



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:

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 RAO 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