

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

**AND IN THE MATTER OF** The Elliot Lake Commission of Inquiry, established by Order  
in Council 1097/2012 dated July 19, 2012

**AND IN THE MATTER OF** the Corporation of the City of Elliot Lake

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**PHASE II - WRITTEN CLOSING SUBMISSIONS OF THE  
CORPORATION OF THE CITY OF ELLIOT LAKE**

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**PHASE II - WRITTEN SUBMISSIONS OF THE  
CORPORATION OF THE CITY OF ELLIOT LAKE**

**INTRODUCTION**

**Overview**

These are the submissions for the Corporation of the City of Elliot Lake and include submissions on behalf of the Elliot Lake Fire Department, the City of Elliot Lake and the Emergency Community Control Group.

**The Corporation of the City of Elliot Lake**

1. The Corporation of the City of Elliot Lake (“the **City**”) is a municipality of 11,000 people located between the City of Greater Sudbury and the City of Sault Ste. Marie on Highway 108.
  
2. It is a small, somewhat isolated community with a mining background. The City’s main economic driver is as a retirement community in Northern Ontario.

**Elliot Lake Fire Department**

3. The Elliot Lake Fire Department (the “**ELFD**”) is created by municipal by-law and is a “composite” department composed of both volunteer and full-time fire fighters.

**Reference: Paul Officer, page 20416,  
line 18 to page 20417, line 17**

**Paul Officer, page 21510,  
line 4 to page 21511, line 17**

## **The Emergency Community Control Group**

4. The Emergency Community Control Group (the “**CCG**”) is a committee of community stake holders who each have roles pursuant to the City’s Emergency Response Plan (the “**Plan**”) in accordance with the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c E9, as amended.

**Reference: Dan Hefkey, page 20111, line 5 to 20112, line 17  
Exhibit 8090, page 10**

5. The CCG’s main role is to look after community interests during an emergency. This role includes supporting the emergency responders from a human needs and logistics scenario. This includes issues such as food and lodging rather than direct technical support.

**Reference: Exhibit 8090, pages 14-17**

## **The Elliot Emergency Response Plan**

6. The City has been involved in emergency response planning since 1964.

**Reference: Trudy Rheume, page 27483,  
line 21 to page 27484, line 8**

7. The City’s current Plan is found at **Exhibit 8090**.

8. The City participates in training pursuant to the Plan on at least an annual basis.

**Reference: Testimony of Trudy Reheume  
Exhibit 5847, page 3**

9. The Plan sets out the persons or positions that are to compose the CCG.

**Reference: Exhibit 8090, page 15**

10. In the case of the structural collapse at the Algo Centre Mall on June 23, 2013, the CCG made arrangements for accommodation and feeding the rescuers and also set up an information centre in the Collins Hall. The CCG arranged food, some basic sleeping facilities and access to radio and television for people at the Collins Hall.

**Reference: Natalie Bray, page 28352  
line 18 to page 28353, line 21**

11. The CCG operates by committee. In other words there is no “commander” or veto on the committee. The Incident Commander for the June 23, 2012 collapse was Fire Chief Paul Officer. The Incident Commander is part of the CCG, but does not hold a veto or command position vis-à-vis issues determined by the CCG.

**Reference: Paul Officer, page 23406, line 22 to page 23407,  
line 15**

12. When the CCG conducts a meeting, the meeting is opened by the City’s Chief Administrative Officer, Rob deBortoli. Next, the various committee members provide an update on their sector. These meetings are designed primarily for information sharing. Their purpose is not to review, scrutinize or debate issues and, typically, the CCG will look to the advice of the most experienced member in a particular sector. Specifically, for media issues, the CCG deferred to the advice received from the Ontario Provincial Police (“**OPP**”).

**Reference: Paul Officer, page 21633, lines 4-8**

13. Trudy Rheame is the City’s Community Emergency Management Co-ordinator. In this role, Ms. Rheame facilitates and arranges annual training of the CCG in accordance with the legislation. Ms. Rheame is also responsible for ensuring that the

Plan is properly updated and that it is in compliance with the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9.

**Reference:** Trudy Rheume, page 27485,  
line 16 to page 27486, line 7

14. Ms. Rheume was out of town at the time of the mall collapse. She learned of the crisis shortly after the collapse occurred and joined the CCG on the evening of Sunday, June 24, 2012.

**Reference:** Trudy Rheume, page 27509, Line 4 to 11

15. Ms. Rheume testified before the Commission that, when she joined the CCG upon her return to Elliot Lake, she found that it was working well and in accordance with the Plan. This is consistent with the evidence that the City was not at any time in material breach of the Plan.

**Reference:** Trudy Rheume, Page 27509, Line 4 to 11

16. Ms. Rheume also confirmed that the members of the CCG had undergone training pursuant to the Plan that was in place at the time of the mall collapse.

**Reference:** Trudy Rheume, page 27492, lines 13-23

### **Mayor Rick Hamilton's Role**

17. Mayor Rick Hamilton's role with the CCG is to be a media spokesperson for the community. He testified that this role required him to provide interviews to hundreds of media outlets around the world.

**Reference:** Rick Hamilton, page 28556, lines 5-8  
Rick Hamilton, page 28569, lines 6-22

18. Mayor Hamilton is also responsible for providing overall leadership in responding to an emergency; declaring an emergency; notifying Emergency Management Ontario; providing information to members of Council and ensuring that members of the public and other government agencies are kept informed by issuing news releases and public announcements on advice from the CCG. The Mayor is also responsible for maintaining a personal log and declaring, at the appropriate time, that an emergency has been terminated.

**Reference: Exhibit 8090, page 19**

#### **CAO Rob deBortoli's Role**

19. Mr. Rob deBortoli is the CAO of the City. The role of Mr. deBortoli with respect to the Plan is to chair the CCG meetings in the absence of the Mayor; co-ordinate operations within the Emergency Operations Centre (“**EOC**”); schedule meetings; obtain briefings; ensure the Incident Commander has been appointed; request situation reports from the emergency site; prepare briefings for the Mayor; ensure that Council is kept informed through meetings; and, approve major announcements in conjunction with the head of Council.

**Reference: Rob deBortoli, page 28376, line 24 to page 28378, line 14**  
**Exhibit 8090, page 20**

#### **Fire Chief Paul Officer's Role**

20. The role of Chief Paul Officer at the CCG is as Fire Chief and as overall Incident Commander. His is primarily an information role in that he provides information and

advice to the CCG about the response and the progress of the rescue. Chief Officer is further responsible for directing all activities at the emergency site; isolating the site by establishing an inner and outer perimeter; searching for and treating survivors and casualties; carrying out a full damage assessment; assessing secondary effects of the emergency; providing information to the CCG; determining the best method for dealing with the emergency; requesting additional personnel and resources as required; learning what additional resources are available from the City and from outside agencies; organizing shifts and workers; organizing logistical support; organizing the physical layout of the site; and establishing a meeting and briefing site.

**Reference: Exhibit 8090, page 18**

### **Natalie Bray's Role**

21. Natalie Bray was the Duty Officer for the CCG and was charged with, among many other responsibilities, keeping the log for the CCG. Members of the CCG, with the exception of Chief Officer and Inspector Percy Jollymore, did not have scribes and relied on Ms. Bray to maintain the log for the CCG. She is also responsible for activating the EOC call-out list; maintaining and implementing the EOC Operational Guidelines; notifying required support and advisory staff of an emergency and the location of the EOC; opening and maintaining the main event log for the CCG; ensuring that maps and status boards are displayed and kept up-to-date; co-ordinating telephone needs; ensuring building and security needs are spoken to; co-ordinating all logistical needs of the EOC and planning for and scheduling shift rotations for EOC based on the input from the CCG.

**Reference: Exhibit 8090, page 21**

## **Elliot Lake Fire Department**

22. A City by-law established The ELFD.

23. The ELFD is composed of nine (9) full-time firefighters plus Chief Officer and Trudy Rheume. The EFLD keeps space available for twenty-five (25) volunteer firefighters. In 2012, they had twenty or twenty one (20 or 21) volunteer firefighters.

**Reference: Paul Office, page 21493, line 2 to page 21494, line 5**

24. The ELFD is set up primarily to deal with the major threats that the community faces including fire suppression, forest fire suppression, auto extrication, first response medical and ice and water rescue.

