

IN THE MATTER of the Public Inquiries Act, S.O. 2009, c 33 Sched. 6

AND IN THE MATTER of the Elliot Lake Commission of Inquiry

WRITTEN SUBMISSIONS OF TOM DERRECK

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Introduction

The Terms of Reference for Phase One of the Inquiry state that Commission's mandate is to "examine the circumstances surrounding the collapse of the Algo Centre Mall" and in doing so "the Commission shall perform its duties without expressing any conclusion or recommendations regarding the potential civil or criminal liability of any person or organization." Given the evidence to date, it seems impossible not to understand the actions and inaction by various parties and organizations as more than merely "circumstances surrounding the collapse" of the Mall, but as factors contributing to the collapse of the Mall. We shall all have to wait for final determinations of civil and criminal liability by the Courts of competent jurisdiction.

Executive Summary

The intention of the submissions set out below is to help the Commission understand the context in which Tom Derreck came into the job as Chief Administrative Officer in Elliot Lake and to contrast his actions with the actions and inaction of others in positions of authority and/or power who, given the knowledge and responsibilities they had, chose not to follow the proper course. Based on this goal, the following includes detailed submissions regarding key public officials, the various owners of the Mall and their agents who had the knowledge necessary and the responsibility for addressing concerns about public safety at the Mall.

The submissions on factual findings set out below urge the Commission to conclude that The actions and inaction by municipal officials with the City of Elliot Lake, the owners of the Algo Centre Mall and in some cases their employees and agents collectively contributed to the eventual collapse of the Mall.

The Commission is further respectfully urged to find that **the only public official who behaved responsibly**, indeed decisively and with dispatch upon encountering and witnessing for himself, within days of his arrival in the City, the evidence of the eventual threat to health, safety and property at the Algo Centre Mall, **was Mr. Tom Derreck**. In his capacity as Chief Administrative Officer (CAO) for the City of Elliot Lake, he initiated a process under the City's property standards bylaw that caused building and fire department inspections; the issuances of violation notices; caused the first formal policy resolution (Resolution #469/06, Exhibit 167) regarding the state of the Mall by City Council when it adopted his recommendations on October 23, 2006. The passing of this resolution was the first formal response by City Council to those mounting threats in the almost three-decade history of the situation - which response, as the Inquiry revealed – also remained the only expression of interest displayed in the matter by a City Council right up to the 2012 collapse. Had the results of Mr. Derreck's timely, professional and forthright work been followed up and continued by his CAO successors, Mayor Rick Hamilton and other responsible City officials such as Mr. Allard, following Mr. Derreck's his departure, it is very possible, if not actually probable, that the Mall would be standing today, repaired and functional to the continuing economic and community benefit of Elliot Lake, rather than an agonizing memorial to shameful neglect, municipal ineptitude, failed leadership, personal and commercial avarice, loss, injury and death.

Part 1 – Submissions On Factual Findings

Role of Tom Derreck – Chief Administrative Officer (2006-2007)

1. Mr. Derreck came to Elliot Lake as a well-qualified and experienced municipal professional with more than 20 years of experience as a municipal CAO, 5 years as a local government advisor to the Ontario Ministry of Municipal Affairs and Housing, almost 20 years as a municipal professional development speaker and trainer and possessing an award of merit proffered

by the Association of Municipal Managers, Clerks and Treasurers of Ontario in recognition of his contribution to the advancement of excellence in local government.

Transcript pages 9337 thru 9341

2. Mr. Derreck confirmed that the CAO is the senior staff person reporting to a municipal Council and is ultimately responsible to ensure that the city staff carries out the decisions of Council.

Transcript pages 9350, Lines 2-6

3. Mr. Derreck's evidence was that a key element of a CAO's role is to be aware of any issues arising in the community or otherwise that would be of interest or concern to the Council.

Transcript pages 9345, Lines 5-9

4. Over the course of his career with various different municipal governments, Mr. Derreck had become familiar with property standards bylaws such as those in place in the City of Elliot Lake during his service there.

Transcript pages 9351, Lines 1-23, Exhibits 6-7

5. He explained that in his experience such property standards bylaws always require buildings to be watertight and require every part of the building to be maintained in a structurally sound condition.

Transcript pages 9353, Lines 3-7

Transcript pages 9353, Lines 8-22,

Exhibits 6 and 7

6. In Mr. Derreck's experience, even though property standards bylaws are generally enforced on the basis of a written complaint being received by the municipality, a municipality is not restricted in appropriate circumstances

from enforcing the provisions of its bylaws without a written complaint being filed.

Transcript pages 9357, Line 25 and 9358, Lines 1-5 , Exhibits 6 and 7

7. **In our submission, the circumstances as described below in the evidence of Mr. Derreck were most certainly circumstances in which it was appropriate to enforce a municipal bylaw even without a formal complaint. In fact ,the circumstances described were so staggering that we submit that it would be an egregious dereliction of duty for the municipality not to take action under its property standards bylaws.**

Transcript page 9411 lines 8-12, page 9496 line 3-7

8. Mr. Derreck noticed evidence of leaks in the Algo Centre Mall when he visited the mall on October 10, 2006 – his first day on the job as the city’s new CAO. He saw buckets placed in various locations, areas segregated with yellow caution tape, and ceiling tiles missing.

Transcript pages 9359, Lines 1-21

9. That same day (October 10, 2006) he spoke to people and shop-owners in the Mall and learned that leakage from the rooftop parking deck was a long-standing and persistent problem.

Transcript page 9360, Lines 22-25 and page 9361, Lines 1-16

10. Mr. Derreck returned to the Mall on or about October 12, 2006 and met with chief librarian, Susan Morin, who gave him a tour of the library facility. He witnessed for himself the deplorable and hazardous state of the library premises while leaks were ongoing after a recent rainfall and learned that these conditions were typical – and worsening - from the time of the library’s relocation to the Mall in 1989.

Transcript pages 9361, Lines 17-25 and 9362 thru 9364, Exhibits 11-60 thru 11-69

11. Mr. Derreck explained that he could not believe what he was seeing and could not understand why a municipality would place its library collection in the worst possible environment such as he found in the Mall, and then make that placement subject to a 20 year lease that freed the landlord from any responsibility for damages, health or safety-threatening or other detrimental conditions arising from chronic roof leakage.

*Transcript pages 9364, Lines 23-25; page 9365, Lines 1-22; page 9461, lines 16-25, pages 9462 – 9463 and page 9464 lines 1-7
Exhibits 345; 3289 and 1706 (see page 2 and 3 of Exhibit 1706)*

12. Mr. Derreck's evidence was that one of his initial concerns was for the City's risk position because of its apparent lack of action over the course of 27 years with respect to a widely known Mall roof leakage problem clearly in evidence from one end of the mall to the other. He was concerned and perplexed by the City's non-responsiveness to repeated raising of concerns about health and safety threats to staff and patrons and damage to the library collection by library employees and board members, including the City's own appointee to the library board.

