

ELLIOT LAKE COMMISSION OF INQUIRY

PHASE 2

WRITTEN SUBMISSIONS OF THE PROVINCE OF ONTARIO

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INTRODUCTION

1. The Province of Ontario (“Ontario”) had many roles in responding to the emergency created when the Algo Centre Mall collapsed on June 23, 2012. The five days from June 23 to June 27 involved the coordination of many participants in the efforts to ensure that survivors, if any, were rescued as quickly and safely as possible.

2. Those four days were examined in detail over 35 days of hearing at the Inquiry, and the message from the first responders who testified was overwhelmingly one of mutual respect, cooperation, and a shared sense of mission. However, the Inquiry will serve a valuable purpose in locating areas where such emergency responses can be improved in the future.

3. Ontario’s submissions to assist the Commission in this regard are three-fold. First, to provide an overview of the legislative and policy underpinnings to emergency management in Ontario, including the role of the Ministry of Labour (MOL) in an emergency response. Second, a summary of the evidence as presented by the various witnesses and the exhibits, which sets out the narrative of what took place, and which it is submitted, should form the basis of factual findings by the Commission. Third, to provide recommendations for improving the response to an emergency in the future.

PART I – EMERGENCY MANAGEMENT AND RESPONSE IN ONTARIO

Governance

4. The primary piece of legislation governing emergency management in Ontario is the *Emergency Management and Civil Protection Act* (EMCPA). This Act gives both provincial and municipal governments important roles in emergency management within their respective areas of jurisdiction.

5. The EMCPA along with other provincial legislation, including the *Fire Protection and Prevention Act, 1997* (FPPA), the *Police Services Act* and the *Ambulance Act*, establishes a framework for municipal and provincial governments to prepare for and respond to emergencies (whether or not an emergency declaration has been made) that occur in Ontario.

6. The EMCPA came into being following a two and a half year study into emergency management best practices, and was informed by the lessons learned following the terrorist attacks of September 11, 2001, the provincial response to the 2003 SARS (Severe Acute Respiratory Syndrome) Outbreak and the 2003 northeast blackout.¹

7. The EMCPA confers certain powers and responsibilities on provincial ministries and municipalities. The EMCPA includes powers designed to assist in preventing, reducing or mitigating serious harm to persons or substantial damage to property in the event of an emergency.

8. The EMCPA also provides for additional powers for provincial officials in the event that there is a provincially-declared emergency.² There has never been a provincial declaration of emergency since the EMCPA was passed into law.³

9. An emergency is defined under the Act as “a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise.”⁴

10. The Commissioner of Community Safety identified the “five pillars” of emergency management, or the five dimensions that speak to emergency management. These are:

- a. mitigation
- b. prevention
- c. preparedness
- d. response, and
- e. recovery.⁵

11. These five pillars of emergency management can be seen as a cycle as, once a response to an emergency is completed and a community begins recovery, it can also begin to develop

¹ Exhibit 5847-004, Overview of Emergency Management in the Province of Ontario, p. 1

² *Emergency Management and Civil Protection Act*, s. 7.0.1 *et seq.*

³ Testimony of Dan Hefkey, Transcript, August 8, 2013, p. 20193, l. 22-25

⁴ *Emergency Management and Civil Protection Act*, s. 1, “emergency”

⁵ D. Hefkey, August 8, 2013, p. 20081, l. 11 – p. 20086, l. 11

mitigation and prevention strategies that are informed by the response efforts, and will apply those strategies to mitigate any future similar events:

I like to describe it more so as a cycle. Because the minute you start into recovery is the minute you also begin, through your mitigation and your prevention because you've learned through your response efforts and through your recovery, trying to bring normalcy back to your community, you've learned things and now you are going to apply them so you are going to be mitigating any future similar events.⁶

12. One of the most significant obligations on municipalities, as well as on the provincial government, is the requirement to develop emergency management programs which are to include, among other things, emergency plans, training and public education.⁷ Municipalities and provincial government bodies are also required to identify and assess those hazards and risks to public safety that could give rise to emergencies and identify the elements of their infrastructure that are at risk of being affected by emergencies.

13. The underlying philosophy of the EMCPA is that the municipality is the first line of emergency response. Because they are local, they are best able to identify the predominant hazards they need to prepare against and include those hazards in the municipality's emergency management plan.⁸ They also understand the situations facing their municipalities and their capacity to respond to situations, including the assistance they can seek from neighbouring communities within their region.

14. The first line of response, then, to an emergency facing a municipality is expected to be the municipality's own resources, in particular the fire, police and EMS resources of that municipality or region. "Rescue and emergency services", for example, are included in the definition of "fire protection services under the FPPA."⁹ "Emergency response" is included as a core police service to be provided by municipalities.¹⁰

15. The primary legislative framework for the provision of fire protection services in Ontario is the FPPA. The FPPA establishes the powers, and duties of the Fire Marshal. The powers of

⁶ D. Hefkey, August 8, 2013, p. 20086, l. 3-11

⁷ *Emergency Management and Civil Protection Act*, s. 2.1, 5.1

⁸ D. Hefkey, August 8, 2013, p. 20090, l. 2-11

⁹ *Fire Protection and Prevention Act, 1997*, s. 1, "fire protection services", s. 2

¹⁰ *Police Services Act*, s. 4

the Fire Marshal under this Act include the power to monitor, review and advise municipalities respecting the provision of fire protection services, and to advise and assist ministries and agencies of government respecting fire protection services and related matters. Among many other duties, it is the role of the Fire Marshal to provide information and advice on fire safety and to develop training programs for those who provide fire protection services.¹¹

16. Under the FPPA, every municipality shall establish a program which must include public education with respect to fire safety, and shall provide such other fire protection services and is determines necessary. It shall either appoint a community fire safety officer or team, or establish a fire department.¹²

17. The head of council of a municipality has the authority under the EMCPA to declare that an emergency exists in the municipality and to take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area.¹³

18. Municipalities are not expected to have all of the resources within their own jurisdiction to be able to respond to all emergencies. Municipalities have entered into mutual assistance agreements with neighbouring communities to allow for the sharing of municipal resources when one municipality is responding to an emergency situation.¹⁴

19. In addition to these mutual assistance agreements, which are voluntary agreements, fire departments may establish with neighbouring communities within their region a mutual aid plan whereby they agree to assist each other in the event of an emergency.¹⁵

¹¹ Another duty of the Fire Marshal is to investigate the cause, origin and circumstances of any fire or of any explosion or condition that in the opinion of the Fire Marshal might have caused a fire, explosion, loss of life or damage to property, and develop training programs and evaluation systems to improve practices relating to fire protection services. See *Fire Protection and Prevention Act, 1997*, s. 9

¹² *Fire Protection and Prevention Act, 1997*, s. 2

¹³ *Emergency Management and Civil Protection Act*, s. 4(1)

¹⁴ D. Hefkey, August 8, 2013, p. 20092, l. 10 – p. 20093, l. 13

¹⁵ *Fire Protection and Prevention Act, 1997*, s. 7

20. The EMCPA confers certain powers and responsibilities on provincial ministries and municipalities, as well as on specific individuals with designated appointments under the EMCPA, such as the Commissioner of Emergency Management and the Chief, Emergency Management Ontario (EMO).¹⁶ The EMCPA includes powers designed to assist in preventing, reducing or mitigating serious harm to persons or substantial damage to property in the event of an emergency.

21. The EMCPA also provides for additional powers of provincial officials in the event that there is a provincially-declared emergency.¹⁷ As noted above, there has never been a provincial declaration of emergency since the EMCPA was passed into law, however there have been municipal declarations of emergency.¹⁸

Roles in Emergency Management and Response

Municipal Role

22. Under the EMCPA, only the head of council of a municipality (with respect to an emergency within the municipality) has the authority to declare an emergency with respect to an emergency within the municipality.¹⁹

23. In the case of a municipal emergency, an emergency declaration may extend to all or any part of the municipality. If the decision is made by a municipality to declare an emergency, the municipality must notify the Province. In practice, this notice is generally provided through the Provincial Emergency Operations Centre (PEOC).²⁰

24. Each municipality must designate an employee of the municipality or a member of the council as its emergency management program co-ordinator.²¹ This person effectively

¹⁶ Note: the powers and authority of the Commissioner of Emergency Management rest with the Commissioner of Community Safety.

¹⁷ *Emergency Management and Civil Protection Act*, s. 7.0.1 *et seq*

¹⁸ D. Hefkey, August 8, 2013, p. 20193, l. 22-25

¹⁹ *Emergency Management and Civil Protection Act*, s. 4

²⁰ Exhibit 5847-004, p. 9

²¹ O. Reg. 380/04 (Standards), s. 10

supervises the development and implementation of the municipal emergency management program. Each municipality shall also have a municipal emergency control group (MECG) that directs the municipality's response in an emergency. The Municipal Emergency Control Group may at any time seek the advice and assistance of government officials or employees involved in emergency management.²²

25. When the PEOC Duty Officer receives a declaration of an emergency, a series of questions are posed to the person notifying the PEOC to verify contact information, situational details and to determine if any provincial assistance is being requested by the municipality. If provincial assistance is requested, the PEOC Duty Officer will notify the applicable provincial officials regarding the request and the circumstances thereof.

26. Staff in the PEOC and the Emergency Management Operations Section will assist with coordinating the provincial response to the municipal declaration of an emergency as required. This will include creating an Emergency Information Notification (EIN) or situation report (SITREP), disseminating this document to designated provincial and ministry representatives, contacting ministry representatives who may be able to support response operations and contacting the impacted municipalities, ministry officials and, as necessary federal departments and agencies.²³

27. The municipality has management and control over local emergency operations, which may be exercised through its Municipal Emergency Control Group. The impacted municipal government would generally begin its response operation by convening the Municipal Emergency Control Group and activating its emergency plan.

28. An Incident Commander may be appointed by the Municipal Emergency Control Group to manage operations at the site of the emergency event or significant incident in accordance with the municipality's emergency response. The Incident Commander is usually a senior officer from one of the local emergency services, such as the police force of jurisdiction, the fire department or emergency medical services. In cases where the Ontario Provincial Police (OPP) are the local police force of jurisdiction it is possible that they may also then play the role of

²² O. Reg. 380/04 (Standards), s. 12

²³ Exhibit 5847-004, p. 12

local Incident Commander. It is expected that the nature of the emergency will be the predominant consideration in determining which local emergency service assumes command (for example, whether it is an incident involving fire, search and rescue, public order, etc.).

Provincial Resources

29. As described above, municipalities are expected to identify hazards within their own municipality and create capacity and plans to respond to those identified hazards. Municipalities are also encouraged to enter into mutual assistance agreements with neighbouring municipalities to augment their capacity to respond to emergency situations that exceed their own municipality's resources. In the case of fire services, fire coordinators appointed by the Fire Marshal for designated areas establish and maintain mutual aid plans under which the fire departments that serve that area agree to assist each other in the event of an emergency.²⁴

30. However, in the event that the scope of the emergency exceeds the resources available to a municipality, either alone or with the assistance of its neighbouring municipalities, a municipality may request provincial assistance. This assistance may be requested either through the PEOC, or through the OPP (in the case of the OPP UCRT team described below).

(a) Heavy Urban Search and Rescue Team (HUSAR)

31. The Province of Ontario and the City of Toronto have signed a memorandum of understanding²⁵ and agreed that a Toronto Heavy Urban Search and Rescue (HUSAR) team would provide a response capability to HUSAR incidents on a province-wide basis. This team has been referred to at the Inquiry under the acronym HUSAR, or Task Force 3; however, it will be referred to as HUSAR in these submissions.

32. The Inquiry heard evidence of a National Urban Search and Rescue Program established in 2001 by Public Safety Canada. Under this Program, five teams were developed across the country. Federal funding through the Joint Emergency Preparedness Program (JEPP) for these

²⁴ *Fire Protection and Prevention Act, 1997*, s. 7(2)

²⁵ Exhibit 768, A Memorandum of Understanding

teams was discontinued in 2012. Currently, the City of Toronto HUSAR team receives funding only from the City of Toronto and the Province of Ontario.²⁶

33. The City of Toronto is responsible for the training and development of the members of the HUSAR team.

34. The team is composed of members from fire, police, emergency medical, and water services and structural engineers.

35. Approximately 68 team members are available to respond upon activation. The number of responders and the composition of the team will depend on the seriousness and circumstances of each incident.

36. The capabilities of HUSAR include, but are not limited to:

- Physical search and rescue operations in damaged/collapsed structures;
- Emergency medical care to disaster response personnel;
- Emergency medical care to the injured;
- Reconnaissance to assess damages and needs and provide feedback to local, provincial, and federal officials;
- Assessment of utilities to houses and buildings;
- Hazardous material evaluations;
- Structural/hazard evaluations of government/municipal buildings needed for immediate occupancy to support disaster relief operations; and
- Stabilization of damaged structures, including shoring, cribbing operations on damaged buildings.²⁷

37. The assistance of these specialized teams may be requested by contacting the PEOC.

38. The request for HUSAR deployment is first assessed and approved by the Fire Marshal and Chief of Emergency Management who then makes a recommendation to the Commissioner of Community Safety as to whether HUSAR should be deployed. Authorization to deploy the resources of the HUSAR team is provided by the Commissioner of Community Safety, upon

²⁶ Testimony of Coby Duerr, Transcript, August 15, 2013, p. 20836, l. 17 – p. 20838, l. 12

²⁷ Exhibit 5847-004, p. 16

being satisfied that the following prerequisite criteria have been met and proper authority sought to deploy the team:

- The head of council of the affected community has declared an emergency in accordance with the EMCPA;
- The affected community must have used all of its available (appropriate) resources;
- Mutual aid assistance from other communities must have been requested; and
- The designated fire coordinator or the designated alternate fire coordinator has made the request for the team.²⁸

(b) CBRNE Response Teams

39. Although they were not deployed in the response to the Algo Centre Mall collapse, Ontario has a number of other response teams able to respond to emergency incidents, again depending on the nature and scope of the incident, and depending on the capacity and the needs of the municipality requesting assistance.

40. Ontario has a number of Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE) response teams able to respond to an incident in accordance with the NFPA 472 Standard for competence of responders to incidents involving hazardous materials or release of biological agents or radiological contamination.²⁹ Ontario has access to three level 3 (Technician level) teams, in Toronto, Windsor and Ottawa, and six level 2 (Operation level) teams, in Peterborough, Cornwall, Sault Ste. Marie, Thunder Bay, North Bay and Waterloo Region.³⁰

41. Any of these CBRNE teams may be activated using the same process as for HUSAR, by contacting the PEOC.

²⁸ Exhibit 5847-004, p. 16

²⁹ D. Hefkey, August 8, 2013, p. 20203, l. 11 – p. 20205, l. 7; p. 20240, l. 11-18

³⁰ Exhibit 5847-004, p. 12

OPP – UCRT

42. The legislative framework for policing in Ontario is set out in the *Police Services Act R.S.O. 1990 c. P-15* and related regulations. The protection of persons and property is part of the policing mandate of the OPP.³¹

43. Rescue operations are part of the OPP mandate for the protection of persons and the UCRT is an OPP asset that was established to assist in the performance of that mandate.³²

44. The Ontario Provincial Police (OPP) Urban Search and Rescue (USAR) and Chemical/Biological/Radiological/Nuclear and Explosive (CBRNE) Response Team collectively comprise the OPP UCRT team.³³

45. The UCRT team is part of the OPP's Field Support Bureau,³⁴ which provides a variety of specialized services to support other OPP operations throughout the province.³⁵ The Field Support Bureau is comprised of a number of sections, one of which is the Emergency Management Section. UCRT is a unit within the Emergency Management Section.³⁶

46. The UCRT was established in response to the 9/11 terrorist attacks in the United States. The mandate of UCRT is to ensure Ontario's capability to manage terrorist incidents, major disasters, and public safety threats.³⁷

47. The UCRT base of operations is located in Bolton, Ontario.³⁸ The UCRT can be deployed to any part of the province.³⁹ The UCRT currently has an authorized complement of 28 members.⁴⁰ The members of UCRT are employed in that unit on a full-time basis.⁴¹ When at

³¹ Testimony of Robert Bruce, Transcript, August 23, 2013, p. 22164, l. 11 – p. 22165, l. 18

³² R. Bruce, August 23, 2013, p. 22172, l. 10-25; p. 22173, l. 1

³³ Testimony of Robert Bruce, Transcript, August 23, 2013, p. 22119, l. 4-25; p. 22120, l. 1-25; p. 22121, l. 1-2

³⁴ Exhibit 7847, USAR CBRNE OPP policy – Mandate; R. Bruce, August 23, 2013, p. 22123 l. 3 - 15

³⁵ R. Bruce, August 23, 2013, p. 22107 l. 19 - 25

³⁶ R. Bruce, August 23, 2013, p. 22107 l. 19 – 25

³⁷ Exhibit 7850, UCRT Document p. 1; Exhibit 7847, Introduction

³⁸ Testimony of Jamie Gillespie, Transcript, September 3, 2013, p. 23498, l.1 - 2

³⁹ R. Bruce, August 23, 2013, p. 22114, l. 18-21; p. 22115, l. 9-16

⁴⁰ R. Bruce, August 23, 2013, p. 22114, l. 18-21 p. 22115, l. 9-16

⁴¹ J. Gillespie, September 3, 2013, p. 23460, l. 21-25

full complement, UCRT would be capable of operating on a 24-hour cycle with two 12-hour shifts.⁴²

48. The UCRT is under the direct supervision of a Staff Sergeant Unit Commander.⁴³ The unit is accountable to the Inspector in charge of the Emergency Management Section of the Field Support Bureau.⁴⁴

49. The UCRT would be considered to operate at the medium USAR operational level according to the Canadian Urban Search and Rescue (USAR) classification guide.⁴⁵ HUSAR would be operating at the heavy USAR operational level.⁴⁶

50. The difference between the medium and heavy USAR operational levels is one of capacity and sustainability, not training.⁴⁷ The training provided to UCRT members would meet or exceed the training provided to members of HUSAR.⁴⁸ The mandate of UCRT is broader than that of HUSAR and the training received by the UCRT members would enable them to respond to a broader range of situations.⁴⁹

51. UCRT can be deployed at the request of any unit within the OPP, the request of any police service, municipality, or Emergency Management Ontario.⁵⁰ All requests for deployment are forwarded to the Field Support Bureau through the OPP General Headquarters (GHQ) duty office.⁵¹ The Field Support Bureau would determine if the request was within the mandate of UCRT and if UCRT had the capacity to respond. The decision to deploy UCRT rests with the OPP Field Support Bureau.⁵²

⁴² R. Bruce, August 23, 2013, p. 22116, l. 3-17

⁴³ J. Gillespie September 3, 2013, p. 23463, l. 2-10

⁴⁴ J. Gillespie, September 3, 2013, p. 23507, l. 8-13; Exhibit 7847, UCRT Police Orders, p. 2

⁴⁵ R. Bruce, August 23, 2013, p. 22115, l. 20-23; D. Hefkey, August 8, 2013, p. 20220, l. 15-19

⁴⁶ D. Hefkey, August 8, 2013, p. 20221, l. 15-25

⁴⁷ D. Hefkey, August 8, 2013, p. 20220, l. 20-25; p. 20221, l. 1-14

⁴⁸ D. Hefkey, August 8, 2013, p. 20221, l.1-4

⁴⁹ Exhibit 7847, Mandate

⁵⁰ R. Bruce, August 23, 2013, p. 22173, l. 7-11; p. 22174, l. 9-20,; D. Hefkey, August 8, 2013, p. 20213, l.18-25

⁵¹ Exhibit 7847, p. 2

⁵² R. Bruce, August 23, 2013, p. 22124, l. 12-24

52. The deployment of UCRT is not dependent upon a declaration of an emergency by the Province or any municipality.⁵³ The Province can request the deployment of UCRT but the decision to deploy UCRT rests with the OPP.⁵⁴

53. When responding to a major incident, the OPP would utilize a Major Incident Command structure. A “major incident” is defined as an occurrence that, by circumstance, requires the mobilization of OPP employees, equipment and other resources beyond those required for normal police service delivery.⁵⁵

54. The goal of major incident command is to successfully conclude a major incident through the overall command / control and efficient management of resources and services either alone or in concert with other emergency management agencies.⁵⁶ A major incident would be managed by a trained incident commander.⁵⁷

55. A critical incident is a high risk incident requiring an OPP integrated response. A critical incident would be managed by a critical incident commander.⁵⁸

56. The OPP utilizes the Incident Management System (IMS) in responding to major incidents.⁵⁹ The Major Incident Command Structure is the means by which the OPP has operationalized the IMS.⁶⁰

57. Where other provincial and / or municipal resources are deployed to an incident, the UCRT would work collaboratively with these resources. This would be accomplished by instituting a unified command structure with an overall Incident Commander as the final decision

⁵³ R. Bruce, August 23, 2013, p. 22175, l. 5-14

⁵⁴ R. Bruce, August 23, 2013, p. 22175, l. 15-24; D. Hefkey, August 8, 2013, p. 20213, l. 18-25; p. 20216, l. 1

⁵⁵ R. Bruce, August 23, 2013, p. 22139, l. 3-11; p. 22155, l. 4 – 11; Exhibit 841, OPP Major Incident Command Police Orders

⁵⁶ Exhibit 841, Definition of Major Incident

⁵⁷ Exhibit 841, Definition of Major Incident

⁵⁸ Exhibit 841, Definition Critical Incident; R. Bruce, August 23, 2013, p. 22155, l. 14 - 22

⁵⁹ R. Bruce, August 23, 2013, p. 22171, l. 3-16

⁶⁰ R. Bruce, August 23, 2013, p. 22171, l. 17-23

maker. Depending on the nature of the incident, the Incident Commander could be a trained OPP incident commander or a representative of another responding agency.⁶¹

Command Structure and Incident Management System

58. The Incident Management System (IMS) is intended to provide the format and basis for an effective response to emergencies, particularly when multiple agencies are responding to an incident.⁶² One of the main purposes of IMS is to provide a common system or approach and common terminology for managing an emergency. IMS is meant to be flexible and scalable, and can be modified to adapt to emergencies of different scopes and sizes.⁶³

59. It is also meant to be a voluntary system, and represents a best practice that can help to organize the response capacity of multiple agencies into a standard response approach. The doctrine outlines standardized principles, and represents a “tool box” of standardized terms and processes for use as required.⁶⁴

60. The expectation is that gradually Ontario’s various response organizations will implement the IMS doctrine and will train their personnel in the content of the doctrine to the extent that those organizations deem necessary.⁶⁵ To make the system mandatory would involve a significant commitment of resources from the participating agencies, and it was determined not to make it too onerous but to seek voluntary compliance through acceptance and adoption by those agencies.⁶⁶

61. Under IMS, it is essential in responding to an incident to establish an effective command structure. The individual who exercises the function of Command is identified as the Incident

⁶¹ R. Bruce, August 23, 2013, p. 22141, l. 5-25; p. 22142, l. 1-19 and 23-25; p. 22143, l. 1-20

⁶² Testimony of Dan Hefkey, Transcript, October 8, 2013, p. 28657, l. 7-14

⁶³ D. Hefkey, August 8, 2013, p. 20241, l. 24 – p. 20243, l. 5

⁶⁴ Exhibit 887, Incident Management System for Ontario, December 2008, p. 3-4

⁶⁵ Exhibit 887, p.4; D. Hefkey, August 8, 2013, p. 20247, l. 23 – p. 20248, l. 3

⁶⁶ D. Hefkey, August 8, 2013, p. 20249, l. 20 – p. 20250, l. 25

Commander. The Incident Commander is responsible for all incident activities, including the development of strategies and tactics and the ordering of resources.⁶⁷

62. The other key components of a command structure under IMS include: operations, planning, logistics and finance administration. It is expected that there will be one section chief for each of these sections, therefore, there will be only one Operations Section Chief who oversees the operational aspects of the emergency response in an incident. Similarly, it is expected that there be one Planning Section Chief, and one Logistics Section Chief.⁶⁸

63. While two functions might be exercised by one person, depending on circumstances and the size of the incident, it is never expected that more than one person could act as a Section Chief for any of the sections, including Operations. Instead, as resources are added to respond to an incident, the Operations Section would break into two or more groups comprised of distinct teams under each group, all while ensuring that the number of groups or teams do not exceed the optimum span of control (expressed as a ratio of supervisors to individual, the range being between 1:3 and 1:7).⁶⁹

64. The other members of the Command Staff as described in IMS include an Emergency Information Officer, a Safety Officer, and a Liaison Officer. These positions provide advice and assistance to the Incident Commander, and are also responsible for ensuring adequate communications within the response agencies, communications outward to the public, liaison among responding agencies, and ensuring the overall safety of the first responders on the scene. In addition, the Incident Commander may seek the advice and assistance of subject matter experts to support the Command Staff.⁷⁰

⁶⁷ Exhibit 887, p. 29

⁶⁸ Exhibit 887, p. 19-26

⁶⁹ Exhibit 887, p. 19-21

⁷⁰ Exhibit 887, p. 16

Ministry of Labour’s Legislative Authority in an Emergency

OHSA Always Applies, including in an Emergency Situation

65. The *Occupational Health and Safety Act* (OHSA) does not differentiate between a workplace at which a rescue and / or recovery is taking place and an ordinary workplace. The provisions of the OHSA, including its enforcement provisions, apply at all times.⁷¹

66. The OHSA, which sets out the minimum health and safety standards in all workplaces under provincial jurisdiction, has been recognized by the Ontario Court of Appeal as the main legislative vehicle for maintaining and promoting workplace health and safety standards.⁷² It is a remedial public welfare statute and, as such, is to be generously interpreted in a manner that is in keeping with the purposes and objective of the legislative scheme.⁷³

67. The OHSA contains a supremacy provision which provides that its provisions and regulations prevail despite anything in any general or special Act. Further, the EMCPA provides that in the event of a declared provincial emergency, the OHSA is the **only** statute that an emergency order issued by the Lieutenant Governor in Council would not be able to override.⁷⁴

68. In these ways, the Courts and the Legislature have recognized the importance of the health and safety of Ontario workers, even in a rescue or recovery situation.

OHSA Applies to First Responders

69. OHSA’s application to all workplaces includes workplaces at which first responders are attempting to preserve human life, such as the collapse of the Algo Centre Mall. There are no provisions in OHSA which exempt first responders such as firefighters, police and paramedics or their employers from the general applicability of the Act. Further, any place where a rescue by a firefighter takes place has been found to be a workplace within the meaning of the OHSA. The

⁷¹ Exhibit 9907, *The Occupational Health and Safety Act, the Ministry of Labour and Emergency Operations*, prepared by the Province of Ontario for the Elliot Lake Commission of Inquiry, September 6, 2013, p. 2-3

⁷² *R. v. Ellis-Don Ltd.* (1990), 1 O.R. (3d) 193 at p. 210 (C.A.), revd on other grounds 92 D.L.R. (4th) 288n (S.C.C.), per Houlden J.A.

⁷³ *Ontario (Ministry of Labour) v. Hamilton (City)* (2002), 58 O.R. (3d) 37 (C.A.) at p. 43

⁷⁴ Exhibit 9907, p. 3

fact that there is no general exemption from the OHS Act recognizes that first responders taking part in a rescue or recovery operation have the same right to safe working conditions as any other worker.⁷⁵

70. However, there are three situations in which the OHS Act or a regulation promulgated thereunder may apply differently with respect to first responders or emergency workers: 1) where a worker is saving life or relieving human suffering; 2) there is a limited right to refuse work that may endanger the worker; and 3) there are exemptions to the regulations for entering confined spaces and working with asbestos for firefighters.⁷⁶

1) Saving Life or Relieving Human Suffering

71. Section 51 of the OHS Act sets out the Act's notification requirements where there is a critical injury or death at a workplace. Section 51(1) requires immediate notice of the event to the Ministry of Labour (MOL) by the employer. Section 51(2) prohibits any disturbance of the scene in order to preserve evidence for the purpose of an investigation into possible contraventions of the OHS Act, mandating that where a person is killed or critically injured at a workplace, no person shall "disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector".⁷⁷

72. There are, however, three exceptions to the rule of scene preservation. Section 51(2) states that a scene may be disturbed for the following reasons:

- 51. (2)**
- (a) saving life or relieving human suffering;
 - (b) maintaining an essential public utility service or a public transportation system; or
 - (c) preventing unnecessary damage to equipment or other property,

⁷⁵ Exhibit 9907, p. 3-4

⁷⁶ Exhibit 9907, p. 4-5

⁷⁷ Exhibit 9907, p. 4

73. In enacting clause (a), the Legislature has recognized that the preservation of evidence for an MOL investigation is a **secondary consideration** when human life or suffering is at stake. For example, this provision would clearly exempt first responders (and anybody else) from the prohibition on disturbing wreckage, such as a collapsed structure. As such, it is clear, that an ongoing rescue for missing persons takes precedence over the imperative of preserving an accident scene for an MOL investigation.⁷⁸

2) *Limitation on First Responders' Right to Refuse Work that Could Endanger the Worker*⁷⁹

74. Section 43(3) of the OHSA provides that a worker has the right to refuse work in certain situations if the worker believes that he or she could be endangered by that work. However, the right to refuse work is limited for classes of workers such as first responders, who have occupational responsibilities for the lives and safety of others.⁸⁰

75. Police, firefighters and paramedics, among others, are not permitted to refuse work in an emergency situation pursuant to section 43(3), if the danger is inherent in their work or is a normal condition of employment or if refusing the work would directly endanger the life, health or safety of another person. It has been recognized that risking one's health and safety is a primary requirement of these occupations.⁸¹ However, this limitation does not deprive first responders of the OHSA's protections in all other respects. As the Ontario Labour Relations Board (OLRB) has stated:

Indeed, workers who engage in inherently dangerous work for the benefit of the public have a right to expect that their employers and the Ministry of Labour will be especially vigilant in ensuring that all reasonable precautions consistent with the performance of their duties will be taken.⁸²

⁷⁸ Exhibit 9907, p. 4-5

⁷⁹ Even though first responders have a limited right to refuse work, the MOL continues to enforce the OHSA with respect to those workers. The MOL also works collaboratively with the sectors through Section 21 Committees, which are committees that have been established under s. 21 of the OHSA to advise the Minister of Labour on specialized occupational health and safety matters. These committees provide advice on the unique issues in the respective sectors.

⁸⁰ Exhibit 9907, p. 4-5

⁸¹ Exhibit 9907, p. 5

⁸² *OPSEU Loc. 321 and Ministry of Labour (Re)* [1992] O.O.H.S.A.D. No. 9, at para. 5

3) *Firefighters Exempted From Regulations Dealing with Confined Spaces and Asbestos*

76. Working in confined spaces and working with asbestos are recognized as inherently dangerous activities. As such, separate regulations have been passed under the OHSA with respect to both activities. O. Reg 632/05 (Confined Spaces) requires that an employer assess the hazards related to the confined space and develop a plan to deal with the hazards before sending a worker into the confined space. O.Reg 278/05 (Designated Substance – Asbestos on Construction Projects and in Buildings and Repair Operations) contains detailed provisions intended to protect workers who may come in contact with asbestos; for example, materials suspected of containing asbestos must be tested before being disturbed by a worker.⁸³

77. However, each of these regulations provides an exemption for emergency work performed by firefighters. In an emergency situation where a firefighter may be called upon to rescue someone whose life is in imminent danger, it is not reasonable to require the employer or the firefighter to take all the steps normally required under these regulations prior to the work being performed.⁸⁴

78. Nevertheless, both of these regulations require firefighters' employers to take some specific steps to protect the health and safety of the firefighters such as the provision of personal protective equipment, clothing and devices, adequate training, and the control of asbestos exposure within specified limits. The two regulations therefore attempt to balance a specific hazard that firefighters may face in the normal course of their work with the need to ensure that the health and safety of those workers is adequately protected.⁸⁵

79. Save for these three exceptions, the provisions of the OHSA, including the enforcement provisions, remain in effect during a rescue or recovery situation.

80. Nothing which occurred at the site of the Algo Centre Mall collapse suggests this should change. While the employers of first responders at the scene of the collapse acted responsibly and reasonably in protecting their workers, there may indeed be situations where the employers

⁸³ Exhibit 9907, p. 5-6

⁸⁴ Exhibit 9907, p. 5-6

⁸⁵ Exhibit 9907, p. 6

of first responders do not similarly take all reasonable precautions to avoid endangering their workers. Therefore, it is crucial that the OHSA continue to apply at a rescue or recovery and that MOL retain its ability to enforce the Act where adequate protections for workers are not being put in place.