**Reference: Paul Officer, page 23350, line 24 to page 23352, line 3**

25. The ELFD is not trained or equipped as a heavy urban search and rescue team. Its members are not trained on building collapse, high angle rescue or confined space rescue. Members of the ELFD who were responding to the collapse, however, did have significant training. Exhibits 983, 8076, 8079, 8075, 8077, 8036, 8037, 8039, 8040, 8041, 8043, 8099, 8100, 7787, note their extensive training. The ELFD firefighters have received all appropriate training as indicated by ELFD Captain Thomas and Captain Connors' records.

**Reference: Paul Officer, page 23351 to page 23353  
Page 23351, lines 8 to 23354, line 10**

26. Members of the ELFD were trained for their role in the rescue operation from the perspective of a firefighter. Chief Officer confirmed by his testimony that his firefighters had all of the training that they needed to perform their roles.

**Reference: Paul Officer, p 23354, 26380**

27. It must be borne in mind that the level of service for a municipal fire department is set by Council and is typically based on the types and frequency of threats that predictably may be dealt with by the fire department as well as based on available financial resources. Training courses require that there be adequate financial resources as well as time and equipment. The need for adequate financial resources is obvious - there is a cost to train firefighters in all of the disciplines that they require to respond as needed and as expected as well as to maintain that training. Firefighter training is not a one time event and ongoing training and practice is required to maintain skills.

**Reference: Paul Officer, page 26380 to page 26384**

28. Training also requires significant time commitments of the volunteer firefighters. The ELFD volunteers initially undergo intensive training, which is later followed by regular refresher training sessions. The firefighters participate in in-house training on a weekly basis in addition to training that they must satisfy on their own time. They are also required to attend lengthier training sessions outside of Elliot Lake, which require a greater time commitment. The number of hours that can be devoted to training must be realistic and a certain types of training must be prioritized based on the type of threats that the fire department is most likely to face.

**Reference: Paul Officer, page 23352, lines 4-21**

29. Equipment is also a consideration when evaluating the resources that shall be devoted to training. Firefighting requires significant specialized and complex equipment depending on the threat. The ELFD is equipped to deal with the threats that are within its mandate and as described above. Certainly some equipment can be used for other purposes than that for which it was specifically designed. However, as stated above, the purpose and design of the ELFD equipment is not intended for use in heavy urban search and rescue. It is evident from the inventory of equipment that Task Force 3 (“TF-3”) deployed in response to the mall collapse that there is a significant amount of specialized equipment required to deal with complex structural collapses.

**Reference: Paul Officer, page 23352, line 22 to page 23353 line 6**

### **Media Relations**

30. Elliot Lake is a small community. Throughout the Phase II inquiry, Commission Counsel raised concerns regarding the media response provided by the City, specifically as it related to casualty reporting.

**Reference: Rob deBortoli, Page 28408, Line 2 to 10  
Rob deBortoli, Page 28411, Line 22  
Rob deBortoli, Page 28494, Line 1**

31. Media relations is not a subject matter in which the members of the ELFD are trained, nor is there any training available to the firefighters that relates to providing information to victims’ families. The latter is typically a role occupied by the OPP.

**Reference: Chief Officer, Page 21917, Line 7 to 12**

32. The City, given the lack of specific training did the best it could with limited resources and with the lack of media training for Mayor Hamilton, CAO Rob deBortoli or anyone with the City as it relates to disaster communications.

**Reference: Mayor Hamilton, Page 28532, Lines 5 to 20  
Rob deBortoli, Page 28487, Line 8 to 19**

33. Once the rest of the nation and even the world became aware of the collapse, the media literally descended on the City.

34. The goals of the media differ from the goals of the CCG and the other rescuers who were focused only on rescuing potential victims. No recommendation can change the discrepancy that exists between the goals of media reporting and sale of media produces on one hand and the goals of rescuers wanting to save people's lives on the other.

**Reference: Paul Officer, page 21934, Line 12**

35. It is respectfully submitted, that despite its lack of experience in disaster reporting, the City representatives conducted themselves commendably in their reporting and showed respect to the families of the potential victims and the community generally.

**Reference: Mayor Hamilton, page 28433, Line 1**

36. At no point was there an intent by the City to "mislead" the media by stating that "at this time no casualties have been reported or confirmed" as noted in **Exhibit 6610**.

37. Firstly, as noted throughout this document, the City is not an expert in national media releases generally, let alone in disaster rescues with national and international media interest. The City also applied a strict standard to determine if a victim could be declared a casualty. This standard was based on the OPP protocol communicated by Percy Jollymore to the CCG. Commission Counsel may have disagreed with this protocol, but it was inappropriate to characterize it as “mislead”.

*And I suggested earlier that this is misleading because of the information that, again, you had received from the medical person that there was a person with no pulse, a Code 5, and while he confirmed the loss of life, by definition, the CCG wasn't going to do it because they didn't have the same definition of loss of life.*

**Reference: Rob deBortoli, page 28516  
Rob deBortoli, page 28903, Line 2 to 8**

38. Somehow, this single innocuous sentence has become a focus for commission counsel to suggest that members of the CCG intentionally mislead the media or the public. This is not the case. The evidence clearly showed that there was a dichotomy between disclosing that a person was deceased and the recommendations from the OPP that they could not confirm fatalities until such time a same were confirmed by a doctor or a coroner.

39. Caution should be exercised when reporting the number of casualties as can be seen from other disasters/emergencies such as the Sandy Hook shootings and the Boston Marathon bombings.

40. In the days and even weeks following the September 11 attacks, the media was still reporting that more than 6000 people were estimated dead. The final casualty number for September 11<sup>th</sup> is approximately 3000 victims.

**Reference:**

<http://edition.cnn.com/2001/US/09/29/gen.america.under.attack/index.html>,

41. Caution in reporting was exercised by the City representatives.

**Reference: Exhibit 6610**

42. The key issue for the purposes of the Phase II submissions is not whether there had been a confirmed casualty at the time **Exhibit 6610** was released, which the City submits was not the case.

**Reference: Rob deBortoli, page 2844, Line 6**

43. The key point is that the City conducted itself appropriately and with an abundance of caution. This was the correct manner of conduct especially considering the City's lack of experience in national disaster reporting.

44. The reality is that when an emergency situation descends on a community, media relations ought to be handled by expert media liaisons, such as the media team available through EMO.

45. As noted by Mr. deBortoli:

*We weren't able to confirm that there were any casualties at this point in time, so I believe we are putting the information out, again, as suggested by our OPP advisers to not, at this particular point in time indicate that there was casualties because we hadn't been able to confirm such.*

**Reference: Rob deBortoli, page 28425, line 24  
to page 28426, Line 5**

46. Given the City's lack of experience in national reporting relating to such a disaster, the City should not be criticized for utilizing caution in its reporting and for demonstrating the utmost respect for the families of the deceased, as well as for the victims themselves.

47. The ELFD is a member of the Algoma District Mutual Aid Association. It has agreements with other departments within the district to provide assistance during a fire call. The agreements typically contemplate the provision of personnel and equipment required during a call.

**Reference: John Thomas, page 21227, lines 2-23.**

48. In the case of the mall collapse, the Blind River Fire Department, under the mutual aid agreement, sent personnel to Elliot Lake to cover the fire department in the event a call was received while the ELFD was engaged in the rescue operations.

**Reference: Paul Officer, page 23378, line 24 to  
page 23379, line 9**

49. Additionally, Chief Officer spoke to Chief Provenzano from the Sault Ste. Marie Fire Department to discuss the provision of equipment. However, it was determined that the Sault Ste. Marie Fire Department could not offer equipment that the ELFD did not already have.

**Reference: Paul Officer, page 21882, line 13 to page 21883, line 8**

50. The Ontario Fire Marshall (“OFM”) provided significant assistance to ELFD during the collapse. Representatives of the OFM attended in Elliot Lake within hours of the collapse and provided any assistance that they could.

**Reference: Exhibit 8025, page 3**

51. Additionally, Carol-Lynn Chambers of the OFM was available to Chief Officer whenever he called.

**Reference: Exhibit 8025, page 2**

### **The Ontario Fire Marshall’s Office**

52. The OFM oversees municipal fire departments throughout the Province of Ontario and has personnel on call to assist municipal fire departments in dealing with the emergency management of provincial chemical, biological, radiological, nuclear and explosives events, hazardous materials events, as well as heavy urban search and rescue (“HUSAR”).

