

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

PHASE 2 WRITTEN SUBMISSIONS OF THE ONTARIO ASSOCIATION OF FIRE CHIEFS

Dated: November 8, 2013

Hicks Morley Hamilton Stewart Storie LLP
77 King Street West, 39th Floor
Box 371, TD Centre
Toronto, Ontario M5K 1K8

John W. Saunders
Tel: 416-864-7247 Fax: 416-362-9680
LSUC No.: 28642K
E-mail: john-saunders@hicksmorley.com

Carolyn L. McKenna
Tel: 416-864-7436 Fax: 416-362-9680
LSUC No.: 59877H
E-mail: carolyn-mckenna@hicksmorley.com

Lawyers for the Ontario Association of Fire Chiefs

OVERVIEW

1. These written submissions are made on behalf of the Ontario Association of Fire Chiefs (“O AFC”).
2. The O AFC represents the Chief Fire Officers from over 450 Fire Departments across Ontario. These Chief Officers are ultimately responsible, by statute, for the management and delivery of fire, rescue, and emergency response to the residents of Ontario. The O AFC’s mission is to lead innovation and excellence in public and life safety.
3. The partial roof collapse of the Algo Centre Mall (“the Mall”) on June 23, 2012 gave rise to an emergency response involving a number of individuals, agencies and organizations. As such, the Elliot Lake Commission of Inquiry (“the Inquiry”) provided an opportunity to examine Ontario’s emergency management and response system.
4. Despite the tragic circumstances giving rise to the Inquiry, the O AFC is confident that lessons may be learned and recommendations can be made to improve emergency management and response in Ontario for the future.
5. Part I of these submissions will address certain factual issues regarding this Inquiry.
6. Part II of these submissions will address the basis for certain policy recommendations regarding:
 - (a) Incident Command during a rescue;
 - (b) the role of the OPP’s UCRT in such circumstances;
 - (c) the role and authority of the Ministry of Labour (“MOL”) in emergency response situations; and
 - (d) funding the Toronto Heavy Urban Search and Rescue team (“TF3”).

7. Part III of these submissions will include a list of these policy recommendations.

PART I – SUBMISSIONS REGARDING FACTUAL FINDINGS

8. On October 23, 2012 at 2:19 p.m., the Elliot Lake Fire Department (“the ELFD”) received a call regarding the partial roof collapse at the Mall.¹ Despite countless challenges and extraordinary circumstances, the response of the local Fire Chief Paul Officer and the ELFD was not only reasonable and appropriate, but also commendable.
9. The collapse occurred on a weekend in the summer at which time many full-time and volunteer fire fighters were out of town.² Thus, the ELFD and the City of Elliot Lake faced the initial challenge of mustering the appropriate amount of resources to respond to the incident.
10. Nevertheless, at least four (4) ELFD fire fighters responded to the scene within five (5) minutes of the call.³ Chief Officer arrived on scene a few minutes later at 2:30 p.m on June 23, 2012.⁴ A number of other ELFD full-time and volunteer fire fighters ultimately attended the scene as well.⁵
11. Chief Officer assumed Incident Command from Fire Captain David George once he arrived on scene.⁶ Chief Officer, or his designate,⁶ remained overall Incident Commander for the duration of the rescue operation until June 27, 2012 at about 6:34 p.m.⁷ While acting as the Incident Commander during this response, Chief Officer was required to make a number of difficult decisions in the face of

¹ Exhibit 8044, Standard Incident Report, ELFD_E000002568_0020.

² P. Officer, August 29, 2013, p. 23376, l. 3-14.

³ Exhibit 8044, Standard Incident Report, ELFD_E000002568_0020. P. Officer, August 29, 2013, l. 4-10.

⁴ Exhibit 8044, Standard Incident Report, ELFD_E000002568_0020.

⁵ Exhibit 8044, Standard Incident Report.

