

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 29

April 19, 2013



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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is Day 29 in the Inquiry proceedings held
before the Honourable Justice P.R. Bélanger,
Commissioner, taken at the White Mountain Academy
of the Arts, 99 Spine Road, Elliot Lake, Ontario,
on the 19th day of April, 2013, commencing at 9:00
a.m.

REPORTED BY: Deana Santedicola
CSR, CRR, RPR

1 A P P E A R A N C E S:
2 Mark Wallace, Esq.,
3 Duncan Ault, Esq., Commission Counsel
4
5 Douglas Elliott, Esq., ELMAC/SAGE
6
7 Alexandra Carr, Ms., ELMAC
8
9 Robert MacRae, Esq., Robert Wood
10
11 Paul Cassan, Esq., City of Elliot Lake
12
13 Douglas Kearns, Esq., Retirement Living and
14 NorDev
15
16 John Picone, Esq. Halsall Associates
17 Limited
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1 -- Upon commencing at 9:01 a.m.

2

3 THE COMMISSIONER: Good morning.

4 MR. ELLIOTT: Good morning,

5 Mr. Commissioner.

6 THE COMMISSIONER: Good morning, ma'am.

7 THE WITNESS: Good morning.

8 THE COMMISSIONER: Mr. Elliott?

9 MR. ELLIOTT: Yes, I'm very sorry to
10 inconvenience the witness, Mr. Commissioner.

11 I have sought instructions from my
12 clients this morning, and they have instructed me
13 to suspend participation in the Inquiry until such
14 time as we --

15 THE COMMISSIONER: I hope it is nothing
16 I have done.

17 MR. ELLIOTT: No, it is Queen's Park,
18 Mr. Commissioner. Queen's Park, I brought to their
19 attention the fact that we have not been paid.
20 They are aware of it. At the Cabinet level they
21 are aware of it.

22 We still have not been paid. I
23 understand from my friend, Mr. Cassan, that he has
24 not been paid. And I understand that some of
25 the -- from your comments yesterday, I understand

1 that some of the people associated with the
2 Commission have not been paid or have been having
3 difficulty getting paid.

4 I think this is extremely disrespectful
5 of the Commission. I think it is disrespectful of
6 the people of Elliot Lake. The people of Elliot
7 Lake have learned through this Inquiry that there
8 have been people who have put money ahead of the
9 interests of the people of Elliot Lake, and
10 regrettably, it appears that the Government of
11 Ontario is doing that now. They don't even have
12 the courtesy to have someone here today from the
13 Attorney General of Ontario. I have tried to talk
14 to them directly, Mr. Commissioner, to no avail.

15 I have spoken to my clients this
16 morning. They have advised me that I should
17 suspend my involvement until such time as I am
18 paid, my friend Mr. Cassan is paid, and that I am
19 satisfied that the people associated with the
20 Commission are being paid on a regular basis.

21 In my respectful submission,
22 Mr. Commissioner, this Commission cannot continue
23 without our participation because we represent the
24 victims of this tragedy. However, that is a
25 decision for you to make, Mr. Commissioner, but my

1 instructions are to withdraw at this time.

2 Thank you.

3 THE COMMISSIONER: Thank you. I
4 hesitate to make any comments in reply except to
5 ask Mr. Elliott to put in a good word for me in the
6 process, but I have been working for --

7 MR. ELLIOTT: Mr. Commissioner, I
8 simply say that I know that --

9 THE COMMISSIONER: I don't wish to make
10 fun of the situation.

11 MR. ELLIOTT: No, but you are not able
12 to do this, Mr. Commissioner, but I am, and that is
13 why I am doing it.

14 THE COMMISSIONER: Thank you.

15 Another way of looking at it is that I
16 have been working for the government for 35 years,
17 and eventually payment is made. I look at it as
18 money in the bank and my contribution as extending
19 a loan to the Province of Ontario until such time
20 as I'm paid.

21 But as I say, I understand that the
22 situation of some individuals may be made very
23 difficult at least in terms of cash flow, and I can
24 only urge the government to be attentive to its
25 obligations to make payment in a timely way.

1 Thank you.

2 MR. ELLIOTT: Thank you.

3 THE COMMISSIONER: That being said,
4 Mr. Wallace, are you ready to proceed this morning?

5 MR. WALLACE: Yes, I am,
6 Mr. Commissioner. I understood Mr. MacRae wanted
7 to address you first, though, on a different matter
8 altogether.

9 THE COMMISSIONER: Okay, Mr. MacRae.

10 MR. MacRAE: Good morning,
11 Mr. Commissioner. I just wanted to indicate that I
12 am from Elliot Lake and Mrs. Guertin is a relative
13 of mine. She is my sister-in-law. My client,
14 Mr. Wood, has known that since I became retained
15 and that I wouldn't be asking any questions of
16 Ms. Guertin.

17 In the event that something does
18 change, her evidence is obviously very important to
19 the Commission, and I will arrange for someone else
20 to ask any questions, but I will be attending to
21 listen to the evidence. I just wanted to make that
22 clear very publicly that I believe that I have a
23 conflict from that perspective.

24 THE COMMISSIONER: Thank you,
25 Mr. MacRae. It is quite proper that you should

1 make that known to the Commission, and if there is
2 anything arising from that, let me know and we'll
3 see if we can accommodate.

4 Thank you.

5 Mr. Registrar, thank you.

6 RHONA GUERTIN: SWORN.

7 EXAMINATION IN-CHIEF BY MR. WALLACE:

8 Q. Thank you, Commissioner.

9 I just want to remark that since my
10 last attendance here, there has been some more
11 equipment put on the podium, so I don't have as
12 much space and so I'll try not to drop things and
13 maybe figure something out at the break.

14 Good morning, Ms. Guertin.

15 A. Good morning.

16 Q. I gather I'm not pronouncing your
17 name right. It is Guertin?

18 A. Guertin is fine.

19 Q. Guertin, thank you. I understand,
20 Madam, that you are currently the Manager of
21 Finance for the Elliot Lake Retirement Living
22 company?

23 A. Finance and Business Development,
24 yes.

25 Q. Thank you. And I understand that

1 your background is, firstly, educationally that you
2 have an Honours Bachelor of Commerce degree?

3 A. Correct.

4 Q. And you also have a Masters of
5 Business Administration?

6 A. I do.

7 Q. And after obtaining those degrees,
8 you worked as a bookkeeper for a property
9 management company?

10 A. I did.

11 Q. And you were also at the same time
12 an instructor at Sault College, have I got that
13 right?

14 A. I was a bookkeeper for two years.
15 Then I moved over to Sault College as an instructor
16 for two years and then a consultant for two years.

17 Q. And you also, following that,
18 worked for a mining manufacturer for approximately
19 four years?

20 A. Yes.

21 Q. And the company moved to Sudbury.
22 I assume that the mining manufacturer was in the
23 Sault?

24 A. No, my employment with Sault
25 College was actually in Elliot Lake.

1 Q. Oh, okay.

2 A. There was a campus here, and the
3 mining manufacturer was here in Elliot Lake and
4 they moved their operations to Sudbury.

5 Q. Okay, so were you raised in Elliot
6 Lake?

7 A. I was raised in Elliot Lake, yes.

8 Q. Okay. And I understand that you
9 worked in New Brunswick until 1997, in fact, March
10 of 1997?

11 A. Well, no, that is not really --
12 that is not correct. I did have a small consulting
13 contract actually with Elliot Lake Retirement
14 Living to do a four-month stint in Miramichi, New
15 Brunswick.

16 Q. And when was that?

17 A. I started that in the fall of '96,
18 and finished it in the spring of '97.

19 Q. Okay. And that was a contract
20 with Elliot Lake Retirement Living?

21 A. Yes, I had my own business
22 consulting company, and that was one of the
23 contracts that I had.

24 Q. My understanding was that you had
25 started working for Elliot Lake Retirement Living

1 in December of 1997?

2 A. Yes, that is when I became
3 employed by Retirement Living directly, yes.

4 Q. But you had had a previous
5 contractual relationship with --

6 A. Yeah, a short-term contract with
7 them, yes.

8 Q. And when was the first time that
9 you had an employment contract with Elliot Lake
10 Retirement Living?

11 A. The full-time?

12 Q. Let's deal with part-time first.

13 A. So it was just that four-month
14 project in Miramichi which was in '96, from late
15 '96 to early --

16 Q. To '97?

17 A. -- '97, yes.

18 Q. And between March of '97 and
19 December of 1997, did you do any work for Elliot
20 Lake Retirement Living?

21 A. I had a number of contracts, and I
22 think one of the projects I was working on was a
23 partnership between Retirement Living and two other
24 organizations, so they were part of the group that
25 paid me but I didn't work directly for them during

1 that time.

2 Q. So when you started to work with
3 Elliot Lake Retirement Living in '97, you knew a
4 fair bit about the company at that point in time?

5 A. I understood the basic business
6 model, yes.

7 Q. Okay. And you were hired in
8 December of 1997 as the Manager of Finance and
9 Business?

10 A. Yes.

11 Q. And that is the position you
12 currently hold?

13 A. Yes.

14 Q. And you report to Mr. Kennealy?

15 A. I do.

16 Q. And he is the General Manager?

17 A. He is.

18 Q. And when you started in December
19 of '97, the other managers that I am aware of were
20 Mr. Quinn as the Property Manager?

21 A. Yes.

22 Q. And the Marketing Manager was a
23 woman by the name of Marielle Brown?

24 A. Yes.

25 Q. And I understand that later on the

1 company hired a Manager of Customer Service by the
2 name of Lisa Speck?

3 A. Yes.

4 Q. And when you were hired in
5 December of 1997, what was your role in the
6 company?

7 A. My role has always been Manager of
8 Finance and Business Development.

9 Q. No, I'm sorry, what I meant is
10 what was your function?

11 A. Oh, my function?

12 Q. Yes.

13 A. Sorry. Two parts to it. The
14 first is I managed the Finance Department, so all
15 of the accounting staff, and the second part, it is
16 really hard to describe but I guess you could call
17 me the project person. Whenever there was a
18 business development idea, I did all of the
19 background research, the feasibility studies, the
20 preliminary plans. Basically the intent was to
21 take anything to where it could possibly transition
22 into an operation.

23 Q. So you would be the person when
24 the company was deciding on -- had an idea of a
25 direction that they wanted to take, you would look

1 at it from the financial point of view; is that
2 correct?

3 A. Yes.

4 Q. And you would do the financial
5 analysis and bring it back to Mr. Kennealy and who
6 ultimately would bring it to the Board and then
7 decisions would be made based upon the information
8 that you had gathered?

9 A. That is typically what would
10 happen, yes.

11 Q. And what was your understanding
12 when you signed on in December of '97 of the
13 business purpose of Elliot Lake Retirement Living?

14 A. To provide affordable housing to
15 retirees and, in doing so, to wherever possible
16 enhance the economy of Elliot Lake.

17 Q. And you have told us that you were
18 raised here, so you would have been witness, would
19 you not, to the economic downturns in the '80s and
20 '90s?

21 A. I was.

22 Q. And were you aware of the -- or
23 did you follow the genesis of the company itself,
24 Elliot Lake Retirement Living?

25 A. Not very closely. In the

1 beginning, I was working for EL-Equip at the time.

2 Q. I'm sorry?

3 A. I was working -- well, sorry, the
4 mining manufacturer, I was working for them during
5 a lot of the early years of Retirement Living. So
6 it was a mining manufacturing company, completely
7 different from the retirement business, so I really
8 wasn't paying a lot of attention to what was
9 happening with the corporation.

10 Q. I was just thinking more or less
11 as being a resident of the City, not necessarily,
12 you know, being an employee or following it
13 professionally, but just from what you understood.

14 A. As a resident, I knew that the
15 company was in operation.

16 Q. And as the company developed -- it
17 started in 1991; correct?

18 A. Yes.

19 Q. And as it developed, how did you
20 see the relationship between Elliot Lake Retirement
21 Living and the City of Elliot Lake?

22 A. I have to be honest, I don't think
23 I gave it any consideration until close to probably
24 '96 when I started working a little bit more
25 closely with the organization.

1 Q. Okay. What about in '96, when you
2 started to work closely with the organization, what
3 did you see and what was your impressions?

4 A. So when I started working with
5 them, it became apparent that Retirement Living and
6 the City of Elliot Lake quite often had common
7 goals and that each potentially needed the other to
8 be successful.

9 Q. And they were -- would it be fair
10 to say that they were dependent on each other for
11 their success?

12 A. I don't know if I would use that
13 word, but there was certainly some synergies
14 between the two of them.

15 Q. And a spirit of cooperation
16 towards joint enterprises?

17 A. That is my understanding, yes.
18 That is what I felt.

19 Q. Now, that is what you had felt
20 prior to starting, but let's talk about when you
21 actually started, what did you see in terms of the
22 relationship between the company and the City of
23 Elliot Lake?

24 A. Often times we worked closely
25 together.

1 Q. Yes. When -- you started
2 employment with Elliot Lake Retirement Living in
3 December of 1997. When were you interviewed for
4 the job, do you know?

5 A. A month or two before that. I
6 can't remember exactly.

7 Q. At the time -- we'll get to this a
8 little later, but the fact of the matter is that
9 there had been some contact between Mr. Kennealy of
10 Elliot Lake Retirement Living and Mr. Leistner from
11 Algoma Central Properties earlier in 1997 and which
12 these contacts, as you know, ultimately led to the
13 purchase of the Algo Mall; correct?

14 A. Correct.

15 Q. And at the time that you were
16 hired -- sorry, not at the time that you were
17 hired, but at the time that you were interviewed
18 for the job, were you aware that this idea or there
19 was any sort of an idea or potential plan to move
20 forward on this? This would be in December of --
21 or sorry, it would be I guess November or late
22 October of '97.

23 A. I really wasn't aware of any
24 involvement in particular with the hotel, because
25 that is where it started, as far as my knowledge

1 goes until it was maybe at the very end of December
2 or early January that Mr. Kennealy talked to me
3 about it.

4 Q. So would it be fair to say that
5 your first knowledge of the idea that ultimately
6 led to the purchase of the Algo Mall by Elliot Lake
7 Retirement Living was in late December, early
8 January?

9 A. No, no. My first knowledge of the
10 idea of Retirement Living becoming involved in the
11 hotel was at that time frame. The concept of us
12 actually looking at the whole property --

13 Q. Okay.

14 A. -- that probably happened in the
15 late summer, and it was the Board meeting in
16 September of 1998 when the Board actually directed
17 Mr. Kennealy to look at the whole property. Up
18 until that time, I was -- it was the hotel that I
19 was looking at.

20 Q. Okay, so -- and feel free to
21 correct me if I have got this wrong.

22 A. Okay.

23 Q. Your knowledge of the potential
24 interest of Elliot Lake Retirement Living in the
25 hotel would have been in -- your first knowledge

1 would have been in late December, early January;
2 correct?

3 A. That is what I recall, yes.

4 Q. And your first knowledge of the
5 interest of Elliot Lake Retirement Living in
6 pursuing a potential purchase, potential purchase,
7 of the mall was not until September; have I got
8 that right?

9 A. It was September when the Board
10 directed Mr. Kennealy.

11 Q. Okay, well, I'll ask you when did
12 you have knowledge? Prior to the Board directing,
13 I presume you knew something?

14 A. Oh, yes, sorry. I think it was in
15 one of the meetings with Algoma Central, July I
16 think, that when I was down doing some work on the
17 retail study and also looking at the hotel at the
18 same time, and you know, we were really struggling
19 with the hotel numbers and trying to find something
20 that would work. Algoma Central shared their
21 overall mall numbers with us, and I remember going
22 back to the office after that and saying, you know,
23 the mall numbers really aren't that bad. And it
24 was shortly after that that the September Board
25 meeting had happened and the Board directed us to

1 look at the whole property in closer detail.

2 Q. Okay. Now, I just want to ask you
3 a couple of questions concerning your knowledge of
4 the issues of leaking at the Algo Mall, and as a
5 member of the community growing up here, what
6 comment can you make as far as what you knew about
7 the fact that they had a problem of leakage
8 practically from the day it was built? What can
9 you say?

10 A. As a resident in the community and
11 going to the mall, yeah, there would be occasions
12 that you would see that it had leaked. I didn't
13 really, you know, give it much more thought than
14 that, other than, you know, I lived here and I knew
15 it leaked. I didn't know when the leaks started
16 and I didn't know the extent of the leaks, but
17 yeah, just every once in awhile you would come in
18 and you would see evidence of a leak.

19 Q. And the evidence of leakage that
20 you would see, what exactly would that be?

21 A. You may see the occasional bucket
22 or stained ceiling tiles or a missing ceiling tile
23 in the common area.

24 Q. And I am not necessarily
25 suggesting that this -- that you made these

1 observations each and every time you came into the
2 mall, but it was something that you saw, was it
3 not, almost like every year that you -- sorry, I'm
4 cutting you off there.

5 A. No, you are not finished your
6 question, sorry.

7 Q. Were there periods of time when
8 you did not go into the mall, like for a year or
9 two?

10 A. When I was working for the mining
11 manufacturer, that company actually left Elliot
12 Lake a little bit before I left, so I did spend a
13 lot of time in Sudbury there. I don't think I went
14 a year without being in the property, though, but
15 there was long periods of time where I would not
16 have been in the mall.

17 Q. Okay. We know that the library
18 opened up as a tenant of the mall in 1989. Were
19 you a client of the library?

20 A. Back in those days I think we had
21 library cards, and I am sure I had one. I wasn't a
22 frequent user, though.

23 Q. Do you recall seeing any leaking
24 in the library?

25 A. Nothing that sticks in my mind,

1 no.

2 Q. But you certainly were cognizant
3 of the fact that there was a leaking problem in the
4 mall, from your own observations?

5 A. I knew the mall leaked.

6 Q. And what about just as a matter of
7 conversation or common knowledge within the
8 community, would it be fair to say that the leaking
9 was common -- that the leaking at the mall, rather,
10 was common knowledge?

11 A. It was never anything that became
12 part of any of my discussions with people. It
13 is -- yeah.

14 Q. Now, Elliot Lake Retirement Living
15 obviously has a Board of Directors?

16 A. Yes.

17 Q. And the composition of the Board
18 of Directors is made up of various representatives
19 of different organizations in the community?

20 A. Yes.

21 Q. And the City of Elliot Lake has
22 two seats on the Board?

23 A. Yes.

24 Q. And the tenants of Elliot Lake
25 Retirement Living have three?

1 A. I believe that is correct, yes.

2 Q. And there are also two
3 representatives on the Board from the community at
4 large?

5 A. Yes.

6 Q. And one from Rio Algom company?

7 A. Yes.

8 Q. And one from Denison Mines?

9 A. Yes.

10 Q. And another from the Elliot Lake
11 Chamber of Commerce?

12 A. Yes.

13 Q. And one from St. Joseph's
14 Hospital?

15 A. Yes.

16 Q. And one from Huron Lodge?

17 A. Yes.

18 Q. What is your understanding of the
19 purpose of having these people, or these
20 organizations, I guess, because the people change
21 from time to time, but the organizations on the
22 Board?

23 A. Actually, that was the structure
24 that was in place before I even started.

25 Q. Yes.

1 A. So I never really gave it much
2 thought other than those were who -- those were the
3 groups that were established when the Corporation
4 was created.

5 Q. Were you aware of the fact that
6 the people who were there were from these different
7 organizations?

8 A. Yes.

9 Q. And what did you think when you
10 became aware of the fact that they were from these
11 organizations? What did you think was the reason
12 that these organizations were there?

13 A. I never really gave it any
14 thought.

15 Q. Well, I'll ask you now. What do
16 you think? Why do you think they are there?

17 A. I don't know. You know, some of
18 them are obvious. You have got tenants. I'm
19 gathering it is -- I would assume it is -- there is
20 various different groups involved, and at the time
21 Elliot Lake Retirement Living was created, I would
22 assume that these groups were tasked with making
23 this Corporation a success, and you would bring in
24 the different parties that would have a stake in
25 that, you know, being the tenants, being the

1 community at large, the business community, the
2 medical facilities, the two companies that actually
3 ended up providing the housing units and then, of
4 course, the City of Elliot Lake.

5 Q. Would you or did you think or do
6 you think that the reason that the City was granted
7 seats on the Board was so that they could represent
8 the interests of the City as far as the activities
9 of Elliot Lake Retirement Living?

10 A. I would assume it was a sharing of
11 information. Like the City is there and they
12 understand what Retirement Living is up to, and I
13 am sure if the City felt that they needed to share
14 any information with respect to what the City was
15 doing, that they would do so.

