

Province of Ontario

Reply Submissions - Procedural Order No. 9

Submitted: June 18, 2014

1. On May 12, 2014, the Commission issued Procedural Order No. 9 (the “Order”) regarding the “Deterioration of Parking Structures” report (the “Report”) attached as Appendix B to that Order.¹
2. On May 30, 2014, the Province provided written submissions in response to the Order. The Province confirmed the authenticity of the Report and provided documentation regarding the steps taken by the Province at the time to implement the recommendations of the Report. On June 4, 2014, the Province provided supplemental submissions containing further documentation related to the Report.²
3. On June 12 and 13, 2014, in accordance with the Order, submissions were received from exp Global Inc. (Trow), the Ontario Building Officials Association, Robert Wood and the City of Elliot Lake.
4. The following submissions from the Province are provided in response.

Legislated Requirements for Existing Parking Garages

Provincial Action in Response to Report

5. As noted in the Province’s submissions dated May 30 and June 4, the Province took a number of steps upon receipt of the Report as recommended by the Advisory Committee on the Deterioration, Repair and Maintenance of Parking Garages (the “Advisory Committee”), including:

- amending the Ontario Building Code regulation in 1988 to incorporate the recently published Canadian Standards Association (“CSA”) standard for parking structures;³
- participating in the development of amendments to the CSA standards for parking structures and repair of reinforced concrete in buildings;⁴

¹ Procedural Order No. 9 http://www.elliottlakeinquiry.ca/li/pdf/ELI-Procedural_Order_No.9_with_Appendices.pdf.

² <http://www.elliottlakeinquiry.ca/li/index.html#dps>.

³ Pages 4-5 and Appendix D, Province’s May 30, 2014 submissions.

⁴ Pages 9-10 and Appendices R-T, Province’s May 30, 2014 submissions.

- participating in and supporting long-term research initiatives on deterioration of parking structures such as National Research Council’s (“NRC”) 1987-1992 Deterioration of Parking Structures Research Project;⁵
- publishing and making available publicly the technical chapters of the Report which described the extent of the problem and addressed inspection techniques, repair methods and maintenance and monitoring procedures, to assist building owners, engineers, building officials and the public;⁶ and
- promoting the published Report and ensuring it was widely disseminated, including, for example, reporting on it in ministry newsletters, distributing copies as requested to building owners, engineers, building officials and the public, and making the report available in public and university libraries.⁷

Advisory Committee’s Recommendations on Requirements for Existing Parking Structures

6. The Advisory Committee did not make specific recommendations that the Province enact legislative, regulatory, policy or program reforms to provide for periodic inspection, repair, restoration and maintenance programs for existing parking garages. Rather, it indicated that “1992 is the projected target date for arriving at a comprehensive repair and restoration program which is affordable, effective and enforceable”.⁸

7. The Advisory Committee’s Subcommittee on Enforcement Procedures recommended that “two methods of enforcement be considered” – (a) a scheme of mandatory retrofit under the *Building Code Act*, and (b) permits for existing structures that would have to be renewed on a periodic basis.⁹

8. The Subcommittee noted that:

In the time available, this Subcommittee does not presume to reach a conclusion on either (a) or (b) above at this time...

Before a reasoned decision can be reached on (a) or (b) above, we strongly recommend that an impact study be performed, as it is recognized that the concept of issuing permits for structures is novel and the implications far-reaching...Furthermore, we strongly recommend a detailed analysis from the other jurisdictions within Canada, and perhaps the United States, which are provincial or nonmunicipal in scope.¹⁰

⁵ Pages 7-9 and Appendices I and K-Q, Province’s May 30, 2014 submissions.

⁶ Page 2 and Appendices A, C and H, Province’s June 4, 2014 submissions.

⁷ Pages 5-6 and Appendices G-H, Province’s May 30, 2014 submissions.

⁸ Page ii of Appendix B, Procedural Order No. 9.