⁶ Exhibit 8025, Fire Chief Notes and Actions at Call 108 Eastwood Mall Structure Collapse June 23, 2012, ELFD_P000001857, p. 1; P. Officer, August 21, 2013, p. 21565, l. 20-25

⁷ D. Hefkey, October 8, 2013, p. 28610-11, l. 6-25, 1-3, p. 28624-25, l. 23-25, 1-5, p. 28691, l. 22-24. P. Officer, August 29, 2013, p. 23419, l. 7-25. B. Neadles, September 11, 2013, p. 25769, l. 20-23.

numerous challenges. The OAFIC submits that Chief Officer acted reasonably throughout the response and ought to be commended for his efforts.

12. Shortly after his arrival on scene, the Chief assigned scribe duties to one of his volunteer fire fighters.⁸ As a result, the Chief had 57 pages of detailed notes regarding his actions throughout the response.
13. The first challenge for the ELFD was that it took quite a while to shut off the gas, hydro and water due to the size of the building. The first responders could not enter the building prior to completing these tasks due to the number of broken and dangling hydro lines in the vicinity.⁹
14. Once these preliminary issues were taken care of, Chief Officer and the ELFD faced further significant obstacles. The ELFD did not, and was not mandated to, conduct specialized training in building collapse, high angle rescue and confined space rescue.¹⁰
15. The council of each municipality sets the level of service and its entirely appropriate not to require such specialized training in a community such as Elliot Lake.¹¹ However, the status of the ELFD's training in this regard certainly presented the ELFD with a further challenge in terms of conducting a rescue operation in the circumstances.
16. Regardless of the ELFD's degree of training with respect to such a situation, the nature of the collapse presented further risks to the first responders.¹² There was a large beam above the rubble pile within the collapse zone that could have fallen; there were "widow-makers" in several different locations; there was a car resting on another beam that was potentially affecting the uncollapsed parts of the building; there was potential for the escalator inside the collapse zone to fail;

⁸ P. Officer, August 21, 2013, p. 21557, l. 7-9; Exhibit 6336 [Quinn's notes]

⁹ P. Officer, September 19, 2013, p. 26412, l. 4-9.

¹⁰ P. Officer, August 29, 2013, p. 23351, l. 9-17.

¹¹ Fire Protection and Prevention Act, 1997, SO 1997, c 4, s. 2. C. Chambers, September 18, 2013, p. 26262, l. 5-15.

¹² Exhibit 7932, Graphics. Exhibit 9279, p. 59-60.

and, there was potential for the concrete slabs resting on the escalator to slide off on to the rubble pile.¹³

17. Even for a seasoned structural collapse expert, such as TF3 Team Coordinator Tony Comella, this situation presented significant risks not typically present in a building collapse. In this regard, Mr. Comella stated:¹⁴

Normally, when you go to a collapse, you can get some clues as to what happened. This one was very hard to understand, so we didn't really know whether the building was finished collapsing because of that, so that... becomes a very large hazard.

18. In light of these dangerous conditions, Chief Officer went so far as to testify that he would not fault an Incident Commander in the same situation who decided *not* to put his team on the pile.¹⁵ Nevertheless, the ELFD put themselves in harm's way to try to save the victims. Following the ELFD's initial attempts at a rescue, such efforts were continued with the members of the UCRT and TF3.
19. Another challenge Chief Officer had to overcome throughout the course of the emergency was the issue of self-deployment or "freelancing". For example, Chief Officer noted that individuals such as John Green from Ottawa or well-intentioned members of the community who deployed to the scene without being requested posed a danger to themselves and his team. The Incident Commander does not know their degree of skill or equipment. The self-deployed individuals or agencies would not be familiar with the ELFD's communication protocols or training standards. Thus, their involvement in a rescue poses a danger not just to themselves, but also to the first responders.¹⁶
20. In fact, Carolyn-Lyn Chambers, former Deputy Fire Chief and Chief of the Emergency Preparedness and Strategic Development Unit for the Ontario Fire Marshal's Office ("OFM") in June 2012, echoed the Chief's sentiments in this regard. She stated that such self-deployed individuals or agencies can

¹³ T. Comella, September 6, 2013, p. 24389-90, l. 18-24, 13-23.

