participation and funding recommendations.

- First, consistent with the Guiding Principle of transparency, the public interest is served by allowing members of the public to see and hear the Inquiry at work. Deciding who has the right to participate in the Inquiry's Public Hearings is an important aspect of the Inquiry's work. Holding these Participation Hearings offers the public a window into this important part of the Inquiry's work. Because these Hearings are open to the public, everyone is free to attend and watch.
- And, for those members of the public who are not able to attend, a transcript of these Hearings will be available through the Inquiry's website.
- Second, consistent with the Guiding Principle of fairness, the Participation Hearings give each applicant the opportunity to explain why they should be given the right to participate and to learn about the other applicants.
- Third, again consistent with the Guiding Principle of fairness, these Participation Hearings give me the chance to ask applicants any questions I might have. As I mentioned, almost 50 persons and organizations have applied to participate in the Public Hearings. In

order for the Public Hearings to be conducted effectively and expeditiously, it may be necessary to limit the number of participants and to place limits on the extent of participation. Before making these decisions, I need and want the opportunity to speak with each of you and give you the opportunity to answer my questions.

- The same is true in respect of funding recommendations. These Hearings enable me to put to applicants any questions that I might have before deciding whom I should recommend for government funding and for what purposes.

5. The Mechanics of these Hearings

For those who made an application to participate, you should have seen an Inquiry lawyer when you arrived. This enabled the Inquiry lawyers to prepare a list with the names of the applicants who are here today and, if the applicant is represented by a lawyer, the name of that lawyer. The Inquiry lawyers then organized the list so that, to the extent possible, applicants with similar interests are heard one after the other or together. Where possible, the Inquiry lawyers also addressed the scheduling needs of applicants. For example, some applicants must be heard today due to previously scheduled commitments that could not be changed.

If you have not yet seen an Inquiry lawyer and had your name put on the list, please do that at the morning recess. The morning recess will start at approximately 11:30 a.m. and last for 15 minutes. The lunch recess will begin at 1 p.m. and court will resume at 2:15 p.m. The hearing today is scheduled to run until 4:30 p.m. There will be an afternoon break from 3:30 p.m. to 3:45 p.m.

Your name will be called

Using the list that the Inquiry lawyers prepared, I will call out your name and, if you have a lawyer, I will also call out the name of your lawyer.

When your name is called, please come forward to the area just in front of the dais. If you have a lawyer, you should stand near him or her.

You will speak and I may ask you some questions

After your name is called, you or your lawyer have 2-3 minutes to explain the basis on which you seek to participate in the Public Hearings. I may ask you questions about that.

If you indicated in your application form that you wished funding in order to participate in the Public Hearings, I will also ask you questions about that.

After you have been heard

Once you have spoken and answered any questions that I might have for you, you are free to leave. If you are heard today, there is no need for you to return tomorrow.

However, you are also welcome to stay and watch the balance of these hearings. If there is not enough room in this courtroom, you can watch from courtroom #202, next door.

If your name is not called today

I may not reach everyone on the list today. If I do not call your name today, please return tomorrow. Court will resume promptly at 10 a.m. When you return, please check in with Inquiry legal counsel.

When will you know if you have been given the right to participate and/or been recommended for funding?

I anticipate that my rulings on participation and my recommendations on funding will be posted on the Inquiry's website in mid-January 2018.

Conclusion

In conclusion, I invite you to think about the name of these hearings. These are the Participation Hearings.

In prior inquiries, hearings such as these have been called Standing Hearings. Why then are these hearings called "Participation" Hearings, not Standing Hearings? One good reason is that the **Act**, which governs public inquiries, uses that language – it speaks about whether a person may "participate" in the Inquiry, not whether a person has "standing".

I offer you a second – and important – reason for using the word participation, rather than standing. "Standing" is a technical legal word used in civil and criminal trials. Trials are adversarial in nature, with one side pitted against the other. But this is not a trial – it is a public inquiry. And, in a public inquiry, we are all "rowing in the same direction". All who participate in the Inquiry are committed to the same goal: doing what we can to ensure the safety and security of residents in Ontario's long-term care homes by preventing similar tragedies. Using the language of "participation" – not standing – reminds us that we are working together and that, together, we can and will fulfill the Inquiry's mandate.

It is in that spirit that I express my hope and expectation that all who are given the opportunity to participate in the Public Hearings will co-operate with one another and with Commission counsel. That has been the tradition in public inquiries in this province and one that we should embrace.

Thank you for your kind attention.

I will now call the list.

Appendix O – Newspaper advertisement for Participation Hearings

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System



Enquête publique sur la sécurité des résidents des foyers de soins de longue durée

CALL FOR APPLICATIONS TO PARTICIPATE (STANDING) AT THE INQUIRY'S PUBLIC HEARINGS

The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System was established shortly after Elizabeth Wetlaufer pleaded guilty to and was convicted of serious criminal offences that she committed while working as a Registered Nurse in Southwestern Ontario.

The Inquiry's mandate is to examine the circumstances and contributing factors that allowed those offences to occur, including the effect, if any, of relevant policies, procedures, practices, accountability and oversight mechanisms, and any other relevant matters that the Commissioner, Justice Eileen E. Gillese, considers necessary to avoid similar tragedies.

Pursuant to s. 15 of the *Public Inquiries Act, 2009*, applications to participate at the Inquiry's public hearings are invited from any person: (a) with a substantial and direct interest in the subject matter of the Inquiry; (b) who is likely to be notified of a possible finding of misconduct under s. 17 of the *Act*; (c) whose participation would further the conduct of the Inquiry; or, (d) whose participation would contribute to the openness and fairness of the Inquiry. The manner of participation of those persons given the right to participate shall be determined by the Commissioner.

The Commissioner may make recommendations to the Attorney General regarding funding, to the extent of a participant's interest where, in the Commissioner's view, that person would otherwise not be able to participate.

Further information on the Application to Participate (Standing), including the application form, can be found on the Inquiry's website: www.longtermcareinquiry.ca

Any person or group of persons wishing to apply to participate must submit a completed application form, electronically or in writing, to the Inquiry offices **no later than 4 p.m. on Friday, November 24, 2017**.

Hearings on the Applications to Participate (Standing) will take place on December 12 and 13, 2017, in the Elgin County Courthouse, St. Thomas, Ontario.

APPEL DE DEMANDES DE PARTICIPATION (QUALITÉ POUR AGIR) AUX AUDIENCES PUBLIQUES DE LA COMMISSION D'ENQUÊTE

La Commission d'enquête sur la sécurité des résidents des foyers de soins de longue durée a été constituée peu de temps après qu'Elizabeth Wetlaufer a plaidé coupable à des infractions criminelles graves commises alors qu'elle travaillait comme infirmière autorisée dans le Sud-Ouest de l'Ontario. Elle a été reconnue coupable de ces infractions.

La Commission d'enquête a pour mandat d'effectuer une enquête sur les circonstances et les facteurs contributifs ayant permis que ces événements surviennent, notamment sur l'effet, le cas échéant, des politiques, procédures et des pratiques pertinentes et sur les mécanismes de responsabilisation et de surveillance. Le mandat de la Commission d'enquête porte également sur les autres éléments pertinents que la commissaire, la juge Eileen E. Gillese, juge nécessaires afin d'éviter des tragédies similaires.

Aux termes de l'article 15 de la *Loi de 2009* sur les enquêtes publiques, la Commission d'enquête lance un appel à des demandes de participation à ses audiences publiques de la part de toute personne, selon le cas : a) qui a un intérêt important et direct dans l'objet de l'enquête publique; b) qui est susceptible d'avoir reçu un préavis d'une conclusion éventuelle d'inconduite conformément à l'article 17 de cette loi; c) dont la participation contribuerait à l'avancement de l'enquête publique; ou d) dont la participation contribuerait à la transparence et à l'équité de l'enquête publique. La commissaire décidera des modalités et de l'étendue de la participation des participants.

La commissaire peut présenter des recommandations au procureur général en ce qui concerne le versement de fonds, dans la mesure de l'intérêt du participant, si, de l'avis de la commissaire, la personne ne pourrait pas autrement participer.

D'autres renseignements sur les demandes de participation (qualité pour agir), y compris le formulaire de demande, sont consultables sur le site web de la Commission d'enquête, à : www.longtermcareinquiry.ca.

Toute personne ou tout groupe de personnes qui souhaite demander de participer doit soumettre un formulaire de demande de participation dûment rempli, par la voie électronique ou par écrit, à la Commission d'enquête, **au plus tard à 16 h, le vendredi 24 novembre 2017**.

Les auditions des demandes de participation (qualité pour agir) auront lieu le 12 et le 13 décembre 2017, au palais de justice du comté d'Elgin, à St. Thomas (Ontario).

Appendix P – News Release – Call for Applications to Participate



Call for Applications to Participate (Standing) at the Long-Term Care Homes Inquiry's Public Hearings Français

SOURCE

The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System
07:00 ET

TORONTO, Oct. 25, 2017 /CNW/ - The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System was established shortly after Elizabeth Wettlaufer pleaded guilty to and was convicted of serious criminal offences that she committed while working as a Registered Nurse in Southwestern Ontario.

The Inquiry's mandate is to examine the circumstances and contributing factors that allowed those offences to occur, including the effect, if any, of relevant policies, procedures, practices, accountability and oversight mechanisms, and any other relevant matters that the Commissioner, Justice Eileen E. Gillese, considers necessary to avoid similar tragedies.

Pursuant to s. 15 of the *Public Inquiries Act, 2009*, applications to participate at the Inquiry's public hearings are invited from any person: (a) with a substantial and direct interest in the subject matter of the Inquiry; (b) who is likely to be notified of a possible finding of misconduct under s. 17 of the *Act*; (c) whose participation would further the conduct of the Inquiry; or, (d) whose participation would contribute to the openness and fairness of the Inquiry. The manner of participation of those persons given the right to participate shall be determined by the Commissioner.

The Commissioner may make recommendations to the Attorney General regarding funding, to the extent of a participant's interest where, in the Commissioner's view, that person would otherwise not be able to participate.

Further information on the Application to Participate (Standing), including the application form, can be found on the Inquiry's website: www.longtermcareinquiry.ca

Any person or group of persons wishing to apply to participate must submit a completed application form, electronically or in writing, to the Inquiry offices **no later than 4 p.m. on Friday, November 24, 2017**.

Hearings on the Applications to Participate (Standing) will take place on December 12 and 13, 2017, in the Elgin County Courthouse, St. Thomas, Ontario.

www.longtermcareinquiry.ca

SOURCE The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

For further information: Peter Rehak, peter.rehak@longtermcareinquiry.ca, Telephone: 1-437-776-4123

Profil de l'entreprise



The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

Autres communiqués de cette entreprise:

[Public Inquiry into the Safety and Security of Residents in the Long-Term Care...](#)

[News Conference - Long Term Care Homes Inquiry to hold news conference on...](#)

[Long-Term Care Homes Inquiry Announces Counsel](#)

Appendix Q – Application to Participate

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

APPLICATION TO PARTICIPATE (STANDING)

NOTE: THIS APPLICATION FORM MUST BE SUBMITTED ELECTRONICALLY OR IN WRITING TO THE INQUIRY OFFICES AT 400 UNIVERSITY AVENUE, SUITE 1800C, TORONTO, ON M7A 2R9.

ALL APPLICATIONS MUST BE RECEIVED BY THE INQUIRY NO LATER THAN 4:00 P.M. ON FRIDAY, NOVEMBER 24, 2017.

THE APPLICANT

(i) **Individual***

Name _____

email address _____

Mailing address _____

Telephone number _____

(ii) **Corporation or Organization***

Name _____

Contact person (name and position) _____

email address _____

Mailing address _____

Telephone number _____

*** IF REPRESENTED BY COUNSEL:**

Name _____

Firm _____

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

email address _____

Mailing address _____

Telephone number _____

CRITERIA FOR PARTICIPATION (STANDING)

Participation is based on the following criteria. Check all that apply to you.

- (a) I have a substantial and direct interest in the subject matter of the Inquiry
- (b) I am likely to be notified of a possible finding of misconduct under s. 17 of the *Public Inquiries Act, 2009*;
- (c) My participation would further the conduct of the Inquiry; or,
- (d) My participation would contribute to the openness and fairness of the Inquiry.

Explain how you satisfy the criteria you checked off.

TYPES OF PARTICIPATION SOUGHT

If given the right to participate in the Public Hearings, which of the following types of participation do you seek? Check all that apply.

**Public Inquiry into the Safety and Security of Residents
in the Long-Term Care Homes System**

- Make an opening statement
- Lead evidence
- Lead expert evidence
- Cross-examine witnesses
- Make closing submissions

FUNDING

If given the right to participate, are you asking the Commissioner to recommend to the Attorney General that you be given funding? (Check only one).

Yes

No

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

If “yes,” using the space below indicate:

1. Why, without funding, you would not otherwise be able to participate in the Inquiry?

2. How much funding are you seeking and for what purposes?

Signature

Date (month/date/year)

Appendix R – Important Information for Applicants to Participate (Standing)

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

Important Information for Applicants to Participate (Standing)

When are the Participation (Standing) Hearings?

The Participation (Standing) Hearings (the “Hearings”) will be held on December 12 and 13, 2017.

Where are the Hearings being held?

The Hearings will be held in Courtroom 201 of the Elgin County Courthouse, located at 4 Wellington Street in St. Thomas, Ontario.

What are the Hearings' hours?

The Hearings will run from 10:00 a.m. through 4:30 p.m. There will be a morning break from 11:30-11:45 a.m., a lunch break from 1:00-2:15 p.m., and an afternoon break from 3:30-3:45 p.m.

NOTE: On December 12, the first day of the Hearings, all Applicants should arrive between 8:30 and 9:00 a.m. and proceed to Courtroom 201. When you arrive at Courtroom 201, please see either Will McDowell (Lead Commission Counsel) or Rebecca Jones (Commission Counsel) to sign in.

Will the Hearings be recorded?

The hearings will not be video recorded, but they will be transcribed.

Who will have access to the transcripts?

The transcripts will be posted on the Inquiry's website. They will be available to the public at large.

Will Applicants have a chance to speak at the Hearings?

Yes. Each Applicant will have 2-3 minutes to explain the basis on which they seek to participate in the Inquiry's public hearings. Your remarks should explain whether:

- You have a substantial and direct interest in the subject matter of the Inquiry;

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- You are likely to be notified of a possible finding of misconduct under section 17 of the *Public Inquiries Act, 2009*;
- Your participation would further the conduct of the Inquiry; and/or
- Your participation would contribute to the openness and fairness of the Inquiry.

Will the Commissioner ask Applicants questions?

The Commissioner may ask you three kinds of questions.

- Questions to clarify your request to participate.
- Questions about how you wish to participate in the Inquiry's Public Hearings.

For example, the Commissioner may ask whether you wish to:

- Make an opening statement;
- Sit at the tables reserved for counsel;
- Introduce evidence and, if so, what kinds of evidence and on what matters;
- Cross-examine witnesses; and/or
- Make closing submissions, either orally or in writing.
- If you have asked that the Commissioner recommend that you be given funding to participate, she may also ask you questions about that request.

For example, the Commissioner may ask:

- Why you would not be able to participate in the hearing without funding;
- How much funding are you seeking; and
- The purpose(s) for which you would use the funding.

When will I find out the result of my application to participate (standing)?

The Commissioner's rulings on applications to participate (standing) will be posted on the Inquiry's website in mid-January, 2018. Each Applicant will be sent an email notification informing them when the Commissioner's rulings have been posted.

When will I find out the result of my request for funding?

The Commissioner's recommendations on funding will be posted on the Inquiry's website in mid-January, 2018. Each Applicant will be sent an email notification informing them when the Commissioner's recommendations have been posted.

After the Commissioner has made her funding recommendations to the Attorney General, it will be up to the Attorney General to decide whether or not to accept those recommendations.

Appendix S – Important Information for Applicants Seeking Funding

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

Important Information for Applicants Seeking Funding

What do I need to do for the Commissioner to recommend that I receive funding?

Under the Inquiry's Terms of Reference, the Commissioner may recommend that you receive funding only if she is of the view that you would not otherwise be able to participate in the Inquiry without funding. Therefore, you will need to come to the Participation (Standing) Hearings (the "Hearings") with evidence to show the Commissioner that this is the case.

What kind of evidence will I need to bring?

If you are seeking funding, you will need to provide an affidavit (i.e. a sworn written statement) outlining your financial circumstances and explaining why you would not otherwise be able to participate in the Inquiry without funding. You will also need to provide documents to support the statements in your affidavit. Please bring your affidavit and supporting documentation to the Hearings.

In your affidavit, you should refer to any relevant financial circumstances. For example, you may want to provide evidence of your annual net income, the number of dependents you have and the expenses associated with supporting those dependents. Examples of documents you may wish to attach to your affidavit in support of your application for funding include:

- Tax returns;
- Bank or financial statements;
- Other financial documentation that supports your application for funding, such a statement of expenses.

What is an affidavit?

An affidavit is a sworn written statement that outlines the facts and/or attaches documents to support those statements. A template to help you prepare your affidavit can be found here.

I don't have a lawyer. How can I swear my affidavit?

You can bring your prepared but unsigned affidavit to the Hearings. The Inquiry has arranged for a lawyer to be present to help you swear your affidavit on the morning of December 12,

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2017. There is no cost to you to use the lawyer's services for the purpose of swearing the affidavit. You must bring a piece of photo ID with you. In order to swear your affidavit, the lawyer will need to verify your identity and must be present with you when you sign the affidavit.

What kind of funding can I seek?

You may seek funding for: (1) legal counsel to enable you to participate in the Inquiry's public hearings; and/or (2) expenses that you will incur if you are given the right to participate in the Inquiry's public hearings.

If I seek funding for expenses other than for legal counsel, are there any limitations on how much funding I can receive or what I can use it for?

Yes. The Government of Ontario specifies the maximum amount that can be reimbursed for certain expenses, such as mileage. Please be aware that the amount granted may not cover all of your expenses.

In addition, any funding you receive must be used for the purpose for which it is granted. This means you must keep original receipts showing what you paid for, how much you spent, and when the expenses were incurred. You will need to provide these receipts when you make a claim for reimbursement. If you are given funding to cover mileage, you will need to show the distance from your home to the Inquiry's Public Hearings. Your receipts will be reviewed by an Independent Assessment Officer (who will be appointed by the government) before you will be reimbursed.

I am seeking funding for legal counsel. Is there anything my lawyer needs to know?

Yes. The Government of Ontario has established rules governing the reimbursement of legal fees and disbursements. If the Commissioner recommends that you be granted funding for legal counsel, your lawyer will have to agree to those terms, which provide for the following maximum hourly rates:

- Junior counsel (up to 7 years' experience) – \$132/hour
- Intermediate counsel (8-9 years' experience) – \$160/hour
- Senior counsel (10+ years' experience) – \$192/hour
- Articling students – \$45-\$55/hour
- Law students – \$30-\$45/hour
- Law clerks/paralegals – \$30-\$55/hour

If the hourly rates above are less than the rate that your lawyer would ordinarily charge you, your lawyer may not recoup the difference from you or from any other third party. Your lawyer may only receive the applicable hourly rates above.

In accordance with the government's guidelines, your lawyer also cannot be reimbursed for his or her:

- Meals, snacks and beverages;
- Gratuities;
- Laundry or dry cleaning;
- Valet services;
- Dependent care;
- Home management; and/or
- Personal telephone calls.

Are there any guidelines that specify how much applicants can be reimbursed for legal fees and disbursements?

Yes. The Government of Ontario has prepared Guidelines that will be used by the Independent Assessment Officer to assess claims for reimbursement. The Guidelines can be found [here](#).

What kind of legal expenses and disbursements can the Commissioner recommend be funded?

The legal fees and disbursements eligible for funding are those that:

- relate to reasonable preparation for, and representation at, those portions of the Inquiry's public hearings for which you have been accorded participation rights;
- are associated with attendance at meetings requested by the Commission, the production of documents in your possession or control to the Inquiry, if so requested, and the provision of other information requested by the Commission; and/or
- are associated with preparation for and attendance at interviews by Commission counsel or staff.

Only legal fees and related disbursements falling within these categories and that have been incurred after the signing of the Order-in Council that established the Inquiry (dated July 26, 2017) are eligible for reimbursement.

Any recommendation for funding for legal counsel will specify the number and seniority of counsel for which you are to receive funding. Your lawyer can be funded for a maximum of 10 hours per hearing day. There will also be limits imposed on the number of preparation hours that will be funded. Funding will cover your lawyer's attendance at the Public Hearings only for the days on which your particular interests are engaged.

Will the amount of funding I receive and the information about what I use it for be confidential?

No. Because funding is provided by the Government of Ontario, the *Public Inquiries Act, 2009* applies. It states that no privilege or confidentiality applies to information about any funding granted to a participant, including the existence of any funding and its nature, rate, and amount.

Appendix T – Ruling on Participation

Public Inquiry into the Safety
and Security of Residents in
the Long-Term Care
Homes System



Commission d'enquête
publique sur la sécurité des
résidents des foyers de soins
de longue durée

LONG-TERM CARE HOMES PUBLIC INQUIRY

RULING ON PARTICIPATION

Commissioner Gillese:

I was appointed Commissioner of the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System (the "Inquiry" or the "Commission") by Order in Council 1549/2017 (the "OIC"). Under the terms of the OIC, I am to identify and make recommendations to address systemic failings in Ontario's long-term care homes system that may have occurred in connection with offences that Elizabeth Wettlaufer committed while working as a registered nurse in that system (the "Offences").

One of the functions that I must fulfill in my role as Commissioner is to decide who can participate in the Inquiry's Public Hearings. In this ruling, I set out those decisions and explain how I arrived at them.

1. BACKGROUND

A. The Inquiry Mandate

Paragraph 2 of the OIC sets out the Inquiry's mandate. It reads as follows:

2. Having regard to section 5 of the *Public Inquiries Act, 2009*, the Commission shall inquire into:

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- a. the events which led to the Offences;
- b. the circumstances and contributing factors allowing these events to occur, including the effect, if any, of relevant policies, procedures, practices, and accountability and oversight mechanisms; and
- c. other relevant matters that the Commissioner considers necessary to avoid similar tragedies.

B. Invitation to Participate at the Public Hearings

Pursuant to its mandate, on October 25, 2017, the Inquiry publicly called for applications to participate at its Public Hearings. Those who wished to apply to participate at the Public Hearings were invited to submit a completed application form to the Inquiry offices by Friday, November 24, 2017.

The Public Hearings are scheduled to begin in June 2018 and will be held in the Elgin County Courthouse in St. Thomas, Ontario. At the Public Hearings, the Inquiry will present the results of its investigations into the events that led to the Offences and the surrounding conditions and circumstances allowing these events to occur. Participants will have the opportunity to scrutinize the investigative results.

The call for applications also noted that as Commissioner, I may make recommendations to the Attorney General regarding funding for participants who would not otherwise be able to participate. In separate reasons, delivered concurrently with this Ruling, I set out my funding recommendations.

The application form to participate was posted on the Inquiry's website. So, too, was information for applicants seeking to participate. Among other things, those who wished to participate were advised to attend the Participation (Standing) Hearings held on December 12, 2017, at the Elgin County Courthouse in St. Thomas, Ontario.

At the Participation (Standing) Hearings, each applicant was given an opportunity to explain the basis on which they sought to participate in the Public Hearings and to answer any questions I had about their application. As well, if the applicant sought funding for

their participation, they were given the opportunity to address that matter and answer questions.

An appearance list for the Participation (Standing) Hearings is contained in Appendix A to this ruling.

C. The Applicants

The Commission received 50 applications to participate in the Public Hearings. A list of those who applied to participate is attached as Appendix B to this ruling.

2. THE FRAMEWORK FOR DECIDING WHO CAN PARTICIPATE

Section 15 of the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6 (the “Act”) establishes the framework for determining participation. It reads as follows:

- 15.** (1) Subject to the order establishing the commission, a commission shall determine,
- a) whether a person can participate in the public inquiry;
 - b) the manner and scope of the participation of different participants or different classes of participants;
 - c) the rights and responsibilities, if any, of different participants or different classes of participants; and
 - d) any limits or conditions on the participation of different participants or different classes of participants.
- (2) Before making a decision under subsection (1), the commission shall consider,
- a) whether a person has a substantial and direct interest in the subject matter of the public inquiry;
 - b) whether a person is likely to be notified of a possible finding of misconduct under section 17;
 - c) whether a person’s participation would further the conduct of the public inquiry; and
 - d) whether a person’s participation would contribute to the openness and fairness of the public inquiry.

It should be noted that s. 15 gives no person an automatic right to participate in the Inquiry, even if that person satisfies one or more of the considerations set out in s. 15(2). Rather, it is up to me to consider the criteria in s. 15(2) of the Act in respect of each applicant, and then determine whether that applicant can participate. Section 15 also requires that I determine the manner and scope of participation of different participants and classes of participants, and whether any limits or conditions should be placed on the participation of different participants or classes of participants.