**Reference: Carol-Lynn Chambers, page 26069, lines 8-19**

53. The OFM also deploys people from its organization to assist in an emergency. The function of these individuals would be principally to liaise and support the rescue operations. These individuals are not operational and are not involved in the response itself. Rather, they act as a liaison with the OFM to advise on and assist in obtaining from the OFM extra equipment or other resources as needed.

**Reference:** Carol-Lynn Chambers, page 26070,  
line 14 to page 26071, line 2

### **Algoma District Mutual Aid Association**

54. The Algoma District Mutual Aid Association is an association of fire departments within the District of Algoma who have executed mutual aid agreements. The agreements essentially provide assistance between the fire departments of one municipality in the district and another. The system allows for equipment and manpower to be shared between municipalities in the district for both training and emergency response purposes. The concept of mutual aid agreements is included in the *Fire Protection and Prevention Act*.

**Reference:** Dan Hefkey, Page 20097, line 15 to 20103, line 24  
Page 26071, line 8 to 26072, line 25

55. The City did activate the mutual aid agreements with neighbouring municipalities and for instance, firefighters from Blind River and Algoma Mills were called in to cover the Hall while the Elliot Lake Fire Department was responding to the Algo Mall collapse.

**Reference:** Darren Connors, page 21227, Line 2 to 21  
Paul Officer, Page 21601, Line 20 to 21602, Line 15

56. The use of mutual aid in this instance proved extremely beneficial because during the time mutual aid responders were covering the Elliot Lake Fire Hall, there were three calls that those responders had to deal with.

**Reference: Paul Officer, Page 21864, Line 13 to 20**

57. The Mutual Aid Association and agreements are facilitated by the Office of the Fire Marshall. Particularly in this instance, Mr. Bob Thorpe from the Office of the Fire Marshall was instrumental in assisting with activating mutual aid and assisting Paul Officer with the use of the mutual aid system in relieving Chief Officer from various duties so that he could concentrate on the response.

**Reference: Paul Officer, Page 21896, Line 2 to 21897, Line 4**

### **Forensic Evidence of the Victims, Lucie Aylwin and Doloris Perizzolo**

58. Any review of the rescue effort must be informed by the highly persuasive forensic evidence suggesting that the two victims, Lucie Aylwin and Doloris Perizzolo, died nearly immediately after the collapse of the mall.

59. It is the City's submission that the testimony from Drs. Queen and Bradshaw must inform any analysis of the rescue operation.

60. Commission counsel put forth theories that the victims possibly survived for a period of time after the collapse. Embedded in this notion is the idea that, during this period, the actions of the rescuers might possibly have had an impact on the victim's survival.

61. In light of the paucity of evidence that either victim survived for any amount of time after the collapse occurred, it is neither constructive nor fair to the families and the rescuers themselves to suggest that a different rescue effort could have resulted in any other outcome.

62. It was the evidence of all of the medical professionals, based on their scientific analysis that both victims, Ms. Lucie Aylwin and Ms. Doloris Perizzolo, died nearly immediately after the mall collapse.

**Reference: Exhibits 9259, 9260  
Transcripts  
Dr. Bradford - Page 23251, lines 3 to 21,  
Page 23287, lines 14 to 23288, line 7  
Page 23287, lines 13 to 23288, line 7  
Page 23319, lines 13 to 25  
  
Dr. Queen - Page 26466, lines 18 to 26468, line 16  
Page 26481, lines 18 to 26482, line 4  
Page 26553, lines 7 to 9  
  
Dr. Posen - Page 28263, lines 5 to 21  
Page 28265, lines 7 to 14**

63. There are many empirical indications in the medical testimony that was received by the Commission suggesting that neither victim lived for any significant period of time.

64. It was established by the evidence presented to the Commission that Ms. Perizzolo suffered a severed carotid artery and that her injury was not survivable. Death would have been near immediate.

**Reference: Page 26466, lines 18 to 25  
Exhibit 9259, pages 5 and 8**

65. Significantly, Dr. Bradford testified that “*laceration of the carotid artery is not survivable and it would be difficult to survive a lacerated carotid artery even if it should happen in the presence of a surgeon.*”

**Reference: Dr. Bradford, page 23315, lines 6 to 9**

66. With respect to Ms. Aylwin, there are many indications that she did not survive for any length of time after the collapse. Dr. Queen notes that, “the fingernails are clean with no apparent fresh damage” and, further, “the fingernails of the deceased were clean with no evidence of fresh damage, suggesting the lack of or inability to mount any attempt to “claw” her way out of the situation.”

**Reference: Exhibit 9260, pages 4 and 10**

67. This suggests, beyond a balance of probabilities, that the “tapping” heard by rescuers was not Ms. Aylwin.

68. However, the vitreous testing provides a more scientific analysis of what likely occurred. Of Ms. Aylwin, Dr. Queen notes that “biochemical analysis of vitreous (eye) fluid shows no evidence for dehydration, hemo-concentration or hyperglycemia (some or all of which would be expected in the event of a significant survival interval, particularly in a diabetic with no fluid intake).”

**Reference: Exhibit 9260, page 10**

69. Dr. Posen also commented on the biochemical analysis of the vitreous fluid which he found indicated that Ms. Aylwin died very soon after the crush injury.

**Reference: Dr. Posen, page 28263, lines 13 to 21**

70. Dr. Queen found that the injuries sustained by Ms. Aylwin showed no evidence of any inflammatory or reparative reaction. This would be expected in the event of a significant survival interval.

**Reference: Exhibit 9260, page 10**

71. Dr. Queen also found that Ms. Aylwin suffered from crush asphyxia which included prevention of breathing movements and mechanical limitation of lung expansion as a result of active chest compression and rapid increase in intrathoracic pressure such that it exceeds that of venous return. Blood cannot re-enter the chest. In these circumstances, innumerable post capillary venules burst under hydrostatic pressure, producing the most florid physical signs of raised intravenous pressure.

**Reference: Exhibit 9260, page 10**

72. Commission Counsel advocated that there may have been a shift in the rubble pile that caused the deaths of Ms. Aylwin and Ms. Perizzolo. This was not supported by any of the medical evidence. Dr. Queen stated such a scenario was “highly unlikely.”

**Reference: Dr. Queen, page 26603, lines 3 to 11  
Dr. Queen, page 26607, lines 4 to 9**

**Questions by Nadia Effendi at Page 23296,  
Line 5 through 21**

73. Dr. Posen indicated that there was no evidence that Ms. Aylwin was possibly trapped within the rubble for a period of time without having sustained the crush injury and then sustained the crush injury subsequent to her being trapped.

**Reference: Dr. Posen, page 28265, lines 7 to 14**

74. Commission counsel asked Dr. Bradford if it was "*possible that [Ms. Aylwin] had sustained injury as a result of the collapse and found herself in a void, for example*".

**Reference: Dr. Bradford, page 23296, lines 11 to 13**

75. Dr. Bradford responded that it was possible. Commission counsel further posited:

*Q. And not knowing when the crushing actually occurred, and assuming that it is possible that she was in a void, is it possible that she would have been crushed later by a shift, let's say, of the debris?*

*A. It's possible but very unlikely.*

*Q. Any why is that?*

*A. I would rely on Dr. Queen's opinion for this, but basically the injuries that Dr. Queen described are all of the same time. So it seems less likely to me, that her -- she would have been crushed in the initial collapse and sustained no injury and then later on sustained such massive injury.*

**Reference: Dr. Bradford, page 23296, lines 15 to 25  
Dr. Bradford, page 23297, lines 1 to 3**

76. Notwithstanding this clear response from Dr. Bradford, Commission counsel continued on with a review of “possibilities” associated with Ms. Aylwin’s death.

*Q. And is it possible that she would have sustained, at the moment of the collapse, some crush injury that wouldn’t have caused her death right away?*

*A. That’s possible.*

*Q. Okay, and I gather that given that we don’t know exactly when the fatal crushing occurred, it is possible that she would have survived a certain period of time?*

*A. It’s – it’s possible.*

**Reference: Dr. Bradford, page 23297, lines 4 to 13**

77. Dr. Bradford went on to say of the possibility that Ms. Aylwin would have survived: “...[T]his is a stream of probabilities. It is possible that she survived for an hour. It is more likely that she died before that.”