¹⁴ T. Comella, September 6, 2013, p. 24389-90, l. 25, 1-6.

¹⁵ P. Officer, September 19, 2013, p. 26415, l. 9-20.

¹⁶ P. Officer, August 29, 2013, p. 23380-82, l.12-25, 1-25, 1-19.

“compromise safety” in that they “introduce unknowns to the scene”.¹⁷ Thus, individuals or agencies not mandated to be at the site of a rescue operation and not requested to attend by the Incident Commander, ought not to attend. To do otherwise only serves to create distractions and heighten the risks associated with the rescue operation.

21. The Chief dealt with the issue of self-deployment throughout the response. However, he also recognized the need for particular individuals and he correctly and quickly requested their deployment. Early on in the response, Chief Officer recognized the need for TF3's assistance with the rescue operations.¹⁸ The Chief called OFM Fire Protection Advisor Bob Thorpe to assist with this request.¹⁹ He also contacted the Provincial Emergency Operations Centre in this regard.²⁰ Additionally, he had an Emergency declared by the Mayor in order to assist with activating TF3. The Chief also activated mutual aid in order to ensure that all members of the ELFD were available to respond to the Mall collapse.²¹ The Chief carried out all of these tasks within the first hour and a half of arriving on scene.²²
22. Ultimately, however, on the evening of June 23, 2012, the Chief had to make the difficult to decision to pull his fire fighters out of the hot zone in light of the dangers posed by the structure. Dan Hefkey, Commissioner of Community Safety for Ontario, characterized both the Chief's decision to contact Mr. Thorpe and his decision to pull his fire fighters out as good and sound.²³
23. The experts in urban search and rescue, the UCRT and TF3, arrived later on June 23, 2012 and on June 24, 2012. Chief Officer ultimately delegated

¹⁷ C. Chambers, September 18, 2013, p. 26267-29, l. 7-25, 1-25, 1-22.

¹⁸ Exhibit 8025, Fire Chief Notes and Actions at Call 108 Eastwood Mall Structure Collapse June 23, 2012, ELFD_P000001857, p. 1, 2; D. Hefkey, October 8, 2013, p. 28696, l. 6-10.

¹⁹ P. Officer, August 21, 2013, p. 21582-83, l. 7-25, 1-6;

²⁰ Exhibit 6336, Handwritten Notes of Natalie Quinn, p. 1. P. Officer, August 29, 2013, 23378, l. 15-19.

²¹ P. Officer, August 29, 2013, p. 23378-79, l. 20-25, 1-9.

²² P. Officer, August 29, 2013, p. 23380, l. 1-11.

²³ D. Hefkey, October 8, 2013, p. 28844, l. 6-17.

responsibility for the rescue sector to Bill Neadles of TF3.²⁴ However, as the Incident Commander with overall decision-making authority during the rescue operations, Chief Officer continued to carry out his command role.²⁵

24. Mr. Neadles briefed Chief Officer on the plans for the rescue as the rescue operations progressed. Through his communications with Mr. Neadles, Chief Officer received sufficient information to carry out his role as Incident Commander. While Chief Officer had authority to retract the rescue sector from Mr. Neadles or to ask the rescue sector to change its plans for the rescue, he did not think it was necessary to do so at any point in time based on the information he was receiving.²⁶
25. In fact, on June 25, 2013, Mr. Neadles advised Chief Officer that the escalator inside the collapsed structure was 300 to 400 percent overstressed, that the engineers thought the escalator was moving and that they did not even know why the structure was still standing. In light of this information, Chief Officer indicated that, allowing the first responders to work in such precarious circumstances would be negligent. As a result, he agreed with Mr. Neadles' decision to pull out the workers on June 25, 2012.²⁷
26. While this decision along with many others during the course of the emergency were extremely difficult for the individuals commanding this incident, such decisions were certainly made in good faith. In fact, Mr. Hefkey stated:²⁸

And so from my perspective, I do see that everyone who contributed to this incident, did so with all of the best intentions.