16 Q. And when you say "the City", you
17 are referring to the City Hall, the Council and the
18 administrative structure of the City; correct?

19 A. Yes.

20 Q. So that your understanding or your
21 expectation would be that the representatives from
22 the City, in fact, they were either the Councillors
23 or the Mayor; correct?

24 A. I think throughout the years that
25 is typically who it has been, yes.

1 Q. Yes, that there would be a flow of
2 information between the City and Elliot Lake
3 Retirement Living, and the conduit would be the
4 representative on the -- or the representatives on
5 the Board?

6 A. I'm sorry, can you -- I'm not
7 really sure what your question is.

8 Q. Information would flow between the
9 Elliot Lake Retirement Living and the City through
10 the representatives that were on the Board?

11 A. I don't know if I ever interpreted
12 it as being a flow of information, but more an
13 opportunity for the organizations, all of the
14 organizations, not just the City, to represent what
15 is important to them and their interests. By
16 default, there is flow of information, but I don't
17 think it is a formal flow of information.

18 Q. The persons from the City on the
19 Board, your expectation is that they would be
20 bringing the City's perspective to whatever the
21 issue was that is being discussed?

22 A. I don't really have an expectation
23 of our directors. They are the directors. I would
24 assume they have expectations of us.

25 Q. What I am referring to is the

1 individual directors from the City who would be
2 participating in some sort of a debate, whatever
3 the topic is, would be putting forward the view of
4 the City for the benefit of the debate; correct?

5 A. I -- yeah, I think that is fair,
6 yeah, okay.

7 Q. And in the normal course of Board
8 meetings, as I have come to learn here, is that in
9 advance of a meeting, an agenda and written
10 materials are usually -- are in fact, not usually,
11 but are in fact circulated to the Board members so
12 that when they come, they will be briefed and know
13 what is going to be discussed and will have
14 informed themselves on that particular issue;
15 correct?

16 A. Yeah, before the meetings, they
17 are given a Board package and their agenda, yes.

18 Q. Because, I mean, every -- I mean,
19 all the people on the Board are busy people and
20 their time is valuable, and you don't want them
21 sitting around in a group having to read through
22 stuff that they could read the night before?

23 A. There is a -- they get their
24 package ahead of time. There are meetings where
25 they are given information at the meetings.

1 Q. Sure, but the purpose of providing
2 a package in advance is to allow the particular
3 Board member to inform themselves of what is going
4 to be discussed; correct?

5 A. Yes.

6 Q. And in the case of someone from
7 the City, perhaps canvassing amongst their
8 colleagues what do you think about this particular
9 issue from the City's point of view; correct?

10 A. Well, I don't know what the City
11 directors would do with their information.

12 Q. I know you don't know for a fact.

13 A. Okay.

14 Q. But would it not be a reasonable
15 assumption that that is in fact what they would do?

16 A. Again, I don't know what they
17 would do, I really don't.

18 Q. Well, if you consider the fact
19 that the reason that they are there on the Board in
20 the first place is to represent the City's
21 interests vis-a-vis Elliot Lake Retirement Living,
22 is it not a reasonable assumption that they would
23 inform themselves of the City's point of view on
24 any particular issue that is coming up for debate?

25 A. Again, I don't know what a City

1 representative would do with the information, and
2 you know, certainly as -- sorry, I just don't know
3 what they would do with it.

4 Q. And would --

5 A. And I can't -- I don't want to
6 assume what someone else would do with the
7 information.

8 Q. Would you at least agree that it
9 is a reasonable thing for them to do prior to
10 coming to the meeting?

11 MR. KEARNS: Mr. Commissioner, I don't
12 know how long this is going to go on. I mean, the
13 witness has given her answer. She has been
14 established so far as an employee of Retirement
15 Living who is now being asked questions as if she
16 is an expert on Board proceedings and how this
17 Corporation came to be and what the directors are
18 supposed to be doing. She doesn't -- it has not
19 been made clear to me or to you I don't think that
20 she has any expertise on that area, and she has
21 answered the question in exactly that way.

22 BY MR. WALLACE:

23 Q. I neglected to ask one question,
24 and I'll ask it right now.

25 Madam, you attended all the Board

1 meetings; correct?

2 A. I attended most of the Board
3 meetings, yes.

4 Q. And you attended by virtue of the
5 fact that you were the controller of the company?

6 A. Controller, but not director.

7 Q. Yes, but you were there at most of
8 the meetings; correct?

9 A. I was at most of the meetings.

10 Q. And you would, generally speaking,
11 be there from start to finish; correct?

12 A. Generally, unless there was a
13 closed session, of course.

14 Q. And often times you would play a
15 role in creating the documents that were circulated
16 in advance of the Board meetings?

17 A. Each manager would provide at
18 certain meetings, not all meetings, their reports
19 and any information that they presented, but I --
20 that is about what I would do.

21 Q. And you would be the person who
22 would be responsible for providing to the Board
23 members the financial information?

24 A. Yes.

25 Q. Correct?

1 A. Correct.

2 Q. And obviously, finances were an
3 integral part of this company; correct?

4 A. Yes.

5 Q. And it would be fair to say that
6 you provided information for more Board meetings
7 that took place than not?

8 A. Definitely, yes.

9 Q. Okay. So to ask you the questions
10 about the operation of the Board meeting, you saw
11 them in action; correct?

12 A. Yes.

13 Q. Yes, and you are knowledgeable
14 about how this Board, this Board -- and I am not
15 talking about Boards generally but this Board, how
16 this Board operated?

17 A. Yes.

18 Q. Okay, so I'll get back to my
19 question and I'll just ask it one more time and
20 that is it and then I'll move on. Is it not a
21 reasonable assumption that those persons on the
22 Board from the City would inform themselves of the
23 City's position prior to coming to the Board
24 meeting where an issue was being discussed that
25 concerned the City?

1 THE COMMISSIONER: This was the
2 question to which Mr. Kearns objected, and I think,
3 bearing in mind the central and important position
4 that this witness held for a significant period of
5 time in the operations of Elliot Lake Retirement
6 Living, makes the question appropriate on the
7 understanding that after this answer you will move
8 on, Mr. Wallace.

9 BY MR. WALLACE:

10 Q. Yes.

11 A. So again, I'm not sure what the
12 City representatives would do, but I can agree with
13 you that it is possible that they may have done
14 that.

15 Q. With your leave, I would like to
16 ask one more question. Were you ever in a meeting
17 where a Board member would say, I have discussed
18 the issue with Council and we think this?

19 A. Nothing that comes to mind.

20 Q. What did you understand, from
21 where you sat as the controller and as a person who
22 attended Board meetings, at the limitations, if
23 any, on Board members sharing information with
24 non-Board members about what happened at Council --
25 sorry, at the Board meetings?

1 A. The only thing I know, and even
2 then it is very limited and it is only because it
3 is in our annual Board package, is that -- and I
4 think the information has already been presented
5 here that there is a confidentiality agreement that
6 the Board directors signed.

7 Q. Did you have to sign any sort of a
8 confidentiality agreement? I know you weren't on
9 the Board, but did you have to sign one?

10 A. Yes.

11 Q. And what limitations did it put on
12 you?

13 A. Well, it has been 15 years since I
14 signed it. I think it generally the intent, as far
15 as I'm concerned, is, you know, Retirement Living's
16 business and what happens at the Board of Directors
17 table is their business and I certainly don't go
18 talking about it outside of our office and our
19 operation.

20 Q. If we'll just go to tab -- if you
21 can go to tab 40, and that would be Exhibit No.
22 2145. This I understand has been identified as a
23 template for the agreements that Board members
24 sign. Was the confidentiality agreement that you
25 signed, was it similar to this?

1 A. No.

2 Q. Okay, and how did it differ?

3 A. Again, it was 15 years ago and I
4 haven't looked at it since. It is about a
5 paragraph and a half that just basically says, you
6 know -- my understanding of what it says is, as an
7 employee of Retirement Living, I'm not to discuss
8 our operations outside of Retirement Living.

9 Q. Now, you had indicated to us that
10 your first knowledge of any potential interest in
11 the hotel was in -- that any potential interests of
12 Elliot Lake Retirement Living in the hotel was in
13 late December, early January of '97, '98?

14 A. Yes.

15 Q. Okay. I would like you to tell
16 us, please, first of all, who gave you that
17 information and what information you were given?

18 A. It would have been Mr. Kennealy
19 that talked to me about it, and it would have been,
20 you know, Algoma Central is having difficulty with
21 the hotel. They are threatening to either close it
22 or possibly even demolish it. He explained to me
23 how important it was to Retirement Living, which I
24 was starting to gather by then because I had been
25 there a few weeks and understand how our tour

1 process works. So I understood that.

2 And he also at the same time would have
3 talked to me about some of the other challenges
4 that were going on in the community with respect to
5 the retail sector. He would have most likely, I
6 can't remember the conversations exactly, but
7 filled me in on his meeting with Mr. Leistner and
8 Mr. Bauthus and Mr. Farkouh from earlier in
9 December.

10 Q. Yes, the meeting that took place
11 on the 5th of December, '97?

12 A. I believe that was the date, yeah.

13 Q. And would he have told you that in
14 October of '97 -- and I can show you the minutes,
15 but it may be quicker just to recite it -- that he
16 had been authorized by the Board to investigate
17 options and report back to the Board about the
18 potential involvement of Elliot Lake Retirement
19 Living in the future of the Algo Inn?

20 A. Actually, I don't think I was
21 aware of that until I actually saw the minutes,
22 like going through this process for the inquiry.

23 Q. So I'm simply asking you, did he
24 tell you in this conversation that you had that the
25 Board has authorized me to look at the Algo Inn?

1 A. I think I would have just assumed
2 that he had some direction to do that.

3 Q. Okay. Now, I gather from what you
4 have just told us you became aware of the fact that
5 he had met with Mr. Leistner and others on the 5th
6 of December, you became aware of that after the
7 fact; is that correct?

8 A. Yes, yeah, I had only been at
9 Retirement Living a few days before that meeting,
10 so I wasn't -- certainly wasn't aware of anything
11 that Mr. Kennealy was doing --

12 Q. And --

13 A. -- the first few weeks.

14 Q. When you started the job, was it
15 like the 1st of December?

16 A. I started December 1st, yes.

17 Q. And are you able to give us, and I
18 don't expect you to say a day or a date, but are
19 you able to give us a rough idea of how long into
20 the job it was before you became aware of this
21 potential project?

22 A. Late December or early January.

23 Q. Okay, so three or four weeks into
24 the job?

25 A. Yeah.

1 Q. And up until that point in time,
2 you had no idea that this was a possible project?

3 A. Not that I recall.

4 Q. Okay. And when you were briefed
5 by Mr. Kennealy, was it strictly a face-to-face
6 meeting or did he provide you with any written
7 materials? And like, for example, we have seen and
8 heard about a terms of reference that Mr. Bauthus
9 had sent off to Mr. Leistner for his approval. You
10 know what I am talking about?

11 A. Yeah, yes, I saw those.

12 Q. And documents like this. Were you
13 aware of these documents?

14 A. I don't know if I was aware at the
15 initial discussion, but anything -- as we got into
16 the project, anything that Mr. Bauthus or
17 Mr. Kennealy had I'm assuming was shared with me.

18 Q. And just -- if you could just go
19 to tab 47, this would be Exhibit No. 2098. Now,
20 you have obviously seen these documents in your
21 preparation?

22 A. Yes, I have.

23 Q. And obviously, from what you have
24 said earlier, this was not the first time you had
25 seen them?

1 A. They looked familiar when I saw
2 them, yes.

3 Q. And I'll just jump ahead here for
4 one second. In late January Mr. Nicholls from the
5 architectural firm Nicholls Yallowega Bélanger
6 wrote to you; in fact, on the 30th of January, '98,
7 he wrote to you in response. When was it that you
8 first contacted him?

9 A. Actually, that is a good question.
10 I had to ask myself that the other day, because I
11 actually didn't know who Mr. Nicholls was, and his
12 firm, I had no contact with them beforehand. So
13 then I sort of went back to this project and
14 realized that the City had obviously done some work
15 on this before I got involved, and I have to
16 assume, based on, you know, how I know I would have
17 got involved is that Mr. Bauthus would have
18 transitioned over some of his contacts and some of
19 his information.

20 So you know, that is how, you know, he
21 became involved, or at least that is my
22 understanding of how I would have probably --
23 Mr. Bauthus or I would have contacted Mr. Nicholls
24 and said, I am now the contact person for
25 continuing on with this.

1 Q. If you could look at tab 51, and
2 that would be Exhibit No. 397, that is the letter
3 that was written to you by Mr. Nicholls?

4 A. Yes.

5 Q. And we can get the full text of it
6 at tab 70, which is Exhibit No. 874, and for your
7 purposes, Ms. Guertin, it would be at the page
8 ending 004.

9 A. Okay.

10 Q. And my first question to you is
11 when in relation to this letter did you have
12 contact with Mr. Nicholls?

13 A. I would have no idea what date.

14 Q. Okay.

15 A. It would have been somewhere in
16 the month of January that we would have made
17 initial contact with each other to continue on with
18 whatever contact was made earlier before I got
19 involved, and I believe we were looking for a
20 budget at this point in time.

21 Q. So you would have contacted him
22 sometime in early January?

23 A. Sometime in January.

24 Q. And prior to that, prior to
25 contacting him, you would have to be given some

1 information? You just couldn't pick up the phone
2 and call him up and not know what to talk about?

3 A. I agree.

4 Q. Right. So what I would like to
5 know is the information that you were given prior
6 to contacting him?

7 A. At the time, and I think -- I
8 thought I had answered that earlier -- we were
9 talking about the hotel and the problems with
10 the --

11 Q. Okay, and --

12 A. "We" being Mr. Kennealy and
13 myself.

14 Q. This is back in December?

15 A. Back in December, early January,
16 and then we had the discussion about the whole
17 retail sector and the need for this retail study,
18 which included the commercial sector assessment.

19 So that was my understanding at that
20 point in time. Gathering information on the actual
21 Algo Centre itself was part of that study process,
22 and so that is what knowledge I had going into it.

23 I also knew that the City had already
24 contacted some of these people to discuss some of
25 the terms of reference also.

1 So where I picked up, at exactly what
2 point, I don't remember.

3 Q. Prior to speaking to Mr. Nicholls,
4 did you have a file? Were you starting to collect
5 documents in connection with this project?

6 A. I probably did.

7 Q. Okay.

8 A. I don't recall.

9 Q. And I would assume that the terms
10 of reference would be part of the information that
11 you were given prior to contacting Mr. Nicholls?

12 A. I would assume so.

13 Q. Right. And you would have read
14 the terms of reference, I presume?

15 A. I would hope so, yes.

16 Q. And if we could just go back to
17 them, and that is at tab 47, Exhibit No. 2098. And
18 on the first page of the terms, it identifies an
19 individual by the name of Graham Murphy as a
20 partner, you will see that at the top left?

21 A. Yes.

22 Q. Do you know him?

23 A. I actually do know him.

24 Q. And if you'll turn over the page,
25 and that would be at page 1245 where it is talking

1 about the methodology of what is going to happen
2 under "Phase III(a) - Determination of a Current
3 Fair [Market] Value of the Property", and the last
4 sentence of that paragraph reads:

5 "This will assist in determining a
6 possible offering price for the
7 property."

8 Correct?

9 A. Correct.

10 Q. And it would be a reasonable
11 assumption, would it not, that Mr. Murphy has been
12 asked as part of his work to figure out what this
13 property is worth on the open market; correct?

14 A. Correct.

15 Q. And the property that is being
16 spoken of is referred to in Phase IV towards the
17 bottom of the page where it talks:

18 "The final stage of our work will
19 consist of a review of factors which
20 may affect the operational viability
21 of the Algo Mall and Algo Inn,
22 including potential sources of
23 financing for the acquisition and
24 possible ownership and management
25 options of the property."

1 So the property that is being spoken of
2 is both the mall and the hotel; correct?

3 A. Correct.

4 Q. And it is clear, and I know that
5 you didn't set this up, but it is clear that
6 whoever did engage Mr. Murphy was looking beyond
7 simply the value of the hotel but rather the
8 complex as a whole; correct?

9 A. Correct.

10 Q. Now, when you saw this -- as you
11 have said, you read it -- and you understood, at
12 least as I got your evidence, you understood the
13 exercise to be looking at the hotel; from Elliot
14 Lake Retirement Living's point of view, you thought
15 the exercise was in connection with the hotel,
16 correct?

17 A. Yeah, the two sides of it, though,
18 it was looking at the hotel --

19 Q. Yes.

20 A. -- and then also looking at doing
21 this -- we called it the retail study which was the
22 retail study and commercial sector study also went
23 hand in hand with that. The two just seemed to
24 happen together, and they also involved Algoma
25 Central.

1 Q. The idea of the hotel is looking
2 at Elliot Lake Retirement Living's possible
3 ownership of a hotel; correct?

4 A. Yes.

5 Q. And as I understand what you are
6 telling us, the retail study involving the mall is
7 not a question of ownership but rather looking at
8 it from marketing and attracting new customers, or
9 have I got that wrong?

10 A. It wasn't from a point of view of
11 Retirement Living's ownership at that point in
12 time.

13 Q. But it was a question of
14 ownership, though; correct?

15 A. It was a question of my
16 understanding is actually gathering information.
17 You know, I do remember the sense of being
18 concerned that, you know, if Algoma Central was
19 going to possibly close down or tear down the
20 hotel, it is possible that it may just be a matter
21 of time before they ended up doing the same thing
22 with the mall. So it was definitely an
23 information-gathering exercise.

24 Q. And the information-gathering is
25 to position oneself knowledge-wise such that they

1 could intelligently consider purchasing either the
2 mall and/or the hotel?

3 A. I think I viewed it more as
4 gathering information to react -- or react or
5 actually even proactively deal with the possibility
6 that we could lose this asset to our community,
7 that meant so much to the community.

8 So it wasn't -- was someone else, you
9 know, above me, you know, at the City, in the
10 community as a whole, I don't know what they were
11 thinking. I just know what my understanding was at
12 the time.

13 Q. And the understanding that you had
14 of this exercise, it came from Mr. Kennealy and, as
15 I understand as well, Mr. Bauthus; is that correct?

16 A. I recall a lot of discussions
17 about this exercise with both, yes.

18 Q. And at no time in the discussions
19 did Mr. Bauthus say the City is thinking of buying
20 the hotel -- or the mall; correct?

21 A. I don't recall that.

22 Q. Well, he has given evidence that
23 at no time did the City consider buying the mall?

24 A. And I agree, I never heard that or
25 I never got the sense that that was what he was

1 thinking.

2 Q. And I am not trying to suggest
3 that in January of '98 that there was a firm plan
4 in place to buy the mall, but of the two parties,
5 Elliot Lake Retirement Living and the City, the
6 only one who could consider buying the property
7 would be Elliot Lake Retirement Living?

8 A. I -- Mr. Wallace, I don't know if
9 anyone was considering buying the property. I
10 just -- my understanding of this exercise was to
11 gather the information and be able to react to the
12 possibility that something could happen. That is
13 all I know at the time.

14 Q. Okay. Would you agree that the
15 only reasonable purpose --

16 MR. KEARNS: An objection, Your Honour.
17 Mr. Commissioner, she has just told what she knows
18 and I think everybody understood what that was.
19 And she is now asked to agree on things that she
20 says she doesn't know about. It is not a fair
21 question.

22 THE COMMISSIONER: Well, perhaps the
23 question can be phrased "can you" as opposed to "is
24 it possible", that kind of thing.

25 MR. WALLACE: Okay.

1 THE COMMISSIONER: If not, then she can
2 give us a frank answer.

3 BY MR. WALLACE:

4 Q. As far as the terms of reference
5 are concerned, can you give us a suggestion other
6 than potentially buying the mall and hotel to want
7 to know what is the property worth? Do you follow
8 the question?

9 A. No, I'm not a hundred percent sure
10 what you are asking.

11 Q. Okay. The reason somebody would
12 want to know what the hotel and the mall are worth
13 is to potentially buy it; correct?

14 A. To potentially have the
15 information that maybe someone else would buy it or
16 maybe someone else would be able to react to the
17 potential loss of that centre.

18 Q. Back in December or early January
19 when you became involved, there was nobody -- was
20 there another entity suggested that might buy the
21 hotel or mall?

