



## **RULES OF PROCEDURE FOR THE PUBLIC HEARINGS**

### **I. GENERAL**

1. On June 1, 2017, Elizabeth Wettlaufer was convicted of serious criminal offences that she committed while working, as a registered nurse, in various facilities in the Ontario long-term care homes system (the “Offences”).
2. By Order in Council 1549/2017 (the “OIC”), the Long-Term Care Homes Public Inquiry (the “Commission”) was established and directed to, among other things, inquire into the events leading to the Offences and the circumstances and contributing factors allowing the events to occur.
3. Paragraph 6 of the OIC authorizes the Commission to hold public hearings (“Public Hearings”) as necessary to fulfill its mandate.
4. The Commission has announced its intention to hold Public Hearings beginning in June 2018 at the Elgin County Courthouse in St. Thomas, Ontario.
5. In the Ruling on Participation released on January 18, 2018, the Commissioner set out who can participate in the Public Hearings (the “Participants”).
6. Subject to the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6 (the “Act”) and the OIC, the Commission has the power to control its own processes and make rules governing its practice and procedure.

7. The Commissioner consulted with the Participants about the Rules of Procedure that will apply at the Commission's Public Hearings. On February 1, 2018, she provided the Participants with electronic copies of draft Rules of Procedure (the "draft Rules") and invited them to provide her with written comments and suggestions on the draft Rules by February 15, 2018.
8. After duly considering the Participants' comments and suggestions, the Commissioner finalized the within Rules of Procedure (the "Rules") and made them public by posting them on the Commission's website.
9. For the purposes of these Rules:
  - a. all documents shall be served by email;
  - b. Lead Commission Counsel is Mr. Will McDowell or his designate;
  - c. if a Participant is represented by legal counsel ("Counsel"), service on the Participant shall be by email to its Counsel;
  - d. if a Participant is not represented by legal counsel, service on the Participant shall be by email to the Participant's designated contact person (the "Contact Person");
  - e. documents to be provided to, or served on, the Commission shall be delivered electronically no later than 4:00 p.m. on the specified date, to the attention of Ms. Andrea Barton, Executive Director, at [andrea.barton@longtermcareinquiry.ca](mailto:andrea.barton@longtermcareinquiry.ca); and
  - f. the Commissioner has the discretion to determine what constitutes reasonable notice.
10. The Commissioner may amend the Rules or dispense with compliance with the Rules as she deems necessary to ensure that the Public Hearings operate effectively, expeditiously, and in accordance with the principle of proportionality.

11. All Participants, Counsel, and witnesses at the Public Hearings are bound by the Rules, and may raise any issue of non-compliance with the Commissioner.
12. The Commissioner may deal with non-compliance with the Rules as she deems appropriate, including by revoking the right to participate in the Public Hearings or by imposing limitations on the manner and scope of the participation of one or more Participants.

## II. THE COMMISSION'S GUIDING PRINCIPLES

13. The Commission conducts its work in accordance with four guiding principles (the "Guiding Principles"). The conduct of the Public Hearings and these Rules are informed by the Guiding Principles:
  - a. **thoroughness**: examine all relevant issues with care so that there can be no doubt that the questions raised by the Commission mandate are explored and answered;
  - b. **timeliness**: proceed in a timely fashion to engender public confidence, remain relevant, and meet its deadline;
  - c. **transparency**: the Commission proceedings and processes must be as open and available to the public as is reasonably possible; and
  - d. **fairness**: the Commission must balance the interests of the public in finding out what happened with the rights of those involved to be treated fairly.
14. The Guiding Principles must be read in conjunction with s. 5 of the Act, which sets out the following duties of a commission:
  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.

15. The Participants, Counsel and all those taking part in the Public Hearings shall conduct themselves, and discharge their responsibilities under the Rules, in accordance with the Guiding Principles.

### **III. THE PUBLIC HEARINGS – TIME AND LOCATION**

16. The Commissioner will set the dates, hours, and place of the Public Hearings, and may alter them as she sees fit.

17. It is anticipated that the Public Hearings will take place during the weeks of June 4, 11, 18, 25, July 16, 23, 30, August 6 and September 24, 2018.