Transcript pages 9382, Lines 4-25 and 9383, Lines 1-10; 9384, lines 10-25; 9385, Line 1; 9463, , Lines 5-14; Exhibits 00011-0002, 00011-003, 00011-0011, 00011-0012, 00011-0014, 00011-0015, 00011-00120, 00011-00082, 00011-00083, 00011-00084, 00011-00089, 00011-00090, 00011-00093, 00011-00094, 00011-00096, 00011-00097, 273, 274, 1144, 1145, 1698, 1699, 2020, 2293, 3309, 3310, 3311, 3347, 3348, 335 3356 (I note that I not always included all the "0's" when referencing the Exhibits with a hyphen)

13. Mr. Derreck explained that after observing conditions at the Library and the Mall generally, he returned to the City Hall and went to the building inspector's offices on the second floor with the intention of reviewing the situation with the Chief Building Official, Mr. Syl Allard. Arriving at the offices and learning that Mr. Allard was out of town for the day, he spoke with building inspector, Mr. Chris Cloutier who informed him that there were

no records in the building inspector's office concerning leaks at the Mall and that he himself had never heard about leaks in the library. Mr. Derreck was mystified as to how this could be possible given what he had seen and learned about the longstanding, serious nature of the water leakage problems at the Mall.

Transcript pages 9380, Lines22-25; 9381, Lines1-23

14. Mr. Derreck instructed building inspector, Chris Cloutier to go immediately to the Mall and to the library and conduct an inspection of those premises with specific attention given to the library premises, the Zellers store, the food court area and other retail locations and to pay particular attention to any evidence of negative structural impacts and to threats to the Mall's electrical infrastructure that could pose a fire threat. He also instructed Mr. Cloutier to have Chief Building Official, Syl Allard, come to see him immediately upon his return to the City.

***Transcript page 9382, Lines 1-2; page 9383, Lines 11-25;page 9384, Line 1; page 9385, Lines9-25 and page 9386, Line 1
Exhibit 00011-00124***

15. On October 19, 2006, Councillor Kathy McTaggart informed Mr. Derreck in a lengthy e-mail message thread demonstrating that she had kept City Council members and City appointed officials well informed about health and safety issues arising at the library because of roof leakage and that she had specifically insured that the Chief Building Official, Mr. Allard, was copied on those messages.

***Transcript pages 9405, Lines 21-25; 9406; 9407, Lines1-17
Exhibit 11-19***

16. When Mr. Allard reported to Mr. Derreck on October 19, 2006 and was asked about the building office's awareness and involvement in addressing leaks at the Mall and at the library in particular, Mr. Allard claimed that no complaints

about such leaks had ever been received by his department. Incredulous at Mr. Allard's statement, particularly in the light of Councilor McTaggart's email message, Mr. Derreck instructed him to visit the Mall and the library himself and to conduct a formal inspection.

***Transcript page 9407, Lines 18-25; page 9408; page 9409 Lines 1-8
Page 9495-9496
Exhibit 11-21***

17. Mr. Derreck's evidence was that he had never encountered such disinterest or laxity in a municipal building office as that which he experienced in Elliot Lake with respect to the extensive and longstanding parking deck leakage at the Mall.

Transcript pages 9385, Lines 2-8, page 9495 lines 1-17

18. Perhaps the foundation for that disinterest can be understood as flowing from Mr. Allard's foolish and lazy approach to his job. Mr. Allard testified that if a person were to verbally express to him a concern about a severely leaking roof, he would not act upon or investigate that information unless the person providing it told him that they thought some provision of a city bylaw was not being enforced and specified to him how *they* expected the municipality to respond.

Transcript page 7014, Lines 16-25; page 7015, Lines 1-9.

19. Mr. Allard (accompanied by Mr. Cloutier) proceeded to carry out an inspection at the Mall in accordance with the instructions previously given by Mr. Derreck to Mr. Cloutier. The inspection resulted in Mr. Allard issuing a Notice of Violation to the Mall owner on October 24, 2006 and in notifying the fire department of conditions he suspected to be violations of the Ontario Fire Code. The Fire Department thereafter conducted its own inspection and issued a Fire Code violation notice.

***Transcript page 9409, Lines 9-25; pages 9409 through 9412; page 9413,
Lines 1-2***

Exhibits 11-21 and 175

20. Amongst other things, Mr. Allard's notice specifically required a review by a professional engineer to address structural integrity concerns. The Notice of Violation issued by Mr. Allard stated:

"REMEDY: A review by a Professional Engineer of building structural frame in leakage areas must be conducted forthwith and a report certifying the acceptability of the existing condition or remediation steps necessary to be taken to ensure structural capacity must be provided to the Chief Building Official by December 15, 2006."

Unfortunately, no report was ever delivered and Mr. Allard did not adequately follow-up on his Notice. In fact he retired about a year and half later and the Notice of Violation was apparently forgotten by the Building Office. In fact, Mr. Allard's replacement, Bruce Ewald did not become aware of the Notice of Violation issued in 2006 by Mr. Allard until September of 2008 or 2009. He could not recall precisely but it was a matter of years and it was still awaiting attention and follow-up. The Notice had originally required an engineer's report in December of 2006.

Transcript page 6973, lines 9-13; page 7032, lines 12-14; page 7119, lines 21-25; page 7120, lines 1-17,; page 7142, lines 5-25; page 7144; page 7145 lines 1-24; page 7169, lines 5-7; page 7223, lines 21-25; page 7224, lines 1-9; page 11449, lines 21-25; page 11450; page 11452; and pages 11456-11457 Exhibits 175, 11-21 and 1704

21. **Had Mr. Allard responsibly followed up with this Notice of Violation process initiated by Mr. Derreck's direction for an inspection, and assuming a competent engineer had conducted the necessary inspection and reported as required and advised the City and Mall owner of the appropriate remediation steps, the Mall may never have collapsed as it did.**

22. Had Mr. Derreck not been terminated from his employment with the City of Elliot Lake in July of 2007, he most certainly would have ensured that the Chief Building Official followed through with obtaining the engineers report as directed in the Notice of Violation.
- Transcript pages 9490 -9491; page 9460, Lines13-25; page 9461, Lines 1-15; page 9503, Lines 11-19*
23. Mr. Derreck testified that on October 18, 2006, he personally informed Mayor George Farkouh about the circumstances he had encountered, his concerns about conditions at the Mall and the library, the City's risk position, and the actions that he was taking to investigate for the purpose of bringing the matter and his recommendations to the attention of City Council.
- Transcript pages 9386, Lines 2-19*
24. Mr. Derreck's evidence was that Mayor Farkouh expressed surprise toward his forcefully running up such a red flag after just a few days on the job. Mr. Derreck sensed skepticism and coolness on the Mayor's part as he told Mr. Derreck not to do anything that would negatively impact the Mall's operations or business viability.
- Transcript pages 9386, Lines 2-25; 9387, Lines 1-15; 9399, Lines14-25; 9400, Lines 1-8; page 9457, lines 1-25; page 9458; page 9459, lines1-11 Exhibit 3374*
25. Mr. Derreck explained that he was not discouraged by Mayor Farkouh's reaction. He carried on with information gathering and his intent to propose steps to have the situation formally addressed and recorded as such by City Council and to protect and/or minimize, to whatever degree possible, the City's exposure should anything happen at the Mall for which blame may be laid on the City for its longstanding inaction in respect of the leaks and associated problems.
- Transcript pages 9387, Lines 14-15*

26. It was Mr. Derreck's opinion that, "some people (viz: city officials) had been seriously asleep at the switch" over the 27-year history of the Mall's rooftop leakage and throughout the 17 years during which the library had been situated in a particularly leak-ridden area of the Mall.