27. The loss of two citizens of Elliot Lake is certainly a tragedy. However, in light of the significant risks posed by the structure, one should not lose sight of the fact that no emergency responders perished or were critically injured in the course of

²⁴ P. Officer, August 29, 2013, p. 23439, l. 8-11.

²⁵ P. Officer, August 21, 2013, p. 21688, 1-19. C. Chambers, September 18, 2013, p. 26266-67, l. 4-25, 1-6.

²⁶ P. Officer, August, 29, 2013, p. 23440-42.

²⁷ P. Officer, August 29, 2013, p. 23445-46, l. 21-25, 1-21.

²⁸ D. Hefkey, October 8, 2013, p. 28847, l. 5-8.

this rescue operation.²⁹ That fact alone is a testament to the sound judgment of the Incident Commander and TF3 command during the course of this incident.

PART II – SUBMISSIONS REGARDING POLICY RECOMMENDATIONS

The Fire Chief or his/her Designate Incident Commander during Rescue

28. Throughout the course of this emergency response there was a degree of confusion regarding the chain of command and who was in charge.³⁰ As Chief Officer indicated in his testimony, it would be helpful to clarify this jurisdictional issue through a recommendation.³¹
29. According to section 1 of the *Fire Protection and Prevention Act, 1997* (“FPPA”), “fire protection services” includes the delivery of rescue services. This section states:³²
- “fire protection services” includes fire suppression, fire prevention, fire safety education, communication, training of persons involved in the provision of fire protection services, rescue and emergency services and the delivery of all those services;
30. Contrast this definition of fire protection services with the services to be delivered by the police force. According to the *Police Services Act* (“PSA”), the Ontario Provincial Police are responsible for providing police services in respect of the parts of Ontario that do not have municipal police forces.³³
31. Subsection 4(2) of the *PSA* sets out the core police services to be provided in a municipality. This section states:

Core police services

²⁹ P. Officer, September 19, 2013, p. 26431-32, l. 23-25, 1-13.

³⁰ D. Hefkey, October 8, 2013, p. 28692, l. 1-4. R. Cox, August 26, 2013, p. 22280, l. 3-13.

³¹ P. Officer, August 29, 2013, p. 23421, l. 18-24.

³² Fire Protection and Prevention Act, 1997, SO 1997, c 4, s. 1.

³³ Police Services Act, RSO 1990, c P.15, s. 19.

(2) Adequate and effective police services must include, at a minimum, all of the following police services:

1. Crime prevention.
2. Law enforcement.
3. Assistance to victims of crime.
4. Public order maintenance.
5. Emergency response.

There is no reference to the delivery of “rescue” services as a core police service.

32. Section 21 of the *Adequacy and Effectiveness of Police Services* regulation to the *PSA* describes “emergency response” in the following terms:³⁴

21. (1) Police forces shall include the following emergency response services:

1. Tactical unit.
2. Hostage rescue team.
3. Major incident commanders.
4. Crisis negotiators.
5. Police explosive forced entry technicians.
6. Explosive disposal technicians.

Once again, there is no reference to the “rescue” services.

33. Hence, the legislation is clear that “rescue” is the jurisdiction of fire services. Rescue is not a core police service. This notion is clear not only in law, but also in practice. For example, as Mr. Hefkey stated with respect to members of the fire service on TF3, these individuals were consciously chosen to be part of TF3 because they are practitioners who have acquired perishable skills related to urban search and rescue. They apply the relevant aspects of their training in their day-to-day work when they are responding to calls.³⁵
34. Similarly, in terms of comparing the UCRT and Toronto Fire Services members on TF3, Mr. Comella noted that members of the Toronto Fire Service likely practiced technical rescue more often than members of the UCRT by virtue of what they do for a living.³⁶

³⁴ Adequacy and Effectiveness of Police Services, O Reg 3/99, s. 21.