**Reference: Dr. Bradford, page 23298, lines 17 to 20**

78. Commission Counsel asked questions of Dr. Bradford with respect to “possibilities.” Dr. Bradford clarified by stating the following: “*I’m being technical saying ‘possible’. We are approaching vanishing small probabilities.*”

**Reference: Dr. Bradford, page 23300, lines 6 to 8**

79. The City submits that triers of fact in Canada are required to deal with more statistically relevant probabilities and specifically, as will be discussed below, the standard in which to consider the evidence is a balance of probabilities.

80. When asked by Commission Counsel if there was any shifting of the pile, Don Sorel testified that there was no shifting.

**Reference: Don Sorel, page 27583, lines 13 to 25**

81. Similarly, Philip Glavin was unequivocal in his testimony that he did not experience any vibration while standing on the pile.

**Reference: Phil Glavin, page 27774, lines 20 to 25  
Phil Glavin, page 27775, lines 1 to 2**

82. Moreover, Dr. Bradford stated that the evidence that he has from Dr. Queen's work doesn't support the "shift" scenario.

**Reference: Dr. Bradford, page 23326, lines 3 to 15**

83. Dr. Bradford went on to say of the possibility that Ms. Aylwin would have survived, "this is a stream of probabilities. It is possible that she survived for an hour. It is more likely that she died before that."

**Reference: Dr. Bradford, page 23298, lines 17 to 20**

84. Where Commission Counsel asked questions of Dr. Bradford with respect to "possibilities," Dr. Bradford clarified by stating the following: "*I'm being technical saying 'possible'. We are approaching vanishing small probabilities.*"

**Reference: Dr. Bradford, page 23300, lines 6 to 8**

85. The City submits that the Commissioner, as with all triers of fact in Canada, must deal with the evidence on the basis of probabilities. Statistical probabilities are used in making findings of fact to the standard "balance of probabilities". It is further submitted

that a discussion of possibilities however remote they may be, is not of assistance to a trier of fact and specifically not to this Commission. As such, the Commissioner should carefully scrutinize the evidence and the questions when Commission Counsel was questioning medical professionals about whether or not a particular scenario was “possible.”

86. As such, the discussion of possibilities put forward by Commission Counsel is not of assistance to this Inquiry.

87. Furthermore, Commission counsel’s theory of a shift in the rubble does little if nothing to further the Commission’s mandate. The shift theory is essentially a hypothesis absent any supporting facts or evidence. It is the City’s submission that, particularly where the theory carries with it such grave emotional implications for the rescuers and the victims’ families, it is not the role of Commission Counsel to promote theories that lack even a threshold level of supporting evidence.

88. A determination of fact with respect to the time of death of the victims is important both for the families and for the well-being of the emergency responders. It was noted by Dr. Bradford in his examination that “I have no experience in rescue or work on the part of the firefighters, but just from what small amount I saw of the debris on top of Ms. Aylwin, I can’t imagine what they could have done”. Dr. Bradford provided this evidence in response to the question “In your opinion is there anything that the firefighters could have done to save these people?”

**Reference: Dr. Bradford, page 23328, lines 8 to 15**

89. The fact is that, despite the valiant efforts by all of the rescuers, the medical evidence, on a balance of probabilities, clearly indicates that the victims succumbed to their injuries almost immediately. Unfortunately, there was nothing that any of the rescuers could have done to save the victims or to achieve a different outcome in this situation.

### **Other “Signs of Life”**

90. There was evidence before the Commission of “signs of life” from the victims. Namely, witnesses testified that there had been indicators that the victims could possibly have been still alive including the reaction of the scent dog, the noises believed to have been heard by the firefighters and the first responders as well as indications from the use of the Lifelocator, which was used to detect breathing.

91. The HUSAR team (a.k.a Task Force 3 or TF-3), initially deployed the Lifelocator from a crane and thereafter placed it directly on the pile when searching for a location of the victims. The evidence indicates that the Lifelocator did detect breathing. However, the evidence was that that Lifelocator was used improperly when it was lowered by a rope from the crane basket and when it was operated within a fifteen meter radius of responders. As such, it appears most likely that the Lifelocator did work; however, it was detecting the breathing of one or more rescuers within its sensing radius.

**Reference: Tony Comella, page 24199, lines 15 to 25**

92. With respect to the scent dog, Dare, who was used by rescuers to attempt to locate individuals trapped within the rubble, it is not clear whether Dare or other “live dogs” are able to determine or distinguish the scent of a live individual as opposed to one who has recently passed away. As such, for a period of time after a person is dead, a live dog may indicate on their position.

**Reference: Wayde Jacklin, page 22599, line 23 to 22600, line 22**

93. The firefighters felt that noises indicating life were heard and it is clear that they believed, without a doubt, that they were talking to a live individual. However, when questioned, Captain Thomas indicated that the sound was muffled and that he couldn't tell if it was a voice saying yes or no, rather he said it was just a sound.

**Reference: John Thomas, page 21202, lines 2 to 25**

94. Captain Connors indicated that the sound was like mumbled or a muffled voice.

**Reference: Darren Connors, page 21385, lines 6 to 18**

95. Sergeant Scott Fowlds described the tapping as “a hollow sound” like flesh hitting concrete.

**Reference: Scott Fowlds, page 26320 to 26322**

96. It is submitted that the empirical scientific medical evidence that indicated the victims died nearly immediately and further, the notations of Dr. Queen indicate that, “the upper airway obstruction by blood, mucous and/or debris” as well as the crush asphyxia suffered by Ms. Aylwin would have made it impossible for her to speak or

mumble. Further, as indicated previously, her fingernails were clean and intact which suggests that it was not Ms. Aylwin that was “tapping.”

**Reference: Exhibit 9260, page 10**

97. In situations of crisis such as this, there is a great ability within the human spirit to have and maintain hope. This is what gives rescuers the enormous ability to persevere in the face of daunting challenges. This powerful hope, however, can have an effect on the rescuers’ perception.

**Reference: Mike McCallion, page 24406,  
line 18 to page 24409, line 15**

98. Chief Officer indicated that he was advised that someone was talking on a cell phone while inside the pile. Chief Officer also noted that he heard cell phones ringing or vibrating in the debris pile.

**Reference: Paul Officer, page 21618, lines 10 to 16**

99. Chief Officer advised that when he was in the collapse zone that,

*“not one of those firefighters said anything about the noise and the droppings of the material around them. They didn’t mention anything about cell phones ringing. When I finally got in and was able to observe exactly what was there, those were the first two things I noticed. So what I will tell you is that they were so focused on what they were doing, they didn’t hear those things and they were trying to hear what was coming from the pile.”*

**Reference: Paul Officer, page 21934, lines 5 to 16**

100. It is submitted that the scientific and medical evidence, on a balance of probabilities, ought to be preferred over the anecdotal evidence, the Lifelocator and the first responders when determining the time of death issue for the two victims.

### **June 23, 2013 - Weather**

101. Chief Officer recorded that the weather at the time of the collapse was 24.1° C, 40% humidity with the winds being 11.2 km per hour from the west.

**Reference: Exhibit 8025, page 1**

102. This weather likely contributed to the small number of people in the collapse zone. Had the collapse happened during the winter months or during bad weather, there may well have been many more people in the food court area at the time of the collapse.

**Reference: Exhibit 8025, page 1**

### **Collapse**

103. The roof of the Algoma Centre Mall collapsed at 2:18 pm on June 23, 2012.

**Reference: Exhibit 7919**

### **Response from ELFD**

104. At 2:19 p.m., the call went into the ELFD and one minute later, the call out to firefighters was made. Within five minutes, the first truck arrived on scene carrying four firefighters.

**Reference: Paul Officer, page 23376, lines 15-17**

105. It is important to note that there were only two firefighters stationed at the Fire Hall. In the five minutes it took for the ELFD to respond, two additional firefighters were paged; arrived at the Fire Hall; dressed in their gear; mounted the truck and arrived at the scene.