Transcript pages 9387, Lines 10-13; 9400, Lines 2-18; page 9494 Exhibit 3384

27. Mr. Derreck explained to the Commission that as CAO, he considered the Mall and library leakage issues to be requiring of expeditious attention and action and that is what he initiated and carried through on to the extent that he was able to during his brief tenure.

***Transcript pages 9428, Lines 10-14
Exhibits 00011-00121, 1705, 3356, 3359,***

28. Mr. Derrek gave evidence that he proceeded to assemble library and City officials who had roles to play and/or knowledge that he required to determine appropriate next steps. On October 18, 2006 he convened a meeting with those officials to round out his information gathering and to formulate a go-forward action plan aimed at bringing his concerns and recommendations to the City Council at its regular meeting scheduled to convene five days later, on October 23, 2006.

***Transcript pages 9387, Lines 16-25; 9388, Lines 1-24;
Exhibits 1706 and 11-24***

29. Immediately following the conclusion of that October 18, 2006 meeting, Mr. Derreck produced and circulated a "Draft Action Plan" for moving forward to address what he had now concluded was a serious situation needing the City Council's immediate attention. His Action Plan assigned tasks to each attendee at the meeting with responses required by noon on the following day (October 19, 2006).

***Transcript pages 9388, Line 25; 9388, pages 9389; 9390 through 9395 ;
9396 Lines 1-7; Exhibits 3359 and 1706***

30. In his "Action Plan", Mr. Derreck specifically cited the need for quick and decisive action, "In order to protect the library and the City from being found in neglect of their responsibilities and/or being assigned culpability in the event that disease or injury should arise from water damage or structural failure."

Transcript pages 9392, Lines 12-17; Exhibit 1706

31. In so doing, Mr. Derreck drew direct attention to the possibility of structural deterioration emanating from the multi-decade history of chronic leakage from the Mall's rooftop parking deck.

Transcript pages 9392, Lines 12-17; Exhibit 1706

32. He considered it extremely important to pursue and produce a proactive response on the City's part when he stated in his "Action Plan" the need for, "a quick and effective resolution of the problem on the owner's part as well as demonstrating and recording due diligence and a proactive response to the matter on the City's part....particularly because the issue impacts other commercial areas of the building and poses a potential health and safety threat to members of the general public as they visit and shop."

Transcript pages 9393, Lines 7-17; Exhibit 1706

33. Noting the consensus arrived at by the participants at the October 18, 2006 meeting, Mr. Derreck also recorded in his "Action Plan", "It was agreed that the Library's stance - and that of the City which contributed to the Library's operation and pays its staff should be firm in terms of holding the Mall owner responsible for all costs and damages already incurred and for those that may yet arise over the course of getting the situation resolved."

Transcript page 9395, Lines 9-17; Exhibit 1706

34. Mr. Derreck provided a copy of his "Action Plan" to Mayor Farkouh to discuss it with him, and requested a response to it.
Transcript pages 9396, Lines 6-15; 9399, Lines 14-25; Exhibits 1706 and 3374 (item 8)
35. Mr. Derreck recorded for follow-up in his personal "Business Action Record" the specific areas of concern to be addressed out of the October 18, 2006 meeting, the actions that were delegated and responses required from officials who attended that meeting by noon the following day (October 19, 2006).
Transcript pages 9396, Lines 16-25; 9397 through 9399; 9400 Line 1; Exhibits 3374 (item 8)
36. Mr. Derreck discussed his concerns and actions to date and proposal with the City's legal advisor (Ms. Virginia McLean) as an additional measure in the course of formulating a report with recommendations to the City Council.
Transcript pages 9400, Lines 19-25; 9401 through 9404; 9405 Lines 1-20 Exhibit 3368
37. Mr. Derreck explained to the Commission that his two principal aims were to get the Mall leak situation out in the open and receive the Council's direction as to how they wished to deal with it.
Transcript pages 9405, Lines 14 to -20
38. On October 23, 2006, Mr. Derreck submitted a report with recommendations to the City Council which was made the subject of an in-camera discussion after which, the Council, in open session, passed a resolution directing Mr. Derreck to, among other things, ensure that, the mall owner be formally provided with written notice of the inspections conducted, their findings, and the remedies to be undertaken.
Transcript pages 9413, Lines 15-25; 9414 through 9415; 9416, Lines 1-15; 9421, Lines 1-25; 9422, Lines 1-11; Exhibits 11-129 and 167

39. On October 30, 2006, in accordance with the Council's direction, Mr. Derreck sent a letter to the Mall owner, Mr. Bob Nazarian, attaching the Notice of Violation and setting out particulars arising and discussed at the October 23, 2006 regular meeting of the Council concerning conditions of the Mall and advising him of the specific points of concern that he was required to respond to within seven days from the date of his receipt of the letter.

Exhibits 11-137, 306 and 175

40. Thus, within two weeks of his having taken up his position as CAO for the City of Elliot Lake, Mr. Derreck had personally witnessed and investigated the Mall and library leaks situation, discussed it with library and City officials, informed Mayor Farkouh about his findings, actions and intentions to implement a response plan, authored and presented a report with response recommendations to the City Council, caused inspections of the library and the Mall to be conducted by the City's building and fire departments and the issuance of a Notices of Violation based on those inspections.

Transcript pages 9429, Lines 24-25; 9430, Lines 1-8

41. **It is submitted that Mr. Derreck was the only City Official who ever took his responsibility for the safety of the public seriously and acted in an appropriate manner by seeking information about the history of the leaks, their impact and in considering the potentially dangerous conditions flowing from those leaks at the Mall and taking action to mitigate those risks to both the City and the safety of the public.**

42. As an additional follow-up measure, on the day after the October 23, 2006 regular Council meeting, Mr. Derreck also met with the Mall manager, Mr. Tom Turner, to review and discuss the situation and to advise him about the Council's decision and the letter he would be sending to Mr. Nazarian. (Ex. 306) He also communicated and met with Mr. Nazarian for the same purpose and it was explained to him during that meeting that Mr. Nazarian was not

provided with adequate disclosure about the history or magnitude of the leaks at the Mall prior to his purchase of the facility from Elliot Lake Retirement Living/Nordev.

Transcript pages 9423, Lines 19-25; pages 9424 -9425; page 9426, Lines 1-24; page 9432, Lines 20-25; page 9433 lines 7-25; page 9434, Lines 1-10; page 9441, Lines 12-25; page 9442, Lines 1-17; Exhibits 11-24, 306

43. In order to keep Mayor Farkouh and the members of Council, as well as the CBO, Fire Chief and several other involved City officials, up to date on how the Mall owner and Mall manager were responding to the letter sent to Mr. Nazarian on October 30, 2006, Mr. Derreck distributed copies of the Mall manager's (Tom Turner) letter dated November 13, 2006 and the remedial timetable referenced therein and attached thereto. Mr. Derreck specifically noted the copies provided to Syl Allard, Paul Officer, Phil Butler, Suzanne Morin and Andrea Leddy as being sent for their "follow-up as appropriate".
Transcript pages 9439, Lines 19-25; 9440, lines 1-13; Exhibit 11-24 (hand written notes "copies to:...")

