



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:

- 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 Wettlaufer 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 Schwartzenruber 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. Caressant Care Nursing and Retirement Homes Limited
7. Caressant 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) Caressant Care Nursing and Retirement Homes Limited and Caressant 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