

**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

RULING ON A PROCEDURAL MOTION

APPEARANCE LIST

Caressant Care Nursing and Retirement Homes Limited and Caressant Care –
Woodstock, represented by David M. Golden

Jarlette Health Services and Meadow Park (London) Inc. o/a Meadow Park London
Long-Term Care, represented by Lisa Corrente

The Commission, represented by Mark Zigler, Liz Hewitt, Rebecca Jones, Megan
Stephens, Lara Kinkartz, and Lindsay Merrifield

(as a group) Arpad Horvath Jr., Laura Jackson, Don Martin, Andrea Silcox, and Adam
Silcox-Vanwyk, represented by Alex Van Kralingen, Katherine Chau and Mark Repath

AdvantAge Ontario – Advancing Senior Care, represented by Jared B. Schwartz

College of Nurses of Ontario, represented by Denise Cooney and Megan
Schwartzentruber

Her Majesty the Queen in right of Ontario, represented by Darrell Kloeze and Judith
Parker

Interfaith Social Assistance Reform Coalition, represented by Rabbi Schachter

Ontario Association of Residents' Councils, represented by Suzan Fraser and Jane
Meadus

Ontario Long Term Care Association, represented by Melanie Ouanounou

Ontario Nurses' Association, represented by Kate Hughes

Heard: May 23, 2018
Toronto, ON

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Commissioner Gillese:

This is a motion by Caressant Care Nursing and Retirement Homes Limited, Caressant Care - Woodstock, and Jarlette Health Services and Meadow Park (London) Inc. o/a Meadow Park London Long-Term Care (collectively, the “**Moving Participants**”). It is brought pursuant to Rules 44-48 of the Commission’s Rules of Procedure.

In this motion, the Moving Participants seek the following items of relief:

1. An order that the transcript of the interview with Elizabeth Wettlaufer (“EW”) by Commission counsel dated February 14, 2018 (the “**Transcript**”) be admitted into evidence at the Inquiry’s Public Hearings;
2. An order directing Commission counsel to redact certain materials from volumes 5 and 6 of the Facilities Overview Report and from volumes 3 and 4 of the Ministry Overview Report;
3. An order directing Commission counsel to include in the Ministry Overview Report additional facts pertaining to the Long-Term Care Homes Quality Inspection Program (“**LQIP**”) and the Risk & Priority Assessment Reports (“**LRPA**”); and
4. Such further and other relief as the Commissioner may deem just.

I. Background in Brief

Effective August 1, 2017, this Commission was established under the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, by Order in Council 1549/2017. Broadly speaking, its mandate is to identify and make recommendations to address systemic failings in Ontario’s long-term care homes system that may have occurred in connection with the offences that EW committed while working as a registered nurse in that system.

The Commission has scheduled Public Hearings to begin on June 5, 2018.

On January 18, 2018, I ruled on who had the right to participate in the Public Hearings (the “**Participants**”).

Rules of Procedure for the Public Hearings were published on March 15, 2018. Rules 44-48 of the Rules of Procedure set out a process enabling Participants to bring procedural motions to resolve procedural issues related to the Public Hearings that have not been otherwise been settled with Commission Counsel.

II. Other Participants’ Positions on Item 1 of the Relief Sought

On item 1 of the relief sought, the Ontario Association of Residents’ Councils and Her Majesty the Queen in right of Ontario support the Moving Participants.

On this item of relief, the following Participants take no position:

- (as a group) Jon Matheson, Pat Houde, and Beverly Bertram
- College of Nurses of Ontario
- Interfaith Social Assistance Reform Coalition
- Ontario Long Term Care Association
- Ontario Nurses’ Association
- Registered Nurses’ Association of Ontario
- Registered Practical Nurses Association of Ontario
- Revera Long Term Care Inc.

Commission Counsel has no objection to item 1, provided that no Participant objects to admission of the Transcript.

III. Items 2 and 3 of the Relief Sought – a Proposed Resolution

At the oral hearing of this motion, counsel for the Moving Participants advised that she had discussed items 2 and 3 of the relief sought with Commission counsel and counsel for Her Majesty the Queen and they had reached a proposed resolution, subject to my approval.

The proposal for resolving item 2 consists of two components:

- i. In the Facilities stage of the Public Hearings, the Facilities would be allotted an additional 3 hours of time, bringing the Facilities' total time allotment to 12 hours. The additional 3 hours of time would not be at the expense of the other Participants. It would be additional time, found either through an extra half hour of hearing time on 6 hearing days or by sitting for a half day on a Friday on which the Public Hearings would not otherwise have been held.
- ii. In the Ministry of Health and Long-Term Care stage of the Public Hearings, the Facilities would be allotted an additional 2 hours of time, bringing the Facilities' total time allotment to 6 hours. Again, the additional 2 hours would not be at the expense of the other Participants. It would be additional hearing time, likely made up through an extra half hour of hearing time on 4 days on which the Public Hearings are already scheduled to be held.

In relation to item 3, the proposed resolution is that counsel for the Moving Participants would work with Commission counsel and counsel for Her Majesty the Queen to prepare additional facts for inclusion in the Ministry Overview Report about the LRPA. I was advised that no special relief was needed in relation to LQIP.

On hearing these submissions, I asked the Participants in attendance if anyone had any objections or concerns about the proposed resolution of these items of the motion. No one indicated that they did. It should be noted that all Participants had notice of this motion.

IV. RULING

Item 1 of the Relief Sought

I make the order as requested, namely, that the Transcript be admitted into evidence at the Public Hearings. The principle of transparency underlies my decision.

The work of this Commission is guided by four principles: thoroughness, timeliness, transparency and fairness. The transparency principle is described as “the Inquiry proceedings and processes must be as open and available to the public as is reasonably possible”. (See, for example, my Opening Remarks at the Participation (Standing) Hearings on December 12, 2017, at St. Thomas, Ontario.)

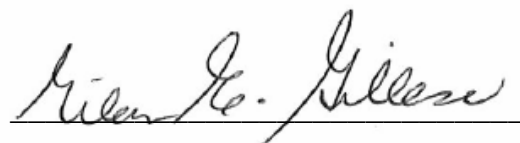
The Transcript is of the interview conducted by Commission counsel with Wettlaufer. As such, it was conducted as a part of the Inquiry process. In accordance with the principle of transparency, I therefore begin from the position that the Transcript should be made available to the public unless there is good reason for it to be treated as confidential. In my view, there is no such reason. The fact that no Participant objected to its admission lends support for my view.

All documents admitted into evidence at the Public Hearings will be made available to the public. Accordingly, by making the order as requested, the Transcript will become public, which accords with the transparency principle.

Items 2 and 3 of the Relief Sought

I see no basis on which to reject the proposed resolution. Indeed, I congratulate the relevant Participants for crafting a resolution to the perceived problem and for agreeing to work together to ensure that the information in question in the Overview Reports and given by witnesses is as accurate and complete as possible.

Dated: May 29, 2018

A handwritten signature in cursive script, reading "Eileen E. Gillese", written over a horizontal line.

Commissioner Eileen E. Gillese