81. While the statutory power is largely the same in both emergency and non-emergency situations, MOL personnel on the scene of a rescue or recovery operation are expected to exercise their broad discretion in a manner appropriate to the context, as discussed below.⁸⁶

Ministry of Labour’s Role in an Emergency Situation

82. Although MOL inspectors and professional staff such as engineers are not first responders and do not generally participate in rescue operations, they have three separate and distinct valuable roles in an emergency situation: 1) investigating the causes of critical injuries or fatalities at workplaces; 2) helping ensure the safety of first responders by enforcing the OHSA; and 3) providing expert advice.

1) Investigatory role

83. The MOL typically receives early notice of an emergency or developing emergency through a variety of means: direct contact from Emergency Management Ontario, first responders, local governments, or the media; or through an employer complying with their section 51 obligations under the OHSA.⁸⁷ Section 51 requires an employer to immediately notify the MOL by telephone when a person is killed or critically injured from any cause in a workplace.⁸⁸

⁸⁶ Exhibit 9907, p. 8

⁸⁷ Exhibit 9907, p. 6

⁸⁸ *OHSA*, s. 51(1): “Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe.”

84. MOL inspectors Donald Jones and Michel Lacroix were dispatched to the scene of the Algo Centre Mall collapse in the normal course after the MOL received a report from Lucie Aylwin's employer that she was missing, pursuant to the requirements in section 51.⁸⁹ After receiving such a report, the MOL dispatches an inspector to the scene to verify what happened, gather information and begin an investigation into the cause of the occurrence and whether any contraventions of the OHSA led to the injury or death.⁹⁰ In the Northern region, it is regular practice that two inspectors are dispatched on a serious incident with possible multiple fatalities.⁹¹

85. Responding to any such incident with a reactive field visit to a workplace is a priority for the MOL. However, in practice, MOL arrives on the scene in the majority of cases after the first responders have already completed their work, i.e. the rescue or recovery has come to a conclusion. Nevertheless, it does sometimes occur and MOL's investigatory and enforcement powers are the same whether or not the rescue or recovery is ongoing.⁹²

2) *Helping Ensure the Safety of First Responders*

86. MOL inspectors may also take steps to enforce the OHSA at a workplace affected by an emergency where there are workers involved in responding to an event. Where an inspector finds a contravention of the OHSA or a regulation the inspector may order that the provision be complied with immediately or within a specified time. In issuing such an order, the inspector may require that a plan of compliance be submitted to the MOL.⁹³

87. If an inspector finds that a contravention of OHSA poses an imminent danger or hazard to the health or safety of a worker, the inspector may issue a "stop use" or "stop work" order, the scope of which can range from specifying that a specific piece of equipment not be used until the contravention is corrected to requiring that work stop in its entirety and that workers leave a

⁸⁹ Exhibit 7020, Event Information Form June 23, 2012; Testimony of Don Jones, Transcript, September 26, 2013, p. 27428, l. 1 – p. 27429 l. 24

⁹⁰ D. Jones, September 26, 2013, p. 27428, l. 24 – p. 27429, l. 14

⁹¹ D. Jones, September 26, 2013, p. 27429, l. 11 to 27430, l. 22; Testimony of Michel Lacroix, Transcript, October 3, 2013, p. 27968, l. 15-18

⁹² Exhibit 9907, p. 2-3

⁹³ Exhibit 9907, p. 6-7

workplace until the danger or hazard is removed. It is especially important that MOL inspectors retain this power even in an ongoing rescue or recovery situation because first responders do not typically have the right to refuse work.⁹⁴ However, the MOL recognizes that emergencies are special situations where unique considerations come into play and that inspectors may need to exercise their discretion under the OHSA differently.⁹⁵

Discretion of MOL inspectors at an emergency response

88. MOL inspectors must always exercise their enforcement authority in a manner that is appropriate to the context and the circumstances. This may require that inspectors exercise their discretion under OHSA differently in a rescue situation than in an investigation in the normal course, due to the important objective of a rescue operation: safeguarding life. The OHSA must be complied with to the extent necessary to protect first responders from imminent dangers, while taking into account the important objective of a rescue or recovery situation.⁹⁶

89. The MOL Emergency Response Plan (MOL ERP) provides that field staff should exercise their enforcement authority in circumstances that are immediately dangerous to workers. As such, the MOL ERP effectively recognizes that some OHSA duties are more critical to ensuring emergency worker safety than others and that other provisions of the Act, while important in the ordinary course, may not require enforcement where an attempt is being made to save human life.⁹⁷

90. In identifying an immediate hazard to rescue workers, inspectors would work closely with emergency workers and their employers and make every attempt to assist them in addressing hazards before taking the extraordinary measure of issuing an order that would effectively halt a rescue effort.⁹⁸

⁹⁴ *OPSEU Loc. 321 and Ministry of Labour (Re), supra*

⁹⁵ Exhibit 9907, p. 6-7

⁹⁶ Exhibit 9907, p. 6-7

⁹⁷ Exhibit 9907, p. 7

⁹⁸ Exhibit 9907, p.7

91. The MOL inspectors and engineers dispatched to the collapse of the Algo Centre Mall each recognized the necessity of exercising their discretion differently in a rescue or recovery situation.⁹⁹ The MOL inspectors and engineers also noted that if they saw something unsafe they would not stop a rescue operation, although they had the powers to do so under the OHSA. Instead, as summarized by MOL engineer, Roger Jeffreys:

Well, the Act does not indicate there's any change in the powers of an inspector. The inspector's powers are the inspector's powers, whatever workplace he's at and whatever situation he's at. However, in the Act, there are provisions for workers, such as first responders, that they cannot refuse unsafe work.

So there is an implied statement here that unsafe work may take place, and the inspector has to recognize that or the engineer has to recognize that. And so the inspector or engineer would not step in and issue orders to stop a rescue operation. If they saw something that was patently unsafe for one of those first responders, they would bring it to the attention of that responder's supervisor or to the responder's attention if he couldn't get anybody else in time, but that's what would normally take place.¹⁰⁰

92. Mr. Jeffreys went onto note that this is the "reasonable approach":

We know what's going on. Somebody's trying to save somebody's life, and, you know, the occupational health and safety inspector or engineer, we're all about protecting people's lives and their safety. So if somebody is being rescued, well, [it's] important that move forward unimpeded."¹⁰¹

93. Mr. Jeffreys accepted that it is appropriate for a worker to expose him or herself to a higher level of risk in a rescue situation.¹⁰²

3) *Providing Expert Advice*

94. Finally, the MOL may have a role in providing expert advice in a rescue or recovery situation where it has the resources and technical expertise to do so.¹⁰³ The MOL has prepared

⁹⁹ M. Lacroix, October 3, 2013, p. 27953, l. 18 – p. 27956, l.10; D. Jones, September 26, 2013, p. 27381, l. 2-8

¹⁰⁰ Testimony of Roger Jeffreys, Transcript, October 3, 2103, p. 28057, l. 6 – p. 28058, l. 3; Testimony of Brian Sanders, Transcript, October 4, 2013, p. 28274, l. 20 – p. 28275, l. 4

¹⁰¹ R. Jeffreys, October 3, 2013, p. 28059, l. 14-20

¹⁰² R. Jeffreys, October 3, 2013, p.28061, l. 25 – p. 28062, l. 4

¹⁰³ The MOL employs professional staff with a range of expertise, but this expertise is focused on issues related to workplace safety. Some emergency situations may require a level of experience and a degree of expertise that MOL staff would not require in their work with the Ministry. In these situations, MOL professional staff would be looking to receive expert advice themselves so they in turn could provide advice to protect worker health and

various emergency response documents, as required under the EMCPA. These documents recognize that securing and safeguarding human life is the priority in an emergency and that while MOL field staff (including professional staff such as engineers, physicians and radiation specialists) may be present at an emergency to enforce the OHSA and its regulations, they may also be expected to assist and advise with respect to an emergency.¹⁰⁴

95. For example, Order-in-Council 1157/2009 issued under the EMPCA directs the MOL to formulate a plan for “any emergency that affects worker health and safety”. Further, the MOL-ERP sets out the following emergency response actions for the MOL:

- 1.1 Execute the ministry emergency response plan, which could include among other things the actions outlined below.
- 1.2 Ensure that employers meet their obligations concerning health and safety of workers during an emergency.
- 1.3 Provide emergency worker safety support according to MOL emergency response plans.
- 1.4 Provide occupational health and safety advice for workers deployed to emergency sites.
- 1.5 Provide radiation analyses of samples, interpretations and recommendations for public safety actions in support of other Ministries and to local agencies during a nuclear or radiation emergency through the Ministry's Radiation Protection Service.¹⁰⁵

96. Under the MOL-ERP the following actions form part of ‘response expectations’ for field staff during an emergency, which includes inspectors and engineers:

- Responds to emergency calls within a reasonable time, usually within 2 hours. Provides advice to ensure that the measures taken to protect emergency responders and other workers are adequate.
- Exercises enforcement authority in circumstances that are immediately dangerous to workers.

safety. For example, in situations involving possible pandemics, MOL medical staff obtain information from experts at the Centre for Disease Control or the World Health Organization and pass this information along to MOL staff to enable them to effectively deal with the health and safety aspects of the emergency.

¹⁰⁴ Exhibit 9907, p. 8

¹⁰⁵ Exhibit 9907, p. 8 Reproduced in the MOL Emergency Response Plan, p. 25

- Co-operates fully with the Emergency Site manager, the community control group and/or the Provincial Emergency Response Team deployed by Emergency Management Ontario during an emergency.¹⁰⁶

97. It is contemplated in the MOL-ERP that MOL staff may attend a workplace at which an emergency event is occurring to both provide advice and to enforce the OHSA to ensure emergency responders are protected. However, it is implicit in these principles that inspectors will exercise their legislated authority to enforce the OHSA with appropriate discretion given the facts that may present themselves at a rescue scene. To that end, as noted above, inspectors would exercise their discretion to explore all options possible before issuing a stop work order that would effectively halt a rescue effort.¹⁰⁷

98. Further, the MOL Emergency Response Guide for Regional Staff includes procedures that field staff are expected to follow when responding to an emergency situation. The procedures direct an MOL officer arriving at an emergency scene to immediately contact the person in charge of the scene (which was done by inspectors Don Jones, Michel Lacroix and Roger Jeffreys who reported to the OPP detachment as instructed and then went on to the scene and met Fire Chief Paul Officer).¹⁰⁸ They note that a command centre may be set up at a separate safe location and that an inspector may not even be allowed access to the emergency scene. The procedures state that if an inspector is not able to access the workplace or emergency scene, he or she would be expected to arrange offsite meetings with necessary parties to gather information about workplace safety at the emergency site.¹⁰⁹

99. These procedures also illustrate the role the MOL expects its inspectors to play at a workplace where there is an emergency. They recognize that an MOL inspector must work with the person in command of an emergency workplace, and that in some cases may be required to enforce the OHSA from a distance. By inference, the MOL recognizes that OHSA enforcement would have to exist simultaneously with an ongoing rescue.¹¹⁰

¹⁰⁶ Exhibit 9907, p. 8, MOL Emergency Response Plan, *supra*, p. 38

¹⁰⁷ Exhibit 9907, p. 9

¹⁰⁸ Exhibit 9907, p. 9

¹⁰⁹ Exhibit 9907, p. 9. See the MOL Emergency Response Guide for Regional Staff (April 2009), Elliot Lake Inquiry Database: MOL_E000000001 at p. 8

¹¹⁰ Exhibit 9907, p. 9

PART II – ELLIOT LAKE: JUNE 23, 2012 TO JUNE 27, 2012

100. Having reviewed the legislative and policy structure of emergency response in Ontario, it can be seen that the emergency response to the Algo Centre Mall collapse was overall a successful implementation of those principles. As set out below, the municipality took the lead role in managing the emergency response effort, called in provincial resources, and those provincial resources provided the necessary expertise. The MOL fulfilled its dual role in responding to a possible worker injury or fatality, as well as helping to ensure the safety of first responders in a manner that took into account the urgency inherent in the situation.

June 23 at 14:18 to June 23 at 21:25 – First Response / Provincial Resources Mobilized

101. On June 23, 2012 at 14:18 a portion of the Algo Centre Mall collapsed. The collapse occurred in the food court area of the mall. The roof of the mall was used as a parking deck and was built with pre-stressed, precast hollow core concrete slabs.¹¹¹ The roof collapsed into the second floor of the mall causing a cascading collapse into the main floor level.

102. Local emergency responders including firefighters from the Elliot Lake Fire Department (ELFD), paramedics from Algoma Emergency Medical Services (EMS) and police officers from the OPP detachment responded within minutes of the collapse to assess the scene and begin to search for possible victims. Given the close proximity of the mall to the OPP detachment and the fire station, there was no delay in the arrival of the local first responders to the scene.

103. Because this was a rescue operation, the lead agency for the response was the ELFD.¹¹² The ELFD immediately assumed control over the response to the collapse and the Fire Chief, Paul Officer, who held the most superior rank in the ELFD was the Incident Commander of the incident.¹¹³ He remained the Incident Commander throughout the response to the incident.

¹¹¹ Exhibit 6227, MOL Engineering Report – Mall Roof Collapse, p. 5

¹¹² *Fire Prevention and Protection Act, 1997*, s. 1, “fire protection services”, s. 2

¹¹³ Testimony of Paul Officer, Transcript, August 21, 2013, p. 21502, l. 9 – p. 21503, l. 10; p. 21525, l. 9-17

104. Chief Officer arrived on the scene at 14:30 and assumed command of the response.¹¹⁴ He immediately began to gather as much information he could about the collapse in order to determine the next steps for the response.¹¹⁵ He was briefed by the most senior firefighter on the scene (Captain David George) and told that the building had been evacuated¹¹⁶ and firefighters were working on getting the utilities shut-off.¹¹⁷ Chief Officer immediately determined that this was not a typical call for the ELFD and by 14:49 he activated the Community Control Group (CCG).¹¹⁸

105. The CCG is a group of people that come together to deal with the response to the emergency. The CCG is chaired by the Mayor and is comprised of various members of the municipal sector and from emergency services including police, fire and EMS. The gathering of individuals with expertise in various sectors allows the CCG to deal with an emergency effectively. The CCG does not determine how to tactically respond to the incident or develop plans for the rescue operations. It receives information from various sources about the management of the emergency response to be able to resolve issues that may arise. The CCG is also responsible for keeping the public informed and they did this through press releases, press conferences and media interviews conducted by the Mayor.¹¹⁹

106. Given Chief Officer's quick determination that this was not a typical call, by 15:00 he had recognized that he would need additional resources in heavy search and rescue to assist with the response to the collapse. He immediately requested mutual aid assistance from Blind River Fire Department.¹²⁰ In addition, while he testified that he knew that the proper procedure for accessing heavy search and rescue resources from the Province was to contact the PEOC and to

¹¹⁴ P. Officer, August 21, 2013, p. 21562, l. 15-17

¹¹⁵ P. Officer, August 21, 2013, p. 21575, l. 7 – p. 21576, l. 3

¹¹⁶ P. Officer, August 21, 2013, p. 21563, l. 14-24

¹¹⁷ P. Officer, August 21, 2013, p. 21563, l. 25 – p. 21564, l. 16; p. 21569, l. 1-5

¹¹⁸ P. Officer, August 21, 2013, p. 21573, l. 21 – p. 21574, l. 11

¹¹⁹ Testimony of Robert deBortoli, Transcript, October 7, 2013, p. 28380, l. 18 – p. 28381, l. 9; p. 28383, l. 5-9; p. 28473, l. 3-17

¹²⁰ P. Officer, August 21, 2013, p. 21601, l. 15-23

declare an emergency¹²¹, at 15:00 he contacted Bob Thorpe of the Office of the Fire Marshal (OFM).

107. Mr. Thorpe is a Fire Protection Advisor with the OFM who works out of Sault Ste. Marie; the City of Elliot Lake falls within Mr. Thorpe's area. As a Fire Protection Advisor, Mr. Thorpe normally works Monday to Friday from 09:00 to 17:00.¹²² Chief Officer testified that he has a working relationship with Mr. Thorpe and so he contacted Mr. Thorpe to "work the back channels" because he did not know how long it would take to get the emergency declared by the Mayor.¹²³ Chief Officer testified that at 15:00 when he first tried to contact Mr. Thorpe he mis-dialed his cell phone number and did not reach him at this time.¹²⁴

ELFD Firefighters search for victims

108. Chief Officer's immediate next step at approximately 15:01 was to instruct a team of three firefighters led by Captain John Thomas to form Rescue Team 1 and enter the building and search for survivors and attempt a rescue while making sure to not cause further collapse of the structure.¹²⁵ Chief Officer then went into the building himself to assess the collapse zone and get a better understanding of the hazards. In his notes he described that he observed a large concrete slab resting on the escalator at about a 45 degree angle above the rubble pile. The pile could only be accessed through a small opening beside the escalator. He noticed two large beams hanging over the rubble pile. There was an SUV resting on the pile. He estimated the rubble pile to be 10-15 feet high and area of the collapse zone to be 40 feet x 80 feet in size.¹²⁶

109. Chief Officer testified that despite the ELFD's limited capability and resources to deal with the large pieces of concrete on the pile, the firefighters went into the collapse zone to determine if there were any victims that were closer to the top of the pile or accessible to the firefighters. Without moving too much debris, the firefighters started checking the voids in the

¹²¹ P. Officer, August 21, 2013, p. 21582, l. 13-21

¹²² Testimony of Carol-Lynn Chambers, Transcript, September 18, 2013, p. 26076, l. 19-20; 26099, l. 11-17

¹²³ P. Officer, August 21, 2013, p. 21582, l. 22 – p. 21583, l. 15

¹²⁴ Exhibit 8025, Fire Chief Notes, p. 2; P. Officer, August 21, 2013, p. 21582, l. 25 – p. 21583, l. 2

¹²⁵ P. Officer, August 21, 2013, p. 21584, l. 1-24; Exhibit 8025, p. 1-2

¹²⁶ Exhibit 8025, p. 2

pile and calling out for victims.¹²⁷ Within minutes (by 15:04), one of the firefighters with Rescue Team 1 reported that he had found a person trapped in the rubble pile with a hand and foot showing.¹²⁸

110. The ELFD firefighters continued to search the debris and at approximately 15:28, Capt. Thomas, who was in the collapse zone on the pile searching for possible victims, began doing a call-out. Capt. Thomas said he would do a call-out “Fire Department is there anybody here?”¹²⁹ Capt. Thomas describes hearing a muffled noise in a different location than the victim located by Rescue Team 1 and proceeded to do a second call-out and another muffled response was returned.¹³⁰ According to the notes of Chief Officer, Captain Darren Connors who was leading the ELFD Search Team 1 also reported hearing a mumbled communication with a potential victim at the same time as Capt. Thomas.¹³¹

111. Capt. Thomas testified that he continued to communicate with a person he believed was responding back to him for approximately 20 minutes. Capt. Thomas testified that he heard from 6 to 10 muffled responses to his call outs during that time period. At no time was he able to make out what this person was saying. At that point Capt. Thomas asked Capt. Connors to continue attempting to communicate with the possible victim.¹³²

112. At the request of Capt. Thomas, Capt. Connors continued trying to communicate with the person that Capt. Thomas believed he had been in contact with.¹³³ Capt. Connors continued to ask yes or no questions, to which muffled responses were provided within 10 to 15 seconds.¹³⁴ He testified that he believed he was receiving responses to his questions but could not make out what this person was saying.

¹²⁷ P. Officer, August 21, 2013, p. 21590, l. 9 – p. 21591, l. 1-20; p. 21596, l. 7-20

¹²⁸ P. Officer, August 21, 2013, p. 21597, l. 16-24

¹²⁹ Testimony of John Thomas, Transcript, August 15, 2013, p. 21041-, l. 25 – p. 21042, l. 2

¹³⁰ J. Thomas, August 15, 2013, p. 21042, l. 11-20

¹³¹ P. Officer, August 21, 2013, p. 21602, l. 16 – p. 21603, l. 5

¹³² J. Thomas, August 15, 2013, p. 21045, l. 18 – p. 21047, l. 6

¹³³ Testimony of Darren Connors, Transcript, August 20, 2013, p. 21381, l. 16-18

¹³⁴ D. Connors, August 20, 2013, p. 21387, l. 3-8

113. Capt. Connors has no recollection of how long he was communicating with this person; however, he testified that the communications with this individual did eventually stop.¹³⁵

OPP UCRT is deployed

114. The duty officer for the OPP Northeast Regional Headquarters contacted the OPP General Headquarters duty office to request that the UCRT unit be activated and attend the scene in Elliot Lake.¹³⁶

115. This request for deployment was forwarded to Sgt. Gillespie, the administrative sergeant for the UCRT team at 14:34. As the ranking officer for the UCRT Sgt. Gillespie immediately initiated a call out to all available UCRT members requesting they attend the UCRT facility in Bolton to prepare for deployment to Elliot Lake.¹³⁷

116. Constable Patrick Waddick was the first UCRT member to arrive in Bolton and he immediately began preparing the equipment for deployment to Elliot Lake. Other members began arriving and assisted with the preparation of the equipment.¹³⁸

117. Sgt. Gillespie was unable to immediately attend Bolton and deploy to Elliot Lake. He contacted Acting Sgt. Ryan Cox at 14:39 and directed him to take command of the unit until he arrived at the scene of the collapse. Sgt. Cox arrived in Bolton at 15:50.¹³⁹

118. Members of the UCRT unit were already on scene in Bolton when Sgt. Cox arrived. Sgt. Cox departed Bolton for Elliot Lake at 16:16. The other available UCRT members departed shortly thereafter.¹⁴⁰

¹³⁵ D. Connors, August 20, 2013, p. 21389, l. 14-17

¹³⁶ Testimony of Jamie Gillespie, Transcript, September 3, 2013 p. 23504, l. 19 – p. 23505, l. 3; p. 23509, l. 8-14

¹³⁷ J. Gillespie, September 3, 2013, p. 23522, l. 11-18; Testimony of Ryan Cox, Transcript, August 26, 2013, p. 22256, l. 19 – p. 22257, l. 8

¹³⁸ R. Cox, August 26, 2013, p. 22252, l. 1-9; p. 22253, l. 15-22, p. 22258, l. 12-16; J. Gillespie, September 3, 2013, p. 23521, l. 1-22

¹³⁹ R. Cox, August 26, 2013, p. 22256, l. 25 – p. 22257, l. 8, p. 22259, l. 6-9

¹⁴⁰ R. Cox, August 26, 2013, p. 22261, l. 9-20, p. 22266, l. 12-16

OPP Command Structure for Elliot Lake

119. The UCRT unit is under the command of a Staff Sergeant.¹⁴¹ The Staff Sergeant reports to the Inspector in charge of the Emergency Response section of the Field Support Bureau who in turn reports to the Chief Superintendent in charge of the Bureau.¹⁴²

120. Within the UCRT unit there are three sergeants who report to the Staff Sergeant. One sergeant is in charge of the USAR element and another is in charge of the CBRNE element of UCRT. The third sergeant is responsible for the administrative functions of the UCRT unit.¹⁴³

121. From a command structure perspective the Staff Sergeant is the officer in charge whenever the UCRT is deployed.¹⁴⁴

122. When the UCRT unit deployed to Elliot Lake the Staff Sergeant did not attend and did not participate in the deployment in any way.¹⁴⁵ The sergeants in charge of the USAR and CBRNE elements were not available and did not attend in Elliot Lake or otherwise participate in that deployment.¹⁴⁶

123. Sgt. Gillespie, the administrative sergeant, deployed to Elliot Lake and was the officer in charge of UCRT throughout the deployment.¹⁴⁷ Sgt. Cox, who also deployed to Elliot Lake, was the acting sergeant in charge of the USAR element.¹⁴⁸ Sgt. Cox was in charge of the UCRT unit until Sgt. Gillespie arrived in Elliot Lake late on the evening of June 23.¹⁴⁹

124. In June 2012 at the time of the collapse Staff Sergeant Wayde Jacklin was the acting inspector in charge of the Emergency Management Section of the Field Support Bureau.¹⁵⁰

¹⁴¹ J. Gillespie, September 3, 2013, p. 23463, l. 2-4, p. 23506, l. 20-21

¹⁴² R. Bruce, August 23, 2013, p. 22107, l. 16-25

¹⁴³ J. Gillespie, September 3, 2013, p. 23463, l. 4-10

¹⁴⁴ R. Bruce, August 23, 2013, p. 22147, l. 23-24, p. 22150, l. 3-9

¹⁴⁵ J. Gillespie, September 3, 2013, p. 23509, l. 1-6; R. Bruce, August 23, 2013, p. 22150, l. 3-9

¹⁴⁶ J. Gillespie, September 3, 2013, p. 23508, l. 12-18

¹⁴⁷ J. Gillespie, September 3, 2013, p. 23508, l. 12-18

¹⁴⁸ J. Gillespie, September 3, 2013, p. 23521, l. 5-16

¹⁴⁹ J. Gillespie, September 3, 2013, p. 23521 l. 17-22

¹⁵⁰ Testimony of Wayde Jacklin, Transcript, August 27, 2013, p. 22614, l. 23 – p. 22615, l. 6

S/Sgt. Jacklin was unable to attend in Elliot Lake but did remain in contact with UCRT members throughout the deployment and was available to provide assistance as requested.¹⁵¹

125. Sgt. Gillespie testified that due to the lack of the presence of adequate command staff from the OPP in Elliot Lake he was unable to be present in the command tent on a continuous basis. He indicated that he had to make the choice of either being in the command tent or remaining at the collapse site to supervise the activities being undertaken by the UCRT members. He chose to remain in the collapse zone to act as the safety officer for his members and otherwise supervise them in the performance of their duties.¹⁵² That was his choice to make.

126. In his testimony Chief Superintendent Bob Bruce, the commander of the Field Support Bureau, testified that the OPP had let Sgt. Gillespie down during the deployment to Elliot Lake.¹⁵³ The staff sergeant in charge of the UCRT unit should have attended.¹⁵⁴ In his absence arrangements should have been made to have alternative command staff attend.

127. The OPP policy has been revised since the deployment to Elliot Lake. As was previously the case, the staff sergeant in charge of UCRT is required to attend any deployment of UCRT.¹⁵⁵ In addition, the inspector in charge of the Emergency Management Section of the Field Support Bureau is also expected to attend UCRT deployments.¹⁵⁶ Finally, structural collapse deployments, such as the one in Elliot Lake, are now defined as critical incidents and in accordance with OPP policy in regard to Major Incident Command such deployments will require the attendance of a Critical Incident Commander.¹⁵⁷ These changes will ensure that going forward there will be adequate OPP command staff present at any such incident.

¹⁵¹ W. Jacklin, August 27, 2013, p. 22615, l. 11-14, p. 22616, l. 11-13, p. 22623, lines 14-22, p. 22624, l. 22-25, p. 22625, l. 1-5

¹⁵² J. Gillespie, September 3, 2013, p. 23587, l. 10 – p. 23588, l. 1-12

¹⁵³ R. Bruce, August 23, 2013, p. 22148, l. 1-3

¹⁵⁴ R. Bruce, August 23, 2013, p. 22147, l. 23-24, p. 22150, l. 3-9

¹⁵⁵ R. Bruce, August 23, 2013, p. 22150, l. 1-9

¹⁵⁶ R. Bruce, August 23, 2013, p. 22146, l. 13-16

¹⁵⁷ R. Bruce, August 23, 2013, p. 22146, l. 16-19

Role of the OPP Detachment in Elliot Lake

128. Inspector Percy Jollymore was the Detachment Commander for the Elliot Lake OPP detachment in June 2012. In accordance with the Elliot Lake Emergency Response Plan, the OPP detachment commander was identified as a member of the CCG. In addition to his usual policing duties and responsibilities the detachment commander was also assigned specific responsibilities under the emergency response plan, when activated.¹⁵⁸

129. Insp. Jollymore testified that he completed all of the tasks assigned to him by the emergency response plan and also took on a number of tasks that needed to be done that were not assigned to him by the plan. They included sourcing a number of resources requested by the OPP UCRT team as well as providing assistance to victims' families.¹⁵⁹

130. Insp. Jollymore was the senior OPP member on site at the time of the collapse. Insp. Jollymore was in charge of local OPP resources and other members who were brought in to assist with the local response to the collapse.

131. Insp. Jollymore was not the incident commander in charge of the UCRT resources. Chief Officer was the Incident Commander for the rescue / recovery operations. The UCRT team reported to Chief Officer with respect to their role in the rescue /recovery operation.¹⁶⁰ Insp. Jollymore assisted UCRT in obtaining material and other resources and was available throughout the rescue / recovery operation to provide additional assistance if requested.¹⁶¹

132. As the emergency response progressed there were numerous meetings of the CCG that Insp. Jollymore attended. As a member of the CCG Insp. Jollymore was asked to provide input with respect to decisions that needed to be made by the group as the rescue operation progressed. These decisions are described in more detail below.

¹⁵⁸ Testimony of Percy Jollymore, Transcript, September 24, 2013, p. 26802, l. 8-12; Exhibit 8090, Elliot Lake Emergency Response Plan, p. 18

¹⁵⁹ P. Jollymore, September 24, 2013, p. 27000, l. 22 – p. 27001, l. 21, p. 27002, l. 21 – p. 27015, l. 6; Exhibit 8090, p. 18

¹⁶⁰ P. Jollymore, September 24, 2013, p. 27017, l. 1-4, p. 27020, l. 3-7, p. 26934, l. 14 – p. 26935, l. 10

¹⁶¹ P. Jollymore, September 24, 2013, p. 26935, l. 4-10, p. 27022, l. 5-21, p. 27023, l. 4-23, p. 27021, l. 14-23

ELFD requests HUSAR / OFM immediately “stands-up” HUSAR

133. At approximately 15:08 Chief Officer requested that the firefighter on dispatch (base) make another attempt to contact the OFM given that Chief Officer’s first attempt to contact Mr. Thorpe at 15:00 was not successful. Chief Officer explained that the call from dispatch would have been made to a central contact within the OFM, the same contact that the ELFD would make for assistance with a fire investigation.¹⁶² At 15:14 he told the dispatch to give his cell phone number to the OFM to call him directly on the scene.