44. Although regulatory measures were now in the hands of the Chief Building Official, Mr. Allard and the Fire Chief, Mr. Paul Officer, Mr. Derreck's evidence was that he continued to liaise with the Mall manager, Tom Turner, with respect to how the Mall was dealing with the severe leakage problem, even visiting the rooftop parking deck to be personally shown what remedial work was being done.
Transcript pages 9436, Lines 10-25; pages 9437- 9438, Line 1; Exhibit 11-24

45. Through his talks with Mr. Turner, Mr. Derreck was surprised to learn that a complete review of the Mall (the Halsall Report) had been conducted during the period when Elliot Lake Retirement Living/Nordev owned the premises, which report had addressed the leaking rooftop parking deck with

recommendations and 2 options for its repair - neither of which were adopted by Nordev management.

Transcript pages 9444; 9445, Lines 119; Exhibit 70

46. Mr. Derreck also insured that the newly elected City Council that took office in December, 2007 received a briefing of the Mall and library-related events and actions to date.

Transcript pages 9430, Lines 24-25; 9431; 9432, Lines 1-7

47. Mr. Derreck checked-in with Mr. Allard from time to time to follow-up on progress with the actions required under the Notice of Violation. Evidently Mr. Allard had granted the Mall owner an extension on delivery of the engineering report, as evidenced by the letter dated February 22, 2007 from the engineer retained by the Mall, Bruce Caughill to Mr. Allard in which Mr. Caughill undertook to provide the City with a full structural assessment of the Mall premises by sometime in August, 2007. Mr. Derreck was dismissed from his position on July 24, 2007 and was consequently not in a position to know whether or not Mr. Allard ever received that assessment. Evidently he did not, nor did he visit any consequences on the Mall owners for failing to provide same before he retired in May 2008

Transcript pages 9443 through 9446; 9447, Lines 1-7; page 6973 lines 9-13 Exhibits 162, 816, 817, 819

48. **The astounding evidence taken from the mayors, CAO's, building officials and municipal clerks over the course of this inquiry spotlights Mr. Derreck - with the recorded exception of Councilors Kathy McTaggart and Don Denley who's attempts to engage City Council were ignored – as the one and only municipal official over the course of more than 32 years, at the time of the collapse, to have taken seriously the mounting health and safety threat situation and possible structural deterioration at the Algo Center Mall. He is the only City official to have taken direct, expeditious leadership and action to address it in an effort**

that could have averted just such a catastrophe as befell the City in June 2012 and took the lives of two innocent women as well as imposing other horrific injuries and losses to the citizens of Elliot Lake.

49. During Mr. Derreck's testimony a ruling was made by Commissioner Belanger regarding evidence that Mr. Derreck was not permitted to provide to the Commission. It was explained on the record by counsel for Mr. Dereck that the excluded evidence was aimed at revealing the inner workings of a political culture that was in fact what enabled the kind of willful blindness, negligence and dereliction of duty by public officials which ultimately lead to the collapse of the Mall. Counsel for Mr. Derreck explained that the evidence of these other activities involving City Councilors and members of the community would have demonstrated that as a result of Mr. Derreck not acquiescing to this political culture and to the will of those who maintained it, he was eventually terminated from his employment as CAO. Counsel further explained that the evidence he wished to adduce would show that Mr. Derreck's actions with respect to the leaks at the Mall (Notice of Violation, etc. as described above) was the first of many encounters with this political culture. Those submissions made in the hearing speak to the need for additional investigations by government authorities into the inner workings of municipal in Elliot Lake and its connections with various business interests in the community that are set out in more detail in Part 2 of these submissions.

Transcript pages 9465, lines 2-18; pages 8207 through 8220; page 8221, lines 1-4

City Officials (Farkouh, Hamilton, Speck, Bathus, Allard, Pegeau)

50. The next section of these submissions will contrast the actions of Mr. Derreck with the actions and/or inaction of other City officials who had knowledge of the problems at the Mall, the power and authority to do something about it but chose not to do so. It is a story of willful blindness and dereliction of duty that is difficult to fathom until one considers the amazing evidence heard before this Commission of Inquiry.

George Farkouh

51. George Farkouh was a City Councilor in Elliot Lake for 2 years (1986-1988). In 1989 he was first elected Mayor and served in that capacity for 18 years (1989-2006). He has also served on the Board of Directors of Elliot Lake retirement Living (ELRL) from 1991 to the present with only one year not on the Board (1989), for total of 22 years all together. For 15 of those years he was one of 2 City Councilors appointed by City Council to sit on the Board of ELRL.

Transcript pages 7916, 7917, 7925- 7928

52. In 1989 when the decision was made to move the Library to the Algo Centre Mall, George Farkou was Mayor. He had been the City Council representative on the Library Board the previous year. At that point in time the Mall was commonly known to have a 10 year history of chronic leaking from the roof-top parking deck and the Library Board of the day did not want to move to the Mall because of this problem, but Mayor Farkouh in fact asserted that he believed that placing the Library in the leaking Mall was a good move.

Transcript pages 7931- 7934

53. George Farkouh was a member of the ELRL (incorporated as Non-Profit Retirement Residences of Elliot Lake Inc. hereinafter referred to as “ELRL”) board of Directors when ELRL bought the Mall in 1999 (through a subsidiary

called Nordev) and then sold it in 2005 after deciding not to spend the money on the recommendations contained in the 1999 Halsall Building Assessment report as the appropriate remedy to the (by then 20-year) leaking parking deck problem.

Transcript pages 7926-7928

54. Throughout the period of ownership of the Algo Center Mall by ELRL (through its subsidiary, Nordev) the full extent of the leakage and structural concerns and the cost of fixing them were known to the management and Board of Directors including George Farkouh because they were in possession of the Halsall engineering report. When the Mall was sold to Eastwood Mall (Bob Zazarian's company) the full extent of the leaks and structural issues described in the Halsall report were not disclosed, nor was their failure to follow the recommended remedial work.

Transcript pages 7926-7928

55. **The testimony of George Farkouh before the Commission of Inquiry was riddled with inconsistencies, contradictions and failures to recall the most obvious facts.**

56. During his testimony before the Commission, George Farkouh claimed that he did not know there were any leaks at the mall in 1989 but then contradicted that evidence when he acknowledged that he was aware of leaks when the Library was moved into the Mall in 1989. Later, in cross-examination he again denied knowing about the leaks at the Mall when the Mall was moved there in 1989.

Transcript pages 7934-7935, lines 13-25 and 1-5

Transcript pages 10030 lines 20-25 and 1-10

57. On cross examination, he told the Commission that he knew about the leaks since the Mall was built in 1980. He also gave evidence that he had a campaign office in the Mall for 7 election campaigns, campaigned in the Mall,

attended ELRL meetings in the Mall in the ELRL office, which is across the hall from the Library and passed through the Mall many times over the course of his 18 years as Mayor.

Transcript page 10031, lines 12-19

Transcript pages 10025-10028

58. **Despite his eventual acknowledgment that he knew about the leaks at the Mall, Mr. Farkouh claims that he simply “didn’t really connect the dots” between what he knew to be a longstanding problem with leaks at the Mall and the safety concerns associated with the affects of water on the steel structure that supported the building. This failure to connect the dots is astounding for a man of his education and obvious intelligence. In fact, it is hard to believe. One wonders what motivated this willful blindness.**

Transcript page 8317

59. Mr. Farkouh also gave conflicting evidence about the City Council’s knowledge of the leaks when the decision was made to move the Library into the Mall.