18. Generally, the Public Hearings will run from Monday through Thursday in any given week.

19. The hours of the Public Hearings will be from 9:30 a.m. to 1:00 p.m. and from 2:00 p.m. to 4:30 p.m., with short morning and afternoon breaks.

20. The Public Hearings will be held at the Elgin County Courthouse in St. Thomas, Ontario. They will be transcribed and webcast.

### **IV. DOCUMENT PRODUCTION**

21. Counsel and Contact Persons will be provided with access to an electronic document database (the “Database”), and other documents and information gathered or created by Commission counsel, only upon providing the Commission with a duly executed written undertaking in the form of Appendix “A” to these Rules. Provided that this condition is met to the Commission’s

satisfaction, Counsel and Contact Persons will be given access to the Database shortly after the Overview Reports, described below, are distributed.

22. Counsel and Contact Persons shall not provide any person with access to the Database. Counsel and Contact Persons may provide copies of documents and disclose information to their clients (or, in the case of Contact Persons, instructing individuals), witnesses or potential witnesses, and experts retained for the purposes of the Public Hearings, as they deem appropriate, only on terms consistent with their undertakings and only after they have received from those individuals duly executed written undertakings in the form of Appendix “B” to these Rules.
23. No one may make public any document or information provided by the Commission pursuant to these Rules until after it is entered into evidence at the Public Hearings. However, the Commissioner may order that certain documents or evidence not be made public.
24. The Commissioner orders that all persons who have entered into a written undertaking pursuant to these Rules shall comply with the terms of their undertaking. Failure to do so is deemed to be a breach of an order of the Commission.
25. On or before April 5, 2018, each Participant shall serve on the Commission a list of all documents, reports and other written information in its possession, control or power that the Participant views as relevant to the Commission’s mandate as set out in the OIC (the “List”). A Participant shall not include in its List any documents that it has already produced directly to the Commission.
26. The Commission may require a Participant to produce one or more of the documents in its List. Subject to Rule 28, below, the Participant shall comply promptly with any such request.
27. Participants should provide original documents to the Commission only upon request and only where doing so would not interfere with any potential or

ongoing investigation or legal proceeding. Participants shall otherwise preserve originals of relevant documents until such time as the Commissioner has fulfilled her mandate or orders otherwise.

28. Where a Participant objects to the production of any document, or part thereof, on the grounds of privilege pursuant to s. 8(3) of the Act, including any documents the Participant has already provided to the Commission in redacted form, the following procedures will apply:

- a. the Participant shall deliver to Lead Commission Counsel a list of the document(s) or parts thereof over which privilege is being asserted (the "Claimed Privilege List"). The Claimed Privilege List shall include the date, author, recipient, and a brief description of the document(s), and may have attached to it additional material, such as an affidavit, to support the Participant's claim to privilege;
- b. Lead Commission Counsel shall review the Claimed Privilege List and decide whether to recommend to the Commissioner that she accept the claim for privilege;
- c. if Lead Commission Counsel is not prepared to recommend to the Commissioner that she accept the claim for privilege, the Claimed Privilege List, any further material filed by the Participant, and copies of the documents over which privilege is claimed shall be submitted forthwith, together with Lead Commission Counsel's written submissions, to the Commissioner; and
- d. the Commissioner shall rule on the claim for privilege. If the claim for privilege is dismissed, the Participant shall produce the document(s) to Lead Commission Counsel forthwith.

29. The Commission shall disclose to the Participants by April 19, 2018, or as soon as practicable thereafter, any document on a List that the Commission or the Commissioner has required a Participant to produce.

30. Where a Participant takes the position that one or more documents that it produced to the Commission should be redacted before its inclusion in the Database, the following procedures apply:

- a. the Participant shall deliver to the Lead Commission Counsel no later than 4:00 p.m. on March 22, 2018, a list of the documents that the Participant asks be redacted (the “Redacted Document List”) and attach to the Redacted Document List the documents in proposed redacted form;
- b. Lead Commission Counsel shall review the Redacted Document List and the documents in proposed redacted form and decide whether to recommend to the Commissioner that she accept the Participant’s position that the documents ought to be redacted before inclusion in the Database;
- c. if Lead Commission Counsel is not prepared to recommend to the Commissioner that she accept the Participant’s position that the documents be redacted before inclusion in the Database, the Redacted Document List and copies of the proposed redacted documents shall be submitted forthwith, together with Lead Commission Counsel’s written submissions on the matter, to the Commissioner; and
- d. the Commissioner shall rule on the claim that the documents ought to be redacted before inclusion in the Database.