134. As a result of this direction, approximately 10 minutes later at about 15:23, Chief Officer spoke with the Sault Ste. Marie District Chief and explained to him what had happened and what the ELFD was facing and asked him to contact Mr. Thorpe to let him know about the situation. Minutes later, Chief Officer again told dispatch to request heavy urban search and rescue assistance by contacting Mr. Thorpe.¹⁶³ At this same time, Mr. Thorpe received a telephone call from the Sault Ste. Marie District Chief and was asked to contact Chief Officer as quickly as possible due to the collapse of the Elliot Lake Mall.¹⁶⁴ Mr. Thorpe called the ELFD dispatch and was given Chief Officer’s cell phone number which he used to contact him directly. During this call, Chief Officer told Mr. Thorpe they would need heavy urban search and rescue and Mr. Thorpe told him he was on it.¹⁶⁵ Immediately after he spoke with Mr. Thorpe, Chief Officer spoke with Wayne Romaine, OFM Fire Investigation Services and gave him a scene assessment and among other things, told him there was one victim that they knew of at that time.¹⁶⁶

135. As outlined above, by the time Chief Officer spoke with Mr. Thorpe at approximately 15:25 and told him that they were requesting the heavy urban search and rescue, the UCRT team was already mobilizing and readying for deployment. Also, by this time, Chief Officer had already activated mutual aid assistance and quickly determined that ELFD would need heavy urban search and rescue capabilities. While the CCG had been called together and held its first meeting at 15:00, an emergency declaration, which would be needed for the Province’s Heavy

¹⁶² P. Officer, August 21, 2013, p. 21601, l. 4-14

¹⁶³ Exhibit 8025, p. 2

¹⁶⁴ Exhibit 9656, Anticipated Evidence of Robert (Bob) Thorpe, p. 1

¹⁶⁵ Exhibit 8025, p. 2

¹⁶⁶ Exhibit 8025, p. 2

Urban Search and Rescue Team (HUSAR) from the City of Toronto to be formally deployed,¹⁶⁷ had not been made.¹⁶⁸

136. Although an emergency declaration had not yet been made by the City of Elliot Lake, upon learning of the situation in Elliot Lake and the Fire Chief's request for HUSAR assistance, staff in the OFM immediately began to act on the request. This was done at a number of levels and initiated a series of actions simultaneously by OFM staff:

- (a) At 15:37 – Art Booth sent an email to Carol-Lyn Chambers and others in the OFM reporting that there had been a mall collapse in Elliot Lake, the Fire Chief is requesting HUSAR assistance and that Bob Thorpe was en route to Elliot Lake.¹⁶⁹ At the time of the collapse, Ms. Chambers was an Operations Manager with the OFM's Emergency Preparedness and Response Unit (EPRU) and she was on-call that day. Her role was to authorize, on an operational level, the deployment of HUSAR.¹⁷⁰ Once HUSAR was deployed, Ms. Chambers acted as the conduit between the HUSAR team and the Province. She was in direct contact with the HUSAR Commander, Staff Inspector Bill Neadles, throughout the incident. She did not have a command role in the operation. She fulfilled a liaison role and ensured that HUSAR had as much information as possible to perform its operations and she would facilitate any requests for assistance from HUSAR. As a conduit, she also received regular updates on the operation from S/Insp. Neadles and the OFM staff at the scene and reported this information to OFM senior management.¹⁷¹
- (b) Approximately 15:37 – Mr. Thorpe contacted the PEOC to ask if Elliot Lake had made a request to the PEOC for HUSAR and was told no request had yet been made to the PEOC.¹⁷²
- (c) By 15:43 – Ms. Chambers has contacted HUSAR to request a “stand-up” time and has also made contact with the OPP to determine if UCRT is aware of the incident and if

¹⁶⁷ Exhibit 768, p. 3

¹⁶⁸ Exhibit 3743, Notes of CCG Meetings, p. 1

¹⁶⁹ Exhibit 6410, Email from A. Booth to C. Chambers et. al. dated June 23, 2012 at 15:37

¹⁷⁰ C. Chambers, September 18, 2013, p. 26080, l. 25 – p. 26081, l. 10; p. 26104, l. 8 – p. 26106, l. 2

¹⁷¹ C. Chambers, September 18, 2013, p. 26075, l. 12-20, p. 26145, p. 21 – 26146, l. 8;

¹⁷² Exhibit 9656, p. 1

UCRT is responding.¹⁷³ Ms. Chambers testified that although HUSAR was formally deployed when the request for HUSAR was approved at 16:42 by the Commissioner of Community Safety,¹⁷⁴ by “standing-up” HUSAR at 15:43 she was activating the team so that it could start mustering and get a core contingent on the road earlier because it has a sixhour “stand-up” time.¹⁷⁵ She also testified that although the normal procedure for requesting HUSAR would have been for ELFD to contact PEOC and then for the PEOC to call her as the on-call Operations Manager that day, the fact that she was first notified about the collapse via an email from Mr. Booth did not cause any delay in activating the HUSAR team.¹⁷⁶

- (d) By 15:45 – Mr. Thorpe had spoken with Ms. Chambers and was told that she had made contact with HUSAR and UCRT to determine a response time and that Elliot Lake had not yet declared an emergency. Mr. Thorpe then called Chief Officer and told him that the declaration must be made in order to activate the HUSAR team. He was told by Chief Officer that he would call the Mayor immediately and have the document drawn up and faxed to the PEOC immediately.¹⁷⁷
- (e) Approximately 15:55 – Ms. Chambers called ELFD dispatch and informed ELFD that she had activated HUSAR and confirmed that UCRT is deploying. She was provided with Chief Officer’s cell number and she called him and offered him assistance.¹⁷⁸
- (f) At 16:00 – Ms. Chambers deployed OFM staff to the scene. In her testimony, Ms. Chambers explained that one of the primary functions of the OFM during the incident was to ensure that the HUSAR team had everything it needed to be able to perform its job without having to be concerned about peripheral issues such as meals or accommodation. Ms. Chambers immediately deployed Dave Howse, a Program Specialist who was under

¹⁷³ Exhibit 6416, Email from C. Chambers to A. Booth et. al. dated June 23, 2012 at 15:43

¹⁷⁴ Exhibit 6436, Email from EMO DO 01 to C. Chambers dated June 23, 2012 at 16:51; Exhibit 7812, Elliot Lake Chronology (Notes of D. Hefkey), p. 1

¹⁷⁵ C. Chambers, September 18, 2013, p. 26094, l. 8-20; p. 26105, l. 3-9

¹⁷⁶ C. Chambers, September 18, 2013, p. 26272, l. 2 – p. 26273, l. 13

¹⁷⁷ Exhibit 9656, p. 2

¹⁷⁸ Exhibit 6305, Telephone call from C. Chambers to ELFD dispatch (Audio File); Exhibit 8025, p. 2

her command to perform this liaison role.¹⁷⁹ Another Program Specialist, Brent Ellen, was deployed on June 24 at 11:43.¹⁸⁰ A Fire Investigator, Dan Newburn, was dispatched on June 23 at 16:20¹⁸¹ and he also assisted with liaison and logistics for the HUSAR team.

- (g) At 16:07 – Ms. Chambers was contacted by Mr. Thorpe and told her that he was en route to Elliot Lake.¹⁸² Ms. Chambers explained that while Mr. Thorpe would not normally respond to an incident like this, she tasked Mr. Thorpe to stay with Chief Officer during the incident as a liaison and to provide the Fire Chief with whatever support, advice and assistance he needed.¹⁸³ None of the OFM staff who were at the scene of the incident were involved in the operational aspect of the emergency response.¹⁸⁴
- (h) By 16:11 – Ms. Chambers has spoken with HUSAR on-call lead from Toronto Police Service (TPS), S/Insp. Bill Neadles and also with the OPP UCRT Commander Sgt. Gillespie. Sgt. Gillespie told Ms. Chambers that UCRT would need HUSAR support and he expected UCRT to arrive in 8 to 9 hours (by 20:15 or 21:15). At this time, she put HUSAR in touch with responders at the scene including OPP Insp. Jollymore.¹⁸⁵ She also put S/Insp. Neadles in touch with Sgt. Gillespie so that the two teams could share information and coordinate response efforts.¹⁸⁶

¹⁷⁹ Exhibit 6420, Email from C. Chambers to D. Howse dated June 23, 2012 at 16:00

¹⁸⁰ Exhibit 9537, Anticipated Evidence of Brent Ellen, p. 1

¹⁸¹ Exhibit 9654, Anticipated Evidence of Dan Newburn, p. 1

¹⁸² Exhibit 6423, Email from B. Thorpe to C. Chambers et. al. dated June 23, 2012 at 16:07

¹⁸³ C. Chambers, September 18, 2013, p. 26099, l. 7 – p. 26102, l. 23; P. Officer, August 21, 2013, p. 21619, l. 10 – p. 21620, l. 12: Chief Officer testified that Bob Thorpe stayed with him for most of the incident and acted as Chief Officer's avenue to access provincial resources. He testified that he found Mr. Thorpe's presence and efforts to be of assistance to him on a number of occasions.

¹⁸⁴ Exhibit 6434, Email from C. Chambers to T. Bain et. al. dated June 23, 2012 at 16:43; C. Chambers, September 18, 2013, p. 26099, l. 1 – p. 26103, l. 15

¹⁸⁵ Exhibit 6428, Email from C. Chambers to J. Gillespie dated June 23, 2012 at 16:11; Exhibit 6430, Email from C. Chambers to J. Fisher et. al. dated June 23, 2012 at 16:25; C. Chambers, September 18, 2013, p. 26093, l. 12-18

¹⁸⁶ C. Chambers, September 18, 2013, p. 26082, l. 16 – p. 26083, l. 19, p. 26097, l. 2-6

137. While the HUSAR team was being activated, and the UCRT team was readying for deployment, the City of Elliot Lake declared an emergency. The declaration of emergency was made at 15:55 and faxed to the PEOC at 16:03.¹⁸⁷

138. Also, during this time, Ms. Chambers exchanged a number of emails and had conversations with both S/Insp. Neadles and Sgt. Gillespie regarding the number of HUSAR team members that would be deployed. Given that UCRT could muster 13 members, S/Insp. Neadles and Ms. Chambers agreed that a core contingent of HUSAR team members should be sent as soon as they could muster. Ms. Chambers testified that as the HUSAR lead, S/Insp. Neadles would determine how many team members would comprise a core contingent. In her emails with him she conveyed a sense of urgency in deploying the team as the idea was to get them moving as quickly as possible with as much information as possible.¹⁸⁸

139. When the HUSAR team left from Mississauga, 34 members were deployed. Ms. Chambers testified that throughout the deployment HUSAR could deploy additional team members if S/Insp. Neadles determined that additional resources were needed, but this did not happen.¹⁸⁹ S/Insp. Neadles acknowledged in his testimony that he knew that he could get additional team members for the rescue operation if he determined this was necessary but he felt that with the 34 members that were deployed with the team he had sufficient assets for the rescue operation.¹⁹⁰

140. Ms. Chambers described HUSAR as an elite, expert team that focuses on the tactical operations of heavy search and rescue. While the team was “standing-up” Ms. Chambers made efforts to provide Chief Officer with information through the OFM staff at the scene as to what he could expect when HUSAR arrived. In particular, at the outset of the HUSAR deployment and throughout the incident, she told Chief Officer, who was the Incident Commander for the emergency response, and she also told the OFM staff under her command, to confirm to the Fire

¹⁸⁷ Exhibit 3743, p. 2; Exhibit 8114, EMO Chronology, p. 1

¹⁸⁸ Exhibit 6430; C. Chambers, September 18, 2013, p. 26094, l. 1 – p. 26095, l. 13; p. 26096, l. 3 – p. 26097, l. 1

¹⁸⁹ C. Chambers, September 18, 2013, p. 26093, l. 20 – p. 26095, l. 24, p. 26244, l. 21 – p. 26245, l. 20; Exhibit 6460, Email from B. Neadles to C. Chambers dated June 23, 2012 at 17:29; Exhibit 6501, Emails between B. Neadles and C. Chambers dated June 23, 2012 17:28 to 17:38; Exhibit 6558, Email from B. Neadles to C. Chambers dated June 23, 2012 at 20:59; Exhibit 6569, Email from B. Neadles to C. Chambers dated June 23, 2012 at 21:09

¹⁹⁰ Testimony of Bill Neadles, Transcript, September 12, 2013, p. 25792, l. 8 – p. 25794, l. 25

Chief that as the Incident Commander he retained control of the scene and HUSAR was expected to be a resource that could plug into the Operations Sector under the Fire Chief's command.¹⁹¹

MOL Inspectors and Engineers are sent to Elliot Lake

Inspectors

141. As noted above, MOL inspectors Don Jones and Michel Lacroix, who are based in Sault Ste. Marie, were dispatched to Elliot Lake to investigate a possible fatality in a workplace. The MOL has the jurisdiction to investigate even if a worker is not the injured or deceased party as long as the incident occurs in a workplace.¹⁹²

142. Mr. Jones was the lead inspector and Mr. Lacroix was assigned to assist him. Mr. Jones has been an industrial inspector since 2000, and Mr. Lacroix since 2004. Both have been trained in enforcement of the OHSA. Mr. Lacroix is also cross-trained as a construction inspector.¹⁹³

143. Although Elliot Lake was not in Mr. Jones' or Mr. Lacroix's regular territory, the MOL inspector for Elliot Lake, Ed Hudson, was not dispatched due to his imminent retirement.¹⁹⁴

144. Mr. Jones was contacted by on-call manager Don Jewitt at about 18:00 and Mr. Lacroix at 19:15. Mr. Jones was advised that there had been a partial roof collapse at the mall and there were possible fatalities and that he should go there without delay. They did not know how many people were affected, but it could have been 100, and they didn't know who.¹⁹⁵

145. Mr. Jones was not given specific instructions as to what he was to do by Mr. Jewitt, but testified that such instructions were unnecessary because "an inspector knows what to look for when they investigate occurrences where there is believed to be an injury that happened to a

¹⁹¹ C. Chambers, September 18, 2013, p. 26138, l. 22 – p. 25141, l. 21; Exhibit 6725, Email from C. Chambers to D. Howse and B. Thorpe dated June 24, 2012 at 5:50; Exhibit 6674, Email from C. Chambers to D. Howse et. al. dated June 24, 2012 at 00:41; P. Officer, August 22, 2013, p. 21674, l. 6-12; p. 21897, l. 5-9

¹⁹² R. Jeffreys, October 3, 2013, p. 28070 l. 6-17

¹⁹³ D. Jones, September 26, 2013, p. 27374, l. 18 – p. 27376, l. 5; Michel Lacroix, October 3, 2013, p. 27947, l. 25 – p. 27948, l. 4; 27948, l. 18 – p. 27949, l. 23

¹⁹⁴ M. Lacroix, October 3, 2013, p. 28030, l. 12 – p. 28031, l. 9

¹⁹⁵ D. Jones, September 26, 2013, p. 27377, l. 4-18; p. 27380, l. 16-23; p. 27382, l. 5-13; p. 27379, l. 2-16

worker or an injury in a workplace.” Mr. Jones had not attended the scene of a mall collapse similar to the Algo Centre Mall collapse previously so he did not know what he would be facing when he arrived. The inspectors believed they would be investigating a workplace incident in the normal course and were not aware the rescue was on-going.¹⁹⁶

Engineers

146. MOL Provincial Engineer Roger Jeffreys and MOL Regional Engineer Brian Sanders were also deployed to Elliot Lake.

147. Mr. Jeffreys has been a structural engineer since 1966 and has extensive experience in structural engineering, demolition and management. Mr. Jeffreys joined the MOL in 2004 as an industrial inspector, became a Regional Engineer in 2007 and the Provincial Engineer in 2010. As the Provincial Engineer, Mr. Jeffreys co-ordinates the activities of MOL engineers across the Province. During his time with the MOL, Mr. Jeffreys has worked on approximately 100 collapses and structural failures and has assessed plans for the demolition of collapsed structures.¹⁹⁷

148. Brian Sanders graduated with a degree in civil engineering, structural option in 2001. He became a P.Eng. in 2005. Mr. Sanders did design and structural engineering work for approximately 8 years before joining the MOL as the Regional Engineer, Structural, for the Western Region in 2009. Mr. Sanders has attended at about a dozen structural collapses since joining the MOL.¹⁹⁸ Mr. Sanders primary responsibilities are to accompany inspectors on proactive and reactive field visits, as well as assisting inspectors on investigations.¹⁹⁹

149. Mr. Jeffreys was dispatched to Elliot Lake as the result of a direct order from MOL Assistant Deputy Minister, Operations Division, Sophie Dennis. Mr. Jeffreys received an email from Ms. Dennis on June 23 at 17:46. She advised there was a mall collapse in Elliot Lake, that a structural engineer was needed and requested that Mr. Jeffreys call her. When Mr. Jeffreys

¹⁹⁶ D. Jones, September 26, 2013, p. 27377, l. 19 – p. 27378, l. 24; M. Lacroix, October 3, 2012, p. 27970, l. 1-4

¹⁹⁷ R. Jeffreys, October 3, 2013, p. 28032 l. 16 - 28043 l. 25

¹⁹⁸ B. Sanders, October 4, 2013, p. 28268, l. 7 – p. 28269, l. 8

¹⁹⁹ B. Sanders, October 4, 2013, p.28270, l. 6 – p. 28272, l. 5; p. 28272 l. 7-10

spoke to Ms. Dennis, she advised that a structural engineer was needed up in Elliot Lake because there was someone under the rubble. Ms. Dennis did not give specifics as to what she wanted at that point, but Mr. Jeffreys undertook to find a structural engineer to attend the scene.²⁰⁰

150. Mr. Jeffreys contacted Mr. Sanders who told him that he was unable to attend immediately due to a family commitment the next day. No other MOL structural engineers were available to attend immediately. Mr. Jeffreys called Ms. Dennis to advise her that the only engineer who was able to attend immediately was himself and that his manager did not generally want him going into the field. Ms. Dennis advised him to go in this case, saying something he found unusual, “I want you to go. I want you to sister up with the organizations up there, and want you to give them whatever help you can.”²⁰¹ It was agreed that Mr. Sanders would come when he was available.²⁰²

151. Mr. Jeffreys took Ms. Dennis’ direction as meaning that he was to use his professional expertise to assist the organizations on the ground in whatever way he could and felt the mandate he was given was very clear.²⁰³ Although Mr. Jeffreys thought that his deployment was unusual, he also testified that it was appropriate because he was a:

...provincial resource. And here we have a provincial emergency, and whether I thought it was correct within my mandate to do it, or not, as a human being, knowing people are stuck under rubble, I just don’t know how I could refuse to do that personally. If I’d have said, “No, I’m not going, I don’t think I could live with myself afterward, so I have to deal with my morality.”²⁰⁴

152. Ms. Dennis’ instruction to Mr. Jeffreys was clear and specific and perfectly appropriate given the dynamic nature of the situation and the dearth of information available to all parties at the time. Mr. Jeffreys continued to brief Ms. Dennis, his supervisor Mr. Mansour, and other individuals from the MOL throughout his deployment in Elliot Lake and there is no evidence before this Inquiry that his mandate ever changed or that there were any concerns with his

²⁰⁰ R. Jeffreys, October 3, 2013, p. 28069, l. 20-25

²⁰¹ R. Jeffreys, October 3, 2013, p.28071, l. 25 – p. 28072, l. 16

²⁰² B. Sanders, October 4, 2013, p. 28277, l. 9 – p. 28278, l.5; p. 28278, l. 15; p. 28278, l. 20 – p. 28279, l. 10

²⁰³ R. Jeffreys, October 3, 2013, p. 28073, l. 2-6

²⁰⁴ R. Jeffreys, October 3, 2013, p. 28073, l. 9-20

conduct. Mr. Jeffreys fulfilled the mandate he was given; the first responders who testified at the Inquiry had only complimentary things to say about his involvement.²⁰⁵

ELFD Remove Rescuers from Collapse Zone for Safety Reasons

153. While the Provincial resources were being sourced and deployed, the ELFD firefighters continued to attempt to rescue the victim they had discovered on the initial search of the pile and the other suspected victim in the area where Capt. Thomas and Capt. Connors had reported hearing mumbling.

154. With respect to the first victim that was located initially by Rescue Team 1 with a hand and foot showing, at approximately 16:37 Chief Officer instructed Capt. Connors to direct EMS into the pile to check for the victim's vital signs.²⁰⁶ Capt. Connors testified that he did not go into the pile with the EMS.²⁰⁷ Chief Officer testified that the EMS told him that in their opinion the victim was deceased.²⁰⁸

155. Chief Officer summarized the status of the ELFD's knowledge about potential victims in the pile. He explained that by 16:37 he knew there were two people trapped in the rubble pile; one person was deceased; and from the other, at least two of the firefighters had heard mumbled sounds that they believed to be signs of life, but there had been no other signs of life for a least an hour.²⁰⁹

156. Soon after, at approximately 17:05, Chief Officer spoke with Captain Ken Barnes who he had appointed to act as a safety officer in the collapse zone. Capt. Barnes told him that he felt the firefighters had done everything that they could on the pile because at that point they had looked in every void that they could in the pile and that any other efforts in moving debris to attempt a rescue would be at risk to the lives of the firefighters. As a result, Chief Officer and

²⁰⁵ See for example, Testimony of William (Bill) Neadles, Transcript, September 12, 2013, p. 25775, l. 15 – p. 25776, l. 2; Testimony of Tony Comella, Transcript, September 5, 2013, p. 24150, l. 15 – p. 24151, l. 2

²⁰⁶ Exhibit 8025, p. 3

²⁰⁷ D. Connors, August 21, 2013, p. 21418, l. 14-21

²⁰⁸ P. Officer, August 21, 2013, p. 21604, l. 4-9; p. 21614, l. 7-15; p. 21615, l. 18 – p. 21616, l. 14

²⁰⁹ P. Officer, August 21, 2013, p. 21616, l. 15 – p. 21617, l. 4

Capt. Barnes decided to pull the firefighters out of the pile.²¹⁰ The firefighters then used a sewer camera to check the voids to try and locate victims but they had no success.²¹¹ By the time they finished searching with the sewer camera and at approximately 18:30, Capt. Barnes observed the failed beam that was hanging over the collapse zone swaying as a result of what was later determined to be downdraft from an OPP helicopter flying over the mall. At this point Capt. Barnes, in his role as safety officer, called the rescue off because he determined that the situation was too dangerous.²¹²

157. At approximately 18:08 Mr. Thorpe arrived on the scene and Chief Officer provided him and the Chief Administrative Officer (CAO) for the City, Robert deBortoli, with an update including that they had exhausted search and rescue efforts within their capabilities on the pile, and there was one deceased and one potential casualty but it had been a while since there was any response from this victim.²¹³ At 18:17 Mr. Thorpe sent an email to Ms. Chambers relaying the information that he received from Chief Officer: “due to unsafe conditions of the structure all responders are evacuating the building. There is one confirmed VSA.” Ms. Chambers provided this information to S/Insp. Neadles and Sgt. Gillespie.²¹⁴

158. As with the update she received from Mr. Thorpe at 18:17, Ms. Chambers continued to provide all information she received from the scene to S/Insp. Neadles and Sgt. Gillespie to ensure that they were receiving as much information as possible. This included situation reports (SITREPS) and photos from the scene. She also arranged for S/Insp. Neadles and Sgt. Gillespie to speak directly with Chief Officer.²¹⁵ S/Insp. Neadles testified that while he was en route he

²¹⁰ P. Officer, August 21, 2013, p. 21621, l. 15 – p. 21622, l. 6

²¹¹ P. Officer, August 21, 2013, p. 21624, l. 2-18; J. Thomas, August 15, 2013, p. 21060, l. 17 – p. 21061, l. 18

²¹² Exhibit 8025, p. 4; P. Officer, August 21, 2013, p. 21627, l. 2-20; J. Thomas, August 15, 2013, p. 21067, l. 3-15

²¹³ P. Officer, August 21, 2013, p. 21625, l. 18 – p. 21626, l. 10

²¹⁴ Exhibit 6483, Email from B. Thorpe to C. Chambers et. al. dated June 23, 2012 at 18:17; Exhibit 6485, Email from C. Chambers to B. Thorpe et. al. dated June 23, 2012 at 18:27

²¹⁵ Exhibit 6451, Email from C. Chambers to S. Mintz et. al. dated June 23, 2012 at 17:18; Exhibit 6452, Email from C. Chambers to J. Gillespie dated June 23, 2012 at 17:18; Exhibit 6515, Email from C. Chambers to J. Gillespie and B. Neadles dated June 23, 2012 at 19:57; Exhibit 6546, Email from C. Chambers to J. Gillespie et. al. dated June 23, 2012 at 20:41; Exhibit 6548, Email from C. Chambers to R. Jenkin and T. Wieclawek dated June 23, 2012 at 20:44; P. Officer, August 29, 2013, p. 23372, l. 14-18; B. Neadles, September 10, 2013, p. 25268, l. 9 – p. 25269, l. 25

did not speak with Sgt. Gillespie because he knew he was busy, but he spoke with Chief Officer, and he was getting what he felt to be sufficient and good information from Ms. Chambers.²¹⁶

City of Elliot Lake decides not to publicly release information that there is one deceased

159. As this was a municipal emergency, the response fell under the City of Elliot Lake's Emergency Plan. The Plan states that the Mayor is the official media spokesperson. As a result, the City of Elliot Lake determined what information to release to the public, as well as when and how to release the information.²¹⁷

160. The CAO, Mr. deBortoli, testified that when the CCG met on June 23 in the evening and again on June 24 at 08:00, among other things, it had a discussion about the number of potential victims and specifically whether it was an appropriate time to release information that there was one victim VSA.²¹⁸

161. During these CCG meetings, Insp. Jollymore was asked to provide input with respect to releasing information to the public concerning the progress of the investigation. At the CCG meeting on June 23 at 17:00, members were asked to provide input with respect to the issue of disclosing to the public that the rescuers had discovered a deceased victim and the identity of that victim. Insp. Jollymore was concerned that there was not sufficient evidence of death or the identity of the victim to disclose this information to the public. Insp. Jollymore testified that OPP policy would not authorize OPP members to advise the public about a deceased person until death had been declared by a medical doctor and he shared this information with the members of the CCG. He advised them not to make a public announcement about a deceased victim at that time.²¹⁹

²¹⁶ B. Needles, September 10, 2013, p. 25271, l. 15 – p. 25272, l. 9

²¹⁷ Exhibit 8090, p. 15; Exhibit 8087, Elliot Lake Emergency Response Plan Annex Section II, p. 022-023; Testimony of Richard Hamilton, Transcript, October 7, 2013, p. 28556, l. 5-8; D. Hefkey, October 8, 2012, p. 28611, l. 20-24; p. 28767, l. 17 – p. 28768, l. 1

²¹⁸ R. deBortoli, October 7, 2013, p. 28407, l. 17 – p. 28408, l. 10; p. 28473, l. 2-17

²¹⁹ P. Jollymore, September 24, 2013, p. 27031, l. 13 – p. 27033, l. 12; p. 26888, l. 17-25, p. 26895, l. 3 – p. 26897, l. 9; p. 26907, l. 12 – p. 26908, l. 20; R. deBortoli, October 7, 2013, p. 28407, l. 16 – p. 28409, l. 25; p. 28411, l. 9-25; p. 28412, l. -2

162. Insp. Jollymore's evidence was confirmed by the evidence of Mr. deBortoli. Mr. deBortoli testified that given that in his view the OPP had more experience than the other CCG members with the release of information, the CCG sought advice from Insp. Jollymore and relied on his advice not to release information until the death is confirmed and the individual is able to be identified. Mr. deBortoli testified that Chief Officer disagreed with this and wanted to make a statement that there was a potential casualty.²²⁰

163. Any decisions on the release of information to the public were made by the CCG. Any formal press releases were prepared and released by the City of Elliot Lake. Insp. Jollymore was not involved in the drafting of any press releases nor did he review or approve them prior to their release.²²¹

164. The CCG decided at the meeting on June 24 at 08:00 that the only information to be released about victims was that there were 22 people admitted, treated and released from hospital.²²² Throughout the early morning hours that day, staff at the PEOC attempted to confirm with municipal officials how much information could be released regarding potential casualties.²²³ The PEOC issues SITREPS²²⁴ periodically that are sent to staff in various ministries and minister's offices in the Provincial government to keep staff up to date on the progress of the response. Commissioner Hefkey explained in his testimony that because the response and the release of information is being managed by the municipality, the PEOC will only use the numbers of victims or potential casualties and other information that it is provided by the municipality and that the municipality has confirmed can be released throughout the government and publicly.²²⁵

165. On June 24 at 11:23, Bruce Ewald, who at the time was acting as the alternate Community Emergency Management Coordinator (CEMC), spoke with a Duty Officer (DO) at the PEOC and confirmed that the only numbers that could be released were the 22 seen / treated /

²²⁰ R. deBortoli, October 7, 2013, p. 28408, l. 2 – p. 28410, l. 7

²²¹ P. Jollymore, September 24, 2013, p. 26915, l. 14 – p. 26916, l. 9; p. 27015, l. 7-19; R. deBortoli, October 7, 2013, p. 28473, l. 2-17

²²² Exhibit 3743, p. 016-017

²²³ Exhibit 9290, PEOC – Event Log, p. 5-9

²²⁴ D. Hefkey, October 8, 2013, p. 28612, l. 3-18

²²⁵ D. Hefkey, October 8, 2012, p. 28767, l. 17 – p. 28768, l. 1

released from hospital.²²⁶ This was the same information that was included in the City of Elliot Lake press release issued on June 24 at 09:00 and at the press conference that day at 09:00.²²⁷

UCRT identifies the need for a crane

166. Acting Sgt. Cox identified the need for a crane while on route to Elliot Lake from Bolton on June 23.²²⁸ Sgt. Cox spoke with Sgt. Taylor from the OPP detachment in Elliot Lake at 17:30 and requested that a crane be ordered.²²⁹

167. Sgt. Taylor passed that message on to the detachment commander Insp. Jollymore.²³⁰ Insp. Jollymore spoke directly with Sgt. Cox at 18:17. Sgt. Cox explained the need for a number of resources.²³¹ Following that conversation Insp. Jollymore tasked one of his sergeants to locate and request a crane to attend the scene of the collapse.²³²

168. In the early evening on June 23, Sgt. Faye met with Constable Dale Burns and asked if he was aware of crane operators located in the Sault Ste. Marie area. Constable Burns identified Millennium Crane and located the telephone number for Sgt. Faye.²³³

169. Sgt. Faye called Millennium Crane at approximately 23:00 on June 23 and left a message on Millennium's voice message system.²³⁴ Dave Selvers of Millennium Crane returned Sgt. Faye's call at approximately 23:15.²³⁵ Sgt. Faye provided Mr. Selvers with the information he required to deploy the appropriate equipment to the scene of the collapse.²³⁶

²²⁶ Exhibit 9290, p. 8

²²⁷ Exhibit 6654, City of Elliot Lake Press Release dated June 24, 2012 at 9:00, p. 1

²²⁸ R. Cox, August 21, 2013, p. 22260, l. 20-25; p. 22261, l. 9-20

²²⁹ R. Cox, August 21, 2013, p. 22262, l. 7-18; p. 22263, l. 15-21

²³⁰ P. Jollymore, September 24, 2013, p. 26847, l. 13 – p. 26848, l. 1

²³¹ P. Jollymore, September 24, 2013, p. 26852, l. 1-13, 19 – p. 26853, l. 9

²³² P. Jollymore, September 24, 2013, p. 26853, l. 22 – p. 26854, l. 22

²³³ Testimony of Dale Burns, Transcript, August 20, 2013, p. 21276, l. 11 – p. 21277, l. 3 and 8-13

²³⁴ Testimony of Dave Selvers, Transcript, September 9, 2013, p. 25008, l. 1-14

²³⁵ D. Selvers, September 9, 2013, p. 25008, l. 16 – 23

²³⁶ D. Selvers, September 9, 2013, p. 25009, l. 7 – p. 25010, l. 8; p. 21160, l. 18 – p. 25161, l. 25

170. Following the call with Sgt. Faye, Millennium Crane began mobilizing its staff and equipment.²³⁷ Mr. Selvers testified that normally it would take approximately 8 hours for Millennium to mobilize staff and equipment for a job of this nature. In this case they put a rush on the preparations and were finished in approximately 6 hours.²³⁸ Those activities were completed by 06:30 on June 24 and Millennium Crane resources were on route to Elliot Lake by 07:15 that morning.²³⁹

171. Insp. Jollymore undertook to source and order a crane. Under the terms of the Elliot Lake Emergency Response plan logistics were not the responsibility of the OPP Detachment Commander.²⁴⁰ Bruce Ewald, Chief Building Official with the City of Elliot Lake and the Alternate CEMC at the time of the response to the collapse, was also tasked with finding a crane.²⁴¹ There is no evidence before the Commission of what steps, if any, Mr. Ewald, took to accomplish that task.

172. It is submitted that the OPP UCRT team was the only agency to anticipate the need for a crane and take steps to order one prior to its arrival at the scene. The UCRT team lead, Sgt. Cox, made that request in a conversation with the local Detachment Commander, Insp. Jollymore, at 18:17 on June 23 and following that conversation Insp. Jollymore tasked one of his sergeants to source and order a crane. Sometime early on the evening of June 23 Sgt. Faye inquired about crane operators in the Sault Ste. Marie area and was given the name and telephone number of Millennium Crane by Cst. Dale Burns. Sgt. Faye spoke directly with Mr. Selvers of Millennium Crane at 23:15 on June 23. As a result of that conversation Mr. Selvers commenced the mobilization of staff and equipment and arrived on site at Elliot Lake at 11:15 on June 24.²⁴²

173. It is submitted that Insp. Jollymore took immediate steps to source and order a crane after his conversation with Sgt. Cox at 18:17 on June 23. This is corroborated by Cst. Burns who testified that in the early evening of June 23, Sgt. Faye asked him about crane operators in the

²³⁷ D. Selvers, September 9, 2013, p. 25012, l. 15-21; p. 25014, l. 20-25; p. 25015, l. 1-9

²³⁸ D. Selvers, September 9, 2013, p. 25018, l. 19 – p. 25019, l. 1-4

²³⁹ Exhibit 6246, Millennium Crane Report, p. 3

²⁴⁰ Exhibit 8090, Elliot Lake Emergency Response Plan, p. 18

²⁴¹ R. deBortoli, October, 7, 2013, p.28420, l. 1 – p. 28421, l. 15

²⁴² D. Selvers, September 9, 2013, p. 25023, l. 3-7

Sault Ste. Marie area. There is no evidence before the Inquiry to explain what occurred between that conversation and 23:15 when Sgt. Faye spoke with Mr. Selvers of Millennium Crane.