Transcript pages 7937, lines 12-25

Transcript page 7938, lines 1-10

60. Despite Council’s knowledge of the leaks at the Mall and assurances at the time the library moved in that they would be dealt with, it is clear that no steps were taken to address the problem of the leaks.

Transcript Page 7938, lines 1-14

Transcript pages 8331 -8332 lines

Exhibit 11-3

61. When questioned about the City’s property standards bylaw and the minimum standards it required to ensure buildings safe, watertight and structurally sound, Mr. Farkou initially indicated he had no specific understanding of such things and then contradicted himself claiming that when he sat on the Council

that approved the property standards bylaw he would have understood each specific provision of the bylaw. He appeared to change his tune when Commission Council suggested that Farkouh's approach to Council votes was that they were a "rubber stamp".

Transcript page 7939 lines 23-25 and page 7940, lines 1-6; Transcript page 7941, lines 1-8; Transcript page 7942, lines 18-21; Transcript page 7956 lines 17-25; Transcript 7957 lines 5-11

62. Despite his patchy memory with respect to leaks at the Mall, concerns about moving the library to the Mall and the specifics of the property standards bylaws, George Farkouh confidently recounted for the commission a 26 year history of the mining collapse in Elliot Lake, the history of ELRL, the detailed history of deliberations taking place between 1985- 1989 concerning relocating the Library, a specific property standard issue that occurred in the City's north end industrial area and the Civic Centre management issue that arose in 2002.

***Transcript pages 7938, 7963-7965, 7968, 8046-8049
Exhibit 2351***

63. Despite the above noted demonstration of a superb memory, Mr Farkouh was unable to recall any of the numerous emails concerning leaks at the Mall which were circulated to City Council and to him personally while he was Mayor by the Library Board, City Council's representative on the Library Board (Councillor Kathy McTaggart), which contained concerns and details about the chronic leaks and other health and safety threats to library staff and the public and damage to the library's collection. Council even made a resolution acknowledging the concerns raised. Later in his testimony he did seem to recall some of these details when pressed and questioned by Commission Council with respect to various documents. Regardless, the information he received about the leaks clearly fell on "deaf ears" when it came to Mr. Farkouh.

***Transcript page 7939 lines 8-14
Transcript pages 8073-8075, 8323, and 8229-8236***

Exhibits 11-3; 11-20; 3356; 1698 and 1699

64. As Mayor and a member of Council appointed to serve as a Director on the Board of Directors for ERL, Mr. Farkouh placed himself in a conflict of interest when he signed a non-disclosure agreement preventing him from discussion of ERL business with City Council.

Transcript pages 7968-7982 (especially lines 22-25 on page 7981 and line 1 on 7982); Transcript pages 10062-10065

Exhibit 2146 (page 4)

65. Mr. Farkouh further failed to properly understand his responsibility as Mayor when he explained that although he did not consult City Council or receive specific direction from it regarding matters that affected the City which came before the ERL Board, he presumed to know Council's position when such matters arose.

Transcript pages 10062, 10063 and 10072

66. Mr. Farkouh naively or conveniently explained that he understood that "we had common interests....the success of the municipality is the success of Retirement Living" and appeared to use this understanding to absolve himself of any fiduciary duties that may be in conflict as between his different roles with the City and ERL.

Transcript page 10074 lines 8-12

67. Mr. Farkouh demonstrated his indifference toward any potential safety concerns related to the leaks at the Mall when Mr. Derrek, after only days on the job as CAO, raised the issue and caused it to come before Council and become the subject of a Notice of Violation issued by the City's Building Department. Because he was already extremely familiar with the situation, he did not bother to go to the Mall (only steps away from his office) to confirm Mr. Derrek's observations, despite claiming not to have any personal knowledge of the situation.

Transcript page 10032, lines 1-21

68. **The testimony of George Farkouh before the Commission of Inquiry was riddled with inconsistencies, contradictions and failures to recall the most obvious facts of high importance to his community to a degree so astounding that the only reasonable conclusions one can draw are that he was willfully blind to the problems and the potential threats they posed to public safety, grossly incompetent or some combination thereof.**

Richard Hamilton

69. Mr. Hamilton was a City Councilor & Deputy Mayor for six consecutive years (2000-2006) - on Councils headed by George Farkouh - before being elected mayor in 2006 (his 1st mayoral term started Jan 2007), the office which he continues to hold today and in which he had served for 5 and a half years (2006-2012) when the mall roof collapsed.

Transcript Pages 14904, Lines 9-25; pages 14905 through 1490; page 14908, Lines 1-3

70. Mr. Hamilton was a 33 year resident of Elliot Lake when the mall collapsed.

Transcript Page 14901, Lines 10-16

71. **Mr. Hamilton is a 19-year employee of the Provincial Ministry of Labour who represents workers in workplace safety and insurance appeals – including representation before tribunals. With his 33 years of residence in Elliot Lake and his professional role with the Ministry of Labour one might reasonably be expected to be especially attuned to and actively interested in reports of workplace health and safety issues such as those frequently communicated to his and the City Council's attention by the public library board - including messages so sent by the council's own appointee to the board, Councillor Kathy McTaggart.**

Transcript pages Exhibits Exhibits 00011-0002, 00011-0011, 00011-00012, 00011-00014, 00011-00015, 00011-00120, 00011-00082, 00011-00083,

00011-00084, 00011-00089, 00011-00090, 00011-00093, 00011-00094, 00011-00096, 00011-00097, 273, 274, 1144, 1145, 1698, 1699, 2020, 2293, 3309, 3310, 3311, 3347, 3348, 3357

72. Following upon former Mayor Farkouh's 20-year example of disinterest and unresponsiveness to the leaks-generated dilemma progressing in the library and throughout the Mall, when Mr. Hamilton took up the office of Mayor and Head of the council on December 4, 2006 - just six weeks after the Council's passed Resolution Number 469/06 in determination to respond to the leaks situation at the Mall, he continued to be uninvolved in the situation right up to the day of the collapse and, contrary to his providing testimony to the Commission about the Mayor's role as including being a guide and leader, he neither led nor encouraged any further action to ensure that the intentions of Resolution Number 469/06 were ever realized.

Transcript pages 15050, lines 15-25; 15051 through 15068, Lines 1-6 Exhibits 00011-00129 and 167

73. Mayor Hamilton testified that when his Council colleague, Kathy McTaggart brought written concerns to the city council's attention about the impacts of chronic leakage on the library's work environment and collection in April, 2004, he was content when the Council undertook no responsive action, the matter being - in his view - addressed by City staff, even though it was a responsibility of Council to see to it that staff was doing his job, and it had not directed any member of the staff to do anything in response to Councilor McTaggart's messages.

Transcript pages 15034 through 15045, lines1-8; Exhibit 1699

74. **It is submitted that this failure to act by Mayor Hamilton was yet another failure by omission by a City official, that contributed to the collapse of the Mall.**

Mr. Allard

75. Mr. Allard had occupied the post of Chief Building Official for the City of Elliot Lake for four years at the time of Mr. Derreck's arrival as the City's new Chief Administrative Officer on October 10, 2006.

Transcript pages 6972, lines 9-21; 6974, lines 4-9

76. Mr. Allard confirmed that he frequented the Mall regularly at least once a week for six years and claimed to have seen only one bucket with no water in it over the entire time.