⁹ Page 12 of Appendix G, Province’s June 4, 2014 submissions.

¹⁰ *Ibid.*

9. The Advisory Committee's executive summary did not recommend either of these two specific approaches.¹¹ While the Report did identify a projected target date for arriving at a comprehensive repair and restoration program, it also noted the importance of allowing for pertinent technical research to be completed (including the 1987-1992 NRC Deterioration of Parking Structures Research Project) and for owners to fully assess the economic impact of the problem on those directly affected.¹²

10. It appears that the former Ministry of Housing did carry out an impact study as recommended by the Advisory Committee and developed a policy paper on proposed options.¹³ As noted in the Province's May 30, 2014 submissions, neither the impact study nor the policy paper can now be located.¹⁴ Although the record is not complete and documentation is not available regarding specific policy decisions of government, it is reasonable to infer that consideration was given to the option of developing provincial laws, policies or procedures for existing parking structures and some level of policy decision was made not to do so.

11. Whether or not to enact legislation, make regulations or develop policies and procedures is a policy decision of government that involves consideration and balancing of a number of policy factors. Generally, when considering development of legislation, regulations, policies or procedures related to building standards, relevant policy factors can include, for example:

- ability to establish standards capable of being enforced through regulation;
- ability to effectively and efficiently enforce regulatory requirements;
- what is the best method for achieving the desired policy outcome and who is best positioned to deliver it;
- stakeholder input and reaction;
- technical advice;
- challenges with establishing general requirements for issues that are often specific in nature (e.g. inspection of existing buildings is often diagnostic and depends on the individual characteristics of the buildings);
- whether there are existing laws and powers relevant to the issue (e.g. property standards by-laws, unsafe building powers);
- how any new requirements would fit within the existing legislative framework and whether they would lead to conflicts with existing requirements;
- whether there are other methods that can effectively address the issue, such as education of the sector and the public;

¹¹ The executive summary of the Report attached as Appendix B to Procedural Order No. 9 also noted on page ii that "[m]onitoring must form an integral part of the effective repair and maintenance program to ensure public safety and maintain the structural integrity of a garage". It is clear from section 3.3 on page 48 of the Report that this monitoring was to be done by the building owner, their staff or their consultants: "Initially, a professional consultant may be engaged to conduct a condition survey. The frequency and extent of monitoring will depend on the condition of the garage, economic considerations and the capabilities of in-house staff".

¹² Page ii of Appendix B, Procedural Order No. 9.

¹³ Pages 6-7 and Appendix G, Province's May 30, 2014 submissions.

¹⁴ Pages 6-7, Province's May 30, 2014 submissions.

- costs of retrofits, repairs and inspections and impact on building owners and the economy;
- broader prevailing economic circumstances in the economy as a whole; and
- availability of professionals with necessary qualifications/expertise.

12. The Advisory Committee’s Report noted the importance of balancing affordability, effectiveness and enforceability in developing any potential legislation, policy or program.¹⁵ Similarly, during the Commission’s Policy Roundtables in November 2013, a wide range of opportunities and challenges affecting the potential for establishing standards for inspection and maintenance of existing buildings were identified by a number of participants.

13. The need to balance competing considerations and interests has led to the recognition by the Courts that liability will not attach to policy decisions.¹⁶

14. Historically, the policy decision made by governments in Ontario has been to empower municipalities to regulate and enforce maintenance standards for existing buildings.¹⁷ This approach recognizes that municipalities are best placed to effectively respond to the needs of their local communities, and is consistent with Ontario’s recognition of municipalities as responsible and accountable governments with respect to matters within their jurisdiction.