22 A. I wasn't aware, again, of anyone
23 actually -- other than Retirement Living looking at
24 the hotel?

25 Q. Uhm-hmm.

1 A. I was not aware of anyone else
2 considering buying the property. Were there other
3 organizations -- if that was the intent, were there
4 other organizations? ELNOS was certainly up and
5 running by then, not that anyone ever said that
6 that was the case, but --

7 Q. Right. If we could turn to the
8 actual letter to Mr. Nicholls -- or from Mr.
9 Nicholls, rather, at tab -- and we'll use the
10 version at tab 70, please. This is --

11 A. This is the Halsall Report.

12 Q. Sorry, it is tab 70. I'm sorry, I
13 gave the wrong -- it's Exhibit No. 874. This is a
14 letter in response to a what, a phone call or a
15 face-to-face meeting with Mr. Nicholls?

16 A. I don't recall having met him
17 prior to this.

18 Q. I'm sorry, I'm sorry, that is the
19 right tab, the right exhibit. It is the wrong
20 page, though. 004. Yes.

21 Sorry, could you repeat that?

22 A. Sorry, I have lost the question.

23 Q. Okay, the question was, the letter
24 is in response to some sort of communication,
25 previous communication with Mr. Nicholls. Was that

1 by phone or face-to-face?

2 A. I don't recall meeting him
3 face-to-face at that point in time, so I would have
4 to assume there was some sort of phone call with
5 Mr. Nicholls.

6 Q. And it is clear that he is
7 responding to you; correct?

8 A. He is certainly addressing the
9 letter to me, yes.

10 Q. And did you have any conversation
11 with Mr. Nicholls?

12 A. Again, I'm not really sure how
13 this particular letter transpired. At some point
14 we transitioned from the City to myself. I don't
15 know if Mr. Bauthus sent him the letter or made
16 contact and said send the response to Mrs. Guertin,
17 or if, you know, Mr. Bauthus just said Mrs. Guertin
18 will be calling you. I really don't know what the
19 background is. I do know that the letter indicates
20 or references a potential purchase.

21 Q. Yes.

22 A. That certainly wasn't my
23 understanding, and actually even when you get to
24 our meeting with Mr. Nicholls in July, I'm sure it
25 is quite clear then that, you know, we were not

1 looking at purchasing the mall. The purpose of
2 this exercise was to get a budget to do the work
3 that needed to be done.

4 Q. And amongst the budgetary items
5 was for a Building Condition Assessment?

6 A. I think that is how we have
7 referred to it, yes.

8 Q. And you did get an estimate of
9 \$10,000 plus tax plus disbursements of about
10 \$1,500; correct?

11 A. Yes.

12 Q. And are you saying that you did
13 not tell Mr. Nicholls that the -- what the second
14 paragraph opening line is:

15 "My understanding is that the
16 acquisition of the building is being
17 considered and, as part of a larger
18 Phase 1 analysis, you are interested
19 in establishing the condition of the
20 building, any major deficiencies and
21 the potential costs for repairs."

22 Are you saying you did not tell him
23 that?

24 A. I certainly wouldn't have told him
25 that we were buying a property. I would have told

1 him that we were doing an exercise of assessing the
2 property, but it certainly wasn't my intent to have
3 him believe that we were buying property. And
4 again, I think when we finally met with him in
5 July, we clarified that with Mr. Nicholls.

6 Q. But nobody had come forward, to
7 your knowledge, as part of the City or Elliot Lake
8 group saying that they were interested in buying?

9 A. No one, no.

10 Q. Okay. Now, if you look over at
11 the second page of the document, when looking at
12 what the assignment is, it says:

13 "Building structure.

14 It is assumed that the key issue
15 will be the condition of the parking
16 deck."

17 Do you see that?

18 A. Yes.

19 Q. That would be information that you
20 gave to Mr. Nicholls?

21 A. Again, I'm not sure what
22 background information I may have given him or what
23 information Mr. Bauthus gave him.

24 Q. Well, did Mr. Bauthus say that he
25 had spoken to Mr. Nicholls?

1 A. Again, I'm not really sure how the
2 transition happened. I know Mr. Bauthus had a
3 relationship with Mr. Nicholls because they had
4 done some work at the City Hall just prior to this.
5 I had no encounter with Mr. Nicholls until this
6 particular time, so I didn't -- I don't know how he
7 became part of the project other than through the
8 City who had started this process.

9 Q. What about Mr. Kennealy? Did he
10 tell you, listen, I want you to carry the ball here
11 for Elliot Lake Retirement Living, and the first
12 thing to do is to line up an architect? Did you
13 get any instructions from Mr. Kennealy?

14 A. Not that I recall, because -- I
15 don't know exactly what Mr. Kennealy knew about Mr.
16 Nicholls. I don't even know if he knew him. And
17 if he had asked me to go get an architect, I
18 probably would have touched base with several
19 firms. I don't remember doing that. So I -- my
20 only sense I have here is that I actually inherited
21 Nicholls Yallowega Bélanger from work that was done
22 prior to me becoming involved.

23 Q. But you do recall speaking to him,
24 that is, Mr. Nicholls, on the phone prior to him
25 writing to you?

1 A. I can only assume I spoke to him.

2 Q. And you have no recollection of
3 what was said in the conversation?

4 A. No.

5 Q. And you have no recollection of
6 how he got that information in the opening -- or
7 sorry, the second paragraph about the purchase of
8 the building?

9 A. No, I don't know exactly how that
10 came about.

11 Q. And what about the next page on
12 the building structure part:

13 "It is assumed that the key issue
14 will be the condition of the parking
15 deck."

16 Do you know how he got that
17 information?

18 A. Again, I don't know exactly where
19 that came from, whether it was -- who it was.

20 Q. Well, can we eliminate or include
21 yourself, because --

22 A. Sure, you could include me. It
23 could be possible.

24 Q. And what were you told? How would
25 you be able to tell him that?

1 A. Through discussions with both
2 Mr. Bauthus and Mr. Kennealy.

3 Q. And so if you were the source of
4 that information, then -- to Mr. Nicholls, rather,
5 you would have been essentially conveying the
6 information given to you by Messrs. Kennealy and/or
7 Bauthus?

8 A. Yes.

9 Q. And do you recall having a
10 conversation with either/or both of them where they
11 outlined to you the condition of the parking deck
12 being a key issue?

13 A. I don't recall any specific
14 conversations. That is 15 years ago, 16 years ago.

15 Q. It appears that as far as the
16 assignment is concerned as to what is being asked
17 to do, that this is not the only task but it
18 appears to be task one; it is important to the
19 project?

20 A. I would say it was important to
21 the project, yes.

22 Q. But yet you have no recollection
23 of what information you were given or who gave it
24 to you, if you were the source of this?

25 A. That is correct.

1 Q. Do you have any idea when you
2 became aware of the fact that the condition of the
3 parking deck was an important issue?

4 A. Again, I'm not -- I don't know
5 exactly when it came about at all.

6 Q. Just one last point on this
7 correspondence. On the page 3 of the letter, Ms.
8 Kuka, if you could bring that up, please.

9 A. Yes.

10 Q. He has given you the price and he
11 says:

12 "The cost is based on one trip to
13 the site for each of the
14 consultants. As you had noted, in
15 Phase 1, it will not be necessary to
16 make a presentation to City
17 Council."

18 So he is saying, "As you had noted",
19 like you have told me, "it [won't] be necessary to
20 make a presentation to City Council"?

21 A. Yes.

22 Q. How were you able to convey that
23 to him? Like what is the context of that
24 statement?

25 A. I actually understand the context

1 of that being with respect to budgeting for a trip
2 to Elliot Lake and that we are telling him you
3 won't have to come to Elliot Lake to make a
4 presentation.

5 Q. And that is information that you
6 obviously gave him?

7 A. It says I did, so I have to assume
8 so.

9 Q. And do you have any idea how he
10 would know, that is, Mr. Nicholls would know to cc
11 Mr. Murphy?

12 A. No, I have no idea, and again,
13 that may come back to someone else was running this
14 before I got involved.

15 Q. Is it possible that you had
16 briefed Mr. Nicholls on what is going on, the
17 broader picture, that this is part of the retail
18 study and we have retained KPMG?

19 A. I don't know if that is what
20 happened or not. I don't actually recall. I don't
21 even remember, once we became involved, working
22 with Graham Murphy from KPMG after this. We used
23 KPMG later on.

24 Q. Uhm-hmm.

25 A. But certainly during the early

1 part of the study, I think we took -- "we" being
2 Retirement Living took on some of the roles that
3 initially KPMG were considered for.

4 Q. Just moving forward from this
5 correspondence, what, if anything, did you do on
6 this project between January and March? Because we
7 know in March the City passed the by-law
8 authorizing the contract between Elliot Lake
9 Retirement Living and the City.

10 A. Yes.

11 Q. What did you do? Or do you have
12 any memory of what you did?

13 A. I have memories of what I did.
14 Time frames, they are certainly gone in terms of
15 what I did what day. I remember a number of
16 discussions with and working with the City's EDO,
17 Carol Listner --

18 Q. Yes.

19 A. -- where I'm working a little bit
20 with Fred Bauthus and designing the whole retail
21 leakage study. We spent a bit of time in talking
22 about and setting up the commercial space inventory
23 part of or aspect of that project. We would have
24 started to gather background information. I know
25 during this project we spent quite a bit of money

1 with Stats Canada, so we probably would have at
2 least started to identify what it was we needed.

3 Q. Okay. If you could turn to tab
4 54, and this is Exhibit No. 249, and this is
5 correspondence or an interoffice memo from
6 Mr. Burling to Mr. Bauthus indicating that the
7 resolution was passed and that the municipality
8 enter into an agreement with Retirement Living to
9 perform the mall/retail survey at a cost not to
10 exceed \$48,150.

11 And if you turn to the last page there,
12 it outlines the cost breakdown to arrive at
13 \$48,150, and as you can see, the amount of \$30,000
14 is earmarked for the Algo Mall/Hotel review;
15 correct?

16 A. Yes.

17 Q. And this, the breakdown of that
18 figure would be two components, that is, the
19 Building Condition Assessment, the fees payable to
20 Nicholls Yallowega; correct?

21 A. Those would be two of the
22 components. The Nicholls Yallowega was about 10 to
23 12,000.

24 Q. Yes.

25 A. The appraisal I think we had

1 budgeted anywhere from 8 to 10. I'm not sure.

2 Q. Okay.

3 A. And then you would have, you know,
4 other research and statistics and reports and
5 things.

6 Q. Now, when you say other statistics
7 and research and reports, are you referring to the
8 line items above, that is, the \$3,000 and \$8,000
9 for the retail space analysis and retail patterns
10 survey?

11 A. Those are separate items, yes, I
12 agree, but there was also, like I said, we bought a
13 lot of information from Stats Canada. We would
14 have bought reports and whatever we can.

15 So there was probably if you want to
16 call it a contingency in there also.

17 Q. Okay. And if you could turn to
18 tab 58, that is Exhibit No. 3233, and this is a
19 copy of the actual contract -- sorry, if you could
20 just turn over the page.

21 A. Yes.

22 Q. And this is the actual contract
23 for the services to be provided by Elliot Lake
24 Retirement Living to the City of Elliot Lake?

25 A. Yes.

1 Q. And if you go to the last page,
2 the matters that are identified on the Algo
3 Mall/Hotel areas that are budgeted you can see at
4 the \$30,000, which is the same as it was back in
5 the by-law that I showed you earlier.

6 A. Yes.

7 Q. The City is contracting you, that
8 is, Elliot Lake Retirement Living, to on this line
9 item do two things, a building condition -- a
10 physical building condition of the hotel and mall
11 facilities?

12 A. Uhm-hmm.

13 Q. As well as a determination of the
14 fair market value of the property?

15 A. Uhm-hmm.

16 Q. Correct?

17 A. Correct.

18 Q. I don't see anything there about
19 any statistical research reports on that line item
20 at least?

21 A. Not within the actual line itself,
22 but you are going to do background information
23 while you are -- yes, you are going to hire an
24 appraiser to do the work, but you are also -- and,
25 sorry, the engineers to do the work, but you are

1 also going to gather information on your own.

2 Q. But you'll agree with me that
3 doesn't say that there, though?

4 A. Oh, I agree, sure.

5 Q. Okay. And the information that
6 you are talking about, is it information that has
7 anything to do with the Building Condition
8 Assessment?

9 A. Could we have bought some books on
10 malls and shopping centres? That may or may not --
11 yes maybe, no maybe. I don't know.

12 Q. Do you actually know that there
13 was money actually spent? I know this is just a
14 budget.

15 A. Yes.

16 Q. But was there actually money spent
17 on research in this part of the contract?

18 A. I can't say specifically that
19 part. All I know is we bought a lot of reports and
20 a lot of information.

21 Q. Okay, but the bottom line of it is
22 that you are going to provide the City -- I mean,
23 it is pretty straightforward. You are going to
24 provide the City with two things: a Building
25 Condition Assessment and an assessment of the

1 market value of the building; correct?

2 A. On that particular deliverable,
3 yes.

4 Q. Yes, and that was, at least as I
5 understand it, that was in fact the expectation?
6 That is what was both sides -- both parties to the
7 contract expected that; correct?

8 A. That is what, yeah, this document
9 says, yes.

10 Q. Yeah, and when you had contacted
11 Mr. Nicholls -- and I know he didn't do the
12 assessment in January. I know that took place in
13 the fall, the late summer, early fall. But when
14 you contacted him, the purpose of making a contact
15 was to, as you said, get an a estimate of what his
16 fees are going to be to do this?

17 A. To do --

18 Q. To do the building assessment?

19 A. Yeah, what we called a Building
20 Condition Assessment, yes.

21 Q. And that the two parties that were
22 interested in this, in this Building Condition
23 Assessment, were your company, Elliot Lake
24 Retirement Living, and the City; correct?

25 A. Because we were the two parties to

1 this contract, yes.

2 Q. Yes.

3 A. Yes.

4 Q. And then moving forward, you
5 actually -- an actual contract for the delivery of
6 those materials was entered into --

7 A. Yes.

8 Q. -- that we were just looking at?

9 A. Yes.

10 Q. Okay. And therefore, at some
11 point in time you expected on behalf of Elliot Lake
12 Retirement Living, just from where you sat, you
13 expected that you would be giving to the City the
14 Building Condition Assessment and the Fair Market
15 Value Assessment; correct?

16 A. At this point in time?

17 Q. Yes.

18 A. That is what we thought was going
19 to happen, yes.

20 Q. Right. And not unreasonably, the
21 folks at the City, they could expect that for our
22 \$30,000 or thereabouts, that is what we are going
23 to get?

24 A. That is what the contract is, yes.

25 Q. And did the City ever get a copy

1 of the Building Condition Assessment?

2 A. I think when we met with -- or
3 when Mr. Kennealy presented our findings on the
4 hotel and the mall to the City in October, we led
5 the -- we -- he told the City at that point in time
6 that his Board had instructed him to look at the
7 entire centre, ownership of the entire centre.
8 Also at that point in time we talked about the
9 retail study, and I'm sure he talked about that the
10 other day.

11 During that meeting, when we let the
12 City know that we were actually looking at that
13 whole centre, they were ecstatic. We were about to
14 not only deal with the hotel, but we were going to
15 deal with some of the major issues that we were
16 facing as we were going through this retail study.

17 At that point in time, I think we lost
18 track of the fact that the document, which, by the
19 way, Nicholls Yallowega had -- really wasn't
20 complete because they were suggesting that -- they
21 suggested that we needed to do more research and
22 more investigation. So it just no longer became an
23 issue, and we continued to focus on at that point
24 in time the actual doing all of our due diligence
25 to possibly take ownership.

1 THE COMMISSIONER: So the answer was
2 no?

3 THE WITNESS: Right.

4 THE COMMISSIONER: Yes.

5 THE WITNESS: I believe the answer
6 was -- maybe I should be clear on what the question
7 was. Did we give it to the City? No.

8 BY MR. WALLACE:

9 Q. And that answer remains true even
10 after you became the owners of the mall, correct,
11 and the hotel?

12 A. Yeah, well, as far as I know.

13 Q. So to your knowledge, the City was
14 never given the Nicholls Yallowega report?

15 A. That is -- I know I didn't give it
16 to them.

17 Q. Now, at tab 62, and that, sorry,
18 is Exhibit No. 390, this is the -- as you well
19 know, this is the non-disclosure agreement, and the
20 one we are looking at is Mr. Kennealy's. You
21 signed a similar non-disclosure agreement?

22 A. I have to assume I did. I haven't
23 seen one in the evidence, but I'm pretty sure I
24 did.

25 Q. Well, yeah, there is actually --

1 do you recall? Because I can show you some
2 correspondence where it says that you --

3 A. Yes, I'm --

4 Q. You are happy with that?

5 A. Yeah.

6 Q. Yes, okay. And the document
7 clearly prohibits you from delivering to the City
8 without the permission of Algoma, Algoma Central
9 Properties, the two documents that you had about a
10 month and a half earlier contracted to provide to
11 the City. You appreciated the meaning of that?

12 A. My understanding of this document
13 is we weren't allowed to share information with
14 anybody, and that if we chose to or we asked
15 Mr. Leistner to share information with the City and
16 he declined particularly on those two items --

17 Q. Yes.

18 A. -- that he would reimburse us for
19 those items.

20 Q. Right.

21 A. That is my understanding of this
22 document.

23 Q. Right, but did it not strike you
24 as odd that in March you are signing a contract to
25 provide the City with information in the form of

1 the Fair Market Value Assessment and the Building
2 Condition Assessment and in May you are having to
3 sign a document that says we won't give these very
4 documents, this very information to the City unless
5 we get the permission of Algoma Central? Did that
6 not strike you as odd?

7 A. I wasn't involved a lot in this
8 non-disclosure. My only understanding is that
9 Mr. Leistner was very particular about protecting
10 all information he gave us, and this was -- you
11 know, my sense of this is this was some way of at
12 least recovering the costs, the significant costs
13 of that contract if Mr. Leistner didn't allow the
14 information to be shared.

15 So odd in that I have never had an
16 exposure to an NDA before, but you know, to me it
17 was really clear you don't share information with
18 anybody, and that was the foundation of this whole
19 process. And after that, you know, we had to ask
20 permission to share it.

21 Q. When you signed this, the
22 non-disclosure agreement, did you tell anybody from
23 the City that we have had to sign this document?

24 A. That is nothing that I would be
25 involved in.

1 Q. If the City was told that fact, it
2 would have been by Mr. Kennealy?

3 A. It would have been by
4 Mr. Kennealy, yes.

5 Q. And do you know by virtue of
6 speaking to him whether he did or he didn't?

7 A. I don't recall any discussions
8 about this after.

9 Q. If you just turn and go to the
10 next tab, and that is tab 63 and that is Exhibit
11 No. 3234, these are the minutes from the Board
12 meeting of Retirement Living of it looks like the
13 21st of May, '98, and if you would go to the page
14 with the number 9 -- sorry, it is in type page 5
15 and it ends 35.

16 A. Okay.

17 Q. Okay, and I just want to get your
18 comment on this aspect of it. Under the "General
19 Manager's Comments":

20 "This project is moving along
21 quite well. Considerable time has
22 been invested in negotiating
23 acceptable confidentiality
24 agreements with Algoma Central
25 Properties, Elliot Lake Retirement

1 Living and the City of Elliot Lake
2 to ensure all parties have a clear
3 understanding of what can and can
4 not be disclosed to who. Our legal
5 counsel has been involved throughout
6 this process to ensure our
7 Corporation's position is adequately
8 protected."

9 Now, just as a general statement,
10 these -- because there is a lot of them in the
11 documentation that we have received, these "General
12 Manager's Comments", in the course of a Board
13 meeting are these generally the basis of
14 discussion? Like this information is given to the
15 Board members in advance; correct?

16 A. The General Manager's Report, yes.

17 Q. Yes, okay. So and it is given to
18 the Board members in advance of the meeting so that
19 they can inform themselves of what is going to be
20 discussed at the meeting or what is going to be
21 presented to them?

22 A. Right, yes.

23 Q. This information here that is
24 contained in the "General Manager's Comments", was
25 there any discussion on that?

1 A. I don't recall.

2 Q. Okay, you don't recall. Do you
3 know what the reference is to the fact that there
4 has been negotiation of acceptable confidentiality
5 agreements between the three parties, Algoma
6 Central, Elliot Lake Retirement and the City, to
7 ensure that all parties have a clear understanding
8 of what they can -- of what can and cannot be
9 disclosed to who? Were you part of that?