In determining participation, I must be mindful of the overriding duties placed on the Inquiry by s. 5 of the Act. Section 5 reads as follows:

5. A commission shall
 - a) conduct its public inquiry faithfully, honestly and impartially in accordance with its terms of reference;
 - b) ensure that its public inquiry is conducted effectively, expeditiously, and in accordance with the principle of proportionality; and
 - c) ensure that it is financially responsible and operates within its budget.

3. APPLICANTS GRANTED THE RIGHT TO PARTICIPATE

Working within the framework set out above, I considered the 50 applications to participate and determined that the applicants in the following three categories can participate at the Public Hearings:

- a. the victim, and family members and close friends of victims;
- b. the Province of Ontario, the facilities at which the Offences were committed, and the College of Nurses of Ontario; and,
- c. certain other organizations involved in the Ontario long-term care homes system.

Naturally, Commission counsel have full rights of participation throughout the Public Hearings. They do not represent any particular interest or point of view, and their role is

not an adversarial one. Rather, their job is to ensure that all relevant matters are brought to my attention.

A list of all those granted the right to participate in the Inquiry's Public Hearings is contained in Appendix C to this ruling.

A. The Victim, and Family Members and Close Friends of Victims

One victim, as well as a number of family members and two close friends of victims, applied to participate. These applicants organized themselves into the following groups:

- Jon Matheson, Pat Houde, and Beverly Bertram;
- Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam Silcox-Vanwyk; and
- Shannon Lee Emmerton, Jeffrey Millard, Judy Millard, Sandra Lee Millard, Stanley Henry Millard, and Susie Horvath.

Each of the above groups is given a single grant of participation.

It is self-evident that each of these applicants has a substantial and direct interest in the subject matter of the Inquiry. Each has suffered – and, indeed, continues to suffer – as a direct result of the Offences.

Further, because of their direct knowledge of the Offences and the circumstances within which they were committed, their participation will further the conduct of the Public Hearings.

As well, their participation will contribute to the openness and fairness of the Public Hearings.

B. The Province, the Facilities and the College of Nurses of Ontario

It will be readily apparent that Her Majesty the Queen in Right of Ontario (“Ontario”), the facilities at which the Offences were committed and the College of Nurses of Ontario (“CNO”) all have a substantial and direct interest in the subject matter of this Inquiry. Given their roles and responsibilities, each will further the conduct of the Public Hearings. Moreover, their participation will contribute to the openness and fairness of those hearings.

Accordingly, the following applicants are granted the right to participate in the Public Hearings. A brief description of the applicant follows its name. The description has been drawn from the materials filed by the applicant.

- Ontario – which includes the Ministry of Health and Long-Term Care. Among other things, that Ministry is responsible for the oversight and regulation of long-term care homes and some home care agencies in the province, including the facilities in which the Offences were committed. Ontario is also responsible for leading the design, development and implementation of legislation, regulation and policy in the long-term care homes system.
- Caressant Care Nursing and Retirement Homes Limited and Caressant Care – Woodstock (together, “Caressant”). Caressant Care Nursing and Retirement Homes Limited owns and operates Caressant Care – Woodstock, the facility in which many of the Offences were committed (seven murders, two aggravated assaults and two attempted murders). Caressant is given a single grant of participation.
- Jarlette Health Services (“Jarlette”) and Meadow Park (London) Inc. o/a Meadow Park London Long Term Care (“Meadow Park”). Jarlette owns and operates Meadow Park, where the eighth murder was committed in 2014. Jarlette and Meadow Park are given a single grant of participation.
- Revera Long Term Care Inc. (“Revera”) operates Telfer Place Long-Term Care Residence, in which an Offence of attempted murder took place in 2015.

- The CNO is responsible for regulating nurses in the province of Ontario. Elizabeth Wettlaufer was a member of the CNO when she committed the Offences.

C. Other Organizations involved in Ontario's Long-Term Care Homes System

Several organizations working directly in Ontario's long-term care homes system applied to participate. Although these organizations were not directly involved with Elizabeth Wettlaufer or the events in question, each offers a unique, representative perspective that will further the conduct of the Inquiry and contribute to its openness and fairness. Further, each has played – and continues to play – an active role in shaping the policies, procedures and practices in Ontario's long-term care home system.

According, the following organizations are granted the right to participate in the Public Hearings. A brief description of the work of each organization follows its name. The descriptions are drawn from materials that the organizations filed with the Inquiry as part of the application process.

- AdvantAge Ontario – Advancing Senior Care (“AdvantAge”) is a provincial not-for-profit association representing not-for-profit providers of long-term care, services and housing for seniors. Its members include not-for-profit long-term care homes, seniors' housing, supportive housing, and community service agencies. Its member organizations serve over 36,000 long-term care residents annually, and provide 34% of the total number of beds in long-term care homes in Ontario.
- The Interfaith Social Assistance Reform Coalition (“ISARC”) is an advocacy organization for marginalized Ontarians that has operated for over 30 years. In particular, it has advocated for safe housing for marginalized groups. Members of ISARC also engage in pastoral care with their residents in long-term care homes.
- The Ontario Association of Residents' Councils (“OARC”) acts as a conduit between long-term care residents and both the Ministry of Health and Long-Term Care and the public. Its mandate includes providing education and support to more than 600 Residents' Councils in long-term care homes and ensuring that those

Councils are functioning to improve the quality of life for residents. Its Board of Directors is made up of residents in long-term care homes from across the province.

- The Ontario Long Term Care Association (“OLTCA”) is the largest association of long-term care home providers in Canada, representing nearly 70% of Ontario’s long-term care homes. It is the only association that represents the various types of long-term care homes, including private, not-for-profit, charitable, and municipal. As many of its members also offer other types of seniors’ housing – such as seniors’ apartments, retirement homes and home care – OLTCA brings a system-wide knowledge to the Inquiry.
- The Ontario Long Term Care Clinicians (“OLTCC”) is a not-for-profit organization that represents physicians who practice in Ontario long-term care homes. It is the largest organization in Canada that represents physicians and other clinicians working in long-term care. Its membership also includes nurse practitioners and pharmacists. OLTCC promotes education, advocacy and engagement with the Ministry of Health and Long-Term Care and other stakeholders in the long-term care sector.
- The Ontario Nurses’ Association (“ONA”) is the trade union for registered nurses and allied health professionals and nursing students. Many registered nurses are employed in long-term care homes across the province, including those in which Elizabeth Wettlauffer worked. ONA has experience and expertise in nursing accountability and oversight mechanisms. Registered nurses working in long-term care homes could be directly impacted by the Inquiry’s work.
- The Ontario Personal Support Workers Association (“OPSWA”) is the professional association for personal support workers (“PSWs”) in Ontario, and currently represents over 31,000 PSWs. Its membership includes thousands of PSWs working in long-term care. OPSWA has expertise in issues that arise in long-term care, including staffing and issues related to the scope of practice.

- The Registered Nurses' Association of Ontario ("RNAO") is the not-for-profit professional association representing more than 41,000 registered nurses, nurse practitioners and nursing students across Ontario. RNAO has contributed to policy development in the nursing sector and has created a nursing guideline on elder abuse. It has also been an advocate for improvements to long-term care funding, staffing and safety. RNAO leads and delivers a provincial Long-Term Care Best Practices Program.
- The Registered Practical Nurses Association of Ontario ("RPNAO") is a not-for-profit professional association representing registered practical nurses ("RPNs") in Ontario. Over 15,000 RPNs work in Ontario's long-term care system, the majority of whom work directly with residents. RPNs working in long-term care homes could be directly impacted by the Inquiry's work.

4. APPLICANTS NOT GRANTED THE RIGHT TO PARTICIPATE

The applicants not granted the right to participate fall into two broad categories.

The first category consists of applicants who have had relatives or friends in long-term care homes. Some of these applicants expressed the view that the care their loved ones received while in long-term care was inadequate or worse.

The second category consists of applicants who have worked in long-term care homes or in roles that have brought them into contact with such facilities or seniors.

The following applicants fall in the first category:

- Costa Abinajem
- Aiko Jan Hindrik (Ed) Dik
- Alison Hegarty
- Andrea Kale Marcus

- Rasu Rosario
- Eileen Sturby
- Barbara Timmerman

The following applicants fall into the second category:

- Chris Biggs
- Jason Glover
- Janice Goldmintz
- Melissa Holden
- Anita Jacobson
- Melissa Kuehl
- Greta Roberts
- Pat Robilliard
- Anthony Stelzer
- Marga Sym

I carefully considered the criteria for participation set out in s. 15(2) of the Act in respect of each of these applicants before determining that I would not grant them the right to participate in the Public Hearings. Two considerations in s. 15(2) are paramount in my determination.

First, recall the language of s. 15(2)(a) of the Act – whether a person has a “substantial and direct interest in the subject matter of the public inquiry”. The applicants in both categories show a deep interest in improving the long-term care homes in this province, for which they are to be commended. However, their interest tends to be in Ontario’s long-term care homes in general. They do not have a sufficiently substantial and direct

interest “in the subject matter” of this Inquiry, within the meaning of s. 15(2) (a). The subject matter of this Inquiry is the events that led to the Offences and the circumstances and conditions allowing those events to occur.

Second, as I set out in the foregoing section of this Ruling, several representative organizations have been given the right to participate in the Public Hearings. Based on the work performed by each of those organizations, I am satisfied that the concerns of these applicants will be raised by the various organizations. Importantly, when the organizations raise such concerns, they are able to do so from a broader, more representative, perspective.

Moreover, participation by representative organizations, rather than by way of a multiplicity of individuals, better meets the Commission’s duty under s. 5 of the Act. It will be recalled that s. 5 requires the Inquiry to be conducted effectively, expeditiously, and in accordance with the principle of proportionality.

I conclude by stressing that although these applicants have not been given the right to participate in the Public Hearings, it does not mean that they cannot contribute to the Inquiry’s work. The Inquiry welcomes written submissions from all those interested in its mandate.

5. CONDITIONS AND LIMITS ON THE RIGHT TO PARTICIPATE

As explained above, s. 15(1) of the Act requires that I determine whether a person can participate and the manner and scope of their participation. As well, it requires me to determine any limits and conditions on the participation of different participants and classes of participants.

In my view, at this stage of the Inquiry, it is premature to attempt to set limits and conditions on participation. However, I wish to make explicit that I retain the right to determine the manner and scope of participation, as well as to establish limits and conditions on participation rights, to ensure that the Public Hearings are conducted

effectively, expeditiously and in accordance with the principle of proportionality. I hasten to add that I will not impose any such limits or conditions without first giving participants the opportunity to address the matter.

6. CONCLUSION

In conclusion, I wish to thank all those who applied to participate in the Public Hearings. I look forward to your continuing assistance with the Inquiry's work so that the tragedies that led to this Inquiry are never repeated.

Commissioner Eileen E. Gillese

APPENDIX A – APPEARANCE LIST

The following individuals spoke on their own behalves or on behalf of applicants at the Participation (Standing) Hearings:

- Beverly Bertram, on her own behalf
- Paul H. Scott for Jon Matheson, Pat Houde, and Beverly Bertram
- Susie Horvath, on her own behalf
- Gregory Willson for Shannon Lee Emmerton, Judy Millard, Jeffrey Millard, Sandra Lee Millard, Stanley Henry Millard, and Susie Horvath
- Alex Van Kralingen for Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam Silcox-Vanwyk
- Jennifer McAleer for Revera Long Term Care Inc.
- Megan Schwartzentruber for the College of Nurses of Ontario
- Darrell Kloeze for Her Majesty the Queen in Right of Ontario
- Candace Chartier for the Ontario Long Term Care Association
- Jared B. Schwartz and Robert Morton for AdvantAge Ontario – Advancing Senior Care
- Reverend Alexander Wilson for the Interfaith Social Assistance Reform Coalition
- Dr. Fred Mather for the Ontario Long Term Care Clinicians
- Jane Meadus and Diana Lender for the Ontario Association of Residents' Councils
- Kate Hughes for the Ontario Nurses' Association
- Matthew Gourlay, Sarah Boesveld and Bahar Karimi for the Registered Nurses' Association of Ontario
- Barbara Timmerman, on her own behalf

- Costa Abinajem, on his own behalf (via teleconference)
- David M. Golden for Caressant Care Nursing and Retirement Homes Limited and Caressant Care – Woodstock (via teleconference)
- Lisa Corrente for Jarlette Health Services and Meadow Park (London) Inc. o/a Meadow Park London Long Term Care (via teleconference)
- Alison Hegarty, on her own behalf (via teleconference)
- Marga Sym, on her own behalf (via teleconference)

APPENDIX B – THE APPLICANTS TO PARTICIPATE

The following persons and organizations filed Applications to Participate with the Inquiry:

1. Abinajem, Costa
2. AdvantAge Ontario – Advancing Senior Care
3. Advocacy Centre for the Elderly¹
4. Bertram, Beverly
5. Biggs, Chris
6. Caessant Care Nursing and Retirement Homes Limited
7. Caessant Care - Woodstock
8. College of Nurses of Ontario
9. Dik, Aiko Jan Hindrik (Ed)
10. Emmerton, Shannon Lee
11. Glover, Jason
12. Goldmintz, Janice
13. Hegarty, Alison
14. Her Majesty the Queen in Right of Ontario
15. Holden, Melissa

¹ The Advocacy Centre for the Elderly withdrew its application before the Participation (Standing) Hearings took place, on the basis that its views were sufficiently represented by the Ontario Association of Residents' Councils.

16. Horvath, Arpad Jr.
17. Horvath, Susie
18. Houde, Pat
19. Interfaith Social Assistance Reform Coalition
20. Jackson, Laura
21. Jacobson, Anita
22. Jarlette Health Services
23. Kuehl, Melissa
24. Lifeguard Homecare²
25. Marcus, Andrea Kale
26. Martin, Don
27. Matheson, Jon
28. Meadow Park (London) Inc. o/a Meadow Park London Long Term Care
29. Millard, Jeffrey
30. Millard, Judy
31. Millard, Sandra Lee
32. Millard, Stanley Henry
33. Ontario Association of Residents' Councils
34. Ontario Long Term Care Association
35. Ontario Long Term Care Clinicians

² Lifeguard Homecare withdrew its application before the Participation (Standing) Hearings took place.

36. Ontario Nurses' Association
37. Ontario Personal Support Workers Association
38. Ontario Public Service Employees Union³
39. Registered Nurses' Association of Ontario
40. Registered Practical Nurses Association of Ontario
41. Revera Long Term Care Inc.
42. Roberts, Greta
43. Robilliard, Pat
44. Rosario, Rasu
45. Silcox, Andrea
46. Silcox-Vanwyk, Adam
47. Stelzer, Anthony
48. Sturby, Eileen
49. Sym, Marga
50. Timmerman, Barbara

³ The Ontario Public Service Employees Union withdrew its application following the Participation (Standing) Hearings.

APPENDIX C – THE PARTICIPANTS

The following have been given the right to participate in the Public Hearings:

- (As a group) Jon Matheson, Pat Houde, and Beverly Bertram
- (As a group) Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam Silcox-Vanwyk
- (As a group) Shannon Lee Emmerton, Jeffrey Millard, Judy Millard, Sandra Lee Millard, Stanley Henry Millard, and Susie Horvath
- Her Majesty the Queen in Right of Ontario
- (Together) Caessant Care Nursing and Retirement Homes Limited and Caessant Care – Woodstock
- (Together) Jarlette Health Services and Meadow Park (London) Inc. o/a Meadow Park London Long Term Care
- Revera Long Term Care Inc.
- College of Nurses of Ontario
- AdvantAge Ontario – Advancing Senior Care
- Interfaith Social Assistance Reform Coalition
- Ontario Association of Residents' Councils
- Ontario Long Term Care Association
- Ontario Long Term Care Clinicians
- Ontario Nurses' Association
- Ontario Personal Support Workers Association

- Registered Nurses' Association of Ontario
- Registered Practical Nurses Association of Ontario

Appendix U – Addendum to Ruling on Participation

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese
Commissioner



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese
Commissaire

ADDENDUM TO RULING ON PARTICIPATION

In my Ruling on Participation released January 18, 2018, I gave three groups of victims and their families and loved ones the right to participate (standing) in the Inquiry's Public Hearings. The members of those groups and their legal counsel were as follows:

1. Jon Matheson, Pat Houde, and Beverly Bertram (Counsel: Paul Scott of Harrison Pensa);
2. Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam Silcox-Vanwyk (Counsel: Alex Van Kralingen); and
3. Shannon Lee Emmerton, Jeffrey Millard, Judy Millard, Sandra Lee Millard, Stanley Henry Millard, and Susie Horvath (Counsel: Nigel Gilby and Greg Willson of Lerner's LLP).

Each of the three groups was given a single grant of participation.

Due to a conflict, as of May 28, 2018, Lerner's LLP could no longer represent the third group. Mr. Alex Van Kralingen undertook to represent that group with the result that he is now counsel for both the second and third groups. Together, the second and third groups now form a single group and have a single grant of participation.

Dated: June 27, 2018

A handwritten signature in black ink that reads "Eileen E. Gillese".

Commissioner Eileen E. Gillese

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Appendix V – Funding Recommendations

Public Inquiry into the Safety
and Security of Residents in
the Long-Term Care
Homes System



Commission d'enquête
publique sur la sécurité des
résidents des foyers de soins
de longue durée

LONG-TERM CARE HOMES PUBLIC INQUIRY

FUNDING RECOMMENDATIONS

Commissioner Gillese:

I was appointed Commissioner of the Public Inquiry into the Safety and Security of Residents in the Long-term Care Homes System by Order in Council 1549/2017 (the "OIC"). In that role, concurrent with the release of these recommendations, I have issued a Ruling on Participation (the "companion Ruling"). In the companion Ruling, I set out who has been given the right to participate in the Inquiry's Public Hearings.

In these reasons, I set out my funding recommendations in respect of that participation. Before setting out those recommendations, I provide background information, including a discussion of: the source of my power to make funding recommendations; the constraints governing the making of those recommendations; and, the Ontario government's guidelines for reimbursement of legal fees and disbursements for private sector lawyers for this Inquiry (the "Guidelines").

1. BACKGROUND

A. The Power to make Funding Recommendations

Paragraph 13 of the OIC empowers me to make recommendations to the Attorney General regarding funding to participants. It reads as follows:

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13. The Commissioner may make recommendations to the Attorney General regarding funding to participants in the inquiry to the extent of that participant's interest where, in the Commissioner's view, the participants would not otherwise be able to participate in the inquiry without such funding. Such funding shall be in accordance with applicable Management Board of Cabinet directives and guidelines.

B. The Constraints governing Funding Recommendations

Paragraph 13 of the OIC constrains the making of funding recommendations in two ways.

First, para. 13 does not give me the power to grant funding to participate. My power is limited to making funding recommendations to the Attorney General. It is for the Attorney General to make the actual funding decisions.

Second, para. 13 dictates that I make funding recommendations: (1) to the extent of the participant's interest where (2) in my view, the participant would not otherwise be able to participate in the Inquiry without such funding. I understand the second matter requires me to consider the financial circumstances of each applicant who seeks a funding recommendation.

For this reason, the application form to participate asked participants to indicate whether they sought funding and, if so, to state why they would not be able to participate in the Inquiry without funding.

Additionally, all applicants who sought funding were asked to bring to the Participation (Standing) Hearings affidavit evidence outlining their financial circumstances. The Inquiry arranged for a lawyer who was not a member of the Inquiry team to be present on the day of the Participation (Standing) Hearings to help applicants without legal counsel to swear their affidavits. There was no cost to the applicants for this service.

Apart from the constraints imposed by para. 13 of the OIC, it is important to bear in mind that funding for participation in the Public Hearings comes from the public purse. This important contextual consideration is underscored by s. 5 of the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6 (the "Act"), which places a duty on the Commission to ensure that it is financially responsible.

C. The Guidelines

The Ministry of the Attorney General established the Guidelines to specify the terms on which reimbursement of legal fees and disbursements will be made for those participants who are granted funding for legal counsel. The Guidelines are set out in full on the Inquiry website.

Applicants seeking funding and their lawyers are encouraged to carefully review the Guidelines. However, I would draw attention to the following five dictates contained in the Guidelines.

First, maximum hourly rates are established for the retention of private sector lawyers as follows:

- Junior counsel (up to 7 years' experience) – \$132/hour
- Intermediate counsel (8-9 years' experience) – \$160/hour
- Senior counsel (10+ years' experience) – \$192/hour
- Articling students – \$45-\$55/hour
- Law students – \$30-\$45/hour
- Law clerks/paralegals – \$30-\$55/hour

Second, the Guidelines stipulate that any lawyer who accepts compensation in accordance with them shall not bill the client or apply to any third party for any additional funding for the services in question.

Third, legal counsel are limited to billing for a maximum of 10 hours per day for each funded client. I note here that where I have given participation rights to a group, I view each group to be a "funded client" for the purposes of these recommendations.

Fourth, the Guidelines specify that lawyers shall not be reimbursed for any hospitality, incidentals or food expenses.

Fifth, all accounts for legal fees and disbursements will be reviewed by an Independent Assessment Officer, who will assess the accounts on the basis of the Guidelines. Once approved, accounts will be forwarded to the Ministry of the Attorney General for payment.

2. APPLICANTS SEEKING A FUNDING RECOMMENDATION

In the companion Ruling, I explain why certain applicants were not granted participation rights. Some of those applicants also sought funding. As they were not given the right to participate, they are ineligible for funding so nothing more need be said in relation to them. Other applicants who had initially sought funding withdrew their requests.

In the result, the following three groups of individuals and three organizations had to be considered for the purposes of funding recommendations:

- Jon Matheson, Pat Houde, and Beverly Bertram
- Shannon Lee Emmerton, Jeffrey Millard, Judy Millard, Sandra Lee Millard, Stanley Henry Millard, and Susie Horvath
- Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam Silcox-Vanwyk
- the Ontario Association of Residents' Councils
- the Registered Nurses' Association of Ontario
- the Registered Practical Nurses Association of Ontario

3. THE FUNDING RECOMMENDATIONS

After careful consideration, I am satisfied that the three groups of applicants and the three organizations meet the criteria in s. 13 of the OIC and should be recommended for funding.

A. The Three Groups for which Funding is Recommended

For the reasons given in the companion Ruling, I granted participation rights to one victim, a number of family members and two close friends of victims. These applicants have organized themselves into three groups. Each group was given a single grant of participation in the Public Hearings. The three groups are:

1. Jon Matheson, Pat Houde, and Beverly Bertram
2. Shannon Lee Emmerton, Jeffrey Millard, Judy Millard, Sandra Lee Millard, Stanley Henry Millard and Susie Horvath
3. Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam Silcox-Vanwyk

Each group seeks funding for legal counsel.

In addition, Jon Matheson and Pat Houde have asked that they receive funding for travel, accommodation and meal costs to enable them to attend the Public Hearings. They reside in Peterborough. The distance between their home and the Elgin County Courthouse in St. Thomas where the Public Hearings will be held, along with health considerations, preclude daily trips to St. Thomas.

Recommendation

As I explain in the companion Ruling, each member of all three groups has a substantial and direct interest in the subject matter of the Inquiry. Based on their evidence, I am satisfied that the groups would not otherwise be able to participate in the Public Hearings without funding for legal counsel. Accordingly, I recommend to the Attorney General that he provide each group with funding for legal counsel for reasonable preparation for, and representation at, the Public Hearings to a maximum of \$80,000, plus HST, in accordance with the parameters set out below.

In light of the extent of Jon Matheson's and Pat Houde's interest in the subject matter of the Inquiry, and the evidence of their financial circumstances, I recommend to the Attorney General that he provide them with funding for travel, accommodation and meal

costs, in accordance with the Government of Ontario's Management Board of Cabinet Directive.

If such funding is given, Mr. Matheson and Ms. Houde must submit their claims, with original receipts, to the Independent Assessment Officer. The Independent Assessment Officer will assess the claims and, once approved, pass them on to the Attorney General for reimbursement.

B. The Three Organizations for which Funding is Recommended

The three organizations for which I would recommend funding are the Ontario Association of Residents' Councils ("OARC"), the Registered Nurses' Association of Ontario ("RNAO") and the Registered Practical Nurses Association of Ontario ("RPNAO").

i. OARC

OARC seeks funding for a number of things.

OARC intends to retain the Advocacy Centre for the Elderly ("ACE") to provide representation on its behalf at the Public Hearings. ACE is a community legal clinic that serves low-income seniors under the *Legal Aid Services Act, 1998*, S.O. 1998, c. 26. ACE has expertise in long-term care but is not able to assign a staff litigation lawyer to the Public Inquiry due to high demand for its services. If OARC is granted funding, it will retain a senior lawyer with experience with public inquiries. OARC submits that this is essential for its effective representation at the Public Hearings.

ACE will also provide representation for OARC through lawyer Jane Meadus, Institutional Advocate. No funding is sought for the provision of Ms. Meadus' professional services. Ms. Meadus regularly represents clients in long-term care homes, hospitals, psychiatric facilities and retirement homes on legal matters.