15. The legislative framework in Ontario has recognized that building owners are responsible for maintaining their buildings in accordance with the standards established by municipalities and municipalities are responsible for enforcing their by-laws. Municipalities have had powers to establish by-laws regarding maintenance and occupancy standards for existing residential properties since 1965 and for all building types since 1972.¹⁸ In 1997, the legislative provisions authorizing these standards were transferred virtually unchanged from the *Planning Act* to the *Building Code Act, 1992*, but the policy of enabling municipalities to establish and enforce such standards was maintained.¹⁹ At the time the Advisory Committee’s Report was received by government, the legislative structure in Ontario of local standards for maintenance of existing buildings was generally consistent with how such standards were developed in other jurisdictions

¹⁵ Page ii of Appendix B, Procedural Order No. 9.

¹⁶ *Cooper v. Hobart*, [2001] 3 S.C.R. 537 (S.C.C.) at para. 38: “It is established that government actors are not liable in negligence for policy decisions, but only operational decisions. The basis of this immunity is that policy is the prerogative of the elected Legislature. It is inappropriate for courts to impose liability for the consequences of a particular policy decision...The exclusion of liability is better viewed as an immunity imposed because of considerations outside the relationship for policy reasons – more precisely, because it is inappropriate for courts to second-guess elected legislators on policy matters...”; *R. v. Imperial Tobacco Canada Ltd.*, [2011] 3 S.C.R. 45; *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, [2013] 3 S.C.R. 810.

¹⁷ Page 11, Province’s May 30, 2014 submissions; Pages 51-53, Province’s written submissions for Phase 1 of the Inquiry. As noted on p. 10 of the Province’s May 30, 2014 submissions, the only Building Code requirements for existing buildings relate to the maintenance of small on-site sewage systems, which were transferred from Part 8 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 to the *Building Code Act, 1992* and Building Code by the *Services Improvement Act, 1997*, S.O. 1997, c. 30, Sched. B.

¹⁸ *Planning Amendment Act, 1964*, S.O. 1964, c. 90, s. 4; *Planning Amendment Act, 1972*, S.O. 1972, c. 118, s. 7.

¹⁹ *Tenant Protection Act, 1997*, S.O. 1997, c. 24, s. 224.

in Canada.²⁰ It was also consistent with the policy decision reflected in the *Building Code Act* of empowering local municipal building officials to inspect and take action to address unsafe buildings.²¹ Changing this approach to establish provincial standards for existing parking structures would have constituted a significant and fundamental shift in policy direction.

Existing Legislative Requirements, Powers and Knowledge Base

16. Based on the evidence presented during the Inquiry, there are no grounds for concluding that the enactment of additional legislative requirements or the establishment of new policies or new procedures regarding maintenance, repair and inspection of existing parking structures in response to the 1988 Report would have prevented the tragic collapse of the Algo Centre Mall.

17. The evidence presented during the Inquiry shows that:

- laws were in place since 1979 requiring the mall roof to be watertight and maintained in a structurally sound condition capable of safely sustaining its own weight;
- municipal officials were empowered to issue orders, require expert reports and take action to effect repairs of buildings that were not maintained in accordance with the laws;
- the municipality did issue two orders to the building owner requiring an inspection be undertaken and report prepared regarding the structural soundness of the mall;
- inspections of the condition of the roof were carried out by professional engineers throughout the span of the life of the mall, including just prior to the collapse; and
- the problem of deterioration of parking structures was well known in the engineering and building owner communities since before the mall was designed and built.

18. As there were already laws in place requiring the maintenance and repair of the mall and given that inspections of the mall were carried out by professional engineers throughout the life of the mall, including of the beam that ultimately failed, there is no basis for concluding that the changes proposed by the Advisory Committee for consideration by government would have prevented the failure. Any laws requiring repair or retrofit or any programs requiring inspection, maintenance and repair would only be effective to the extent they were implemented.