³⁵ D. Hefkey, October 8, 28794, l. 5-24.

³⁶ T. Comella, September 6, 2013, p. 24400, l. 1-7.

35. In any event, Commissioner of Community Safety for the Province, Dan Hefkey, confirmed that the lead agency in a rescue situation is the fire service.³⁷ Thus, traditionally one would expect the Fire Chief or a member of the fire department to be the Incident Commander for the duration of the rescue.³⁸ Chief Paul Officer indicated that he held the same view.³⁹ Seargent Jamie Gillespie of the OPP's UCRT also confirmed that, normally, if there is a rescue involved, a member of the local Fire Department, likely the Fire Chief, would act as Incident Commander for that incident.⁴⁰

Funding HUSAR

36. Team Coordinator for TF3, Tony Comella, advised that over the years, the team received between \$460,000 and \$1,400,000 annually from the Federal Joint Emergency Preparedness Program ("JEPP"). He noted that such funding was primarily used for capital purchases *i.e.* equipment.⁴¹
37. Unfortunately, the JEPP program has now been cancelled and therefore the Federal government is no longer funding TF3.⁴² There is currently no alternate funding in place to make up for the shortfall in Federal funding.⁴³
38. Mr. Comella explained the effect of this lack of funding. Over the next 3-5 years, TF3's equipment would cycle out and TF3 would not be able to replace such equipment. As a result, decisions would have to be made about what to do with the team at that point.⁴⁴ One option would be to demobilize the team.⁴⁵

³⁷ D. Hefkey, August 9, 2013, p. 20423, l. 4-6. Note that, while "rescue" is not defined in the relevant legislation, Mr. Hefkey indicated that the following definition is appropriate: "taking a person from a position of danger to a position of safety" D. Hefkey, August 9, 2013, p. 20426, l. 1-7.

³⁸ D. Hefkey, August 9, 2013, p. 20427-28, l. 22-25 and 1-9.

³⁹ P. Officer, August 21, 2013, p. 21502, l. 11-14

⁴⁰ J. Gillespie, September 4, 2013, p. 23838-39, l. 23-25, 1-4.

⁴¹ T. Comella, August 9, 2013, p. 23989-90, l. 9-21.

⁴² T. Comella, August 9, 2013, p. 23989-90, l. 22-25, 1-3.

⁴³ T. Comella, August 9, 2013, p. 23990, l. 21-25.

⁴⁴ T. Comella, August 9, 2013, p. 23991, l. 21-25.

⁴⁵ T. Comella, August 9, 2013, p. 23992, l. 6.

39. This is worrisome as Mr. Hefkey, Commissioner of Community Safety for the Province of Ontario, confirmed that there is a need for a Heavy Urban Search and Rescue team in Ontario and TF3 fulfills that need.⁴⁶
40. While the UCRT is somewhat skilled with respect to urban search and rescue, it is a medium level team. The UCRT lacks certain important characteristics possessed by TF3. For example, the UCRT, which is comprised of members of the OPP. In contrast, TF3 is a multidisciplinary team in the sense that it is comprised of members of police services, fire services, emergency medical services, Toronto Water as well as an engineer and a doctor. Mr. Hefkey further confirmed that a multidisciplinary team is superior when dealing with incidents such as Elliot Lake.⁴⁷
41. There are also differences in equipment between the two teams such that TF3 has the capacity to respond to emergencies for longer periods of time than the UCRT.⁴⁸ TF3 is also better equipped than UCRT in terms of its ability to deal with certain materials in the context of a building collapse such as concrete.⁴⁹
42. One might be inclined to suggest that the Province has the option to call in an American heavy urban search and rescue team in circumstances similar to those giving rise to this Inquiry. However, this option is simply not cost-effective. Mr. Comella confirmed that while the Federal Emergency Management Agency (“FEMA”) has teams similar to TF3, the cost of having a FEMA team respond to an incident in Ontario would be substantially more costly having TF3 respond. In fact, he indicated that the cost of TF3 would be “pennies in comparison”.⁵⁰ Thus, Mr. Comella testified that a recommendation in relation to funding TF3 would be “absolutely fantastic”.⁵¹