10 A. Was I part of?

11 Q. Part of the negotiations that's
12 referred to there?

13 A. Other than I know I was the
14 conduit, you know, the faxing back and forth to
15 Mr. Leistner and I would have -- like I said, while
16 the document was being prepared, I would have seen
17 it. But other than that, I don't recall a whole
18 lot of involvement in it. I think we might have
19 identified the names of the Councillors and the
20 people that were on that list. But other than
21 that, I didn't -- in terms of negotiating, I wasn't
22 involved in the negotiations whatsoever, just the
23 transfer.

24 Q. Okay, what I am interested in
25 knowing was that you have told us that you didn't

1 tell -- you didn't tell, nor were you aware of
2 anybody telling the City about the non-disclosure
3 agreement; correct?

4 A. Correct.

5 Q. Okay.

6 A. But obviously --

7 Q. Were you aware of any negotiations
8 that involved the City prior to the execution of
9 the non-disclosure agreement?

10 A. I'm not sure -- I wasn't involved
11 in discussions between Mr. Kennealy and the City.
12 I have no idea what those discussions were, when
13 they took place, what the context of them were.

14 Q. So the short answer is you don't
15 know?

16 A. I don't know.

17 Q. Okay. And at the Board meeting,
18 present were the Mayor and Mr. Croteau from the
19 City; do you see that?

20 A. Yes, Terry Croteau, member, and --

21 Q. George Farkouh.

22 A. Actually, I'm missing him on the
23 list here. He is not there.

24 Q. Oh, sorry, I was looking at the
25 wrong page. Yes, my apologies. Yes, Mr. Croteau,

1 yeah. And do you have any recollection of
2 Mr. Croteau asking about that?

3 A. I -- yeah, I couldn't recall what
4 the actual discussions were.

5 Q. Okay.

6 THE COMMISSIONER: We are getting close
7 to our break time, Mr. Wallace. You tell me when
8 you think it is an appropriate time to break.

9 MR. WALLACE: Well, the next point I
10 was going to make was to move to the meeting that
11 Ms. Guertin talked about in July of '98, so we can
12 stop now.

13 THE COMMISSIONER: Is that a good point
14 now?

15 MR. WALLACE: Yes.

16 THE COMMISSIONER: Thank you. Let's
17 take 20 minutes.

18 -- RECESSED AT 10:45 A.M.

19 -- RESUMED AT 11:05 A.M.

20 BY MR. WALLACE:

21 Q. Thank you.

22 Ms. Guertin, I would just ask you to
23 turn to tab 67, and that would be Exhibit No. 3272,
24 and that is a fax that you sent to Mr. Leistner in
25 preparation of the meeting that you mentioned this

1 morning on the 17th of July, and you indicated to
2 him things that you wished to discuss.

3 And as I understand it, you came away
4 from this meeting with the idea that the financial
5 numbers for the mall -- because you discussed both
6 the mall and the hotel in this meeting; correct?

7 A. Correct.

8 Q. And what had your impression been
9 of the numbers that you had seen of the hotel prior
10 to that meeting?

11 A. The hotel numbers were not good,
12 if I recall, and I can't specifically remember
13 exactly what they were. I do remember negative
14 numbers. So yeah, it was throughout this process,
15 it looked like financially it was going to be
16 difficult with the hotel.

17 Q. And as a stand-alone proposition?

18 A. As a stand-alone, yes.

19 Q. And I gather you were taking some
20 comfort from the fact that the mall numbers were
21 looking reasonable?

22 A. I do remember a sense from this
23 meeting, because Mr. Leistner started to share some
24 of the mall numbers and you saw that there were --
25 he shared his operating numbers with us, and they

1 were positive. They were quite positive, and when
2 you put the two together, they were still positive.

3 Q. So from your perspective, it would
4 make more sense if you are going to do a deal here,
5 make a purchase, to buy the whole thing as opposed
6 to simply the hotel?

7 A. Not necessarily buy at that time,
8 but it was certainly we should look at this a
9 little bit closer because, you know, the one alone
10 doesn't make a lot of sense; when you put the two
11 together, it makes more sense.

12 Q. No, I wasn't suggesting that you
13 went to Mr. Leistner's office with the idea --

14 A. Okay.

15 Q. -- of deciding whether you are
16 going to buy it or not buy it. But if there was
17 going to be a purchase down the road, it made more
18 sense to do the whole mall complex as opposed to
19 the hotel as a stand-alone?

20 A. Yes.

21 Q. And I gather your impression of
22 the hotel as a financial proposition was it was a
23 loser?

24 A. Yes.

25 Q. I don't think you find that in the

1 accounting textbooks --

2 A. Yeah, no.

3 Q. -- but everybody knows what it
4 means.

5 A. Yes.

6 Q. So if we could go then to your
7 meeting with Mr. Nicholls, and that is at tab 68
8 and it is -- I just need to get an exhibit number
9 here.

10 A. Are you referring to the minutes
11 from Mr. Nicholls?

12 Q. Sorry?

13 A. Are you referring to the minutes
14 from Mr. Nicholls?

15 Q. Yes, I am.

16 A. Okay, it is actually in my tab 68,
17 but it is behind --

18 Q. Yeah, it is just stapled in, so
19 that may be why I'm coming up with a blank here.

20 Could we try Exhibit No. 2154 as an
21 exhibit? And is that it? No, okay, well, then how
22 about I'll give you the number YBA_E000000002.0101.
23 It should be some handwritten notes.

24 Thank you.

25 THE COMMISSIONER: And that is exhibit

1 number?

2 MS. KUKA: Exhibit No. 69.

3 THE COMMISSIONER: Thank you.

4 MR. WALLACE: 59?

5 MS. KUKA: 69.

6 BY MR. WALLACE:

7 Q. 69, thank you. And these look --
8 well, they are, it says right at the top these are
9 Mr. Nicholls' notes?

10 A. Yes.

11 Q. And it is recording a site visit
12 to the Algo Mall; is that correct?

13 A. Yeah, I'm assuming he came to our
14 office. I don't remember going there, so yes.

15 Q. Oh, okay, so this was a meeting at
16 your office; this didn't actually take place at the
17 mall?

18 A. Well, our office was in the mall,
19 yes.

20 Q. Oh, sorry, okay. And present was
21 Mr. Nicholls and it looks to be Mr. Luciw?

22 A. Michael Luciw, yes.

23 Q. Yes, yourself, Mr. Quinn and
24 Mr. Kennealy?

25 A. Yes.

1 Q. And on the point number 2 it
2 appears that it says:

3 "Parking deck appears to be main
4 problem due to extensive/long term
5 maintenance work/cost."

6 This was information that was given to
7 Mr. Nicholls; correct?

8 A. Correct.

9 Q. And who was -- I presume that it
10 was either you, Mr. Kennealy or Mr. Quinn who was
11 providing him with that information?

12 A. This is a discussion from the
13 meeting.

14 Q. Uhm-hmm.

15 A. Yeah, so I'm not sure who is
16 actually making those comments.

17 Q. And the problem with the parking
18 deck, I think to be clear, was the leaking;
19 correct?

20 A. Correct.

21 Q. Yeah, we are not talking about
22 potholes or things like that?

23 A. No.

24 Q. We are talking about the fact that
25 the roof had a chronic leaking problem?

1 A. The fact that the roof leaked,
2 yes.

3 Q. Would you not agree that it had a
4 chronic leaking problem?

5 A. Again, I wasn't in the mall a
6 whole lot. I have no context in terms of chronic.
7 I just know it leaked.

8 Q. Okay. Did anybody in the meeting
9 describe it as a long-term problem?

10 A. I don't recall the details of the
11 discussion. That is what Mr. Nicholls wrote.

12 Q. Okay. And then on the next page
13 under the heading "Issues" we have what you alluded
14 to earlier this morning on the second point:

15 "Retirement Living is looking to
16 acquire hotel.

17 ACP will continue to operate mall
18 with upgrading.

19 ACP has not viewed the property
20 as a long term asset. Therefore,
21 they want to pursue cash flow and
22 have only spent money [as
23 required]."

24 I believe that is what the last word
25 is.

1 THE COMMISSIONER: Or "on repair".

2 MR. WALLACE: Or "on repair".

3 THE WITNESS: Yeah, we are not sure
4 what it is.

5 BY MR. WALLACE:

6 Q. Okay, "on repair" or "required".

7 In any event, this notation, I gather
8 by virtue of what you have told us earlier,
9 reflects the thinking from Retirement Living's
10 point of view at that point in time?

11 A. Yeah, at that point in time we
12 were still looking at the hotel. You know, it
13 wasn't until the Board gave direction in September
14 that it went beyond that.

15 Q. Right, okay. And it is clear that
16 it is Retirement Living that is looking at the
17 hotel, not some unknown third party?

18 A. That has been clear from the
19 get-go that I -- from the beginning when I got
20 involved, yes.

21 Q. And your understanding from your
22 start of involvement was that Retirement Living was
23 considering, not any higher than that, considering
24 the possibility of ownership of the hotel?

25 A. Yes.

1 Q. And it is -- I'll just leave it at
2 that.

3 Now, if you turn over the page, on the
4 second bullet point here:

5 "ACP has final say on release of
6 report."

7 And I assume what you are talking or
8 what is being referred to is his report, that is,
9 Mr. Nicholls' report that is going to be prepared?

10 A. I would assume that too. I think
11 he is talking about releasing it.

12 Q. What did you understand by meaning
13 "has final say on release of report"? What did you
14 understand that to be?

15 A. I believed that -- not that
16 Mr. Leistner could approve the actual report, but
17 he would approve who or authorize who we could
18 share the report with.

19 Q. So his approval is to the
20 dissemination of the report or the information
21 contained in the report, right?

22 A. Sorry, could you say that?

23 Q. His approval related to who could
24 get the information contained in the report?

25 A. Yes.

1 Q. As opposed to what was contained
2 in the report?

3 A. Yes.

4 Q. And in fact, as you have -- as far
5 as the confidentiality agreement, taken to its
6 logical extension, he could in fact say you can't
7 show it to anybody?

8 A. He could.

9 Q. And in which case he would then
10 have to pay for it?

11 A. That's correct.

12 Q. Okay. Now, if you look right at
13 point number 5, "it doesn't appear to be any
14 concern in getting frank information"; do you see
15 that?

16 A. Yes.

17 Q. What did that mean?

18 A. I'm not sure exactly what that
19 means. I don't know if he was referring to getting
20 information from us or getting information from the
21 property owner.

22 Q. Well, he certainly wouldn't have
23 any difficulty getting information from you people,
24 given the fact that you have hired him?

25 A. I would hope not.

1 Q. Right, and so I assume that means
2 that it was expressed to him by one of your team
3 that you are not going to have a problem getting
4 the information you need to do your report?

5 A. That is probably -- that is fair,
6 yes.

7 Q. And then just to get back on the
8 confidentiality stream again at point number 6, if
9 you could just raise that up, please:

10 "Results of study have to be kept
11 quiet and not discussed with staff."

12 Whose staff? Is that his staff?

13 A. I can't imagine it would be his
14 staff. I think we were talking about the staff at
15 the mall when they did their study.

16 Q. Now, wait a second. "Results of
17 study", are you talking about the retail study?

18 A. I'm not sure what he is writing
19 down there, but I'm assuming, and maybe I shouldn't
20 assume, but I'm assuming he is referring to the
21 results from the Building Condition Assessment and
22 that they are not to be -- I assumed it was not to
23 be discussed with employees at the mall.

24 Q. Well, where it says "results of
25 study have to be kept quiet and not discussed with

1 staff", I mean, why would you think that he would
2 go walking through the mall telling what the mall
3 condition is to the staff members?

4 A. Actually, I think he is -- and
5 again, I'm not sure exactly what he was thinking,
6 and maybe I should leave it at that because I don't
7 know what he was thinking, but that is what I --
8 that is the conclusion I came to, is that it was
9 not to be -- when he is out doing his studies, he
10 is not to be talking to the employees that are
11 touring him, the mall employees, about the study,
12 about the results that they are finding.

13 Q. What they are finding?

14 A. Yes.

15 Q. Okay. He had to sign a non-
16 -- or a confidentiality agreement, did he not?

17 A. Yes.

18 Q. In fact, anybody who touched this
19 project had to sign a non-disclosure agreement?

20 A. Yes.

21 Q. So the architects from his office,
22 himself and Mr. Luciw, they signed?

23 A. Yes.

24 Q. Yeah, as well as personnel from
25 Halsall, Mr. Buckley?

1 A. Mr. Buckley and Mr. Celli, yes.

2 Q. And at the last -- at the next
3 page, point number 7:

4 "Retirement Living will consider
5 having a representative along with
6 the tour".

7 This would be in reference to somebody
8 accompanying -- somebody from Retirement Living
9 being on-site when the engineers came to town to
10 have a look?

11 A. That is what I believe that was
12 referring to.

13 Q. And did anybody accompany them, to
14 your knowledge?

15 A. I don't know.

16 Q. And the last point is under
17 "Schedule":

18 "Meeting with Rhona to discuss
19 conclusions."

20 Did you ever have a meeting after the
21 inspection was done and prior to the report?

22 A. I don't remember specifically. I
23 know I met with Mr. Luciw when he started, and I
24 know I had other meetings with them but I can't
25 recall if it was on this particular item or on a

1 different project that they ended up working with
2 us on afterwards.

3 Q. You would agree with me, would you
4 not, that since you are indirectly paying for this
5 project, that you want to get the best possible
6 product from them; correct?

7 A. Yes.

8 Q. And because this study would be
9 quite important in terms of deciding not whether
10 you are going to buy it or not but whether you are
11 even going to continue down this road?

12 A. Well, actually at this point in
13 time, again, it is still we are looking at the
14 hotel and we are still completing this whole retail
15 commercial sector study.

16 Q. But he is looking at the whole
17 mall; correct?

18 A. He is --

19 Q. Yeah.

20 A. -- as part of the terms of
21 reference.

22 Q. And he is being told, listen, the
23 big issue here is -- or one of the big issues is
24 the condition of the roof, the parking deck. So
25 you want him to have as much information as he

1 possibly can in order for him to give you as good
2 an opinion as he can; correct?

3 A. I would -- yes.

4 Q. Yeah, I mean, it just stands to
5 reason.

6 A. Yes.

7 Q. So if you could look at tab number
8 70, and that is Exhibit No. 874, this is a fax
9 dated the 30th of July, '98, from Michael Luciw who
10 is from Mr. Nicholls' office; correct?

11 A. Yes, yes.

12 Q. And it is to you, and it says:

13 "Dear Rhona.

14 In anticipation of providing you
15 with a draft of our report for the
16 review of the Algo Centre before
17 mid-August, I have briefed our
18 consultants regarding the site
19 visits that we discussed. In
20 preparation for these visits we
21 require copies of the existing
22 drawings (architectural, structural,
23 mechanical & electrical) of the
24 building for our preliminary
25 review."

1 So in this paragraph he is asking you,
2 he is telling you, you know, to do this thing, this
3 is what we need, these documents, okay. And then
4 in the next paragraph he says:

5 "It is our understanding that
6 Mr. Larry Liautaud was to arrange to
7 have copies of the construction
8 drawings and any other pertinent
9 reports or information forwarded to
10 our office. Due to your urgency in
11 having this report finalized could
12 you kindly follow up with ACP to try
13 and expedite delivery of these
14 documents."

15 So you can see that he is referring to
16 an understanding he has that Mr. Liautaud was going
17 to -- who was the mall manager at the time, right?

18 A. Correct.

19 Q. And I gather this appears to be at
20 least a follow-up to the bullet point that we
21 talked about from the meeting, that is, that there
22 is going to be no difficulty getting frank
23 information. So it appears that he is asking you,
24 that he said, Listen, you told us that there is not
25 going to be a problem getting information, and he

1 was, that is, Liautaud:

2 "[...] was to arrange to have
3 copies of the construction drawings
4 and any other pertinent reports or
5 information forwarded to our
6 office."

7 Do you see that?

8 A. Yes.

9 Q. Okay, so he obviously doesn't have
10 anything; he hasn't gotten anything yet. He wants
11 you to facilitate it?

12 A. Yes, this is a week after our
13 on-site meeting.

14 Q. Right. My question to you is did
15 you ask Mr. Liautaud for not only the drawings, but
16 did you ask for what Mr. Luciw was referring to
17 here, any other pertinent reports?

18 A. I actually would have picked up
19 the phone and called -- I suspect I would have
20 called Mr. Leistner, because that is who I dealt
21 with --

22 Q. Right.

23 A. -- most of the time at least at
24 this point and said this is what our engineers are
25 asking for.

1 Q. Right.

2 A. And can you please provide them.

3 Q. Right.

4 A. And then, you know, seeing as
5 there is a reference to Mr. Liautaud, I would
6 assume that Mr. Leistner would then call
7 Mr. Liautaud and ask him to deliver those
8 reports --

9 Q. Right.

10 A. -- to Nicholls Yallowega.

11 Q. Right, but what I am asking here
12 is Mr. Luciw is asking you to get to him not only
13 the drawings but any other reports that may exist?

14 A. Any other --

15 Q. He doesn't know what exists, and
16 you don't know what exists?

17 A. I agree, I don't know.

18 Q. Okay, but Liautaud has agreed to
19 arrange delivery of those things. My question to
20 you is when you called Mr. Leistner, did you say to
21 him, I want the drawings that we would presume
22 exist and any other relevant reports that you may
23 have? Did you make that specific request?

24 A. I would have called Mr. Leistner
25 and read to him this paragraph. I don't know

1 specifically what Michael Luciw is looking for.

2 Q. Right.

3 A. I -- you know, we rely on them to
4 tell us what it is they are looking for. So when
5 he says please get me these drawings and these
6 other pertinent reports, that is what I would have
7 asked Mr. Leistner for. And, you know, even when
8 we get to their report, I think they were
9 discussing missing some engineering consumption
10 reports and occupancy status reports. I didn't
11 know what those were. You know, I would have
12 relied on Mr. Luciw to be specific about what it
13 was he was looking for.

14 Q. But you can say with confidence
15 that you conveyed this request from Mr. Luciw --

16 A. Yes.

17 Q. -- that is, to provide any other
18 relevant reports?

19 A. Yeah, I think I would have --

20 Q. You conveyed that request to
21 Mr. Leistner?

22 A. I think I would have read it right
23 from here, because "other pertinent reports", yes.

24 Q. And because we know when we look
25 at the report -- first of all, in following this,

1 we know that there were previous reports done for
2 Algoma by the Trow company; we know that now?

3 A. We all know that now, yes.

4 Q. Okay. But those documents were
5 not turned over, to your knowledge, or as we have
6 heard, they weren't turned over?

7 A. No, they weren't turned over.

8 Q. Despite this request?

9 A. Despite this request. I asked for
10 other pertinent reports. Actually, you know, when
11 doing the investigation, you know, now I guess
12 hindsight is great and we know that there were
13 evidence of bore holes, and it would have been
14 great if, you know, Mr. Luciw or anyone else who
15 was doing that investigation actually came to us
16 and said, Listen, there is evidence of reports of
17 previous research being done up here. It would
18 have -- if they had seen that and asked us, I would
19 have then said, What is it you need? I would call
20 ACP and say, Listen, this is what I need. This is
21 what they are asking for very specifically.

22 Q. Okay. Now, if we could go to tab
23 76, this is Exhibit No. 394, and this is the first
24 step in what it appeared to me to be quite a
25 cumbersome process of giving information to your

1 Boards in terms of what you had to do with
2 Mr. Leistner before you could give information and
3 what you had to do after; would you agree with that
4 characterization, that it was a cumbersome process?

5 A. Yeah, I think that is fair.

6 Q. So the first document at tab 76 is
7 your request of him, that is, you are seeking his
8 approval to share certain information; in fact, it
9 is framed in the following fashion:

10 "As per our conversation, below
11 are the points I would like to
12 include in our report on the hotel
13 to our board of directors."

14 And this is dated the 17th of
15 September.

16 And then it says under the first bullet
17 point, and I won't read everything, but it just
18 says:

19 "Current and Historical Occupancy
20 (1993 to 1998). [...]

21 General comments regarding the
22 room designs/layout. [...]

23 Algo Inn's 1997 Year End
24 Statement."

25 And it says here:

1 "In order for the board to make
2 informed decisions they will have to
3 see and understand the financial
4 performance of the hotel. We need
5 to show them the existing financial
6 performance, discuss the financial
7 impacts on ELRL and Hotel under
8 different scenarios, and clearly
9 understand our risk in taking on the
10 hotel.

11 Historical Revenues and Profit
12 1993 to 1997."

13 And you finish off by saying:

14 "We will not provide any results
15 on the building condition assessment
16 being undertaken by Nicholls
17 Yallowega Bélanger at this time, but
18 will want to after the report is
19 approved by you."