²⁰ British Columbia *Local Government Act*, R.S.B.C. 1996, c. 323, s. 694 and *Community Charter*, S.B.C. 2003, c. 26, ss. 8 and 63; Alberta *Municipal Government Act*, R.S.A. 2000, c. M-26, ss. 7(a) and (c) and *Safety Codes Act*, R.S.A., 2000, c. S-1, s. 66(2); Manitoba *Municipal Act*, C.C.S.M., c. M225, ss. 232-233.1; New Brunswick *Municipalities Act*, R.S.N.B. 1973, c. M-22, s. 94; Nova Scotia *Municipal Government Act*, R.S.N.S. 1998, c. 18, s. 344; Prince Edward Island *Municipalities Act*, R.S.P.E.I. 1988, c. M-13, ss. 30(z.2) and 64(l); Newfoundland and Labrador *City of St. John's Act*, R.S.N.L. 1990, c. C-17, ss. 389 and 392.

²¹ Page 11, Province's May 30, 2014 submissions; Pages 51-53, Province's written submissions for Phase 1 of the Inquiry.

(i) Existing Legislative Requirements and Enforcement Powers

19. As noted above, the legislative approach in Ontario is to empower municipalities to establish and regulate standards for the maintenance of existing buildings. Since 1979, the City of Elliot Lake had in place legislation that provided maintenance requirements that applied to the mall. The City's property standards by-law no. 79-15²² required owners to maintain their properties in accordance with the by-law and required that all properties in the municipality, including the mall, be maintained in a structurally sound condition capable of safely sustaining its own weight and that roofs be maintained in a watertight condition:

s. 4.1 The owner of any property shall repair and maintain that property in accordance with the standards of this by-law, or clear the property of all buildings, structures, debris or refuse and leave in a graded and levelled condition as detailed by an Order given by the Officer.²³

s. 5.1 Structural Soundness – Every part of a building shall be maintained in a structurally sound condition and so as to be capable of sustaining safely its own weight and any load to which it may normally be subjected. Materials that have been damaged or show evidence of dry rot or deterioration shall be repaired or replaced in a workmanlike manner.²⁴

s. 5.4 (a) Roofs – The roof of a building shall be maintained in a watertight condition so as to prevent leakage of water into the building, and where necessary, shall be maintained by the repair of the roof and flashing or by applying waterproof coatings or coverings. The roof shall be free of loose or unsafe objects and materials and all other accident and fire hazards. The roof drainage system, where present, shall be kept in good repair, watertight, and free of health and accident hazards.²⁵

20. By-law no. 79-15 was replaced in 2003 by property standards by-law no. 03-29. The requirements for building owners to maintain their properties in accordance with the by-law, including to maintain buildings in a structurally sound condition and roofs in a watertight condition, were carried forward to the new by-law.²⁶

21. Under the *Building Code Act*, the City had the authority to enforce its property standards by-law by carrying out inspections (including requiring the preparation of reports), issuing orders for repairs to be carried out, and effecting repairs if the orders were not complied with.²⁷

22. In addition, the City had authority under the Act to address unsafe conditions in existing buildings to protect health and safety. Powers available to the City's chief building official and inspectors included the ability to inspect buildings to determine if they were unsafe (including

²² Exhibit 6-6 "City of Elliot Lake By-law No. 79-15".

²³ Exhibit 6-6 "City of Elliot Lake By-law No. 79-15"; Syl Allard, Day 34, April 29, 2013, pp. 6979-6980, lines 20-9.

²⁴ Exhibit 6-6 "City of Elliot Lake By-law No. 79-15"; Syl Allard, Day 34, April 29, 2013, p. 6980, lines 10-25.

²⁵ Exhibit 6-6 "City of Elliot Lake By-law No. 79-15"; Syl Allard, Day 34, April 29, 2013, p. 6981, lines 1-12.

²⁶ Exhibit 6-7 "City of Elliot Lake By-law No. 03-29"; Syl Allard, Day 34, April 29, 2013, pp. 6987 – 6994, lines 19-1.