As Legal Aid Ontario will not cover the cost of disbursements incurred by Ms. Meadus' office, OARC also seeks funding for those disbursements.

Further, OARC asks for funding for reasonable travel and accommodation expenses for both Ms. Meadus and the funded lawyer.

As well, OARC seeks funding for the President of its Board to attend certain days of the Public Hearings. Because of the President's needs, OARC estimates the daily cost of transportation and accommodation would be approximately \$1,500. In oral submissions made at the Participation (Standing) Hearings, OARC indicated that the reason the President sought to attend was to observe the Public Hearings and provide instructions to counsel.

Finally, OARC also sought funding for two teleconferences per month, at the rate of \$50 per teleconference, for the purpose of briefing Board members and receiving instructions.

Recommendation

OARC is a small not-for-profit organization. Its affidavit evidence shows that it has limited resources and would not otherwise be able to meaningfully participate without funding. In addition, because OARC represents the residents of long-term care facilities, it has a unique and substantial interest in the Inquiry, and its participation will provide an important and necessary perspective.

I recommend that the Attorney General grant OARC funding for senior legal counsel for reasonable preparation for, and representation at, the Public Hearings to a maximum of \$80,000, plus HST, in accordance with the parameters set out below.

I further recommend that funding be given for the reasonable costs of disbursements of both the funded legal counsel and Ms. Meadus.

In addition, I recommend to the Attorney General that he provide both funded legal counsel and Ms. Meadus funding for travel and accommodation expenses, in accordance with the Guidelines.

I would not recommend funding for the travel and accommodation costs for OARC's President. While I recognize the President's interest in the Public Hearings, I note that the Public Hearings will be webcast, which will permit the President to watch the

proceedings without the necessity of attending in person. Further, there was no evidence to support the proposition that the President's attendance was necessary to enable legal counsel to be properly instructed.

I would, however, recommend that the Attorney General provide funding to OARC for two teleconferences per month at the rate of \$50 per teleconference, to ensure that legal counsel is afforded sufficient opportunity to obtain instructions.

ii. RNAO

The RNAO is a not-for-profit professional association representing registered nurses, nurse practitioners and student nurses in Ontario. It seeks funding for two legal counsel, an intermediate and a senior member of the bar, as defined in the Guidelines.

Recommendation

In the companion Ruling, I explain why I grant the RNAO the right to participate. Based on its evidence, I am satisfied that without funding, the RNAO would not otherwise be able to participate in the Public Hearings. However, I do not see a need for two funded legal counsel to attend the Public Hearings. Accordingly, I recommend that the Attorney General grant the RNAO funding for legal counsel for reasonable preparation for, and representation at, the Public Hearings to a maximum of \$50,000, plus HST, in accordance with the parameters set out below.

iii. RPNAO

The RPNAO is a not-for-profit association representing registered practical nurses. It seeks \$20,000 in funding to obtain the help of legal counsel in preparing for, and participating in, the Public Hearings.

Recommendation

In the companion Ruling, I explain why I grant the RPNAO the right to participate. Based on its evidence, I am satisfied that without funding, the RPNAO would not otherwise be able to participate in the Public Hearings. Accordingly, I recommend that the Attorney

General grant funding to the RNAO for legal counsel, as sought, to a maximum of \$20,000, plus HST, in accordance with the parameters set out below.

4. PARAMETERS GOVERNING FUNDING

The above funding recommendations are subject to the following parameters.

- Only one counsel for each group and organization shall be funded for any given day in the Public Hearings. I encourage funded counsel to attend the Public Hearings only on those days that are necessary and to send junior counsel for those hearing days in which their client's interests are not directly engaged but for which they deem attendance is still necessary.
- As indicated above, funding covers reasonable preparation time for the Public Hearings. Wherever possible, I urge senior counsel to rely on junior counsel, law clerks, or students to conduct the preparatory work.
- Funded counsel may claim reasonable costs for travel, accommodation, and disbursements, in accordance with the Guidelines.
- As indicated above, funding recommendations for legal counsel are subject to a specified maximum, plus HST. If any counsel finds that they are approaching the maximum, they may apply to me to review the ceiling limit and seek a recommendation for increased funding.
- Legal services that are eligible for funding are those provided on and after the date of the associated participant's application to participate, up to the last day of the Public Hearings.

Commissioner Eileen E. Gillese

Appendix W – Further Funding Recommendations

Public Inquiry into the Safety
and Security of Residents in
the Long-Term Care
Homes System



Commission d'enquête
publique sur la sécurité des
résidents des foyers de soins
de longue durée

LONG-TERM CARE HOMES PUBLIC INQUIRY FURTHER FUNDING RECOMMENDATIONS

Commissioner Gillese:

Earlier in the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System (the "Inquiry"), I prepared funding recommendations in respect of certain groups that had been given the right to participate in it.

In the reasons that follow, I set out further funding recommendations ("Further Funding Recommendations") in respect of three of those participants.

1. SUMMARY

In my role as Commissioner of the Inquiry, by virtue of para. 13 of Order in Council 1549/2017, I can make recommendations to the Attorney General regarding funding to participants where, in my view, those participants would not otherwise be able to participate in the Inquiry.

In January of 2018, I determined who had the right to participate in the Inquiry (the "Participants") and I made initial funding recommendations ("Initial Funding Recommendations") for certain of the Participants. In the main, those recommendations were to provide funding for legal counsel. My Initial Funding Recommendations were

accepted, with the result that the affected Participants were able to participate in the Public Hearings that the Inquiry has held to date.

My Initial Funding Recommendations were subject to strict parameters and specified maximums. However, I also provided that if any counsel found that they were approaching the specified maximum, they could apply to me to review the ceiling limit and seek a recommendation for increased funding. Three Participants have made such an application: (1) the group consisting of a number of victims' families and loved ones represented by Alex Van Kralingen (the "Van Kralingen Group"); (2) the Registered Nurses' Association of Ontario (the "RNAO"); and (3) the Ontario Association of Residents' Councils ("OARC").

For the reasons that follow, I recommend that:

1. the Van Kralingen Group receive further funding of \$30,000;
2. the RNAO receive further funding of \$25,000; and
3. the OARC receive further funding of \$25,000.

2. THE MAKING OF FUNDING RECOMMENDATIONS

In my Initial Funding Recommendations (posted on the Inquiry website on January 18, 2018), I set out the framework that governs when I make funding recommendations. That framework includes: the source of my power to make such recommendations; the constraints within which I must operate; and, the Guidelines laid down by the Ministry of the Attorney General for reimbursement of legal fees and disbursements.

I will not repeat that same information here. For those who are interested, please see my Initial Funding Recommendations on the Inquiry's website.

However, I would stress that in making these Further Funding Recommendations, I have kept squarely in mind that: funding for participation comes from the public purse; amounts sought must be reasonable and warranted, having regard to the Participant's interest in

the Inquiry's mandate; and, without funding, these Participants would not otherwise be able to continue participate in the Inquiry.

3. CHANGED CIRCUMSTANCES

Since I made my Initial Funding Recommendations, there have been three significant changes in the circumstances relevant to my consideration of the further funding requests.

a. A change in the Participants

I originally granted participation rights to three groups of victims, their family members, and loved ones. The three groups and their legal counsel were:

1. Jon Matheson, Pat Houde, and Beverly Bertram (represented by Paul Scott of Harrison Pensa LLP)
2. Shannon Lee Emmerton, Jeffrey Millard, Judy Millard, Sandra Lee Millard, Stanley Henry Millard and Susie Horvath (represented by the London office of Lerner LLP)
3. Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam Silcox-Vanwyk (represented by Alex Van Kralingen of Van Kralingen & Keenberg LLP).

Each group was given a single grant of participation in the Public Hearings. The Attorney General granted each group \$80,000 for legal counsel, plus HST, to enable each group to participate in the Inquiry's Public Hearings.

Shortly before the Public Hearings began on June 5, 2018, Lerner LLP found that it had to remove itself from the record. Mr. Van Kralingen agreed that he would represent those previously represented by Lerner LLP, in addition to the groups of victims' families and loved ones that he already represented.

When Mr. Van Kralingen agreed to take over representation of the Lerner's LLP clients, he did not assume the funding that had been granted for those clients. Nor did he ask for additional funding at that time. However, he reserved the right to seek additional funding depending upon how much his workload increased as a result of having assuming the additional client groups.

Lerner's LLP used approximately \$10,000 of the \$80,000 grant before getting off the record. This means that approximately \$70,000 of the funds granted in respect of the group that it represented are unspent, a matter to which I return below.

b. An increase in the Participants' responsibilities

Since the Initial Funding Recommendations were made, the number and length of the Inquiry's Public Hearing days increased. A number of witnesses were called in addition to those originally scheduled. This led to not only additional hearing days but also much longer than anticipated hearing days. As well, further hearing days had to be scheduled once it was determined that the Inquiry would call expert and technical evidence.

Moreover, after setting out the consultative process that the Inquiry would undertake in Part 2 of its work, I asked the Participants to assist in those consultations. The significant issues to be probed in Part 2 are of interest and concern to the Participants, and the Inquiry will benefit from their experience, expertise, and practical wisdom.

c. Demonstrated cost containment

Finally, I now have months of experience with the Participants and the way in which counsel are discharging their responsibilities. To a person, counsel have made significant efforts to save costs and limit the extent of their involvement to those areas of particular relevance to their clients.

The three Participants who seek additional funding have provided me with information that shows that each has fully complied with the parameters set out in the Initial Funding Recommendations including:

- having only one funded counsel at the Public Hearings and only on those days that were necessary because of their client's interests;
- relying on junior counsel, law clerks, and law students (at much-reduced rates) whenever possible; and,
- regularly "cutting" hours to comply with the government's 10-hour per day maximum.

I turn now to a consideration of each of the three Participant's requests for additional funding.

4. THE VAN KRALINGEN GROUP

a. Background

As I explain above, Mr. Van Kralingen now represents a number of different groups of victims' families and loved ones. He has fully discharged his responsibilities in respect of all of the different groups. The increase in the number of client groups has, of course, necessitated greater and different preparation for the Public Hearing as well as cross-examination of more witnesses and greater cross-examination of others. It has also required him to establish clear, discrete communication channels for the various groups and, sometimes, within the groups themselves. The amount of work involved in the latter task alone cannot be overstated.

b. The Request for Additional Funding

As I explain above, before Mr. Van Kralingen agreed to represent the groups of victims' families and loved ones originally represented by Lerner LLP, the Van Kralingen Group had been granted initial funding of \$80,000. The initial grant of \$80,000 for the Lerner LLP clients was not transferred to the Van Kralingen Group when the clients themselves were transferred.

In its request for additional funding, the Van Kralingen Group asked for two things. First, that I recommend further funding of \$30,000 for legal fees. And, second, that I provide guidance to the Independent Assessment Officer that she consider allowing funding in excess of the 10-hour daily maximum for a period during July 2018 in which Mr. Van Kralingen's representation of the numerous and diverse victims' families' groups required that he and his team work virtually around the clock.

However, in the highest traditions of the Bar, Mr. Van Kralingen has withdrawn the second part of his request. He recognizes that public service animates the work of all counsel involved in the Inquiry and that accountability for the use of public funds requires limits such as the 10-hour daily maximum.

Recommendation

I recommend that the Attorney General grant the Van Kralingen Group additional funding for legal counsel of \$30,000, plus HST, to enable their continued representation in the Inquiry proceedings.

5. RNAO

a. Background

The RNAO is the not-for-profit professional association that represents more than 41,000 registered nurses, nurse practitioners, and nursing students across Ontario. Nurses play a key role in providing residents with care in long-term care homes, including performing resident assessments and administering their medications. They also play a key role in the provision of healthcare services in private homes.

b. The Request for Additional Funding

The RNAO was given initial funding of \$50,000 for legal counsel. It advises that its legal costs have now exceeded the initial funding cap by approximately \$5,000. In order to continue to participate in the balance of the Public Hearings and also in the consultations

in Part 2 of the Inquiry's work, the RNAO asks for further funding of \$25,000 for legal fees (approximately \$5,000 for work already done and \$20,000 going forward).

Recommendation

I recommend that the Attorney General grant the RNAO additional funding for legal counsel of \$25,000, plus HST, to enable their continued representation in the Inquiry proceedings.

6. OARC

a. Background

OARC is a small not-for-profit organization that represents the residents of long-term care homes. As the voice of the residents, OARC brings a unique, important, and necessary perspective to the Inquiry's work.

b. The Request for Additional Funding

OARC was given initial funding of \$80,000 for legal counsel. It asks for additional funding of \$30,000 for legal fees to complete its participation in the Public Hearing and continue to advance the perspective of residents in the Inquiry's work.

Recommendation

I recommend that the Attorney General grant OARC additional funding for legal counsel of \$25,000, plus HST, to enable its continued representation in the Inquiry proceedings.

I have not recommended funding for the full amount sought by OARC because I do not see the need for 50 hours for participation in the closing submissions in addition to 50 hours to prepare its written submissions. The oral closing submissions will be webcast. There will be no cross-examination or right of reply at the oral closing submissions. The Participants' written closing submissions will be made publicly available through the Inquiry website.

In the circumstances, I do not find it reasonably necessary to provide funding for counsel to attend the oral presentation of closing submissions except to make their own presentation which should take less than a single day, including travel time to and from the Public Hearings in St. Thomas, Ontario. I did not reduce the recommended funding by the full amount saved by OARC attending for only one day of the oral presentation of closing submissions in order to allow for time for its participation in Part 2.

7. CONCLUSION

Each of the three Participants in question has a substantial and direct interest in the subject matter of the Inquiry. Each has played an important role in the Public Hearings to date. Their continued participation in the balance of the Public Hearings and the consultations in Part 2 of the Inquiry's work is vital. Without further funding for legal counsel, these Participants will be unable to continue to participate in the Inquiry's work.

In total, I recommend further funding of \$80,000, plus HST. However, as I explain above, less than \$10,000 of the initial funding of \$80,000 granted to the Lerner's LLP group was spent before Lerner's LLP got off the record and the Van Kralingen Group accepted that it would represent the victims' families' groups previously represented by Lerner's LLP. That means there is approximately \$70,000 of previously granted funding that remains unspent. Consequently, the vast majority of my Further Funding Recommendations (\$70,000 of \$80,000) is simply a re-allocation of previously granted funding.

It is for these reasons that I make the foregoing funding recommendations to the Attorney General.

Dated: September 5, 2018



Commissioner Eileen E. Gillese

Appendix X – Rules of Procedure for the Public Hearings

Public Inquiry into the Safety
and Security of Residents in the
Long-Term Care Homes System



Commission d'enquête publique
sur la sécurité des résidents des
foyers de soins de longue durée

RULES OF PROCEDURE FOR THE PUBLIC HEARINGS

I. GENERAL

1. On June 1, 2017, Elizabeth Wettlaufer was convicted of serious criminal offences that she committed while working, as a registered nurse, in various facilities in the Ontario long-term care homes system (the "Offences").
2. By Order in Council 1549/2017 (the "OIC"), the Long-Term Care Homes Public Inquiry (the "Commission") was established and directed to, among other things, inquire into the events leading to the Offences and the circumstances and contributing factors allowing the events to occur.
3. Paragraph 6 of the OIC authorizes the Commission to hold public hearings ("Public Hearings") as necessary to fulfill its mandate.
4. The Commission has announced its intention to hold Public Hearings beginning in June 2018 at the Elgin County Courthouse in St. Thomas, Ontario.
5. In the Ruling on Participation released on January 18, 2018, the Commissioner set out who can participate in the Public Hearings (the "Participants").
6. Subject to the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6 (the "Act") and the OIC, the Commission has the power to control its own processes and make rules governing its practice and procedure.

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7. The Commissioner consulted with the Participants about the Rules of Procedure that will apply at the Commission's Public Hearings. On February 1, 2018, she provided the Participants with electronic copies of draft Rules of Procedure (the "draft Rules") and invited them to provide her with written comments and suggestions on the draft Rules by February 15, 2018.
8. After duly considering the Participants' comments and suggestions, the Commissioner finalized the within Rules of Procedure (the "Rules") and made them public by posting them on the Commission's website.
9. For the purposes of these Rules:
 - a. all documents shall be served by email;
 - b. Lead Commission Counsel is Mr. Will McDowell or his designate;
 - c. if a Participant is represented by legal counsel ("Counsel"), service on the Participant shall be by email to its Counsel;
 - d. if a Participant is not represented by legal counsel, service on the Participant shall be by email to the Participant's designated contact person (the "Contact Person");
 - e. documents to be provided to, or served on, the Commission shall be delivered electronically no later than 4:00 p.m. on the specified date, to the attention of Ms. Andrea Barton, Executive Director, at andrea.barton@longtermcareinquiry.ca; and
 - f. the Commissioner has the discretion to determine what constitutes reasonable notice.
10. The Commissioner may amend the Rules or dispense with compliance with the Rules as she deems necessary to ensure that the Public Hearings operate effectively, expeditiously, and in accordance with the principle of proportionality.

11. All Participants, Counsel, and witnesses at the Public Hearings are bound by the Rules, and may raise any issue of non-compliance with the Commissioner.
12. The Commissioner may deal with non-compliance with the Rules as she deems appropriate, including by revoking the right to participate in the Public Hearings or by imposing limitations on the manner and scope of the participation of one or more Participants.

II. THE COMMISSION'S GUIDING PRINCIPLES

13. The Commission conducts its work in accordance with four guiding principles (the "Guiding Principles"). The conduct of the Public Hearings and these Rules are informed by the Guiding Principles:
 - a. **thoroughness**: examine all relevant issues with care so that there can be no doubt that the questions raised by the Commission mandate are explored and answered;
 - b. **timeliness**: proceed in a timely fashion to engender public confidence, remain relevant, and meet its deadline;
 - c. **transparency**: the Commission proceedings and processes must be as open and available to the public as is reasonably possible; and
 - d. **fairness**: the Commission must balance the interests of the public in finding out what happened with the rights of those involved to be treated fairly.
14. The Guiding Principles must be read in conjunction with s. 5 of the Act, which sets out the following duties of a commission:
 5. A commission shall,
 - (a) conduct its public inquiry faithfully, honestly and impartially in accordance with its terms of reference;

(b) ensure that its public inquiry is conducted effectively, expeditiously, and in accordance with the principle of proportionality; and

(c) ensure that it is financially responsible and operates within its budget.

15. The Participants, Counsel and all those taking part in the Public Hearings shall conduct themselves, and discharge their responsibilities under the Rules, in accordance with the Guiding Principles.

III. THE PUBLIC HEARINGS – TIME AND LOCATION

16. The Commissioner will set the dates, hours, and place of the Public Hearings, and may alter them as she sees fit.

17. It is anticipated that the Public Hearings will take place during the weeks of June 4, 11, 18, 25, July 16, 23, 30, August 6 and September 24, 2018.

18. Generally, the Public Hearings will run from Monday through Thursday in any given week.

19. The hours of the Public Hearings will be from 9:30 a.m. to 1:00 p.m. and from 2:00 p.m. to 4:30 p.m., with short morning and afternoon breaks.

20. The Public Hearings will be held at the Elgin County Courthouse in St. Thomas, Ontario. They will be transcribed and webcast.

IV. DOCUMENT PRODUCTION

21. Counsel and Contact Persons will be provided with access to an electronic document database (the “Database”), and other documents and information gathered or created by Commission counsel, only upon providing the Commission with a duly executed written undertaking in the form of Appendix “A” to these Rules. Provided that this condition is met to the Commission’s

satisfaction, Counsel and Contact Persons will be given access to the Database shortly after the Overview Reports, described below, are distributed.

22. Counsel and Contact Persons shall not provide any person with access to the Database. Counsel and Contact Persons may provide copies of documents and disclose information to their clients (or, in the case of Contact Persons, instructing individuals), witnesses or potential witnesses, and experts retained for the purposes of the Public Hearings, as they deem appropriate, only on terms consistent with their undertakings and only after they have received from those individuals duly executed written undertakings in the form of Appendix “B” to these Rules.
23. No one may make public any document or information provided by the Commission pursuant to these Rules until after it is entered into evidence at the Public Hearings. However, the Commissioner may order that certain documents or evidence not be made public.
24. The Commissioner orders that all persons who have entered into a written undertaking pursuant to these Rules shall comply with the terms of their undertaking. Failure to do so is deemed to be a breach of an order of the Commission.
25. On or before April 5, 2018, each Participant shall serve on the Commission a list of all documents, reports and other written information in its possession, control or power that the Participant views as relevant to the Commission’s mandate as set out in the OIC (the “List”). A Participant shall not include in its List any documents that it has already produced directly to the Commission.
26. The Commission may require a Participant to produce one or more of the documents in its List. Subject to Rule 28, below, the Participant shall comply promptly with any such request.
27. Participants should provide original documents to the Commission only upon request and only where doing so would not interfere with any potential or

ongoing investigation or legal proceeding. Participants shall otherwise preserve originals of relevant documents until such time as the Commissioner has fulfilled her mandate or orders otherwise.

28. Where a Participant objects to the production of any document, or part thereof, on the grounds of privilege pursuant to s. 8(3) of the Act, including any documents the Participant has already provided to the Commission in redacted form, the following procedures will apply:
- a. the Participant shall deliver to Lead Commission Counsel a list of the document(s) or parts thereof over which privilege is being asserted (the “Claimed Privilege List”). The Claimed Privilege List shall include the date, author, recipient, and a brief description of the document(s), and may have attached to it additional material, such as an affidavit, to support the Participant’s claim to privilege;
 - b. Lead Commission Counsel shall review the Claimed Privilege List and decide whether to recommend to the Commissioner that she accept the claim for privilege;
 - c. if Lead Commission Counsel is not prepared to recommend to the Commissioner that she accept the claim for privilege, the Claimed Privilege List, any further material filed by the Participant, and copies of the documents over which privilege is claimed shall be submitted forthwith, together with Lead Commission Counsel’s written submissions, to the Commissioner; and
 - d. the Commissioner shall rule on the claim for privilege. If the claim for privilege is dismissed, the Participant shall produce the document(s) to Lead Commission Counsel forthwith.
29. The Commission shall disclose to the Participants by April 19, 2018, or as soon as practicable thereafter, any document on a List that the Commission or the Commissioner has required a Participant to produce.

30. Where a Participant takes the position that one or more documents that it produced to the Commission should be redacted before its inclusion in the Database, the following procedures apply:
- a. the Participant shall deliver to the Lead Commission Counsel no later than 4:00 p.m. on March 22, 2018, a list of the documents that the Participant asks be redacted (the “Redacted Document List”) and attach to the Redacted Document List the documents in proposed redacted form;
 - b. Lead Commission Counsel shall review the Redacted Document List and the documents in proposed redacted form and decide whether to recommend to the Commissioner that she accept the Participant’s position that the documents ought to be redacted before inclusion in the Database;
 - c. if Lead Commission Counsel is not prepared to recommend to the Commissioner that she accept the Participant’s position that the documents be redacted before inclusion in the Database, the Redacted Document List and copies of the proposed redacted documents shall be submitted forthwith, together with Lead Commission Counsel’s written submissions on the matter, to the Commissioner; and
 - d. the Commissioner shall rule on the claim that the documents ought to be redacted before inclusion in the Database.

V. THE PROCESS LEADING TO THE PUBLIC HEARINGS

31. Commission counsel inquired into the events which led to the Offences. They also inquired into the circumstances and contributing factors allowing these events to occur, including the effect, if any, of relevant policies, procedures, practices, and accountability and oversight mechanisms. Together, these inquiries are referred to as the “Inquiries”.

32. In accordance with para. 5 of the OIC, Commission counsel prepared four Overview Reports, described below, summarizing the results of the Inquiries. The Overview Reports will be entered into evidence at the Public Hearings.
33. In addition, three documents (the “Foundational Documents”) will be entered into evidence at the Public Hearings:
- a. a timeline showing the major events, including the dates of each Offence;
 - b. the Agreed Statement of Facts entered into evidence on June 1, 2017, in the criminal proceedings against Elizabeth Wettlaufer relating to these Offences; and
 - c. a list of the relevant legislation and regulations.
34. At the Public Hearings, the Commission will rely on the Foundational Documents and Overview Reports, wherever possible, in lieu of calling witnesses. It is anticipated that the Foundational Documents and the Overview Reports will constitute the bulk of the Commission’s evidence at the Public Hearings.
35. The Participants will be given a draft copy of each of the Foundational Documents and draft copies of the Overview Reports on or about March 29, 2018.
36. The four Overview Reports cover, for the time period relevant to the Offences:
- a. the College of Nurses of Ontario;
 - b. the facilities and agencies for which Elizabeth Wettlaufer worked, including those facilities in which the Offences were committed;
 - c. the Ministry of Health and Long-Term Care; and
 - d. the Office of the Chief Coroner of Ontario.