174. Millennium Crane was set up and ready for operations at approximately 18:00 on June 24. It is clear on the evidence that the rescuers would not be allowed in the collapse zone until the completion of a safe platform in the hotel lobby to north of the collapse zone. The rigging and craning operations were not authorized to commence until 23:50 on June 24. Millennium Crane was able to remove the failed beam prior to the completion of the safe platform because all of that work was done by workers suspended from the crane. That procedure commenced at approximately 20:45 on June 24. It is submitted that any delay in the ordering of the crane did not impact on the progress of the rescue operation because the rigging and removal of the concrete slabs could not proceed until 23:50 on June 24, at least 6 hours after the crane was actually ready to be used.²⁴³

June 23 at 21:25 to June 24 at 09:00 – Provincial Resources Arrive on Scene

UCRT Arrives and Performs Reconnaissance

175. While on route Sgt. Cox developed an initial rescue plan based on the information about the mall and the collapse that was available to him at the time. His intention at the time was to use rigging and a crane to lift the large concrete slabs out of the collapse zone.²⁴⁴

176. Sgt. Cox arrived in Elliot Lake at 20:52. The other UCRT unit members arrived between 21:00 and 21:30. The UCRT members began setting up their equipment. They then commenced a reconnaissance of the site. As part of the reconnaissance Sgt. Cox intended to lower two team members into the collapse zone from the parking level of the structure with cameras and air monitoring equipment. Team members were directed to set up for that activity.²⁴⁵

²⁴³ R. Cox, August 26, 2013, p. 22348, l. 8 – p. 22349, l. 6

²⁴⁴ R. Cox, August 26, 2013, p. 22282, l. 5-7; p. 22291, l. 2-18; p. 22293, l. 16-25; p. 22295, l. 3-7; p. 22296, l. 18-24; p. 22297, l. 23 – p. 22298, l. 15

²⁴⁵ J. Gillespie, September 3, 2013, p. 23527, l. 4-8; p. 23542, l. 19-21; p. 23549, l. 6-12; p. 23550, l. 16 – p. 23551, l. 25

177. Sgt Gillespie departed for Elliot Lake at 19:00 and arrived on scene at 23:35. Sgt Gillespie determined that it was too risky to put any team members in the collapse zone at that time and elected instead to deploy the equipment tethered to ropes.²⁴⁶

178. The reconnaissance of the structure continued through the night. Sgt Gillespie developed a preliminary plan of operation to re-enforce the beam and roof above the escalators and stairs.²⁴⁷

179. HUSAR was on site at 04:15 on June 24. As described in more detail below, in consultation with Captain Tony Comella of the HUSAR Team, a preliminary plan was developed to shore the hotel lobby to the north of the collapse zone.²⁴⁸

180. The UCRT unit members went off shift to sleep at 07:00 on June 24. When Sgt Gillespie went off shift he understood the plan of operation going forward would be to shore the hotel lobby area.

MOL Arrives / MOL Engineer provides assistance to UCRT and HUSAR

181. Mr. Jones and Mr. Lacroix arrived on the scene at approximately 22:30 and reported to the OPP detachment to wait for Roger Jeffreys, the MOL Provincial Engineer, as per their instructions from Don Jewitt, the MOL on-call manager that weekend. The inspectors let the OPP know they were on the scene, and started gathering information from them.²⁴⁹ Sgt. Espoto of the OPP advised Mr. Lacroix that a 20 feet x 40 feet piece of parking structure had collapsed and that one vehicle had gone through two floors. Sgt. Espoto also told him that the OPP's UCRT team was on site.²⁵⁰

²⁴⁶ J. Gillespie, September 3, 2013, p. 23565, l. 18-25; p. 23567, l. 2-14

²⁴⁷ J. Gillespie, September 3, 2013, p. 23566, l. 6-11, p. 23578, l. 6 – p. 23579, l. 5

²⁴⁸ J. Gillespie, September 3, 2013, p. 23579, l. 6-22

²⁴⁹ D. Jones, September 26, 2013, p. 27379, l. 15-25

²⁵⁰ M . Lacroix, October 3, 2013, p. 27971, l. 3-18

182. Mr. Jeffreys left Brantford at about 19:00. At 20:42, while en route, Mr. Jeffreys received an email from Don Jewitt saying that the OPP were waiting for him to arrive, which put him under a lot of pressure because he still had a long way to travel.²⁵¹

183. Mr. Jeffreys arrived on June 24 at about 00:30. Mr. Jones was glad to see him because as he was not an engineer he would have requested that one attend. He looked upon Mr. Jeffreys as a go-to person if he needed advice.²⁵² Mr. Lacroix understood Mr. Jeffreys was there to assist the inspectors and to use his expertise to determine what areas were safe to be in.²⁵³ MOL inspectors have access to experts in various areas employed by the MOL such as hygienists and engineers.²⁵⁴

184. When Mr. Jeffreys arrived he went to the OPP station where he met Don Jones, Michel Lacroix and others.²⁵⁵ They then went to the collapse zone at about 00:43 where they met Chief Officer of the ELFD, the Incident Commander in Elliot Lake and Sgt. Gillespie. Sgt. Gillespie had copies of the steel shop drawings of the mall. At this point, the MOL personnel learned that it was an ongoing rescue operation.²⁵⁶

185. The MOL personnel then went with Sgt. Gillespie on a tour of the area in order to get an overall view of what happened. Mr. Lacroix took some photographs of the collapsed area, the beam, and drip pans seen in the mall.²⁵⁷ Mr. Jeffreys and Sgt. Gillespie discussed shoring sections of the collapse zone and Mr. Jeffreys suggested steel shoring.

186. Mr. Sanders arrived on June 24 at 22:24. He believed his role was to assist Mr. Jeffreys.²⁵⁸ When he arrived Mr. Sanders contacted Mr. Jeffreys who immediately asked him to take care and control of the beam, which as described below, had just been extracted from the pile. At this time, Mr. Sanders knew there might be one fatality at the scene. However, he was

²⁵¹ R. Jeffreys, October 3, 2013, p.28075, l. 2-5; p. 279754, l. 22-25

²⁵² D. Jones, September 26, 2013, p. 27381, l. 16-24

²⁵³ M. Lacroix, October 3, 2013, p.27979, l. 6 – p. 27980, l. 8

²⁵⁴ D. Jones, September 26, 2013, p. 27376, l. 6 - 17

²⁵⁵ R. Jeffreys, October 3, 2013, p. 28074, l. 6-9

²⁵⁶ M. Lacroix, October 3, 2013, p. 27975, l. 4 – p.27976, l. 14

²⁵⁷ M. Lacroix, October 3, 2013, p. 27978, l. 12 – p. 27979, l. 3; p. 27981, l. 6-8

²⁵⁸ M. Lacroix, October 3, 2013, p.27997, l. 1-13; B. Sanders, October 4, 2013, p. 28280, l. 5 – p.28281, l.4

shocked to learn that rescue personnel were still on the scene 32 hours after the incident and realized this situation was different than a typical collapse.²⁵⁹

Rumoured MOL “shut-down” of rescue operations

187. S/Insp. Neadles heard a media report at approximately midnight on June 23 while he was en route to Elliot Lake that the MOL had shut down the rescue operation. He asked Ms. Chambers to verify this information.²⁶⁰ S/Insp. Neadles was then told by the OFM staff on site that the MOL was on the scene and had no issues with proceeding and he was completely satisfied with this answer.²⁶¹ It appears that Captain Barnes’ decision at 18:30 to pull ELFD members off the pile was being wrongly attributed to the MOL.

188. Mr. Jones was the only MOL employee on site who heard about the rumour that MOL had shut down the rescue operation early on June 23. He heard about it because shortly after he arrived some of the first responders advised him that they owed him an apology because they believed that MOL had shut it down, but now knew that was incorrect. Mr. Jones explained that he could not have shut the rescue down because he had just arrived on the scene and had had no contact with anyone on the site before arriving.²⁶² Mr. Jones does not recall whether the issue of whether MOL *would* be issuing any order limiting the rescue was discussed upon the inspectors arrival as this was not something Mr. Jones would contemplate doing. Mr. Jones further testified he believed it was clear to the first responders that he would not be making such an order.²⁶³

HUSAR Arrives on Scene, Conducts Assessment and Formulates Plan

189. The HUSAR team began to arrive in Elliot Lake on June 24 at 04:18. The team travelled in a convoy with trucks and a bus. Capt. Comella travelled in his own truck, and S/Insp. Bill

²⁵⁹ B. Sanders, October 4, 2013, p. 28280, l.5 – p. 28281, l. 4; p. 28282, l. 13-22

²⁶⁰ Exhibit 6662, Email from B. Neadles to C. Chambers dated June 24, 2012 at 00:01

²⁶¹ B. Neadles, September 10, 2013, p. 25274, l. 4-12; p. 27275, l. 23 – p. 26277, l. 25

²⁶² D. Jones, September 26, 2013, p. 27393, l. 4 – p. 27394, l. 9; M. Lacroix, October 3, 2013, p. 27974, l. 4-17; R. Jeffreys, October 3, 2013, p. 28112, l. 13-17

²⁶³ D. Jones, September 26, 2013, p. 27388, l. 24 – p. 27389, l. 6; p. 27395, l. 24 – p. 27396, l. 12

Neadles travelled on the bus along with Commander Mike McCallion who throughout the deployment acted as the HUSAR Lead when S/Insp. Neadles rested. The HUSAR structural engineer, James Cranford, also travelled on the bus.²⁶⁴

190. Capt. Comella was one of the first HUSAR team members to arrive. He testified that shortly after he arrived on the scene he was introduced to MOL engineer Roger Jeffreys. Even though HUSAR had brought its own structural engineer, Mr. Jeffreys offered up his services to the HUSAR team, and Capt. Comella said he welcomed his help. He testified that he accepted Mr. Jeffreys' offer of assistance as it was an opportunity to have his own structural engineer and Mr. Jeffreys form an evaluation team.²⁶⁵

191. S/Insp. Neadles arrived on the HUSAR bus at 05:30. He testified that when he arrived he did a tour of the building with Chief Officer, Capt. Comella, James Cranford and Mr. Jeffreys. Mr. Lacroix also went on this tour of the mall. There was some discussion on the tour regarding how to best secure or stabilize the building to commence the rescue, but MOL personnel did not approve any operational plans.²⁶⁶

192. As a result of this tour, Capt. Comella developed a tactical plan for the first operational period that included constructing and installing shoring on the north side of the collapse to create a stable path for access and egress from the collapse zone for the rescue workers through the hotel lobby. The plan included systematically removing debris from the pile so that there would be a safe escape route for the rescue workers. Once the rescue workers were able to safely make their way into the collapse zone, they could then perform a search for victims and determine the best tactical methods for removing the debris to be able to reach the victims, which could include breaching, breaking and cribbing the concrete and if necessary, heavy lifting. S/Insp. Neadles approved this plan.²⁶⁷

²⁶⁴ T. Comella, September 4, 2013, p. 25075, l. 7-16; 24076, l. 3-11; Exhibit 6393, HUSAR Notes Compiled, p. 2

²⁶⁵ T. Comella, September 4, 2013, p. 24082, l. 12 – p. 24082, l. 10

²⁶⁶ B. Neadles, September 10, 2013, p. 25280, l. 11-17; p. 25308, l. 10 – p. 25309, l. 2; M. Lacroix, October 3, 2013, p. 27985, l. 21 – p. 27986, l. 17

²⁶⁷ Exhibit 6393, p. 2; T. Comella, September 5, 2013, p. 24113, l. 13 – 24115, l. 18; p. 24116, l. 8 – p. 24118, l. 16; p. 24129, l. 4 – p. 24131, l. 1; p. 24133, l. 19-22; Testimony of Michael McCallion, Transcript, September 6, 2013, p. 24487, l. 1 – p. 24490, l. 5

193. The initial operational plan proposed by Capt. Comella that S/Insp. Neadles approved was the shoring of the hotel lobby to the north of the collapse zone to provide a safe platform; a safe escape route for the rescue workers working on the pile. The plan was that no rescue workers would be allowed to work on the pile until the safe platform had been created.²⁶⁸ S/Insp. Neadles advised Chief Officer that no rescue workers would be allowed in the collapse zone until a safe platform had been established in the hotel lobby to the north end of the collapse zone.²⁶⁹

194. S/Insp. Neadles testified that he discussed the plan with Chief Officer but he did not seek his approval. S/Insp. Neadles explained in his testimony that although he recognized that Chief Officer was the Incident Commander, he did not speak with Chief Officer about the command structure for the response. However, he said that he got the impression from Chief Officer that he expected HUSAR would move forward with its tactical plans.²⁷⁰ Chief Officer confirmed in his testimony that he saw the HUSAR team as the subject-matter experts.²⁷¹

195. Both S/Insp. Neadles and Capt. Comella testified that they did not ask MOL to approve any of their operational plans. They testified that they understood that Mr. Jeffreys was there to provide whatever advice and assistance that HUSAR felt that they needed and they did not stop to ask Mr. Jeffreys for MOL approval. During his testimony S/Insp. Neadles explained that although he stated in his first email update that MOL had “approved our operational plan”,²⁷² this was an error in his writing as the MOL did not sign-off on the plan.²⁷³

196. S/Insp. Neadles also stated in his first email update sent on June 24 at 08:48 that the HUSAR team had been divided into two rescue / search / medical squads and each squad would work 12-hour shifts on a rotational basis. Squad 1 had started to unpack the necessary tools for the first operational period and Squad 2 had “bedded down.”²⁷⁴

²⁶⁸ T. Comella, September 5, 2013, p. 24114, l. 17 – p. 24115, l. 7; p. 24132, l. 3-21; p. 24135, l. 17 – p. 24136, l. 18

²⁶⁹ P. Officer, August 21, 2013, p. 21686, l. 4-19; B. Neadles, September 11, 2013, p. 25726, l. 13 – p. 25727, l. 13

²⁷⁰ B. Neadles, September 10, 2013, p. 25287, l. 6-17; 25287, l. 23 – p. 25288, l. 17

²⁷¹ P. Officer, August 21, 2013, p. 21687, l. 13-18; August 29, 2013, p. 23440, l. 23 – p. 23441, l. 5

²⁷² Exhibit 6765, Email from B. Neadles to R. Jenkins et. al. dated June 24, 2012 at 8:48 (Operational Update #1)

²⁷³ B. Neadles, September 10, 2013, p. 25308, l. 10 – p. 25309, l. 2; T. Comella, September 5, 2013, p. 24148, l. 8-23

²⁷⁴ Exhibit 6765

June 24 at 09:00 to June 24 at 17:00 – Operational Shift #1: Gaining safe access to the pile

197. As reported in S/Insp. Neadles' first email update, HUSAR Squad 1 began the first operational update on Sunday morning which included various tactics necessary to search for victims and gain access to the collapse zone.

Tapping is heard in the Collapse Zone

198. Sgt. Scott Fowlds was the canine handler for HUSAR. On June 24 at approximately 09:30 he and Sgt. Lawson, another HUSAR member, entered the building and proceeded to the second floor to an area adjacent to the collapse zone. Sgt. Lawson began doing a call-out. He would ask anyone hearing his voice to make a sound, and a tap sound was heard.²⁷⁵

199. Sgt. Lawson then called for an all quiet and again asked anyone hearing his voice to make a sound and again a tap was heard. Sgt. Lawson continued the call-outs and continued to receive taps in response requesting first 2 and then 3 taps in response to his call out. On both occasions he received the requested response and then the tapping stopped. After a group of three taps was heard, no further taps were heard.²⁷⁶ Sgt Fowlds testified that the taps were coming from the pile and he believed they were communicating with a possible victim.

Shoring the North Side of the Collapse Zone

200. While the searches were being conducted by Sgt. Fowlds and Sgt. Lawson, other HUSAR members started working on gaining access to the pile by building shoring and removing debris. A number of witnesses that testified at the Inquiry, including members of HUSAR and UCRT, explained that shoring is one of the first necessary steps for the operation because it allows the rescue workers to access the pile and to be able to remove debris from the rubble pile. Once the

²⁷⁵ Testimony of Scott Fowlds, Transcript, September 19, 2013, p. 26315, l. 23 – p. 26316, l. 4

²⁷⁶ S. Fowlds, September 19, 2013, p. 26321, l. 11-15

debris is removed, the rescue workers need somewhere to deposit it to ensure that it does not create secondary hazards.²⁷⁷

201. Sgt. Gillespie with UCRT testified that the north side in the hotel lobby was chosen as the area to first construct shoring because it was determined that “the only way we were going to get physical entry at the ground level safely into the collapse area was through the north area, and if -- in order to do that, we needed to build a safe zone for our workers to retreat to. That was the necessity for the laced-post shores as well as the clearing by hand of rubble to facilitate access to the collapse area.”²⁷⁸

202. The construction of shoring to create access routes was also necessary given the location of the collapse zone in the building. Chuck Guy with HUSAR explained that the collapse was unique because it was shaped as a bowl, which meant that the rescue workers would need to have an access route to the pile to be able to move debris out. The collapse zone was also unique because only part of the building, not the entire building, had collapsed. Chuck Guy explained that: “Usually buildings that collapse, you usually have some access, you know, from the collapse area, from the outside, and this was a unique situation that you couldn't access it from the east. You couldn't access it from the west. The south was pretty much the no-go zone, so we had one point of entry in the north.”²⁷⁹

203. Capt. Comella explained in his testimony that HUSAR's initial plan after the shoring on the north side was completed was to then “tunnel” into the collapse zone from the north side. He explained that “tunnelling” in the context of urban search and rescue does not have a literal meaning but rather, describes a method of systematically removing debris from the pile by a number of methods such as breaching, breaking and shoring, but does not typically include

²⁷⁷ T. Comella, September 5, 2013, p. 24189, l. 16- p. 24190, l. 18; J. Gillespie, September 3, 2013, p. 23578, l. 21 – p. 23579, l. 5; Testimony of Chuck Guy, Transcript, September 24, 2013, p. 27087, l. 20 – p. 27088, l. 5; Testimony of Patrick Waddick, Transcript, August 23, 2013, p. 22003, l. 1-10; p. 22073, l. 9-21; M. McCallion, September 6, 2013, p. 24487, l. 4-17; p. 24488, l. 12-18; Testimony of Martin McRae, Transcript, September 25, 2013, p. 27217, l. 9 – p. 27218, l. 22

²⁷⁸ J. Gillespie, September 3, 2013, p. 23578, l. 19-25; p. 23579, l. 1-5

²⁷⁹ C. Guy, September 24, 2013, p. 27150, l. 25 – p. 27151, l. 15

lifting slabs with a crane.²⁸⁰ However, because a crane had been ordered by UCRT and had arrived on site by 11:00 on June 24, Capt. Comella testified that the tunnelling ultimately did not happen. Capt. Comella accepted the suggestion made to him by Sgt. Gillespie to use the crane to rig some of the slabs to remove them from the pile to attempt to obtain access to one of the victims.²⁸¹

204. Millennium Crane arrived on site at approximately 11:15.²⁸² The crew that arrived with the crane started setting up the crane so that it could be used to remove the failed beam that was hanging dangerously over the collapse zone and preventing the rescue workers from being able to go into the rubble pile.

HUSAR K9 Search of the Collapse Zone

205. At or around 12:10 on June 24, Sgt. Fowlds deployed his USAR canine, Ranger, onto the pile to search for signs of life.²⁸³

206. Sgt. Fowlds testified that Ranger began to search the pile and that he heard him barking around the mid-point where a Ford SUV was sitting on the rubble pile. Sgt. Fowlds called him off and Ranger went right back to where he had been before, and continued to bark.²⁸⁴ Sgt. Fowlds then removed Ranger from the pile and notified Command that the dog had a positive indication for live scent.²⁸⁵

²⁸⁰ T. Comella, September 5, 2013, p. 24113, l. 13 – p. 24115, l. 18; p. 24116, l. 8 – p. 24117, l. 16; p. 24216, l. 1 – p. 24217, l. 14; p. 24342, l. 12 – p. 24344, l. 10; C. Guy, September 24, 2013, p. 27075, l. 25 – p. 27076, l. 11; p. 27149, l. 22 – p. 27150, l. 15; M. McRae, September 25, 2013, p. 27222, l. 2-16

²⁸¹ T. Comella, September 5, 2013, p. 24140, l. 16 – p. 24141, l. 13; p. 24201, l. 2 – p. p. 24202, l. 14; p. 24222, l. 2-19; J. Gillespie, September 3, 2013, p. 23635, l. 1 – p. 23636, l. 3 and 10-18

²⁸² D. Selvers, September 9, 2013, p. 25023, l. 3-7

²⁸³ S. Fowlds, September 19, 2013, p. 26329, l. 20 – p. 26330, l. 4

²⁸⁴ S. Fowlds, September 19, 2013, p. 26334, l. 18-25

²⁸⁵ S. Fowlds, September 19, 2013, p. 26335, l. 7-9

June 24 at 17:00 to June 25 at 10:00 – Operational Shift #2: Rigging OperationMillennium Crane: Removal of the Beam

207. HUSAR Squad 2 and the UCRT team came on shift and took over for HUSAR Squad 1 at approximately 17:00. By this time the crane had been set up and was getting ready to remove the failed beam. Sgt. Gillespie divided the UCRT team into two squads and directed them to continue the shoring on the north side.²⁸⁶ Some of the rescue workers from both HUSAR and UCRT were also tasked with assisting with the crane operation to remove the beam.²⁸⁷

208. The shoring in the hotel lobby had not been completed when the UCRT members returned to the site on June 24 at 17:00. The safe platform had not been established at that point in time. The UCRT members were tasked with completing the shoring in the lobby.²⁸⁸

209. The initial craning operations commenced at 20:45 with the removal of the beam. Mr. Selvers of Millennium Crane developed a plan to be able to remove the beam and S/Insp. Neadles testified that he approved this plan.²⁸⁹ MOL did not approve this plan.²⁹⁰

210. The removal of the beam was completed by Millennium Crane personnel who were working from a basket suspended from one of the cranes. These workers were not on the debris pile in the collapse zone.²⁹¹

211. When Mr. Jones and Mr. Lacroix returned to the collapse zone on June 24 at about 13:30, they saw that Mr. Selvers and Millennium Crane were on the scene. They were concerned because they were aware of charges that Millennium Crane was facing arising out of the death of

²⁸⁶ P. Waddick, August 23, 2013, p. 22001, l. 24 – p. 22003, l. 10

²⁸⁷ P. Waddick, August 23, 2013, p. 22004, l. 19 – p. 22005, l. 4; R. Cox, August 26, 2013, p. 22326, l. 1-15; M. McRae, September 25, 2013, p. 27224, l. 2-22

²⁸⁸ Testimony of Steve Hulsman, Transcript, August 28, 2013, p. 22934, l. 15-25; p. 22936, l. 23-25; p. 22938, l. 1-20

²⁸⁹ B. Neadles, September 11, 2013, p. 25351, l. 5-17; D. Selvers, September 9, 2013, p. 25040, l. 4-6

²⁹⁰ M. Lacroix, October 3, 2013, p. 27989, l. 5 – p. 27992, l. 12

²⁹¹ Exhibit 6246, Millennium Crane Report, p. 5-7

a worker who had been crushed by one of their cranes. Millennium Crane later pled guilty to one of the charges and was fined \$70,000.²⁹²

212. MOL personnel on the scene of the collapse did not ask Mr. Selvers for any paper work relating to the certification of his cranes or the training of his workers. Mr. Selvers himself admitted that MOL did nothing which impeded the rescue or his work.²⁹³

213. The MOL inspectors did, of course, make inquiries to help ensure worker safety. When the MOL inspectors learned that Millennium was going to use a man basket they spoke to the foreman for the ironworkers brought by Millennium and asked him if his workers were trained in fall protection. The foreman confirmed that they were and the inspectors were satisfied with that answer and did not ask for the production of any documents related to the certification. Further, they did not ask for any documents related to a plan as to how the beam would be removed and did not require Millennium to test the man basket.²⁹⁴ Mr. Lacroix did see one of the Millennium workers take off his respirator and mentioned that he should put it back on and he did.²⁹⁵ The inspectors had no safety concerns with the rigging being done by Millennium.²⁹⁶

214. Mr. Lacroix contradicted testimony given by Mr. Selvers regarding a conversation they were alleged to have had. Mr. Lacroix testified he never told Mr. Selvers that the site was MOL's "fucking site" and that he never gave control of the site to Mr. Selvers. Mr. Lacroix testified that MOL did not have authority over the site during the rescue and, in any event, it is MOL policy that a site is turned back over to the owner when MOL is finished with it.²⁹⁷

215. Mr. Lacroix further testified that he never had a heated conversation with Mr. Selvers and would never use the type of language alleged.²⁹⁸ Mr. Selvers may have had Mr. Lacroix

²⁹² Exhibit 9584, Ministry of Labour Court Bulletin dated July 16, 2013

²⁹³ M. Lacroix, October 3, 2013, p. 27989, l. 11 – p. 27990, l. 12; D. Jones, September 26, 2013, p. 27389, l. 10 – p. 27390, l. 4; D. Selvers, September 10, 2013, p. 26065, l. 20 – p. 25066, l. 10

²⁹⁴ M. Lacroix, October 3, 2013, p.27989, l. 5 – p. 27992, l. 12

²⁹⁵ M. Lacroix, October 3, 2013, p. 27993, l. 7-12

²⁹⁶ M. Lacroix, October 3, 2013, p. 27995, l. 1- 20

²⁹⁷ M. Lacroix, October 3, 2013, p. 28025, l. 2-15; p. 28022, l. 20-22

²⁹⁸ M. Lacroix, October 3, 2013, p. 28025, l. 2-15

confused with someone else as he identified the person with whom he had the conversation as being from Dubreuilville, Ontario and Mr. Lacroix is not from Dubreuilville.²⁹⁹

216. After the beam was removed, a team of rescue workers with rigging experience comprised of two members of UCRT (Sgt. Cox and Cst. Waddick) and two members of HUSAR (Don Sorel and Gregory Law) was assembled to assess whether they could use the crane to remove an SUV that was on the collapse zone. After the beam was removed, Mr. Sorel and Cst. Waddick were lowered into the pile and did a risk assessment and determined that the first thing that had to be done was to create an escape route directly from the pile for the rescuers that could also function as an entry route for medical teams to get to any victims.³⁰⁰

217. Throughout the operational shift overnight from June 24 to June 25 the rescue workers performed a number of different checks for victims and signs of life.

Rescuers checks for Signs of Life

(a) UCRT K9 Searches

218. Around 21:30 on June 24, Cst. Bailey with UCRT was asked to perform a K9 search of the rubble pile with his USAR canine, Dare. Cst. Bailey was unable to go near the area of the pile, so Sgt. Gillespie and Sgt. Cox were to observe Dare from the roof to see what he was doing and the locations he was in. Sgt. Gillespie and Sgt. Cox observed Dare sniffing into a void and Dare began barking.³⁰¹ Dare was further observed by Sgt. Gillespie and Sgt. Cox trying to crawl inside the void. Cst. Bailey believed that because of Dare's indicators, that there was a live victim trapped in the rubble.³⁰²

219. At around 05:03 on June 25, Cst. Bailey was requested to do another K9 search of the rubble. Around 05:15 Dare entered onto the pile and began searching the area of the large

²⁹⁹ M. Lacroix, October 3, 2013, p. 28024, l. 6-13

³⁰⁰ Testimony of Don Sorel, Transcript, October 1, 2013, p. 27565, l. 4 – p. 27566, l. 15; p. 27573, l. 6-10; P. Waddick, August 23, 2013, p. 22005, l. 5-21

³⁰¹ Testimony of Daniel Bailey, Transcript, August 27, 2013, p. 22744, l. 3-11

³⁰² D. Bailey, August 27, 2013, p. 22746, l. 2-6

concrete slabs and was getting some sort of an indication of scent. Dare gave a real low muffled bark. Due to the weak bark and the fact that Dare was just standing and staring Cst. Bailey believed that they had a deceased victim.³⁰³

220. Subsequent to this second search Cst. Bailey had a conversation with S/Sgt. Wayde Jacklin, the OPP Provincial Canine Coordinator. S/Sgt. Jacklin spoke to Cst. Bailey about what occurs during the time lapse between a victim being a live person and then a deceased person.