20 And you asked for his input.

21 And on the 21st, and that is at tab 81,
22 this is Exhibit No. 3273, and the fax cover and
23 this is now dated the 21st of September:

24 "Please review and approve if
25 appropriate as soon as you can. The

1 rest of the report addresses our own
2 comments as to what actions we
3 should take.

4 If you have comments please call.
5 Rhona."

6 And then if you turn that next page.

7 MS. KUKA: I don't have another one.

8 MR. WALLACE: You don't have a next
9 page?

10 MS. KUKA: No.

11 BY MR. WALLACE:

12 Q. Okay. Do you have a next page,
13 Ms. Guertin? Do you have a --

14 A. Yeah, it looks like it has got
15 "background" on the top.

16 Q. Yeah.

17 A. Yes.

18 Q. Okay, if you could go to
19 AGC_P000001182?

20 MS. KUKA: Exhibit No. 3275.

21 BY MR. WALLACE:

22 Q. And this appears to be the
23 actual -- a section of the report that was going to
24 be shown to the Board members?

25 A. That is what it looks like, yes.

1 Q. Yes, and it says "Insert chart
2 here"; is that your writing?

3 A. It could be.

4 Q. It would stand to reason that you
5 were sending him this; you weren't going to send
6 him the whole report because he didn't have to
7 approve it all?

8 A. Yeah, we just needed his approval
9 on his information.

10 Q. Okay. And then at the next, at
11 tab 82, and this is Exhibit No. 3274 and this is
12 now dated the 22nd of September.

13 A. Oh, sorry, what was it, tab 82?

14 Q. Yes.

15 A. Okay, thank you.

16 Q. Yeah. This is his response to
17 your fax and forwarding part of the report, and he
18 is telling you that:

19 "In consideration of the
20 Non-disclosure covenants executed by
21 yourself and Mr. Kennealy, the
22 subject material may be presented to
23 your Board", so he is giving you
24 permission, "subject to the
25 following conditions:

1 1. The Board is subject to
2 confidentiality (which you have
3 already confirmed)."

4 I gather you told him that all our
5 Board members have signed confidentiality
6 agreements, or words to that effect?

7 A. Yeah, I would gather that, yes.

8 Q. And they would be the
9 confidentiality agreements in like kind as I showed
10 you earlier this morning?

11 A. Yes, I would assume so.

12 Q. Okay. The second condition:

13 "2. Any handouts (e.g. reports,
14 etc.) at the meeting will be
15 returned to yourself prior to
16 adjournment;

17 3. A final copy of the subject
18 material with a list of attendees
19 (i.e. Board members and other
20 invitees, if any) will be provided
21 to this office subsequent to the
22 meeting;

23 4. If verbal information is
24 provided to the Board, notes will be
25 made and also provided to this

1 office as in number 3 above."

2 So if you are prepared to do these
3 things, you are free to show it; correct?

4 A. Yes.

5 Q. And the actual report is at tab
6 80, and that is at Exhibit No. 721, and given the
7 fact that this is a financial report in bulk, were
8 you the author of this?

9 A. I would have written a majority of
10 this, yes.

11 Q. And the graphs and things may have
12 come from other sources; is that a fair statement?

13 A. We could have pulled them in from
14 other sources or we created them, yes.

15 Q. Okay. And this is the report that
16 was actually shared with the Board; is that
17 correct?

18 A. It looks like it. I notice it
19 still says "draft" on it, but I can't imagine it
20 would have been drastically different from this.

21 Q. Right, and the date on it is the
22 20th of September, '98 --

23 A. Yes.

24 Q. -- which coincides with this?

25 A. Yes.

1 Q. And it would be this report that
2 the Board would rely on primarily in making a
3 decision as to whether to move forward on looking
4 at the hotel as a potential purchase; fair?

5 A. This would have been the basis for
6 the discussion, yes.

7 Q. Okay. And if we can look at the
8 summary at page 5 of the report, and you start off
9 with a fairly blunt appraisal:

10 "In summary, the Algo Inn is at
11 present an unprofitable business,
12 which with some strong management
13 and implementation of programs
14 geared to leisure travel and
15 possible small business gatherings,
16 could become marginally profitable."
17 That is not really a glowing
18 endorsement, is it?

19 A. No, it is not.

20 Q. And if we go up to the top of the
21 page:

22 "From a purely business
23 perspective, the takeover of the
24 Algo Inn in any manner in which
25 Elliot Lake Retirement Living is not

1 protected is an inadvisable venture.
2 It is believed that proactive
3 management, marketing, packaging of
4 events, and capital improvements can
5 make the hotel profitable, however,
6 the potential return is not great
7 enough to warrant the high risk
8 associated with the costs required
9 to make it profitable."

10 So you are saying here on the one hand,
11 look at, we shouldn't be making this investment;
12 correct?

13 A. We are seeing it is a bad
14 investment, and if you still choose to go ahead,
15 there is still a lot of work --

16 Q. Yeah, right.

17 A. -- for marginal business.

18 Q. And then you are saying but:

19 "On the other hand, the loss of
20 over 60% of the hotel rooms in
21 Elliot Lake could seriously impact
22 business and economic development in
23 the community.

24 For the community good, the hotel
25 requires addition[al] resources, but

1 from a business perspective the
2 provision of those resources is not
3 a good investment. As we proceed
4 with the examination of the hotel,
5 the owners of the hotel, the City,
6 and Elliot Lake Retirement Living
7 must find effective ways of keeping
8 the hotel running and sharing the
9 risk associated with the development
10 of the business."

11 And if you turn to tab 83, that is
12 Exhibit No. 2157, and if we look at the General
13 Manager's comment, if you could just go to the page
14 ending 42, "Summary Comments" -- sorry, no, the
15 last two digits are 42. Yes, and this would be
16 from the General Manager's comments where it is
17 stated:

18 "The Algo Inn is at present an
19 unprofitable business.

20 Could become marginally
21 profitable with substantial resource
22 allocation.

23 Must develop strategies to bring
24 more visitors to the community.

25 From ELRL perspective the return

1 does not warrant the high risk.

2 From Community perspective we can
3 not afford to loose [sic] the hotel
4 rooms."

5 So on the one hand, this is just simply
6 consistent with what you said in the report?

7 A. Yes.

8 Q. And consequently, as a result, if
9 you go to the page ending .38, yes, just the
10 bottom, so the Board directs Mr. Kennealy to move
11 forward, that is:

12 "That the General Manager be
13 directed to pursue opportunities
14 related to the local ownership of
15 the Algo Centre Mall and Hotel, and
16 report back at the next meeting
17 before taking any action."

18 And essentially, at this stage he is
19 formally given his marching orders to pursue this;
20 he is not authorized to buy anything, but he is
21 authorized now to take a serious look at it?

22 A. Yeah, to definitely do what we
23 would call a lower -- or a more detailed level of
24 investigation.

25 Q. And lastly, if you thought you

1 were finished with Mr. Leistner, you still had to
2 report back, and that is shown at tab 77 and that
3 is Exhibit No. 3238, and in essence, you had to
4 confirm with him that what took place at the Board
5 meeting was in conformity with what you said was
6 going to happen?

7 A. Yes.

8 Q. So it is a cumbersome process,
9 isn't it, to share this what appears to be fairly
10 benign information?

11 A. Well, I think to Mr. Leistner it
12 wasn't benign. I think it was important to him,
13 yes.

14 Q. Okay, but in any event, this is
15 what you had to do in order to share with your
16 Board, or anybody for that matter, information that
17 you had gleaned from Algoma Central Properties?

18 A. Yes.

19 Q. Now, just out of curiosity, given
20 the fact that the -- no, that is okay, I was
21 thinking of something else here.

22 If you go to tab 88 -- I'm sorry, I
23 have -- one second, please.

24 Yeah, yes, if you go to tab 88 --

25 MS. KUKA: What is the exhibit number?

1 BY MR. WALLACE:

2 Q. Oh, sorry, Exhibit No. 2090. Now,
3 this is a fax in which you are seeking permission
4 to share information about the hotel to members of
5 Council; do you see that?

6 A. Yes.

7 Q. And it indicates:

8 "As you can see the only
9 information we want to tell Council
10 is the fact that the hotel is in a
11 loss position, where we believe the
12 break even point will be and the
13 occupancy.

14 Any other information we discuss
15 with Council will relate to what we
16 feel can and can not be done with
17 the hotel and what our
18 recommendations are.

19 The words which I end up using
20 will probably be different but the
21 content will remain the same.

22 The meeting we are going to have
23 with Council is not a regular
24 meeting of Council or a caucus
25 meeting. We will remind Council of

1 the sensitive nature of the
2 information and that it is not to be
3 disclosed to any one after the
4 meeting.

5 Please let me know if I have your
6 approval."

7 Now, you -- Mr. Kennealy had been
8 authorized by the Board to pursue this in late
9 September, that is, the hotel. Were you aware of
10 any communication of that to Council after he was
11 authorized to do that and before the meeting that
12 you are going to have?

13 A. Oh, in between those two dates?

14 Q. Yeah.

15 A. I'm really not aware of
16 Mr. Kennealy's communications with people, unless
17 he tells me specifically.

18 Q. And if you -- so what I am asking
19 you is did he tell you that, Listen, I have told
20 Council --

21 A. Not that I recall.

22 Q. -- or I told the Mayor -- well,
23 the Mayor, if he was at the meeting he would know
24 anyway, at the Board meeting.

25 If you look at the next tab, and that

1 is Exhibit No. 2091, and it again repeats what you
2 had said that the two main points of your theme
3 were, that is, it is not a good investment but on
4 the other hand we have to look at this as a
5 community enterprise and not simply as an
6 investment; correct?

7 A. I think it --

8 Q. That would be --

9 A. That is what we are wrestling
10 with, is it is not good, but losing the rooms is
11 also not good for us, yes.

12 Q. So losing the rooms is not good
13 for the community; correct?

14 A. Correct.

15 Q. And it is not good for Elliot Lake
16 Retirement Living either, is it?

17 A. Correct.

18 Q. So I'm not implying anything by
19 this, but there was really a joint interest in
20 pursuing this. I mean, you both stood to lose if
21 the hotel shut down?

22 A. I agree, and I think that is sort
23 of what prompted that whole study, you know, almost
24 a year earlier.

25 Q. Okay. Now, at the bottom of this,

1 which was attached, that is the information you
2 were seeking the permission, you don't set out what
3 your strategy is to Mr. Leistner?

4 A. Correct.

5 Q. I presume that that strategy was
6 shared with Council members?

7 A. Yes, it was.

8 Q. And the Council members were
9 apprised of the fact that you were -- you, that is,
10 Elliot Lake Retirement Living, were going to
11 proceed with looking at the possibility of buying
12 the hotel?

13 A. The whole property.

14 Q. Sorry?

15 A. The whole property. You said
16 Council was apprised that we were going to buy the
17 hotel, but at that point Council was -- would have
18 been apprised that we were doing more homework on
19 the entire property, not purchasing the hotel.

20 Q. Okay, well, why don't you tell us
21 exactly what you had said to them, or at least what
22 was related to you? I mean, you were there.

23 A. Obviously, I can't remember words.
24 The hotel study was shared in terms of here is what
25 we found with respect to the hotel, and we would

1 have shared, just as it says in the verbal report,
2 our concerns about balancing the loss of the rooms
3 with the lack of profitability of the hotel.

4 We also -- I believe it was at this
5 meeting we talked about the retail strategy or the
6 retail study and we talked about, you know, how to
7 deal with some of the findings that came out of
8 that. And I believe Mr. Kennealy also talked about
9 the fact that our Board of Directors had given him
10 instructions to look at the whole property.

11 Q. Yes, fair enough, okay. Now, what
12 was this actual meeting? Because I know this issue
13 was canvassed with Mr. Kennealy, but we have
14 established that at 4 o'clock on the 13th of
15 October there was a meeting between the Elliot Lake
16 Retirement Living executives and Town Council.
17 Were you at the meeting?

18 A. I'm very confident I was at the
19 meeting, yes.

20 Q. And was it a public meeting?

21 A. I actually -- I have -- I don't
22 know what type of meeting it was. All I know is I
23 was expected to be there and provide this
24 information, and I would assume I prepared most of
25 the presentation for it.

1 Q. And you prepared it and delivered
2 it, or you prepared it and Mr. Kennealy delivered
3 it?

4 A. Mr. Kennealy would have delivered
5 most of it. I might have done some of the
6 background information on the retail study and the
7 hotel side of things, but he is definitely a much
8 better presenter than I am and so he would have led
9 most of that.

10 Q. In your fax to Mr. Leistner you
11 said:

12 "The meeting we are going to have
13 with Council is not a regular
14 meeting of Council or a caucus
15 meeting."

16 What type of meeting was it that you
17 were referring to?

18 A. My understanding is it was a
19 meeting between two organizations.

20 Q. And your organization was
21 represented by yourself and Mr. Kennealy?

22 A. I believe that is who was there,
23 yes.

24 Q. And the Council was the full
25 Council and the Mayor?

1 A. I don't know who was actually at
2 the meeting, which members of Council were there or
3 weren't there. I really don't know -- or I don't
4 recall, sorry.

5 Q. You know Mr. Burling? Do you
6 know --

7 A. I'm sorry, I didn't really know
8 him very well. I knew him to see him, yes.

9 Q. Was he at that meeting?

10 A. I don't recall if he was at the
11 meeting or not at the meeting.

12 Q. What about Mr. Bauthus, was he
13 there?

14 A. I don't recall if he was there or
15 not there. I would assume he would have been
16 because of, you know, the importance of this, but I
17 can't say for sure he was there.

18 Q. And Council meetings are generally
19 open to the public unless Council decides to go in
20 camera; correct?

21 A. That is -- I have limited
22 understanding of municipal procedures, but --

23 Q. Were there any members of the
24 public present at this meeting?

25 A. Not that I recall.

1 Q. Were there any members of the
2 press there?

3 A. Not that I recall.

4 Q. Given how you close out the
5 letter -- or sorry, the fax cover:

6 "We will remind Council of the
7 sensitive nature of the information
8 and it is not to be disclosed to
9 anyone after the meeting."

10 We can safely assume that this was not
11 a public meeting, can we not?

12 A. I think that is correct, yes.

13 Q. So that the only people present
14 would have been Council members, Mr. Bauthus
15 possibly, and yourself and Mr. Kennealy?

16 A. That is a fair assumption, yes.

17 Q. And was this something, this type
18 of meeting, was this something that you had
19 participated in prior to this October the 13th?

20 A. I can't recall anything prior to
21 this.

22 Q. Can you recall if you participated
23 in this type of a meeting after the 13th of
24 October?

25 A. Yeah, I think there is several

1 occasions over the years that I have been with
2 Retirement Living where either we have asked the
3 City or the City has asked Mr. Kennealy to, you
4 know, provide updates on various projects. So I --

5 Q. When you say the "City", are you
6 referring to Council or are you referring to some
7 of the administrative staff?

8 A. Probably both.

9 Q. And on these updates, are these
10 public meetings, in the context of a public
11 meeting?

12 A. I think some are; I think some
13 aren't.

14 Q. So this is not an unusual
15 occurrence then?

16 A. Not that -- to me it wasn't. It
17 was -- both organizations had, you know, some -- we
18 had common goals, and so I think it was reasonable
19 for the two organizations to talk and to understand
20 where each other's organization is at.

21 Q. Now, at this meeting that was held
22 on the 13th, the last thing it says here is:

23 "We will remind Council of the
24 sensitive nature of the information
25 and that it is not to be disclosed

1 to any one after the meeting."

2 Did you seek anything other than their
3 say-so that they wouldn't disclose this? What I am
4 asking here is did anybody give you a signed
5 undertaking not to disclose this information?

6 A. Not that I recall.

7 Q. Now, if you go to tab 87, which is
8 Exhibit No. 463, this is the draft of the Nicholls
9 Yallowega report and this was a -- you sent that to
10 Mr. Leistner as per your agreement; correct?

11 A. I believe I did.

12 Q. Yeah, in fact, the fax
13 transmittal, if you want it, is October the 8th.

14 A. Okay.

15 Q. And, sorry, you -- it was
16 transmitted to you on the 8th and you transmitted
17 it to him on the 14th, and we can see that at tab
18 91 -- sorry, yes, tab 91, and that is Exhibit No.
19 2092. You see the 14th and the draft report?

20 A. Yes.

21 Q. Okay.

22 "I will prepare my comments
23 regarding the report."

24 What were you referring to? What
25 comments would you have regarding the report?

1 A. Actually, I don't recall having
2 any comments with the report for Mr. Leistner.

3 Q. I'm sorry, I didn't recall?

4 A. I didn't recall having any
5 comments with respect to the report for
6 Mr. Leistner.

7 Q. And did he have -- did he give you
8 any back?

9 A. Not that I -- no.

10 Q. And tab 92, which is Exhibit No.
11 66, is the final report, there we are, and it is
12 dated the 12th of November, '98. And this report
13 contains both the report of Nicholls Yallowega as
14 well as the reports of the other consultants,
15 including Halsall; correct?

16 A. Correct.

17 Q. Now, you would have read both the
18 draft version of Nicholls Yallowega --

19 A. Yes.

20 Q. -- and Halsall?

21 A. Yes.

22 Q. And then you would have read the
23 final version of Nicholls Yallowega; correct?

24 A. Correct.

25 Q. And I just want to take you to a

1 few parts of this. If you could go to page 11,
2 please, this is the portion of the report dealing
3 with the parking deck structure which, as we have
4 discussed earlier today, formed a very important
5 part of the component of this report; correct?

6 A. Correct.

7 Q. And this was an area of particular
8 concern in terms of finding out what sort of shape
9 it is in; correct?

10 A. Yes.

11 Q. And it states:

12 "A rooftop parking deck structure
13 is located on the third floor of the
14 building. The deck surface
15 generally consists of a concrete
16 topping wear layer installed over
17 precast concrete slabs. It is our
18 understanding that the integrity of
19 the waterproofing ability of this
20 structure has been a continuous
21 maintenance issue."

22 And that was your understanding as
23 well; correct?

24 A. We certainly learned more and more
25 once Nicholls and Halsall got on-site, yes.

1 Q. But by the time you read this,
2 this wasn't news to you?

3 A. No, it wasn't.

4 Q. Okay.

5 "From our review of the existing
6 drawings and visual inspection, the
7 presence of an integral
8 waterproofing membrane could not be
9 determined. Based on the extent of
10 surface applied sealants on the
11 concrete topping wear layer, we
12 suspect that the structure was
13 constructed without an integral
14 waterproofing membrane. Maintenance
15 staff confirmed the absence of a
16 waterproofing membrane during repair
17 work that has been recently executed
18 for their parking deck maintenance
19 and concrete repair program."

20 MR. KEARNS: Mr. Commissioner, I wonder
21 if I might ask for some direction?

22 Thank you.

23 Mr. Kennealy was on the stand for two
24 and a half days earlier this week. A day and a
25 half of that was with respect to a period of time

1 that Retirement Living did not even own the mall.

2 Now, that appeared to be a story that
3 Commission Counsel thought that you should hear,
4 and I didn't object to that and you heard it along
5 with what happened thereafter.

6 This morning I felt encouraged by my
7 friend who had said that perhaps he would be
8 finished as early as lunchtime today, and what I
9 see is that exactly the same thing is happening. I
10 would wonder if I look through the record how many
11 times that particular passage has been read in.

12 We are in November. We are not even a
13 year into Ms. Guertin's experience with the mall.
14 We are still six months, seven months away from
15 buying it. We have been at this for three hours.

16 This is all information that was put
17 before you yesterday, and I would ask for some
18 direction from you to counsel to move forward to
19 that part of Retirement Living's involvement in the
20 mall that they ought to be interested in, which is
21 from the day they owned it until the day that they
22 sold it.

23 That is what the community needs to
24 look at, in my submission.

25 THE COMMISSIONER: Well, I take it that

1 these passages are being referred to Ms. Guertin in
2 order to understand what subsequent actions she may
3 have taken or steps, things she may have done.

4 MR. WALLACE: That is exactly it, yes.

5 THE COMMISSIONER: I think Mr. Wallace
6 is being careful. It is true that it is lengthy
7 for those of us who have been through it, but this
8 is Ms. Guertin's first opportunity to speak about
9 the report in the hearing room. I understand that
10 this is tedious, but it may very well be necessary.

11 Mr. Wallace, do you have any further
12 comments?

13 MR. WALLACE: No, that is exactly what
14 I intend to do and for the reasons that you have
15 cited.

16 THE COMMISSIONER: I'm going to let
17 Mr. Wallace proceed.

18 BY MR. WALLACE:

19 Q. The next paragraph states:

20 "A more detailed review of the
21 parking deck structure is provided
22 in Appendix 'A'".