**Reference: Paul Officer, page 23376, lines 21-24**

106. At the time the call was received, Chief Officer was at his house on the south side of Elliot Lake. He lives further away from the Fire Hall than any of his firefighters. Chief Officer was on the scene five minutes after the first truck arrived. One minute later, command was transferred from the Captain on scene to Chief Officer.

**Reference: Paul Officer, page 23377, line 11 to 23378, line 8**

107. At 2:44 p.m., 26 minutes after the collapse, Chief Officer made his first call to the Provincial Emergency Operations Centre requesting that TF-3 be dispatched.

**Reference: Paul Officer, page 23378, lines 15-18**

108. At 2:46 p.m., Chief Officer called for mutual aid from the Township of the North Shore and Blind River to send firefighters to Elliot Lake to fill in for the ELFD at the Fire Hall as the ELFD firefighters were occupied at the collapse zone.

**Reference: Paul Officer, page 23378,  
line 24 to page 23379, line 17**

109. During this time, Chief Officer was at the mall and was conducting his primary assessment.

**Reference: Paul Officer, page 23379, lines 10-19**

110. At 3:01 p.m., Chief Officer contacted Bob Thorpe, his OFM Advisor.

**Reference: Paul Officer, page 23379, lines 20-24**

111. At 3:45 p.m., 1 hour and 27 minutes after the collapse, the City declared a State of Emergency.

**Reference: Paul Officer, page 23379,  
line 25 to page 23380, line 5**

112. Before the Commission, Chief Officer testified that, looking back, he did not think there was anything he would do differently during that first hour and a half after the collapse occurred.

**Reference: Paul Officer, page 23376,  
line 3 to page 23380, line 10**

### **Role of Incident Commander**

113. It has been suggested occasionally by Commission Counsel that there was confusion as to who was the overall Incident Commander at various points during the response. The Ministry of Labour chart listed various commanders and certainly Mr. Selvers indicated at one point, he thought that he himself was a commander at the scene. The fact is that Chief Officer was the Incident Commander for the entire response. It is important for Sector Commanders and appropriate advisors to

understand who the Incident Commander is. It is important because those people report to the Incident Commander and would have cause to have direct dealings with the Incident Commander. It is less important that people not directly involved in the response or responders who are not involved in command or decision making to know who the Incident Commander is. This fact is seen in the testimony discussed below which indicates that all of the Sector Commanders and individuals on the ground in a command position were fully aware that Chief Officer was at all times, the Incident Commander.

**Reference: Exhibit 7643  
Dave Selvers, page 25144, line 4 to 17**

114. Chief Officer was the Incident Commander for the entire response.

115. Occasionally, people other than Chief Officer were identified as the Incident Commander. For example, Inspector Jollymore who referred to himself as incident commander during the press conference that took place on Monday, June 25, 2012. This, however, was a nomenclature issue and at no time were Mr. Neadles or Mr. Jollymore intending to convey that they had become the overall Incident Commander. That was always Chief Officer. Inspector Jollymore and Staff Inspector Neadles were Sector Commanders, Bill Needles was the Rescue Sector Commander, while the HUSAR team was on the ground and Inspector Jollymore was the OPP Commander.

**Reference: Exhibit 7208, page 3**

116. There are innumerable references throughout the Phase II testimony of Chief Officer being the Incident Commander for the rescue effort. This was one of his main roles in the rescue operation.

117. This authority is noted in the following transcript references and supports Chief Officer's position that he was the Incident Commander. Dan Hefkey noted in response to a question from the commission about who the Incident Commander would be in a hypothetical scenario:

*Q. Okay. When the Fire Chief comes on the scene and takes command, he becomes or she becomes the Incident Commander?*

*A. Correct.*

**Reference: Dan Hefkey, page 20258, Line 11 to 14**

*Q. And who gave you those instructions?*

*A. I believe Paul Officer was the Incident Commander at the -- it would have been Paul Officer. He was the Incident Commander there shortly -- he received command from Captain Dave George within -- once he got his update of what was going on, he took command and then he would have been the guy to send me in.*

**Reference: John Thomas, page 21028, Line 4 to 12**

118. Captain John Thomas noted in his evidence that he received instruction from the Incident Commander:

*Q. And who gave you those instructions?*

*A. I believe Paul Officer was the Incident Commander at the -- it would have been Paul Officer. He was the Incident Commander there shortly -- he received command from Captain Dave George within -- once he got his update of what was going on, he took command and then he would have been the guy to send me in.*

**Reference: John Thomas, page 21028, Line 4 to 12**

119. While some have suggested an inconsistency in the incident command, the evidence is unequivocal that no change occurred. Only permitted delegation occurred, and at all times, Chief Paul Officer was the Incident Commander. Captain Thomas made clear that the ELFD always held the command of the rescue:

*THE COMMISSIONER: Was there a change in Incident Command?*

*THE WITNESS: Absolutely not.*

*THE COMMISSIONER: During the night?*

*THE WITNESS: Oh, I was acting on behalf of the Elliot Lake Fire Department on behalf of the Fire Chief Paul Officer for a good part of the evening, and Ken Barnes as well. And it kind of changed every now and then, if the Chief had a meeting with the Emergency Management Group or anything like that, he would designate --*

*THE COMMISSIONER: But in terms of the Elliot Lake Fire Department being in charge and having the Incident Command responsibility, did it ever change during the night to either UCRT, MOL?*

*THE WITNESS: No.*

*THE COMMISSIONER: It remained*

*THE WITNESS: It stayed with the Elliot Lake Fire Department.*

*THE COMMISSIONER: It stayed with the Fire Department.*

*THE WITNESS: Absolutely.*

*THE COMMISSIONER: All right.*

**Reference: John Thomas, page 21082,  
Line 12 to Page 21083 Line 8**

120. The concept of the Incident Command structure is well known to rescue workers and the oral evidence demonstrates that Chief Officer was the proper individual to be the Incident Commander. This concept has nothing to do with Chief Officer's own subjective understanding of Incident Command process. It has to do with a global understanding among rescue workers that someone must be in charge of the overall operation. Captain Thomas clarified the way the system works:

*Q. All right, and that is based on what Chief Officer told you or your understanding of how it was supposed to work?*

*A. That is how Incident Command works.*

*Q. So that was based on your training with the IMS?*

*A. Yes.*

*Q. And so your understanding was Elliot Lake Fire remains as Incident Command?*

*A. Yes.*

*Q. So Chief Officer –*

*A. Yes.*

*Q. -- would be Incident Command, and TF-3 and UCRT are to assist?*

*A. Yes.*

*Q. Okay. And based on your knowledge in that structure, who had the decision-making power?*

*A. Fire Chief Paul Officer.*

**Reference: John Thomas, page 21097, Line 7 to Line 25**

In his testimony, which continued over two days, Captain Thomas noted:

*Q. Conditions were changing, and I understand because of that a decision was made to leave the pile?*

*A. Yes.*

*Q. Okay, and that decision was made by Captain Barnes?*

*A. Yes, with talking to Fire Chief Paul Officer.*

*Q. Okay, so the decision was made by the Incident Commander?*

*A. Yes.*

**Reference: John Thomas, page 21210,  
Line 23 to Page 21211, Line 7**

121. Chief Officer testified that a great degree of planning with respect to any emergency response is done well in advance and, at the time of the event itself, there is not adequate time to develop a written response plan after a call and before action starts to happen in the response. Chief Officer testified that, essentially, time is of the essence.

122. In his evidence, Chief Officer provided an example of a situation where the Sault Ste. Marie Fire Department responded to a call involving a commercial building that was on fire. Paul Officer stated that the Sault Ste. Marie firefighters could see the “seat of the fire” immediately upon arrival. At the time, the protocol required them to develop an

Incident Action Plan. By the time they finished with their action plan, the smoke was down to floor level and they lost the building.

**Reference: Paul Officer, page 26389 to 26391**

123. In an emergency rescue, especially one with the potential tragic outcomes of a structural collapse, the incident commander must balance the competing interests of protocol and rescue immediacy.