221. S/Sgt. Jacklin explained in his testimony that there is a scent profile that the dogs will pick up when they smell a live person, such as perfumes, deodorants and the clothing a person is wearing. Every person has their own smell and their own DNA that these dogs are trained to pick up on.³⁰⁴ However, there is no clear indication as to at what point the dog is able to make the distinction between a live person and a deceased person after the person passes on.³⁰⁵ S/Sgt. Jacklin testified that this is what is described as the “gray zone” and there is no science that has been able to determine how long after a live person passes that the dogs can differentiate between the person being alive or deceased. In this “gray zone” it would be possible for the dog to indicate on a live person when, in fact, the person has passed on.³⁰⁶

(b) Call-outs for Victims

222. HUSAR team members did two call-outs for victims throughout the operational shift overnight. The first call-out was done around 23:30 after the beam was removed and when the rigging operation was started, and the second was done around 05:30 when the rigging crew was rehabbing. Mr. Sorel testified that he heard both call-outs but there was no response to either.³⁰⁷

³⁰³ D. Bailey, August 27, 2013, p. 22761, l. 19-23

³⁰⁴ W. Jacklin, August 27, 2013, p. 22598, l. 23 – p. 22599, l. 8

³⁰⁵ W. Jacklin, August 27, 2013, p. 22599, l. 9-13

³⁰⁶ W. Jacklin, August 27, 2013, p. 22599, l. 23 – p. 22600, l. 2

³⁰⁷ D. Sorel, October 1, 2013, p. 27581, l. 9 – p. 27582, l. 5

(c) The Life Locator is Deployed

223. The Life Locator is a piece of equipment that can be used during a search and rescue operation to detect movement or breathing under a debris pile.³⁰⁸ For the purposes of the operation of the machine, breathing is a form of movement.³⁰⁹ Movement is interpreted as breathing where there is a rhythm to the movement that falls within established parameters.³¹⁰ This machine will also indicate how far below the surface of the debris the movement or breathing is occurring.³¹¹

224. The only training in the operation of the Life Locator provided to Cst. Hulsman was by the manufacturer. It consisted of an operational manual, training video and a hands-on demonstration by the manufacturer.³¹² The machine has two operational modes, Run and Expert.³¹³ In the Run mode the machine analyses the results which are shown on the monitor as red circles for breathing and black circles for movement.³¹⁴ While Cst. Hulsman was trained on how to put the machine in the Expert mode, he has not been trained to analyse the results in that mode.³¹⁵

225. The OPP UCRT is the only USAR unit in Canada to possess a Life Locator machine³¹⁶ and it was used during the deployment to Elliot Lake in June 2012. Cst. Hulsman was the operator of the Life Locator during the deployment.³¹⁷ While the Life Locator had been used in training it had never been operated in an actual deployment.³¹⁸

226. The Life Locator was deployed on two separate occasions at Elliot Lake. On the first occasion Cst. Hulsman was not allowed to go onto the pile.³¹⁹ The Life Locator was deployed

³⁰⁸ Exhibit 9224. Life Locator Training Video

³⁰⁹ S. Hulsman, August 28, 2013, p.22975, l. 14-23

³¹⁰ S. Hulsman, August 28, 2013, p. 22973, l. 20 – ,p. 22975, l. 25

³¹¹ S. Hulsman, August 28, 2013, p. 22992, l. 7 – p. 22993, l. 18

³¹² S. Hulsman, August 28, 2013, p. 22891, l. 12-25

³¹³ Exhibit 9224;, S. Hulsman, August 28, 2013, p. 22994, l. 4-5

³¹⁴ Exhibit 9224; S. Hulsman, August 28, 2013, p. 22979, l. 13-16

³¹⁵ S. Hulsman, August 28, 2013, p. 22968, l. 5 – p. 22969, l. 25; p. 23115, l. 13-21

³¹⁶ S. Hulsman, August 28, 2013, p. 22980, l. 3-7

³¹⁷ S. Hulsman, August 28, 2013, p. 22900, l. 11-18

³¹⁸ S. Hulsman, August 28, 2013, p. 22992, l. 4-6

³¹⁹ S. Hulsman, August 28, 2013, p. 23007, l. 1-4

from a basket suspended from a crane. The Life Locator was lowered onto the pile with a rope.³²⁰ This occurred on June 24 at approximately 23:30 subsequent to the removal of the beam and prior to the removal of the Ford SUV.³²¹ The Life Locator was deployed in the area where the canines had indicated live hits.³²² Cst. Hulsman recognized that the deployment of the Life Locator in this manner was not in accordance with the manufacturer's recommendation but he wanted to determine if the machine could be operated in this fashion and if they could get any results.³²³ Cst. Hulsman took precautions that were intended to ensure that the rope and he as the operator were not affecting the operation of the machine.³²⁴ The Life Locator was operated in the Run mode. The Life Locator identified breathing on this occasion.³²⁵

227. The Life Locator was deployed on a second occasion on June 25 at approximately 05:30 while the rigging crew was taking a rehab break.³²⁶ On this occasion Cst. Hulsman was able to enter the collapse zone on foot and place the Life Locator directly on the pile.³²⁷ Again the Life Locator was deployed in the area of the previous canine live hits and was operated in the Run mode.³²⁸ The Life Locator identified breathing coming from the pile on this occasion as well.³²⁹ The Life Locator did not indicate movement on either occasion that it was deployed at Elliot Lake, only breathing.³³⁰

228. Following the deployment of the Life Locator in Elliot Lake Cst. Hulsman contacted the manufacturer and sought their assistance in verifying the results of the Life Locator when it was used in that operation.³³¹ The manufacturer concluded that on each occasion the machine was used it was not detecting breathing but rather the movement of other rescue workers who were

³²⁰ S. Hulsman, August 28, 2013, p. 22997, l. 20-25; p. 22999, lines 5-9; Exhibit 7830, Video of deployment of Life Locator from basket

³²¹ S. Hulsman, August 28, 2013, p. 23008, l. 23 – p. 23009, l. 1 and 12-21

³²² S. Hulsman, August 28, 2013, p. 23000, l. 18-25

³²³ S. Hulsman, August 28, 2013, p. 23006, l. 23-25

³²⁴ S. Hulsman, August 28, 2013, p. 23038, l. 13 – p. 23039, l. 15

³²⁵ S. Hulsman, August 28, 2013, p. 23004, l. 14-17; p. 23006, l. 5-9; p. 23007, l. 1-14; p. 23009, l. 9-13

³²⁶ S. Hulsman, August 28, 2013, p. 23024, l. 15-18

³²⁷ S. Hulsman, August 28, 2013, p. 23024, l. 19-23

³²⁸ S. Hulsman, August 28, 2013, p. 23025, l. 12-20

³²⁹ S. Hulsman, August 28, 2013, p. 23009, l. 9-13; p. 23028, l. 5-9

³³⁰ S. Hulsman, August 28, 2013, p. 23010, l. 7-12

³³¹ Exhibit 9214, Letter from GSSI date February 2, 2013; S. Hulsman, August 28, 2013, p. 23031, l. 6-14

too close to the machine at the time.³³² With respect to the deployment of the machine using the rope the manufacturer concluded that any movement of the rope did not interfere with the operation of the machine at the time.³³³

229. The manufacturer recommends that no person be within 15 metres of the machine when it is being operated.³³⁴ The manufacturer recognizes that it may not always be possible for the machine to be operated in the ideal circumstances. In those situations, it is recommended that the machine be operated in the Expert Mode.³³⁵ That would require the operator to analyse the results, but that was something Cst. Hulsman had not been trained to do.³³⁶

230. The results of each deployment of the Life Locator were shared with Sgt. Gillespie.³³⁷ Sgt. Gillespie shared this information with the HUSAR command.³³⁸ Sgt. Gillespie and S/Insp. Neadles testified that they did not rely solely on the Life Locator results to conclude that there may be a live victim in the pile. Rather they considered those results in the context of the canine live hits and the tapping heard by Sgt. Fowlds on June 24 at approximately 09:30 when he was conducting a call-out from the second floor.³³⁹

231. No operational decisions were made on the basis of the findings of the Life Locator in isolation. The results of the Life Locator did not cause the rescuers to change their operational plan.³⁴⁰

232. It is submitted that due to circumstances beyond the control of Cst. Hulsman he was required to operate the Life Locator, initially, in a manner that had not been recommended by the manufacturer. He took reasonable steps to satisfy himself that neither he as the operator, nor the use of a rope to deploy the machine, interfered with its operation. On both occasions when he

³³² Exhibit 9214; S. Hulsman, August 28, 2013, p. 22982, l. 1-25; p. 22987, l. 1-25; p. 23113, l. 5-15

³³³ Exhibit 9214; S. Hulsman, August 28, 2013, p. 23008, l. 1-13

³³⁴ Exhibit 9224; S. Hulsman, August 28, 2013, p. 22956, l. 18-23

³³⁵ Exhibit 9213, Letter from GSSI dated March 28 2013

³³⁶ Exhibit 9213; S. Hulsman, August 28, 2013, p. 22968, l. 15 – p. 22969, l. 25; p. 23117, l. 13-25

³³⁷ S. Hulsman, August 28, 2013, p. 23022, l. 14-19; p. 23024, l. 8-14; p. 23055, l. 5-13

³³⁸ M. McCallion, September 6, 2013, p. 24534, l. 14 – p. 24535, l. 9; p. 24539, l. 11-24

³³⁹ J. Gillespie, September 3, 2013, p. 23641, l. 16-24; B. Neadles, September 12, 2013, p. 25732, l. 1 – p. 25733, l. 12

³⁴⁰ B. Neadles, September 12, 2013, p. 25733, l. 13-22; p. 25376, l. 11-25

deployed the Life Locator he did not have control over the scene and could not ensure that there were no other persons within the area recommended by the manufacturer. He was required to operate the machine in the Run mode because he had not been trained to analyse the results in the Expert Mode. The results of the Life Locator were not relied upon in isolation from other indications of life and did not result in any changes to the course of the rescue operations.

The Rigging Operation

233. After the beam was removed and at approximately 23:00,³⁴¹ the rigging crew began to rig debris to remove it from the pile. The rigging crew initially determined that before the Ford SUV that was resting on the pile could be removed, two to three slabs had to be removed to be able to free-up the SUV enough to be able to rig it and remove it. Mr. Sorel testified that the order in which the concrete slabs are removed depended on the position of the concrete slabs and how they were piled.³⁴²

234. Two or three slabs were removed and then the vehicle was removed. The rigging crew then continued to remove slabs “progressively down through the pile” focusing on the area of the pile where the dogs had shown interest as they believed that this was a signal of the location of the victim that they believed was still viable.³⁴³

235. At approximately 04:00 on June 25, the rigging crew which had been working steadily on the pile for about 5 hours since approximately 23:00, took a rehab break and left the pile. As described above, the rescuer workers used this rehab break as an opportunity to conduct more checks on the pile for signs of life.

236. After the rescue workers checked for signs of life, the rigging crew returned to the pile and continued to remove concrete slabs from the area where they believed there was a viable

³⁴¹ D. Sorel, October 1, 2013, p. 27570, l. 9-15

³⁴² D. Sorel, October 1, 2013, p. 27563, l. 6-18; p. 27564, l. 17 – p. 27565, l. 3; p. 27568, l. 5-7

³⁴³ D. Sorel, October 1, 2013, p. 27563, l. 13-18; p/ 27573, l. 11-19; P. Waddick, August 23, 2013, p. 22006, l. 10-14; p. 22016, l. 2-20; R. Cox, August 26, 2013, p. 22357, l. 13 – p. 22358, l. 20; p. 22362, l. 7-15; J. Gillespie, September 3, 2013, p. 23658, l. 1-9; p. 23659, l. 14 – p. 23660, l. 5 and 18-25; T. Comella, September 5, 2013, p. 24218, l. 24 – p. 24219, l. 24; p. 24220, l. 20 – p. 24221, l. 19

victim. Sgt. Cox testified that they removed “countless slabs” throughout the night.³⁴⁴ Sgt. Gillespie testified that when the rigging crew returned to the pile to resume the rigging, the slabs that they were rigging were more difficult.³⁴⁵ It was during this time that one of the slabs that they were rigging folded into itself when it was lifted off the pile. However, Mr. Sorel, Sgt. Cox, and Cst. Waddick who were conducting the rigging operation on the pile, and Sgt. Gillespie who was observing from above the pile, all clearly testified that no debris landed back on the pile when this happened.³⁴⁶

237. At approximately 07:00, the rigging crew came off the pile for a shift change. Sgt. Cox testified that he was told by Sgt. Gillespie that HUSAR did not have any other members who had rigging experience and could act as a relief crew to continue the work. He testified that at this time he estimated that the rigging crew only needed 30 more minutes to remove a few slabs to be able to reach the victim that they believed was viable. He said that based on this, a command decision was made to let the rigging crew continue to remove slabs from the pile. He testified that his estimate of 30 minutes ultimately turned out to be incorrect since the rigging crew ended up staying on the pile for three more hours.³⁴⁷ He also testified that his estimate that they only had a “few more” slabs to remove to reach the victim that they believed was viable was also underestimated. He testified that when the rigging crew was ultimately removed from the pile at 10:00, while the rigging crew had made progress through the night, at this time, he could not tell how much more of the debris had to be removed to get to the victim. He said it could have been one slab or it could have been 30 slabs.³⁴⁸

238. Cst. Waddick testified that when the rigging crew ultimately stopped the rigging operation at around 10:00, he thought that they needed only three to four more hours to reach the

³⁴⁴ R. Cox, August 26, 2013, p. 22362, l. 11-15

³⁴⁵ J. Gillespie, September 3, 2013, p. 23679, l. 25 – p. 23680, l. 4; p. 23668, l. 2-8; p. 23688, l. 17 – p. 23689, l. 25; p. 23690, l. 13-22

³⁴⁶ D. Sorel, October 1, 2013, p. 27576, l. 9 – p. 27577, l. 21; R. Cox, August 26, 2013, p. 22382, l. 14 – p. 22383, l. 14; P. Waddick, August 23, 2013, p. 22017, l. 19-25; J. Gillespie, September 3, 2013, p. 23648, l. 11-15; p. 23649, l. 2-20; p. 23689, l. 22 – p. 23690, l. 25

³⁴⁷ R. Cox, August 26, 2013, p. 22370, l. 17 – p. 22372, l. 16; p. 22374, l. 3-5

³⁴⁸ R. Cox, August 26, 2013, p. p. 22375, l. 1-19; p. 22379, l. 9-13

victim that they believed was viable. He acknowledged, however, that this was “only a ballpark guesstimate.”³⁴⁹

239. Ryan Priestly of Priestly Demolition testified that when he performed the controlled demolition between the evening of June 26 and the morning of June 27, he ultimately had to remove 40 tons of concrete to be able to free-up the area to be able access the victim who the UCRT and HUSAR members believed to be viable.³⁵⁰

240. There was no further rigging and lifting done utilizing the Millennium Crane equipment after that point in time. The Millennium Crane personnel were ordered to remove their equipment from the collapse site on June 25.³⁵¹

241. While HUSAR had some personnel who were trained in rigging and crane operations this was not part of HUSAR’s standards of operation.³⁵² HUSAR had not used this approach in previous events to which it had been deployed.³⁵³ It would not be the first choice for HUSAR.³⁵⁴ In the opinion of the HUSAR leadership craning operations were dangerous and would only be used as a last resort.³⁵⁵ HUSAR would not have considered ordering a crane for the Elliot Lake mall incident prior to their arrival in Elliot Lake.³⁵⁶

Time of Commencement of Rigging Operation / Time of Death

242. During the testimony of Commissioner Hefkey at the Inquiry, it was suggested that if the Millennium Crane had been ordered earlier, it “could have made a difference”. Underlying this suggestion was the assumption that had the crane been ordered sooner, the rigging operation could have commenced sooner and the concrete in the rubble pile where Ms. Aylwin’s body was

³⁴⁹ P. Waddick, August 23, 2013, p. 22080, l. 5-11

³⁵⁰ Testimony of Ryan Priestly, Transcript, October 2, 2013, p. 27912, l. 2-7

³⁵¹ J. Gillespie, September 3, 2013, p. 23757, l. 23 – p. 23758, l. 20; p. 23759, l. 9-22

³⁵² B. Neadles, September 11, 2014, p. 25261, l. 15-18; September 12, 2013, p. 25725, l. 19-23; T. Comella, September 5, 2013, p. 24079; l. 8-14; p. 24080, l. 1-5; p. 24081, l. 2-5

³⁵³ B. Neadles, September 12, 2013, p. 25725, l. 14-18

³⁵⁴ T. Comella, September 4, 2013, p. 23969, l. 12-14; September 5, 2013, p. 24080; l. 18-25; p. 24117, l. 9-12
4; September 6, 2013, p. 24343, l. 3-20

10, 2013, p. 25264, l. 23 – p. 25265, l. 1-5

recovered would have been removed before the rescue workers were ordered out of the collapse zone by Cdr. McCallion at 12:00 on June 25 and the rescue was called off by S/Insp. Neadles later that afternoon.³⁵⁷ It is submitted that this assumption is inconsistent with the evidence about the rigging operation and Ms. Aylwin's time of death.

(a) Status of Rigging Operation as of June 25 at 10:00

243. As noted above, the rigging operation lasted from approximately 23:30 on June 24 until 04:00, resuming at 07:00 until 10:00, for a total of 8.5 hours. When the crew finished, HUSAR did not have any rescue workers with rigging experience to continue the rigging operation.³⁵⁸

244. While Sgt. Cox originally thought that only a few more hours of rigging work were needed to reach Ms. Aylwin (he had earlier estimated that 30 minutes was all that was required), the rigging crew ended up putting in three more hours with no end in sight. In fact, when Priestly Demolition removed the remaining debris, it was not just a "few more slabs" but instead, it turned out to be 40 tons of concrete.

245. The evidence is therefore wholly inconsistent with the suggestion made to Commissioner Hefkey that only two slabs had to be removed to "free Ms. Aylwin."³⁵⁹

246. Rather, given the availability of rescue workers with rigging experience and the amount of concrete that was removed to access Ms. Aylwin's body, it is impossible to predict when the rigging crew would have reached her.

247. In addition, the evidence of Mr. Selvers that he could have started hoisting (and the rigging operation could have started) as of midnight on June 23 cannot be accepted:

(a) Mr. Selvers testified that it took six hours to get the crane ready to transport, and travel time to Elliot Lake with the crane was three and a half hours, meaning that it took nine and a half hours for him to arrive on the scene. Therefore, even if Mr. Selvers had been

³⁵⁷ D. Hefkey, October 8, 2013, p. 28672, l. 8 – p. 28674, l. 4; p. 28675, l. 4-12; p. 28677, l. 16-19

³⁵⁸ D. Sorel, October 1, 2013, p. 27570, l. 9-15; p. 27584, l. 9 – p. 27586, l. 11; J. Gillespie, September 3, 2013, p. 23680, l. 20 – p. 23681, l. 13; p. 23682, l. 21-24

³⁵⁹ D. Hefkey, October 8, 2013, p. 28673, l. 21-24

called as soon as Sgt. Cox told Insp. Jollymore at 18:17 that he would need a crane, Mr. Selvers would not have arrived on the site until approximately 3:45 on June 24 assuming that there were no other factors that would have delayed his arrival time such as mobilizing his crew and transporting an oversize load in the dark.

- (b) Once Mr. Selvers actually arrived on the scene, it was approximately nine and half hours before the removal of the beam began. Accordingly, even if the crane was ordered at or around 18:17 on June 23 and Mr. Selvers arrived nine and a half hours later, then the removal of the beam would not have started until 12:45 on June 24.
- (c) The rigging operation actually started approximately two and a half hours after the beam was removed. However, the evidence of the rigging crew was that the rigging operation only started once an escape route was constructed for the rigging crew to be on the pile. Accordingly, even if the removal of the beam was started on June 24 at 12:45, the rigging operation would only have started at roughly 15:15 if an escape route had been constructed.

248. It is submitted that the evidence before the Inquiry does not support the suggestion that, had the crane been ordered earlier the rigging operation would have started sooner. In fact, the evidence before the Inquiry is that on June 24 at 15:15, HUSAR was constructing shoring in the north end of the collapse site and therefore, by that time, an important pre-condition to allowing the rigging crew to be on the pile to conduct the rigging operation – the escape route – was not yet in place.

249. Further, the evidence before the Inquiry is that the shoring in the hotel lobby had not been completed when the UCRT members returned to the site on June 24 at 17:00, and the UCRT members were tasked with completing the shoring in the lobby.³⁶⁰ The UCRT team tasked with finishing that shoring spent the majority of their shift finishing those shores, and were still working on that task while the beam was being cut in preparation for its removal by Millennium Crane, which had arrived on site and was set-up by that time.³⁶¹

³⁶⁰ S. Hulsman, August 28, 2013, p. 22934, l. 15-25; p. 22936, l. 23-25; p. 22938, l. 1-20

³⁶¹ S. Hulsman, August 28, 2013, p. 22944, l. 15-25; p. 22945, l. 1-4; p. 22946, l. 9-19

(b) Time of Death

250. The medical evidence before the Inquiry regarding the time of death does not support the suggestion made to Commissioner Hefkey that if the crane had been ordered sooner that it “could have made a difference.”

(i) Dr. Bradford:

251. Dr. Bradford was the investigating Coroner for the deaths of both Ms. Aylwin and Ms. Perrizzolo. At the conclusion of his investigation Dr. Bradford concluded that Lucie Aylwin died as a result of crush asphyxia. It was the opinion of Dr. Bradford that Lucie Aylwin would have died “very rapidly” after sustaining her injuries.³⁶² Dr. Bradford testified that while it was possible Ms. Aylwin survived for an hour it is more likely she died before that. In Dr. Bradford’s opinion as time passes from the point of the collapse the probability of survival declines. While it is possible Ms. Aylwin may have survived for an hour it is more probable that she did not.³⁶³

252. Dr. Bradford testified that there was no evidence to support a scenario that the injuries sustained by Ms. Aylwin were caused by a subsequent shift in the debris pile.³⁶⁴

(ii) Dr. Queen:

253. Dr. Queen was the pathologist who conducted the post-mortems on both Ms. Aylwin and Ms. Perrizzolo. In his report Dr. Queen concluded that the cause of death for Ms. Aylwin was crush asphyxia. He also concluded that death was near immediate and inevitable after the crushing forces were applied.³⁶⁵

³⁶² Testimony of Dr. Marc Bradford, Transcript, August 29, 2013, p. 23235, l. 10-11

³⁶³ Dr. Bradford, August 29, 2013, p. 23298, l. 13-24

³⁶⁴ Dr. Bradford, August 29, 2013, p. 23326, l. 3-15

³⁶⁵ Exhibit 9260, Final Autopsy Report, p. 10

254. Dr. Queen testified that due to the lack of inflammatory or reparative reaction in the left knee laceration Ms. Aylwin did not live a long period of time.³⁶⁶ He further concluded that due to bacterial overgrowth, Ms. Aylwin did not die a few hours before her body was recovered; she had died earlier than that.³⁶⁷

255. Dr. Queen further stated that there was no evidence of dehydration, hemoconcentration (blood thickening), or hypoglycemia, which also suggests that Ms. Aylwin's survival time, if any, was quite limited.³⁶⁸

256. Dr. Queen indicated that it was highly unlikely that Ms. Aylwin would have still been alive 22 hours after the mall collapse when the first canine indicated a live person was buried in the rubble. Similarly, he believed to be highly unlikely she was alive when the canine found evidence of live scent some 31 hours after the collapse.³⁶⁹

257. Dr. Queen further testified that it was highly unlikely Ms. Aylwin was alive 12 hours after the collapse.³⁷⁰

258. Dr. Queen testified that there was no evidence in his medical examination to support the theory of Ms. Aylwin passing away in a secondary collapse.³⁷¹

259. In the Final Autopsy Report, Dr. Queen indicates, "Combined consideration of the scene/circumstantial information, gross morphological findings, microscopic findings, neuropathological findings and vitreous biochemistry results mitigates the likelihood of any significant post-injury survival time. Death was most likely near-immediate and inevitable after the crushing forces were applied."³⁷²

³⁶⁶ Testimony of Dr. Martin Queen, Transcript, September 20, 2013, p. 26481, l. 22 – p. 26482, l. 4

³⁶⁷ Dr. Queen, September 20, 2013, p. 26484, l. 12-19

³⁶⁸ Dr. Queen, September 20, 2013, p. 26533, l. 4-9

³⁶⁹ Dr. Queen, September 20, 2013, p. 26559, l. 5-15

³⁷⁰ Dr. Queen, September 20, 2013, p. 26606, l. 1-4; p. 26609, l. 9-14

³⁷¹ Dr. Queen, September 20, 2013, p. 26607, l. 4-9

³⁷² Exhibit 9260, p. 10

(iii) Dr. Posen:

260. Subsequent to the testimony of Drs Bradford and Queen at the Inquiry, Dr. Posen was asked to provide an opinion to the Inquiry on the issue of acute renal failure post-accident. Dr. Posen concluded that “the elevated serum/vitreous creatinine was not due to acute renal failure but to other factors ... and/or the crush injury itself, and that the patient died very soon after the crush injury.”³⁷³

261. It is submitted that the evidence of the manufacturer of the Life Locator has refuted the findings of life that were indicated by the machine on the two occasions if was deployed in Elliot Lake. The evidence further indicates that it is not possible to determine at what point after a person dies that a dog can identify the scent of a deceased person and that this may impact the ability to determine the time of death based on the canine indications of live scent.

262. While there is evidence that on two occasions the responders believed they were communicating with a victim in the pile there was no significant corroboration of the belief.

263. It is submitted that the medical evidence adduced at the Inquiry overwhelmingly suggests that the death of Ms. Aylwin was immediate or occurred shortly after the collapse of the mall. There is no medical evidence to support a significant period of survival. There is no medical evidence to suggest that any of the injuries sustained by Ms. Aylwin were the result of some intervening event, such as a shift in the pile. In addition, the totality of the medical evidence suggests that Ms. Alywin would not have still been alive even if the rigging operation had started at 15:15 on June 24, more than 24 hours after the collapse.

Role of MOL Inspectors

264. The role of the MOL inspectors at the Algo Centre Mall collapse was twofold: to conduct an investigation into a possible critical injury or fatality at a workplace and to enforce the OHSA and thereby assist in ensuring the health and safety of first responders on the site.³⁷⁴

³⁷³ Exhibit 9893, Report of Dr. Gerald Posen, p. 3; Testimony of Dr. Gerald Posen, Transcript, October 4, 2013, p. 28263, l. 13-21

³⁷⁴ M. Lacroix, October 3, 2013, p. 27976, l. 15 – p.27977, l. 2

(a) *Investigation*

265. As the lead investigator, Mr. Jones believed his primary role on the site was to conduct an investigation into the collapse, the ultimate goal of which would be to try to determine the cause of the collapse. He would do that by gathering information and facts and evidence that may become available. He also testified that he would ask for advice from people like Mr. Jeffreys because ultimately he was there to investigate the collapse, and a possible injury or fatality.³⁷⁵

266. Mr. Jones testified that he would gather information for his investigation from many sources, including interviewing witnesses, getting drawings of the mall, and getting information on its construction and maintenance records. In the end, there was a “vast amount of material”. Mr. Jones testified that he would be more able to take those investigative steps after the rescue, but even during the rescue he wanted to “monitor the site to see if evidence would become available”. He noted that MOL did in fact seize the beam that was believed to be the main cause of the collapse and that those sorts of pieces of evidence would be required and very important to his investigation.³⁷⁶

267. In addition to taking custody of the beam, Mr. Jones also seized possible video evidence of the collapse while the rescue was ongoing.³⁷⁷ Mr. Jones testified that observations made on the scene from various locations assisted with his investigation and it was useful to be on scene to collect evidence.³⁷⁸ Mr. Jones disagreed with counsel for ELMAC when she suggested to him that the OPP could have seized that evidence, stating that they “may not be looking at the same things we were”.³⁷⁹ It must also be remembered that OPP criminal investigators were not on the scene at the time Mr. Jones seized the beam and videotapes. The OPP officers on the scene at that time were UCRT members or were members from local detachments who were securing the scene. It is submitted that it was important to the investigation that MOL investigators were on the scene during the rescue.

³⁷⁵ D. Jones, September 26, 2013, p. 27382, l. 20 – p. 27383, l. 3

³⁷⁶ D. Jones, September 26, 2013, p. 27383, l. 7 – p. 27384, l. 10

³⁷⁷ D. Jones, September 26, 2013, p. 27384, l. 12 – p. 27385, l. 20

³⁷⁸ D. Jones, September 26, 2013, p. 27405, l. 18 – p. 27406, l. 6

³⁷⁹ D. Jones, September 26, 2013, p. 27437, l. 8 – p. 27438, l. 22

(b) *Safety*

268. The other role performed by the MOL inspectors was to enforce the OSHA and thereby assist in ensuring the health and safety of those involved in the rescue.

269. Mr. Lacroix acted as Mr. Jeffreys' "safety" while he was walking around the collapse zone because he wanted to ensure nothing would happen and because he was not comfortable with someone from MOL or other workers walking around an unsafe structure alone. Mr. Jeffreys was grateful that Mr. Lacroix played this role.³⁸⁰

270. Although MOL inspectors and engineers are not first responders and therefore are not trained in specific rescues methods or techniques, they have training in hazard recognition and have a role in ensuring that obvious hazards are considered by those conducting a rescue or recovery. MOL personnel testified that they should continue to have this authority and did not agree with the suggestion that the MOL should not have the authority to shut down a rescue.³⁸¹

271. However, all MOL personnel testified that shutting down a rescue would not be the most obvious or reasonable way to deal with a safety issue in the course of a rescue. The first course of action would be to point out a hazard that could endanger a rescue worker by going to their supervisor, or if that was not possible, to the worker directly, and let the rescuers handle the situation as professionals.³⁸² Mr. Jeffreys testified that if first responders were going to continue doing something unsafe despite his advice he might suggest to them that he would issue an order to stop them from doing that; which is nothing different than he would do if he saw an unsafe situation in a workplace where there was no rescue or recovery taking place.³⁸³ The actual issuance of a stop work order would therefore be a solution of very last resort.

³⁸⁰ R. Jeffreys, October 3, 2013, p. 28081, l. 5-18; M. Lacroix, October 3, 2013, p. 27984, l. 19 – p. 27985, l. 16

³⁸¹ D. Jones, September 26, 2013, p. 27433, l. 4 – p. 27445, l. 22

³⁸² M. Lacroix, October 3, 2013, p. 27960, l. 16 – p. 27961, l. 4; B. Sanders, October 4, 2013, p. 28274, l. 25 – p. 28276, l. 5; D. Jones, September 26, 2013, p. 27391, l. 25 – p. 27392, l. 13

³⁸³ R. Jeffreys, October 3, 2013, p. 28046, l. 17 – p. 28054, l. 14

272. MOL personnel did not have any reason to approach any rescue workers or their supervisors or employers about serious hazards during the rescue operations in Elliot Lake.³⁸⁴ Mr. Jones testified that he took no issue with the rescue operations and thought the rescue workers were taking all due caution and doing a very good job.³⁸⁵ He also noted that they had remembered the basic things, like turning off power, electricity, water and gas; and were planning to wear personal protective equipment due to possible asbestos in the mall. He felt they were doing the right things and were working properly and safely.³⁸⁶

273. Mr. Jones testified he did have a few questions for Millennium Crane due to charges under the OHSA regarding the safety of their cranes pending before the Court at the time, but was satisfied with the answers he was given by Mr. Selvers.³⁸⁷ Mr. Lacroix pointed out when he saw a worker with Millennium Crane remove his respirator, but the situation was quickly remedied without any order being required.³⁸⁸

274. The MOL inspectors on the scene acted in accordance with their training and with MOL policies and procedures. They exercised their discretion appropriately. Moreover, the presence of the MOL inspectors on the scene did not impede the rescue efforts in any way, but instead ensured there was someone monitoring the safety of the first responders. In this case, the MOL inspectors did not encounter any serious safety issues. However, it may not always be the case that a rescue is carried out in this manner. The MOL's role in monitoring the safety of first responders is a laudable one; particularly because of the inherently dangerous nature of their work and their limited right to refuse dangerous work.³⁸⁹

275. It is also important that MOL investigators maintain the authority to attend the scene of a rescue or recovery as part of MOL investigations into the causes of critical injuries or fatalities in a workplace. Enforcement of the OHSA is an important vehicle in the protection of workers in Ontario and it is important that MOL commence investigations without delay in order to preserve evidence.

³⁸⁴ D. Jones, September 26, 2013, p. 27391, l. 25 – p. 27392, l. 13

³⁸⁵ D. Jones, September 26, 2013, p. 27387, l. 9-19

³⁸⁶ M. Lacroix, October 3, 2013, p. 27986, l. 18 – 27987, l. 9

³⁸⁷ D. Jones, September 26, 2013, p. 27387, l. 15 – p. 27389, l. 19

³⁸⁸ M. Lacroix, October 3, 2013, p. 27993, l. 5-17

³⁸⁹ OHSA, s. 43(1)(2)(3)

Role of MOL Engineers

276. As noted above, Mr. Jeffreys was directed to attend in Elliot Lake to provide any assistance he could to the organizations on the scene. Mr. Jeffreys interpreted this direction to mean that he should use his professional expertise to advise first responders about the level of risk in the collapse zone. It is submitted that this is exactly what he did throughout his deployment to Elliot Lake.