37. Each of the Overview Reports includes:

- a. a chronology specific to the particular area of inquiry (the “Specific Chronology”);
- b. the source documents for each event listed in the Specific Chronology;
- c. a list of the relevant legislation and regulations for the particular area of inquiry; and
- d. a list of the relevant policies, procedures, practices, and accountability and oversight mechanisms for the particular area of inquiry, along with an indication of the period during which those items were operative.

38. Each Participant shall serve a written response to the draft Foundational Documents and draft Overview Reports (a “Participant’s Response”) on the Commission and the other Participants no later than April 26, 2018.

39. The Participant’s Response shall:

- a. identify all items in the draft Foundational Documents and the draft Overview Reports that the Participant wishes to dispute;
- b. state the Participant’s position on each disputed item;
- c. set out how the Participant wishes to establish its position on the disputed items; and
- d. specify all evidence the Participant seeks to enter at the Public Hearings, with a brief description of the evidence and a brief explanation for how, why, and when it seeks to enter each item of evidence. The Participant may propose witnesses to be called as part of the Public Hearings. If so, the Participant will set out a list of the names and addresses of all such proposed witnesses and, where applicable, provide copies of all relevant documents, including statements of anticipated evidence from the proposed witnesses. The Participant may propose witnesses to support,

challenge, comment upon, or supplement the Overview Reports in ways that are likely to significantly contribute to a fair understanding of the contents of the Overview Reports.

40. Lead Commission Counsel has the discretion to refuse to call, or permit to be called, evidence proposed by a Participant. If the Participant wishes to dispute the Lead Commission Counsel's decision on this matter, the Participant may have the matter decided by the Commissioner through the procedural motions ("Procedural Motions") process, described below.
41. Each Participant shall serve a further document on the Commission and the other Participants in which it states its position, if any, on the other Participants' Responses (the "Participant's Cross-Response") no later than May 7, 2018.
42. Lead Commission Counsel shall serve a written reply to the Participants' Responses and Participants' Cross-Responses (the "Commission Counsel Reply") on the Participants by May 17, 2018. The Commission Counsel Reply shall set out Commission counsel's position on every matter raised in each Participant's Response and Cross-Response.
43. Lead Commission Counsel shall give the Participants reasonable notice of the witnesses the Commission intends to call at the Public Hearings, an outline of the anticipated areas of examination for each such witness and, where practicable, a statement of the anticipated evidence of the witness. There shall be no cross-examination on the statements of anticipated evidence. The Participants will be given the opportunity to identify which, if any, of the proposed Commission witnesses they wish to cross-examine, and the proposed topics of the cross-examinations.

VI. PROCEDURAL MOTIONS

44. On or about May 23 and 24, 2018, the Commissioner will hear Procedural Motions in Toronto.

45. At the Procedural Motions, the Commissioner will hear motions on any procedural matters related to the Public Hearings, including any issues that have not been resolved among Commission counsel and the Participants through the process of exchanging the Participants' Responses, the Participants' Cross-Responses, and the Commission Counsel Reply.
46. A Participant who intends to bring a Procedural Motion shall serve written notice of its intention on the Commission and other Participants no later than 4:00 p.m. on May 18, 2018. The notice shall include the gist of the motion to be brought.
47. A Participant's motion materials shall be served on the Commission and other Participants no later than noon on May 22, 2018. Due to time constraints, Commission counsel need not file responding materials prior to the hearing of a Procedural Motion but should, as much as is practicable, advise the Participants of Commission counsel's position on each Procedural Motion in advance of the hearing of the Procedural Motions.
48. The Commissioner will issue any necessary rulings arising from the Procedural Motions prior to the commencement of the Public Hearings.
49. Immediately following the Procedural Motions, Lead Commission Counsel will hold a meeting with Counsel and the Contact Persons to discuss the conduct of the Public Hearings.

VII. CONDUCT OF THE PUBLIC HEARINGS

50. At the outset of the Public Hearings, Lead Commission Counsel will tender the Foundational Documents and the Overview Reports. These documents may differ from the draft Foundational Documents and draft Overview Reports that were previously provided to the Participants. The Foundational Documents and the Overview Reports will clearly identify any aspect of their contents that is disputed by one or more of the Participants.

51. Once entered into evidence, the Foundational Documents and the Overview Reports will be posted on the Commission website.
52. In the ordinary course, Commission counsel will call the witnesses who testify at the Public Hearings. Except as otherwise directed by the Commissioner, Commission counsel are entitled to adduce evidence by way of both leading and non-leading questions.
53. Witnesses will give their evidence at the Public Hearings under oath or affirmation. However, the Commissioner may admit evidence not given under oath or affirmation.
54. Witnesses who are not represented by Counsel are entitled to have their own counsel present while they testify. Counsel for the witness may make appropriate objections during the witness's testimony.
55. The Commissioner will determine the order of cross-examinations.
56. Where a Participant has been granted the right to examine a witness in chief, examination will be confined to the normal rules governing the examination of one's own witness.
57. Counsel for a witness, regardless of whether or not that counsel also represents a Participant, will examine the witness after the other Participants have concluded their cross-examinations, unless he or she has adduced the evidence in chief of the witness, in which case there will be a right by that counsel to re-examine the witness. In the event that counsel for the witness intends to adduce evidence in chief not adduced by Commission counsel, counsel for the witness will examine the witness immediately following Commission counsel, and then will have a right to re-examine the witness following the cross-examination by the other Participants.
58. Commission counsel have the right to re-examine any witness at the conclusion of his or her evidence.

59. The Commissioner may set limits, and time limits, on the conduct of examinations and cross-examinations.
60. In advance of a witness's testimony, Lead Commission Counsel shall provide the Participants with reasonable notice of a list of the documents associated with the witness's anticipated evidence in chief.
61. In advance of a witness's testimony, Participants who are permitted to lead a witness's evidence in chief shall provide the Participants and Lead Commission Counsel with reasonable notice of the areas to be covered in the witness's anticipated evidence in chief and a list of the documents associated with that evidence.
62. Participants who are permitted to cross-examine a witness will provide reasonable notice of any documents to which they intend to refer during their cross-examination.
63. The Commissioner may grant Commission counsel, a Participant or counsel for a witness leave to introduce a document to a witness at any point during the Public Hearings on such terms as are fair and just.
64. The Commissioner may permit Commission counsel or a Participant to call evidence at any point during the Public Hearings on such terms as are fair and just.

VIII. CLOSING SUBMISSIONS

65. The Participants will be given the opportunity to make closing submissions, both in writing and orally. The Participants are invited to include, as part of their closing submissions, suggestions on how similar Offences might be avoided in the future.
-

APPENDIX "A"**Confidentiality Undertaking for Counsel and Contact Persons in the Long-Term Care Homes Public Inquiry**

For the purpose of this undertaking, the word "Document" is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Long-Term Care Homes Public Inquiry (the "Commission") including, without limitation, all records, files, sound recordings, videotapes, communications, correspondence, notes, medical records, charts, data, memoranda, statements, reports, email, text (or any other form of electronic communication), photographs and Overview Reports, stored in any manner, including data and information in electronic or digital form, or stored by means of any device, and any other information pertaining to the Commission (collectively referred to as "Documents"), irrespective of whether such Documents have been identified as confidential, and includes all other material prepared, containing or based, in whole or in part, on any information included in the foregoing, including information contained in Overview Reports prepared by Commission counsel.

I, _____, undertake to the Commission that any and all Documents that are produced to me by the Commission will not be used by me for any purpose other than these proceedings. I further undertake that I will only disclose any Documents or the contents of them to those for whom I act (or, in the case of Contact Persons, to up to five individuals within my organization with whom I will consult and whose identities I will disclose to Lead Commission Counsel), witnesses or potential witnesses (and their counsel), or an expert retained for the purposes of this public inquiry. In respect of those individuals, I further undertake that I will only disclose such Documents or the contents of any such Documents upon receiving from the individual in question a duly executed written undertaking in the form attached as Appendix "B" to these Rules.

I understand that under no circumstances shall I give anyone, including, without limitation, those providing instruction or those whom I consult, access to the Database.

I understand that this undertaking has no force or effect with respect to any Document that has been entered into evidence at the Public Hearings, or to the extent that the Commissioner has provided me with a written release from this undertaking with respect to any Document. For greater certainty, a Document is only entered into evidence at the Public Hearings when the Document is made an exhibit at them.

With respect to Documents that remain subject to this undertaking at the end of the Inquiry, I undertake to either destroy the Documents and provide a certificate of destruction to the Commission, or to return the Documents to the Commission for destruction. I further undertake to collect for destruction such Documents from anyone to whom I have disclosed any Documents that were produced to me in connection with the Commission's proceedings.

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

Signature

Witness

Date

Date

APPENDIX "B"**Confidentiality Undertaking for Participants, Potential Witnesses, and Experts in the Long-Term Care Homes Public Inquiry**

For the purpose of this undertaking, the word "Document" is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Long-Term Care Homes Public Inquiry (the "Commission"), including without limitation, all records, files, sound recordings, videotapes, communications, correspondence, notes, medical records, charts, data, memoranda, statements, reports, email, text (or any other form of electronic communication), photographs and Overview Reports, stored in any manner, including data and information in electronic or digital form, or stored by means of any device, and any other information pertaining to the Commission (collectively referred to as "Documents"), irrespective of whether such Documents have been identified as confidential, and includes all other material prepared, containing or based, in whole or in part, on any information included in the foregoing, including information contained in Overview Reports prepared by Commission counsel.

I, _____, undertake to the Commission that any and all Documents that are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such Documents or the contents of any such Documents to anyone.

I understand that this undertaking has no force or effect with respect to any Document that has been entered into evidence at the Public Hearings, or to the extent that the Commissioner has provided me with a written release from the undertaking with respect to any Document. For greater certainty, a Document is only entered into evidence at the Public Hearings when the Document is made an exhibit at them.

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

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

_____ Signature

_____ Witness

_____ Date

_____ Date

Appendix Y – Release of the Rules of Procedure to Govern the Public Hearings – Commissioner’s Remarks

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese
Commissioner



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese
Commissaire

COMMISSIONER'S REMARKS ON THE RELEASE OF THE RULES OF PROCEDURE TO GOVERN THE PUBLIC HEARINGS

Commissioner Gillese

March 15, 2018

I. INTRODUCTION

These remarks are intended to introduce the Rules of Procedure for the Inquiry's Public Hearings. I offer them by way of an overview and also to provide context for the Rules.

As those reading these remarks well know, this Inquiry was established because of the public outrage that followed the discovery of the heinous offences committed by Elizabeth Wettlaufer. Wettlaufer was a registered nurse working in Ontario's long-term care homes system who harmed and killed through the intentional, wrongful administration of insulin. The public demanded that steps be taken to prevent such tragedies from being repeated. Nothing short of a public inquiry could restore public confidence in the Ontario long-term care homes system.

The work of the Inquiry is being conducted in two parts.

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In Part 1, the Inquiry is inquiring into the events that led to the offences and the surrounding conditions and circumstances that allowed those offences to occur. The results of the Part 1 inquiries will be made available to the public through the Public Hearings, which will begin in June 2018. The Public Hearings are also designed to give the Participants the opportunity to examine, challenge and add to the results of the inquiries.

In Part 2, the Inquiry will conduct further research, information gathering, and consultations, all in aid of developing meaningful and viable recommendations on how to prevent similar tragedies in the future. The work of the Public Hearings is the foundation for Part 2 of the Inquiry.

II. THE RULES OF PROCEDURE

As will be readily apparent, the Public Hearings are a crucial step in ensuring a sound factual foundation for the development of the Inquiry’s recommendations.

For the Public Hearings to be effective and expeditious, it is important that “ground rules” are established and communicated. The Rules of Procedure are those ground rules.

III. CREATION OF THE RULES OF PROCEDURE

The Rules were developed after consultation with the Participants. The Participants were provided with draft Rules on February 1, 2018. They were asked to provide the Inquiry with their written comments and suggestions on the draft Rules by February 15, 2018. Counsel for the Participants and the contact persons for those organizations not represented by counsel were invited to a meeting with Inquiry counsel on February 5, 2018, to discuss the draft Rules and pose any questions they might have.

After considering the Participants’ written comments and suggestions, the Rules were finalized.

I would like to take this opportunity to thank the Participants for their valuable comments and suggestions.

IV. PURPOSE OF THE RULES

These Rules dictate how the Public Hearings will be conducted and the responsibilities and rights of all those who will take part in them. Their purpose is to ensure that the Public Hearings operate smoothly, effectively, efficiently and fairly.

The Rules address such matters as: the principles guiding the work of the Public Hearings; where and when the Public Hearings will take place; the disclosure and production of documents; the nature of the information that the Inquiry will provide to the Participants in advance of the Public Hearings; the manner in which the Participants can respond to that information; the method by which the Participants can seek to introduce evidence at the Public Hearings; an outline of how evidence will be led at the Public Hearings; and, procedural safeguards.

Importantly, the Rules also invite the Participants to include, as part of their closing submissions, suggestions on how similar offences might be avoided in the future.

V. CONCLUSION

The work of this Inquiry is a matter of vital public concern. The residents in long-term care homes and the clients of home care service providers are beloved members of our communities. They are also some of the most vulnerable members of our communities. They deserve our respect and support and the confidence of knowing that they are not at risk of the infliction of intentional harm when receiving their medications.

I invite you to learn more by attending the Public Hearings, in person or by watching the daily webcast of the Public Hearings. You will be able to access the webcast and the

transcripts of the Public Hearings through the Inquiry website:
<http://longtermcareinquiry.ca>.

I would conclude by again inviting members of the public to share their suggestions on this important matter by writing to the Inquiry through its website.

Commissioner Eileen E. Gillese

Appendix Z – Ruling on a Motion to compel Elizabeth Wettlaufer to testify at the Public Hearings

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese
Commissioner



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese
Commissaire

RULING ON A PROCEDURAL MOTION respecting Elizabeth Wettlaufer

APPEARANCE LIST

(as a group) Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam Silcox-Vanwyk, represented by Alex Van Kralingen, Katherine Chau and Mark Repath

The Commission, represented by Mark Zigler, Liz Hewitt, Rebecca Jones, Megan Stephens, Lara Kinkartz, and Lindsay Merrifield

AdvantAge Ontario – Advancing Senior Care, represented by Jared B. Schwartz

Caressant Care Nursing and Retirement Homes Limited, Caressant Care – Woodstock, represented by David M. Golden

College of Nurses of Ontario, represented by Denise Cooney and Megan Schwartzentruber

Her Majesty the Queen in right of Ontario, represented by Darrell Kloeze and Judith Parker

Interfaith Social Assistance Reform Coalition, represented by Rabbi Schachter

Jarlette Health Services and Meadow Park (London) Inc. o/a Meadow Park London Long-Term Care, represented by Lisa Corrente

Ontario Association of Residents' Councils, represented by Suzan Fraser and Jane Meadus

Ontario Long Term Care Association, represented by Melanie Ouanounou

Ontario Nurses' Association, represented by Kate Hughes

Heard: May 23, 2018
Toronto, ON

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Commissioner Gillese:

Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam Silcox-Vanwyk bring a procedural motion relating to the Inquiry's Public Hearings. These individuals are family members and loved ones of three of Elizabeth Wettlaufer's victims. As a group, they were given a single grant of participation in the Public Hearings. Because there is a single grant of participation, for ease of reference I will refer to these individuals collectively as the "**Moving Participant**".

In the motion, the Moving Participant asks that I direct Commission counsel to compel Elizabeth Wettlaufer's attendance to testify at the Public Hearings.

I. Background in Brief

Effective August 1, 2017, this Commission was established under the *Public Inquiries Act, 2009*, S.O. 2009, c. 33 (the "**Act**"), by Order in Council 1549/2017 (the "**OIC**"). Broadly speaking, its mandate is to identify and make recommendations to address systemic failings in Ontario's long-term care homes system that may have occurred in connection with the offences that Wettlaufer committed while working as a registered nurse in that system.

The Commission has scheduled Public Hearings to begin on June 5, 2018.

On January 18, 2018, I ruled on who had the right to participate in the Public Hearings (the "**Participants**").

Rules of Procedure for the Public Hearings were published on March 15, 2018. Rules 44-48 of the Rules of Procedure set out a process enabling Participants to bring procedural motions to resolve procedural issues related to the Public Hearings that have not been otherwise been settled with Commission counsel.

This motion is brought pursuant to Rules 44-48 of the Commission's Rules of Procedure.

II. The Moving Participant's Position on the Motion

The Moving Participant argues that the following factors militate in favour of compelling Wettlaufer to testify at the Public Hearings:

- a. She has shown an interest in being a productive part of the Inquiry and appears to be open to discussing the circumstances surrounding her offences;
- b. There would be much to learn from her cross-examination by the Participants;
- c. Wettlaufer's direct participation at the Public Hearings aligns with the Commission's articulated guiding principles of thoroughness, transparency and fairness, and would not detract from its other guiding principle of timeliness;
- d. The documents that Commission counsel will introduce at the Public Hearings relating to Wettlaufer provide insufficient detail on a number of issues on which the Inquiry is required to opine;
- e. Any disruption to the proceedings or sensationalism associated with Wettlaufer's proposed attendance comes from the nature of the offences themselves and not her attendance. Furthermore, the Inquiry has taken steps to ensure that coverage of the Public Hearings is done in a dignified manner;
- f. In the past, public inquiries in Ontario and elsewhere have called - or at least attempted to call - wrongdoers to testify at their Public Hearings;
- g. There is much that can be learned from hearing further from Wettlaufer, including on such matters as: staffing levels at the facilities and how they might have contributed to her offences; the location of where she worked in the facilities relative to others and how this assisted with her criminal intent; her interactions with the Coroner, hospitals, management and other staff members; the steps she took to conceal her offences; her substance abuse

- issues and her interactions with healthcare practitioners in 2006 about her addiction challenges; and
- h. Wettlaufer's testimony would enhance that of Prof. Crofts Yorker who is expected to give expert testimony in the Public Hearings.

III. Other Participants' Positions on the Motion

1. Those who support the Motion

Two Participants support the Moving Participant on the motion.

The first such Participant is the group of victims' family members consisting of Susan Horvath, Judy Millard, Stanley Millard, Sandra Millard, Shannon Emmerton, and Jeffrey Millard. This Participant explains its support for the motion as follows. Because Wettlaufer pleaded guilty to the criminal charges and no trial was conducted, her testimony was never tested through cross-examination. This Participant says it is necessary to bring Wettlaufer to testify at the Public Hearings so that the evidence in the criminal proceedings can be "fully examined for its validity and truthfulness".

The other Participant who supports the motion is the Ontario Association of Residents' Councils ("OARC"). OARC's support is based on public interest considerations. These considerations include the need for transparency in public inquiries and the need for the public to see that the Inquiry has conducted a thorough investigation. OARC says that even if oral testimony by Wettlaufer at the Public Hearings were to add nothing of evidentiary value, it would further these twin public policy interests.

2. Those who take no position on the Motion

Jon Matheson, Pat Houde, and Beverly Bertram, a group consisting of a victim and loved ones of a victim, also hold a single grant of participation. This Participant takes no position on the motion explaining that they do not wish to deny other victims and family members

their right to pursue the course of action that they believe best represents their individual interests. Having said that, this Participant also expressly recognizes the validity of Commission counsel's concern that bringing Wettlaufer to testify at the Public Hearings might be disruptive, including to some victims' families and their loved ones.

Caessant Care Nursing and Retirement Homes Limited, Caessant Care - Woodstock, and Jarlette Health Services and Meadow Park (London) Inc. o/a Meadow Park London Long-Term Care also take no position on the motion. They give the following explanation for their position. These Participants together brought their own procedural motion, one part of which relates to Wettlaufer. In the view of these Participants, that part of their motion relating to Wettlaufer provides a compromise position between that of the Moving Participant and Commission counsel in this motion. More information about these Participants' motion can be found in the ruling on it, issued concurrently with this ruling (the "**Companion Ruling**").

Other Participants who take no position on the motion are:

- College of Nurses of Ontario
- Her Majesty the Queen in right of Ontario
- Interfaith Social Assistance Reform Coalition
- Ontario Long Term Care Association
- Ontario Nurses' Association
- Registered Nurses' Association of Ontario
- Registered Practical Nurses Association of Ontario
- Revera Long Term Care Inc.

3. Those who oppose the Motion

Commission counsel oppose the motion.

Commission counsel began by acknowledging the validity of the Moving Participant's desire to cross-examine the person who killed their loved ones. However, they say that the evidence about Wettlaufer that they have provided to the Participants – and which they will tender at the Public Hearings so that the public also has it – is sufficient to show how she was able to carry out her offences and conceal them. Commission counsel also explained that after conducting an interview with Wettlaufer on February 14, 2018, they concluded that the disruption and sensation that would be caused by her appearance at the Public Hearings would outweigh the value of the limited additional information that might be obtained from her.

Further, Commission counsel rely on s. 5(b) of the Act, which stipulates that a commission shall ensure that its public inquiry is conducted, among other things, in accordance with the principle of proportionality. They stress that this Inquiry was not established to deal with Wettlaufer but, rather, to examine the systemic factors that may have allowed Wettlaufer to commit the offences. Accordingly, they submit that there is more to be gained in terms of understanding how the tragedies occurred by hearing evidence from those who worked with Wettlaufer, from the facilities themselves, and from those responsible for Wettlaufer's oversight. Commission counsel submit that when these considerations are properly weighed, calling Wettlaufer to testify at the Public Hearings offends the principle of proportionality.

Commission counsel also outlined the difficulties that would be involved in bringing Wettlaufer to the Public Hearings in Ontario, given that she is now incarcerated in Quebec.

IV. Analysis

I have carefully considered this matter and concluded against directing Commission counsel to compel Wettlaufer's attendance at the Public Hearings. In my view, whatever evidentiary benefit there might be from her testifying at the Public Hearings is significantly outweighed by the costs associated with her attendance.

In the reasons that follow, I will address the arguments advanced by those in support of the motion. Before doing so, however, it is important to appreciate the context within which I must decide this motion.

1. Contextual Considerations

The following four contextual considerations inform my decision.

a. The scope of the Inquiry

This Inquiry was not established to determine wrongdoing in the sense of finding out who killed and harmed the victims. By the time that this Inquiry was struck those things were known - Wettlaufer had confessed to the offences and, thereafter, been convicted of them and sentenced.

Rather, broadly speaking, this Inquiry was established to inquire into the systemic factors that may have allowed Wettlaufer to commit the offences. As stated in the fourth preamble of the OIC, I was appointed Commissioner “to identify and make recommendations to address systemic failings in Ontario’s long-term care homes system that may have occurred in connection with the Offences”.

b. The relevant legislative dictates

Section 5 of the Act sets out the duties of the Commission. The relevant part of s. 5 of the Act reads as follows:

5. A commission shall,

...

(b) ensure that its public inquiry is conducted effectively, expeditiously, and in accordance with the principle of proportionality.

Section 9 of the Act also bears on this motion and a proportionality analysis. The relevant provisions of s. 9 read as follows:

- 9.(1)** ... a commission shall, as much as practicable and appropriate, refer to and rely on,
- (a) any public transcript or record of any proceeding before any court or statutory tribunal;
 - ...
 - (f) any other document or information, if referral to and reliance on the document or information would promote the efficient and expeditious conduct of the public inquiry.
- (2)** A commission may rely on a record or report in lieu of calling of witnesses.

The Inquiry's obligation to rely on existing records, including those from the Wettlaufer criminal proceedings, is reinforced by para. 5 of the OIC, the relevant part of which reads as follows:

- 5.** The Commission shall, as much as practicable and appropriate, refer to and rely on the matters set out in section 9 of the *Public Inquiries Act, 2009*. In particular, the Commission shall review and consider any existing records or reports relevant to its mandate, including the court records of the Wettlaufer criminal proceedings, and other medical, professional and business records. ...

c. The evidence that will be introduced at the Public Hearings on Wettlaufer

Commission counsel have already provided the Participants with significant documentary evidence about Wettlaufer and the offences she committed. They intend to tender this evidence at the outset of the Public Hearings. Once admitted into evidence, the documents will be made available to the public at large.

The document that Commission counsel will tender into evidence is the 57-page Agreed Statement of Facts filed jointly by the Crown and defence at the guilty plea proceedings. Wettlaufer's lawyer signed this document, acknowledging its truth. So, too, did Elizabeth Wettlaufer herself. Among other things, the Agreed Statement of Fact sets out the fourteen victims and describes how Wettlaufer killed or harmed them.

Appendices A, C and D are attached to the Agreed Statement of Facts. Appendix A is Wettlaufer's handwritten confession in which she sets out details of the offences, how she committed them and what she was feeling at the time. Appendix B is a video of her police statements and is not included. However, Appendix C (which is included) is the 117-page transcript of those police statements. Appendix D is the Centre for Addiction and Mental Health Discharge Data report on Wettlaufer. It, too, is included.

d. The Public Hearings Schedule

The Public Hearings will provide the factual foundation for the Inquiry's recommendations. In order to serve this vital function, the Public Hearings must be finished sufficiently early in the Inquiry process that the results of those hearings can be used to develop recommendations and still allow the Inquiry to meet its deadline of July 31, 2019, for delivery of the Inquiry Report.