²⁷ *Building Code Act, 1992*, s. 15.1 to 15.8; Exhibit 2102 "Presentation to the Elliot Lake Commission of Inquiry 2013 by Warwick Perrin, President of the Ontario Association of Property Standards Officers".

requiring the preparation of expert reports), to issue orders for repairs to be carried out, to issue orders prohibiting occupancy, and to effect repairs if orders were not complied with.²⁸

23. Empowering municipalities with these legislative authorities and enforcement tools recognizes that they are best placed to understand and respond to local matters in this area. It is not practical for the Province to have staff in each municipality to inspect buildings or respond to complaints regarding building maintenance. The powers and responsibilities set out in the *Building Code Act, 1992* are assigned to municipalities, rather than the Province. Accordingly, it is each municipality's responsibility to ensure that it has the necessary capacity to carry out its assigned functions.

24. The evidence presented at the Inquiry demonstrates that the City was aware of and used its powers under the Act to issue two orders with respect to the mall and the mall's lack of compliance with the property standards by-law.

25. The first order was issued on October 24, 2006.²⁹ It indicated that the two provisions of the property standards by-law had been contravened, namely the requirement to maintain the roof in a watertight condition and to maintain the building in a structurally sound condition. The order required that repairs of the roof be carried out to prevent leakage of water into the building and required a review by a professional engineer of the building structural frame in the areas where leakage was occurring and a report certifying the acceptability of the existing condition or the remediation steps necessary to ensure structural capacity.

26. The second order was issued on September 25, 2009.³⁰ It required that an inspection be conducted of the entire mall, including specifically the area above the lottery ticket booth where the failure occurred. It further required that a report be prepared to confirm the mall was structurally sound, and if it was found deficient, to recommend repairs.

27. While the Province did not establish legislative or policy requirements regarding the repair and maintenance of existing parking structures, the evidence demonstrates that the City had such requirements. The City's property standards by-laws required the mall owners to repair and maintain their building in a watertight and structurally sound condition. As well, the City had powers to enforce these requirements, was aware of these powers,³¹ was aware of the mall roof leaks,³² and used these powers to issue orders requiring the carrying out of inspections and the preparation of engineering reports to assess the structural soundness of the mall, including in the area where the collapse occurred. If the Province had enacted legislation, it would have largely duplicated the requirements that already applied to the mall and there is no evidence to suggest it would have been more successful in preventing the collapse.

²⁸ *Building Code Act, 1992*, s. 15.9; Bruce Ewald, Day 49, May 24, 2013, p. 11568, lines 7-19; Bruce Ewald, Day 50, May 27, 2013, pp. 11793-11795, lines 24-6.

²⁹ Exhibit 175 "Notice of Violation - Property Standards Violation Regarding Roof Leakage at Algo Centre Mall".

³⁰ Exhibit 102 "Inspection Report No. 1504".

³¹ Syl Allard, Day 34, April 29, 2013, pp. 7029-7032, lines 17-11 and p. 7186, lines 4-6.

³² Exhibit 102 "Inspection Report No. 1504"; Syl Allard, Day 34, April 29, 2013, pp. 7047-7050, lines 9-4 and pp. 7080-7088, lines 24-13.

(ii) Parking Structure Issues Well Known

28. By the time the Algo Centre Mall was designed and built, the problem of deterioration of parking structures was well known. Information was available indicating that concrete parking structures were susceptible to premature deterioration due to cracks, leaks and the corrosive effects of water and salt. Waterproof membranes had been an available solution for twenty years and waterproofing was considered a main course of action to repair existing parking structures and a best-practice in the design of new ones.³³

29. Beginning in the late 1970s, a number of studies and research projects were carried out to understand the extent of the problem and options for remediation. As well, reports, articles and technical papers were published and conferences held to disseminate information to building owners, engineers and others in the sector.³⁴

30. The former Ministry of Housing's Advisory Committee was comprised of a broad range of individuals with expertise on concrete parking structures, including members of prominent engineering firms, such as Trow,³⁵ Halsall Associates Limited, Standford Engineering Ltd. and Construction Control Ltd. and building owner representatives, such as the Canadian Institute of Public Real Estate Companies (CIPREC). A number of these firms were retained by the various owners of the mall to conduct building condition surveys or inspections of the structural soundness of the mall.³⁶ The Advisory Committee's Report was widely disseminated and made publicly available through libraries and other sources.³⁷ It is therefore reasonable to infer that building owners, professional engineers who conducted structural evaluations of parking structures and municipal building officials were aware of the problems associated with parking structures.

