



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 Leners 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, Leners LLP found that it had to remove itself from the record. Mr. Van Kralingen agreed that he would represent those previously represented by Leners 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's LLP, the Van Kralingen Group had been granted initial funding of \$80,000. The initial grant of \$80,000 for the Lerner's 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.

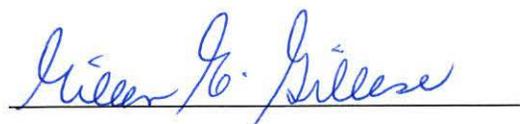
7. CONCLUSION

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

A handwritten signature in blue ink, reading "Eileen E. Gillese", is written over a horizontal line.

Commissioner Eileen E. Gillese