



**CITY OF MISSISSAUGA JUDICIAL INQUIRY**  
THE HONOURABLE MR. JUSTICE DOUGLAS CUNNINGHAM, COMMISSIONER

**RULES OF PROCEDURE**

**Purpose**

1. The Mississauga Judicial Inquiry is an independent Commission established pursuant to s. 274(1) of the Act pursuant to a majority vote of Council of the Corporation of the City of Mississauga (“Mississauga City Council”) with specific terms of reference to inquire into the matters set out in Resolution 0271-2009 adopted by Mississauga City Council on November 11, 2009. Following the conclusion of the hearings, the Commissioner will make any recommendations he deems appropriate and in the public interest.

**General**

2. Throughout these Rules, the words “Commission” and “Inquiry” are used interchangeably, and both refer to the City of Mississauga Judicial Inquiry.
3. Public hearings will be held at 950 Burnhamthorpe Road West in Mississauga. The Commissioner will set the dates for the hearings. Hearings will take place on Monday through Thursday from 10:00 a.m. to 4:30 p.m. each week, unless otherwise directed by the Commissioner.
4. The Commission is committed to a process of fairness, including public hearings and public access to evidence and documents used at the hearings.
5. The Commissioner encourages anyone who may have information that may be helpful to the Inquiry, including documents and the names of witnesses, to provide this information to the Office of Commission Counsel at Lenczner Slaght Royce Smith Griffin LLP, 130 Adelaide Street West, Suite 2600, Toronto, ON, M5H 3P5.
6. People are advised that the law offers protection to witnesses to encourage them to come forward and give full and forthright evidence to an inquiry.

**Standing**

7. Persons, groups of persons, organizations or corporations (“people”) who wish to participate may seek standing before the Inquiry.

8. The Commissioner may grant standing to people who satisfy him that they have a substantial and direct interest in the subject matter of the Inquiry or whose participation may be helpful to the Commission in fulfilling its mandate. The Commissioner will determine on what terms standing may be granted.
9. People who are granted standing are deemed to undertake to follow the Rules of Procedure.
10. People who apply for standing will first be required to provide written submissions explaining why they wish standing. Written submissions are to be received at the Office of Commission Counsel no later than noon on Thursday, December 10, 2009.
11. People who apply for standing will also be given an opportunity to appear in person before the Commissioner to explain their reasons for requesting standing. Applications for standing will be heard starting at 10:00 a.m. on Monday, December 14, 2009 at 950 Burnhamthorpe Road West in Mississauga.
12. The Commissioner has appointed Commission Counsel to represent his and the public interest. Commission Counsel will ensure that all matters which bear on the public interest are brought to the attention of the Commissioner. Commission Counsel will have standing throughout the Inquiry.

### **Preparation of Documentary Evidence**

13. As soon as possible following the granting of standing, people with standing will produce to the Commission all documents in their possession, power or control that have a semblance of relevance to the subject matter of the inquiry. People are encouraged to advise Commission Counsel of the names, addresses and telephone numbers of all witnesses they feel should be heard and, if possible, provide summaries of the information the witnesses may have.
14. Within 15 days after the granting of standing, people with standing will provide to the Commission a plan setting out how they will identify, locate and produce all documents that have a semblance of relevance to the subject matter of the inquiry.
15. All documents received by the Commission will be treated by the Commission as confidential, unless and until they are made part of the public record or the Commissioner otherwise directs. However, Commission Counsel are permitted to produce such documents to potential witnesses.
16. Where possible, Commission Counsel will make best efforts to provide, both to witnesses and people with standing, those documents that will likely be referred to during a witness' testimony at least five days before the witness commences his or her testimony, unless the Commissioner directs otherwise. Before being provided with such documents, witnesses and people with standing will be required to sign an undertaking that they will use the documents only for the purposes of the Inquiry.
17. No document will be used in cross-examination or otherwise unless Commission Counsel and the parties have been advised in advance and the document has been provided to

Commission Counsel, the witness, and people with standing, unless the Commissioner directs otherwise.

### **Expert Witnesses**

18. A copy of an expert witness' report shall, at least 14 days before the expert witness' appearance, be served on the parties.

### **Witness Interviews**

19. Commission Counsel or others designated by Commission Counsel for that purpose will interview people who have information or documents which have bearing on the subject matter of the Inquiry and may be helpful in fulfilling the Commission's mandate. People who are interviewed are welcome, but not required, to have legal counsel present.
20. Witnesses are advised that the *Public Inquiries Act* provides that no adverse employment action shall be taken against any employee who, acting in good faith, has given information to an Inquiry.
21. Following the interview, Commission Counsel or the person acting as his agent for the purpose of the interview will prepare a summary of the witness' anticipated evidence. Before the witness testifies before the Commission, Commission Counsel will provide a copy of the summary to the witness for his or her review.
22. The witness summary, after being provided to the witness, will be shared with people with standing at least five days before the witness commences his or her testimony, unless the Commissioner directs otherwise. Before being given a copy of the witness summary, people with standing will be required to sign an undertaking that they will use the witness summary only for the purposes of the Inquiry.
23. Commission Counsel and the witness may prepare a sworn affidavit of the witness' evidence. At the Commissioner's discretion, this sworn affidavit can be admitted into evidence in lieu of part or all of that individual's *viva voce* testimony.