31. The engineering firms and building owner representatives that were members of the Advisory Committee, as well as others, were also involved in a number of other studies and research projects relating to the susceptibility of parking structures to corrosion, including NRC's five year Deterioration of Parking Structures Research Project.³⁸

³³ David Monroe, Day 5, March 8, 2013, p. 689, lines 1-16 and pp. 714-717, lines 2-13; Exhibit 2000 "Salt Damage in Parking Structures - Prescriptions for an Epidemic Disease".

³⁴ Exhibit 2000 "Salt Damage in Parking Structures - Prescriptions for an Epidemic Disease"; Appendices A, B, C (pp. 57-60) and I, Province's May 30, 2014 submissions.

³⁵ As noted on p. 10 of exp Global Inc.'s (Trow) closing submissions to Phase 1 of the Inquiry, a senior engineer at Trow, John Ryell, "was a member of the former Ministry of Housing Advisory Committee that in 1988 published the report "Deterioration of Parking Structures": http://www.elliottlakeinquiry.ca/submissions_1/exp_Global_Inc/Appendix_A_to_Closing_Submissions_of_exp_Global_Inc._Trow.pdf.

³⁶ See, for example: Exhibit 35 "Investigation of Parking Structure Algo Centre", Trow, May 1991; Exhibit 51 "Parking Deck – Structural Analysis – Algo Centre", Trow, November 6, 1995; Exhibit 72 "Structural Condition Assessment", Halsall Associates Limited, May 10, 1999; Exhibit 88 "Report of a Building Condition Survey", Construction Control Inc., July 6, 2005.

³⁷ Pages 5-6 and Appendices G-H, Province's May 30, 2014 submissions; Page 2 and Appendices A, C and H, Province's June 4, 2014 submissions.

³⁸ Page 3 of Appendix K, Province's May 30, 2014 submissions.

32. The wide-spread understanding of the problem also led engineering firms and building owners to work together on the development of a CSA standard specifying standards for parking structures.³⁹

33. The legislative framework at the time empowered municipalities to enact laws requiring building owners to maintain their building in accordance with standards developed by the municipality. The City had a by-law requiring the mall roof to be maintained in a watertight condition and the mall to be maintained in a structurally sound condition. As the problem was well known among building owners and engineers, it was incumbent on them, in the exercise of their duties, to take action to ensure the mall complied with the requirements of the property standards by-law and that the mall was structurally sound and watertight.

(iii) Engineering Inspections of the Mall and Repairs

34. Given the structural nature of concerns regarding deterioration of parking structures, professional engineers are required to conduct inspections and building condition assessments so that they can apply their training and expertise to assessing the condition of a building and making recommendations for repairs. The evidence presented at the Inquiry demonstrates that, over the life of the mall, it was routinely inspected by various professional engineers to assess its structural condition.

35. Inspections were carried out by a number of engineering firms. Many of the engineers who inspected the mall or signed off on engineering reports regarding the mall were employed by engineering firms that were represented on the Advisory Committee.⁴⁰ They included representatives of Trow, Halsall Associates Limited and Construction Control Ltd. As a result, they should have been aware of the Advisory Committee's Report and recommendations to building owners and engineers regarding inspection, testing, maintenance and repair of parking structures.⁴¹

36. While M.R. Wright was not represented on the Advisory Committee, the evidence presented at the Inquiry indicates that Mr. Wood was a structural engineer with 40 years' experience,⁴² that he often dealt with deteriorating beams and columns,⁴³ that he understood that water leakage and chlorides can compromise the structural integrity of a building,⁴⁴ that M.R. Wright was aware of the long-standing nature of the leakage problem at the mall,⁴⁵ that Mr. Wood conducted two

³⁹ Pages 4-5, Province's May 30, 2014 submissions.