## **V. THE PROCESS LEADING TO THE PUBLIC HEARINGS**

31. Commission counsel inquired into the events which led to the Offences. They also inquired into 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. Together, these inquiries are referred to as the “Inquiries”.

32. In accordance with para. 5 of the OIC, Commission counsel prepared four Overview Reports, described below, summarizing the results of the Inquiries. The Overview Reports will be entered into evidence at the Public Hearings.
33. In addition, three documents (the “Foundational Documents”) will be entered into evidence at the Public Hearings:
- a. a timeline showing the major events, including the dates of each Offence;
  - b. the Agreed Statement of Facts entered into evidence on June 1, 2017, in the criminal proceedings against Elizabeth Wettlaufer relating to these Offences; and
  - c. a list of the relevant legislation and regulations.
34. At the Public Hearings, the Commission will rely on the Foundational Documents and Overview Reports, wherever possible, in lieu of calling witnesses. It is anticipated that the Foundational Documents and the Overview Reports will constitute the bulk of the Commission’s evidence at the Public Hearings.
35. The Participants will be given a draft copy of each of the Foundational Documents and draft copies of the Overview Reports on or about March 29, 2018.
36. The four Overview Reports cover, for the time period relevant to the Offences:
- a. the College of Nurses of Ontario;
  - b. the facilities and agencies for which Elizabeth Wettlaufer worked, including those facilities in which the Offences were committed;
  - c. the Ministry of Health and Long-Term Care; and
  - d. the Office of the Chief Coroner of Ontario.



37. Each of the Overview Reports includes:

- a. a chronology specific to the particular area of inquiry (the “Specific Chronology”);
- b. the source documents for each event listed in the Specific Chronology;
- c. a list of the relevant legislation and regulations for the particular area of inquiry; and
- d. a list of the relevant policies, procedures, practices, and accountability and oversight mechanisms for the particular area of inquiry, along with an indication of the period during which those items were operative.

38. Each Participant shall serve a written response to the draft Foundational Documents and draft Overview Reports (a “Participant’s Response”) on the Commission and the other Participants no later than April 26, 2018.

39. The Participant’s Response shall:

- a. identify all items in the draft Foundational Documents and the draft Overview Reports that the Participant wishes to dispute;
- b. state the Participant’s position on each disputed item;
- c. set out how the Participant wishes to establish its position on the disputed items; and
- d. specify all evidence the Participant seeks to enter at the Public Hearings, with a brief description of the evidence and a brief explanation for how, why, and when it seeks to enter each item of evidence. The Participant may propose witnesses to be called as part of the Public Hearings. If so, the Participant will set out a list of the names and addresses of all such proposed witnesses and, where applicable, provide copies of all relevant documents, including statements of anticipated evidence from the proposed witnesses. The Participant may propose witnesses to support,

challenge, comment upon, or supplement the Overview Reports in ways that are likely to significantly contribute to a fair understanding of the contents of the Overview Reports.

40. Lead Commission Counsel has the discretion to refuse to call, or permit to be called, evidence proposed by a Participant. If the Participant wishes to dispute the Lead Commission Counsel's decision on this matter, the Participant may have the matter decided by the Commissioner through the procedural motions ("Procedural Motions") process, described below.
41. Each Participant shall serve a further document on the Commission and the other Participants in which it states its position, if any, on the other Participants' Responses (the "Participant's Cross-Response") no later than May 7, 2018.
42. Lead Commission Counsel shall serve a written reply to the Participants' Responses and Participants' Cross-Responses (the "Commission Counsel Reply") on the Participants by May 17, 2018. The Commission Counsel Reply shall set out Commission counsel's position on every matter raised in each Participant's Response and Cross-Response.
43. Lead Commission Counsel shall give the Participants reasonable notice of the witnesses the Commission intends to call at the Public Hearings, an outline of the anticipated areas of examination for each such witness and, where practicable, a statement of the anticipated evidence of the witness. There shall be no cross-examination on the statements of anticipated evidence. The Participants will be given the opportunity to identify which, if any, of the proposed Commission witnesses they wish to cross-examine, and the proposed topics of the cross-examinations.