124. In this regard, Chief Officer never wavered in his role as the Incident Commander and his status was understood by everyone supporting the rescue. Captain Thomas' evidence bears proof of this fact – namely, the above testimony and further:

*Q. I just want to get into some more general questions in terms of Incident Command and who was in charge that day, okay. We already talked about on Thursday your understanding of Incident Command and I believe you indicated that from your perspective Chief Officer was Incident Command?  
A. Absolutely.*

**Reference: John Thomas, page 21163, Line 5 to Line 16**

Captain Thomas went on to say who he was receiving his instructions from:

*Q. And then Incident Commander Officer told you to go on the pile and start a search for victims?  
A. Yes.*

**Reference: John Thomas, page 21197,  
Line 25 to Page 21197, Line 2**

125. Those supporting the rescue, including Firefighter John Thomas had confidence in Chief Officer's leadership.

**Reference: John Thomas, page 21229, Line 25**

126. The arrival of other supporting rescue workers did not alter the role and identity of the Incident Commander. It is quite clear from the evidence of the witnesses that testified before the Commission that there was no confusion among them as to who was the Incident Commander in charge of the rescue operation. Captain Connors described who the Incident Commander was after TF-3 and the Urban search-and-rescue Radiological, Chemical Response Team (“UCRT”) arrived:

*Q. In terms of the collapse, who was the Incident Commander from your perspective?*

*A. The Chief.*

*Q. The Chief? And once UCRT and TF-3 arrived, who was the Incident Commander?*

*A. Still Chief Officer.*

**Reference: Darren Connors, page 21465, Line 18 to Line 23**

127. Commission Counsel questioned many witnesses regarding the identity of the Incident Commander and implied that there were numerous incident commanders operating in conjunction or in conflict with one another. This is simply not supported by the evidence.

128. There were numerous rescue workers on site including ELFD, HUSAR, UCRT, and the OPP. Each of these organizations has their own designated incident commander (i.e. individual in charge). However, as noted throughout these submissions, and as supported by the evidence, the overall Incident Commander was Chief Officer. It is proposed by the City that there be a recommendation that all organizations falling below the organization of the main Incident Commander (in this case the ELFD) shall be required to use the title Sub-Incident Commander in defining the most responsible person of that organization during a rescue effort. Chief Officer

testified that the various Sector Commanders were called “incident commanders” by their personnel. It was clear however, that they were the commander of their sector of the incident and that Chief Officer was the overall Incident Commander. In Chief Officer’s testimony on August 22<sup>nd</sup>, he stated:

*Q. Now, the term "Incident Commander" has been used with respect to a number of people.*

*A. Uhm-hmm.*

*Q. Yesterday Constable Burns was referring to Inspector Jollymore as the Incident Commander?*

*A. Yes.*

*Q. And you are now -- you are referring now to Ryan Cox as the Incident Commander?*

*A. Yes.*

*Q. And you are the Incident Commander?*

*A. Yes.*

*Q. So where does everybody fit here? Everybody is walking around and they are all Incident Commanders, but --*

*A. No, not really. I mean, I went through that with you before. That is with the --I treated it as a Unified Command, so each agency, depending on who they are, they have an Incident Commander. So the EMS Chief who was there, he actually designated Ron, his Deputy Chief, as the Incident Commander on scene. He didn't really participate a whole lot because he didn't have the participation. The OPP at the start was I believe Percy Jollymore, and when Ryan Cox showed up, and he is the only OPP on the scene, he is to me the Incident Commander. I believe Mr. Jollymore was probably gone home for the evening.*

*Q. Okay, and --*

*A. And actually, when Bill Neadles came on scene, I treated him as the overall rescue Incident Commander. I later found out that, no, he is actually working for me, so he would be in charge of the rescue sector. So at this point, it is Ryan Cox that has the rescue sector, and he had no issue with that from what I remember. (emphasis added)*

**Reference, John Thomas, page 21761,  
Line 18 to Page 21763, Line 5**

129. It was clear to Ryan Cox, a provincial constable with UCRT that Chief Officer was the Incident Commander. Constable Cox expressed this clearly in his testimony:

*A. At that point, Toronto Task Force 3 was at scene. At that point it was – the overall incident commander was Fire Chief Paul Officer.*

*Q. Right.*

**Reference: Ryan Cox, page 22279, Line 13 to Line 16**

130. Other members of UCRT clearly understood that Chief Officer was the Incident Commander. Namely, Steve Hulsman and Jamie Gillespie.

**Reference: Steven Hulsman, page 22938,  
Line 23 and Page 23521, Line 9**

131. Among the various organizations, all working towards the ultimate goal of finding survivors, it was clear who was in charge, even when more specialized groups were aiding the rescue operation. Constable Cox outlined the chain of command in his testimony as well:

*With respect to the chain of command, you've told us who you thought was in charge, that the fire -- that Fire Chief Paul Officer was the Incident Commander and when UCRT was there without TF-3 it was operating as a Unified Command with you -- sorry, with either you or Mr. Gillespie -- Sergeant Gillespie and Mr. Howse effectively giving advice to Chief Officer who made the final call; right?*

*A. Correct.*

**Reference: Ryan Cox, Page 22431 Line 25 to Page 22432, Line 9**

132. It was well understood that Chief Officer was in charge (Incident Commander) and that the expertise of Staff Inspector Neadles captured the feelings of the entire CCG when he stated that his rescuers “weren't happy and I understand that and respect it. But that's the decision I had to make because it's one that, is unfortunately the responsible decision to make, but they are not happy, are very upset about it.”

**Reference: Exhibit 7208 at page CBC E00000007 0019**

133. Captain Gillespie stated explicitly that all of Task Force 3 was under the control of Incident Commander Paul Officer, whom he stated “would be running the decisions”:

*Q. But just to be clear, you were told that this was what was going to happen. You were not consulted?*

*A. I was told that what was going to happen.*

*Q. That Staff Inspector Neadles would be interposed between you, as the Team Leader, and the Incident Commander, Chief Officer?*

*A. I wasn't told specifically that I couldn't speak to the Incident Commander, but I knew from when -- a Task Force 3 perspective that he would be running the decisions from that level.*

*Q. And did you think that made sense?*

*A. Given their ability to run operations, that made perfect sense to me, and our limited capabilities at that stage of the game.*

**Reference: Jamie Gillespie, page 23606, Line 10 to Line 25**

134. To summarize, it is critically important that response planning to emergency events within a community be completed in advance of a crisis and that delaying emergency responses in order to develop or promulgate a written plan rather than, as was done here, follow a system of paramilitary command can contribute to the extent of the damage or loss of property and even potentially cost lives.

135. It is clear from the testimony of Chief Officer that the roles and responsibilities of the parties involved were well-defined prior to the collapse. Proper preparation and plans are integral to responding to rescue operations and the City was ready and prepared to deal with this tragic event. Chief Officer described the CCG's role as follows:

*A. The Emergency Control Group is essentially there to best deal with and handle an emergency situation. The main purpose is to support the Incident Commander, so –*

*Q. Yourself in this case?*

*A. That's correct. But it also looks at globally the entire community, because the community still has to operate, especially when it becomes a longer duration event. And basically, it is pulling all the resources together to best handle whatever event you are dealing with.*

**Reference: Paul Officer, page 21632, Line 14 to Line 23**

136. At no time was Incident Command delegated to Staff Inspector Neadles. Chief Officer flatly laid out the chain of command in his testimony:

*Q. At no time did Staff Inspector Neadles try to take Incident Command from you?*

*A. No.*

*Q. And at no time did you relinquish it to him?*

*A. Correct.*

**Reference: Paul Officer, page 23440, Line 10 to Line 14**

137. Dan Hefkey, Ontario's Commissioner of Community Safety with Emergency Management Ontario, succinctly described during his testimony the division in expertise between Chief Officer and Staff Inspector Neadles, whose expertise was tactics relating to the rescue in the building. Commissioner Hefkey stated:

*Q. Thank you. And who was leading the rescue at that time, to your knowledge, Chief Officer or Staff Inspector Neadles?*

*A. Again, the Incident Commander was Chief Officer. The individual responsible for the actual putting together the tactics for how they go into the building, that would have been the responsibility of Staff Inspector Neadles.*

**Reference: Dan Hefkey, page 28624,  
Line 24 to Page 28625, Line 5**

138. The ELFD firefighters all had significant training for the roles they fulfilled during the response.

**Reference: Exhibits 983, 8076, 8079, 8075, 8077, 8036, 8037,  
8039, 8040, 8041, 8043, 8099, 8100, 7787**

## **Termination of Rescue – June 25, 2012**

139. Much testimony was devoted to the decision to terminate the rescue at approximately 1:33 p.m. on June 25, 2012. It is true that the rescue personnel were withdrawn from the collapse zone at that time, however, it is important to understand that although conditions prevented the rescuers from remaining in the building, they never gave up.