⁴⁰ See para. 30 and footnote 36 above.

⁴¹ In fact, Trow indicates at paragraphs 7-15 of its June 12, 2014 submissions that it was aware of and followed the guidance provided in the Advisory Committee's Report.

⁴² Gregory Saunders, Day 56, June 6, 2013, p. 13153, lines 1-15.

⁴³ Gregory Saunders, Day 56, June 6, 2013, p. 13191-13192, lines 3-13.

⁴⁴ Robert Wood, Day 57, June 7, 2013, p. 13443, lines 5-17.

⁴⁵ Gregory Saunders, Day 56, June 6, 2013, pp. 13116-13117, lines 25-4; Robert Wood, Day 56, June 6, 2013, pp. 13247-13250, lines 13-19; Page 5 of Exhibit 11-106 "Post-Remediation Verification Assessment". M.R. Wright also conducted two mould investigations in 2006 that noted leaks in the mall: Exhibit 10-91 "Northern Retail Group Ltd. "Northern Reflections" 151 Ontario Avenue, Elliot Lake, Ontario" and Exhibit 325 "Preliminary Mould Investigation and Assessment".

structural inspections of the mall,⁴⁶ and that rust was observed on steel beams and columns during M.R. Wright's inspections of the mall.⁴⁷

37. Building owners are ultimately responsible for maintaining their buildings, and any repairs recommended by professional consultants would have to be directed or carried out by owners. The evidence presented at the Inquiry demonstrates that, although they were not ultimately effective, repairs were routinely carried out on the building (e.g. caulking).⁴⁸

Province's Actions to Communicate Knowledge of the Problem and Existing Laws and Powers

38. The Province took a number of steps to inform engineers, building owners and building officials of the extent of the problem and options and best practices for the proper inspection, repair, maintenance and monitoring of parking structures. This was consistent with the roles of the Province, municipality and building owners under the legislative scheme described above. As noted in the Province's May 30, 2014 submissions, the information contained in the Advisory Committee's Report was disseminated by the Province in a number of ways, including through:

- publishing the technical chapters of the Report, which provided information to the public and sector about the extent of the problem and inspection techniques, repair methods and maintenance and monitoring procedures;⁴⁹
- conducting workshops and technical sessions;⁵⁰
- supporting and funding the NRC research project, which provided information to owners and engineers and provided guidelines to owners and engineers for repair and maintenance of parking structures; and⁵¹
- supporting the development of the CSA standard, which included as an appendix general guidelines for maintenance of existing parking structures.⁵²

39. The Province's efforts to review issues surrounding the durability of parking structures also contributed to development of Public Works Canada's "Durability Guidelines for the Design, Construction, Repair and Maintenance of Parking Structures".⁵³ These guidelines, similar to the

⁴⁶ Exhibit 5223 "Structural Review the Parking Deck Structure at Algo Centre Mall, Elliot Lake", M.R. Wright, October 28, 2009; Exhibit 110 "Structural Condition Inspection - Algo Centre Mall, Elliot Lake, ON", M.R. Wright, May 3, 2012.

⁴⁷ *Ibid.*

⁴⁸ See, for example: Exhibits 12-68 "Phase One Deck Repairs", 12-69 "Z0844 Zellers - Elliot Lake - Roof Repairs Update", 309 "Parking Deck - Repair Budget Algo Centre, Elliot Lake", 598 "Algo Centre - Repair Summary", 1185 "Parking Deck Repair", and 1965 "Report on Algo Centre Rooftop Parking Repairs".

⁴⁹ Page 2 and Appendices A, C and H, Province's June 4, 2014 submissions.

⁵⁰ Page 6 and Appendices G and I, Province's May 30, 2014 submissions.

⁵¹ Pages 7-9 and Appendices I and K-Q, Province's May 30, 2014 submissions.