## **VI. PROCEDURAL MOTIONS**

44. On or about May 23 and 24, 2018, the Commissioner will hear Procedural Motions in Toronto.

45. At the Procedural Motions, the Commissioner will hear motions on any procedural matters related to the Public Hearings, including any issues that have not been resolved among Commission counsel and the Participants through the process of exchanging the Participants' Responses, the Participants' Cross-Responses, and the Commission Counsel Reply.
46. A Participant who intends to bring a Procedural Motion shall serve written notice of its intention on the Commission and other Participants no later than 4:00 p.m. on May 18, 2018. The notice shall include the gist of the motion to be brought.
47. A Participant's motion materials shall be served on the Commission and other Participants no later than noon on May 22, 2018. Due to time constraints, Commission counsel need not file responding materials prior to the hearing of a Procedural Motion but should, as much as is practicable, advise the Participants of Commission counsel's position on each Procedural Motion in advance of the hearing of the Procedural Motions.
48. The Commissioner will issue any necessary rulings arising from the Procedural Motions prior to the commencement of the Public Hearings.
49. Immediately following the Procedural Motions, Lead Commission Counsel will hold a meeting with Counsel and the Contact Persons to discuss the conduct of the Public Hearings.

## **VII. CONDUCT OF THE PUBLIC HEARINGS**

50. At the outset of the Public Hearings, Lead Commission Counsel will tender the Foundational Documents and the Overview Reports. These documents may differ from the draft Foundational Documents and draft Overview Reports that were previously provided to the Participants. The Foundational Documents and the Overview Reports will clearly identify any aspect of their contents that is disputed by one or more of the Participants.

51. Once entered into evidence, the Foundational Documents and the Overview Reports will be posted on the Commission website.
52. In the ordinary course, Commission counsel will call the witnesses who testify at the Public Hearings. Except as otherwise directed by the Commissioner, Commission counsel are entitled to adduce evidence by way of both leading and non-leading questions.
53. Witnesses will give their evidence at the Public Hearings under oath or affirmation. However, the Commissioner may admit evidence not given under oath or affirmation.
54. Witnesses who are not represented by Counsel are entitled to have their own counsel present while they testify. Counsel for the witness may make appropriate objections during the witness's testimony.
55. The Commissioner will determine the order of cross-examinations.
56. Where a Participant has been granted the right to examine a witness in chief, examination will be confined to the normal rules governing the examination of one's own witness.
57. Counsel for a witness, regardless of whether or not that counsel also represents a Participant, will examine the witness after the other Participants have concluded their cross-examinations, unless he or she has adduced the evidence in chief of the witness, in which case there will be a right by that counsel to re-examine the witness. In the event that counsel for the witness intends to adduce evidence in chief not adduced by Commission counsel, counsel for the witness will examine the witness immediately following Commission counsel, and then will have a right to re-examine the witness following the cross-examination by the other Participants.
58. Commission counsel have the right to re-examine any witness at the conclusion of his or her evidence.

59. The Commissioner may set limits, and time limits, on the conduct of examinations and cross-examinations.
60. In advance of a witness's testimony, Lead Commission Counsel shall provide the Participants with reasonable notice of a list of the documents associated with the witness's anticipated evidence in chief.
61. In advance of a witness's testimony, Participants who are permitted to lead a witness's evidence in chief shall provide the Participants and Lead Commission Counsel with reasonable notice of the areas to be covered in the witness's anticipated evidence in chief and a list of the documents associated with that evidence.
62. Participants who are permitted to cross-examine a witness will provide reasonable notice of any documents to which they intend to refer during their cross-examination.
63. The Commissioner may grant Commission counsel, a Participant or counsel for a witness leave to introduce a document to a witness at any point during the Public Hearings on such terms as are fair and just.
64. The Commissioner may permit Commission counsel or a Participant to call evidence at any point during the Public Hearings on such terms as are fair and just.

