



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:

- 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.