Transcript page 7120, lines 18-20

77. Mr. Allard openly acknowledged that he did not follow-up on his own violation notice of October 24, 2006 at any time between the date of its issuance and his retirement from his position as Chief Building Official for the City of Elliot Lake. He offered no reason to explain why he didn't do so. He also ignored written complaints about leaks directed specifically to him. (see paragraph 12 above)

Transcript pages 7142, lines 5-25; 7143; 7144; 7145, lines 1-24

Mr. Pegeau

78. Mr. Pigeau was employed as the City of Elliot Lake's Chief Building Official for 19 years, 1980 – 1989, including the first 10 years of the life of the Algo Centre Mall.

Transcript page 2538, Lines 15-18

79. Mr. Pigeau acknowledged that he was responsible for the enforcement of the Ontario Building Code and various municipal bylaws, including the City's Property Standards Bylaw with which he claimed to be familiar.

Transcript page 2540, Lines 2-16 and 11-18; page 2542, Lines 6-25; 2543 and 2544, Lines 1-23; Exhibit 00006-00006

80. Mr. Pigeau confirmed that although the City's policy was that enforcement of its property standards bylaw would be initiated on the submission of a written complaint, he had discretion and would definitely act upon it were the Mayor, a Council member, he himself, or a member of his staff was to raise the issue of a dangerous condition in a building.

Transcript pages 2547, Lines 18-25; 2548, 2549 through 2551; 2552, Lines 1-13; Exhibits 00006-00008 and 00006-00009

81. Mr. Pigeau confirmed his awareness that leaking from the Mall's rooftop had a multi-year history and that it started and then stopped for periods, "for years on end", during his tenure as the City's Chief Building Official.

Transcript pages 2554, Lines 1-17; 2557, Lines 4-25; 2558, Lines 1-3

82. Mr. Pigeau confirmed that although he might have had concerns about the ongoing leaks at the Mall impacting the building's structural integrity over the long term, at no time during his 19- year tenure as Chief Building Official did he either undertake an inspection under the provisions of the City's property standards bylaw, request a member of his staff to do so, or engage engineer to do it for him.

Transcript pages 2558, Lines 10-24; 2562, Lines 5-18; 2563, Lines 6-14

83. Mr. Pigeau confirmed that he received what qualified as a written complaint under the property standards bylaw dated April 25, 1991 - from Janet Taylor, Chair of the City's library board (via cc to him, Mayor George Farkouh and the members of Council) about the serious impacts to the library's premises, operations and collection arising out of the Mall's ongoing rooftop leakage, he made no effort to investigate or respond to it, even when the Mall manager failed to follow through on a promise to provide Mr. Pigeau with a copy of an engineering report being prepared that would address the matter. One wonders what this could have meant had this been the Trow report. In hindsight, the timing of the exchanges seems auspicious. He also affirmed his conclusion

that the report might have been purposely withheld from him, an eventuality that he similarly permitted to pass without concern or follow-up.

Transcript pages 2576, Lines 1-25; 2577 through 2594; 2598 Lines 15; Exhibits 00011-00011; 1113

84. Mr. Pigeau further confirmed that at no time during his 19-year tenure was a property standards inspection ever undertaken with respect to the Mall's leaking rooftop or its mounting effects.

Transcript pages 2561, Lines 3-13

85. **By his own admissions recounted above, Mr. Pigeau was derelict in his duties as CBO in respect of the leaks at the Mall and had he done his job, the collapse may never have occurred as it did in 2012. Mr. Pigeau's failure to properly conduct his duties as CBO was a factor that contributed to the collapse of the Mall.**

Other Chief Administrative Officers

86. The following statements offer a snapshot of the lack of interest in, disregard for, lazy approach to and overall lack of concern - in one instance, arrogantly and unprofessionally so - about reports and appeals made to the City, and to each CAO directly, by board members and staff of the Elliot Lake Public Library since shortly after the library's being forced by the City Council to locate in the leak-ridden Mall premises;

Mr. Speck: In response to an e-mail sent to him by Chief Librarian, Barbara Frezekas, "this is not a goddamn strawberry social".

Transcript Page 6901, Lines 10-25

Mr. Bathus: In response to a question put to him, "I did not draw a straight line relationship between the leaks and the structural integrity of the mall" and, "I did not draw that direct inference at any time".

Transcript Page 1275, Lines 6-18

Mr. Rob DiBotoli: The City's current CAO who - when he was the city's Director of Operations in 2006 - was kept informed through cc's of various email messages concerning the mounting leakage problems at the mall. Like his predecessors Mr. Speck and Mr. Bauthus, he took no personal interest in addressing the problem when he became CAO. He acknowledged his awareness that Chief Building Official, Bruce Ewald, who reports to him, was flippant in his response to leak-related concerns personally voiced to him by Councilor Al Collett and affirmed that "maybe" Mr. Ewald should have followed up when the matter was brought to his attention; and offered the statement to the Inquiry, "I think we all know that this has been a learning experience for a lot of us and that, you know, a situation like this won't be overlooked again as it was in this case".

Transcript Page 14306, Lines 17-25; 14307; 14308; 14309, Lines 1-17; Exhibits 00011-00020, 1698 and 3357

Owners of the Mall and Owners Agents

Algoma Central Properties

87. The Commission of Inquiry heard evidence that the designer of the Algo Center Mall, Mr. Kadlec had his engineering licence revoked by the Professional Engineers of Ontario (PEO) in March of 1994 in connection with findings concerning the engineering work he had done on a Mall in Sault Ste. Marie that also collapsed.

Transcript page 5038, Exhibits 2328, 2329

88. The Commission also heard evidence that the original owners of the Mall, Algoma Central Properties (ACP) received a warning issued by the PEO to all owners of buildings designed by Mr. Kadlec. ACP never advised Nordev and/or ELRL of this warning issued by PEO when it purchased the Mall.

Transcript pages 5714-5715

89. The Commission heard evidence that ACP had a report done in May 1991 by Trow Consulting Engineers LTD. The report was entitled “Investigation of Parking Structure Algo Centre Elliott Lake Ontario” The report raised many concerns which included observations of extensive deterioration due to the leakage through the parking deck. The Trow Report indicated that design deficiencies were the cause of the leaks. Two remedial options were proposed by Trow. Option one involved removing unsound concrete and patching it then installing a waterproof membrane over the existing concrete topping and a new “wear course” on top of that. Option two involved removal of the entire concrete topping and install waterproofing over top of the structural precast slab then installation of a new “wearing course” (asphalt) on top of that. There were numerous other details of work recommended such as installing new drains, fireproofing, cleaning and painting all rusted steel beams, etc. Option 2 was the recommended option and it was further recommended that repairs be carried out “as soon as possible to maintain the structural integrity of the slab”. The cost for these repairs was between \$1.3 Million and \$1.6 Million Regardless of which option was selected, the Trow report made it clear that one or the other option was “essential to maintain the structural integrity of the roof.” Shockingly, no such repairs were done by ACP and this information was never passed to Nordev when it purchased the Mall from ACP approximately 9 years later. One can only imagine the amount of additional deterioration given that the recommended repairs were not done.