23 Which is the Halsall Report, and we'll
24 get that in a second.

25 A. Okay.

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Q.
"Note there are concerns and recommendations expressed by the structural consultant regarding the structural integrity of the concrete slabs. Recommendations are provided for conducting additional inspection and testing to accurately assess the extent of any deterioration. The results of the additional inspection and testing may have significant cost implications if the structural integrity of the slabs has been affected. Concerns and restrictions regarding live loadings and structural capacities are also indicated."

So this section of the report you will agree with me raises possible concerns about the condition of the parking deck; correct?

A. Yes.

Q. And if we go to the Halsall Report at page 3, and that would be -- it is upside down here -- 0036 would be the page number. Yes, thank you. Have you got that page, Ms. Guertin?

1 A. Yes, I do.

2 Q. Okay.

3 "We understand that the parking
4 deck is being sanded during the
5 winter months. However, there is
6 evidence of salt contamination where
7 the snow was stockpiled off the
8 parking deck. We understand that
9 there is no existing waterproofing
10 protection system."

11 Which is simply the statement that
12 Nicholls Yallowega made earlier.

13 "It is our opinion there may be
14 chloride contamination in the
15 precast parking deck slabs.

16 The cause of corrosion is usually
17 chlorides in the concrete (from
18 various sources but primarily road
19 salt) combined with water and
20 oxygen. Chloride contamination acts
21 to break down the protection against
22 corrosion which concrete normally
23 provides for steel.

24 At this time we cannot render an
25 opinion as to what the true state of

1 the deck is, nor what long term cost
2 could be expected. However, given
3 the age of the structure,
4 deterioration of the concrete slabs
5 may begin to occur now or in the
6 near future. This could result in
7 significant maintenance costs for
8 the remainder of the building life.

9 There was no evidence of
10 structural distress or excessive
11 deterioration of the structural
12 steel framing observed at the time
13 of the review."

14 And then they go on to say that further
15 study is warranted.

16 And if we go back to page 25 of the
17 Nicholls report, yes, at the bottom, at "Parking
18 Structure" they offer two options of remediation of
19 the problem, both involving the installation of a
20 waterproofing membrane.

21 The first option is priced out at
22 \$606,500, and the other one is priced out at --
23 which is another involving a waterproofing
24 membrane, but covered in asphalt, and it has a
25 price tag of 1.8 million dollars, roughly; correct?

1 A. Correct.

2 Q. Yes. Now, this -- these -- both
3 of these reports I presume were read by you?

4 A. Yes.

5 Q. And as well as by Mr. Kennealy?

6 A. Yes.

7 Q. And these reports, as far as the
8 parking structure is concerned, point out that
9 there is cause for concern; they cannot give it --
10 they cannot render an opinion as to the true state
11 of the parking deck; correct?

12 A. That is what we took -- that is
13 what I took away from this report, that we needed
14 to do a lot more; we needed to have them do a lot
15 more investigation for us.

16 Q. In order to come to a true
17 conclusion as to what the state of affairs is?

18 A. Exactly.

19 Q. And you understood by reading this
20 that they are saying that because they cannot
21 render an opinion as to the state of the parking
22 deck structure, further studies have to be done,
23 firstly; correct?

24 A. Yes.

25 Q. And what they are -- amongst other

1 things, they are going to be looking at is to see
2 what is the extent of the deterioration of any of
3 the precast concrete slabs; correct?

4 A. What the deterioration is, if any.

5 Q. If any.

6 A. Yes.

7 Q. If any.

8 A. Yes.

9 Q. Which support the topping and
10 ultimately the cars; correct?

11 A. Correct.

12 Q. Now, I would like to take you to
13 tab 102, which is Exhibit No. 3240. This is the
14 tab, it outlines the minutes of the meeting, the
15 Board meeting on the 3rd of December, 1998. And if
16 you turn to the "Manager's Comments", which are at
17 page 4, Mr. Kennealy is reporting to the Board
18 members that since their last meeting in September:

19 "[...] we met with Council to
20 review the Retail Study. This went
21 quite well and all councillors now
22 have a much better understanding of
23 the realities of the community's
24 position in relation to this
25 sector."

1 Dropping down, it says:

2 "Council was also provided the
3 position taken by Retirement Living
4 regarding the hotel and mall and
5 concur with your view that we should
6 be looking at the entire mall not
7 just the hotel."

8 So they were provided with, as I see it
9 here -- and this would be referring to the meeting
10 in October?

11 A. Yeah, I am assuming that is the
12 meeting he is referring to, yes.

13 Q. And at that meeting we know that
14 they were provided with the information for which
15 you sought approval of Mr. Leistner, that they --

16 A. Yes, that they were provided, like
17 I said, the studies.

18 Q. Yeah, and there was also -- they
19 were provided with that and they were also told, as
20 you have told us, the fact that your company was
21 going to be moving forward looking at possibly
22 purchasing both the mall and the hotel, and of
23 course, they were quite enthusiastic about this?

24 A. Yes.

25 Q. Now, in addition, Mr. Kennealy has

1 testified that at the meeting of December the 3rd,
2 that he provided the members of the Board with a
3 handout that would contain the costing estimates
4 that were contained in the Nicholls Yallowega
5 report at pages 24 to 28 which included -- if we
6 can go back to that, please, which includes the
7 costing of all items that they were asked to report
8 on, the cladding assemblies, the parking structure,
9 mechanical systems upgrades and electrical systems
10 upgrades, and ultimately coming up with totals
11 between 2 million and 3 million dollars or 3.5
12 million dollars. What comment can you make as to
13 whether this took place or not?

14 A. I don't remember specifically what
15 Mr. Kennealy ended up providing. I remember
16 talking about or having the discussion about the
17 costs and the overview of what Nicholls Yallowega
18 had to say.

19 Q. And this is on the 3rd of
20 December; correct?

21 A. It is.

22 Q. And he has said that he actually
23 provided photocopies or a handout. Is it your
24 evidence that you don't remember?

25 A. Well, I don't remember exactly

1 what -- whether he gave handouts or a discussion, I
2 just don't remember specifically what happened
3 there, but --

4 Q. Well, what I am asking you is did
5 he pass out printed material?

6 A. Again, I'm not sure what -- if he
7 passed out anything, what he passed out, or whether
8 it was a verbal discussion. Just my sense is that
9 yes, the information was discussed.

10 Q. And in addition, he also indicated
11 that the report indicated that there was -- it
12 raised issues that needed further looking at; is
13 that a fair characterization of your recollection?

14 A. I think all along when we referred
15 to the Nicholls Yallowega report, we referred to it
16 as not quite -- well, I guess incomplete is
17 probably the right word because there was that
18 whole recommendation in there that we do more
19 investigation to be certain. So yeah, that was
20 raised several times.

21 Q. And it is your recollection that
22 you do not recall if he handed out printed
23 material; is that your recollection?

24 A. I don't recall how the discussion
25 happened or the information was transferred.

1 Q. But he certainly shared with the
2 Board the information concerning the costing of the
3 remediation?

4 A. Yes.

5 Q. And he also shared with the Board
6 the fact that the report raised issues that needed
7 more looking at?

8 A. Yes.

9 Q. Now, one of the reasons that it
10 puzzles me that you don't recall whether he passed
11 this information -- whether he passed information
12 out or not, you don't dispute the fact that he
13 shared the information, is that this would
14 represent, it appears to me at least, a gross
15 deviation from the agreement that you folks had
16 with Mr. Leistner?

17 A. Yes.

18 Q. Correct?

19 A. Yes.

20 Q. And it would be -- were you told
21 in advance he was going to be doing this?

22 A. Not that I recall.

23 Q. And when he did that, did you not
24 sort of say to him, What are you doing here; we are
25 not allowed to do this?

1 A. I did a little bit of a, I haven't
2 asked Mr. Leistner yet, yes.

3 Q. So you made it clear to him that
4 he wasn't authorized to give this information;
5 correct?

6 A. This was after the fact that I
7 would have been -- I would have -- it would have
8 been nice to be able to cover it off with
9 Mr. Leistner, but it didn't happen.

10 Q. Did you have any discussion in
11 advance of the Board meeting?

12 A. Not that I recall, no.

13 Q. And this would have come as a
14 complete shock to you that he was doing this?

15 A. I wouldn't say a shock. You know,
16 Mr. Kennealy, he makes the decisions as to what he
17 is doing, what he is presenting to the Board. That
18 is not my call. He goes into a Board meeting well
19 prepared. I don't tell him what to say or what to
20 do. He is my boss, so --

21 Q. What else did he say in that
22 meeting concerning the contents of the Nicholls
23 Yallowega report?

24 A. I don't remember the specifics.
25 All I know is that he talked about the numbers, and

1 he talked about the fact that more work needed to
2 be done.

3 Q. And I would have thought that you
4 would have had a clear recollection, given what
5 appears a clear repudiation of the contract, the
6 non-disclosure agreement?

7 MR. KEARNS: Is that a question?

8 BY MR. WALLACE:

9 Q. I'm asking you, did you not feel
10 shocked about this?

11 A. No --

12 THE COMMISSIONER: Well, she told you
13 she wasn't shocked.

14 THE WITNESS: No.

15 THE COMMISSIONER: I take it surprised
16 perhaps? Or what word would you use?

17 THE WITNESS: He caught me off guard a
18 little bit.

19 BY MR. WALLACE:

20 Q. Now, at tab 105, at Exhibit No.
21 2094 --

22 MR. KEARNS: Just for the record,
23 perhaps if Ms. Guertin could be asked does she
24 recognize this document, has she read it and is she
25 prepared to answer questions on it, we might speed

1 up things as opposed to having it read into the
2 record again.

3 THE COMMISSIONER: This is from you to
4 Mr. Leistner. Do you recognize that document?

5 THE WITNESS: Yes, I do.

6 BY MR. WALLACE:

7 Q. And in this document you are
8 seeking to share additional information with the
9 Board; correct?

10 A. Yes.

11 Q. And if we could look at -- and you
12 sent -- as point number 4 you sent:

13 "A brief summary of the building
14 condition assessment completed by
15 Nicholls Yallowega & Bélanger".

16 Correct?

17 A. Yes.

18 Q. And if we look at Exhibit No.
19 3276, and you will find that at tab 108, now this
20 information that is contained in the document we
21 are looking at, it was intended to be shared with
22 the Board. I don't think it has been clearly
23 established, when was it shared with the Board?
24 Was it -- because the -- was this information that
25 was going to be shared with the committees that

1 were being or that had been struck to consider
2 whether to make an offer on the mall?

3 A. This isn't the actual information
4 that was shared with the committees.

5 Q. Say that again.

6 A. This isn't the actual information
7 that was shared with the committees. The --

8 Q. No, I understand that.

9 A. Okay.

10 Q. But I'm just trying to situate
11 when the information was shared with the committee
12 and how it was shared.

13 A. So the detailed information that
14 went with this --

15 Q. Yes.

16 A. -- in writing was shared -- the
17 committee reports, I could have the dates wrong,
18 but we met with one committee the 22nd or 23rd of
19 December and the other two committees on the 30th
20 of December.

21 Q. Okay, and there were a number
22 of -- there were in fact three, as you have said,
23 three committees and there was a report to each
24 committee?

25 A. Correct.

1 Q. Correct? There was a report to
2 the Community Issues Committee, one to the
3 Diversification Committee, and one to the Finance
4 Committee?

5 A. Correct.

6 Q. And this information found its way
7 into each one of those reports?

8 A. Not that particular information,
9 no.

10 Q. No, but I mean --

11 A. Oh, I thought you said --

12 Q. No, I don't mean to suggest that
13 this piece of paper, 3276, was, but the information
14 contained in it was incorporated into the reports
15 that were presented?

16 A. Yes.

17 Q. Okay. Now, I want to ask you
18 about the actual document. It states that:

19 "In August 1998 Elliot Lake
20 Retirement Living hired the
21 architectural firm of Nicholls
22 Yallowega & Bélanger to conduct a
23 building condition assessment of the
24 Algo Centre.

25 The assessment touched four major

1 aspects of the building:

2 Architectural and structural
3 features.

4 Electrical systems.

5 Mechanical systems.

6 Parking deck structure.

7 The initial inspection indicates
8 that the building is structurally
9 sound, including the parking deck,
10 and has been well maintained."

11 You drafted that, did you?

12 A. I did.

13 Q. And do you see a statement in
14 Nicholls Yallowega or Halsall that states that the
15 building is structurally sound, including the
16 parking deck?

17 A. Not specifically in those words.
18 I actually -- I know I had -- somewhere I had
19 written down something about that particular item,
20 but at the end of the day, it doesn't say that in
21 Nicholls Yallowega & Bélanger; it doesn't say that
22 in Halsall. I think the term that they used is,
23 you know, a couple of times you can see generally
24 in good condition and I think Halsall says there is
25 no evidence of structural distress or excessive

1 deterioration, so -- but it does not say
2 "structurally sound".

3 Q. The report doesn't come close to
4 saying it is structurally sound; it says we don't
5 know, correct?

6 A. You are right, and that actually
7 the fact that we don't was shared with each of the
8 subcommittees.

9 Q. That statement that "The initial
10 inspection indicates that the building is
11 structurally sound, including the parking deck",
12 that statement is not correct, is it?

13 A. I think I said yes.

14 Q. And this is information that was
15 being provided to the Board for the purposes of
16 making a decision as to whether to pursue the
17 purchase; correct?

18 A. I think you are correct the word
19 "structurally sound" is in -- the term
20 "structurally sound" is in those reports, along
21 with here is what was missing in terms of the
22 membrane; there appears to be a missing membrane.
23 We also talk about the fact that there is a lot
24 more work to be done.

25 So I have to -- I have to own up to the

1 fact that I should not have used that term
2 "structurally sound" until May 1999 when we found
3 out from Halsall that it actually was structurally
4 sound.

5 Q. Well, it is -- can you explain for
6 the Commissioner how you could jump from a
7 statement we don't know the structural condition to
8 it is structurally sound? How do you get from we
9 don't know to it is okay?

10 A. All I can say is I had a poor
11 choice of words. You know, Halsall says there is
12 no evidence of structural distress or excessive
13 deterioration. I don't know how I came up with the
14 term "structurally sound". You know, I -- I can't
15 tell you why. That is the term that ended up in
16 the document and it got -- it was actually cut and
17 paste into future documents beyond that.

18 Q. Mr. Kennealy read both reports,
19 did he not?

20 A. I believe so, yes.

21 Q. Well, I mean, he in fact presented
22 the costing from Nicholls Yallowega to the Board?

23 A. Yes.

24 Q. And he also shared with them the
25 fact that there were unresolved issues as far as

1 the diagnosis was concerned?

2 A. Yes.

3 Q. Correct?

4 A. That is the subcommittee reports.

5 Q. Right, so and when he was -- when
6 this statement was put to him when he testified, he
7 agreed with Mr. Doody that this statement was in
8 fact false.

9 Now, what I am asking you is when this
10 information found its way into the reports that
11 were circulated, did Mr. Kennealy say to you, You
12 can't say that, Rhona, that is not true?

13 A. I don't -- no, he never said that
14 to me.

15 Q. So if we go to tab 110, this is
16 Exhibit No. 2168 -- just before you leave that,
17 there is just one thing here. On the
18 second-to-last paragraph it says:

19 "In 1999, the building will
20 require capital expenditures for the
21 cooling tower. Within the next few
22 years, the roof of the hotel will
23 require replacement. Also, the
24 mechanical engineer has suggested
25 that significant dollars be budgeted

1 for the HVAC system in the mid
2 term."

3 You will agree with me that in this
4 document, and in fact, when you move forward with
5 future iterations, there is no mention of the fact
6 that in Nicholls Yallowega they had indicated a
7 potential cost in the six to seven figures?

8 A. Our Board was well aware of the
9 potential costs.

10 Q. And that is the reason why it
11 wasn't mentioned here?

12 A. No, this was, again, a summary to
13 Mr. Leistner.

14 Q. Okay. Well, let's then have a
15 look at the information that was --

16 THE COMMISSIONER: Well, perhaps we can
17 reserve that until 2 o'clock this afternoon,
18 Mr. Wallace.

19 MR. WALLACE: Thank you.

20 THE COMMISSIONER: We'll rise until
21 that time.

22 Thank you.

23 -- RECESSED AT 12:47 P.M.

24 -- RESUMED AT 2:00 P.M.

25 THE COMMISSIONER: Mr. Kearns was ready

1 to start re-examination.

2 MR. WALLACE: He would be a lot quicker
3 than me.

4 BY MR. WALLACE:

5 Q. If we could turn to -- or you may
6 be there, in fact, at tab 110.

7 A. Okay.

8 Q. Sorry, Exhibit No. 2168. These
9 are the minutes of the meeting of the 30th of
10 December of the Board, and at this meeting the
11 Board received the reports from the
12 Diversification, Finance and Community Issues
13 Committees, as is shown on the first page; and as a
14 result of that and after the discussion that
15 ensued, Mr. Kennealy had been authorized by the
16 Board to put in an offer of 2.5 million with some
17 further provisos.

18 And what I am interested in is the
19 actual reports themselves. There are three of them
20 attached. The first one is the report to the
21 Community Issues Committee which is at page 003 and
22 the -- and you are familiar with these reports?

23 A. Yes, I am.

24 Q. Yes, and you were the author of
25 them?

1 A. Most of it, anyways. Yeah,
2 typically I would write most of them.

3 Q. If you want to read them, go
4 ahead, but I was just going to ask you that the
5 information contained in "The Physical Asset" part
6 of each report is identical; is that not correct?

7 A. I believe that is true.

8 Q. Okay. So each committee was given
9 the identical information as far as the building
10 was concerned?

11 A. Yes.

12 Q. Okay, now, and it was -- this is
13 the form in which the information that you had
14 sought to release and get Mr. Leistner's permission
15 to release finds itself; is that correct?

16 A. With respect to the fax --

17 Q. Yes, the 17th of December.

18 A. Yes.

19 Q. The result of the 17th of December
20 fax to Mr. Leistner seeking his approval where you
21 attached the one-page document outlining the
22 Building Condition Assessment and he gave his
23 permission, this is where that information finds
24 itself?

25 A. Not word for -- not in the same

1 words, but yes.

2 Q. No, no, and I'm not expecting this
3 to be word for word.

4 A. Okay.

5 Q. But it wasn't you got -- my only
6 point is that you received his permission to give
7 this information to the Board, and this is where it
8 shows up?

9 A. Correct.

10 Q. Okay. Now, just as a matter of
11 process, what would happen is you would prepare
12 this report and it would be distributed to the
13 various committees in advance of their meeting; is
14 that how it works?

15 A. That is typically how it works,
16 yes.

17 Q. Okay. And obviously then the
18 purpose of these is to assist them in making
19 whatever decision they are charged with making?

20 A. To assist --

21 Q. Or recommendation?

22 A. Yes, as part of the information
23 sharing, yes.

24 Q. And in this case here, it was to
25 examine whether or not Elliot Lake Retirement

1 Living should take the next step on this project,
2 that is, should we be making a formal offer to
3 purchase; correct?

4 A. Correct.

5 Q. And that was the reason that this
6 document was -- or the three documents were
7 created?

8 A. Yes.

9 Q. Okay. Now, you will agree with me
10 that this, if we -- just for ease of reference, why
11 don't we go with the Diversification Committee
12 Report, it is just the one I have got marked up
13 here, which would be page 007. And you'll agree
14 that this page, in fact the fourth paragraph
15 contains that statement that we talked about this
16 morning, that is:

17 "The Building Condition Assessment
18 indicates that the building is
19 structurally sound"?

20 A. Yes.

21 Q. So that single statement would
22 find itself in all three reports?

23 A. Yes, and actually I think maybe
24 even a couple of other reports after on where I cut
25 and pasted --

1 Q. Yes, no, and we are not going to
2 forget those.

3 A. Okay.

4 Q. Yeah. So and then at the top of
5 the next page, on the top of the second page there
6 is a paragraph dealing with the roof and the
7 absence of the membrane on the parking deck?

8 A. Uhm-hmm.

9 Q. Okay, and then it says:

10 "The architect and engineers were
11 asked to identify any significant
12 capital expenditures which will be
13 required in the next several years.
14 The report identifies the
15 following:"

16 And then it outlines the hotel roof,
17 the HVAC system and the cooling tower. What we can
18 agree obviously is what you did not include there
19 was the capital expenditures for the roof deck
20 parking structure; correct?