⁴⁶ D. Hefkey, August 9, 2013, p. 20461-62, l. 21-25, 1-3. D. Hefkey, October 8, p. 28809, l. 7-18.

⁴⁷ D. Hefkey, October 8, 2013, p. 28785-86, l. 2-25, 1-3.

⁴⁸ D. Hefkey, October 8, 2013, p. 28786, l. 2-25, 4-14.

⁴⁹ D. Hefkey, October 8, 2013, p. 28786-87, l. 21-25, 1-7.

⁵⁰ T. Comella, September 6, 2013, p. 24413-14, l. 11-4, 9-16.

⁵¹ T. Comella, August 9, 2013, p. 23992-93, l. 23-25, 1-7.

43. Additionally, the former Premier of Ontario, Dalton McGuinty, confirmed that it would be a good thing for the Provincial government to consider whether it is able to make up the shortfall in Federal funding for the emergency response program in the province.⁵² Thus, in light of the necessity for heavy urban search and rescue capability and the recent cancellation of Federal funding in this regard, the Provincial government ought to consider whether it is able to make up the shortfall.
44. Finally, according to the Incident Commander on the ground, Chief Officer, Elliot Lake could not have coped with this incident without the assistance of TF3 and UCRT.⁵³ Thus, in the Chief's opinion, funding for TF3, from whatever source, ought to be continued.⁵⁴

Confusion Regarding Role of MOL

45. There was considerable confusion regarding the MOL's role during this emergency response.⁵⁵ On the evidence, it is apparent that the confusion is not confined to the rescue operations conducted in Elliot Lake in June, 2012. As a result, the MOL's role and authority during a rescue operation requires clarification.
46. To this end, consider the various beliefs of individuals involved in the June, 2012 response regarding the MOL's role and authority during a rescue. Early on in the rescue operation, Chief Officer was uncertain as to whether the MOL had the ability to regulate rescue operations. Later, it was his understanding that the MOL had no such ability.⁵⁶ In fact, Chief Officer, the overall Incident Commander during this incident, testified that clarification on the MOL's role in such an incident would be helpful.⁵⁷ Chief Officer explained that such clarification would

⁵² D. McGuinty, October 9, 2013, p. 28984-85, l. 20-25, 1-3.

⁵³ P. Officer, August 29, 2013, p. 23421-22, l. 25, 1-6.

⁵⁴ P. Officer, August 29, 2013, p. 23422, l. 25, 7-13.

⁵⁵ D. Hefkey, October 8, 28748-49, l. 25, 1-4. C. Chambers, September 18, 2013, p. 26202, l. 12-16.

⁵⁶ P. Officer, August 21, 2013, p. 21651, l. 2-7.

⁵⁷ P. Officer August 29, 2013, p. 23349, l. 1-11.

be helpful to ensure that an emergency response is not delayed in order to sort out who has the authority to do certain things.⁵⁸