Transcript pages 5378 - 5380 and Exhibit 35

90. **Although ELRL/Nordev had its own evaluation of the structural integrity of the Mall by its own Architects and Engineers (Nicholls Yallowega Belanger and Halsall), the fact that ACP did not disclose the Trow Report and its warning from the PEO is a clear example of how self-interest, deceit and bad faith negotiating can impact more than just the duped purchaser. In fact it can be seen as a key contributing factor to the**

ultimate collapse which resulted in 2 deaths, many injuries and significant economic harm to the community.

Transcript pages 5714, lines 15-25 and page 5715 lines 1-7; Transcript pages 5388, lines 1-3; Transcript pages 5389-5390

Elliot Lake Retirement Living / Nordev

91. When Elliott Lake Retirement Living/ Nordev was considering purchasing the Algo Centre Mall from ACP it obtained its own report from the Architectural firm of Nicholls, Yallowega, Belanger (NYB) that included as Appendix "A" a structural report by the engineering firm of Halsall. Unfortunately, the scope of the NYB report was nowhere near as extensive as the Trow report that ACP had in its possession. The NYB report explicitly stated that it was "generally limited to a visual assessment" and that a "detailed review of concealed conditions... did not form part of the scope of this study". This stands in stark contrast to the core sampling and other destructive testing conducted by Trow in 1991.

Exhibit 66

92. **One can only assume that as a matter of typical commercial practice that such extensive destructive testing was not something ACP would have agreed to allow a prospective owner to conduct. This raises the importance of ACP's failure to share the contents of the Trow report with ELRA/ Nordev.**
93. Mr. Kennealy acknowledged having read both a draft of the NYB report including Appendices and the final report dated November 21, 1989.
Transcript page 5419 lines 5-8
Transcript pages 5439-5440
94. Mr. Kennealy acknowledged that he misrepresented the contents of the draft NYB report to the board of ELRL when he presented them with a Building Condition Assessment Report in the Fall of 1998. This report stated that "The

initial inspection indicates "that the building is structurally sound, including the parking deck, and has been well maintained." In another report to a Committee of ELRA Mr. Kennealy put the following in writing to the Committee: "The building condition assessment indicates that the building is structurally sound...". Mr. Kennealy admitted that these statements were false. Additionally he misrepresented the cost of the work recommended in the NYB report. He told them it would cost \$600,000 spread over 10 years when in fact the two options for fixing the parking deck were roughly \$3.6 Million – \$2.1 Million.

Transcript pages 5454-5455; Transcript page 5458, lines 9-25; Transcript page 5460 lines 3-18; Transcript page 5461, lines 3-5; Exhibits 3276, 3240, 2169; Transcript page 5478

95. Mr. Kennealy acknowledged that in a Business Plan tendered to prospective lenders when seeking financing for the purchase of the Mall, he caused false statements about the soundness of the structure and the cost of capital improvements required as set out in the initial NYB report.

**Transcript pages 5502-5504 (especially lines 15-17 on page 5504)
Transcript page 5505-5507
Exhibit 7-2 ; Exhibit 2168**

96. Mr. Kennealy acknowledged that he believed that it was important that ELRL/Nordev buy the Mall and hotel because without these assets in the town the other businesses of ELRL would suffer.

Transcript page 5482, lines 2-23; Transcript page 5483, lines 1-8

97. Mr. Kennealy, convinced City Council that based on market studies that purchasing the Mall was essential to the economic well-being of the City.

Transcript page 5436

98. Mr. Kennealy did not share the NYB report with the City despite the fact that the City covered the cost of the report. The City was therefore unaware of the structural problems and the recommended remedial work that was necessary

to maintain the structural integrity of the building and presumably relied on the misrepresentations described below.

Transcript page 5353 lines 13-19; Transcript pages 5352-5354

99. **Mr. Kennealy was in locked into an absurd conflict of interest because of a Non-disclosure agreement he had signed with ACP agreeing not to disclose the contents of the NYB report. This prevented him from disclosing that report to both his own Board of Directors and the City of Elliot Lake, which was paying for the report, and with which ELRL had an agreement to provide a copy of the report. Entering into such an agreement was a gross error of judgment on the part of Mr. Kennealy. What is even more striking is that the City never pressed him for delivery of the report. This suggests either a level of ineptitude by the City or in the alternative, it reveals that the City was really just a puppet of ELRL and/or Mr. Kennealy and Mayor Farkouh who as the top City official should have lead the charge to insist on delivery of the NYB report as required by the agreement.**

Transcript page 5349 lines 1-25; Transcript page 5350 line 1-3

100. **From the evidence before the Commission it is clear that Mr. Kennealy mislead both his own Board of Directors and the City Council in order to convince them that buying the Mall was a good idea.**

Transcript page 5482, lines 2-23; Transcript page 5483, lines 1-8

101. Although no motivation for this dishonest conduct was elicited, one can only surmise that Mr. Kennealy would personally benefit at least from continued employment if buying the Mall really was a way to benefit the other businesses of ELRL as he acknowledged.

102. **Although he had an office in the Mall, Mr. Kennealy claimed that he was unaware of the leaks until after Nordev purchased the Mall in 1999. This**

assertion strains credulity in the face of the common refrain of nearly every witness who testified before the Commission of Inquiry - “everyone in Elliot Lake knew the Mall had leaked since it was built”.

Transcript page 5732, lines 1-24

103. In his testimony before the Commission Mr. Kennealy asserted that he was “very open” with his Board of Directors at ELRL. This strains credulity in the face of the evidence that he signed a non-disclosure agreement with ACP that did not allow him to share the actual contents of the NYB report.

Transcript pages 5475- 5476 lines 16-25 and 1-5

104. In his testimony Mr. Kennealy spoke of being “very responsive to tenant complaints”.

Transcript page 5626, line 1-14

105. The evidence before the Commission of numerous longstanding and unresolved complaints by tenants about leaks flies in the face of the assertion that Mr. Kennealy and by extension Nordev, was responsive to tenant complains. Correspondence from the Library, Scotia Bank and Buck of Two and the City’s CAO, Troy Speck, all suggest that quite the opposite was true.

Transcript page 5636, lines 1-25

Exhibit 13-5

Transcript page 5627, lines 24-25

Exhibit 677

Transcript page 5628, line 8-15

Exhibit 11-100

Transcript page 5665, line 20-21

106. **Mr. Kennealy’s dishonesty was a factor contributing to the collapse of the Mall.**

107. The NYB report indicates that significant expenditure is required to ensure the structural integrity of the parking deck and set out two different options for how to deal with the concerns raised about the parking deck.

Exhibit 66

108. In cross-examination, Mr. Kennealy acknowledged that Nordev did not follow either option 1 or option 2 proposed by NYB for addressing the leaking parking deck.

Transcript page 5755, lines 8-12

109. Mr. Quinn, who was in charge of maintenance at the Mall during Nordev's ownership of the Mall, explained to the Commission that he chose not follow the recommendations set out in the NYB report because the process was really no more complicated than changing a muffler on one's car. The implication being that paying engineers and other experts to fix the parking deck was a waste of money when his team of laborers could do it themselves.

Transcript pages 5138- 5144

110. **The evidence of Mr. Kennealy and Mr. Quinn confirms that in fact Nordev followed the same inadequate procedures to deal with the leaking parking deck as had been done by ACP when it owned the Mall and it did not properly follow the recommended course of action set out in the NYB report.**

Transcript page 5559, line 25; Transcript page 5560, lines 1-18
Exhibit 2194

111. Mr. Kennealy acknowledged before the Commission the inadequacy of the maintenance program over seen by Mr. Quinn that attempted to deal with the leaking parking deck.