277. Mr. Jeffreys testified that he has not had training in rescue techniques, but has previously worked with UCRT after a major fire in Woodstock. While in practice it is not normally the case that MOL inspectors and engineers attend a scene where a rescue was ongoing, it does occur. An MOL engineer is most often on scene to assist an inspector with his or her investigation or inspection, but can also offer advice to first responders on safety issues.³⁹⁰

278. Mr. Jeffreys was clear in his testimony that he did not give advice to the rescuers on how to do things. Instead he “gave advice to Tony [Comella] on what [he] thought were the risks involved in working in certain areas and the situation with respect to the structure.”³⁹¹ James Cranford, the engineer with HUSAR, testified that he gave similar advice.³⁹² Mr. Jeffreys stated that he gave one piece of advice to Sgt. Gillespie when first on scene regarding whether steel shoring would be appropriate and the grade of steel required. He did not give any advice to S/Insp. Needles.³⁹³

279. Mr. Jeffreys did not deem any areas of the collapse zone to be unsafe; this was done by Capt. Comella. Similarly, Cap. Comella made decisions about districting the area to workers. Mr. Cranford expressed the same opinion when he testified. Mr. Cranford also testified he

³⁹⁰ R. Jeffreys, October 3, 2013, p. 28046, l. 17 – p. 28054, l. 14

³⁹¹ R. Jeffreys, October, 3, 2013, p. 28066, l. 21 – p. 28067, l. 3

³⁹² Testimony of James Cranford, Transcript, September 9, 2013, p. 24726, l. 10 – p. 24727, l. 17

³⁹³ R. Jeffreys, October 3, 2013, p. 28097, l. 13 – p. 28098, l. 11

believed Capt. Comella understood that he was only providing a risk assessment.³⁹⁴ Mr. Jeffreys looked at the level of risk; he never told anyone it was unsafe to proceed further.³⁹⁵

280. Mr. Jeffreys was also very clear that he did not clear the site of workers at any time and did not approve rescue plans. While he discussed shoring options with Mr. Cranford and Capt. Comella, they did not ask him whether he agreed with the options. Mr. Jeffreys never told anyone that steel shores would not safely shore up the beam under the escalator.³⁹⁶

281. He further testified that the first responders did not ask for his approval on anything the entire time he was there.³⁹⁷

282. Mr. Jeffreys did not discuss rigging with the first responders, nor did he discuss whether the workers should take more risks because of signs of life; that decision was made by Capt. Comella.³⁹⁸ Mr. Jeffreys testified that his actions on the scene were no different than when normally presented with a remediation plan with respect to a collapsed structure.³⁹⁹

283. Mr. Jeffreys did accept that if he told someone that an area or the structure is extremely high-risk they may interpret that it is unsafe to proceed. However, Mr. Jeffreys did not think that his advice to Capt. Comella would lead to the complete cessation of the rescue as outlined further below. He was stunned by S/Insp. Neadles' announcement at the 15:00 CCG meeting that the rescue had been declared a recovery and that the jurisdiction over the scene would return to the ELFD.⁴⁰⁰

284. Mr. Jeffreys viewed his role to be different than that of Mr. Cranford, the structural engineer with HUSAR. Mr. Jeffreys testified that he viewed the job description for the HUSAR engineer⁴⁰¹ to be broader than what he perceived to be the role of an MOL engineer. Mr. Cranford's role was to provide advice to HUSAR, as well as to do calculations and design

³⁹⁴ J. Cranford, September 9, 2013, p. 24959, l. 1-10; p. 24959, l. 22 – p. 24960, l. 2

³⁹⁵ R. Jeffreys, October 3, 2013, p. 28106, l. 13 – p. 28109, l. 4; p. 28184, l. 14-16

³⁹⁶ R. Jeffreys, October 3, 2013, p. 28144, l. 7-11

³⁹⁷ R. Jeffreys, October 3, 2013, p. 28111, l. 9 – p. 28113, l. 8; p. 28102, l. 20 – p. 28103, l. 17

³⁹⁸ R. Jeffreys, October 3, 2013, p. 28113, l. 19 – p. 28115, l. 24

³⁹⁹ R. Jeffreys, October 3, 2013, p. 28104, l. 5-21

⁴⁰⁰ R. Jeffreys, October 3, 2013, p. 28184, l. 18-24; p. 28148, l. 4-5

⁴⁰¹ Exhibit 245, Stephenson Engineering Job Description for HUSAR Engineer

shoring. Mr. Jeffreys saw that his role was limited to providing advice, and did not involve designing shoring or doing calculations.⁴⁰² Mr. Cranford agreed that Mr. Jeffreys did not participate in performing the calculations or designing shoring.⁴⁰³ Mr. Jeffreys felt that Mr. Cranford's advice would take precedence due to his experience with HUSAR.⁴⁰⁴ Mr. Jeffreys testified that Capt. Comella understood the differences in the roles of the engineers because he never asked him to do any of the things that Mr. Cranford was asked to do, such as performing calculations.⁴⁰⁵

285. Though they had different roles, Mr. Cranford and Mr. Jeffreys did not disagree with any of the engineering advice the other provided at any time.⁴⁰⁶ They agreed that Mr. Cranford's calculations demonstrated the structure would ultimately fail, but when it would fail could not be predicted.⁴⁰⁷ Mr. Cranford testified that there is a theoretical risk of further collapse in all buildings that have had a partial collapse, but in this case his calculations demonstrated that there was an actual, not just theoretical, risk of further collapse.⁴⁰⁸

286. It must be remembered that Mr. Cranford left the scene on the afternoon of June 25, and was advised that he did not need to return when the rescue was re-started later that evening. Mr. Jeffreys and Mr. Sanders were then the only structural engineers on the scene.⁴⁰⁹

287. Mr. Sanders viewed his primary role on the scene to provide assistance to Mr. Jeffreys and to the MOL inspectors. When he arrived on the scene he understood his purpose was to help the inspectors with their investigation, which is the reason he is called to any incident. However, because the rescue was still ongoing Capt. Comella and Mr. Jeffreys asked him to be "another set of eyes to just watch over the rescuers". His role was not to assist in giving his opinion as a

⁴⁰² R. Jeffreys, October 3, 2013, p. 28095, l. 8 – p. 28096, l. 4

⁴⁰³ J. Cranford, September 9, 2013, p. 24960, l. 12-24

⁴⁰⁴ R. Jeffreys, October 3, 2013, p. 28094, l. 17

⁴⁰⁵ R. Jeffreys, October 3, 2013, p. 28094, l. 17 – p. 28097, l. 12

⁴⁰⁶ J. Cranford, September 9, 2013, p. 24960, l. 25 – p. 24961, l. 8

⁴⁰⁷ R. Jeffreys, October 3, 2013, p. 28220, l. 24 – p. 28221, l. 8; p. 28223, l. 12-21; J. Cranford, September 9, 2013, p. 24956, l. 4-19

⁴⁰⁸ J. Cranford, September 9, 2013, p. 24960, l. 1-11

⁴⁰⁹ J. Cranford, September 9, 2013 p. 24847, l. 25 – p. 24852, l. 24

structural engineer to the rescuers and he never gave such an opinion. He never gave an opinion on shoring.⁴¹⁰

288. Mr. Sanders also reviewed the steel shop drawings on June 25, as he was there to help the inspectors investigate and he wanted to see the framing layout. Mr. Cranford showed him the connections; what beams were framing into what beams and columns. He wanted to see where the failed beam that was removed had been connected and how it was in place because he was not there when it was extracted.⁴¹¹

289. Mr. Sanders also worked with officers from the local OPP detachment to get appropriate photos of the beam for the MOL investigation and remained with the beam when it was being cut for testing in order to ensure continuity.⁴¹² He also suggested storage and wrapping of the beam in order to keep its structural integrity and any rust that might still be on it.⁴¹³

June 25 at 10:00 to June 25 at 17:45 – Operations hit a “Cross-Roads”

Building is Shifting / Workers ordered out of the collapse zone

290. While the rescue workers were completing operational tactics on the pile to try and access the victims, Capt. Comella continued to monitor a widening gap at the top of the escalator. He testified that in his assessment the gap suggested that the escalator and the beam supporting it were moving. He was very concerned that this meant that the beam that was supporting the escalator and the stairs were overstressed and this could cause a secondary collapse that could harm the rescue workers and could also cause a domino effect throughout the entire building. By June 25 at approximately 08:30, he felt that the widening gap was significant.⁴¹⁴

⁴¹⁰ B. Sanders, October 4, 2013, p.28286, l.4 – p. 28287, l. 18

⁴¹¹ B. Sanders, October 4, 2013, p. 28288, l. 5-20

⁴¹² R. Jeffreys, October 3, 2103, p. 28036, l. 20 – p. 28037, l. 14; B. Sanders, October 4, 2013, p. 28308, l. 5-15

⁴¹³ B. Sanders, October 4, 2013, p. 28283, l. 18-20; p. 28284, l. 1-4

⁴¹⁴ T. Comella, September 5, 2013, p. 24192, l. 21 – p. 24194, l. 3; p. 24195, l. 4-10; p. 24197, l. 6 – p. 24198, l. 13; p. 24235, l. 16-21; p. 24242, l. 2-14

291. Capt. Comella then tasked Captain Martin McRae with installing a measuring device to be able to measure the movement. Capt. Comella told Capt. McRae that he had discussed the movement and the installation of a measuring device with both Mr. Cranford and Mr. Jeffreys. Capt. McRae testified that two 2x4s were placed level to each other at the top of the escalator and the device was checked by himself as well as by Capt. Comella and Mr. Jeffreys to see if either of the 2x4s moved off level.⁴¹⁵

292. Capt. Comella testified that when he checked the measuring devices throughout the morning he observed movement.⁴¹⁶ He then tasked Mr. Cranford to come up with some calculations to assess the stress on the beam. The HUSAR engineer determined that the beam was subject to over four times its load capacity.⁴¹⁷ By that time, Capt. Comella had already removed all the men from the debris pile until the results of the engineering assessment were known.⁴¹⁸

293. Capt. Comella told Cdr. McCallion that the escalator was continuing to move and that he was concerned that this increased the risk of a secondary collapse in the building. He also told Cdr. McCallion the results of Mr. Cranford's calculations that indicated that the beam was significantly over its load-bearing capacity.⁴¹⁹ Neither Mr. Cranford nor Mr. Jeffreys told Capt. Comella that the rescue operations had to stop as a result of the movement that was observed on the measuring device and Mr. Cranford's calculations, but the information about the increasing risk of collapse was sent up through the command structure by both Capt. Comella and Cdr. McCallion where a decision was made at the command level.⁴²⁰

294. S/Insp. Needles testified that at 10:45 he was told by Cdr. McCallion that there was some minor movement of the escalator and stairs and a measuring device had been installed to measure the movement. S/Insp. Needles explained that he did not see this information at this

⁴¹⁵ M. McRae, September 25, 2013, p. 27249, l. 1 – p. 27250, l. 24; p. 27272, l. 21 – p. 27273, l. 15; T. Comella, September 5, 2013, p. 24233, l. 1-7; p. 24234, l. 9-15; p. 24240, l. 11 - p. 24241, l. 24; p. 24243, l. 21 – p. 24244, l. 4; See also J. Cranford, September 9, 2013, p. 24806, l. 9-17

⁴¹⁶ T. Comella, September 5, 2013, p. 24242, l. 15-23; p. 24245, l. 1-22; p. 24246, l. 5 – p. 27247, l. 3

⁴¹⁷ J. Cranford, September 9, 2013, p. 24810, l. 4-15; p. 24823, l. 8 0 p. 24824, l. 11

⁴¹⁸ T. Comella, September 5, 2013, p. 24249, l. 11-21

⁴¹⁹ M. McCallion, September 6, 2013, p. 24570, l. 11 – p. 24571, l. 16; p. 24575, l. 1-6; p. 24591, l. 24 – p. 24592, l. 6

⁴²⁰ J. Cranford, September 9, 2013, p. 24845, l. 2-5; R. Jeffreys, October 3, 2013, p. 28136, l. 6-9; T. Comella, September 5, 2013, p. 24251, l. 9-19; M. McCallion, September 5, 2013, p. 24575, l. 1-10; p. 24577, l. 10-22

time as a real threat requiring the operations to stop.⁴²¹ S/Insp. Neadles was then away from the site for a period of time up until and after 12:00 to attend a press conference. During the press conference S/Insp. Neadles informed the public that the escalator inside was still shifting, it was unsafe, he was removing crews to assess the entry point; and although shoring was ongoing, the crane was not being used due to instability of the structure even for the crane itself.⁴²²

295. After the 12:00 press conference S/Insp. Neadles returned to the site and was told by Cdr. McCallion that the measuring devices that the HUSAR team had installed near the collapse zone showed signs of movement. S/Insp. Neadles testified that after he was informed about the movement detected by the measuring devices he had a conversation with Capt. Comella, Mr. Cranford and Mr. Jeffreys. This conversation took place either in or near the command tent and Capt. Comella was the spokesperson in the meeting.⁴²³ S/Insp. Neadles' recollection of who was present for this conversation was contradicted by Mr. Jeffreys who testified that he did not attend this meeting and never attended any meetings in the command tent and that he documented every meeting he attended. There is no notation in Mr. Jeffreys' notes about any meetings in the command tent.⁴²⁴

296. S/Insp. Neadles testified that in this conversation Capt. Comella told him that the measuring device had shifted significantly and based on what he was told by the two engineers, the escalator was over 100% stressed and a risk of collapse was imminent. He said that Capt. Comella recommended to him that the workers be removed from the building. However, by this time, Cdr. McCallion had already removed all the workers from the building. S/Insp. Neadles also testified that after this conversation he had no discussions with Mr. Jeffreys or the MOL about what would happen next in the operation as a result of the information about movement and the increasing risk.⁴²⁵

⁴²¹ B. Neadles, September 11, 2013, p. 25394, l. 13 – p. 25397, l. 4

⁴²² Exhibit 6962, Transcript of Press Conference June 25, 2012 at 12:00

⁴²³ B. Neadles, September 11, 2013, p. 25420, l. 23 – p. 25422, l. 12; p. 25423, l. 3-21; p. 25428, l. 12-15

⁴²⁴ R. Jeffreys, October 3, 2013, p. 28207, l. 19-25; Exhibit 9449, Handwritten Notes of Roger Jeffreys

⁴²⁵ B. Neadles, September 11, 2013, p. 25427, l. 18 – p. 25433, l. 15

MOL Engineering Observations

297. During his initial tour of the mall with some of the UCRT team members shortly after his arrival on scene in the early hours of June 24, Mr. Jeffreys saw some cracking on core slabs to the west of the opening and noted that could be a possible area of subsequent collapse. He also noticed a crack at the top of the escalator and stairway which later turned out to be significant. The cracks he saw on the floor of the penthouse at the Zellers entrance did not turn out to be significant. Mr. Jeffreys also observed that the beam at the bottom of the escalator, which supported the second floor and the escalator, was noticeably bowed down in the middle, which in Mr. Jeffreys opinion was a “sign that there significant structural distress in this area.”⁴²⁶

298. Mr. Jeffreys repeated his initial tour with Capt. Comella and Mr. Cranford after HUSAR arrived at approximately 04:30 on June 24 and left the site at 08:30. He was back on the site at 14:00 that day and went on another tour of the building with Capt. Comella and noted there was some cribbing going on in the north and west of the collapse zone. Mr. Jeffreys does not believe he noticed a marked change in the escalator area during this tour.⁴²⁷

299. On June 25 in the morning, Mr. Jeffreys did a walk around with Capt. Comella. Mr. Jeffreys noted a significant amount of movement, approximately a quarter of an inch, in the escalator area overnight. There were no measuring devices in place at the time, but the movement could be seen. Mr. Jeffreys felt that any change was significant.⁴²⁸

300. After the markers or tattle tales were put in place by HUSAR on June 25, Mr. Jeffreys noticed that the crack was opening at the top of the escalator and staircase and the top of the escalator was dropping and the lower beam was sagging. The top marker indicated that the escalator dropped one half to three quarters of an inch. There was also noticeable movement to the north and the lower marker on the west side showed a drop of a quarter of an inch. Mr.

⁴²⁶ R. Jeffreys, October 3, 2013, p. 28086, l. 13-17; p.28089, l. 17- p. 28090, l. 15; p. 28091, l. 2 – p. 28092, l. 22; p. 28092, l. 23 – p. 28093, l. 11

⁴²⁷ R. Jeffreys, October 3, 2013, p. 28094 l. 10-16; 28101 l. 6- 28102 l. 19; 28109 l. 5-21

⁴²⁸ R. Jeffreys, October 3, 2013, p. 28117, l. 5- p. 28118, l. 7

Jeffreys testified that he has used glass as a tattle tale in the past. Capt. Comella did not ask him for any advice on measuring devices.⁴²⁹

301. Capt. Comella brought the movement that he had noticed to Mr. Jeffreys' attention and asked him to look at it around lunch time on June 25. Mr. Jeffreys expressed his opinion to Capt. Comella and Mr. Cranford that it was very significant movement which caused him concern and that the movement could potentially lead to a collapse of that area. Mr. Jeffreys came to this conclusion because when a building is shifting without any additional load being put on it, it indicates that something is starting to yield or give way.⁴³⁰ The building had started to move faster on June 25.⁴³¹

302. Mr. Jeffreys was not aware that Capt. Comella had asked all rescuers to leave the pile at 12:05.⁴³²

303. Mr. Jeffreys had a further discussion with Capt. Comella and Mr. Cranford at approximately 14:00, after Mr. Cranford had run his calculations. Mr. Cranford told him that the beam was 428 per cent over design capacity and he was extremely concerned about the consequences of those numbers.⁴³³ Mr. Jeffreys had no involvement in the calculations that Mr. Cranford ran.⁴³⁴

304. Mr. Jeffreys testified that his assessment of the building changed dramatically after learning of Mr. Cranford's calculations. It was his belief that some piece of the steel structure was approaching a "rupture point" and a rupture point means sudden failure.⁴³⁵

305. Based on the calculations, Mr. Jeffreys and Mr. Cranford were both of the opinion that the beam was ultimately going to fail, whether it was in minutes or hours.⁴³⁶ Mr. Jeffreys

⁴²⁹ B. Sanders, p.28294, l. 24 – p. 28301, l. 23; R. Jeffreys, October 3, 2103, p. 28119, l. 16-22; p. 28121, l. 3 – p. 28128, l. 1

⁴³⁰ R. Jeffreys, October 3, 2013, p. 28128, l. 2 – p. 28129, l. 17; p. 28130, l. 5; p. 28129, l. 2-25

⁴³¹ R. Jeffreys, October 3, 2013, p. 28137, l. 17 – p. 28138, l. 7

⁴³² R. Jeffreys, October 3, 2013, p. 28138, l. 8 – p.28139, l.18

⁴³³ R. Jeffreys, October 3, 2013, p. 28130, l. 6 – p. 28131, l. 8

⁴³⁴ R. Jeffreys, October 3, 2013, p. 28138, l. 19 – p. 28139, l. 12

⁴³⁵ R. Jeffreys, October 3, 2013, p. 28198, l. 11- p. 28199, l. 1

⁴³⁶ B. Sanders, October 4, 2013, p. 28305, l. 16 – p. 28306, l. 8

advised Capt. Comella that he did not understand why it had not already failed and that it posed an “extreme risk”. However, he was never asked whether work should stop because of the movement and never told anyone that.⁴³⁷ After learning of the calculations, Capt. Comella, Mr. Cranford and Mr. Jeffreys bounced around ideas for bracing the area but no safe practical way was found.⁴³⁸

306. However, as noted above, Mr. Jeffreys did not believe this would lead to a permanent cessation of the rescue and was stunned when that decision was announced at the CCG meeting at 15:00 described below.⁴³⁹

HUSAR Lead Stops the Operation

307. S/Insp. Neadles testified that after he received the information from Capt. Comella regarding the movement of the building he made the decision to stop the rescue because he was of the view that he did not have any information that there was any other viable option to continue as no other options had been presented to him. He also stated that he believed at this time that he did not have any further authority to continue and he understood that he would have to seek further authority from Chief Officer who was the Incident Commander. While he acknowledged in his testimony that this belief was incorrect, since Chief Officer always had final authority over the operation as the Incident Commander, he testified that he did not consult with Chief Officer about his decision to stop the rescue operation.⁴⁴⁰

308. S/Insp. Neadles explained in his testimony that based on his belief that there were no other options to continue the rescue operation without removing the hazard posed by the escalator resting on the overstressed beam and his belief that he did not have any further authority to continue the operation in these circumstances, he stated that the rescue was over. He said that he decided that the building was an “unsafe work zone” and ordered everyone out of the

⁴³⁷ R. Jeffreys, October 3, 2013, p. 28135, l. 21 – p. 28136, l. 9

⁴³⁸ R. Jeffreys, October 3, 2013, p. 28141, l. 1-10; p. 28198, l. 1 – p. 28199, l. 23

⁴³⁹ R. Jeffreys, October 3, 2013, p. 28148, l. 4-6

⁴⁴⁰ B. Neadles, September X, 2013, p. 25431, l. 23 – p. 25433, l. 13; p. 25440, l. 10-16; p. 25422, l. 1-11; p. 25447, l. 16 – p. 25448, l. 20; September 12, 2013, p. 25790, l. 10-21

building. He testified that he did not have an opportunity at this time to talk to anyone about other options to continue the operation because he had to attend the CCG meeting at 15:00.⁴⁴¹

309. S/Insp. Neadles testified that although he was told the day before by the HUSAR physician that it was his opinion that both victims in the rubble pile were already deceased, this opinion did not factor into his decision to stop the rescue operation. He testified that even if he had clear indications of life in the rubble pile five or ten minutes before he made the decision to stop the rescue, he would have had to make the same decision because he felt that he could not send his team members into the unstable building that could collapse at any time.⁴⁴²

310. At approximately 14:00, S/Insp. Neadles asked Ms. Chambers to call him so that he could provide her with his next operational update over the phone rather than by email.⁴⁴³ Ms. Chambers testified that she clearly recalls this telephone call. She said that S/Insp. Neadles told her that the rescue operations had to stand down due to structural failure. He told her that the escalator was moving and he could not leave his people in the building. She said that she asked him if he had other options and he said not at that moment. She advised him that she would be leaving all the OFM personnel and resources in place for HUSAR. She testified that she did not understand S/Insp. Neadles to be telling her that HUSAR was leaving but he told her that he would be moving from rescue to recovery at some point.⁴⁴⁴ As was her practice with the other updates she received from S/Insp. Neadles and other information she received from the scene, Ms. Chambers reported this information to the OFM senior management including the Fire Marshal.⁴⁴⁵

311. Before the CCG meeting started at 15:00, S/Insp. Neadles told Chief Officer that he had made a decision to stop the rescue operation. Chief Officer did not challenge this decision and, in fact, he testified that he agreed with the decision.⁴⁴⁶ Chief Officer then informed the CAO Mr. deBortoli of the decision that the rescue workers had to “pull out” of the building. Mr. deBortoli

⁴⁴¹ B. Neadles, September 11, 2013, p. 25431, l. 23-0 p. 25433, l. 155; p. 25449, l. 6 – p. 25450, l. 13

⁴⁴² B. Neadles, September 12, 2013, p. 25662, l. 24 – p. 25665, l. 2

⁴⁴³ B. Neadles, September 11, 2013, p. 25434, l. 19 – p. 25435, l. 20; Exhibit 7104, Email from B. Neadles to C. Chambers et. al. dated June 25, 2012 at 14:00

⁴⁴⁴ C. Chambers, September 18, 2013, p. 26156, l. 2 – p. 26159, l. 6

⁴⁴⁵ Exhibit 7109, Email from C. Chambers to T. Wieclawek et. al. dated June 25, 2012 at 14:22

⁴⁴⁶ B. Neadles, September 11, 2013, p. 25447, l. 16-22; P. Officer, August 22, 2013, p. 21913, l. 11-14

testified that this information was a “bomb shell” and it was devastating. Chief Officer told him that there had been engineers observing the building and they had detected movement on the structure and indications were that the beam that was supporting the concrete slab was overstressed and the collapse was imminent.⁴⁴⁷ Despite his shock that a decision had been made to stop the rescue operation, Mr. deBortoli testified that given the information that was provided by the engineer about the situation with the structure, he did not think that it would have been prudent for anyone to go back into the building because the rescuers would be at risk.⁴⁴⁸

CCG Meeting at 15:00

312. The CCG meetings were conducted in a roundtable format moderated by Mayor Hamilton. Each of the attendees at the meeting was given an opportunity to speak at the meeting although not all attendees were required to speak at each meeting.⁴⁴⁹

313. At the CCG meeting at 15:00, CAO Mr. deBortoli started off the meeting by announcing that the rescue efforts had been called off. S/Insp. Neadles then explained to the attendees of the meeting that he had decided to stop the rescue and the decision was a tough one. He explained that his decision was based on advice he received from the engineers that the stress on the beam under the escalator was in excess of 100% of its strength capacity and could fall at any time. He said that he had to make the decision for the safety of the rescue workers. He also stated that he had made an official designation to reclassify the operation from rescue to recovery and turned the operation back to the jurisdiction of the ELFD.⁴⁵⁰

314. Mr. Jeffrey was then asked to explain the situation with the building from a structural engineering perspective.⁴⁵¹ S/Insp. Neadles testified that there was discussion at the meeting that the MOL **would** be issuing an order so no one can enter the building. S/Insp. Neadles testified that he believed that at the time of the meeting no order had been issued by the MOL and an

⁴⁴⁷ R. deBortoli, October 7, 2013, p. 28442, l. 1 – p. 28449, l. 13; p. 28450, l. 6-16

⁴⁴⁸ R. deBortoli, October 7, 2013, p. 28455, l. 13-24; p. 28497, l. 14-20

⁴⁴⁹ R. deBortoli, October 7, 2013, p. 28384, l. 5-24

⁴⁵⁰ Exhibit 3743 at p. 32-33; B. Neadles, September 11, 2013, p. 25466, l. 8 – p. 25468, l. 20

⁴⁵¹ R. Jeffrey, October 3, 2013, p. 28150, l. 14 - 22

order was being contemplated at that time. He also testified that he understood that an MOL order would be issued as a result of his decision that the rescue was over.⁴⁵²

315. Mr. Thorpe was one of the attendees at this meeting. After the meeting he reported what was said at the meeting to Ms. Chambers. Later that day, Ms. Chambers told Mr. Thorpe to remind Chief Officer that it was his scene.⁴⁵³ Chief Officer testified that Mr. Thorpe gave him this message and advised him that he was the “ultimate Incident Commander”.⁴⁵⁴

Misinformation Regarding MOL’s Role in the June 25 Decision to Halt the Rescue

316. All MOL personnel on site at the collapse testified that they did not issue any orders, verbal or written, which shut down rescue operations or prevented rescue workers from accessing or working on the collapse site at any time during their deployment to Elliot Lake and were not aware of any such orders. The decision to pull rescue workers from the collapse zone and turn the rescue operation into a recovery was entirely the decision of S/Insp. Neadles.⁴⁵⁵

317. It is clear now, however, that certain first responders were under the mistaken impression that MOL had issued some sort of an order which prevented the rescue from continuing. As stated by S/Insp. Neadles:

And I will probably say that if there was one entity that was probably misunderstood or thrown around and used in the wrong contexts of what they were really doing or what they really weren't doing was the Ministry of Labour.⁴⁵⁶

318. However, the mistaken impressions about the MOL appear to be based on misinformation from others or confusion. There is no credible evidence that MOL issued any orders which prevented the rescue efforts from continuing, nor any credible evidence that there was ever an intention to do so. The evidence establishes that the only order issued by MOL

⁴⁵² B. Neadles, September 11, 2013, p. 25472, l. 4-12; September 12, 2013, p. 25808, l. 7 – p. 25809, l. 24

⁴⁵³ Exhibit 7107, Email from B. Thorpe to C. Chambers et. al. dated June 25, 2012 at 14:15

⁴⁵⁴ Exhibit 7198, Email from C. Chambers to B. Thorpe et. al. dated June 25, 2012 at 22:01; P. Officer, August 21, 2013, p. 21674, l. 6-12; August 22, 2013, p. 21897, l. 5-9

⁴⁵⁵ D. Jones, September 26, 2013, p. 27392, l. 8 – p. 27393, l. 3; p. 27435, l. 2- 5; M. Lacroix, October 3, 2013, p. 28025, l. 16-21; R. Jeffreys, October 3, 2013, p.28144, l. 18 – p. 28146, l. 8; B. Sanders, p.28331, l. 16-23

⁴⁵⁶ B. Neadles, September 10, 2013, p. 25309, l. 2-6

during the deployment was the written Order of Don Jones written late on June 25 and served on June 26, which specifically excluded rescue workers.⁴⁵⁷

The Evidence of Chief Officer

319. During his testimony Chief Officer stated that he was first told that an MOL order was going to be put on the building in a meeting in the command tent at 13:33 on June 25. He indicated that Mr. Jeffreys, Mr. Jones and possibly Mr. Lacroix were present at the meeting. It was his understanding that the order was in existence at that point, had been made verbally and that the MOL personnel were just waiting for approval from Toronto. Chief Officer believed that this order applied to everyone including rescue and recovery workers. He indicated that this same order was mentioned at the CCG meeting at 15:00.⁴⁵⁸

320. However, it appears that Chief Officer is confused about events. This is not surprising given the dynamic nature of, and stress inherent in, the situation, as well as the long hours the first responders logged on the site, which Chief Officer described “as one big blob.”⁴⁵⁹

321. Although Chief Officer’s notes (recorded four days after the events) state that MOL was present at the 13:33 meeting in the command tent, the notes do not mention anything about an MOL order being in place at that time. In fact his notes go on to say that the building will continue to be reassessed. The notes of his scribe, Natalie Quinn, do not note the presence of MOL at the 13:33 meeting. MOL personnel on site testified that they did not attend any meetings in the command tent during their deployment to Elliot Lake, and no such meetings are recorded in their notes. MOL personnel attempted to record all meetings they attended in their notes.⁴⁶⁰

322. Further, all MOL witnesses testified that they did not put any order on the building, verbal or written, which would stop the rescue from proceeding at any time during their

⁴⁵⁷ Exhibit 5052, Field Visit Report, June 25, 2012

⁴⁵⁸ P. Officer, August 22, 2013, p. 21807, l. 21 – p. 21821, l. 18; September 19, 2013, p. 26416, l. 13 – p. 26428, l. 19

⁴⁵⁹ P. Officer, August 21, 2013, p. 21557, l. 2-9

⁴⁶⁰ Exhibit 8025, p. 6; Exhibit 6336, Notes of Natalie Quinn, p. 1988; Exhibit 9449; D. Jones, September 26, 2013, p. 27407, l. 15-23, p. 27431, l. 4-10; p. 27449, l. 1-5; R. Jeffreys, October 3, 2013, p. 28207, l. 15-25

deployment. The only order issued by MOL during the deployment in Elliot Lake was the written order issued to the owner on June 26, which specifically allowed for rescue and recovery to continue.⁴⁶¹ MOL inspectors are not required to get approval from Toronto to issue orders.⁴⁶²

323. The fact that an MOL order was not in place on the afternoon of June 25 is supported by the notes of Insp. Jollymore's scribe from the CCG meeting, which indicate that MOL "**will put** a stop order on the building"⁴⁶³ and an email update sent by Mr. Thorpe of the OFM at 14:15 on June 25, which also indicates the intention to put an MOL order on the building in the future (although the exact parameters of the intended order described in Mr. Thorpe's email appear to be incorrect).⁴⁶⁴ Also, as set out above, S/Insp. Neadles testified that at the CCG meeting at 15:00 no order had been issued and an order was only being contemplated.⁴⁶⁵

324. Finally, MOL personnel testified that they learned that the rescue had been stopped for the first time at the 15:00 CCG meeting or shortly thereafter and were surprised by this news,⁴⁶⁶ which is inconsistent with MOL having placed a stop work order on the building before or at 13:33.

Minutes of the June 25 15:00 CCG Meeting and the Evidence of Natalie Bray

325. Natalie Bray was called to testify at the Inquiry with respect to the narrow issue of the CCG meeting at 15:00 on June 25. Ms. Bray was tasked with recording the minutes of the CCG meetings that took place during the rescue and recovery. She testified that these meetings

⁴⁶¹ D. Jones, September 26, 2013, p. 27431, l. 10 – p. 27432, l. 4; p. 27424, l. 23 – p. 27425, l. 12; R. Jeffreys, October 3, 2013, p. 28148, l. 4-5; B. Sanders, October 4, 2013, p. 28308, l. 14-24; M. Lacroix, October 3, 2013, p. 28025, l. 16-21

⁴⁶² D. Jones, September 26, 2013, p. 27432, l. 4-10

⁴⁶³ Exhibit 6396, Notes of Bonnie deBortoli, p. 11 of 28

⁴⁶⁴ Exhibit 7107

⁴⁶⁵ B. Neadles, September 11, 2013, p. 25472, l. 4-12. This was also the understanding of Ms. Chambers who testified that if she had been told by S/Insp. Neadles or the OFM staff that the MOL had issued an Order shutting down the rescue she would have raised this issue with her senior management; however, she never did that throughout the rescue because she was not provided with an order and she was never told that the rescue had been shut down because of an order by the MOL. See C. Chambers, September 18, 2013, p. 26273, l. 14 – p. 26274, l. 21

⁴⁶⁶ R. Jeffreys, October 3, 2013, p. 28148, l. 4-5; D. Jones, September 26, 2013, p. 27413, l. 2-8; B. Sanders, October 4, 2013, p. 28308, l. 13- 24; M. Lacroix, October 3, 2013, p. 28018, l. 4 – p. 28019 l. 16

involved everyone providing updates about their particular area and they were not question and answer sessions, although sometimes questions were asked.⁴⁶⁷

326. Much has been made about the statement Ms. Bray recorded at that meeting “MOL stop order so no one can enter”,⁴⁶⁸ which it has been suggested is evidence that there was an MOL order in place at the time of that meeting which prevented the rescue from continuing. However, there are several difficulties with that interpretation.