With this in mind, I allotted 10 weeks for the Public Hearings: the month of June (4 weeks), and 2 weeks in each of July, August, and September 2018. In those 10 weeks, four things must be achieved:

- i. Commission counsel must present the results of their investigations into the roles played by: the facilities and home care agencies; the office of the Chief Coroner and Chief Forensic Pathologist; the College of Nurses of Ontario; and the Ministry of Health and Long-Term Care and regulated home care services;

- ii. the 17 Participants (who have been assigned into groups) must complete, within the times allotted, cross-examination of Commission witnesses and examination-in-chief of their own witnesses;
- iii. expert and technical evidence must be led on some of the broader policy issues unearthed through the Commission investigations; and
- iv. the Participants must make their closing submissions.

In light of the time constraints, if Wettlaufer is compelled to appear and testify, it is highly likely that other evidence to be called at the Public Hearings would have to be curtailed.

2. A Consideration of the Arguments in Support of the Motion

I turn now to consider the arguments advanced in support of the motion. I will begin by addressing the arguments of the two Participants who support the motion and then turn to those advanced by the Moving Participant.

a. The Submissions of Participants other than the Moving Participant

In addition to the Moving Participant, two participants support the motion. I will deal with each of those participants' submissions, in turn.

It will be recalled that the first Participant who supported the motion did so based on this premise: Wettlaufer should be brought to testify at the Public Hearings so that the evidence in the criminal proceedings could be "fully examined for its validity and truthfulness".

This premise runs afoul of the collateral attack doctrine with the result that I do not accept it.

The collateral attack doctrine can be understood in this way. The documentary evidence about Wettlaufer comes from the criminal proceedings. The Crown, defence counsel and

Wettlaufer herself all consented to it and jointly asked the court that it be admitted into evidence. The court admitted the evidence and registered convictions based on it. The court also relied on that evidence to determine a fit sentence for Wettlaufer. The Public Hearings are not the venue through which the validity and truthfulness of the documentary evidence in question can be challenged. That kind of attack can be launched only in appropriate appeal proceedings against the convictions and/or sentence.

OARC was the other Participant who supported the motion. It will be recalled that OARC's support for the motion was based on public interest considerations, including the need for transparency and to demonstrate the thoroughness of Commission counsel's investigations.

I fully accept that public interest considerations must guide and inform my decision on this motion. However, I do not accept that transparency and thoroughness considerations dictate that Wettlaufer must be required to attend the Public Hearings and testify.

Transparency is the reason for my decision in the Companion Ruling. Commission counsel interviewed Wettlaufer in February of this year. That interview was transcribed and, as a result of the Companion Ruling, that transcript will be made available publicly. The Companion Ruling promotes transparency – the public will be able to see for themselves what questions were put to Wettlaufer by Commission counsel and what her replies are.

However, transparency does not demand that Wettlaufer be called to testify at the Public Hearings absent reasonable grounds to believe that her testimony would be of value. After reading the court records of the Wettlaufer criminal proceedings and the transcript of the later Wettlaufer interview by Commission counsel, in my view, there is little that would be gained from further questioning of Wettlaufer. Therefore, I do not have reasonable grounds to believe that Wettlaufer's testimony at the Public Hearings would be of evidentiary value beyond that provided by documents and records which will already be in evidence at the Public Hearings.

I would conclude on this point by observing that both s. 9 of the Act and para. 5 of the OIC are clear and explicit: the Commission is to rely on court records in lieu of calling witnesses as much as practicable and appropriate. In these circumstances, in my view, it is practicable and appropriate to rely on the court records of the Wettlaufer criminal proceedings, supplemented by the transcript of the later Wettlaufer interview by Commission counsel.

As for thoroughness, that must be measured in relation to two things: the scope of the Inquiry and the principle of proportionality. Both augur against calling Wettlaufer to testify.

In terms of the scope of the Inquiry, it must be remembered that the Inquiry was not established to deal with Wettlaufer. The criminal justice system has already performed that function with the result that she is now serving a life sentence in prison. The Inquiry was established to examine the systemic factors that may have allowed the offences to be committed. The existing documentary evidence on Wettlaufer tells us how she carried out the offences and how she concealed them. A consideration of the Inquiry's scope augurs in favour of time being spent at the Public Hearings on the evidence relating to the systemic factors that may have allowed the offences to be committed, not on Wettlaufer's views of those systemic factors.

As we have seen, s. 5 of the Act compels the commission to ensure that its public inquiry is conducted in accordance with the principle of proportionality. Proportionality necessarily entails a consideration of the costs and benefits of compelling Wettlaufer to attend and testify. As I have already explained, I see little evidentiary value in having Wettlaufer testify at the Public Hearings. On the other hand, I see very real costs associated with her attendance, including lost hearing time on the systemic factors that may have allowed the offences to be committed.

Section 9 of the Act is also relevant to the question of proportionality. It will be recalled that s. 9(1) of the Act requires the commission to (among other things) refer to and rely on, "as much as practicable and appropriate", public transcripts or records of court

proceedings, and any other documents or information, if referral to and reliance on the document or information would promote the efficient and expeditious conduct of the public inquiry. Section 9(2) expressly empowers the commission to rely on a record or report in lieu of calling witnesses. In short, s. 9 of the Act supports reliance on the existing documentary evidence rather than compelling Wettlaufer to testify at the Public Hearings.

In conclusion, while the public interest lies in favour of transparency and thoroughness in Inquiry proceedings, when those matters are being considered in the context of testimony to be compelled at the Public Hearings, they must be informed by the legislative dictates. When that is done, in my view it is clear that compelling Wettlaufer's attendance and testimony at the Public Hearings offends the principle of proportionality.

b. The Moving Participant's Submissions

The Moving Participant gave eight reasons for why Wettlaufer should be compelled to testify at the Public Hearings. For the convenience of those reading this ruling, I set out those eight reasons again here. After setting out each one, I will offer my response for why it does not warrant compelling Wettlaufer to attend at the Public Hearings.

- a. She has shown an interest in being a productive part of the Inquiry and appears to be open to discussing the circumstances surrounding her offences.

Analysis: This may be but, for the reasons already given, when considered within the scope of the Inquiry as established by the OIC, there are no reasonable grounds for believing that her testimony would be of evidentiary value beyond that provided by the court records that will already be in evidence at the Public Hearings.

- b. There would be much to learn from her cross-examination by the Participants.

Analysis: As I have explained above, the record does not support this.

c. Wettlaufer's direct participation at the Public Hearings aligns with the Commission's articulated guiding principles of thoroughness, transparency and fairness, and would not detract from its other guiding principle of timeliness.

Analysis: Again, as I explain above, these general principles must be considered within the specific context of the Public Hearings and measured against the proportionality principle mandated by the Act. I will not repeat my explanation, above, for why compelling Wettlaufer to attend and testify at the Public Hearings offends the proportionality principle. I would, however, add that it is very likely that if compelled to attend and testify, it would detract from the timeliness principle. In this regard, I harken back to the contextual considerations set out above in respect of the Public Hearings Schedule.

d. The documents Commission counsel will introduce at the Public Hearings relating to Wettlaufer provide insufficient detail on a number of issues on which the Inquiry is required to opine.

Analysis: Wettlaufer can offer little, if anything, of value on the systemic issues, which is the Inquiry's mandated focus. On the other hand, the evidence that Commission counsel has indicated it will lead on the systemic issues appears to be directly relevant to the systemic issues.

e. Any disruption to the proceedings or sensationalism associated with Wettlaufer's proposed attendance comes from the nature of offences themselves and not her attendance. Furthermore, the Inquiry has taken steps to ensure that coverage of the Public Hearings is done in a dignified manner.

Analysis: I will assume, for the purposes of this motion, that the Moving Participant is correct when it says that Wettlaufer's attendance at the Public Hearings would not be a source of disruption and sensationalism. However, as I explain above, a full consideration of the costs and benefits associated with her proposed attendance leads me to conclude that she should not be so

compelled. And, I would note, that consideration did not include the possibility of disruption and sensationalism.

f. In the past, public inquiries in Ontario and elsewhere have called - or at least attempted to call – wrongdoers to testify at their Public Hearings.

Analysis: This Inquiry is in a very different position than any other to date. In other public inquiries, alleged wrongdoers were called to testify in order for the Commissioner to make findings about what happened, when and how. To the best of my understanding, no past public inquiry has had the benefit of an undisputed court record that included such information.

In this Inquiry, there is no question who the wrongdoer is. Nor is there any dispute about how the offences were committed and what steps Wettlaufer took to avoid detection. The Agreed Statement of Facts from the criminal justice proceedings includes undisputed evidence on these matters. Wettlaufer's detailed confession, in conjunction with the Agreed Statement of Facts, offers unparalleled direct, uncontroverted evidence about her wrongdoing. All of the court records and other documentary information will be entered at the Public Hearings and, once entered into evidence, be made available to the public.

As well, other public inquiries may not have been subject to the directives of s. 9 of the Act. It will be recalled that s. 9(1) requires the Inquiry to refer to and rely on court records and transcripts, as much as practicable and appropriate. Section 9 (2) also exhorts the Inquiry to rely on records and reports in lieu of calling witnesses. Furthermore, para. 5 of the OIC repeats those directives.

g. There is much that can be learned from hearing further from Wettlaufer, including such things as: staffing levels at the facilities and how that might have contributed to her offences; the location of where she worked in the facilities relative to others and how this assisted with her criminal intent; her interactions with the Coroner, hospitals, management and other staff

members; the steps she took to conceal her offences; her substance abuse issues and her interactions with healthcare practitioners in 2006 about her addiction challenges.

Analysis: As I explain above, in my view there is little value in Wettlaufer's evidence on these matters. On the other hand, however, there is much to be gained from hearing from the relevant stakeholders on such matters.

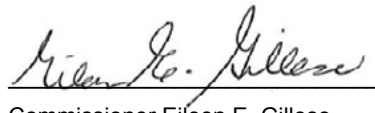
h. Wettlaufer's testimony would enhance that of Prof. Crofts Yorker who is expected to give expert testimony in the Public Hearings.

Analysis: At this point, I have not seen Prof. Crofts Yorker's expert report nor, to the best of my understanding, have the Participants. In its absence, I must confess that I do not understand how Wettlaufer's testimony could enhance Prof. Crofts Yorker's expert testimony on the phenomenon of health care serial killing.

V. Conclusion

It is for these reasons that I have concluded that whatever evidentiary benefit there might be from Wettlaufer's testimony at the Public Hearings is significantly outweighed by the costs associated with that attendance. Accordingly, I dismiss the motion.

Dated: May 29, 2018



Commissioner Eileen E. Gillese

Appendix AA – Ruling on a Procedural Motion [productions, redactions]

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese
Commissioner



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese
Commissaire

RULING ON A PROCEDURAL MOTION

APPEARANCE LIST

Caressant Care Nursing and Retirement Homes Limited and Caressant Care –
Woodstock, represented by David M. Golden

Jarlette Health Services and Meadow Park (London) Inc. o/a Meadow Park London
Long-Term Care, represented by Lisa Corrente

The Commission, represented by Mark Zigler, Liz Hewitt, Rebecca Jones, Megan
Stephens, Lara Kinkartz, and Lindsay Merrifield

(as a group) Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam
Silcox-Vanwyk, represented by Alex Van Kralingen, Katherine Chau and Mark Repath

AdvantAge Ontario – Advancing Senior Care, represented by Jared B. Schwartz

College of Nurses of Ontario, represented by Denise Cooney and Megan
Schwartzentruber

Her Majesty the Queen in right of Ontario, represented by Darrell Kloeze and Judith
Parker

Interfaith Social Assistance Reform Coalition, represented by Rabbi Schachter

Ontario Association of Residents' Councils, represented by Suzan Fraser and Jane
Meadus

Ontario Long Term Care Association, represented by Melanie Ouanounou

Ontario Nurses' Association, represented by Kate Hughes

Heard: May 23, 2018
Toronto, ON

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Commissioner Gillese:

This is a motion by Caressant Care Nursing and Retirement Homes Limited, Caressant Care - Woodstock, and Jarlette Health Services and Meadow Park (London) Inc. o/a Meadow Park London Long-Term Care (collectively, the “**Moving Participants**”). It is brought pursuant to Rules 44-48 of the Commission’s Rules of Procedure.

In this motion, the Moving Participants seek the following items of relief:

1. An order that the transcript of the interview with Elizabeth Wettlaufer (“EW”) by Commission counsel dated February 14, 2018 (the “**Transcript**”) be admitted into evidence at the Inquiry’s Public Hearings;
2. An order directing Commission counsel to redact certain materials from volumes 5 and 6 of the Facilities Overview Report and from volumes 3 and 4 of the Ministry Overview Report;
3. An order directing Commission counsel to include in the Ministry Overview Report additional facts pertaining to the Long-Term Care Homes Quality Inspection Program (“**LQIP**”) and the Risk & Priority Assessment Reports (“**LRPA**”); and
4. Such further and other relief as the Commissioner may deem just.

I. Background in Brief

Effective August 1, 2017, this Commission was established under the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, by Order in Council 1549/2017. Broadly speaking, its mandate is to identify and make recommendations to address systemic failings in Ontario’s long-term care homes system that may have occurred in connection with the offences that EW committed while working as a registered nurse in that system.

The Commission has scheduled Public Hearings to begin on June 5, 2018.

On January 18, 2018, I ruled on who had the right to participate in the Public Hearings (the “**Participants**”).

Rules of Procedure for the Public Hearings were published on March 15, 2018. Rules 44-48 of the Rules of Procedure set out a process enabling Participants to bring procedural motions to resolve procedural issues related to the Public Hearings that have not been otherwise been settled with Commission Counsel.

II. Other Participants’ Positions on Item 1 of the Relief Sought

On item 1 of the relief sought, the Ontario Association of Residents’ Councils and Her Majesty the Queen in right of Ontario support the Moving Participants.

On this item of relief, the following Participants take no position:

- (as a group) Jon Matheson, Pat Houde, and Beverly Bertram
- College of Nurses of Ontario
- Interfaith Social Assistance Reform Coalition
- Ontario Long Term Care Association
- Ontario Nurses’ Association
- Registered Nurses’ Association of Ontario
- Registered Practical Nurses Association of Ontario
- Revera Long Term Care Inc.

Commission Counsel has no objection to item 1, provided that no Participant objects to admission of the Transcript.

III. Items 2 and 3 of the Relief Sought – a Proposed Resolution

At the oral hearing of this motion, counsel for the Moving Participants advised that she had discussed items 2 and 3 of the relief sought with Commission counsel and counsel for Her Majesty the Queen and they had reached a proposed resolution, subject to my approval.

The proposal for resolving item 2 consists of two components:

- i. In the Facilities stage of the Public Hearings, the Facilities would be allotted an additional 3 hours of time, bringing the Facilities' total time allotment to 12 hours. The additional 3 hours of time would not be at the expense of the other Participants. It would be additional time, found either through an extra half hour of hearing time on 6 hearing days or by sitting for a half day on a Friday on which the Public Hearings would not otherwise have been held.
- ii. In the Ministry of Health and Long-Term Care stage of the Public Hearings, the Facilities would be allotted an additional 2 hours of time, bringing the Facilities' total time allotment to 6 hours. Again, the additional 2 hours would not be at the expense of the other Participants. It would be additional hearing time, likely made up through an extra half hour of hearing time on 4 days on which the Public Hearings are already scheduled to be held.

In relation to item 3, the proposed resolution is that counsel for the Moving Participants would work with Commission counsel and counsel for Her Majesty the Queen to prepare additional facts for inclusion in the Ministry Overview Report about the LRPA. I was advised that no special relief was needed in relation to LQIP.

On hearing these submissions, I asked the Participants in attendance if anyone had any objections or concerns about the proposed resolution of these items of the motion. No one indicated that they did. It should be noted that all Participants had notice of this motion.

IV. RULING

Item 1 of the Relief Sought

I make the order as requested, namely, that the Transcript be admitted into evidence at the Public Hearings. The principle of transparency underlies my decision.

The work of this Commission is guided by four principles: thoroughness, timeliness, transparency and fairness. The transparency principle is described as “the Inquiry proceedings and processes must be as open and available to the public as is reasonably possible”. (See, for example, my Opening Remarks at the Participation (Standing) Hearings on December 12, 2017, at St. Thomas, Ontario.)

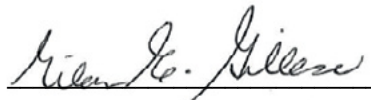
The Transcript is of the interview conducted by Commission counsel with Wettlaufer. As such, it was conducted as a part of the Inquiry process. In accordance with the principle of transparency, I therefore begin from the position that the Transcript should be made available to the public unless there is good reason for it to be treated as confidential. In my view, there is no such reason. The fact that no Participant objected to its admission lends support for my view.

All documents admitted into evidence at the Public Hearings will be made available to the public. Accordingly, by making the order as requested, the Transcript will become public, which accords with the transparency principle.

Items 2 and 3 of the Relief Sought

I see no basis on which to reject the proposed resolution. Indeed, I congratulate the relevant Participants for crafting a resolution to the perceived problem and for agreeing to work together to ensure that the information in question in the Overview Reports and given by witnesses is as accurate and complete as possible.

Dated: May 29, 2018



Commissioner Eileen E. Gillese

Appendix BB – Protocol for Calling and Examination of Witnesses

PROTOCOL FOR CALLING AND EXAMINATION OF WITNESSES AT LONG-TERM CARE INQUIRY

General Provisions

These provisions are intended to comply with and supplement the *Rules of Procedure* for the conduct of the Public Hearings as determined by the Commissioner and to assist counsel in the preparation, presentation and examination of witnesses.

Generally, each hearing day will involve 5.5 hours of hearing time. As contemplated, the Inquiry will be divided into four (4) stages after the first day of submissions and statements on Tuesday June 5, 2018. These four (4) stages are as follows:

- (a) **June 5 – June 28, 2018** (no sitting on Fridays except for June 8 and June 22) (total of 88 hours) – Facilities Stage
- (b) **July 16 – July 19, 2018** (total of 22 hours) – Coroners Stage
- (c) **July 24 – 27, 2018** (total of 22 hours) – College of Nurses Stage
- (d) **July 30 – August 10, 2018** (no hearings on August 6) (total of 49.5 hours) – Ministry of Health and Long-Term Care Stage

In addition to these stages for fact evidence, there will be hearings held September 12 – 14, 2018, in Toronto, ON, with respect to expert witnesses. Final submissions will take place September 24 – 27, 2018 (September 28, if necessary) at the Elgin County Courthouse in St. Thomas, ON. All participants shall file a written submission with the Commissioner by 4:00 PM on Thursday September 20, 2018. The procedure for Closing Submissions to be determined by the Commissioner.

Commission Counsel has estimated the total number of hours required for its witnesses in each phase. Below is the proposal for such hours and the hours available for cross-examination or examination-in-chief of Participants' witnesses. Should Participants determine that they require more time to address issues raised at the Hearing, they should speak to Commission Counsel to determine if an agreement can be reached. Otherwise, Participants may not exceed time allocations without the approval of the Commissioner or without exchanging some portion of their allocated time with other parties. Time usage will be monitored daily and Commission Counsel will advise parties of their usage of time.

Time allocation will not be to individual Participants but to groups of Participants using the following groups:

- (a) Victims' families

The three victims' family groups, represented by Harrison Pensa LLP, Van Kralingen & Keenberg LLP and Lerner LLP.

- (b) The facilities

CCW represented by Torkin Manes LLP, Meadow Park represented by Torkin Manes LLP and Revera represented by Faskens.

- (c) Her Majesty the Queen in Right of Ontario (“HMQ”)
Representing the Ministry of Health and Long-Term Care, the LHINS (and legacy CCACs), and the Coroners.
- (d) Resident and Not-for-Profit Associations
Interfaith Social Assistance Reform Coalition represented by Shalom Schachter, Ontario Association of Residents' Counsels represented by Fraser Advocacy and Jane Meadus.
- (e) Ontario Nurses' Association (ONA)
Represented by Cavalluzzo LLP.
- (f) College of Nurses of Ontario (CNO)
Represented by Cooper, Sandler, Shime & Bergman LLP and Paliare Roland Rosenberg Rothstein LLP.
- (g) Ontario Long-Term Care Association (OLTCA) and AdvantAGE
OLTCA represented by Goodmans, and AdvantAGE represented by Fogler Rubinoff LLP.
- (h) Professional Associations
Ontario Long-Term Care Clinicians – self-represented, Ontario Personal Support Workers Association – self-represented, Registered Nurses' Association represented by Henein Hutchison LLP and Registered Practical Nurses Association represented by Keyser Mason Ball LLP.

Where time is allocated to any one of the above-mentioned groups and there is more than one Participant in the group, the Participants' counsel or Contact Persons will have to determine how time is shared.

Generally all witnesses may be examined or cross-examined only by counsel. The Commission will provide a lawyer known as *amicus curiae* counsel (friend of the court) to assist any self-represented. Participants wishing to examine or cross-examine a particular witness if they so desire. Representatives of self-represented Participants who are not legal counsel may only examine or cross-examine a witness with leave of the Commissioner.

The order of cross-examination and approximate time for allocation of each witness will be determined by Commission Counsel with consultation of Participants who wish to cross-examine so that witnesses can be properly scheduled. Any disputes as to the order of cross-examinations will be resolved by the Commissioner. An anticipated list of witnesses for each week of hearing will be provided before the commencement of the week of hearing.

Cross-examiners may not repeat questions already asked. The Commissioner under the Rules reserves the right to limit examinations and cross-examinations.

Generally, once a witness is led by Commission Counsel, counsel for that witness may lead further evidence in chief on topics not yet covered by the witness, provided that the topics are

relevant and were disclosed in a statement of the witness's anticipated evidence. The order of cross-examination will be determined based on those who wish to cross-examine. Only Commission Counsel and counsel for the witness will have any right to re-examine (See Rule 57).

Specific Time Allocations per Segment of Hearing

1. Facilities Stage – total of 88 hours
 - Commission Counsel will require approximately 46 hours. All others collectively have 42 hours to be allocated as follows:
 - (i) Victims' Families (9 hours)
 - (ii) Facilities (9 hours)
 - (iii) HMQ (5 hours)
 - (iv) Resident and Not-for-Profit Associations (4 hours)
 - (v) ONA (5 hours)
 - (vi) CNO (4 hours)
 - (vii) OLTCA & AdvantAGE (4 hours)
 - (viii) Professional Associations (2 hours)

2. Coroners Stage – total of 22 hours
 - Commission Counsel will require approximately 11 hours. All others collectively have 11 hours to be allocated as follows:
 - (i) Victims' Families (2.5 hours)
 - (ii) Facilities (2 hours)
 - (iii) HMQ (2 hours)
 - (iv) Resident and Not-for-Profit Associations (1 hour)
 - (v) ONA (1 hour)
 - (vi) CNO (0.5 hour)
 - (vii) OLTCA & AdvantAGE (1 hour)
 - (viii) Professional Associations (0.5 hour)

3. College of Nurses Stage – total of 22 hours
 - Commission Counsel will require approximately 10 hours. All others collectively have 12 hours to be allocated as follows:
 - (i) Victims' Families (2 hours)
 - (ii) Facilities (2 hours)
 - (iii) HMQ (1 hours)
 - (iv) Resident and Not-for-Profit Associations (0.5 hour)
 - (v) ONA (2 hours)
 - (vi) CNO (3 hours)
 - (vii) OLTCA & AdvantAGE (0.5 hour)
 - (viii) Professional Associations (1 hour)

4. Ministry of Health and Long-Term Care Stage – total of 49 hours
 - Commission Counsel will require 29 hours. All others collectively have 20 hours to be allocated as follows:
 - (i) Victims' Families (2 hours)
 - (ii) Facilities (4 hours)
 - (iii) HMQ (5 hours)
 - (iv) Resident and Not-for-Profit Associations (2.5 hours)
 - (v) ONA (2 hours)
 - (vi) CNO (1 hour)
 - (vii) OLTCA & AdvantAGE (2.5 hours)
 - (viii) Professional Associations (1 hour)

5. Time Allocations for Experts – total of 17.5 hours
 - To be determined

6. Time Allocations for Submissions – total of 22.5 hours
- (i) Individual Statements by Family Members (1 hour)
 - (ii) All Others
 - (1) Victims' Families (3 hours)
 - (2) Facilities (4.5 hours)
 - (3) HMQ (3 hours)
 - (4) Resident and Not-for-Profit Associations (2 hours)
 - (5) ONA (2 hours)
 - (6) CNO (3 hours)
 - (7) OLTCA & AdvantAGE (2 hours)
 - (8) Professional Associations (2 hours)

Appendix CC – Protocol for Closing Submissions for Part 1

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese
Commissioner



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese
Commissaire

Protocol for Closing Submissions for Part 1

The protocol for closing submissions for Part 1 of the Inquiry process is as follows:

1. The Participants' written closing submissions shall be served on the Commission electronically, in both Word and .pdf formats, by 4:00 p.m. on Thursday, September 20, 2018. The Participants shall also serve copies on the Counsel and Contact Persons, electronically.
2. No particular form is required for the written closing submissions. However, we encourage the use of a format similar to that of a factum. Reference to the evidence should be by document number as well as by exhibit number. There is no need to attach transcripts or exhibits to your submissions.
3. Written closing submissions shall be a maximum length of 40 pages, double-spaced, including suggestions referred to in para. 5 below.
4. Written closing submissions will be posted on the Inquiry website by 4 p.m. on Friday, September 21, 2018.
5. As rule 65 of the Rules of Procedure provides, Participants are invited to include, as part of their written closing submissions, suggestions on how similar offences might be avoided in the future. Please include your suggestions in a separate section of your written closing submissions.