140. It is apparent from the notes of Natalie Bray, Paul Officer, Trudy Rheame, Inspector Percy Jollymore and Natalie Quinn, that the Ministry of Labour and specifically Inspector Don Jones, did order that the rescue be stopped. It is equally important to recognize that the responders understood and agreed that this was the right decision.

**Reference: Exhibit 3743, page 34 to 36  
Exhibit 8025, page 6  
Exhibit 6621, page 13  
Exhibit 6396, page 11  
Exhibit 6336, page 35**

141. It was confirmed by Natalie Bray and Mayor Rick Hamilton that it was, in fact, Inspector Don Jones who indicated that a verbal stop order was being placed on the property and that everyone would have to be kept out of the building.

**Reference: Natalie Bray, page 28337, line 3 to 28339, line 3  
Rob deBortoli, page 28454, line 20 to 28455, line 8**

142. It is inconceivable that five different people could record in their notes that the Ministry of Labour had issued a stop order at this time and two people could specifically indicate that it was Inspector Don Jones who uttered the words if that was not an

accurate recollection of the events that unfolded. The evidence is that the Ministry of Labour did in fact stop the rescue at approximately 1:33 p.m. on June 25, 2012.

143. It is clear that all of the rescue commanders agreed with this decision even if it was not well received. It is equally clear that if an alternate method of rescue came about, that the Ministry of Labour could just as quickly revoke, rescind or alter their order to allow a continuation of the rescue. This in fact occurred when the Ministry of Labour representatives came up with the idea of exempting the rescue and recovery workers from the effect of their Order at the June 25, 2012 meeting at the OPP station.

**Reference: Exhibit 5025  
Rob deBortoli, page 28453, lines 15 to Page 28454, line 4**

### **The Team Never Gave Up**

144. Although a decision was made to remove the rescuers, and re-assess the building, the Elliot Lake Fire Department was always on the scene, Chief Officer was always the Incident Commander and the first responders never gave up.

145. While the decision was made by the MOL to stop the rescue, it was Chief Officer and Inspector Neadles who captured the feelings of the entire CCG when Inspector Neadles stated that his rescuers “weren't happy and I understand that and respect it. But that's the decision I had to make because it's one that, is unfortunately the responsible decision to make, but they are not happy, are very upset about it.”

**Reference: Exhibit 7208 at page CBC E00000007 0019**

146. Mr. deBortoli stated during the press conference on June 25, 2012 that the first responders never gave up even after the MOL ordered all persons out of the rescue zone. In response to the question “will the City look into every possible thing [in terms of rescue options].” Mr. deBortoli confirmed: “Yes, we will ... explore all available options... obviously we are not ... prepared to quit on this either.”

**Reference: Exhibit 7208 at page CBC E00000007\_0026**

147. There was evidence given by Phil Glavin that on June 24<sup>th</sup>, the day before the rescue was ordered to stop by the MOL, he had been in touch with his brother-in-law, who is a Priestly, to discuss where the “long arm” or “Komatsu” machine was and the status of its availability. This is the machine which was ultimately brought to Elliot Lake on the 26<sup>th</sup> of June.

**Reference: Phil Glavin, page 27659, line 19 to page 27666, line 14**

148. Mr. deBortoli confirmed in his testimony that after the press conference where he stated that the City would “explore all available options”, a number of people convened at the police station to come up with possible solutions to overcome the MOL stop order. Mr. deBortoli stated:

*After the press conference we reconvened at the police station, and they have a meeting room there, and there was a -- as far as I can recall, there were the -- Inspector Jollymore was there; Chief Officer was there; Mr. Jeffreys; Mr. Jones, I believe; and some representation from HUSAR. Bill Neadles was not there at that particular time. And there was discussion about what we needed to do to continue on with the operation, and we had identified that we knew in order to get back at the face of the operation, that we would need to first take care of the slab that was resting on the escalator and that particular beam, so it was -- we were formulating a plan basically to try and somehow get that structure down in a way that it would not (a) impact the work area that we had already been*

*working on and (b) do it in a manner that we would be able to do it expeditiously and get in there as quickly as we could to continue on with the operation...*

*Q. Yeah. And so what you were talking about was getting the building down as quickly as possible and also any bodies that were there out with dignity as well?*

*A. Correct. We were looking at it from a very controlled aspect. We didn't want to give any indication that we were going in there with a wrecking ball just to knock the structure down. It was to be what we described as a controlled demolition, to -- and all efforts to be made to get the structure down away from the rubble pile where the victims were.*

**Reference: Rob deBortoli,  
Page 28454, line 15 to Page 28463, line 11**

149. In the above-noted quotation, Mr. deBortoli explains the situation whereby the rescue was stopped by the MOL and thereafter the parties got together and came up with the idea of using heavy equipment for a controlled demolition which eventually led to the Priestly solution.

150. This evidence is further supported by the CCG notes of Natalie Bray. In her notes from June 25<sup>th</sup>, at the CCG meeting immediately following the 5 o'clock press conference where the MOL called off the rescue, she attributes the following comments to CAO deBortoli "work within the framework we have to do what we can to [sic] expeditiously as possible."

**Reference: Exhibit 3743 at page CEL\_E000013925\_037**

151. Paul Officer, in his testimony, noted that, after the MOL had stopped the rescue, there were reassessments going on to try and figure out how to continue the rescue, rather than everyone simply packing their bags and going home.

Fourth-last line says:

*"The building is now completely unsafe for rescue operations."*

A. Yeah.

*"No options are available." I believe that says to secure the area.  
"Reassessment measures will commence."*

Q. So at this point, that's still the Ministry of Labour saying, "Everybody's got to get out"; right?

A. Yes.

Q. Now, when you read this and when you recall the meetings, was HUSAR, at this point, going home?

A. No.

Q. Tell me about the reassessment process.

A. Well, essentially, to continue to monitor and, I believe, to see if there's anything else that can be done, and I believe Mr. Neadles was looking at giving his people some time to come up with other options for the rescue component.

Q. And were you aware of the engineers being tasked to look at that or anything that they did to look at that?

A. I don't have that particular knowledge, but when I say they're looking at reassessing, I take it that that's what was taking place.

**Reference: Paul Officer, page 26421,  
line 24 to page 26423, line 6**

152. At a second CCG meeting later on in the evening on June 25<sup>th</sup>, after a meeting that took place at the police station between many of the members of the CCG, the CCG took part in a brainstorming session to determine tactics for getting back into the mall. The common theme seen throughout the comments, which are not attributed to any particular individual, is that the rescue will continue until all avenues have been explored.

*OFM – if escalator comes down search area would be considered safe for rescue efforts. Is there a safe way/controlled way to do that? with enough weight it would come down... If we start picking at bld. the beams will more than likely come down, send equipment if not people."... "if weight was dropped on escalator – we could then shore/remove debris w/ BobCat."... "attempting would be our last effort – exhausted all possibilities – approach family?*

**Reference: Exhibit 3743 at page CEL\_E000013925\_042**

153. Even though the rescue was stopped, and while there were attempts to reassess to scene, there were still preparations going on at the collapse site. There rescuers never stopped work.