47. Chief Officer also confirmed that, between midnight on June 23, 2012 and 1:00 a.m. on June 24, 2012, there was confusion as to whether the MOL had shut down the rescue operation. He stated that it took some discussion to get that issue sorted out.⁵⁹
48. Constable Patrick Waddick of the UCRT testified that, during the rescue, he understood that the MOL could shut down the operation. He regretted that, at the time, he was not aware of “the legislation” that said that the MOL could not do so.⁶⁰
49. Constable Ryan Cox of UCRT understood that the MOL did not have the authority shut down a rescue.⁶¹ Sergeant Jamie Gillespie, Constable Dan Bailey and Constable Steven Hulsman of the UCRT held the same belief.⁶²
50. TF3 Team Coordinator Tony Comella testified that he did not know what the MOL’s purpose on the scene was when he arrived in Elliot Lake on June 24, 2012. However, the MOL had no jurisdiction during a rescue as far as he was concerned.⁶³
51. Commander Mike McCallion of TF3 testified as to his understanding of the MOL’s role during a rescue as well. His understanding was that the MOL would have a very limited role, which would probably be more of an advisory role.⁶⁴

⁵⁸ P. Officer August 29, 2013, p. 23349, l. 12-18.

⁵⁹ P. Officer, August 21, 2013, p. 21666-68, l. 19-25, 1-25, 1-8.

⁶⁰ P. Waddick, August 23, 2013, p. 22104, l. 13-23.

⁶¹ R. Cox, August 26, 2013, p. 22299, l. 16-21.

⁶² D. Bailey, August 27, 2013, p. 22773, l. 10-25. S. Hulsman, August 28, 2013, p. 22906, l. 5-12. J. Gillespie, September 3, 2013, p. 23500, l. 12-24.

⁶³ T. Comella, September 4, 2013, p. 24082-83, l. 20-25, 1-5.

⁶⁴ M. McCallion, September 6, 2013, p. 24497, l. 4-10.

However, it was his understanding that the MOL did not have authority to shut down a rescue.⁶⁵

52. Commander Bill Neadles of TF3 testified that he was not 100 percent certain as to whether the MOL had any authority during a rescue.⁶⁶ He did not know what the MOL's role was during a rescue.⁶⁷
53. Carol-Lyn Chamber of the Ontario Fire Marshal's Office testified that she understood the MOL's role to be more advisory or observatory during a rescue.⁶⁸ At one point in her evidence, she stated that the MOL lacked authority to stop a rescue.⁶⁹ However, later on, she stated that the MOL did have such authority.⁷⁰
54. MOL Inspector Don Jones testified that he had authority to shut down a rescue under the *Occupational Health and Safety Act*. However, he also believed there were some exceptions in the Act which addressed rescue, preservation of life and relieving of suffering.⁷¹
55. MOL Inspector Michel Lacroix believed that the MOL had the authority to interfere with a rescue operation, but realistically it would not do so.⁷² He further testified that his understanding of the MOL's role during a rescue was clearer at the time he gave evidence than it was in June, 2012.⁷³
56. It is a given that time is of the essence during a rescue operation. As a result, first responders and others involved in an emergency response should not have to waste any time concerning themselves with sorting out jurisdictional issues such as the MOL's degree of authority during a rescue. Clarification with respect to this matter is clearly necessary.

⁶⁵ M. McCallion, September 6, 2013, p. 24498, l. 19-25.

⁶⁶ B. Neadles, September 10, 2013, p. 25275, l. 8-19.

⁶⁷ B. Neadles, September 11, 2013, p. 25320, l. 3-24.

⁶⁸ C. Chambers, September 18, 2013, p. 26128, l. 15-18.

⁶⁹ C. Chambers, September 18, 2013, p. 26240-41, l. 22-25, 1-3.

⁷⁰ C. Chambers, September 18, 2013, p. 26275-76, l. 24-25, 1-15.

⁷¹ D. Jones, September 26, 2013, p. 27423-24, l. 23-25, 1-2.

⁷² M. Lacroix, October 3, 2013, p. 27956, l. 4-9.

⁷³ M. Lacroix, October 3, 2013, p. 27958, l. 19-25.