327. Ms. Bray testified that it was her impression at that meeting that nobody would be allowed back on to the site due to an alleged MOL order, and that she believed this was because the building was so unsafe, not because the rescue was being called off. She also testified that this was the impression of everyone in the room as well. However, she admitted that she did not ask people at the time what their impression was, but determined that “everybody had that opinion” as a result of reading through the notes of others at the meeting later on. It is uncertain on which notes Ms. Bray relies, however, as noted above, the notes of Insp. Jollymore’s scribe indicate that an order **will** be issued, not that an order was already in place.⁴⁶⁹

328. Further, while it is not clear from Ms. Bray’s notation whether the alleged order was actually in place, or whether it was contemplated in the future, she testified that she understood that an order stating that “no one **would be**” allowed to enter” was “what **was going to be** happening”, not that an order was already in place.”⁴⁷⁰

329. Ms. Bray also testified that it was her belief that S/Insp. Needles had been given a verbal order by MOL and they were just waiting for paper work.⁴⁷¹ However, S/Insp. Needles did not testify that he was ever given a verbal order by MOL which shut down the rescue and they were just waiting for paperwork. Instead, as noted above, he testified the decision to call off the rescue was his decision. Ms. Bray further testified that it was Don Jones who had indicated there

⁴⁶⁷ Exhibit 3743; Testimony of Natalie Bray, October 4, 2013, p. 28335, l. 8-14; p. 283338, l. 5-6; p. 28358, l. 1-4

⁴⁶⁸ Exhibit 3743, p. 34

⁴⁶⁹ N. Bray, October 4, 2013, p. 28358, l. 14 – p. 28359, l. 6

⁴⁷⁰ N. Bray, October 4, 2013, p. 28336, l. 18 – p. 28339, l. 3; p. 28337, l. 9-15

⁴⁷¹ N. Bray, October 4, 2013, p. 28362, l. 4-8

was an MOL stop work order in place at the 15:00 CCG meeting. However, Mr. Jones and Mr. Jeffreys do not recall Mr. Jones saying anything at that meeting.⁴⁷²

330. Mr. Jeffreys testified that after he made the comment in the meeting about the structure at the meeting at the invitation of S/Insp. Neadles, some questions were raised about whether people could go into the mall to collect their personal belongings and there was a lot of pressure from certain people who wanted to go in. He also stated that people were asking about what would happen if the mall was turned back over to the owner. Therefore, the discussion at the meeting that was recorded by Ms. Bray under the heading “M.O.L.” was about the fact that the Ministry would place an order on the owner so that people would not be allowed to go in to the building to retrieve their belongings and he “was not talking about rescue or recovery” because at that point the operation had absolutely stopped and nothing was going on. Mr. Jeffreys further testified that he made it clear that the order would be issued to the owner at a later time and would not affect the rescue or recovery work.⁴⁷³ Mr. Jeffreys did not object to anything said by S/Insp. Neadles at the meeting because he was so stunned with the decision to call off the rescue.⁴⁷⁴

331. Ms. Bray testified that she has no knowledge of how MOL orders work and no knowledge of the OHSA. She also testified that she has not had any formal training in taking minutes and that the CCG meeting at 15:00 was very sombre, very emotional and very quick. She tried to take the minutes to the best of her ability in a very stressful situation. Ms. Bray also testified that her notes are not a verbatim recording of what was said at the meetings and that there are no tapes of what was actually said.⁴⁷⁵

332. Certainly, there are two glaring omissions in Ms. Bray’s minutes. The first is that Ms. Bray failed to record the attendees at the 18:15 CCG meeting.⁴⁷⁶ The second was noted by Mr. Jeffreys who testified that Ms. Bray had failed to record questions asked or introductions to comments. For example, Ms. Bray did not record that S/Insp. Neadles asked Mr. Jeffreys (who

⁴⁷² D. Jones, September 26, 2013, p. 27462, l. 10-11; R. Jeffreys, October 3, 2013, p. 28152, l. 14-18

⁴⁷³ R. Jeffreys, October 3, 2013, p. 28151, l. 1 – p. 28153, l. 23

⁴⁷⁴ R. Jeffreys, October 3, 2013, p. 28148, l. 4-12

⁴⁷⁵ N. Bray, October 4, October 4, 2013, p.28345, l. 20 – p. 28348, l. 6

⁴⁷⁶ Exhibit 3743, p. 38

had not previously attended a CCG meeting) to comment on the state of the structure. Nor did she record the numerous questions people were “firing” at Mr. Jeffreys after he spoke about the movement in the building.⁴⁷⁷

333. Finally, Ms. Bray also testified about the 18:15 and 20:30 CCG meetings. Ms. Bray testified that no one from MOL had objected to any statements made at the 18:15 CCG meeting. However, it does not appear that anyone from MOL was actually in attendance at that meeting as there is no statement from MOL recorded in Ms. Bray’s notes, and there is no record in either Mr. Jones’ or Mr. Jeffreys’ notes that they attended that meeting. Mr. Jeffreys testified that after the 15:00 CCG meeting he went to another meeting, the object of which was to attempt to determine who had the authority to demolish the building. He then participated in a conference call to provide an update on the situation at the rescue scene to MOL personnel in Toronto and was then later asked to join a CCG meeting at 20:30, which was already in progress.⁴⁷⁸

334. With respect to the CCG meeting later that evening at 20:30, Ms. Bray testified that Mr. Jeffreys was not late for this meeting (which he testified that he was), but that she was late to that meeting. However, on cross-examination she admitted that as she was the last to arrive at the meeting she could not say when Mr. Jeffreys arrived, she could only say he arrived before she did.⁴⁷⁹

335. It is submitted that while well intentioned, Ms. Bray’s CCG minutes and testimony do little to elucidate the issue of whether an MOL order stopping work on the rescue site was in effect at the time of the 15:00 CCG meeting. It is submitted that the evidence before the Inquiry supports the sworn testimony of the MOL personnel who each testified there was no such order.

⁴⁷⁷ R. Jeffreys, October 3, 2013, p. 28151, l. 6 – p.28152, l. 13

⁴⁷⁸ N. Bray, October 4, 2013, p. 28350, l. 14-16; p. 28363, l. 16 – p. 28364, l. 8; Exhibit 3743, p. 37-41; R. Jeffreys, p. 28167, l. 1 - p. 28171, l. 8; p. 28176, l. 7-14; p. 28172, l. 1-7, p. 28176, l. 2; Exhibit 7021, Notes of D. Jones; Exhibit 9449, Notes of R. Jeffreys

⁴⁷⁹ N. Bray, October 4, 2013, p. 28351, l. 2-8; p. 28359, l. 14 – p.28360, l. 5

Email from Brian Sanders to Gabriel Mansour

336. After the 15:00 CCG meeting Mr. Jeffreys spoke to Mr. Sanders about the fact that there would be a requirement for the owner to get an engineering report on the building so that people are not allowed in, to secure the scene and that the time for this order was fast approaching because it looked like the rescuers were leaving.⁴⁸⁰ Mr. Jeffreys also asked Mr. Sanders to draft an email update about what was happening in Elliot Lake to Mr. Jeffreys' supervisor Gabriel Mansour. Mr. Mansour, the Provincial Co-Ordinator of Specialized Services, is a long-time MOL employee who had been the Provincial Engineer before Mr. Jeffreys and was very familiar with engineering issues and MOL practices. He would therefore have been aware that when MOL is finished with a scene they turn the scene back over to the owner of the property and any orders would be directed at the owner.⁴⁸¹

337. Mr. Sanders sent the following email to Mr. Mansour on June 25 at 17:24, after the rescue had been called off, but before it had been re-started:

Gabriel,

It is my understanding that you would like a progress report of the events that are unfolding here in Elliot Lake.

Roger Jeffreys, Tony Comella (Toronto HUSAR (Heavy Urban Search and Rescue) Team Coordinator Captain), Inspector Mike Lacroix and I went around the building earlier today to see the progression of the damage to the structure since we last saw it in the early hours of this morning (approx. 5am).

The concrete parking slab has fallen onto an escalator (at the south of the building) and continues to slide toward the north (the remainder of the collapsed area), as shown by the HUSAR indicator readings. The fallen load is being mostly supported by an approximately 17'-6" beam. This lower beam had already been supporting the second floor framing and has continued to deflect under the new loads now present. Based on the readings, this beam will ultimately fail as it is at 428% stress or over 4 times what it was intended to support (HUSAR's calculations from their engineering team). The beams alongside the escalator are at 137% stressed. (Also HUSAR's calcs) Once failure occurs, the damage will most likely be catastrophic from all accounts. HUSAR has pulled all of their team out of the collapse area and are not planning to send them back in. No one is in the building at this time. Roger and I have had numerous meetings on site with the

⁴⁸⁰ R. Jeffreys, October 3, 2013, p. 28153, l. 24 – p. 28155, l. 4

⁴⁸¹ B. Sanders, October 4, 2013, p. 28310, l. 18 – p. 28311, l. 21

HUSAR staff especially with James Cranford their Structural Engineer and Tony Comella in regards to the safety of all on site.

In respect to the rest of the building, there are numerous signs of rust and fatigue throughout the building (many reports and indications of water damage), hence our determination in shutting down the whole facility until an engineer can determine that it is safe to be in, or determines complete demolition of the structure. Either way, a report from an engineer will be required before we will let them proceed further.

I trust that this satisfies your request at this time. If you have any further questions, please call me.

Thank you,

Brian Sanders, P.Eng.⁴⁸²

338. Mr. Sanders and Mr. Jeffreys testified about the content of the email and the sources of information used to gather information for the email.

(i) Third paragraph

339. With respect to the first statement in the third paragraph: “the concrete parking slab has fallen onto an escalator (at the south of the building) and continues to slide toward the north (the remainder of the collapsed area), as shown by the HUSAR indicator readings”, both Mr. Sanders and Mr. Jeffreys testified that this was a misstatement and what Mr. Sanders meant to say was that the escalator had continued to slide to the north.⁴⁸³

340. Mr. Sanders also stated that the lower beam had already been supporting the second floor framing and has continued to deflect under the new loads now present. He knew it had continued to deflect because of the indicator readings that Mr. Cranford had just told him. Mr. Jeffreys also noted that this was an accurate statement because the upper end of the escalator was moving down and away from the mezzanine area.⁴⁸⁴

⁴⁸² Exhibit 9280, Email from B. Sanders to G. Mansour, June 25, 2013 at 17 :24; R. Jeffreys, p. 28159, l. 4 – p. 28164, l. 16

⁴⁸³ B. Sanders, October 4, 2013, p. 28313, l. 22 – p. 28314, l. 15

⁴⁸⁴ B. Sanders, October 4, 2013, p. 28314, l. 15 – p. 28315, l. 21

341. Mr. Sanders' opinion that the beam would ultimately fail as it was 428 per cent stressed, or over four times what it is intended to support, was based on what Mr. Cranford had told him about his calculations.⁴⁸⁵

342. The statement that HUSAR has pulled all of their team out of the collapse area and were not planning to send them back in was a result of what Mr. Jeffreys had told Mr. Sanders about what was said at the 15:00 CCG meeting and his own observations that HUSAR was packing up.⁴⁸⁶

343. Mr. Sanders' statement "once failure occurs it will be catastrophic" was based on his discussions with the other engineers and perhaps Capt. Comella and the word "catastrophic" was the word being used.⁴⁸⁷

344. Finally, although Mr. Sanders noted that he, Mr. Jeffreys, Mr. Cranford and Capt. Comella had had discussions regarding the safety of those on the site, Mr. Sanders did not express any opinions about the safety of people on the site during those discussions and he did not believe that Mr. Jeffreys had done so.

(ii) Fourth Paragraph

345. With respect to the fourth paragraph in the email, it was suggested to Mr. Sanders and Mr. Jeffreys during their testimony that this paragraph was evidence of an intention by MOL to shut down the entire mall to everyone including rescue workers and to require a report by an engineer before allowing the rescue or recovery to continue. Both Mr. Jeffreys and Mr. Sanders rejected this interpretation.

346. The statement "in respect of the rest of the building" was referring to what would occur when the building went back to the owner and was not talking about the collapse zone, but instead about the rest of the building where Mr. Sanders and Mr. Jeffreys had observed many other signs of stress and leaking. As a result, they were going to require that the building be

⁴⁸⁵ B. Sanders, October 4, 2013, p. 28315, l. 21 – p. 28316, l. 11

⁴⁸⁶ B. Sanders, October 4, 2013, p. 28317, l. 1 – p. 28318, l. 1

⁴⁸⁷ B. Sanders, October 4, 2013, p. 28316, l. 17 – p. 28317, l. 24

assessed by an engineer, which is what would happen in the normal course of an MOL investigation.⁴⁸⁸

347. Mr. Sanders testified that when he wrote “a report from an engineer will be required before we let them proceed further”, “them” meant the owner and not HUSAR who was referred to in the previous paragraph.⁴⁸⁹ Mr. Jeffreys also testified that “them” referred to the owner.⁴⁹⁰ Although the paragraph does not specifically mention the owner, Mr. Sanders testified that Mr. Mansour was familiar with MOL practice which includes turning scenes back over to an owner once MOL is finished with them and therefore Mr. Mansour would have known what Mr. Sanders meant.⁴⁹¹ Mr. Jeffreys also noted that he did not think the specific language used was critical because he was going to be on a phone call with Mr. Mansour a few minutes after the email was sent and could clear up any issues that arose.⁴⁹²

348. It is submitted that neither a plain reading of Mr. Sanders’ email to Mr. Mansour, nor the other evidence before the Inquiry, supports the interpretation that this email reflected an intention by the MOL to shut down the entire mall to everyone including rescue or recovery workers. At 17:24 when this email was sent, the rescue operation had already been called off by S/Insp. Neadles and had not yet been re-started. There was no need for an MOL order ceasing rescue operations.

349. There is no evidence that it was ever the intention of the MOL to issue an order preventing all access to the collapse zone. In any event, no such order was ever issued. The rescue had already been called off by S/Insp. Neadles before MOL did issue an order, and when it was finally issued, the order explicitly excluded rescue and recovery workers, which allowed the rescue and recovery operation to continue.

⁴⁸⁸ B. Sanders, October 4, 2013, p. 28322, l. 23 – p. 28328, l. 17; p. 28327, l. 20 – p. 28328, l. 18

⁴⁸⁹ B. Sanders, October 4, 2013, p. 28231, l. 2-22

⁴⁹⁰ R. Jeffreys, October 3, 2013, p. 28162 l. 2-19; p. 28163, l. 9 – p. 28164, l. 2

⁴⁹¹ B. Sanders, October 4, 2013, p. 28323, l. 1 - 18; p. 28321, l. 20 – 28322, l.16

⁴⁹² R. Jeffreys, October 3, 2013, p. 28164, l. 3-16

Victim Families are told by HUSAR Lead that Rescue Stopped

350. As outlined above, during the response, Insp. Jollymore was carrying out his usual policing duties and responsibilities as well as the specific responsibilities assigned to him as the OPP detachment commander under the emergency response plan. Insp. Jollymore testified that he took on additional roles and responsibilities that were not assigned to him by the Elliot Lake emergency response plan. One of those additional roles was to provide for the needs of the families.

351. In the early hours of the response Insp. Jollymore arranged for the opening of the Collins Hall as a location where the families of persons who had not been accounted for could gather to obtain information and support. He assigned OPP members to be present at Collins Hall. He arranged for the OPP Trauma team to be available to provide assistance to victims' family members and for members of the OPP Provincial Liaison Team to be with them on a continuous basis to see that their needs were addressed. Insp. Jollymore testified that there were a total of 35 times where he or his members provided assistance to family members.⁴⁹³

352. Insp. Jollymore testified that he undertook to keep the victims' family members informed as to the progress of the investigation.⁴⁹⁴ Insp. Jollymore testified that despite his direction there were times that OPP members were not present at Collins Hall and when he discovered that he took steps to rectify that problem.⁴⁹⁵ Insp. Jollymore admitted that due to circumstances beyond his control he did not meet with family members prior to the press conference on June 25 at 12:00. He met with family members immediately following that press conference and apologized for that oversight.⁴⁹⁶ Insp. Jollymore readily acknowledged the incident that Darren Latulippe testified about during this meeting but did not agree that he had made the comments suggested by Mr. Latulippe.⁴⁹⁷ Insp. Jollymore testified that the situation was highly charged and Mr. Latulippe was very emotional and confrontational at the time. He further indicated that

⁴⁹³ P. Jollymore, September 24, 2013, p. 27024, l. 13 – p. 27026, l. 6

⁴⁹⁴ P. Jollymore, September 24, 2013, p. 26619, l. 19 – p. 26917, l. 12

⁴⁹⁵ P. Jollymore, September 24, 2013, p. 26919, l. 14 – p. 26920, l. 17

⁴⁹⁶ P. Jollymore, September 24, 2013, p. 26924, l. 5-16

⁴⁹⁷ Darren Latulippe testified that during the meeting, Insp. Jollymore said to him "I don't really have to be here. I'm doing you a favour by being here": Testimony of Darren Latulippe, Transcript, August 7, 2013, p. 19885, l. 17-19

he did not intend to offend the family members in these circumstances nor was he aware that Mr. Latulippe had found his comments offensive until Mr. Latulippe testified at the inquiry.⁴⁹⁸

353. S/Insp. Neadles testified that after the CCG meeting at 15:00 when he announced to the CCG that the rescue was called off and would be transitioning to a recovery, he went with the Mayor and Insp. Jollymore to meet with the families of the victims at Collins Hall. S/Insp. Neadles testified that he told the families that the rescue was over but he did not tell them that the operation “has now become a demo” nor did he tell them that HUSAR was leaving Elliot Lake.⁴⁹⁹

354. It is submitted that Insp. Percy Jollymore had a broad range of responsibilities to manage during the emergency response operation. Insp. Jollymore not only performed his assigned tasks but he also took on other responsibilities that needed to be done. He made every effort to ensure that the needs of the family members were met. He undertook to keep them advised of the progress of the emergency response operation and met with them personally to deliver the most difficult information. He recognized how difficult the situation was for the family members and attempted to be sensitive to their needs and compassionate in his dealings with them.

Press Conference at 17:00

355. Mr. deBortoli testified that although the CCG had not yet considered other options for handling the operation after the announcement at the 15:00 CCG meeting that the rescue had been called off, it was decided that they would go ahead with the press conference scheduled for 17:00 and would inform the public that the rescue operation had been called off. He stated that there was an obvious “air of quiet” on the scene at that time because there had been no work on the rescue operation since approximately 12:00 that day. He felt that the City of Elliot Lake had to explain to the community the reason for the lack of action on the site at the press conference

⁴⁹⁸ P. Jollymore, September 24, 2013, p. 26926, l. 1-17; p. 26927, l. 16-23; p. 26928, l. 17 – p. 26933, l. 6

⁴⁹⁹ B. Neadles, September 11, 2013, p. 25482, l. 13 – p. 25483, l. 3; p. 24585, l. 1-20; p. 24589, l. 18-21

even though he acknowledged that not all alternate options for continuing the operation had been considered at that point.⁵⁰⁰

356. At 16:47, just prior to the press conference, Commissioner Hefkey had a brief conversation with S/Insp. Neadles. Commissioner Hefkey explained that he had been notified by the Fire Marshal earlier that day that the operation was shifting from a rescue to a recovery and he called S/Insp. Neadles because he wanted to understand first-hand why the transition had been made to recovery. S/Insp. Neadles told Commissioner Hefkey that HUSAR was “at a cross-roads” and that the HUSAR engineer and the MOL engineer were telling him that the integrity of the building was compromised. S/Insp. Neadles also told Commissioner Hefkey that he believed, based on advice from the HUSAR physician, that the person under the rubble may be under so much pressure from the collapse that the second they pulled the body out of the pile, the chances of survival were minimal. At this time S/Insp. Neadles did not say anything to Commissioner Hefkey about a “Plan B”.⁵⁰¹

357. The press conference was moderated by Mr. deBortoli. The panel included Chief Officer, Mayor Hamilton, S/Insp. Neadles, OPP Insp. Jollymore and EMS paramedic Henry Alamenciak. After stating that they had reached a difficult decision, Mayor Hamilton then asked S/Insp. Neadles to explain the decision he had made to stop the rescue operation. Although the other panel members agreed with the decision made by S/Insp. Neadles, it was left to him to explain the basis for the decision and what would happen next, given that it was believed that there were still two bodies in the rubble pile. S/Insp. Neadles explained that he had removed the rescue workers from the structure and then turned the facility back to the local authorities and that the MOL **would then** become actively involved and would put an order on the building requiring the owner to get an engineering report.⁵⁰² No one from MOL attended the press conference.⁵⁰³

⁵⁰⁰ R. deBortoli, October 7, 2013, p. 28461, l. 14 – p. 28463, l. 11

⁵⁰¹ Exhibit 7812, p. 004; D. Hefkey, October 8, 2013, p. 28615, l. 22 – p. 28616, l. 17; p. 28617, l. 11-16; p. 28620, l. 5-21

⁵⁰² Exhibit 7208, Transcript of Press Conference June 25, 2012 at 17:00, p. 002-009; B. Neadles, September 12, 2013, p. 25809, l. 5-24

⁵⁰³ R. Jeffreys, October 3, 2013, p. 28182, l.2-24; D. Jones, September 26, 2013, p. 27425, l. 3-12; B. Sanders, p. 28327, l. 2-7; Exhibit 6385, Notes of Michel Lacroix, p. 166-168

First Responders' Awareness of MOL's Role on the Scene

358. Mr. Jones and Mr. Lacroix were each asked if they had made their roles on the scene clear and whether first responders knew why MOL was there. Both testified that it was their understanding that people knew what the role of MOL was and why they were there, and further that no one had ever expressed any confusion to them about why MOL was there.⁵⁰⁴ As a result, nothing prompted them to explain or clarify their reason for being on the scene. The MOL inspectors cannot be faulted if others were confused without their knowledge.

359. When the inspectors and Mr. Jeffreys learned that MOL was erroneously being blamed for shutting down the rescue operations they took opportunities that arose to clarify that this was not the case.

360. Mr. Jones testified that he has worked with the police, OPP and local police, previously and they knew what the MOL does. In this case, one of the OPP officers on scene had been in contact with Don Jewitt before the inspectors arrived.⁵⁰⁵ Mr. Jones testified they knew MOL was coming and were expecting him there. Mr. Jones would not normally have a discussion with people about what he is doing and what his authority is when he arrives on scene because most people in workplaces know what the role and function of the MOL is. If someone did not know what MOL did, Mr. Jones would explain.⁵⁰⁶

361. It was also Mr. Lacroix's understanding that the officers knew what his role was when he arrived on the scene and that it was unnecessary to explain it to them.⁵⁰⁷ Mr. Lacroix had worked with one of the OPP officers before. He had also worked with Mr. Thorpe previously and knew Mr. Thorpe was aware of the role of MOL. In his view, the first responders were the experts and the MOL inspectors were not going to interfere with them.⁵⁰⁸ Mr. Lacroix did not discuss any stop work orders or his policy that he would not shut down a rescue with Capt.

⁵⁰⁴ D. Jones, September 26, 2013, p. 27429, l. 25 – p. 27430, l. 17; M. Lacroix, October 3, 2013, p. 28025, l. 22 – p. 28026, l. 18

⁵⁰⁵ Exhibit 9910, Notes of Don Jewitt, p. 1-3 (page number on notes)

⁵⁰⁶ D. Jones, September 26, 2013, p. 27429, l. 25 – p. 27430, l. 17

⁵⁰⁷ M. Lacroix, October 3, 2013, p. 28025, l. 22 – p. 28026, l. 18

⁵⁰⁸ M. Lacroix, October 3, 2013, p. 28025, l. 22 – p. 28026, l. 11

Comella, Chief Officer, Sgt. Gillespie or other UCRT team members because the topic did not come up and they did not ask.⁵⁰⁹ Chief Officer never expressed any confusion or concern about MOL's presence and did not ask at any time why MOL was there.⁵¹⁰

362. When Sgt. Gillespie asked Mr. Lacroix about MOL's alleged role in the decision to shut down the rescue, Mr. Lacroix attempted to clarify the role of the MOL.⁵¹¹ While Mr. Lacroix testified that he did not take further steps to advise anyone in the command structure or the City of Elliot Lake that MOL did not shut down the rescue, there is absolutely no evidence that Mr. Lacroix was aware that anyone in the command structure or City thought that MOL had shut down the rescue.⁵¹²

363. Mr. Jeffreys testified that he clearly explained to first responders why he was on the site, including Chief Officer, Sgt. Gillespie, Capt. Comella and S/Insp. Neadles. He advised them that he had been sent to give any assistance that he could and that he was a structural engineer.⁵¹³ Mr. Jeffreys does not know why Sgt. Gillespie was under the impression that MOL had ordered workers out of the area. Mr. Jeffreys did not know workers had been pulled out of the area until the CCG meeting at 15:00.⁵¹⁴

364. When Mr. Jeffreys heard that S/Insp. Neadles had made a statement at the press conference on June 25 at 17:00 to the effect that MOL would put an order on the building requiring MOL's approval of a demolition plan, he told S/Insp. Neadles he was mischaracterizing the role of the MOL and that he was upset by that and was sure his head office would be upset by that. S/Insp. Neadles advised Mr. Jeffreys he would correct what he had said and Mr. Jeffreys believed it was corrected at a later press conference.⁵¹⁵

365. In summary, MOL personnel on site were not aware of any general confusion as to what their role was at the scene of the collapse among the first responders. They believed that first

⁵⁰⁹ D. Jones, September 26, 2013, p. 27397, l. 7 – p. 27398, l. 4; p. 27398, l. 15 – 27399, l. 3; M. Lacroix, October 3, 2013, p. 27977, l. 15 – p. 27978, l. 6; p. 27983, l. 10-25

⁵¹⁰ M. Lacroix, October 3, 2013, p. 28026, l. 15-23

⁵¹¹ M. Lacroix, October 3, 2013, p. 28017, l. 5 – p. 28019, l. 21

⁵¹² M. Lacroix, October 3, 2013, p. 28019, l. 17-25

⁵¹³ R. Jeffreys, October 3, 2013, p. 28078, l. 5-20; p. 28080, l. 4-12; p. 28201, l. 4-14; p. 28094, l. 3-16

⁵¹⁴ R. Jeffreys, October 3, 2013, p. 28142, l. 8 – p. 28144, l. 6

⁵¹⁵ R. Jeffreys, October 3, 2013, p. 28182, l. 4-24; p. 28184, l. 25 – p. 28185, l. 12; p. 28184, l. 25 – p. 28185, l. 12

responders were well aware of their role and knew why they were there. Where they were aware of specific confusion or misinformation they attempted to correct it. MOL personnel cannot be faulted for any confusion regarding their role of which they were not aware.

June 25 at 17:45 to June 26 at 01:45 – The Formulation of a Plan “B”

366. Throughout the afternoon of June 25 options were being explored to develop a plan to address the hazard posed by the escalator so that the rescuers could again safely access the building. Capt. Comella testified that he considered that they would need to bring in heavy equipment and at approximately 12:05 he presented this to Cdr. McCallion. He also testified that he specifically contemplated bringing in Priestly Demolition to conduct a controlled demolition although he did not convey this thought to anyone in the command structure.⁵¹⁶ Cdr. McCallion testified that he does not recall Capt. Comella speaking with him at this time about heavy equipment.⁵¹⁷

367. Sgt. Glavin of HUSAR testified that when he first assessed the collapse zone when he arrived on the scene in the early hours of June 24, he considered that controlled demolition may be necessary at some point in the operation and he called his brother who works for Priestly Demolition to check if their machine with the articulating arm was available to be deployed to Elliot Lake if necessary. He testified that he did not tell anyone in command that he made these inquiries with Priestly Demolition until the evening of June 25.⁵¹⁸

368. After the press conference at 17:00, efforts intensified simultaneously by a number of individuals on a number of fronts to explore options to safely gain access to the rubble pile.

⁵¹⁶ T. Comella, September 5, 2013, p. 24251, l. 9 – p. 24255, l. 17

⁵¹⁷ M. McCallion, September 5, 2013, p. 24597, l. 25 – p. 24598, l. 22

⁵¹⁸ Testimony of Phil Glavin, October 1, 2013, p. 27659, l. 19-23; p. 27661, l. 13 – p. 27664, l. 15; p. 27665, l. 11 – p. 27666, l. 9

Efforts made in Elliot Lake:

369. A meeting was held at 18:00 at the local OPP detachment to discuss how to move forward to get access to the victims in the rubble pile. The meeting was attended by OPP Insp. Ed Pellarin, MOL Engineers Mr. Jeffreys and Mr. Sanders, MOL Inspector Mr. Jones, Algoma EMS paramedic Henry Alamenciak, Regional Coroner Craig Muir, Chief Officer, OFM Program Specialist Dave Howse, City of Elliot Lake Chief Building Official Bruce Ewald, OPP Forensic Ident. Officer Adam Oprici, and CAO Mr. deBortoli.⁵¹⁹ S/Insp. Neadles did not attend this meeting.⁵²⁰

370. The issue at the meeting was that the building was private property but the attendees at the meeting were reluctant to give the building back to the building owner. The question that was discussed by those present was which entity had the jurisdiction to direct what should be done to the building in order to ensure the safe removal of the two bodies. Mr. Jeffreys stated on behalf of the MOL that the MOL did not have the power to order demolition of a building. The Regional Coroner stated that the Coroner did not have the authority to order demolition. Mr. Ewald said the same thing, as did Mr. Howse with the OFM. As a result, it appeared that there was an impasse and it appeared to those present that the only entity that had authority over the building was the owner who was not there.⁵²¹

371. At approximately the same time that this meeting was taking place, S/Insp. Neadles testified that he had a conversation with Sgt. Glavin when they were getting dinner at the United Church. In this conversation, Sgt. Glavin began to tell S/Insp. Neadles about the Priestley Demolition equipment with the articulating arm. S/Insp. Neadles testified that his discussion with Sgt. Glavin at this time was cut short as he received a call from Commissioner Hefkey as described in more detail below. However, in this short conversation, he said that he gave Sgt. Glavin an “amber light” and told him to “lean forward” and explore the availability and capability of the Priestley Demolition equipment further.⁵²² Sgt. Glavin testified he was

⁵¹⁹ Exhibit 9449, p. 5; R. Jeffreys, October 3, 2013, p. 28167, l. 1 – 28168, l. 10

⁵²⁰ Neadles, September 11, 2013, p. 25501, l. 8-20

⁵²¹ R. Jeffreys, October 3, 2013, p. 28169, l. 24 – p. 28171, l. 8

⁵²² B. Neadles, September 11, 2013, p. 25505, l. 2 – p. 25507, l. 12; p. 25508, l. 22 – p. 25510, l. 15; September 12, 2013, p. 25576, l. 6-12

instructed by S/Insp. Neadles to explore the Priestly Demolition option but not to spend any money.⁵²³ This was corroborated by Cdr. McCallion who testified that S/Insp. Neadles spoke to him after the press conference about a Plan “B” involving obtaining heavy equipment from Priestly Demolition to do a controlled demolition of the building to be able to access the victims. He testified that this conversation happened before S/Insp. Neadles was involved in a teleconference with the Premier which is discussed in further detail below.⁵²⁴

Efforts made in Toronto:

372. Commissioner Hefkey testified that he watched the press conference at 17:00 and immediately following the press conference he met with Deputy Minister Davidson who asked him to make inquiries to determine if there was supplementary equipment that could assist with the operation. Commissioner Hefkey explained that he understood Deputy Minister Davidson to be thinking at this time that it was necessary to determine if there were any additional resources that could be brought to bear in order to bring the operation to a conclusion.⁵²⁵

373. Staff in the Premier’s Office were also following the incident in Elliot Lake as it was unfolding. John O’Leary, Manager of Legislative Issues in the Office of the Premier at the time, testified that when he was informed on the afternoon of June 25 that the rescue had been stopped, some of the staff in the Premier’s Office were considering whether the Premier should issue a public statement.⁵²⁶ Mr. O’Leary watched the press conference at 17:00 and following the press conference, himself and other staff decided to gather more information before releasing a statement.⁵²⁷ The staff also decided to arrange a teleconference with the Premier to provide him with more information about the decision to stop the rescue operation.⁵²⁸ A teleconference was held at approximately 19:30 with the Premier and some of his staff. This call was ended when

⁵²³ P. Glavin, October 1, 2013, p. 27726, l. 4 – p. 27727, l. 22

⁵²⁴ M. McCallion, September 6, 2013, p. 24633, l. 22 – p. 24634, l. 11; p. 24648, l. 8 – p. 24650, l. 23

⁵²⁵ D. Hefkey, October 8, 2013, p. 28620, l. 22 – p. 28623, l. 2; Exhibit 7812, p. 005

⁵²⁶ Testimony of John O’Leary, Transcript, September 17, 2013, p. 25901, l. 2 – p. 25904, l. 23; p. 25921, l. 24, - p. 25922, l. 5; p. 25920, l. 24 – p. 25921, l. 1-8; Exhibit 9140, Notes of John O’Leary (Typed), p. 003; Exhibit 8282, Email from J. O’Leary to D. Livingston et. al. dated June 25, 2012 at 14:53; Exhibit 6964, Emails between J. O’Leary and W. McCann et. al. dated June 25, 2012 at 15:27 to 15:29

⁵²⁷ J. O’Leary, September 17, 2013, p. 25923, l. 6-8; p. 25933, l. 15 – p. 25937, l. 17

⁵²⁸ J. O’Leary, September 17, 2013, p. 25946, l. 14-20; p. 25948, l. 11-15; p. 25949, l. 5 – p. 25950, l. 17

the Premier asked to speak directly with S/Insp. Neadles and Commissioner Hefkey.⁵²⁹ Mr. O’Leary made arrangements for this call to take place at approximately 20:30.⁵³⁰

374. At 20:05 Commissioner Hefkey spoke with S/Insp. Neadles who told him they were looking at plans for how to remove the victims. Commissioner Hefkey asked S/Insp. Neadles to consider other resources that he may wish the Province to obtain for him such as mining resources that may be available from Sudbury. He asked S/Insp. Neadles to consider whether he could use these resources but did not direct him to use them. Commissioner Hefkey also asked S/Insp. Neadles to be available for a call with the Premier that evening.⁵³¹

Teleconference Call with the Premier

375. At approximately 21:00 a teleconference was held at the request of Premier McGuinty. The call included the Premier, S/Insp. Neadles, Deputy Minister Davidson, Commissioner Hefkey, the Secretary of Cabinet, Mr. O’Leary, Cabinet Office Communications Staff, the Fire Marshal and the Chief of EMO.⁵³²

376. The call was held because the Premier, as the leader of the Province, wanted to make sure that all options and other alternatives were being explored and considered. The Premier asked S/Insp. Neadles if there were other options available to move the emergency response forward. S/Insp. Neadles told the Premier that the last signs of life were on June 25 at 04:00 and that the HUSAR physician had explained to him how the crush injuries may cause death to the suspected viable victim when the debris was removed. S/Insp. Neadles also explained that the HUSAR engineer and the MOL engineer had rendered a professional opinion that it was unsafe to proceed based on the physical dynamics of the rubble pile and the stress on the beam from the escalator. The Premier asked if there was anyone else who could go into the pile and S/Insp.