Transcript page 5523, lines 1-22

112. **During the period of ownership of the Mall by Nordev, \$2,276,565 was extracted in profit from the Mall – profit that would have easily covered the estimated cost of repairs as per the Halsall report –even the more expensive Option 2.**

Transcript page 5686, lines 17-20

113. **It is submitted that Nordev’s failure to follow the recommendations set out in the NYB report and the associated Halsall engineering report was a factor that lead to the collapse of the Mall.**

ELRL Governance Issues

114. When the Non-profit corporation know as Elliot Lake Retirement Living was originally incorporated in in February of 1991, its Letter Patent provided for 7 of the 12 Directors and 7 of 12 members would be selected by a larger cross-section of the population of Elliot Lake. In two subsequent changes to the Letters Patent in 1993 and then again in 2011, the governance structure morphed into something resembling a private club rather than a corporation structured to serve the broader interests of the community.

115. The corporation has 12 Members and 12 Directors. Each Member is also a Director.

Exhibit 2143

116. In the original Letters Patent, two of the Member/ Directors were drawn from officials elected to City Council and therefore could be expected to represent a wide cross-section of the community selected in a legitimate selection process. Three of the 12 Member/Directors were selected at a public meeting of participants/tenants of the corporation which would number in the hundreds and later well over 1000 people. Two of the Member/Directors were to be selected at an annual meeting of Community members so they could also be expected to represent a wide cross-section of the community. The remaining 5

Member/ Directors were and continued to be appointed by various other organizations with strong ties to the community (ie. St. Joseph's Hospital, Elliot Lake, Chamber of Commerce, Algoma Community Services Board etc.)

Exhibit 2143

117. In 1993 Supplementary Letters Patent were filed with the Province to change how 5 of the 12 Member/ Directors were elected so that if no one ran for these 5 positions, the existing Board would simply appoint people.

Exhibit 2144

118. In 2011 Supplementary Letters Patent were again filed but this time the appointment of these Member/ Director positions that were originally selected by the community and the tenants of ELRL, were now simply appointed by the Board, thus ensuring that the existing Board would remain in control by only appointing those of like mind – probably reappointing themselves.

Exhibit 2333

119. **The practical effect of this governance structure, given the long terms of municipal politicians such as Mayor George Farkouh and Richard Hamilton, was that the corporation was tightly controlled by a small group of people which allowed it to function as a sort of private club in Elliot Lake that controlled millions of dollars in real estate and community assets.**

120. **It would seem that the corporate structure for selecting Member/ Directors bears almost no relationship with the original configuration that was apparently designed to serve the broader interests of the Community.**

121. **While there is no way to determine precisely how these changes to the governance structure affected the actual decision making outcomes of**

ELRL, it does seem that these changes, in addition to the evidence of secrecy surrounding the Board of ELRL as evidenced by the Non-disclosure agreement required to be signed by all Board members, suggest the corporation has strayed a long way from the original intent as suggested by the original application for Letters Patent, to be accountable to a broad cross-section of the community.

Exhibit 2145 (ELRL Non-disclosure Agreement)

Eastwood Mall/ Bob Nazarian

122. We have chosen not to make any submissions about Eastwood Mall or Mr. Nazarian because although he was in a position of knowledge of the problem and its solutions and had the power to do something about it, most of his more egregious conduct took place after Mr. Derreck left the office of CAO.

Summary of Submissions

The key conclusions regarding findings of fact that the Commissioner is urged to make are **bolded** in the paragraphs above.

The most important finding that the Commissioner is urged to make is as follows:

The only public official who behaved responsibly and did his job with respect to his involvement with the Mall, was Tom Derreck. He demonstrated the highest degree of professionalism as a municipal government official when, in his capacity as Chief Administrative Officer, quickly and effectively initiated a comprehensive process under the City's property standards bylaw which, if had it been followed through in a timely manner by other City officials responsible for that process, could well have prevented the collapse of the Mall.

Part 2 – Submissions on Policy Recommendations

Financial

1. A financial audit should be done of ELRL, the City of Elliott Lake and certain City Officials and employees by the Ministry of Consumer Services or other appropriate Provincial Ministry to determine whether or not any of these organizations and individuals received financial incentives for their willful blindness, apparent incompetence and/or dereliction of duty.
2. A full audit by Canada Revenue Agency of Nordev, ELRL, the City of Elliott Lake and all related quasi business organizations (eg. Elliot Lake Golf Course) and of all individuals who received payments or salary of over \$50,000 whether as employees or independent contractors. The best way to understand the possible motivations for the reckless behavior uncovered by
3. Depending on the outcomes of the financial audits a full public inquiry into the potential corruption of public officials in Elliot Lake should be held. This speaks in part to the evidence that Mr. Derreck was not allowed to provide as discussed in paragraph 49 above.

Electoral

4. Too many consecutive terms leads to too much power concentrated in the hands of two few people and increases the risk that this power will be abused. There should be a recommendation to the Province to institute restrictions on the number of consecutive terms for all city councilors and the mayors in Ontario.

Not-for Profit Governance

5. Separate investigation of ELRL by the Ministry of Consumer Services and/or Ministry of Government Services into its business dealings including bonusing, secrecy and governance structure including election process for

Member/ Directors and the potential breaches of fiduciary duty that such structures may encourage.

Municipal Government Procedure

6. The substantial body of evidence heard by the Commission that suggested many important decisions were made behind closed doors in meetings of which the public had no knowledge nor any possibility to scrutinize. There should be legislative and or regulatory requirements for stronger Provincial auditing of city government practices such as meeting and decision making protocols.

Municipal Government Record Keeping

7. All Municipal governments should be required by legislation or regulation to keep a registry of By-law violations especially property standards bylaws that deal with the safety and soundness of a building structure. This system should be capable of being electronically searched and automatically notify those responsible for enforcement. Periodic audits of these systems should be done by the Ministry of Municipal affairs and Housing or other appropriate Provincial Government entity.
8. The Chief Building Official should be required to report unresolved by-law violations to council every 6 months with a well articulated follow-up plan.

Municipal Government Accountability

9. There needs to be more accountability for elected and appointed municipal officials aimed at preventing official lethargy that will continue to imperil the safety of the community of Elliot Lake and other communities across the province. An effective mechanism needs to be created whereby citizens can call on a Provincial body to audit and review the practices of City Officials and employees so that elections are not the only form of accountability. Clearly that is not enough whether because of voter apathy, lack of access to

relevant information or some other cause. There need to be more safeguards against secrecy, self dealing and willful blindness on the part of public officials both those who are elected, appointed and for other municipal employees.

10. There should be more accountability/ oversight with respect to use of provincial money provided to municipal governments for the purpose of economic development such as was provided to ELRL.

Recommendations of SAGE

11. It is submitted that all 16 recommendations of the Seniors Action Group of Elliot Lake submitted to the Commission should also be adopted by the Commission.

August 8, 2013

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

A handwritten signature in black ink that reads "John Curtis". The signature is written in a cursive, flowing style.

John S. Curtis
Counsel for Tom Derreck