UCRT in Command Structure

57. The overall Incident Commander during the response, Chief Officer, noted that communications and command's ability to discuss broad strategic issues were impacted by the fact that a member of the UCRT or OPP was not in the command tent.⁷⁴
58. The Commander of the Rescue Sector, Mr. Neadles, also noted that the UCRT did not have a presence in the Command Tent. However, it would have been better if UCRT had a presence in the Command Tent.⁷⁵
59. Sergeant Gillespie, who was the lead for the UCRT during the Elliot Lake Response. He explained that due to the small size of the UCRT complement at this response, he was not able to have a presence in the command tent. His priority was to stay with his team and ensure their safety.⁷⁶
60. While Sergeant Gillespie understood that Inspector Percy Jollymore of the Elliot Lake Detachment was effectively in charge of the entire OPP response in Elliot Lake,⁷⁷ as Inspector Jollymore testified, he was not present in the command tent. He explained, "he was not involved in that".⁷⁸
61. Sergeant Gillespie indicated that the lack of OPP UCRT presence in the command tent was a deficiency in this response in terms of the flow of information.⁷⁹
62. In order to avoid such a deficiency, Sergeant Gillespie suggested that an OPP officer of a higher rank than he, who is also appropriately trained, ought to attend at future incidents of this kind.⁸⁰

⁷⁴ P. Officer, August 29, 2013, p. 23361-62, l. 19-24

⁷⁵ B. Neadles, September 11, 2013, p. 25748, l. 5-21.

⁷⁶ J. Gillespie, September 3, 2013, p. 23587, l. 10-19.

⁷⁷ J. Gillespie, September 3, 2013, p. 23530, l. 15-25.

⁷⁸ P. Jollymore, September 24, 2013, p. 26984, l. 1-11.

⁷⁹ J. Gillespie, September 3, 2013, p. 23798, l. 6-9.

⁸⁰ J. Gillespie, September 3, 2013, p. 23797, l. 3-22.

63. OPP Field Support Bureau Superintendent Robert Bruce confirmed that an officer of a higher rank than Sergeant Gillespie ought to have been deployed with the UCRT to Elliot Lake. He admitted that the Field Support Bureau let Sergeant Gillespie down by not having a proper command structure in place in Elliot Lake.⁸¹ OPP Staff Sergeant Wade Jacklin, Training Coordinator for the OPP's Canine Program, echoed the Superintendent's comments in this regard.⁸²

PART III – LIST OF RECOMMENDATIONS

Incident Commander During a Rescue

64. During an emergency response involving the potential rescue of a victim(s), the Fire Chief for the municipality (or his or her designate) responding to the emergency ought to be designated the Incident Commander throughout the duration of the rescue and recovery operation. As a caveat to this proposition, Incident Command may be transferred to an individual from an emergency response agency outside of the fire service if a member of the fire service perishes in the course of the rescue operation.

UCRT Representative in Command Structure

65. In circumstances in which the UCRT respond to an emergency alongside other emergency response agencies, the UCRT shall have a senior officer (or his or her designate) in the command tent.

Funding for TF3

66. The provincial government shall consider whether it is able to and ought to fund the shortfall in funding for TF3 created by cancellation of the Federal Joint Emergency Preparedness Program. In this regard, the Provincial government

⁸¹ R. Bruce, August 23, 2013, p. 22147-48, l. 16-25, 1-3.

⁸² W. Jacklin, September 27, 2013, p. 22652-54. Exhibit 7554, Minutes of Ontario Provincial Police UCRT Debriefing - July 4, 2012 - Elliot Lake Mall Collapse.

ought to consider whether funding for the UCRT ought to be diverted towards funding TF3. In any event, the Provincial Government shall consider how TF3 will be maintained in light of the lack of funding that currently exists.

Clarify Role of MOL During an Emergency Response

67. The role of the MOL during an emergency response ought to be clarified. Clarifications are required specifically with respect to whether the MOL personnel have the authority to stop rescue operations during an emergency response and whether the nature of their authority, if any, is different in the context of a rescue versus a recovery situation.