## **VIII. CLOSING SUBMISSIONS**

65. The Participants will be given the opportunity to make closing submissions, both in writing and orally. The Participants are invited to include, as part of their closing submissions, suggestions on how similar Offences might be avoided in the future.
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**APPENDIX "A"**

**Confidentiality Undertaking for Counsel and Contact Persons in the Long-Term Care Homes Public Inquiry**

For the purpose of this undertaking, the word "Document" is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Long-Term Care Homes Public Inquiry (the "Commission") including, without limitation, all records, files, sound recordings, videotapes, communications, correspondence, notes, medical records, charts, data, memoranda, statements, reports, email, text (or any other form of electronic communication), photographs and Overview Reports, stored in any manner, including data and information in electronic or digital form, or stored by means of any device, and any other information pertaining to the Commission (collectively referred to as "Documents"), irrespective of whether such Documents have been identified as confidential, and includes all other material prepared, containing or based, in whole or in part, on any information included in the foregoing, including information contained in Overview Reports prepared by Commission counsel.

I, \_\_\_\_\_, undertake to the Commission that any and all Documents that are produced to me by the Commission will not be used by me for any purpose other than these proceedings. I further undertake that I will only disclose any Documents or the contents of them to those for whom I act (or, in the case of Contact Persons, to up to five individuals within my organization with whom I will consult and whose identities I will disclose to Lead Commission Counsel), witnesses or potential witnesses (and their counsel), or an expert retained for the purposes of this public inquiry. In respect of those individuals, I further undertake that I will only disclose such Documents or the contents of any such Documents upon receiving from the individual in question a duly executed written undertaking in the form attached as Appendix "B" to these Rules.

I understand that under no circumstances shall I give anyone, including, without limitation, those providing instruction or those whom I consult, access to the Database.

I understand that this undertaking has no force or effect with respect to any Document that has been entered into evidence at the Public Hearings, or to the extent that the Commissioner has provided me with a written release from this undertaking with respect to any Document. For greater certainty, a Document is only entered into evidence at the Public Hearings when the Document is made an exhibit at them.

With respect to Documents that remain subject to this undertaking at the end of the Inquiry, I undertake to either destroy the Documents and provide a certificate of destruction to the Commission, or to return the Documents to the Commission for destruction. I further undertake to collect for destruction such Documents from anyone to whom I have disclosed any Documents that were produced to me in connection with the Commission's proceedings.

I understand that a breach of any of the provisions of this undertaking is a breach of an order made by the Commissioner.

\_\_\_\_\_ Signature

\_\_\_\_\_ Witness

\_\_\_\_\_ Date

\_\_\_\_\_ Date

**APPENDIX "B"**

**Confidentiality Undertaking for Participants, Potential Witnesses, and Experts in the Long-Term Care Homes Public Inquiry**

For the purpose of this undertaking, the word "Document" is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Long-Term Care Homes Public Inquiry (the "Commission"), including without limitation, all records, files, sound recordings, videotapes, communications, correspondence, notes, medical records, charts, data, memoranda, statements, reports, email, text (or any other form of electronic communication), photographs and Overview Reports, stored in any manner, including data and information in electronic or digital form, or stored by means of any device, and any other information pertaining to the Commission (collectively referred to as "Documents"), irrespective of whether such Documents have been identified as confidential, and includes all other material prepared, containing or based, in whole or in part, on any information included in the foregoing, including information contained in Overview Reports prepared by Commission counsel.

I, \_\_\_\_\_, undertake to the Commission that any and all Documents that are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such Documents or the contents of any such Documents to anyone.

I understand that this undertaking has no force or effect with respect to any Document that has been entered into evidence at the Public Hearings, or to the extent that the Commissioner has provided me with a written release from the undertaking with respect to any Document. For greater certainty, a Document is only entered into evidence at the Public Hearings when the Document is made an exhibit at them.

With respect to Documents that remain subject to this undertaking at the end of the Inquiry, I further understand that such Documents will be collected from me by the person acting as my counsel, or the Contact Person who disclosed them to me.

I understand that a breach of any of the provisions of this undertaking is a breach of an order made by the Commissioner.

\_\_\_\_\_ Signature

\_\_\_\_\_ Witness

\_\_\_\_\_ Date

\_\_\_\_\_ Date