

**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 AT THE PUBLIC HEARINGS

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 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. Three 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

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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 Wettklaufer 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 Wettklaufer 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 and the bulk of the source documents to which they refer will be tendered as evidence later this morning. Shortly after being admitted into evidence, the documents will be posted on the Inquiry's website.

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