### **Evidence**

24. The Commissioner may receive any evidence that he considers to be helpful in fulfilling the mandate of the Inquiry. The Commissioner is entitled to receive evidence which might otherwise be inadmissible in a court of law.
25. Subject to the Commissioner's discretion, the Commissioner may, as much as practicable and appropriate for a fair hearing, refer to and rely upon:
  - (a) any existing records or reports relevant to the subject matter of the inquiry;
  - (b) any agreed statement of facts prepared by Commission Counsel;
  - (c) the testimony of a representative witness of a participant in a public inquiry;

- (d) any summary of background facts prepared by Commission counsel.
26. Commission counsel may prepare summaries of background facts and documents relevant to the subject matter of the inquiry. Commission counsel shall provide each party an opportunity to review a summary before it is introduced as evidence. A party may submit written comments and propose witnesses to Commission Counsel for the purpose of supporting, challenging, commenting upon or supplementing a summary.
  27. Witnesses who testify will give their evidence under oath or upon affirmation. Witnesses may be called upon to testify in panels.
  28. The Commissioner may set time allocations for the conduct of examinations and cross-examinations. It will be the practice of Commission Counsel to issue and serve a subpoena (summons to witness) upon every witness before he or she testifies.
  29. Witnesses are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for the purpose of that witness' testimony.
  30. Witnesses may be called more than once.
  31. In the ordinary course, Commission Counsel will call and question witnesses who testify at the Inquiry. Counsel for a witness may apply to the Commissioner to lead a particular witness' evidence-in-chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner.
  32. The order of examination will be as follows:
    - (a) Commission Counsel will lead evidence from each witness. Except as otherwise directed by the Commissioner, Commission Counsel is entitled to ask both leading and non-leading questions;
    - (b) People with standing will then have an opportunity to cross-examine the witness the extent of their interest. The order of cross-examination of each witness will be determined by the people with standing and, if they are unable to reach agreement, by the Commissioner;
    - (c) Counsel for a witness will examine last, unless he or she has questioned the witness-in-chief, in which case there will be a right to re-examine the witness; and
    - (d) Commission Counsel will have the right to re-examine last.
  33. If Commission Counsel elects not to call a witness or to file a document, anyone with standing may apply to the Commissioner to do so or to direct Commission Counsel to do so.

34. All hearings are open to the public. However, where the Commissioner is of the opinion that:
- (a) matters involving public security may be disclosed at the hearing; or
  - (b) intimate financial or personal matters, or any other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearing be open to the public,
- the Commissioner may hold the hearings concerning any such matters in the absence of the public on such terms as he may direct
35. Applications from witnesses or people with standing to hold any part of the hearing in the absence of the public should be made in writing to the Commissioner at the earliest possible opportunity.
36. The transcripts and evidence from the hearing will be made available as soon as possible for public viewing. If any part of the hearing is held in the absence of the public, the transcripts and exhibits from that part of the hearing will only be made available for public viewing on such terms as the Commissioner may direct.
37. The proceedings are open to the public. The use of television cameras or other recording electronic or photographic equipment in the hearing room will be permitted at the direction of the Commissioner.

### **Right to Counsel**

38. Witnesses and people with standing are entitled, but not required, to have counsel present while Commission Counsel interview them and while they testify.
39. Counsel will be retained at the expense of the witness and people with standing. The Terms of Reference do not grant the Commissioner jurisdiction to order the City of Mississauga to provide funding for legal counsel. However, requests for funding may be made to the Commissioner at the hearing on standing, and the Commissioner may make recommendations to the City of Mississauga.

### **Notices Regarding Misconduct**

40. The Commissioner will not make a finding of misconduct on the part of any person unless that person has had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the Inquiry to be heard in person or by counsel.
41. All notices of alleged misconduct will be delivered on a confidential basis to the person to whom the allegations of misconduct refer.

42. If a notice of alleged misconduct is delivered, the recipient may apply to the Commissioner for leave to call evidence which he or she believes may be helpful to respond to the alleged misconduct.

**Amendment to the Rules**

43. These Rules may be amended and new Rules may be added if the Commissioner finds it is helpful to do so to fulfill the Commission's mandate and to ensure that the process is thorough and fair.