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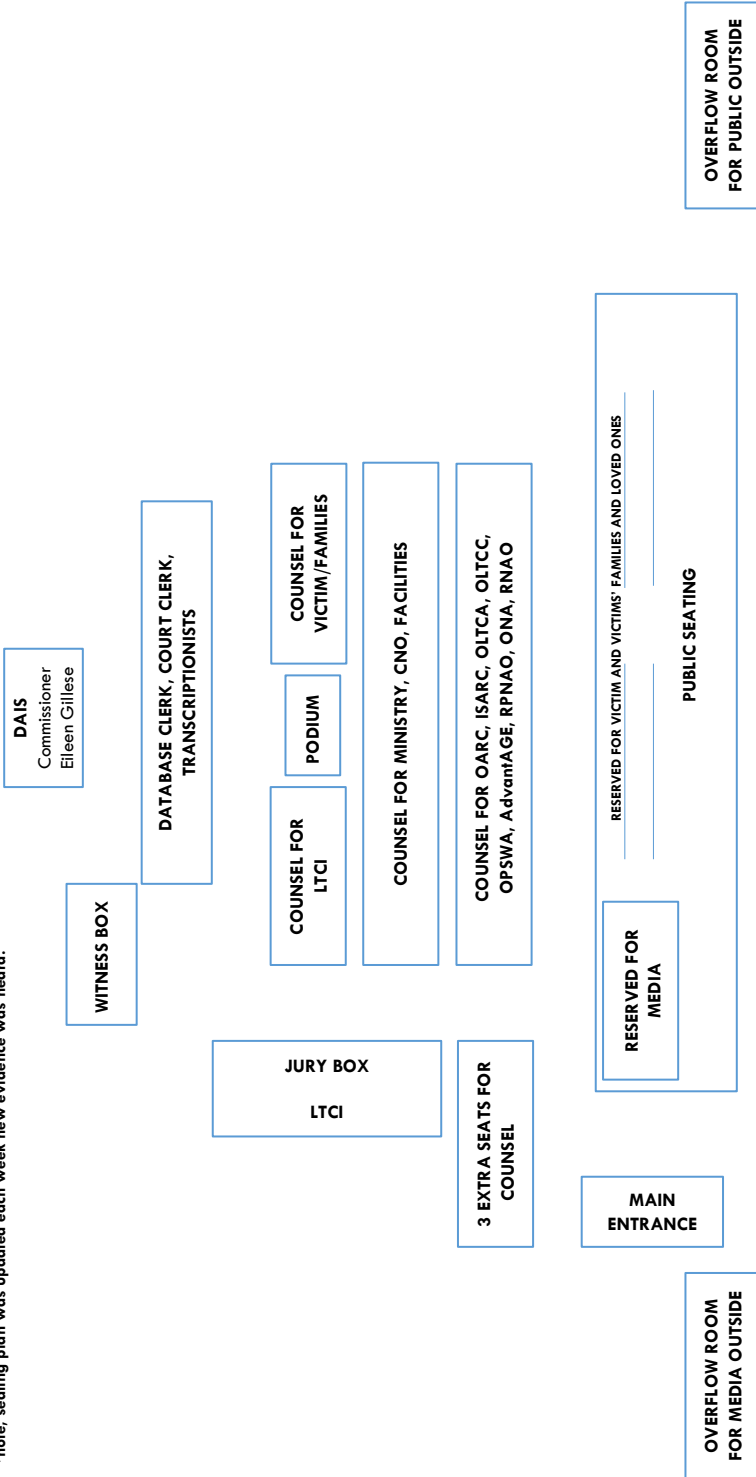
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6. Those Participants who provide the Commission with written closing submissions will be given the opportunity to make time-limited oral submissions, highlighting key points in their written submissions, in the week of September 24, 2018, at the Elgin County Courthouse in St. Thomas, Ontario, in accordance with the Time Allocations for Submissions given by Co-Lead Commission Counsel.
7. There will be no filing of “reply” or responding written submissions. Oral submissions are not intended to be an opportunity to raise new matters. Their primary function is to give the Participant the opportunity to highlight the key points made in the Participant’s written closing submissions. However, the Participant may comment on the written closing submissions of other Participants in oral closing submissions.

Appendix DD – Hearing Room Seating Plan

Hearing Room Seating Plan*

*note, seating plan was updated each week new evidence was heard.



Appendix EE – Newspaper advertisement for the Inquiry's Public Hearings

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

The Long-Term Care Home System Public Inquiry will hold its Public Hearings beginning Tuesday, June 5, 2018. **The public is welcome to attend.**

The Public Hearings will be held in Courtroom 201 of the Elgin County Courthouse, located at 4 Wellington Street in St. Thomas, Ontario.

The Public Hearings will take place during the weeks of June 5, 11, 18, 25, July 16, 23, 30, August 7 and September 24, 2018.

The public can attend in person or by watching the live daily webcast. The webcast will be accessible via the Inquiry website. Webcast recordings will remain available until the end of the Public Hearings.

For more information please visit www.longtermcareinquiry.ca.

L'Enquête publique sur la sécurité des résidents des foyers de soins de longue durée tiendra ses audiences publiques à compter du mardi 5 juin 2018. **Les audiences sont ouvertes au public.**

Les audiences publiques se dérouleront dans la salle d'audience 201 du palais de justice du comté d'Elgin, situé au 4, rue Wellington, à St. Thomas, Ontario.

Elles auront lieu au cours des semaines des 5, 11, 18 et 25 juin, des 16, 23 et 30 juillet, du 7 août et du 24 septembre 2018.

Le public peut assister aux audiences en personne ou les visionner par le biais de la diffusion quotidienne sur le Web. La diffusion sur le Web pourra être visionnée sur le site Web de l'Enquête. Les enregistrements des diffusions seront consultables jusqu'à la fin des audiences publiques.

Pour de plus amples renseignements, visitez le site Web de l'Enquête, au <http://longtermcareinquiry.ca/fr>.

Appendix FF – News Release – Inquiry’s Public Hearings to begin June 5, 2018



The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System to begin Public Hearings on Tuesday, June 5, 2018 Français

NEWS PROVIDED BY

The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System
08:00 ET

TORONTO, May 29, 2018 /CNW/ - The Honourable Justice Eileen E. Gillese, Commissioner of the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System, has announced that the Inquiry's Public Hearings will begin on Tuesday June 5, 2018.

The Public Hearings will be held in Courtroom 201 of the Elgin County Courthouse, 4 Wellington Street in St. Thomas.

The Public Hearings will take place during the weeks of June 4, 11, 18, 25, July 16, 23, 30, August 6 and September 24, 2018. Generally, the Public Hearings will run Monday to Thursday in any given week, the schedule will be updated regularly on the Inquiry's website www.longtermcareinquiry.ca

The Public Hearings will run from 9:30 a.m. to 1:00 p.m. and 2:00 p.m. to 4:30 p.m., with short morning and afternoon breaks.

A list of anticipated witnesses and anticipated areas of examination for the upcoming hearing week will be posted on the Inquiry's website the Friday before each hearing week.

The proceedings will be webcast live, webcast recordings will remain available until the end of the Public Hearings. The webcast will be accessible from the Inquiry homepage. The video feed will be available in the Inquiry’s media room which will also be equipped with WiFi. Transcripts of the daily proceedings will be posted on the website the following morning by 9:00 AM.

Photography inside the Courtroom is permitted only at the start of the Public Hearings through arrangements with Peter Rehak, the Inquiry’s Director of Communications and with the Commissioner’s leave.

The Long-Term Care Homes Public Inquiry was established on August 1, 2017, by Order in Council following Elizabeth Wettlaufer’s conviction of eight counts of first degree murder, four counts of attempted murder and two counts of aggravated assault; offences she committed while working as a registered nurse in Long-Term Care Homes.

The Inquiry’s mandate is to inquire into the events which led to the offences committed by Elizabeth Wettlaufer. Additionally, the Inquiry is directed to inquire into the circumstances and contributing factors allowing these events to occur, including the effect, if any, of relevant policies, procedures, practices and accountability and oversight mechanisms.

Order in Council

Additional information for media is available on the Inquiry’s website: www.longtermcareinquiry.ca

SOURCE The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

For further information: For media inquiries please contact Peter Rehak, Director of Communications at: 1-437-776-4123 or peter.rehak@longtermcareinquiry.ca; For substantive information requests please contact Mark Zigler, Co-Lead Commission Counsel at mzigler@kmlaw.ca

Organization Profile

The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

Appendix GG – Media Information for the Public Hearings

Public Inquiry into the Safety
and Security of Residents in the
Long-Term Care Homes System



Commission d'enquête publique
sur la sécurité des résidents des
foyers de soins de longue durée

Media Information for the Public Hearings

Purpose of the Public Hearings

- The Commission inquired into the events that led to Elizabeth Wettlaufer's offences and the surrounding conditions and circumstances that allowed those offences to occur. The Public Hearings are designed to present the results of these inquiries to the public and to give the Participants the opportunity to examine, challenge and add to these results.

Dates and Times of the Public Hearings

- The Public Hearings will take place during the weeks of June 5, 11, 18, 25, July 16, 23, 30, August 6 and September 24, 2018.
- **The first day of the Public Hearings is Tuesday, June 5, 2018.**
- Generally, the Public Hearings will run from Monday through Thursday in any given week. However, they will run on Friday June 8, 22, August 10, and may run on other Friday's.
- The hours of the Public Hearings are from 9:30 a.m. to 1:00 p.m. and from 2:00 p.m. to 4:30 p.m., with short morning and afternoon breaks. The hearings may run later than 4:30 p.m. to accommodate witnesses and the calling of evidence.

Location

- The Public Hearings will be held in Courtroom 201 of the Elgin County Courthouse, located at 4 Wellington Street in St. Thomas, Ontario.
- Courtroom 205 will be set up as a media room, and will be equipped with a simultaneous feed of the Public Hearings and wifi.

Anticipated Witnesses

- A list of anticipated witnesses for the upcoming hearing week, will generally be posted the Friday before each hearing week, beginning Friday, June 1, 2018.

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Please note that the witnesses called and the order in which they are called is subject to change without notice.

Exhibits

- Exhibits entered at the Public Hearings will be uploaded to the Inquiry website on a new webpage entitled “Exhibits.”
- Each morning of the Public Hearings, reporters will have access to USB keys containing the anticipated exhibits for the day’s proceedings. Reporters shall not make use of or refer to any exhibits unless and until they are admitted into evidence. At the end of each hearing day, reporters must permanently delete or destroy copies of exhibits that have not been entered into evidence.

Webcast

- The Public Hearings will be webcast live. Webcast recordings will remain available until the end of the Public Hearings.
- Beginning June 5, 2018, the webcast will be accessible via a link on the Inquiry homepage.
- Up to three cameras will be used in the Courtroom for webcasting – one focused on the witness, one focused on counsel, and one wide-angle shot.

Interviews

- The Commissioner, as a sitting Judge, does not give interviews. All questions are to be directed to Mark Zigler, Co-Lead Commission Counsel. Please contact Mark at: mzigler@kmlaw.ca.
- Witnesses are not to be interviewed until their testimony is completed.

Transcripts

- Transcripts of the daily proceedings will be posted on the website the following morning by 9:00 AM.
- Transcripts will be accessible via the Transcripts webpage.

Photography, Audio & Video Recording

- Photography inside the Courtroom is permitted only at the start of the Public Hearings through arrangements with Peter Rehak, the Inquiry’s Director of Communications and with the Commissioner’s leave. Thereafter, photography inside the Courtroom is only with the permission of the Commissioner.
- Photography elsewhere in the Courthouse is not permitted at any time.
- Audio and video recording is not permitted anywhere in the Courthouse, including the courtrooms.

Use of Electronic Communication Devices in the Hearing Room

- The use of electronic communication devices - all computers, personal electronic and digital devices, and all phones - is only permitted in the Hearing room in silent or vibrate mode.
- Talking on electronic communication devices is not permitted in the Courtroom while the Public Hearings are in session.

For more information please contact the Inquiry's Director of Communications, Peter Rehak at peter.rehak@longtermcareinquiry.ca or Commission Counsel, Rebecca Jones at rjones@litigate.com.

Appendix HH – Confidentiality Undertaking for Media

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese
Commissioner



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese
Commissaire

CONFIDENTIALITY UNDERTAKING FOR MEMBERS OF THE MEDIA

1. This Confidentiality Undertaking (the “**Undertaking**”) must be provided by any member of the media who wishes to have access to advance copies of documents the Long-Term Care Homes Public Inquiry (the “**Inquiry**”) anticipates will be filed as exhibits on any particular day of the Public Hearings (the “**Anticipated Exhibits**”).
2. I, _____ (print name), of _____ (name of media outlet), acknowledge and agree, as a condition of access to the Anticipated Exhibits, to treat the Anticipated Exhibits and their contents in accordance with the provisions of this Undertaking and to take or refrain from taking certain actions set out herein. I understand that certain Anticipated Exhibits are sensitive and include highly personal information. I understand that I am required by this Undertaking to keep the Anticipated Exhibits and their contents strictly confidential, that I must take whatever steps are reasonably necessary to keep the Anticipated Exhibits and their contents from

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being disclosed, and may only use the Anticipated Exhibits for their intended purpose.

3. Upon executing this Undertaking and providing a copy to the Inquiry, access to the daily Anticipated Exhibits may be provided to me each morning of the Public Hearings, at the sole discretion of Commission Counsel. Without limiting the generality of the strict duty of confidentiality, I undertake and agree to do the following:
 - a. I will maintain in strict confidence and ensure the physical security of the Anticipated Exhibits and their contents. I understand that this is a broad requirement that ensures I do not, through my actions or failure to act, cause the Anticipated Exhibits or their contents to become available to the public or unauthorized persons, either electronically or by any other means.
 - b. I understand that I am required to safeguard the Anticipated Exhibits and their contents at all times. Any Anticipated Exhibits kept on my office computer or any other computer or electronic device in my possession or control must be password protected with access restricted solely to me.
 - c. I will not print, disclose, release, publish, or share with any person the Anticipated Exhibits or their contents until such time as the Anticipated Exhibits are admitted into evidence at the Inquiry's Public Hearings, subject to the additional limitations contained in this Undertaking.
 - d. I understand that in certain cases, the Commissioner may admit an Anticipated Exhibit into evidence, subject to redactions being made (a

“**Redaction Order**”). Notwithstanding paragraph 3(c) above, I will not print, disclose, release, publish, or share with any person at any time the advance copies of Anticipated Exhibits that are subject to a Redaction Order or the information therein that is subject to the Redaction Order. In all such cases, I may print, disclose, release, publish, or share only the redacted versions that are posted on the Inquiry’s website after the Anticipated Exhibit is admitted into evidence (the “**Posted Version**”). In addition, I will not print, disclose, release, publish, or share any information that has been redacted from the Posted Version.

- e. In addition to the limitations imposed by this Undertaking, I will abide by all restrictions or limitations the Commissioner imposes on access, dissemination, or publication of Anticipated Exhibits and their contents.
- f. Subject to paragraphs 3(c) and (d) above, I will not make any additional copies of the Anticipated Exhibits in any form whatsoever.
- g. At the end of each day of the Public Hearings, I will delete and securely destroy:
 - i. my copy of any Anticipated Exhibits that were not admitted into evidence that day; and
 - ii. my copy of any Anticipated Exhibits that are subject to a Redaction Order.

For greater certainty, secure destruction requires permanent and irreversible deletion and destruction in a manner that ensures that the identity of individuals cannot be discerned and the records cannot be retrieved.

h. In the event that there has been unauthorized access to the Anticipated Exhibits, I am required to notify Commission Counsel immediately. I am required to take whatever steps are necessary to mitigate the risks of improper disclosure of the Anticipated Exhibits and their contents.

4. I have read this Undertaking and I agree and undertake to comply with these terms as a condition of receiving the Anticipated Exhibits.
5. I understand that any breach of any provision of this Undertaking is deemed to be a breach of an order made by the Commissioner.

DATED: _____, 2018

Signature

Date

Email address

Appendix II – Commissioner’s Opening Remarks at the Public Hearings (amended)

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese
Commissioner



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese
Commissaire

***AMENDED COMMISSIONER'S OPENING REMARKS AT THE PUBLIC HEARINGS**

* This amended version was delivered by the Commissioner on June 5, 2018, at the opening of the Public Hearings in St. Thomas, Ontario. It reflects two factual changes that occurred between the time the Commissioner wrote her Opening Remarks and the time she delivered them. First, rather than three groups of victims' family members and close friends in the role of Participants, there were two such groups. Second, the source documents referenced in the Overview Reports would not be available immediately on the website on the admission of the Overview Reports into evidence because those documents needed further review and possible redaction of private personal health and medical information.

INTRODUCTION

Mesdames et messieurs – bonjour/good morning and welcome to the Public Hearings for the Long-Term Care Homes Public Inquiry. As many of you know, my name is Eileen Gillese and I am the Inquiry's Commissioner.

Today marks the beginning of this Inquiry's Public Hearings. The Public Hearings are an important part of the Inquiry process in which we will hear evidence about the offences that Elizabeth Wettlaufer committed and the circumstances and contributing factors that may have allowed those offences to be committed.

I wish to begin my remarks this morning by welcoming the victims and their loved ones to the Public Hearings, many of whom are present here today. Others I know are attending

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by watching the webcast of these proceedings. I recognize the emotional toll that your participation in the work of the Inquiry must entail, and I thank you for your continued support and help. Two groups of you are represented by legal counsel and have the status of Participants. As Participants, your voices and concerns will be heard throughout the Public Hearings.

Please know that the Inquiry chose to hold the Public Hearings here in southwestern Ontario, where the offences were committed, so that you and those who live in the communities most directly affected by the offences can more easily attend the Public Hearings in person.

I would also like to welcome the other Participants and the members of the public who are attending the Public Hearings, either in person or by watching the webcast of these proceedings. Your support and interest in the work of the Inquiry is very important. I look forward to all Participants and their counsel introducing themselves later this morning.

My opening remarks today will last for about 20 minutes. In my remarks, I will discuss four matters:

1. the role of public inquiries generally;
2. what to expect in these Public Hearings;
3. access to the Public Hearings; and
4. a brief description of Part 2 of the Inquiry process.

I. THE ROLE OF PUBLIC INQUIRIES

Public inquiries are an important component of our Canadian democracy. They are established to investigate tragic events of substantial public interest. Public inquiries play an important role in fact finding, educating and informing the public about the tragic events, and making recommendations on how to prevent such events from happening again.

The notion of public accountability is critical to understanding the role of a public inquiry.

A public inquiry is not a trial. Its purpose is not to find fault in the legal sense or to require the wrongdoer or wrongdoers to make reparation. That is the job of the justice system. From a criminal justice perspective, that has already taken place. Elizabeth Wettlaufer pleaded guilty to the offences and is now serving a life sentence, in prison, for them.

Rather, public inquiries are established because of the need for public accountability. What is public accountability? It is the public's legitimate "right to know". In this case, public accountability is the right of the people of Ontario to know the answers to the following two questions (the "Questions"):

- a. What failings in our long-term care homes system could allow Elizabeth Wettlaufer to seriously harm or kill 13 residents in long-term care homes and attempt to kill a home care client in her own home, without detection, while working as a registered nurse?
- b. What can be done to prevent similar tragedies from happening again?

Public accountability is the reason that this Inquiry was established – to help provide the people of Ontario with answers to these Questions.

II. WHAT TO EXPECT IN THESE PUBLIC HEARINGS

It is not sufficient to offer answers to these Questions based on conjecture, half-truths, or assumptions. That is not a proper discharge of the obligation of public accountability. Public accountability demands that the answers are based on: (1) a thorough investigation of the tragic events and relevant surrounding circumstances by an independent third party; and (2) the public presentation of the results of those investigations.

Bearing in mind these Questions, I divided the work of the Inquiry into two parts. Part 1 consisted of the necessary investigations. It culminates in these Public Hearings. Part 2 is directed at fulfilling the Inquiry's obligation to make recommendations that will prevent or limit similar tragedies in the future. I will say something more about Part 2 later in these remarks.

In Part 1, the Commission legal team worked tirelessly to investigate the Wettlauffer offences and the surrounding circumstances and contributing factors that may have allowed them to occur. The Commission legal team reviewed over 41,000 documents produced in response to summonses or that were provided independently by the Participants. The team also interviewed experts and dozens of people.

The investigations focused on four areas:

- the investigation into the facilities and home-care agencies that employed Elizabeth Wettlauffer was led by Liz Hewitt, Senior Commission Counsel;
- the investigation into the Office of the Chief Coroner and the Ontario Forensic Pathology Service was led by Rebecca Jones, Commission Counsel;
- the investigation into the College of Nurses of Ontario was led by Rebecca Jones, Commission Counsel; and
- the investigation into the Ministry of Health and Long-Term Care and regulated home care services was led by Megan Stephens, Commission Counsel.

During the Public Hearings, the members of the Commission's legal team who led each of the four areas of investigation will present the results of those investigations. Naturally, the many months of work and hundreds of thousands of pages of documents cannot be presented in detail at the Public Hearings, or we would be here for years instead of the ten weeks allotted to hear evidence. For that reason, the Commission counsel legal team prepared detailed Overview Reports summarizing the key documentary evidence related to each of these four areas of investigation. In total, the Overview Reports amount to nearly 900 pages and refer to thousands of source documents. I expect that the Overview Reports will be tendered as evidence later this morning. Shortly after being admitted into

evidence, the documents will be posted on the Inquiry's website. However, the source documents that are referenced in the Overview Reports will not be available on the website at the same time the Overview Reports are posted because those documents need further review and possible redaction of private personal health and medical information.

The Commission legal team also compiled four Foundational Documents that will assist the public in understanding the events that occurred. The Foundational Documents are: the Agreed Statement of Facts from the criminal proceedings against Elizabeth Wettlaufer, including her handwritten, signed confession, transcripts of her interviews with the police, and her CAMH release document; the Reasons for Sentence after she was convicted; a Timeline showing the key events related to the offences; and, a Legislative Brief with the most relevant pieces of legislation and amendments for the time period in which the offences were committed.

I expect that the Foundational Documents will also be admitted into evidence today. Like all other exhibits admitted into evidence during the Public Hearings, the Foundational Documents will be posted on the Inquiry's website shortly after their admission so that the public has access to them.

The Public Hearings will run for the full month of June, two weeks in July, two weeks in August and two weeks in September, for a total of ten weeks. Two reasons underlie my decision to allow ten weeks for the Public Hearings.

First, s. 5 of the *Public Inquiries Act, 2009* requires, among other things, that the Inquiry be conducted effectively, expeditiously, and "in accordance with the principle of proportionality". Section 5 also requires the Inquiry to operate in a manner that is financially responsible and within its budget. This is a publicly funded process which means that there is a responsibility to the public to be thorough and fair, while still being efficient in terms of time and cost.

Second, it is necessary that the Public Hearings are finished early enough in the Inquiry process that there is sufficient time to develop recommendations and write the Inquiry's report by its July 31, 2019 deadline.

I recognize that the time allotted for the Public Hearings will necessarily constrain all those participating in them. Commission counsel will be required to lead their evidence efficiently, highlighting the most important parts of their investigations. I urge the public to look at the Overview Reports and the underlying source documents once they are posted on the Inquiry's website to see the full scope of the Commission's investigations. I also recognize the important role that the Public Hearings serve in allowing those whose decisions and actions are under scrutiny to challenge the investigative results and put forward their perspectives on how the offences could have been committed. This ensures that the public and I, as Commissioner, have the most complete understanding of what happened and that the evidence that is presented is balanced and fair.

Nonetheless, to ensure that the Public Hearings proceed expeditiously, each Participant has been given a time allotment for the Public Hearings. The evidence they wish to call and the questions they wish to ask of witnesses must be completed in that time. This will discipline everyone involved to focus on the most important evidence and ensure that the Public Hearings are completed within the time allotted for them.

I anticipate that I will finish hearing fact evidence here in St. Thomas in mid-August.

On September 12, 13 and 14, 2018, expert and technical evidence (the "Expert Evidence") will be heard in Toronto as part of the Public Hearings. This evidence will raise for consideration some of the broader policy issues unearthed through the Inquiry investigations and preliminary research.