*Q. The next entry is at sixteen (sic) o'clock, so four o'clock, and it is by Chris Rowland. It says:*

*"Rowland meets with McRae and ELFD Thomas ..."*

*Which I understand to be Captain John Thomas of the Elliot Lake Fire Department:*

*"... to plan lighting set up for aerial and rented scene lighting."*

*Do you know what was meant by this entry?*

*A. Yeah, we were just leaning forward for nightfall, making sure that we had exterior lighting on the building, so that we could take next steps, whenever those next steps were coming down the pike as orders.*

*Q. Now, to be clear, this is after the people were removed from the pile, why would you be setting up lighting?*

*A. Well, we were still engaged in the rescue operation, just from the exterior of the building.*

*Q. The next part of Chris Rowland's entry says:*

*"Command tent being moved to lower parking lot on alpha side."*

*Do you know why this occurred?*

*A. Again, that is leaning forward, in case we got the go ahead. We wanted to make sure that we were doing as much as we could in the time that we had before the -- we anticipated that the decision to bring in the heavy equipment would be the one that they would want to do, so we're just trying to take steps to get ready for that.*

**Reference: Tony Comella, page 243453,  
line 7 to page 24354, line 17**

154. The Commissioner noted that there is an important distinction between a rescue being over and a rescue being stopped. Mr. Needles was exploring the issue during his testimony:

*Q. Well, the clear implication is you have told us -- sorry, you have told us that the decision to make was to stop the rescue?*

*A. Correct.*

*Q. The clear, logical consequence of that is the rescue now becomes a recovery; correct?*

*A. Again, that -- at that point in time I don't have any concrete -- though I did call it a recovery, I still hopefully that there is some slim chance that that individual may be still alive. I don't know one way or the other.*

*Q. I'm not questioning the person's viability here. I'm just asking about the decision. You have told us it is clearly the rescue is over?*

*A. Correct.*

*Q. And the implication of that, as I understand it, is the rescue would then become a recovery; correct?*

*A. I—*

*THE COMMISSIONER: Well, there may be a distinction here. Is the rescue over or is the rescue stopped, interrupted? I think there is a distinction.*

*THE WITNESS: Okay.*

*THE COMMISSIONER: And in fairness to Mr. Neadles, I think that distinction ought to be explored.*

*THE WITNESS: Failing any second idea that any of the -- I had no further indication from Comella or the engineers that there was a viable option at that point. I then more or less was making my way back to the Control Group, and I am not -- I'm going to assume, because I only found out this later, that they were working on some other viable options on how to continue or how to move forward with this structural problem.*

**Reference: Bill Neadles, page 25439,  
line 7 to page 25440, line 18**

155. Shortly after the brainstorming session that happened at 8:30 p.m. on June 25<sup>th</sup>, Mr. Neadles came to the CCG that was convened and said that the “full support” of the Premier was with the group. At this point once the go-ahead was given to re-enter the building, the entire CCG knew that what was needed as a controlled demolition of the building, and with the all-clear to continue working, that is exactly what was to be. This view was confirmed at an early press conference on June 26<sup>th</sup>. Mr. deBortoli stated:

*This team that is sitting at the table in front of you worked diligently from the time we left this press conference to ensure that we did do everything within our capabilities to expedite the process and, on – by the time we met again. And had some more news for the community which was more positive than it was, early in the afternoon, we had been advised that the go-ahead had been given to continue the operations at the Algo Centre Mall.*

**Reference: Exhibit 7255 at page CO\_P00002079.**

156. The efforts of the CCG to find a solution to the problem even at the time they were barred from entering the building by the MOL order allowed the rescue to proceed resume more expeditiously once the rescue work resumed.

### **Termination of Emergency Status**

157. At the time of drafting these submissions, Mayor Hamilton has not declared this emergency terminated due to ongoing issues with the mall owner as well with the Province.

<b>LAW</b>
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### **Standard of Proof**

158. It is submitted that the standard of proof to be applied to the Commissioner's findings of fact is that of a balance of probabilities. In Canada, there are only two standards of proof; namely, a balance of probabilities and the criminal standard - proof beyond a reasonable doubt. There is no intermediate standard of proof between the civil standard and the criminal standard.

**Reference: F.H. v. McDougall, [2008] SCJ No. 54 (SCC).**

159. To impose a standard that would require the Commissioner to be satisfied 'beyond a reasonable doubt' of facts in question would unduly impede the Commissioner in satisfying the mandate of the inquiry which is to provide the public with knowledge of what occurred.

160. “A key function of public inquiries is to shed light on events or decisions, not only to provide answer, but also to inform the public and restore public confidence.”

**Reference: Report of the Ipperwash Inquiry, The Honourable Sidney B. Linden, Volume 3 at p 4.**

161. In addition to satisfying this critical public interest component, proof on a balance of probabilities also furthers the interests of natural justice and procedural fairness as it is not so low a threshold so as to allow findings of fact based on evidence that is less than persuasive.

162. Therefore, it is submitted that the appropriate standard of proof to be applied consistently throughout the report by the Commissioner is that of a balance of probabilities. Finally, the report should indicate clearly the standard of proof that is relied upon.

## **RECOMMENDATIONS**

163. The City of Elliot Lake would strongly support a recommendation that the Federal Government reinstate the JEPP funding and the Canadian Emergency Management College or in the alternative, that the Province consider implementing a similar program.

164. The City of Elliot Lake would support a recommendation that all organizations involved in a collaborative response like that which took place at the Algo Mall, should ensure that their nomenclature is such that there one “Incident Commander” and that the commanders of other supporting branches be called “Sector Commanders”. This

would mean that Bill Needles would be the Rescue Sector Commander, Percy Jollymore would be the OPP Sector Commander, etc.

165. The City is concerned that the Canadian Federal Government has eliminated the Joint Emergency Preparedness Program funding (“**JEPP**”) and the funding of the Canadian Emergency Management College.

166. Both Trudy Rheaume and Chief Officer testified about the importance of this funding and particularly the usefulness of the College with respect to training. Accordingly, the City would strongly support a recommendation that the Federal Government reinstate the JEPP funding and the Canadian Emergency Management College, or in the alternative, that the Province consider implementing a similar program.

**Reference: Canadian Emergency Management College  
Dan Hefkey, page 20453, line 16 to page 20454,  
line 18  
Dan Hefkey, page 27520, line 4 to page 27522, line 17**

167. Chief Officer and the Elliot Lake Fire Department were not aware of the existence of the OPP UCRT Team. The City would support a recommendation that Emergency Measures Ontario disseminate information to all fire departments about the various specialty teams serving the Province so that Incident Commanders can have a better understanding of the resources available to them.

168. The City would support a recommendation that the ICS System remain optional and not mandatory. While it is a useful model, it is the City's position that having five individuals reporting to Chief Officer dealing with issues such as finance, planning, logistics, etc., would not have been helpful when the true experts in those fields would be reporting to the various sector commanders. It is preferable for the Incident Commander to get information from the sector commanders. Further, as an example, it would not be practical to have an Operations' Chief acting for the Incident Commander doing the set-up for the Fire Department, the OPP, HUSAR and the EMS. It is not practical to expect a single person within the Incident Commander's organization to understand and command the operations of all of those separate individual entities.

169. Although a single channel radio for communication among all of the responding entities sounds attractive, it is clear that there would be too much traffic on that channel for the solution to be workable. The City would however, support a recommendation to have communication devices available between the Incident Commander, all of the Sector Commanders and a protocol be set in place to ensure proper communication of major tactical decisions between the Sector Commanders and the Incident Commander.

170. Similarly, the City would strongly support a recommendation that each responding entity must have a presence at the command post. It is the City's position that it is not possible to command a sector remotely especially when decisions have to be made and communicated quickly.

**Reference: Paul Officer, pages 23360 and 23362**

171. The City would support a recommendation that the Sector Commander, Planning Chief, communications experts and an engineer should be deployed immediately and in advance of the rest of the HUSAR or UCRT Team. The City believes that there is a need for early assistance and response and particularly to advise of, and obtain, resources on the ground.

172. The City believes it would be appropriate to clarify and make consistent all legislation dealing with responders during an emergency. A protocol whereby life, then law, and then property are addressed, should be established. In other words, it should be clear that when there is the potential for a live victim to be rescued, that it is the overarching responsibility and priority of all responding entities. The *Occupational Health and Safety Act* should be clarified in this respect as well. The City found the assistance of the provincial engineers to be invaluable. However, the presence of Ministry of Labour inspectors clearly was a distraction and in this case, potentially an obstacle to the continuation of the rescue on June 25. It is also suggested that the difference between rescue and recovery not be determinative of the process. A suggestion would be to proceed as if a rescue is possible until such time as all persons alive or dead are removed from the scene after which recovery of property and dealing with debris can be dealt with by other agencies.

173. The City would support a recommendation that the provincial media resources be deployed at any time a provincial emergency is declared. Municipalities need the assistance of a media professional who can advise the municipality about dealing with

the media; can monitor media broadcasts and can free up key players at the municipality to perform their emergency roles.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**Dated:** November 8, 2013

**J. PAUL R. CASSAN  
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