21 A. The parking deck, I agree it is
22 not there.

23 Q. It is not there. And in fact,
24 without taking you back there, that was the biggest
25 single expense that was identified by Nicholls

1 Yallowega?

2 A. Yes, it was, and our Board was
3 aware of those numbers, and they were also aware
4 that we still had a lot more investigation that had
5 to be undertaken by, well, which ended up being
6 Halsall. So yeah, they knew the numbers. They
7 knew the range of the numbers on the parking deck
8 were 600,000 up to 1.8 million dollars.

9 Q. But in fact, they would have known
10 all of the other numbers as well, because
11 Mr. Kennealy had informed them of all of the
12 expenses?

13 A. Yeah, the other discretionary
14 numbers for improvements and -- yes.

15 Q. And in fact, these numbers here
16 that we see here, 157.5 and 400,000 and 47,000
17 immediately --

18 A. Yes.

19 Q. -- they were aware of those
20 things?

21 A. Yes.

22 Q. So what was the harm in putting in
23 then the big ticket items here?

24 A. I'm not really sure what the harm
25 was in not putting it in. The Board was aware of

1 the numbers from 6 million to 1.8 and that more
2 work needed to be done. So those numbers were --
3 you know, we could have received the Halsall Report
4 and it could have been 4 million, for all we know,
5 or it could be what we got.

6 Q. Why put any numbers in then?

7 A. Those were -- I think the
8 intention at the time were those were the things
9 that we knew that had to be dealt with that were
10 very clear. There was no we need to investigate
11 this further in the Nicholls Yallowega Report.

12 Q. I'll make the suggestion to you
13 that the reason that the figure for the roof was
14 not put in, the roofing, the roof deck was not put
15 in is because you had decided that you were not
16 going to make that capital expenditure?

17 A. That is not true.

18 Q. You did in fact not make that;
19 correct?

20 A. We didn't make that expenditure.

21 Q. Just on a side note, did you ever
22 ask permission to share with the City that same
23 information that you had asked to share with the
24 Board in your December 17th fax to Mr. Leistner,
25 that is, the building condition?

1 A. I didn't make a request to
2 Mr. Leistner to share that.

3 Q. And you are not aware of anybody
4 else having made it?

5 A. No. It wouldn't be my decision to
6 make.

7 Q. And did you ever ask for
8 permission to give the report to the Board?

9 A. No, we didn't.

10 Q. I know you asked permission to
11 give a summary or parts of the report to the Board,
12 but did you ever ask outright, can we let them see
13 it?

14 A. I did not do that.

15 Q. Okay. And consequently, you never
16 asked for permission to share the report with the
17 City, Nicholls Yallowega?

18 A. I did not ask for permission to
19 share the report.

20 Q. Okay. Now, we know that as a
21 result of the meeting of -- the Board meeting of
22 the 30th of December, that Mr. Kennealy was
23 authorized to put an offer in and that that offer
24 was in fact put in. And I want to move on and take
25 you to the business plan that you have, and that is

1 at tab 123 and that is Exhibit No. 07-02. Now,
2 first of all, you can identify this, this document,
3 this business plan?

4 A. Yes.

5 Q. You were the author of it?

6 A. Again, predominantly most of it,
7 yes.

8 Q. And it bears a date of the --
9 sorry, of March '99?

10 A. Yes.

11 Q. And Mr. Kennealy indicated before
12 the Commission earlier this week that the purpose
13 of this plan was to assist in obtaining financing
14 for the purchase of the Algo Centre Mall; do you
15 agree with that?

16 A. Yes.

17 Q. And I'll ask you to turn to page
18 3 -- I'm sorry, page 4. Okay, now, we are not --
19 sorry, this would be page -- the last two digits
20 are 18.

21 Okay, now, if you look down the fourth
22 paragraph of that that is currently on the screen
23 there, it is a repetition of the statement about
24 the fact that "The Building Condition Assessment
25 indicates that the building is structurally sound".

1 This again is -- this statement that
2 was contained in the three reports that we looked
3 at a few moments ago that were given to the Board
4 in December is contained again in this document;
5 you'll agree with that?

6 A. Yes.

7 Q. As well as the statements
8 regarding the capital expenditures regarding the
9 hotel roof, the HVAC system and the cooling tower,
10 they appear as well?

11 A. Yes.

12 Q. And the parking deck does not
13 appear there?

14 A. Yes.

15 Q. Correct. What doesn't appear in
16 this document, in this portion of the document or
17 the document at all, is the section that appeared
18 in the report given to the Diversification
19 Committee that we referred to talking about the
20 fact that there was -- they couldn't determine a
21 membrane; the absence of a membrane is not
22 mentioned in this document, correct?

23 A. I don't see it referenced.

24 Q. Okay. So unlike the information
25 that was given to the Diversification Committee or

1 the other committees where it is at least brought
2 to their attention, the fact that there is a
3 membrane missing and that it has caused significant
4 maintenance and repairs to the parking deck and
5 will require the same in the future unless the deck
6 is resurfaced, that doesn't appear here; correct?

7 A. I'm not reading it there, no.

8 Q. So you would agree with me that to
9 a reasonable reader of this document, they would
10 look at it and say, well, they had an engineer and
11 architects have a look at the building; they told
12 them that the building is structurally sound; and
13 it said that they have identified some capital
14 expenditures, hotel roof, an HVAC system and the
15 cooling tower, you agree with that? If someone was
16 to look at that, reasonably, they would see that
17 the things that need to be looked at here from the
18 point of view of spending money are the roof, the
19 hotel roof, HVAC and the cooling tower; correct?

20 A. That's correct.

21 Q. And that the building is
22 structurally sound; correct?

23 A. Yes.

24 Q. Yes. They would have no idea of
25 the true state of affairs, that is, that the

1 building didn't have a membrane and that you have
2 been told that the cost to remediate this
3 particular issue was somewhere over half a million
4 and over a million dollars; correct?

5 A. The next page actually refers to
6 the fact that due diligence still had to be done,
7 and with respect to the missing membrane and the
8 potential capital costs, we still had to complete
9 that Building Condition Assessment. And actually,
10 if you look at the work that still has to be done,
11 we still have to get I think number 4 on the list,
12 which was the structural review in order to
13 complete our Building Condition Assessment.

14 Q. Yes. No, no, I'm not disputing
15 that.

16 A. So the 600 to the 1.8 million
17 dollars, or I can't remember what numbers you just
18 used, they are still unknowns. There is still a
19 lot of work to do. So this is a preliminary plan
20 to work with a bank to get to the point where we
21 start to provide all of the detailed information to
22 them. So this is not -- a bank is not going to
23 commit to us without doing all of this work.

24 Q. It doesn't talk here in this part
25 of the piece that the person is reading, it

1 doesn't -- it would not appear that any problems as
2 far as the roof are concerned had been flagged to
3 you?

4 A. Not in that paragraph, no. No, it
5 would show up when we gave them the entire Building
6 Condition Assessment, which would have included the
7 Halsall.

8 MR. KEARNS: Can we see the other page?
9 I can't see the other page on my screen.

10 THE WITNESS: So it talks about the due
11 diligence that is still being undertaken.

12 BY MR. WALLACE:

13 Q. No, I'm not --

14 A. Oh, sorry.

15 Q. No, no, I'm not disputing that.

16 A. Okay.

17 Q. Now, if we could go to tab 137.

18 Oh, I'm sorry, Exhibit No. 2182. This appears to
19 be a memo or a message that you sent to Michael
20 Collins at the TD Bank, and the date appears to be
21 the 14th of April, 1999, and it is directed to
22 "Michael & Dave". I gather Dave is one of
23 Mr. Collins' associates?

24 A. I would assume so. I don't recall
25 who he is, but yes.

1 Q. Is this the TD Bank here in Elliot
2 Lake, or is this --

3 A. No.

4 Q. -- the one in Sudbury?

5 A. No, it is in Sudbury.

6 Q. Sudbury. Now, prior to sending
7 this message to him, had you sent the business plan
8 to him?

9 A. I have to assume I did. Actually,
10 I may have even delivered it. I know we did meet
11 with some of the banks.

12 Q. And so is the answer, is it that
13 to the best of your knowledge you did?

14 A. Yes.

15 Q. Okay. So he would have had in his
16 possession the document that we just reviewed?

17 A. Yes, he would have.

18 Q. Yes, okay. So what I want to do
19 is I want to take your attention to the second page
20 of this document. And if you could just scroll up,
21 please, Ms. Kuka. That is good, thank you.

22 So it says under the heading "Capital
23 Expenditures":

24 "Carole, our executive assistant,
25 will forward to you a copy of the

1 phase 1 engineering report from
2 Nicholls Yallowega Bélanger. We
3 have not received our report from
4 Halsall on the parking structure
5 yet, but when we do, we will forward
6 it to you. Likewise for the life
7 safety report and the environmental
8 report."

9 That was a true statement?

10 A. Yes.

11 Q. And you go on to explain that:

12 "Our approach to capital spending
13 for [Elliot Lake Retirement Living]
14 is generally not to spend capital
15 dollars until they have been earned.
16 For example, in 1998, ELRL earned
17 approximately \$732,000 before
18 depreciation, and spent \$477,000 on
19 capital projects. In 1999, our
20 budget is \$687,000 profit and
21 \$687,000 in capital expenditures.
22 As part of the annual planning
23 process we establish a target for
24 working capital, then we", I would
25 assume it says "[identify] or

1 [allocate] our capital expenditures
2 based on the target. We will take a
3 similar approach with the Algo
4 Centre."

5 I gather this accurately captures the
6 thinking process or the business thinking of Elliot
7 Lake Retirement Living?

8 A. Generally, we earn our capital
9 expenditures, yes.

10 Q. So is that the same as saying we
11 don't borrow; we spend out of our profits?

12 A. At this point in time, we
13 certainly were not borrowing, no.

14 Q. Okay. Now, then if you look at
15 the top of the next page:

16 "As far as the Algo Centre is
17 concerned, I anticipate our capital
18 funds for the next few years could
19 be allocated as indicated below.
20 You will notice that the NYB", and
21 that is Nicholls Yallowega Bélanger.

22 A. Yes.

23 Q.

24 "[...] report presents options for
25 replacing the parking deck to

1 minimize annual maintenance. We
2 have elected to continue with a
3 maintenance program at this time
4 with hopes of undergoing a
5 replacement program at some point in
6 the distant future."

7 Now, you were the author of this
8 document; correct?

9 A. Yes.

10 Q. And I assume that this was an
11 accurate statement that you made in this
12 correspondence?

13 A. The intent to continue with the
14 maintenance program was definitely subject to
15 receiving the Halsall Report. If the Halsall
16 Report came back and said, you know what, guys, the
17 building is sound but you need to still deal with
18 this and the only way you can deal with it is
19 through the installation of a membrane, then we
20 would have followed our normal process which is put
21 the money aside from our cash flow from operations
22 and, when time permitted, which based on how we
23 flowed our -- how the profits flowed, it would have
24 taken us a few years to do that.

25 If Halsall came back and said, listen,

1 you guys, this building, it needs some significant
2 work, it is not sound and you need to spend the 1.8
3 million dollars, then we would have just taken
4 this, put the number into our model, gone back to
5 our Board of Directors and said here is what we
6 know now. We now have the final Building Condition
7 Assessment. We now know what the state of the
8 building is. We now know what the requirements
9 are.

10 Q. Firstly, you will agree with me
11 that nowhere in that paragraph do you qualify your
12 statement, that is:

13 "We have elected to continue with
14 a maintenance program at this time
15 with hopes of undergoing a
16 replacement program at some point in
17 the distant future."

18 There is no qualification on that?

19 A. You are right.

20 Q. And you still -- this statement is
21 made without the benefit of the Halsall Report;
22 correct?

23 A. Yes, and the bank knew that we
24 didn't have the Halsall Report yet also.

25 Q. And the "we":

1 "We have elected to continue with
2 a maintenance program at this time
3 with hopes of undergoing a
4 replacement program at some point in
5 the distant future."

6 The "we" is whom?

7 A. I would say generally that would
8 be referred to the organization. I don't know if
9 it is a -- I don't believe it is a specific person.
10 It is just the approach that we have taken until we
11 receive the final document.

12 Q. So what is being stated here is
13 that there has been a considered opinion, in the
14 absence of any input from Halsall, we have made a
15 considered opinion to continue with a maintenance
16 program; correct?

17 A. Correct.

18 Q. And that "we", this would
19 represent the thinking of Mr. Kennealy as well;
20 correct?

21 A. I would assume so.

22 Q. Because with all due respect, I
23 don't think that you would be authorized as a
24 finance person to make that type of a decision;
25 correct?

1 A. I -- you are a hundred percent
2 correct on that, yes.

3 Q. Right. So you wouldn't be able to
4 make that decision, much less communicate that
5 decision that you had unilaterally made?

6 A. Correct.

7 Q. So your evidence is that this
8 accurately represented the thinking of the
9 organization and on the 14th of April, 1999?

10 A. Before we received the Halsall,
11 yes.

12 Q. And again, you'll agree with me
13 that there is absolutely no such qualifier in that;
14 correct?

15 A. I agree.

16 Q. And again, a reasonable
17 interpretation of this document would simply be you
18 don't have to concern yourself with what Nicholls
19 Yallowega says, because we are not going to do
20 that; we are not looking for money to do that; we
21 are not going to make any capital expenditure on
22 that?

23 A. Yeah, I don't -- if someone read
24 this entire document and the Halsall -- or sorry,
25 the Nicholls Yallowega Report, they would have seen

1 the numbers in the Nicholls Yallowega Report. They
2 knew that -- and I -- just for simplicity, the NYB
3 Report said we have to do a lot more investigation.
4 So we are telling them here is what the first
5 report says. We don't know what the second report
6 says. When we know, then we'll make a
7 determination as to how we are going to proceed.

8 Q. But it doesn't say that here, does
9 it?

10 A. But if you are asking me if
11 someone read this report. If someone read the
12 report, they would see that they have the Nicholls
13 Yallowega; they know the Halsall still has to come;
14 and we have elected to assume this program until we
15 get the Halsall.

16 Q. But it doesn't say that?

17 A. It doesn't say it is subject to
18 the Halsall, I agree with you.

19 Q. And in fact, what you state here
20 as your election, that is, what the company has
21 decided to do is in fact exactly what happened,
22 simply continued on with what Algoma had done;
23 correct?

24 A. Algoma -- or Halsall gave us a
25 report with a maintenance option as opposed to a

1 capital replacement option, yes.

2 Q. Well, we'll get to that in a few
3 minutes here, but you'll agree with me that what
4 you have stated here, what you have elected to do
5 is in fact what you ended up doing?

6 A. Again, it was all subject to the
7 Halsall. As I said, if Halsall came back and said
8 your building is -- it was not even our building at
9 the time. This building is not structurally sound
10 and you need to spend the 1.8 million dollars, then
11 we would have gone back to the drawing board and,
12 you know, put together the package again and
13 offered that information up to our Board of
14 Directors to make a decision.

15 Q. Okay, why don't we go to the
16 report, that is, the Halsall Report, and that would
17 be at tab 145 for you and it would be Exhibit No.
18 70. Now, before we actually get into the
19 implementation of this report, why don't you tell
20 us exactly what, if any, involvement you had with
21 the ongoing roof maintenance? What role did you
22 play, if any?

23 A. I had no role in the roof
24 maintenance.

25 Q. Okay, and is it fair to say that

1 you played no role in the decision as to which --
2 what was going to be done, how the problem was
3 going to be tackled?

4 A. I agree.

5 Q. And so who did have that? Was
6 that Mr. Kennealy?

7 A. With respect to the maintenance of
8 the roof deck?

9 Q. Yes.

10 A. Mr. Kennealy, obviously he is the
11 General Manager, so he is ultimately responsible,
12 but Mr. Quinn was tasked with the maintenance of
13 the whole physical asset.

14 Q. So you are certainly aware of the
15 fact that Halsall, and this is at -- I'll just go
16 to the very second page in the "Executive Summary",
17 that Halsall recommended or presented for you two
18 options --

19 MR. KEARNS: Mr. Commissioner, I
20 thought the evidence was that Ms. Guertin wasn't
21 involved in the decision-making between Option 1
22 and Option 2.

23 If she was not involved in that, I
24 don't know what the purpose of this continued
25 questioning is.

1 THE COMMISSIONER: Mr. Wallace?

2 MR. WALLACE: Yes, it is very brief.

3 I'm not going to ask her a whole bunch of questions
4 that I had intended to ask her based on that
5 previous answer, but I did want to point out one
6 aspect of the recommendation to her and then get
7 her comment, if she is able to do so.

8 THE COMMISSIONER: Go ahead.

9 BY MR. WALLACE:

10 Q. The first option was, as you can
11 see, is to:

12 "Rout and seal all joints and
13 cracking in the parking deck topping
14 and walkway canopies, ensuring a
15 proper joint profile and surface
16 preparation prior to placing the
17 sealant."

18 You see that?

19 A. Uhm-hmm.

20 Q. Were you ever made aware of
21 anybody being given that instruction? Did
22 Mr. Kennealy ever say to you, I have told Mr. Quinn
23 to go out and have his fellows:

24 "Rout and seal all joints and
25 cracking in the parking deck topping

1 and walkway canopies, ensuring a
2 proper joint profile and surface
3 preparation prior to placing the
4 sealant"?

5 A. The beginning of the question was
6 did I recall --

7 Q. Did you recall Mr. Kennealy
8 telling you that he has instructed Mr. Quinn to do
9 just that?

10 A. No.

11 Q. Okay. Now, if we could go to tab
12 190. Just to situate you, the deal has closed, and
13 your company now owns the mall and the hotel.

14 MS. KUKA: Sorry, what is the exhibit
15 number?

16 BY MR. WALLACE:

17 Q. Sorry, Exhibit No. 2212.

18 This, as you can see, is a letter from
19 yourself to a Mr. Vance, the purpose of which is to
20 attempt to have the property assessment for the
21 mall and hotel lowered.

22 A. Correct.

23 Q. And this was the subject of some
24 questions yesterday.

25 I'm more interested right now just in

1 the process. The purpose of the exercise is to try
2 and to end up paying less property taxes; correct?

3 A. Yes.

4 Q. Yeah. Now, is this the first step
5 in the process?

6 A. I don't know if -- there may be a
7 more detailed process, which I really don't recall.

8 Q. Okay, this is --

9 A. We may have asked I think it is a
10 request for a reconsideration first. I know that
11 is what we would do now --

12 Q. Right.

13 A. -- with MPAC. I'm not sure what
14 it was with OPAC. But essentially, we would have
15 started with some sort of initial, you know, this
16 property is valued at 8.2 million and it is
17 supposed to be valued at market value --

18 Q. Right.

19 A. -- which is what we just paid for
20 it, which was 3.75 million.

21 So I think we would have -- it is
22 either a phone call or some sort of formal process.
23 I don't actually recall what it was.

24 Q. Okay. So in any event, you wrote
25 this letter, but you provided information with the

1 letter, and one of the pieces of information that
2 you provided is the report, the Nicholls Yallowega
3 Bélanger Report?

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. And that is the one, as we have
8 reviewed, that contains all of the figures that
9 would be involved in the remediation of the
10 problems that they found?

11 A. That was the report we had at the
12 time that the price was established, yes.

13 Q. Right. And when was the price
14 established?

15 A. I think in the February Agreement
16 of Purchase and Sale.

17 Q. Okay, so from the point of view of
18 this exercise then, the Halsall Report would be of
19 no meaning; is that fair?

20 A. Trying to recall what happened
21 here, and maybe my explanation might help you a
22 little bit, when we called or talked to this person
23 at the Ontario Property Assessment Corporation,
24 they had just gone through a change in the way that
25 properties were valued.

1 And so when I explained to them the
2 issue that I had, which is how can an assessment
3 show up at 8.25 million and we just bought it for
4 3.75 million, like why is there such a difference?
5 And he actually came back and said, I don't know.
6 Can you -- and really what he said is, Can you give
7 me the information that you had available to you
8 when the price was established?

9 And so the Nicholls Yallowega Report
10 was what we had. We also had -- in there, there is
11 also some detailed dollars relating to the cooling
12 tower and some of the other work that needed to be
13 done.

14 So that is what he -- he asked for the
15 information, and that is what he was given.

16 Q. Okay.

17 A. If --

18 Q. No, that is fine.

19 A. Okay.

20 Q. I mean, the whole process seems
21 quite reasonable in the sense that you get a tax
22 bill based on a figure far in excess of what you
23 paid for it, so why should you.

24 A. Yeah.

25 Q. I don't think anybody would have

1 any difficulty with that. I'm just trying to
2 understand the process a little further.