Although the Expert Evidence week will be a continuation of the Public Hearings, it will be held in Toronto. You may wonder why the Expert Evidence week is being held in Toronto when the rest of the Public Hearings are being held in St. Thomas. As I explained

at the outset of these remarks, I felt that it was important to hold the Public Hearings in St. Thomas so that the people and communities most directly affected by the Wettlaufer offences could more easily attend the Public Hearings and hear the results of the investigations.

However, the Expert Evidence week is not primarily focused on fact-finding nor will it involve a presentation of the results of investigations. Instead, as I mentioned, it will allow experts and other professionals to give evidence about policy issues connected to the offences – things like serial killing in the health care setting and safe medication practices. After weighing all of the factors, I concluded that it was more financially responsible to hold the Expert Evidence week in Toronto. I hasten to add that just like the balance of the Public Hearings, the Expert Evidence week will be open to the public and it will be webcast. Further, the transcripts of the daily testimony will be posted on the Inquiry's website, as will all exhibits that are entered into evidence during the course of the Expert Evidence hearings. I expect those exhibits will include the reports prepared by the expert witnesses that Commission counsel retain.

The Public Hearings will resume here in the St. Thomas courthouse for the week of September 24, 2018. At that time, we will hear the closing submissions of the Participants and formally conclude Part 1 of the Inquiry's work.

I should make one point clear about the Public Hearings and that relates to the difference between my role and that of Commission counsel in terms of the investigations that have been done.

As Commissioner, I am charged with making findings and developing recommendations. Because of my role and duties as Commissioner, I did not perform any part of the investigations nor did I dictate in any way how they were to be performed. Commission counsel made those decisions and conducted the investigations. To prepare for these hearings, I received and reviewed the Overview Reports and the Foundational Documents. However, like the members of the public, I will hear and see the results of

Commission counsel's investigations and the evidence of the witnesses through the Public Hearings.

III. ACCESS TO THE PUBLIC HEARINGS

The Commission team is committed to showing the public the results of their investigations and to demonstrating that those investigations were performed thoroughly and fairly. These Public Hearings are key to discharging that public accountability responsibility.

Accordingly, the following measures have been taken to ensure that the public has access to the evidence presented at the Public Hearings:

- Members of the public are encouraged to attend the Public Hearings in person, here at the Elgin County Courthouse in St. Thomas. We have arranged for an overflow room at the courthouse in case the public seating in the main hearing room fills up. There will be a live feed of the Public Hearings broadcast into the overflow room.
- We have arranged for a separate media room at the courthouse, which is equipped with wifi and a live feed of the Public Hearings.
- A live webcast of the Public Hearings can be accessed through the Inquiry's website – www.longtermcareinquiry.ca
- The webcast page on the Inquiry's website will also allow viewers to watch the webcasts from previous days of the Public Hearings.
- Transcripts of each day of the Public Hearings will be posted on the Inquiry's website by 9:00 a.m. the next morning.
- All documents admitted into evidence at the Public Hearings, as exhibits, will be posted on the Inquiry's website. We will endeavour to do so by the morning following their admission; however, in some cases, documents admitted into evidence may contain sensitive personal health information. In those cases, there

may be a delay in posting the documents to allow time for redactions to be made to protect the privacy of the individuals involved.

- Each Friday preceding the weeks in which the Public Hearings are held, a list of anticipated witnesses for the upcoming hearing week will be posted on the Inquiry's website. For example, this past Friday, the list of anticipated witnesses for this week was posted on the Inquiry website.

IV. PART 2 OF THE INQUIRY PROCESS

As I explained earlier in these remarks, public inquiries are established to investigate tragic events of substantial public interest and to make recommendations on how to prevent such events from happening again.

Part 1 of this Inquiry, culminating in these Public Hearings, is the investigative stage of the process. It is backward-looking in nature, in that it inquires into the events that led to the offences and the circumstances and contributing factors that may have allowed them to be committed. Part 1 is designed to answer the first public accountability question, which I discussed earlier in these remarks.

Part 2 of the Inquiry process, on the other hand, is forward-looking in nature. Using the factual foundation established through Part 1, the goal of Part 2 is to develop practical, effective recommendations on how to prevent similar tragedies in the future. Part 2 of the Inquiry process is designed to answer the second public accountability question, which I also discussed earlier in these remarks.

The Inquiry's work in Part 2 will consist of research, consultations, recommendation-development, and report-writing. Individual and small group consultations will take place in October and November 2018. Those with whom consultations are held will be invited to a meeting in mid-November for a facilitated discussion about areas targeted for recommendations. There will be a plenary session in January 2019 to cap off the consultations and meetings.

I will be present at the consultations and meetings in the Part 2 process.

All of the Participants have been invited to participate in Part 2 of the Inquiry process. The Participants in the Public Hearings represent a full range of stakeholders in the long-term care homes system and regulated home care. Their participation in Part 2 will ensure that we continue to hear stakeholders' voices, concerns, and suggestions throughout the recommendation-development process.

The Participants have played a vital role in Part 1 of the Inquiry process and I look forward to the important role they will play in Part 2.

V. A HOUSEKEEPING NOTE

Before concluding these remarks, there is one housekeeping matter I should address. As I have explained, the Public Hearings are open to all members of the public. However, please be aware that no photography, audio, or video recordings are permitted in this courtroom. There is only one exception to this rule and that was for members of the media, who had permission to take photographs at the beginning of my remarks today.

VI. CONCLUSION

I wish to conclude my remarks by thanking various groups of people for their contributions to the work of the Inquiry to date.

I again offer my thanks to the victims and their loved ones for their continued support and participation. It cannot be easy.

Next, I wish to thank the Participants. You have played a significant role in the Inquiry's work to date and will continue to do so in Part 2. No matter what we have asked of you, you have come through. We asked for documents and you responded by giving us hundreds of thousands of pages of documents. We asked you, the Participants, for

information not captured in documents. You gave us interview time with the people best positioned to provide that information. We asked for your advice on all manner of things, including the Rules of Procedure for these Public Hearings and how to improve the evidence being tendered by Commission counsel. Again, you responded constructively and in a spirit of co-operation.

For those watching these proceedings, let me alert you to one thing, however. A spirit of co-operation is not the same thing as always “playing nice”. Over the course of the Public Hearings, you are likely to see tough questions being posed and differing points of view being advanced forcefully. Do not be dismayed by this. It is not a lack of co-operation. On the contrary, you need to know that I have expressly invited that form of involvement. It is a necessary and vital part of the process. Different Participants hold different perspectives about what happened. I need to know about those disagreements and the perspectives which underlie them – and, frankly, so do you. Respectful disagreement is one of the best tools we have for learning and understanding. Over the course of the Public Hearings I have no doubt that you will see the Participants doing exactly that. Thank you, Participants.

Next, I wish to acknowledge and thank the court staff here in St. Thomas. Thank you for allowing the Inquiry to conduct its hearings in this beautiful courthouse. Thank you also for all that you have done to bring the Public Hearings to fruition.

We are fortunate to have experienced people providing webcasting, web management, court reporting, and data management services. You play a key role in making these Public Hearings accessible to all who residents of Ontario, regardless of where they live. Thank you.

Finally, I want to publicly thank the entire Commission team. There is no better group of people to be found anywhere, beginning with our Executive Director, Andrea Barton, who has primary responsibility for the Inquiry’s operations. In a few moments, co-Lead Commission Counsel, Mark Zigler, will tell you more about the work of the Commission’s

legal team, whose members have spent the last ten months inquiring into the offences and the circumstances and conditions that may have allowed them to be committed. I am not exaggerating when I say that the amount of work that Commission counsel has performed would normally have taken years, not months. Given the number, magnitude and polycentric nature of the issues that had to be investigated, this alone is a testament to their unflagging commitment to the work of the Inquiry. I should also mention that while you will see various members of the legal team here at the Public Hearings, others remain back at our main office, working on the research component of Part 2 of the Inquiry. I thank them as well.

In addition, I thank the other members of the Inquiry support staff and our Director of Communications, who has been the point of contact for the media throughout this process.

Let me close these remarks with a quotation sent to me last week by an old friend. She knew I was working on getting ready for these Public Hearings and thought this quotation was apt. So do I and thus I share it with you:

“We can begin to heal, the moment we begin to feel heard.”

In many ways, this Inquiry is about healing – healing our broken trust in the long-term care homes system. I most sincerely hope that through these Public Hearings, the Ontario public begins to feel heard – and, therefore, begins to heal.

Merci pour votre attention. Thank you so much for your kind attention.

Commissioner Eileen E. Gillese

June 5, 2018

Appendix JJ – Public Hearings – Witness Appearance List

Public Hearings – Witness Appearance List

Facilities and Agencies (weeks of June 5, 11, 18, 25, 2018)

Brenda Van Quaethem	June 6, 2018
Helen Crombez	June 7, 2018
Karen Routledge	June 12, 2018
Wendy MacKnott	June 13, 2018
Heidi Wilmot-Smith	June 13, 2018
Agatha Krawczyk	June 14, 2018
Brenda Black	June 14, 2018
Laura Long	June 18, 2018
Heather Nicholas	June 19, 2018
Melanie Smith	June 20, 2018
Wanda Sanginesi	June 20, 2018
Jill Allingham	June 21, 2018
Robert Vanderheyden	June 22, 2018
John McDonald	June 22, 2018
Richard Reddick	June 22, 2018
Joanne Polkiewicz	June 22, 2018
Vasilki (Lia) McInnes (by affidavit)	June 22, 2108
Felina Cabrera (by affidavit)	June 22, 2018
Cassidy Pizarro (by affidavit)	June 22, 2018
Robyn Laycock	June 25, 2018

Jonathan Lu	June 25, 2018
Diane Beauregard	June 25, 2018
Tracy Raney	June 25, 2018
Tanya Adams	June 25, 2018
Dian Shannon	June 26, 2018
Sherri Toleff	June 26, 2018
Michelle Cornelissen	June 26, 2018
Carol Hepting	June 27, 2018
Tamara Condy	June 27, 2018
Laura Jackson (by affidavit)	June 27, 2018
Patricia Malone	June 28, 2018

Office of the Chief Coroner and Ontario Forensic Pathology Service (week of July 16, 2018)

Noelle Kelly (by affidavit)	July 16, 2018
Dr. Dirk Huyer	July 16, 2018
Dr. G. Richard Mann	July 17, 2018
Dianne Crawford (by affidavit)	July 23, 2018
Dr. Michael Pollanen	July 23, 2018

College of Nurses of Ontario (week of July 23)

Anne Coghlan	July 24, 2018
Karen Yee	July 27, 2018

The Ministry of Health and Long-Term Care and Publicly Funded Home Care Services (weeks of July 30, August 7, 2018)

Karen Simpson	July 30, 2018
Rhonda Kukoly	August 1, 2018
Natalie Moroney	August 2, 2018
Lisa Vink	August 3, 2018
Aislinn McNally	August 7, 2018
Phillip Moorman	August 7, 2018
Karen Fairchild	August 7, 2018
Karen Mitchell	August 8, 2018
Donna Ladouceur	August 8, 2018
Steven Carswell	August 9, 2018

Expert and Technical Evidence (September 12, 13, 14, 2018)

Beatrice Crofts Yorker	September 12, 2018
Julie Greenall	September 13, 2018
Dr. Michael Hillmer	September 14, 2018

Appendix KK – Commissioner's Closing Remarks at the Public Hearings

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese
Commissioner



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese
Commissaire

Commissioner's Closing Remarks at the Public Hearings

Today marks the end of the Inquiry's Public Hearings. I cannot let it pass without recognizing and thanking the people who have enabled the Public Hearings to fulfill their important role in the Inquiry process.

After that, I will briefly explain what the Inquiry will do between now and the summer of 2019 when I will deliver my Report to the government of Ontario.

MY THANKS TO:

1. The victim and groups of victims' loved ones

Earlier this week I thanked the victim, and victims' family members and loved ones, for their continuing support and assistance with the Inquiry. I will not repeat myself except to say this: your loss and grief is not in vain. I am confident that it will serve as the catalyst for real and lasting improvements in the care and safety of all those in long-term care homes or who receive publicly funded healthcare in their homes.

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2. The St. Thomas court staff

Next, I want to thank the wonderful people who work here in the St. Thomas courthouse.

When this Inquiry was called in August of 2017, I knew it was important that the Public Hearings take place in southwestern Ontario, close to the communities where these devastating offences were committed. I wanted to be sure that those most closely affected by the offences could attend the Hearings if they wished.

This beautiful St. Thomas courthouse immediately came to mind. Its facilities are second to none in the province for running a proceeding like the Public Hearings.

We all know that the people who work in a building are as important as the facility itself – and, indeed, often more so. The people in the St. Thomas courthouse are also second to none in the province.

When the Inquiry asked the Regional Senior Justice for southwestern Ontario for permission to use the St. Thomas courthouse, he was immediately supportive and paved the way for the Public Hearings to be held here. There have been two Local Administrative Justices at the St. Thomas courthouse in the time that the Inquiry has been using the facility – both have gone out of their way to make sure that we had all the help we needed. Thank you both.

And the staff in the courthouse have been nothing short of wonderful. They have worked long days and evenings, without complaint, to keep the Hearings running smoothly – all in addition to their other regular duties.

Thank you all for your kindness, your professionalism, and your commitment to the work of the Inquiry.

3. The Witnesses

I echo Mr. Zigler's thanks to the witnesses who testified in the Public Hearings. It took enormous courage to come into this courtroom and give your testimony – to face not only those in the room but also all those who were watching the webcast.

Please know that your testimony was a very important part of the Public Hearings process. I applaud your courage and again thank you for your assistance with the work of the Inquiry.

4. The Participants and their Counsel

You, the Participants and their counsel, played a vital part in ensuring that the Public Hearings fulfilled its role. Thank you.

Your contribution to the work of the Inquiry started months before the Public Hearings. We asked you for documents - you produced tens of thousands of them for Commission Counsel's review. You helped Commission counsel so that they could interview scores of witnesses. And, since June 5th when these Public Hearings began, you have worked day and night to meet the deadlines I imposed. That sounds like an exaggeration – it is not.

Many of you were here throughout the daily Hearings, listening closely to all of the testimony. Then, through cross-examination, you challenged and tested the results of the Inquiry's investigations, with the result that all of us

and the public at large have an improved understanding of the long-term care homes system and what happened in respect of the Offences.

What many people may not know is that after sitting all day in the Hearings, your work continued through the evenings and, often, deep into the night and on the weekends. You had to review witness affidavits and prepare to cross-examine those witnesses. You also had to determine what documents you would put to the witnesses and see that those documents got to all the right people – in accordance with strict deadlines.

Apart from the long hours that you worked, I know the work itself has not been easy. The subject matter of the Inquiry has been difficult and emotional. The guilt and pain of many of the witnesses from whom we heard touched us all.

I also recognize that you had to work to deadlines that must have seemed at times to be unattainable. I take full responsibility for that – *mea culpa*. But you have all risen to that challenge and this Inquiry completed its Public Hearings on schedule. I am told that is something of a rare phenomenon in Canada and you receive much of the credit for that achievement.

Back in December at the Participation Hearings, I expressed the hope and expectation that all of those given the opportunity to participate would cooperate with one another and with Commission Counsel. You have done that in spades.

I thank you for all of these things. I end my thanks to you where I began: you played a vital part in ensuring that the Public Hearings fulfilled its role. You should be justifiably proud of your contribution. I am.

I must also extend my thanks to your families because I know your work for the Inquiry meant that you were not home for much of the last 6 months.

5. Those Behind the Scenes

If a Public Hearing is to fulfill its important role in the Inquiry process, all of the people of Ontario must be able to follow it. To that end, the Commission: ensured that there was sufficient space for the public to attend the Public Hearings in person; had a live webcast of the Hearings available through the Inquiry website; posted transcripts of each day's Hearings on the Inquiry website by 9:00 a.m. the following day; and posted all documents admitted into evidence at the Public Hearings, as exhibits, on the website by the morning following their admission.

It took three groups of dedicated and capable people to make those things happen. And they did. Every single day of the Public Hearings, over the course of 4 months without fail, for both the Public Hearings conducted here in St. Thomas and for the Public Hearings devoted to expert and technical evidence conducted in Toronto.

I thank you all for your hard work which has allowed the public to follow the Hearings or catch up afterwards.

Sight and Sound Design made the webcast happen, each and every day of the Public Hearings. Thank you, Sight and Sound Design.

Neesons Reporting Inc. made the transcripts happen. The Neesons transcriptionists produced a transcript of every word of every day of the

Public Hearings – and had the transcript up on our website by the following day. Thank you, diligent reporters from Neesons Reporting Inc.

Commonwealth Legal and Christina Shiels-Singh made the data management happen. Commonwealth Legal was on the scene daily at the Public Hearings to manage the tens of thousands of documents in the database that they created for the Inquiry. Christina Shiels-Singh oversaw and co-ordinated the data management work to ensure that all data and evidence was properly stored, shared, and made available electronically.

Thank you, Christina and Commonwealth Legal.

6. The Commission Team

Next, I must thank the Commission counsel who were tasked with investigating one or more areas within the LTCH system, creation of the related Overview Report, and presentation of the evidence (the results of their investigations) at the Public Hearings. I won't repeat the magnitude of that task except to note that those investigations led to the creation of a document database of tens of thousands of documents – some 400,000 pages of documents - and included interviews with hundreds of people.

We are all indebted to Commission counsel for the excellence with which they performed those tasks. We are all indebted to them for “shining a light” on the many facets of the LTCH system and the provision of in home publicly funded health care.

But I must tell you that the Commission Team is truly a Team. As you can well imagine, doing all the work necessary to complete the Public Hearings

within tight time deadlines, required more than the lead investigators. So I thank the less visible members of the Inquiry Team who helped our lead investigators make the Public Hearings happen. I know how hard you have worked – thank you.

I also want to thank the members of the Commission Team working on part 2 of the Inquiry's work. We often had to call on you to help those of us immersed in the Public Hearings. Moreover, you played an invaluable role in bringing to fruition the Expert and Technical evidence phase of the Public Hearings. Thank you.

7. The Public

Finally, I want to thank the many members of the public who have been following the work of the Inquiry. Members of my staff have reached out to various people with experience and expertise who are not one of the Participants. To a person, each has responded, offering the benefit of their expertise and experience.

As well, many members of the public have heeded my repeated calls to provide the Inquiry with their input. Over the course of the past year, we have heard from members of the public who shared their experiences about working in the LTCH system. Others have written to share with us stories involving their loved ones and their experiences with not only LTC homes in Ontario but also related types of facilities. Yet others offered their views on how the LTC sector could be improved to avoid tragedies like the one that brought us here – but also to more generally restore dignity to our aging Ontarians.

You, the public, have given the Inquiry team an important contextual backdrop that will inform our work, particularly as we move forward in part 2 of the Inquiry. Thank you all for taking the time to provide us with your stories and suggestions.

NEXT STEPS

I will now briefly discuss the next steps in the Inquiry process. I will begin with a brief explanation for the public. I will then address some remarks to the Participants, each of whom is participating in part 2 of the Inquiry's work.

To the public, you may be asking yourself this question: now that the Public Hearings are over and it is the end of September, why on earth is the Report not going to be delivered until the end of July 2019? Certainly that question has been posed to me more than once in the last few days!

Part 1 of the Inquiry culminated in the Public Hearings. Part 2 of the Inquiry will culminate in the presentation of my Report, in both official languages, to the government of Ontario. The Report must include the results of the Inquiry investigations and workable recommendations on what can be done to prevent tragedies similar to those perpetrated by Elizabeth Wettlaufer from ever being repeated.

How will the Report get written?

First, there is the daunting task of sorting out how to render in writing the massive amount of information discovered through part 1.

Second, there is research. What can we learn from other parts of Canada and the world in respect of long-term care and the possibility of healthcare workers intentionally harming that vulnerable population?

Third, and very importantly, the Inquiry must follow a process by which it develops and tests possible recommendations. That is the consultation process which begins next week. Over the course of October and early November, I and other members of the Inquiry team will meet to hear from individual stakeholders, and others in the LTCH system and the provision of publicly funded home care, to canvas areas we have identified as the source of possible recommendations.

Using the information gained through the consultations, the Inquiry will prepare draft recommendations and then take those draft recommendations back for further consultation, this time with the stakeholders as a group.

And, of course, the drafting of the Report will continue throughout this process. The testing and refinement of the draft recommendations will continue with a final consultation taking place in late January. Which will, of course, require further revision to the Report to ensure that the proper foundation for the recommendations has been laid.

The Report will be finalized and then it will be translated into French. After that, it will need to be produced and printed. It is only then that a copy of the Report, in both official languages, will be presented to the government of Ontario.

So, while it may seem like there is much time between now and the presentation of the Report in the summer of 2019, trust me when I say that is not my perspective!

I promised you, the Participants, more information about the consultations. With the exception of the consultations next week, each of you will receive a consultation package at least one week in advance of our consultation with you. Those with whom I am consulting next week will receive their consultation package early in the week.

The consultation package begins by setting out a summary of the propositions on which the Inquiry is basing its recommendations. Two parts follow. The first part is the same for all consultation packages and all consultations. It briefly describes four systemic responses the Inquiry envisages with a series of propositions/questions for discussion. The second part of the consultation package is unique to the person or group with whom we are consulting. It will contain a list of areas for discussion that may lead to recommendations specific to that stakeholder.

Here is an important message about the consultations. It will be clear from the consultation package the direction in which the Inquiry is headed on any particular matter. I do not anticipate doing a lot of talking in the consultations. I want to hear from you. The Participants have experience and expertise in the LTCH system and/or the provision of publicly funded home care. I respect their experience and expertise. I also need it, if I am to craft recommendations that are workable and effective. So I will be listening far more than I will be talking in the consultations.

I know that I can count on you, the Participants, to demonstrate the same cooperative spirit you have displayed throughout Part 1. Working together is the best assurance that when the Report is delivered next July, it will

contain recommendations that will restore public trust in the LTCH sector and homecare services.

Thank you for your kind attention. Thank you for all you have done to make the Public Hearings fulfill its important role in the work of the Inquiry.

Commissioner Eileen E Gillese

September 26, 2018

Appendix LL – Ruling on a Motion Requesting the Issuance of Summonses

Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese
Commissioner



Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese
Commissaire

RULING ON A MOTION requesting the issuance of summonses

Heard in writing: March 19, 2019 (date of release)
Toronto, ON

Commissioner Gillese:

I. Overview

This is a ruling on a motion dated February 26, 2019 (the **Motion**), brought by the Ontario Association of Residents' Councils (**OARC**).

In the Motion, OARC asks that, as Commissioner, I:

1. issue a summons to each of the Woodstock Police Service, the London Police Service, and the Ontario Provincial Police (**OPP**), for information relating to disclosures made by Elizabeth Wettlaufer regarding the harming of residents and/or patients in her care, which are not outlined in Exhibit 1 produced in the Inquiry's Public Hearings (**Public Hearings**); and

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2. produce the information obtained by the summonses to the groups and individuals granted the right to participate in the Public Hearings (the **Participants**).

For the reasons that follow, I dismiss the Motion.

II. Background to the Motion

To understand the Motion and the issues it raises, some background information is essential. For that reason, I will begin by briefly outlining the facts leading to the Motion.

In the fall of 2016, Wettlaufer, then a registered nurse, confessed to having harmed or killed 14 people while she was providing them with nursing care in long-term care (**LTC**) homes or in their private home (the **Offences**). She said she committed the Offences by injecting her victims with overdoses of insulin. Police investigations followed her confession.

In early June 2017, Wettlaufer pleaded guilty to, and was convicted of, the Offences. Later that month, Wettlaufer was sentenced to life imprisonment for the Offences. Through Order in Council 1549/2017 (the **OIC**), the government of Ontario established this Public Inquiry, and named me its Commissioner, effective August 1, 2017. Broadly speaking, the OIC provides that the Commission is to inquire into the Offences and that, as Commissioner, I am to make recommendations to address systemic failings in Ontario's LTC homes system that may have occurred in connection with the Offences. The OIC establishes July 31, 2019, as the deadline for delivery of the Inquiry's final Report to the government, in hard copy and electronically, in both official languages.

The Commission conducted thorough investigations into the events that led to the Offences. The results of those investigations were made public through the Public Hearings held between June and September 2018.

In October and November 2018, as part of the process for developing the required recommendations, I engaged in extensive consultations with the Participants and other

stakeholders in Ontario's LTC system to canvass areas that were the source of possible recommendations.

On January 5, 2018, the Commission was told that Wettlaufer had recently disclosed to correctional staff at the Grand Valley Institution for Women (where she was imprisoned) that she had attempted to harm two other residents in LTC (the **New Statement**), and that police investigations into the alleged further wrongdoing were underway.

One resident has since been publicly identified as Florence Beedall, but the second resident's name has never been made public.