⁵²⁹ Exhibit 9140, p. 004; J. O’Leary, p. p. 25948, l. 11-15; p. 25949, l. 5 – p. 25951, l. 25

⁵³⁰ J. O’Leary, p. 25951, l. 19 – p. 25952, l. 22; p. 25953, l. 25 – p. 25954, l. 1 and 12-15; Testimony of Dalton McGuinty, Transcript, October 9, 2013, p. 28929, l. 9 – p. 28930, l. 16

⁵³¹ Exhibit 7812, p. 006; D. Hefkey, October 8, 2013, p. 28627, l. 4 – p. 28629, l. 14; B. Neadles, September 11, 2013, p. 25527, l. 10 p. 25528, l. 1

⁵³² Exhibit 7812, p. 006-007; Exhibit 9140, p. 004-005

Neadles said that there was no one else that could go into the rubble pile to remove the victims.⁵³³

377. Both former Premier McGuinty and Mr. O’Leary testified that they recall that the Premier asked whether a controlled demolition was a possibility to be able to access the collapse zone from the outside.⁵³⁴ Both Commissioner Hefkey and S/Insp. Neadles testified that they recalled that during the call S/Insp. Neadles then mentioned Priestly Demolition as an option given HUSAR’s experience with using Priestly Demolition in another structural collapse.⁵³⁵

378. Commissioner Hefkey’s recollection that S/Insp. Neadles mentioned Priestly Demolition as an option is consistent with other evidence before the Inquiry. First, it accords with the testimony of both S/Insp. Neadles and Sgt. Glavin that prior to the call they had a brief conversation about the possibility of bringing in equipment from Priestly Demolition and the direction that S/Insp. Neadles gave to Sgt. Glavin to look into it further.⁵³⁶ It is also consistent with S/Insp. Neadles’s testimony that in the call he explained to the Premier that just before the call had started he had general discussions with Sgt. Glavin about the option of obtaining specialized equipment and expertise from Priestly Demolition and he told the Premier that they were working on a plan to deploy Priestly to do a very precise demolition.⁵³⁷

379. Commissioner Hefkey’s recollection of the call is also consistent with the notes that he took during the call which state: “Bill mentioned Priestly Construction as an option given the experience he had with them during the Bloor Street collapse.”⁵³⁸ In his testimony at the Inquiry, former Premier McGuinty stated that although he does not recall that Priestly was specifically

⁵³³ Exhibit 7812, p. 006-007; Exhibit 9140, p. 004-005; D. Hefkey, October 8, 2013, B. Neadles, September 11, 2013, p. 25528, l. 12-21; p. 25530, l. 9 – p. 25537, l. 5; September 12, 2013, p. 25548, l. 25 – p. 25549, l. 5; J. O’Leary, September 17, 2013, p. 25954, l. 12 – p. 25961, l. 14; D. McGuinty, October 9, 2013, p. 28928, l. 19 – p. 28929, l. 8; p. 28931, l. 20 – p. 28939, l. 6; p. 28940, l. 1-25

⁵³⁴ J. O’Leary, September 17, 2013, p. 25958, l. 17 – p. 25959, l. 1; D. McGuinty, October 9, 2013, p. 28936, l. 17 – p. 28937, l. 7; Exhibit 9140, p. 005

⁵³⁵ B. Neadles, September 12, p. 25549, l. 9 – p. 25552, l. 19; D. Hefkey, October 8, 2013, p. 28636, l. 12 – p. 28637, l. 14

⁵³⁶ B. Neadles, September 11, 2013, p. 25505, l. 2 – p. 25507, l. 12; p. 25508, l. 22 – p. 25510, l. 15; P. Glavin, October 1, 2013, p. 27726, l. 4 – p. 27727, l. 22

⁵³⁷ B. Neadles, September 11, 2013, p. 25551, l. 11 – p. 25552, l. 19

⁵³⁸ Exhibit 7812, p. 007

mentioned in the call, he acknowledged that it could have been mentioned on the call and also that he had no reason to question the notes of Commissioner Hefkey.⁵³⁹

380. Other options were also raised during the call. Mr. Livingstone asked whether the Canadian military was an option as an alternative to further the operation. Commissioner Hefkey testified that he does not recall that an answer was provided to this question at that time, but after the call his staff confirmed that the military does not have resources or expertise to assist with the rescue operation.⁵⁴⁰

381. Commissioner Hefkey testified that it was his view that the Premier's purpose in having the call was to provide a clear message to S/Insp. Neadles that the Premier and the Province were supporting the efforts in Elliot Lake and also, to ensure that everything that could be done was done in order to bring closure to the operation.⁵⁴¹ This is consistent with S/Insp. Neadles' perception of the call which was that the Premier was putting forth a position of concern and he wanted to be sure that the Province was doing everything it could for the families and the City of Elliot Lake.⁵⁴²

382. The call came to a conclusion after S/Insp. Neadles told the Premier that he would go back to his team and determine if there was a way to conduct a controlled demolition with Priestly Demolition. The Premier told S/Insp. Neadles that he was satisfied with this and asked him to connect again with Commissioner Hefkey once a plan was developed. S/Insp. Neadles testified that it was his understanding that Commissioner Hefkey would not be approving the operational plan for the use of the Priestly Demolition equipment, but that he would only be approving the expenditure necessary to obtain the equipment.⁵⁴³

383. S/Insp. Neadles testified that while a call with the Premier of the Province in the middle of the rescue operation was unusual, he felt that the call was a positive step for him. He said that after the call he was relieved because he knew that he was now in a position to move forward

⁵³⁹ D. McGuinty, October 9, 2013, p. 28989, l. 10 – p. 28990, l. 4

⁵⁴⁰ Exhibit 7812, p. 007; J. O'Leary, September 17, 2013, p. 25959, l. 7-10; D. Hefkey, October 8, 2013, p. 28637, l. 15 – p. 28638, l. 22

⁵⁴¹ D. Hefkey, October 8, 2013, p. 28639, l. 30 p. 28640, l. 4

⁵⁴² B. Neadles, September 11, 2013, p. 25528, l. 12-21; September 12, 2013, p. 25566, l. 10-14

⁵⁴³ B. Neadles, September 12, 2013, p. 25563, l. 23 – p. 25564, l. 25; p. 25567, l. 5 – p. 25568, l. 8; p. 25805, l. 24 – p. 25806, l. 3

with the plan that was being put together by his team to conduct a controlled demolition and that any red tape that he *may* have perceived to have existed had been removed.⁵⁴⁴

HUSAR develops Priestly Plan for Controlled Demolition

384. After the teleconference call with the Premier and others concluded, S/Insp. Neadles attended a CCG meeting that was in progress and informed the CCG that he had participated in a call with the Premier.⁵⁴⁵ He explained that Capt. Comella and Sgt. Glavin then worked on developing an operational plan for how the controlled demolition would take place.⁵⁴⁶ Sgt. Glavin testified that while the plan was being developed he was tasked by S/Insp. Neadles to be the contact with Ryan Priestly to work out the specifics of the controlled demolition.⁵⁴⁷

385. S/Insp. Neadles said in his testimony that when he was developing the initial plan for the controlled demolition he consulted Mr. Jeffreys. By this time, Mr. Cranford had left Elliot Lake. S/Insp. Neadles testified that in asking for Mr. Jeffreys' advice on the development of the plan, he was not seeking approval from the MOL to proceed with the plan, but rather, he was seeking their advice.⁵⁴⁸

386. At approximately 23:56, S/Insp. Neadles spoke with Commissioner Hefkey and told him that they had an outline of a plan to have Priestly Demolition bring in heavy equipment with an articulating arm that could reach over the top of the mall and into the collapse zone and then move the escalator out of the way from the rubble pile in a controlled fall. This would then allow the rescue workers to safely enter the pile and retrieve the victims.⁵⁴⁹ Commissioner

⁵⁴⁴ B. Neadles, September 12, 2013, p. 25566, l. 8 – p. 25567, l. 4

⁵⁴⁵ Exhibit 3743, p. 043; B. Neadles, September 12, 2013, p. 25571, l. 20 – p. 25572, l. 17

⁵⁴⁶ B. Neadles, September 12, 2013, p. 25575, l. 12-21; p. 25576, l. 6-23

⁵⁴⁷ P. Glavin, October 1, 2013, p. 27760, l. 17 – p. 27761, l. 22

⁵⁴⁸ B. Neadles, September 12, 2013, p. 25580, l. 16-22; p. 25575, l. 17-21; R. Jeffreys, October 3, 2013, ; p. 28189, l. 4-25

⁵⁴⁹ B. Neadles, September 12, 2013, p. 25576, l. 24 – p. 25578, l. 6; D. Hefkey, October 8, 2013, p. 28642, l. 21 – p. 28643, l. 16

Hefkey's notes of this call reflect that during the call S/Insp. Neadles told him that they "still need to work on confirmation but leaning towards this solution."⁵⁵⁰

387. Commissioner Hefkey and S/Insp. Neadles spoke again at 01:36 on June 26. Commissioner Hefkey testified that S/Insp. Neadles told him that they now have a plan involving Priestly Demolition and that he had received input from the HUSAR engineer and the MOL engineer. S/Insp. Neadles also told him that Priestly Demolition was available and ready to deploy with three pieces of equipment and that they will leave Toronto as soon as possible and the equipment should arrive in Elliot Lake by 14:00. S/Insp. Neadles also told Commissioner Hefkey that they had arranged for a Toronto Police Services escort for the equipment from Toronto to Elliot Lake.⁵⁵¹

388. Commissioner Hefkey testified that during the call with S/Insp. Neadles at 01:36 he told him that he had "authorization to actualize".⁵⁵² Commissioner Hefkey explained that S/Insp. Neadles did not need his approval for the heavy equipment to be ordered.⁵⁵³

389. In his testimony S/Insp. Neadles stated that it was his opinion that for any equipment that was a substantial expenditure, which he described as \$10,000 or more, he would need approval through the OFM. He stated that he did not think that this was a written rule or policy, but it was his opinion that he would need approval for this kind of expenditure.⁵⁵⁴ Both Commissioner Hefkey and Ms. Chambers of the OFM testified that there is no such expenditure limit on HUSAR and while they would like to be informed if a large expenditure was being contemplated during the operation, this was not necessary and HUSAR could obtain the equipment that it determines that it needs to conduct the tactical operations.⁵⁵⁵

390. Moreover, S/Insp. Neadles acknowledged in his testimony that throughout the operation he knew that he could contact Ms. Chambers to obtain any equipment or approvals that he

⁵⁵⁰ Exhibit 7812, p. 008

⁵⁵¹ Exhibit 7812, p. 008; D. Hefkey, October 8, 2013, p. 28643, l. 17 – p. 28645, l. 19

⁵⁵² Exhibit 7812, p. 008

⁵⁵³ D. Hefkey, October 8, 2013, p. 28645, l. 20 – p. 28646, l. 10; p. 28648, l. 13 – p. 28649, l. 19

⁵⁵⁴ B. Neadles, September 12, 2013, p. 25568, l. 16 – p. 25571, l. 19

⁵⁵⁵ D. Hefkey, October 8, 2013, p. 28645, l. 20 – p. 28646, l. 10; C. Chambers, September 18, 2013, p. 26257, l. 1 – p. 26258, l. 18

thought he needed. He also testified that Commissioner Hefkey offered him any assistance he needed in obtaining additional resources and in fact, “[h]e was great assistance”. However, after he decided to stop the rescue operation and throughout the day on June 25 and into June 26, he did not contact Ms. Chambers to ask either of them for additional resources, equipment, assistance or approvals.⁵⁵⁶

The MOL Order Issued in Elliot Lake

391. The only order issued by MOL personnel in Elliot Lake was the order of Don Jones, dated June 25, 2012, which was served on Rhonda Bear, a representative of the owner of the Algo Centre Mall on June 26. Mr. Jones had some difficulty in determining who could properly be served with the order as the mall owner was not present in Elliot Lake.⁵⁵⁷

392. The order had three parts:

- 1) The first part required the owner to obtain a report from a professional engineer that the building was capable of supporting any loads that were applied to it, pursuant to section 54(1)(m) of the OHSA. In other words, the owner was required to obtain a report that the structure was safe for people to enter;
- 2) The second part required the owner to prevent access to the structure due to the structural damage pursuant to section 72(1)(b) Regulation 851 (Industrial Establishments). This part of the order specifically did not apply to the rescue and recovery operations and the work of the professional engineer referred to in the first part;
- 3) The final part required that the area be cleared of workers and that workers be prevented from accessing the site pursuant to section 57(6)(c) of the OHSA; and therefore was essentially a stop work order. This provision specifically did not apply to the rescue and recovery operations and the work of the professional engineer referred to in the first part.⁵⁵⁸

⁵⁵⁶ B. Neadles, September 12, 2013, p. 25804, l. 1-13; p. 25806, l. 4 – p. 25808, l. 2; p. 25525, l. 18 – p. 25526, l. 3

⁵⁵⁷ D. Jones, September 26, 2013, p. 27433, l. 16 – p. 27434, l. 16; Exhibit 5052

⁵⁵⁸ Exhibit 5052

393. The intent of the order was to allow the rescue to continue and to allow an engineer to go in to the building and do assessments as the dynamics of the structure changed, while preventing other workers and the public from exposure to hazards.⁵⁵⁹

394. Mr. Jones started to draft the order in the evening of June 25 after the rescue/recovery efforts had been re-started. Mr. Jones testified that stoppage of the rescue at 15:00 did not provide the motivation to write this order as the order would have to be written regardless as people from the general public wanted to enter the mall to retrieve personal items and to get cars off the roof.⁵⁶⁰

395. Mr. Jones obtained legal advice with respect to the order and engineering advice from Mr. Jeffreys. The MOL Legal Services Branch signed off on the order at about midnight on June 25.⁵⁶¹

396. Mr. Jones felt no obligation to publish the order and anyone who had concerns about it could have spoken with him.⁵⁶² There is no statutory obligation under OHSA to “publish” an order.

June 26 at 01:45 to June 27 at 17:00 – Operation reaches a Conclusion

Priestly Controlled Demolition

397. Sgt. Glavin gave the “go ahead” to Mr. Priestly at 01:46 on June 26 as soon as he received authorization to do so from S/Insp. Neadles. At that point, Sgt. Glavin and the three other Toronto Police Service Sgts. who were in Elliot Lake with HUSAR left Elliot Lake and went back to Toronto and escorted the Priestly equipment and the crew to Elliot Lake. They arrived back in Elliot Lake with the Priestly equipment on June 26 at approximately 22:00.⁵⁶³

⁵⁵⁹ D. Jones, September 26, 2013, p. 27417, l. 3-12; p. 27416, l. 5 – p. 27417, l. 25

⁵⁶⁰ D. Jones, September 26, 2013, p. 27420, l. 8 – p. 27423, l. 12; p. 27433, l. 9-12; p. 27416, l. 5 – p. 27417, l. 25

⁵⁶¹ D. Jones, September 26, 2013, p. 27432, l. 20 – p. 27433, l. 4

⁵⁶² D. Jones, September 26, 2013, p. 27426, l. 11 – p. 27427, l. 21

⁵⁶³ P. Glavin, October 1, 2013, p. 21173, l. 8 – p. 27740, l. 18; p. 27742, l. 9 – p. 27743, l. 15; p. 27745, l. 6-9

398. While the plan was being developed to bring in the Priestly equipment, other members of HUSAR began to ready the site for the controlled demolition operation. This included moving some of the HUSAR tents including the command tent, building shores under the walkway, and building a gravel road and pad for the equipment to be able to access the site.⁵⁶⁴

399. Mr. Priestly travelled to Elliot Lake in advance of the arrival of the equipment. He arrived in Elliot Lake on June 26 at approximately 16:00. He testified that while he was on the site and throughout the controlled demolition he was taking direction from HUSAR. When he arrived, he met with Capt. Comella, S/Insp. Neadles and MOL Engineer Mr. Jeffreys. Mr. Priestly did a walk-through of the building with Capt. Comella and Mr. Jeffreys and developed a plan. Mr. Priestly described the written plan that was developed while they were waiting for the equipment to arrive.⁵⁶⁵ The plan was written jointly and signed by S/Insp. Neadles, Mr. Priestly, and Mr. Jeffreys.⁵⁶⁶ Mr. Priestly testified that Mr. Jeffreys was the only engineer on the site at the time and his engineering advice and contribution to the plan was necessary.⁵⁶⁷

400. Mr. Jeffreys testified that after Priestly Demolition arrived on the site, Capt. Comella asked Mr. Jeffreys for engineering advice with respect to putting together a plan for Priestly. Mr. Priestly wanted something documented before he commenced work. As a result, Mr. Jeffreys sat down with Mr. Priestly, Capt. Comella, Mr. Sanders, and Mr. Jewitt to discuss safety concerns, engineering concerns and how Mr. Priestly would approach the job. Mr. Jeffreys agreed with the plan that was developed, but did not officially approve it. The plan could have proceeded without his agreement. Mr. Jeffreys had not been consulted with respect to any operational plans during his deployment in Elliot Lake prior to the Priestly Plan.⁵⁶⁸

401. The Priestly Plan outlined a Plan "A" that consisted of reaching over the mall in to the collapse zone and positioning the end of the machine just over the slab on the escalator. They would then push the escalator and beam back and out of the way of the rubble pile thereby

⁵⁶⁴ T. Comella, September 5, 2013, p. 24293, l. 10-15p. 24354, l. 5-17; p. 24358, l. 4 – p. 24359, l. 24

⁵⁶⁵ Exhibit 6622, Notes of Ryan Priestly; R. Priestly, October 2, 2013, p. 27839, l. 6 – p. 27840, l. 1; p. 27841, l. 9-19; p. 27847, l. 21 – p. 27848, l. 24; p. 27852, l. 1 – p. 27863, l. 15

⁵⁶⁶ Exhibit 7296, Rescue Recovery Procedure Plan; B. Neadles, September 12, 2013, p. 25631, l. 24 – p. 25632, l. 10

⁵⁶⁷ R. Priestly, October 2, 2013, p. 24850, l. 25 – p. 27851, l. 25

⁵⁶⁸ Exhibit 7296; R. Jeffreys, October 3, 2013, p. 28185, l. 14 – p. 28187, l. 23; p. 28187, l. 25 – p. 28190, l. 25; p. 28199, l. 24 – p. 28200, l. 8

allowing the rescuers to go into the pile. Plan “B” consisted of taking the building down, a little bit at a time, from the parking area and then removing the unsafe hazards. The team went forward with Plan “B” because the Komatsu PC 850 could not reach the beam such that Plan “A” could not be executed.⁵⁶⁹ Mr. Priestly described how the building was demolished surgically to remove the escalator and the beam, as well as overhanging concrete that was presenting hazards so that the rescue workers could walk straight into the pile. He testified that the demolition was done delicately and gently such that during the operation no other debris fell into the pile in the vicinity of the victims.⁵⁷⁰

Commissioner Hefkey Arrives in Elliot Lake

402. Commissioner Hefkey went to Elliot Lake on June 26. Richard (Rick) Bartolucci, who at the time was the Minister of Northern Development and Mines, also went to Elliot Lake at the same time.⁵⁷¹

403. When he arrived in Elliot Lake on June 26 at 10:20, Commissioner Hefkey and Minister Bartolucci first met with the Mayor and the CAO. Commissioner Hefkey said he told them that it was his plan to connect with the various provincial entities on the ground (OFM and OPP) and also the provincial resources (HUSAR and UCRT). He also explained to the Mayor and the CAO that it was his intention to speak with the families to keep them informed of the operations and to ensure that they received information before it was released publicly.⁵⁷²

404. Commissioner Hefkey first met with the families of the victims on the June 26 at 14:17. He made two commitments to them in this meeting: (1) as operational plans were being developed and there was an announcement that would be made, he would let them know prior to an announcement to the media; (2) the Province was working on finding a resolution to the situation created by the hazard from the overstressed escalator so that the operation could be

⁵⁶⁹ Exhibit 7296; R. Priestly, October 2, 2013, p. 27857, l. 19 – p. 27858, l. 13

⁵⁷⁰ R. Priestly, October 2, 2013, p. 27891, l. 11 – p. 27892, p. 18; p. 27907, l. 16 – p. 27908, l. 22; p. 27929, l. 14-24;

⁵⁷¹ Exhibit 7812, p. 008-010

⁵⁷² Exhibit 7812, p. 010-011; D. Hefkey, October 8, 2013, p. 28652, l. 1-22

brought to a conclusion. He told them that the rescue teams did not have everything that they needed at that point but assured them that the equipment was en route.⁵⁷³

405. Commissioner Hefkey was accompanied to Elliot Lake by Patrice Cloutier. Mr. Cloutier is a Team Lead with the Ministry of Community Safety and Correctional Services (MCSCS) Strategic Communications Unit. Commissioner Hefkey explained in his testimony that he and Mr. Patrice offered their assistance to the Mayor and the CAO in handling the media relations including social media. They reached an agreement with the Mayor and the CAO that Commissioner Hefkey would speak to the media only about the provincial role in responding to the emergency. The Mayor and the CCG would continue to handle the media relations regarding the municipality's emergency response.⁵⁷⁴

Bodies Recovered / Coroner Pronounces both victims Deceased

406. Following the commencement of operations by Priestly Demolition UCRT members assisted with the rigging and removal of debris which was covering the remains of Ms. Aylwin.⁵⁷⁵ UCRT personnel assisted with the removal of the remains of both victims from the collapse site.⁵⁷⁶

K9 Searches of Pile during Priestly Operation

407. On June 27 at 03:00 during the Priestly operation Cst. Bailey with UCRT was requested to do a cadaver search. Cst. Bailey brought Dare back onto the pile. Dare ran up to a small void in the rubble pile and indicated a deceased victim; this was the same area in which Dare had given a previous indication of a live find.⁵⁷⁷

⁵⁷³ D. Hefkey, October 8, 2013, p. 28653, l. 15 – p. 28654, l. 5; p. 28656, l. 18 – p. 28657, l.

⁵⁷⁴ Exhibit 7812, p. 011-012; D. Hefkey, October 8, 2013, p. 28652, l. 1-22; p. 28655, l. 11 – p. 28656, l. 15

⁵⁷⁵ P. Waddick, August 23, 2013, p. 22042, l. 1-19

⁵⁷⁶ J. Gillespie, September 3, 2013, p.23783, l. 3-18

⁵⁷⁷ D. Bailey, August 27, 2013, p. 22798, l. 2-6

408. Sgt. Fowlds with HUSAR deployed Ranger to search the pile sometime during the day on June 27 in the area where he had initially indicated live scent. Ranger showed no interest in any of the pile and did not give any indications of live scent.⁵⁷⁸

409. Sgt. Fowlds testified that the area in which Ranger had initially indicated live scent would have been about a foot to a foot and half from the location where Ms. Aylwin's remains were recovered.⁵⁷⁹

Recovery

410. The first victim was located in the pile mid-morning on June 27. The Coroner, Dr. Bradford, had arrived on the scene earlier that morning at 06:50. Dr. Bradford first approached the pile at 08:40 with OPP Ident. Officer Cst. Burns to view the body of the first victim, which was later identified as Ms. Perizzolo. When he first approached the pile, there was still considerable debris surrounding the body and there was no way that it could be recovered at that time. He exited the pile and more debris was removed.⁵⁸⁰

411. At 09:14, Dr. Bradford and Cst. Burns returned to the pile. Dr. Bradford testified that at this time he observed a substantial amount of debris and concrete close to the body. Dr. Bradford made a pronouncement of death between his first visit to the pile and the removal of the body. Once the body was removed, Dr. Bradford was satisfied that the body was Ms. Perizzolo. He explained that he had been provided with a photograph from the family and could make an initial identification of the body.⁵⁸¹

412. At 12:55, Dr. Bradford and Cst. Burns were asked to return to the pile. Dr. Bradford observed that the body of the second victim, later identified as Ms. Aylwin, was surrounded by considerable debris. Dr. Bradford explained in his testimony that when he got to the pile he

⁵⁷⁸ S. Fowlds, September 19, 2013, p. 26359, l. 3-5 and 19-20

⁵⁷⁹ S. Fowlds, September 19, 2013, p. 26361, l. 6-10

⁵⁸⁰ Dr. Bradford, August 29, 2013, p. 23169, l. 17 – p. 23170, l. 7 and 15-23

⁵⁸¹ Dr. Bradford, August 29, 2013, p. 23170, l. 24 – p. 23171, l. 16; p. 23178, l. 2-12

observed that the body was not accessible. Dr. Bradford stayed on the pile when the slabs were removed from Ms. Aylwin.⁵⁸²

413. Dr. Bradford testified that once more debris was lifted from the victim, he observed that Ms. Aylwin was lying on her left side and her hands were curled just below her mouth. At this time he looked for signs of struggle to determine if she had tried to crawl her way out and he saw no signs of this. Once the body was removed from the pile he made a pronouncement of death. As with the body of Ms. Perizzolo, he explained that he was satisfied that the body was Ms. Aylwin based on a photograph that he had been provided by Ms. Aylwin's parents.⁵⁸³

PART III – POST-COLLAPSE: LESSONS LEARNED AND RECOMMENDATIONS

Incident Command and Incident Management System

414. The Incident Management System, as described above, is intended to provide the format and basis for an effective response to emergencies, particularly when multiple agencies are responding to an event.⁵⁸⁴ It provides overall assistance in identifying and developing the strategies and objectives in responding to the incident, in planning, and in ensuring the integrity of the operations and maximizing the use of resources.

415. In reviewing the response of various agencies to the Algo Centre Mall collapse, the MCSCS has identified opportunities for improvement in the implementation of IMS in incidents. It has acknowledged that the roles and responsibilities of various responding agencies were not fully understood by those persons managing the emergency. It has also acknowledged that IMS was not being applied consistently.⁵⁸⁵

416. IMS was developed by MCSCS in partnership with several associations with important mandates in emergency response, including the Ontario Association of Fire Chiefs, the Ontario

⁵⁸² Dr. Bradford, August 29, 2013, p. 23181, l. 5-11; 23182, l. 11-14; p. 23188, l. 3-13; p. 23189, l. 7-10

⁵⁸³ Dr. Bradford, August 29, 2013, p. 23189, l. 12-22; p. 23193, l. 21 – p. 23194, l. 3; p. 23196, l. 4-9

⁵⁸⁴ D. Hefkey, October 8, 2013, p. 28657, l. 7-14

⁵⁸⁵ Exhibit 9912, Elliot Lake Consolidated After-Action Report – FINAL, p. 8

Association of Chiefs of Police, the Association of Municipal Emergency Medical Services of Ontario, the Association of Municipalities of Ontario, among others. It was developed out of the experiences of several incidents in Ontario in the past years that drew together multiple agencies that were required to work together to respond to emergency situations.

417. The agencies that respond to emergencies are not required to use IMS in the manner in which they respond to emergencies. It is submitted, however, that each responding agency has developed its own best practices in determining what is an appropriate command structure, and what are the most appropriate ways of planning, logistics, and administration in their response activities. IMS is meant to be a way to make it simpler for those agencies to understand and fit into the organizations of other responding agencies when an incident requires them to work together.

418. While IMS is not mandatory, the Elliot Lake incident has encouraged MCSCS to go back to the same group who contributed to the development of the doctrine and revisit it. One of the goals of MCSCS will be to ask that group of agencies and contributors to identify those aspects of the doctrine that work, and to revisit those aspects that require further understanding and development. The goal of MCSCS is to build a culture of compliance among participating agencies so that the benefits of IMS are understood and agencies learn to apply it in their operations.⁵⁸⁶

Deployment of HUSAR

419. MCSCS has also committed to revise the deployment protocol for HUSAR, along with any corresponding memorandum of understanding, to ensure that when provincial urban search and rescue teams are deployed, there is an appropriate local incident command structure present into which the provincial resources can connect.⁵⁸⁷

Communications with the Public

⁵⁸⁶ D. Hefkey, October 8, 2013, p. 28763, l. 13 – p. 28764, l. 5

⁵⁸⁷ Exhibit 9912, p. 10

420. In respect of communications, MCSCS has also acknowledged areas in which the communications support offered by the Province can be bolstered to assist the municipalities in responding to emergency incidents. In Elliot Lake, the Commissioner of Community Safety filled an important role when he went to the community in the area of communications. First, Commissioner Hefkey offered his support and that of a provincial communications officer to the municipality to help manage the emergency information and the communications. It was eventually agreed with the Mayor and the CAO that Commissioner Hefkey would communicate to the media on matters of a provincial interest.⁵⁸⁸

421. In addition, as outlined above, Commissioner Hefkey made two commitments to the families waiting for news of developments in the rescue operations: that he would keep them informed of the actions of the first responders, and he would share any information with them first before it was communicated publicly.⁵⁸⁹

422. In this way, Commissioner Hefkey's role evolved into one of being a provincial spokesperson, to bear witness to the seriousness of the incident that was affecting the municipality, and to communicate on the activities of the Province in responding to that incident. This role of a provincial spokesperson, informed by the incident in Elliot Lake and other recent emergency incidents in the Province, is being developed into a draft protocol setting out the role for a senior provincial representative attending emergency incidents in the future.⁵⁹⁰

423. In addition, MCSCS has committed to identifying a provincial communications lead and protocol for critical incidents.⁵⁹¹ This does not mean, however, that MCSCS intends to take over municipal communications in an emergency. MCSCS acknowledges that the municipality must take the communications lead in an emergency, and MCSCS will respect the direction of the municipality in terms of what information can be shared publicly. It is ultimately up to the municipality to decide how to manage the incident that affects their own community.⁵⁹²

⁵⁸⁸ D. Hefkey, October 8, 2013, p. 28655, l. 11 – p. 28656, l. 5

⁵⁸⁹ D. Hefkey, October 8, 2013, p. 28656, l. 18 – p. 28657, l. 4

⁵⁹⁰ Exhibit 9538, Role of Senior Government Representatives at the Emergency Site

⁵⁹¹ Exhibit 9912, p. 14

⁵⁹² D. Hefkey, October 8, 2013, p. 28862, l. 4-13

Other Areas for Recommendations

424. MCSCS, at the direction of the Deputy Minister, established an oversight committee to consolidate all lessons learned from areas of the Ministry that were involved in providing resources to support the municipal response to the collapse of the Algo Centre Mall. The committee prepared a Consolidated After-Action Report to learn from the response undertaken by the Ministry. Knowing that an incident could happen at any time, the preparation of such a report is consistent with Ontario's emergency response strategy, to ensure that lessons learned from previous incidents can be applied in the future.⁵⁹³

425. As part of this After-Action Report, in addition to those matters set out above, a number of areas were identified in which MCSCS has undertaken to examine and consider options to:

- (a) Evaluate the continued use and adoption of IMS in Ontario across all aspects of emergency response, in consultation with key partners and stakeholders;
- (b) Clarify definitions for emergency management related terms such as 'emergency response', 'emergency management', 'IMS', 'unified command', 'unity of command', and 'incident command';
- (c) Encourage the establishment of an appropriate incident command structure at the initial stages of a municipal response to emergency incidents, and in particular when provincial resources and assets are deployed;
- (d) Enhance Ontario's ability to support the municipal response to building and structural collapse events, which may include, for example, the creation of municipal, regional or provincial 'incident support teams';
- (e) Revise the Memorandum of Understanding with the City of Toronto and any related HUSAR deployment protocol to clarify areas such as incident command, joint training, and communications; and
- (f) Engage with provincial counterparts in the MOL to consider development of a protocol setting out the roles of MOL inspectors and engineers and the possible provision of

⁵⁹³ Exhibit 9912, p. 2, 16; D. Hefkey, October 8, 2013, p. 28858, l. 20 – p. 28859, l. 7

advice and assistance in support of urban search and rescue resources at the scene of an incident.⁵⁹⁴

426. These are all areas for discussion at the policy roundtables for Part 2 of the Inquiry. Ontario acknowledges the important mandate of the Commission in reviewing all aspects of the emergency response to the collapse of the Algo Centre Mall, and in reviewing relevant law and policies of provincial and municipal governments and other entities and agencies at the policy roundtables. Ontario welcomes the opportunity to participate in the policy roundtables and is committed to engaging in a discussion of proposed recommendations.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8TH day of November, 2013



**Ken Hogg, Darrell Kloeze, Norm Feaver,
Heather Mackay, Kristin Smith and Judith Parker**

⁵⁹⁴ Exhibit 9912, p. 18-23