

Telephone (705) 848-3601  
Facsimile (705) 848-8416  
Toll Free 1-800-268-7733

# KEARNS LAW OFFICE

13 Manitoba Road  
ELLIOT LAKE, Ontario  
P5A 2A6

~~~~~  
**DOUGLAS B. KEARNS, B.A., LL. B.**  
*Barrister, Solicitor, Notary*

May 8, 2014

Elliot Lake Commission of Inquiry  
2380 St-Laurent Blvd.  
Ottawa, ON  
K1G 6C4

Dear Sirs:

**Re: Responding Submissions Of Elliot Lake Retirement Living and NorDev (ELRL) Further to the Supplementary Submissions of Halsall Associates Dated April 30, 2014**

Further to the provisions of Procedure Rule No. 8, please find following a brief response on behalf of my clients.

### **Scope of Work**

The Supplementary Halsall Submissions reiterate that the purpose of the report was one of due diligence. As Mr. Quinn stated, the purpose of the report was to determine if the purchase was *“smart for us... to give us knowledge from a professional point of view of this. Are we buying a lemon or not”*.

One of Halsall’s statements of the purposes of the Report was as follows:

*“Minimize future repair costs by **identifying defects that could affect the long term durability of the structure**” (Exhibit 70, emphasis added).*

The Supplementary Submissions continue to ignore that the Report failed to alert ELRL to any concerns associated with continued water penetration through the roof. In fact the Report gives comfort to the reader that *“though leakage through the parking deck has been an ongoing problem, we have found no evidence of structural deterioration compromising the integrity of the structure” (Exhibit 71)*. No defects were identified by the Report that would affect the long term durability of the structure.

## Method of Rout and Seal

The Supplemental Submissions then go on to highlight, from its view, the importance of the failure of ELRL to use contractors to perform its Option 1, which was to *"rout and seal all cracks and joints"* (Exhibit 70). It is important to remember that their recommendation was: *"While waterproofing the parking deck is feasible, we suggest a program of joint resealing be effected instead"* (Exhibit 70).

What this submission ignores is that *"rout and seal"* by any method was strongly rejected as a viable approach by all other engineers that gave evidence. It was a completely inappropriate, ineffective and eventually dangerous way to deal with the leaking through the parking deck, no matter how performed.

As we previously pointed out in our submissions:

52. On day 12 of the Inquiry, Mr. Iamónico of Trow said of the rout and seal approach that it was *"just chasing cracks"* (Page 2478, L. 13), *"not a viable option"* (Page 2490, L. 6), *"not proper"* (Page 2493, L. 1), *"wasting your money"* (Page 2493, L. 15), and *"the wrong option"* (Page 2494, L. 24).
53. ...Dr. Saffarini dealt specifically with this position on Day 52:
  - A. *...I think we are emphatically saying "No", that would not be an appropriate means of waterproofing an inhabited building... I'm not, you know, agreeing with the concept that sealing the topping would have worked.*
  - Q. *Well, let me ask you this: I mean, I think everyone accepts that an asphalt membrane would have been a better solution; I take it you agree with that?*
  - A. *I would say it's the only solution. (Page 12337, L. 1 to Page 12338, L. 13)*
54. Mr. Hughes, on day 53, is even more direct on the viability of a rout and seal solution:
  - A. *In my opinion, routing and sealing of cracks and a sealer being applied to concrete is not an acceptable solution for waterproofing a roof.*
  - Q. *Okay?*
  - A. *I would not consider it to be usable in any sense. (Page 12601, LL. 4-10).*

## Consideration of Halsall Recommendations

The statement that Ms. Guertin's comment in her memo to the TD Bank in Exhibit 2182 (*"we have elected to continue a maintenance program at this time"*) occurred *"after ELRL had full knowledge of the problems with the roof"* is, firstly, factually incorrect. ELRL had already provided the Nicholls, Yallowega, Belanger report to TD, but the memo says clearly *"we have not received our report from Halsall on the parking structure yet, but when we do, we will forward it to you."*

However, this submission highlights the most important issue. How can Halsall maintain that ELRL had full knowledge of the problems with the roof at any point? "Full knowledge" is what Halsall was hired to provide. Full knowledge of the problems with the roof would have required:

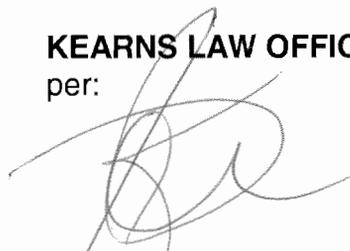
- a. Identification by Halsall that continued water penetration would lead to structural deterioration;
- b. Clear unambiguous instructions that the water penetration needed to be stopped;
- c. A description of the likely consequences of failure to stop the water penetration;
- d. Detailed instructions and timelines for further testing/assessments/engineering reports to assess the success of steps taken to stop the water penetration, and to insure the ongoing structural integrity of the building.

Halsall clearly failed to professionally perform those tasks that they contracted to undertake.

Respectfully submitted,

**KEARNS LAW OFFICE**

per:



Douglas Kearns  
Counsel for ELRL/NorDev