I took no steps in relation to the New Statement because paragraph 3 of the OIC expressly prohibits that. Paragraph 3 requires me, as Commissioner, to "ensure that the conduct of the Inquiry **does not in any way interfere or conflict with any ongoing investigation** or legal proceeding related to these matters" (emphasis added). To have so much as acknowledged publicly that the New Statement had been made would have been a breach of that prohibition.

In December 2018, the Commission learned that the police investigation into the New Statement was complete and that no further charges would be laid against Wettlaufer. Shortly thereafter, the media reported on the fact that the New Statement had been made.

On February 4, 2019, I held a teleconference with the Participants, setting out what information the Commission had been given about the New Statement and when. I explained that the Commission had never been given documentary disclosure of the police investigation relating to the New Statement. I further explained why neither the Commission nor I had taken any action in relation to the New Statement.

Also in early February 2019, the Participants learned that Ms. Beedall's daughter had begun legal proceedings in November 2018, in which she sought disclosure of the relevant police records from the London Police Services Board. In those proceedings, the

London Police Services Board filed motion materials that included a redacted general occurrence report of the London Police Service relating to its investigation arising from the New Statement. This document is now in the public realm. The motion material also revealed that three police services had been involved in the investigation: the London Police Service, the Woodstock Police Service, and the OPP.

OARC wishes to see the relevant records of those three police services and brought this Motion asking that I compel their production through the issuance of summonses.

III. Who Took What Position on the Motion

The Participants and Commission counsel took the following positions on OARC's Motion.

The Ontario Nurses' Association (**ONA**) supports the Motion.

Caressant Care Nursing and Retirement Homes Limited and Caressant Care (Woodstock) (collectively **Caressant Care**) oppose the Motion.

Jarlette Health Services and Meadow Park (London) Inc. (collectively **Jarlette**) oppose the Motion.

Commission counsel oppose the motion.

Her Majesty the Queen (**Ontario**) represents several provincial entities, including the OPP. Ontario does not state its position on whether I should grant the Motion. However, it takes a position on the relief to be granted, if I were to issue a summons. Its submissions are directed at protecting the confidential information in the requested materials.

The following Participants took no position on the Motion:

- The group of victims' family members and loved ones comprised of Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, Adam Silcox-Vanwyk, Shannon Lee Emmerton, Jeffrey Millard, Judy Millard, Sandra Lee Millard, Stanley Henry Millard, and Susie Horvath;
- The group of victims' family members and a victim comprised of Jon Matheson, Pat Houde, and Beverly Bertram;
- AdvantAge Ontario;
- College of Nurses of Ontario;
- Ontario Long-Term Care Association;
- Ontario Personal Support Workers Association;
- Revera Long Term Care Inc.;
- Registered Nurses' Association of Ontario; and
- Registered Practical Nurses Association of Ontario.

Two other Participants – the Ontario Long Term Care Clinicians and the Interfaith Social Assistance Reform Coalition – did not advise of their positions on the Motion. Because they did not file submissions or otherwise participate on the Motion, I have assumed that that they take no position on it.

For ease of reference, I will refer to those who took positions on the Motion as the **Parties**.

IV. The Process for Hearing the Motion

Rules of Procedure (the **Rules**) governed the Public Hearings. The Rules were established following a formal consultation process with the Participants.

The Rules set out a process for hearing procedural motions in advance of the Public Hearings (rules 44-48). They also allow for the possibility of motions being brought during the Public Hearings themselves (rule 10). The Rules do not allow for motions to be brought after the conclusion of the Public Hearings.

The Motion was brought months after the Public Hearings had concluded. The Inquiry's public consultations had also concluded some months earlier. The bringing of a motion at this late point in the Inquiry was not contemplated by the established Inquiry process or by the Rules.

In the circumstances, I attempted to follow, as much as possible, the process in the Rules for the hearing of procedural motions. Accordingly, by letter to the Participants dated February 28, 2019 (the **First Letter**), I informed them of the following process for the hearing of the Motion:

- Participants were to file written submissions on the Motion, along with any documentation or case law on which they intended to rely, by noon on March 8, 2019;
- Commission counsel were to advise all Participants of their position on the Motion, in writing, by 4:00 p.m. on March 11, 2019;
- Any Participants wishing to respond to the submissions of the other Participants or the position of Commission counsel were to do so in writing, by 4:00 p.m. on March 12, 2019;
- Any Participants wishing to speak to the Motion were to inform the Inquiry's Executive Director by noon on March 13, 2019; and
- Oral argument on the Motion would be heard on March 14, 2019.

Counsel for OARC then advised that they were unavailable to argue the Motion on March 14, 2019, or otherwise that week. They suggested that oral argument on the Motion be scheduled for the week of March 18th. However, counsel for other Participants indicated that they were unavailable that week. As a result, the earliest possible date for oral argument on the Motion would have been in the last week of March 2019.

As I explain above, written copies of the Inquiry's final Report, in both official languages, must be delivered to the Ontario government by July 31, 2019. To meet that deadline, it was imperative that the Motion be heard and decided promptly. Accordingly, by letter

dated March 1, 2019, I advised the Participants that the Motion would be heard in writing only; the time for the Participants' response submissions was extended by one day, to March 13, 2019; and, in all other regards, the directions in the First Letter remained unchanged.

V. The Parties' Positions

A. OARC – the Moving Party

OARC's overarching submission is that compelling production of the police records is within the Commission's mandate and also in the public interest. Relying on *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97, at paras. 62-65, OARC submits that obtaining the requested documents and putting them in the public domain would serve both an investigative and social function for the benefit of the public.

OARC says that the documents it seeks are relevant to the Inquiry's mandate. It notes that in the New Statement, Wettlaufer is said to have disclosed that she injected Ms. Beedall with insulin just hours before she murdered Arpad Horvath and that this information is relevant to the "circumstances leading to the Offences." OARC submits that the Commission's mandate should not be narrowly confined to only the Offences of which Wettlaufer was convicted, particularly since the Public Hearings focused on a range of Wettlaufer's conduct, including her emotional abuse of residents, her provision of incompetent care, and her suspected theft of medication.

OARC submits that I have the power to compel the requested documents, even though the Public Hearings have concluded, whereas the Participants have no power to compel the information. OARC cites sections 4-7 and 9 of the OIC; sections 5, 9, and 10 of the

Public Inquiries Act, 2009, S.O. 2009, c. 33, sched. 6 (the **PIA 2009**); and the Rules, in support of this submission.

Further, OARC argues that obtaining the information would serve the purpose of the Inquiry because it would allow the Commission and the Participants to make an informed decision about what bearing the information has on the Inquiry. If, upon reviewing it, Participants feel the information is relevant, OARC says they should have the opportunity to make submissions about what further steps should be taken. Alternatively, OARC suggests that Commission counsel could prepare a summary of the information or I could ask the investigating police forces to report to me. It submits that any of these approaches would fulfil the Inquiry's investigative and social functions.

OARC acknowledges that some of Ms. Beedall's family members have expressed concern about the media and public interest in their mother's death but says that, while an important consideration, it cannot be determinative.

OARC contends that a similar situation arose in the Elliot Lake Public Inquiry where, nine months after the completion of the public hearings, a report was anonymously provided to the Commission. The existence of the report had not been previously disclosed to the Commission. Commissioner Bélanger made a procedural order, directing the Ontario government to serve submissions related to the report. Following receipt of those submissions, the participants were entitled to submit responses. Four of the participants did so. The Commissioner reported his conclusions about the report in an addendum in his final report.

Finally, OARC submits that procedural fairness favours obtaining the documents and producing them to the Participants. It says that the Inquiry cannot make an informed choice on how to proceed without the information and that to do nothing will leave the impression that the harm described in the New Statement is being overlooked, concealed, or ignored. It submits that an incremental approach to evaluating the new information will

allow the Commission and the Participants to make a meaningful assessment of the documents and will serve the Inquiry's functions.

B. ONA – supporting the Motion

ONA makes three key submissions in support of the Motion.

First, it says the information sought on the Motion is highly relevant and falls within the Inquiry's mandate, and that failing to obtain and disclose it would be inconsistent with Commission counsel's approach to the evidence it led in the Public Hearings.

Second, ONA recognizes that the information came to light late in the Inquiry process but observes that, at a much earlier stage in the process, Commission counsel and counsel for at least one of the homes were aware that the New Statement had been made and was the subject-matter of a police investigation. It submits that the information sought on the Motion should be provided to the Participants and that the Participants be given the opportunity to amend their written closing submissions, which they delivered at the end of the Public Hearings. ONA also suggests that the information should be given to the experts who testified at the Public Hearings so that they can determine whether it would change their testimony.

Third, ONA submits that for there to be public confidence in the work of the Inquiry, it must obtain and review this additional information.

C. Caressant Care and Jarlette – opposing the Motion

Caressant Care and Jarlette filed a joint submission in which they oppose the Motion.

As a preliminary issue, they submit that OARC's inclusion of the London Police Services Board records (the **Records**) in the Motion materials is contrary to the order of Justice Garson, dated February 5, 2019, made in the legal proceedings started by Ms. Beedall's

daughter. That order stipulates that the Records shall be used only by the parties directly involved in that litigation and for the purposes of the civil proceeding.

Apart from this preliminary issue, Caessant Care and Jarlette give six reasons for opposing the Motion. They submit:

1. the relief sought on the Motion is outside the scope of the Inquiry's mandate, which was to inquire into the Offences to which Wettlaufer pled guilty and for which she was convicted;
2. there is an absence of a foundation for the possible new crimes. No charges have been laid against Wettlaufer based on the New Statement and the Inquiry is not the venue through which the validity and truthfulness of the information in the New Statement can be determined;
3. granting the relief sought would not advance the Inquiry. The existing evidentiary record shows how Wettlaufer carried out her crimes, how she concealed them, and how systemic factors may have allowed those events to occur;
4. granting the relief sought would delay the Inquiry. Producing documents regarding new unproven allegations would trigger a fairness obligation to allow the Participants to investigate the allegations by re-interviewing witnesses, conducting fresh document searches, introducing fresh evidence, and amending their closing submissions. This course of action would significantly and needlessly delay the completion of the final Report and the implementation of its recommendations in circumstances where there is already a strong evidentiary record that was thoroughly tested through the Public Hearings;
5. granting the Motion would prejudice those Participants and witnesses who have found the Inquiry process to be stressful and emotional. These individuals have taken comfort in knowing that their participation is over, and it would be unfair

to re-immense them in it. Further, it would unfairly focus attention on the homes in which the unproven allegations are said to have occurred, without providing a context or mechanism for exploring the events and depriving the homes of the opportunity to defend against speculation and criticism; and

6. granting the relief sought would offend the principle of proportionality in section 5 of the PIA 2009. There is little, if any, value in disclosing to the Participants documents related to fresh unproven allegations. On the other hand, re-opening the Inquiry to investigate fresh unproven allegations would threaten the integrity of the Inquiry process, delay the delivery of the final Report, and result in considerable prejudice to the homes and many of the witnesses in the Public Hearings.

D. Commission Counsel – opposing the Motion

Commission counsel submit that the principle of proportionality is inconsistent with the relief requested and requires that the Motion be dismissed.

Section 5 of the PIA 2009 requires the public inquiry to be conducted “effectively, expeditiously, and in accordance with the principle of proportionality”. Commission counsel says this means that I must exercise care in deciding whether to allow for further examination of issues related to the Commission’s mandate, by ensuring the issues to be investigated are reasonably relevant to the subject matter of the Inquiry and will advance the Inquiry sufficiently to warrant allocating time and resources to their pursuit. In making this submission, Commission counsel rely on E. Ratushny, *The Conduct of Public Inquiries: Law, Policy and Practice* (Toronto: Irwin Law, 2009), at p. 203.

Commission counsel contend there is little to be gained from a consideration of the police investigation materials and much to be lost by the associated delays in receiving them. They raise cautions about the value of the materials, noting that the information in them

has not been tested in any legal proceedings and no new charges have been laid as a result of it. They point out that I could not make findings of fact based on the materials, and that procedural fairness concerns would require the materials to be subjected to the same process as the evidence gathered in the investigative phase of the Commission's work. This raises the possibility that the Public Hearings would have to be re-opened. Opening the door to a potentially time-consuming process must be balanced against a consideration of what value might be added by the requested information, above and beyond what the Inquiry has already learned through its investigations.

Commission counsel say that neither OARC nor ONA has demonstrated how the requested materials would advance the Inquiry. While the information is not clearly irrelevant to the work of the Inquiry, it is removed from the Inquiry's core mandate which is the circumstances and contributing factors relating to the Offences for which Wettlaufer was convicted. A solid evidentiary record exists on which to base my recommendations, and all relevant systemic factors have been examined. When the information sought on the Motion is viewed against the evidence already vetted and produced to the public, Commission counsel say it is apparent that the requested information will not advance the Inquiry or change the factual foundation on which my recommendations rest. However, the delays associated with granting the Motion could prevent the Report from being released by the deadline.

Commission counsel also say that public confidence would not be enhanced by granting the Motion. Rather, they submit, it would be shaken by a disproportionate response to Wettlaufer's unproven disclosures, particularly since it could prevent a timely release of recommendations based on an already ample evidentiary foundation. They take issue with OARC's suggestions that refusing to grant the Motion could undermine public confidence by conveying to the public that the Commission is "not interested" in the lives of others who may have been harmed by Wettlaufer or that the Inquiry's report is more important than its social function. They say that these suggestions are unwarranted and that the timely release of the Report, with its recommendations aimed at preventing a recurrence of tragic events, is one of the Inquiry's core social functions, and is urgently

needed to address the systemic failings that allowed Wettlaufer to commit her crimes. Further, they say that the Report's timely release is essential to helping restore public trust in the long-term care system.

E. Ontario – submissions on the relief sought in the Motion

Ontario advises that the materials requested on the Motion are all in the OPP's possession so if the Motion were to be granted, only one summons, served on the OPP, would be required.

Ontario takes no position on the relevance of the requested materials but says that they contain personal health information and confidential personal information that must be protected. It observes that the OIC gives me the power to impose conditions on the disclosure of information to protect its confidentiality and also requires that I work to maintain and ensure the confidentiality of personal health information.

Ontario points to OARC's Notice of Motion, which refers to harm to two other residents. It notes that the name of only one affected resident is in the public record. Ontario says that the family of the unnamed resident asked police to keep their identities, and that of the unnamed resident, out of the media and free from any association with Wettlaufer. Ontario says that the family has been able to maintain their anonymity thus far.

In the circumstances, Ontario submits that if I were to issue summonses, I should permit the OPP to first redact the name and identity of the unnamed resident and his or her family members, and any other information that might identify them. If I were inclined to order the release of the police records without redactions, Ontario submits that the family of the unnamed resident should be given notice of that order and the opportunity to make submissions regarding the release of information that might identify them.

As well, if the Motion is granted, Ontario asks that, before releasing the police records to the Commission, it be allowed to redact the records to remove personal health information, any other identifying information, and any privileged communications.

VI. Analysis

The issues raised on this Motion can be addressed by answering the following four questions:

1. Do I have the power to grant the relief requested on the Motion?
2. Is the information requested on the Motion relevant?
3. What approach should I use in deciding the Motion?
4. Using that approach, how ought the Motion to be decided?

1. Power to grant the requested relief

OARC submits that I have the power to grant the relief sought on the Motion, even at this point in the Inquiry process. There was no serious contest on this point. In light of sections 8 and 10 of the PIA 2009 and paragraph 9 of the OIC, I accept OARC's submission. I point particularly to section 10(1)(b), which provides that a commission may serve a summons requiring a person to produce for the public inquiry any information, document or thing under the person's power or control.

2. Relevance of the requested information

For the purposes of this Motion, I accept that the information OARC seeks to obtain is relevant, albeit not directly connected to the Inquiry's mandate.

The Inquiry's mandate is tied to the Offences. The Offences are defined in the OIC as the eight counts of first degree murder, four counts of attempted murder, and two counts of

aggravated assault to which Wettlaufer pled guilty and was convicted on June 1, 2017. Paragraph 2 of the OIC sets out the Commission's mandate, directing it to inquire into the Offences and surrounding circumstances which allowed the Offences to occur.

The requested information relates to police investigations, not to the Offences within the meaning of the OIC. However, the police investigations were into acts allegedly committed by Wettlaufer against residents in LTC homes and at least one of the alleged acts of wrongdoing is proximate in time and location to one of the Offences. When determining relevancy for the purposes of this Motion, I would not construe it so narrowly as to exclude the requested information.

3. The Approach to be used in Deciding the Motion

a. A Preliminary Matter

As a preliminary matter, I will address OARC's suggestion that I should follow the approach taken in the Elliot Lake Public Inquiry to late-disclosed material. Because the relevant facts in the Elliot Lake Public Inquiry are so different from those in this case, I do not find its approach to be of assistance in deciding this Motion.

The Elliot Lake Public Inquiry was established following the collapse of a portion of the rooftop parking deck of the Algo Centre Mall in Elliot Lake. The collapse sent tons of concrete, mangled steel, drywall, glass, and one vehicle crashing down, killing two people and injuring nineteen others.

On May 8, 2014, more than nine months after hearing closing submissions in its public hearings, the Commission received an anonymous letter along with a 1988 report, in both English and French, entitled *Deterioration of parking structures* (the **1988 Report**). The 1988 Report had not been produced during the Commission's investigations despite the fact that, as Commissioner Bélanger found, "many participants in the Inquiry had been

involved in its preparation almost three decades before”. (Page 30 of the Report of the Elliot Lake Commission of Inquiry, Executive Summary) (the **Executive Summary**).

The 1988 Report is described at page 28 of the Executive Summary as follows:

The Advisory Committee on the Deterioration, Repair and Maintenance of Parking Garages was formed in November 1986 by the former Ministry of Housing. Leading Ontario specialists were asked to address the deterioration of the existing provincial stock of approximately 3,000 parking structures – chloride-induced damage estimated to be worth about \$1 billion at that time. The goal was to provide a comprehensive repair and restoration program by 1992 which was “affordable, effective and enforceable”.

Commissioner Bélanger issued a Procedural Order seeking confirmation of the 1988 Report’s authenticity and information about government actions taken in response to it. The Ontario government and four other participants provided submissions. In its submission, the Ontario government confirmed the authenticity of the 1988 Report. It also outlined the steps it had taken, following the Report’s publication, to amend the regulations for the design and construction of new buildings, disseminate the amendments, and participate in research studies and projects.

At page 30 of the Executive Summary, Commissioner Bélanger states that the 1988 Report discusses issues that “go to the very heart of the Algo Mall’s existence and tragic demise” and said that early knowledge of the content of the 1988 Report would have affected the Commission’s approach to its mandate.

The requested information on this Motion is very different from that in the 1988 Report. The 1988 Report had been in the public domain for over 25 years when it was produced to the Commission. It was the work of “leading Ontario specialists” and its authenticity was easily and readily verified. Further, the validity of the contents of the 1988 Report was not disputed – it led to amendments being made to the regulations governing the

design and construction of new buildings in Ontario. Moreover, the information in the 1988 Report went to the issues “at the very heart” of the Elliot Lake Public Inquiry.

Unlike the information in the 1988 Report, which was in Commissioner Bélanger’s hands, the requested information is not in my hands and it would not be a quick process to obtain it. As Ontario’s submission makes plain, before the requested documents could be released to the Commission, they would have to be reviewed and redactions made, a process that in this Inquiry has typically taken months. Moreover, as I explain above, the requested information is not directly relevant to the core Inquiry mandate. Further, the requested information on the Motion is untested and no charges have been laid arising from it. Unlike the information in the 1988 Report, I could not accept the requested information at face value. I could not rely on it for fact finding purposes or the making of recommendations without following a process that would both test its validity and meet procedural fairness considerations.

b. Section 5 of the PIA 2009

This Inquiry was established pursuant to the PIA 2009 and the OIC. Paragraph 2 of the OIC sets out the Commission’s mandate; it begins with these words, “Having regard to section 5 of the *Public Inquiries Act, 2009*”. In my view, the provisions in section 5 of the PIA 2009 apply to all aspects of the conduct of this Inquiry, including this Motion.

Section 5 reads as follows:

- 5.** A commission shall,
- a) conduct its public inquiry faithfully, honestly and impartially in accordance with its terms of reference;
 - b) ensure that its public inquiry is conducted effectively, expeditiously, and in accordance with the principle of proportionality; and
 - c) ensure that it is financially responsible and operates within its budget.

Of the provisions in section 5, those in section 5(b) are the most relevant for the purpose of deciding the Motion. Therefore, the approach to be taken in deciding the Motion is to consider what effect granting the Motion would have on my duty to ensure that the Inquiry is conducted “effectively, expeditiously, and in accordance with the principle of proportionality”.

4. Deciding the Motion

Below I consider the effects of granting the Motion on each of the three components in section 5. While there are considerations cutting both ways in respect of my duty to ensure that the Inquiry is conducted effectively, granting the Motion would clearly be contrary to my obligations to conduct the Inquiry expeditiously and in accordance with the principle of proportionality. Accordingly, I would dismiss the Motion.

Effectively

The word “effectively” in section of 5(b) of the PIA 2009 is not defined. For the purpose of the Motion, in my opinion, it would encompass public interest considerations such as those raised in the Parties’ submissions. Those considerations cut both ways.

OARC and ONA point to the public interest in demonstrating, to the public, that the Inquiry did not overlook, conceal, or ignore any harm alleged to have been perpetrated by Wettlaufer. Further, there is strength in their contention that for there to be public confidence in the work of the Inquiry, the requested police records must be obtained and placed in the public domain.

Commission counsel, on the other hand, contend that the public interest is best served by dismissing the Motion because granting it will interfere with the Report’s timely release, for which there is already an ample evidentiary foundation. They say that the timely release of the Report, with its recommendations aimed at preventing a re-occurrence of

similar tragedies, is one of the Inquiry's core social functions and urgently needed to address the systemic failings that allowed Wettlaufer to commit the Offences.

Expediently

Granting the Motion would not be expeditious: it would delay the release of the final Report by many months. A consideration of the following two factors show why.

First, for the reasons given by Ontario in its submission, before the requested police records could be delivered to the Commission, Ontario would have to review them and make the necessary redactions to protect personal health information and confidential personal information. As well, Ontario would have to be given sufficient time to review the records to determine whether they contain privileged communications. Further, because disclosure of the police records would *prima facie* have an impact on the anonymity of the unidentified resident and his or her family, fairness considerations dictate that they be given notice of any proposed disclosure of those records, along with the opportunity to make submissions regarding the release of information that might identify them.

Second, the New Statement contains unproven allegations on which no new charges were laid. Consequently, for the information contained in the police records to be of value to the Inquiry, the validity of that information would have to be determined. A jurisdictional hurdle may preclude me from making factual findings necessary for that determination. Paragraph 3 of the OIC provides that I am to perform my duties "without expressing any conclusion ... regarding the **potential** civil or criminal liability of any person" (emphasis added).

Assuming that the Inquiry is an appropriate and available venue for determining the validity of the information, procedural fairness would require that the information be subjected to the same type of process as that used for the evidence gathered during the investigative phase of the Commission's work – meaning more document searches, more

interviews and re-interviews of witnesses, and providing the Participants with the opportunity to raise concerns about the new information. In effect, it would require that I re-open the Public Hearings.

Proportionality

The PIA 2009 gives no definition for the term “the principle of proportionality” used in section 5. For the purpose of the Motion, in my view, the proportionality principle requires me to weigh the benefit to the Inquiry from receiving the police records against the costs that would ensue as a result of receiving them.

In terms of benefit, apart from the arguable value to the public interest discussed above, there is none. The records contain the results of the police investigations, from which no new charges arose. The information in the records is untested by any legal proceeding and I cannot use them to make findings of fact or as the basis for recommendations.

In terms of costs, I have already explained the delay that would occur before the records could be produced to the Inquiry because of obligations to, among other things, protect personal health information and confidential personal information. I have also described the delays that would be involved in establishing the validity of the information in the police records (even presupposing that the Inquiry could meet the jurisdictional hurdle to engaging in that process). Thus, receipt of the police records would also threaten the integrity of the Inquiry process.

In addition, there is a human cost to delaying the completion of the Inquiry for those Participants and witnesses who have found the Inquiry process stressful and emotional. There is also a very real cost to the public in delaying release of the final Report, given that its findings and recommendations carry the prospect of change to the LTC system. All of these costs must be considered in light of the existing solid evidentiary record which

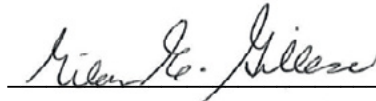
shows how Wettlaufer carried out the Offences and how systemic factors may have allowed them to have been committed.

When I consider the limited, and speculative, benefit to the public interest in receiving the requested police records against the known costs associated with that course of action, section 5 compels me to dismiss the Motion.

VII. Disposition

For these reasons, the Motion is dismissed.

Dated: March 19, 2019

A handwritten signature in cursive script, reading "Eileen E. Gillese", written over a horizontal line.

The Honourable Eileen E. Gillese
Commissioner

Commissioner and Inquiry Staff

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