⁵² Pages 9-10 and Appendices R-T, Province's May 30, 2014 submissions.

⁵³ Page 8 and Appendix L, Province's May 30, 2014 submissions.

published Advisory Committee Report and NRC Deterioration of Parking Structures Research Project report, provided guidance to owners and engineers on the repair and maintenance of parking structures.⁵⁴

40. All of this assisted owners, engineers and building officials in understanding the extent of the problem with parking structures and to develop appropriate inspection techniques, repair methods and maintenance and monitoring procedures tailored to the individual buildings based on factors such as their unique design, construction, exposure to elements and history of maintenance.

41. This approach to educating the public and the sector about the issues and options related to parking structures is consistent with the recognition that:

- owners are in the best position to know the state of their buildings and are responsible for maintaining them in accordance with the property standards by-law;
- engineers have the necessary technical expertise to conduct appropriate inspections and provide effective advice on appropriate repairs, maintenance and monitoring for particular structures taking into account their unique characteristics; and
- building officials have enforcement powers related to property standards and unsafe buildings to address problems with unsafe or improperly maintained buildings.

Publishing the Technical Chapters of the Advisory Committee's Final Report

42. The Report published by the Province and attached as Appendix B to the Commission's Procedural Order No. 9 contained the three technical chapters of what appears to be the Advisory Committee's final report.

43. The Communication Program Subcommittee noted the importance of providing the technical information contained in the Report to "all those who are connected, either directly or indirectly, with the parking garage deterioration problem".⁵⁵ It went on to note that, "as far as corporate or government owners, or design and repair firms are concerned, a more in-depth technical publication is required. This publication would be a Technical Report containing the complete content of each of the technical reports from the Subcommittee on investigation, repair and maintenance".⁵⁶ The other chapters (enforcement, communication) of what appears to be the final report were internally-focused for government.

44. The Province implemented this recommendation by publishing the three technical chapters on investigation, repair and maintenance in the document attached as Appendix B to the Commission's Procedural Order No. 9.

⁵⁴ Beginning at pp. 126 and 191 of Appendix L, Province's May 30, 2014 submissions.

⁵⁵ Page 3 of Appendix H, Province's June 4, 2014 submissions.

⁵⁶ Page 8 of Appendix H, Province's June 4, 2014 submissions.

45. The three technical chapters that were published provided the state-of-the-art information of primary relevance to building owners, engineers and other professional consultants, building officials and the public - namely a description of the types of parking structures, the nature of the corrosion process and factors affecting the rate of corrosion, as well as techniques for the inspection of deterioration, recommended cost effective repair methods consistent with level of deterioration and recommended subsequent monitoring and maintenance procedures.⁵⁷

46. The Subcommittee noted that the “combination of these distinct, but interrelated phases of the requirements for safe and satisfactory performance of parking garages produces a document which is complete in itself, one which will do much to deal effectively with the problem”.⁵⁸

47. As noted above and in the Province’s May 30, 2014 submissions, the published report was widely disseminated to building owners, engineers, building officials and the public.⁵⁹

Reply to Other Parties Submissions

48. The Province fully complied with, and produced documents in response to, all summonses and requests for production of documents from the Commission. As noted in the Province’s May 30, 2014 submissions, while the Commission did not issue a summons for or request the production of documents from the Ministry of Municipal Affairs and Housing (“MAH”) during the Inquiry, a search for all documents responsive to the Commission’s Procedural Order No. 9 was conducted by MAH upon receipt of the Order. As indicated above, some documents such as the impact study and policy paper could not be located as they appear to have been destroyed in accordance with MAH regular document retention policy at the time. All documents that were located were attached to the Province’s May 30 and June 4 submissions as appendices.

⁵⁷ Page 2 of Appendix H, Province’s June 4, 2014 submissions.

⁵⁸ Page 2 of Appendix H, Province’s June 4, 2014 submissions.

⁵⁹ Pages 5-6, Province’s May 30, 2014 submissions.