3 If we go to tab 213, and that is
4 Exhibit No. 2221, and this -- if you look at the
5 next page, that is, the page that is titled
6 "NorDev".

7 A. Okay.

8 Q. And you'll see that it records
9 under "Taxes" that:

10 "We and the City have signed
11 minutes of settlement on the
12 appraised value of the Mall/Hotel.
13 The value will be dropped from 8.2
14 million to 4.3."

15 Still a little more than you actually
16 paid for it --

17 A. Yes.

18 Q. -- but certainly closer?

19 A. Yes.

20 Q. And:

21 "Our [year to date] [...]"

22 Well, I'll just stop it there.

23 You have given the person in the
24 assessment office, you have given him the Nicholls
25 Yallowega Report. What documentation did you have

1 to give the City to get them to drop the assessment
2 down? Did you have to give them the Nicholls
3 Yallowega, or what documentation did you rely on to
4 get the City -- and first of all, I should preface
5 this, were you the one that did the negotiations?

6 A. I don't know if "negotiation" is
7 the right term.

8 Q. Okay.

9 A. But I provided the information to
10 OPAC.

11 Q. Yes.

12 A. So they provided the information
13 to -- I provided the information to them. OPAC
14 then came back, and I'm sure there was some back
15 and forth over a period of time, but they came back
16 and said, Listen, you know, you can continue this
17 process all the way through to an appeal or you
18 can -- we can settle.

19 And so I may have the actual who said
20 what at what time a little bit mixed up, but I
21 believe he came back to me and said, Listen, I
22 think, you know, we can come up with a value of 4.3
23 and we may be able to settle with the City. But it
24 was up to him to negotiate, if you want to use that
25 term, with the City.

1 So I had no direct connection to the
2 City other than all three parties had to actually
3 sign these I think they are referred to as minutes
4 of settlement.

5 Q. Yes.

6 A. So he asked if we would be
7 willing. What he told the City I have absolutely
8 no idea. But at the end of the day, all three
9 parties signed this.

10 Q. Okay. So my bottom line question
11 here is do you have any information as to whether
12 or not the Nicholls Yallowega Report was provided
13 to the City in this process?

14 A. I don't know.

15 Q. You can say that you didn't do
16 that, though?

17 A. I can say I didn't do that.

18 Q. And you are not aware of anybody
19 else who did?

20 A. I'm not aware.

21 Q. Okay. Now, I would like if you
22 would turn to tab 310. Oh, sorry, Exhibit No.
23 2282. Now, if you would just have a quick, quick
24 look at that. This is a document that you have
25 modified from portions of financial statements of

1 NorDev; correct?

2 A. For this purpose.

3 Q. For this purpose, exactly.

4 A. Yes.

5 Q. Because it was difficult and
6 misleading, and not on your part, but it was
7 difficult and misleading for people to understand
8 exactly what was being spent on the roof, and for
9 that purpose, you have identified the cash that was
10 spent by NorDev on the roof deck?

11 A. On the maintenance, that is my
12 best estimate, yeah.

13 Q. Yes.

14 A. I certainly didn't have the old
15 records to go back and be very precise, and I think
16 I identified the assumptions that are there.

17 Q. Okay. Now, firstly, we can agree,
18 I hope, that the money that NorDev spent on the
19 roof maintenance was not a capital expenditure?

20 A. Correct.

21 Q. Correct? Okay. And it was -- it
22 found itself for accounting purposes under the
23 heading of "Exterior Common Area Charges", right,
24 and that is what --

25 A. Well, actually in our general

1 ledger it is under "Grounds Expenses", but this was
2 a document done up for our tenants to reconcile the
3 common area charges and this was the covering
4 document.

5 Q. Right. So what you are telling
6 us, I believe, is that this was a cost in part that
7 was passed on to the tenants; correct?

8 A. Correct.

9 Q. Yes, and it would -- it was not a
10 uniform situation. It depended on who the tenant
11 was and what the terms of the lease were?

12 A. Yeah, as I like to say, at the
13 time 40 tenants and 40 different leases.

14 Q. Yeah, okay. So and recognizing
15 that it is just an estimate, on this type of
16 charge, what percentage of a charge -- well, let me
17 back up.

18 The tenant isn't provided with a
19 statement saying, you are going to pay "X" percent
20 of the roof and then you are going to pay the same
21 on the landscaping. It is all lumped into one; is
22 that correct? But they can actually look and see
23 where the money went?

24 A. The tenants would pay
25 proportionately on their square footage compared to

1 the square footage of the centre as a whole. The
2 interior and the exterior were different because
3 some tenants weren't really part of the interior.

4 Q. I'm just trying to get your best
5 estimate as to what percentage of these common area
6 charges the tenants were picking up and what
7 percentage the landlord was picking up?

8 A. Oh, I would have to go back and
9 look at rent rolls and figure out what percentage
10 of the tenants paid common area, which then -- I
11 have no idea at this point off the top of my head.

12 Q. Would you be able to just give a
13 ballpark? I mean, I'm not intending to hold you to
14 it in the sense that -- -

15 A. Yeah, I know, I just -- I think it
16 was over 50 percent that paid common area.

17 Q. Right.

18 A. I can't tell you where between 50
19 and 100 percent it actually fell.

20 Q. Okay, but in any event, what you
21 have done here is you have identified the common
22 area charges, and the lines that we have to look at
23 for our purposes are the first one, that is,
24 "Maintenance and Security, Wages and Benefits"?

25 A. Correct.

1 Q. And we also have to drop down to
2 "Parking Lot Maintenance"; correct?

3 A. Correct.

4 Q. And in the period of time from
5 1999 until 2004, you have identified the fact that
6 NorDev paid \$323,139; correct?

7 A. That is my best guess.

8 Q. Right, and we'll just flesh out
9 the assumptions here, but that is the -- based on
10 your assumptions, that is the figure you came up
11 with?

12 A. Yes.

13 Q. Okay.

14 A. And I --

15 THE COMMISSIONER: Is this document a
16 recently prepared document?

17 THE WITNESS: Well, it was prepared for
18 the Commission.

19 THE COMMISSIONER: For the Commission?

20 THE WITNESS: Yeah, and it was --

21 THE COMMISSIONER: Okay, so it was not
22 a contemporaneous document --

23 THE WITNESS: No.

24 THE COMMISSIONER: -- that was done at
25 the end of a particular year?

1 Okay, thank you.

2 MR. WALLACE: No. Commissioner, the
3 problem was that we were reading the documents and
4 we were calling -- we thought that "Parking Lot
5 Maintenance" was it, so for that purpose --

6 THE COMMISSIONER: No, no, but I
7 understand what Ms. Guertin is saying.

8 Thank you.

9 BY MR. WALLACE:

10 Q. So and we know that the tenants
11 paid some portion of that figure; correct?

12 A. Yeah, under their exterior common
13 area.

14 Q. Right, so NorDev did not in fact
15 pay \$323,139 but some figure less than that,
16 whatever the tenants' proportionate share was?

17 A. Yeah, you could state it that way,
18 yes.

19 Q. Okay. Now, what falls into the
20 category of "Maintenance, Security, Wages and
21 Benefits"?

22 A. On the exterior section or --

23 Q. Yeah, no, we are only concerned
24 because we are only concerned here with the
25 exterior.

1 A. Okay, so -- of course, the numbers
2 always seem to take me longer to explain. Our
3 staff, our maintenance staff would actually keep
4 records of whether they spend time inside the mall,
5 outside the mall or specific to individual tenants
6 or the hotel.

7 So the exterior wages and benefits, the
8 gross number would be how much time they spent
9 working on the exterior of the mall, and so it
10 would be the dollars allocated to that.

11 Q. And that, okay, so to find your
12 way into this category, it would have to be
13 exterior work?

14 A. It would have to be exterior work,
15 yes.

16 Q. Fine. Because obviously, the
17 maintenance staff do work inside and that is why
18 you have a series of columns up above of interior
19 charges?

20 A. Yes, and they also work in the
21 hotel which don't show up anywhere here, and they
22 also did work in individual spaces which also
23 wouldn't show up on this common area charge
24 statement because those bills wouldn't be part of
25 the common area calculation.

1 Q. Okay. So this represents the
2 wages for the maintenance, and what has gotten me a
3 little confused is security. How does that figure
4 into this?

5 A. When we bought the mall, Algoma
6 Central actually had -- well, maybe I'm getting
7 this wrong. I believe Algoma Central had security
8 staff or a security contract, and so they had that
9 line there and we just continued on with it. We
10 didn't really change the title to that particular
11 category. It was just always under there.

12 Q. Okay, so for our purposes, the
13 word "security" has no meaning?

14 A. No meaning.

15 Q. Okay, and this represents --
16 sorry, I'll ask the question. Does the figure on
17 top, does that represent the hundred percent of the
18 maintenance time or how was the time allocated to
19 the roof? How did you come about that?

20 A. So the number under each of the
21 years --

22 Q. Yes, and so we'll go to 2000,
23 53,693?

24 A. So 53,693 was what was allocated
25 to the outside of the centre during the year

1 2003 -- or 2000, sorry. But when you get to the
2 end where I put the estimate --

3 Q. Yes?

4 A. -- I actually was able to take a
5 fairly good guess at what the actual dollars were
6 that were allocated between the months of April and
7 I think it was -- I think I said November, so
8 mid-April to mid-November which is the period of
9 time that the work would actually be done on the
10 parking deck.

11 MR. KEARNS: Ms. Kuka, could you raise
12 that on the screen?

13 THE WITNESS: Yeah, I think it is at
14 the very bottom.

15 BY MR. WALLACE:

16 Q. Yeah, it is in very small print
17 there. Oh, it is better here.

18 A. So when I came up with there is
19 310 in total, and when I said I estimate 206,000
20 for parking deck --

21 Q. Uhm-hmm?

22 A. -- it would have been I would have
23 taken the time between April and November and then
24 I think I took -- yeah, I took 80 percent of that,
25 you know, just in case they spent some time --

1 there was a little bit of grass there, so they
2 might have had to have, you know, done a little bit
3 of lawn mowing or weed-eating or other, you know,
4 small items like that.

5 Q. So when you -- the first line, it
6 actually, when you come up to 310,000, that
7 represents 12 months' work; correct?

8 A. That represented the 12 months
9 assigned to outside, yes.

10 Q. Okay. And if you are talking
11 about six months time, yeah, about six months time,
12 would that not be half of the figure?

13 A. No, because it is all dependent on
14 where the maintenance staff actually allocated
15 their full time.

16 Q. Okay.

17 A. So because we still had the
18 general ledger, the detail which I think was
19 provided, I was able to go through and pick out the
20 payroll costs for the months, for the six months.
21 So I was able to -- I think I came fairly close in
22 terms of what the total was that was spent, and
23 then I took 80 percent of that, roughly 80 percent
24 of that, because I knew they still had to do some
25 weed-eating and, you know, a little bit of lawn

1 mowing and stuff like that.

2 Q. And the figure on the parking lot
3 maintenance, what does that represent?

4 A. So there is \$146,000 there in
5 total, and that would have represented any work
6 that we allocated specifically to the parking lot.

7 Now, the parking lot included the
8 parking deck and the surface parking in front of
9 the Algo Centre. So we would have picked out --
10 when I went through and came up with the 117, I did
11 my, again, my best guess at trying to identify
12 those costs that specifically went to the parking
13 deck. Most of that would have been for the
14 materials.

15 Q. So is a proper assumption to make
16 that the line "Parking Lot Maintenance" has no
17 labour component?

18 A. Correct, the labour has shown up
19 in the --

20 Q. Yes, okay, so "Parking Lot
21 Maintenance" is strictly a materials thing?

22 A. Yes.

23 Q. Is that right?

24 A. Yeah, I would qualify that there
25 was a little bit of some contract work that would

1 have shown up in the "Parking Lot Maintenance"
2 also. If we brought Beamish, as an example, in to
3 do any work, it would show up there.

4 Q. Okay, yeah, because of course the
5 Beamish people are not on your payroll?

6 A. Yes, exactly.

7 Q. So the figure that was spent in
8 that time span by NorDev was 320 -- sorry, was some
9 figure less than \$323,139 because the tenants, they
10 contributed to that cost?

11 A. You can view it that way. We
12 spent \$323,000, again, our best guess, and
13 transferred some of that cost to the tenants under
14 the common area charges.

15 Q. Right, so at the end of the day,
16 if you had spent \$323,000, you got money back from
17 that?

18 A. From monthly billings.

19 Q. Yeah, from the tenants?

20 A. Yes.

21 Q. So there was -- although you would
22 have written cheques amounting to that, you would
23 be reimbursed some portion of that, in effect?

24 A. Yes, yeah.

25 Q. And you are not able to tell us

1 what the order of magnitude of the reimbursement
2 was?

3 A. I would have to go through and
4 look at a rent roll and do some math.

5 Q. Okay.

6 THE COMMISSIONER: And again, without
7 holding you to anything, you can't even offer a
8 ballpark figure?

9 THE WITNESS: You know, I'm sure it was
10 more than 50, but you know, was it 55 or was it 95?
11 I know it wasn't at the higher end but --

12 THE COMMISSIONER: It was somewhere in
13 there, and that is the best you can do?

14 THE WITNESS: Yes.

15 THE COMMISSIONER: Fair enough. As I
16 say, we won't hold you to that.

17 THE WITNESS: Thank you.

18 BY MR. WALLACE:

19 Q. And if you would just turn to tab
20 306, Exhibit No. 672. And if you could just go up
21 a little further, this represents the capital
22 expenditures that were made by NorDev at the Algo
23 Centre in the years 2000 to 2004 inclusive?

24 A. Yes. There may be a few small
25 items missing, but yes.

1 Q. And the only line area that is
2 attributable to the roof deck is about six from the
3 bottom, "Steel Barricade Roof Parking", and the
4 amount is \$2,676?

5 A. I believe so.

6 Q. So as we are now just putting some
7 flesh on the earlier statement, of the money that
8 was spent on the roof by NorDev, the overwhelming
9 majority of it was in the form of common area
10 charges as opposed to capital expenses?

11 A. They were maintenance expenses
12 versus capital expenses -- operating expenses,
13 sorry, versus capital.

14 Q. Exactly, okay, and the capital
15 expenditures were not charges that could be
16 off-loaded or charged to the tenants; correct?

17 A. No, that is not correct.

18 Q. Okay.

19 A. If we had capital charges, we
20 would then pass on the depreciation in the common
21 area charges. The -- again, every lease is
22 different.

23 Q. Right.

24 A. But generally in the leases, the
25 capital costs would show up -- actually, if you see

1 on the interior, there is some numbers there.
2 Well, I have it as furniture and fixtures, but it
3 was depreciation, supposed to be depreciation of
4 not just furniture and fixtures but I think that is
5 what we had at the time.

6 So we could -- our leases allowed -- to
7 be clear, our leases allowed us to pass on annual
8 depreciation for capital purchases and capital
9 expenditures.

10 Q. Depreciation?

11 A. Depreciation, yes.

12 Q. All right, okay.

13 THE COMMISSIONER: And the amount of
14 depreciation depended on the asset involved, I take
15 it?

16 THE WITNESS: Yes.

17 THE COMMISSIONER: Yes, or the
18 percentage.

19 BY MR. WALLACE:

20 Q. Now, I wanted to ask you some
21 questions concerning your dealings with
22 Mr. Nazarian when he expressed interest in
23 purchasing the mall, the mall and hotel. From the
24 point of view of Elliot Lake Retirement Living,
25 would you have been the person who dealt with him

1 or would it have been Mr. Kennealy or both of you?

2 A. With respect to the negotiations,
3 certainly that was Mr. Kennealy.

4 Q. Fair enough.

5 A. And then --

6 Q. And your dealings with
7 Mr. Nazarian were what?

8 A. I would say I was the person he
9 would go to when he needed any information, when he
10 needed to discuss the lease, when -- even, you
11 know, at one point he needed us to help set up some
12 interviews for him, and so he would call me and
13 say, Can you make arrangements for things? Almost
14 everything that he needed to do his due diligence,
15 either he or someone on his behalf would contact me
16 to do all of the detail work.

17 Q. Okay. It occurs to me that the
18 mall was and at that time was a very important
19 component of the community of Elliot Lake?

20 A. Yes.

21 Q. For sure.

22 A. Yes.

23 Q. And your company had stepped in
24 when it appeared that the former owner, their
25 financial enthusiasm had waned as far as the mall

1 was concerned?

2 A. I think we stepped in when the
3 community needed us to step in.

4 Q. Right.

5 A. Yeah.

6 Q. Okay. And given the fact of the
7 importance that the mall played in the community,
8 was it not an important consideration who you were
9 going to be selling this mall to?

10 A. I think it was important that, you
11 know, whoever bought it had some interest in
12 actually running it as a business and that they had
13 some experience in the industry.

14 Q. Well, prior to Mr. Nazarian
15 expressing interest, had anybody locally expressed
16 any interest in purchasing the mall?

17 A. Local being Elliot Lake?

18 Q. Elliot Lake, yes.

19 A. No, not that I recall, anyways.

20 Q. Okay. Did you know anything about
21 Mr. Nazarian, business background?

22 A. Not initially.

23 Q. Okay.

24 A. And I think -- I remember being at
25 one meeting where he talked about his background a

1 bit.

2 Q. More specifically, did you ever go
3 and have a look at any of his other business
4 ventures?

5 A. I didn't, no.

6 Q. Do you know if Mr. Kennealy ever
7 did?

8 A. I don't know if he actually
9 physically went. I know he -- he was certainly
10 much more on top of what his other ventures or
11 business ventures were as opposed to me.

12 Q. I guess what I am asking you is
13 did anybody have any idea of what sort of physical
14 shape his other business enterprises were in?

15 A. I know I didn't. I don't know if
16 Mr. Kennealy did or didn't.

17 Q. You were aware that he did own
18 other shopping centres in Ontario; correct?

19 A. Yes, yes.

20 Q. And none locally?

21 A. None locally, no, there was --

22 Q. It was all in Southern Ontario
23 somewhere?

24 A. Yes.

25 Q. So there was -- no one actually

1 had a look to see if they were in a good state of
2 repair or they were in bad states of disrepair?

3 A. I didn't.

4 Q. Okay. And as far as his due
5 diligence was concerned, what role did you play in
6 that?

7 A. I guess the best way to describe
8 it is I was the go-to person for both he and his
9 bank, so when they asked for information, for
10 documents, or if they asked for explanations, then
11 typically they would have called me.

12 Q. Did you ever offer to provide
13 Mr. Nazarian with any of the engineering reports
14 that you had?

15 A. I offered to provide them to his
16 bank.

17 Q. And what was the response you got?

18 A. The response I got from the bank
19 was thank you, we need current information, we are
20 going to get our own -- they ended up getting their
21 own on the Building Condition Assessment. We
22 actually ended up supplying them with an
23 environmental assessment because one of our tenants
24 had recently done one and we were able to secure
25 that for them, so -- but the bank ordered their own

1 assessments.

2 Q. What about discussions concerning
3 the condition of the roof deck? Were there any
4 discussions about the fact that you had a leaking
5 problem?

6 A. Mr. -- yeah, Mr. Nazarian was
7 aware of the leaking problem.

8 Q. And how was he aware?

9 A. It was something that came up in
10 discussion probably several times.

11 Q. Uhm-hmm?

12 A. I know Mr. Kennealy talked to him.
13 I was there during some discussions. I recall it
14 being explained to him how key it was to have the
15 employees still work for Mr. Nazarian because they
16 had been working on the deck for years and they
17 understood it and they know how to use the -- they
18 knew how to use the material.

19 Q. The deal went from April until
20 early August. Was he up here in the we'll say May,
21 June and July, any of those time frames?

22 A. He made several trips up here.

23 Q. Did he ever go up on the roof
24 and -- well, I'll ask the first question. Did he
25 ever go up on the roof, to your knowledge?

1 A. Yes, yeah.

2 Q. And when he did, did he see people
3 working on the roof?

4 A. At that time of year I have to
5 presume that he did.

6 Q. Just simply by that is when they
7 did the work?

8 A. Yes.

9 Q. Okay. What about the inside? We
10 have heard over the course of this inquiry a long
11 tale of woe of leaking in the library. Did he ever
12 go into the library, to your knowledge?

13 A. When he came up to Elliot Lake, he
14 would come during the week and he would come on
15 weekends, he would go and talk to the mall tenants;
16 he would go talk to the mall patrons; he would go
17 talk to suppliers. I would have to assume that
18 because he was talking to the tenants that he would
19 have gone into the library.

20 Q. Okay. Did he ever raise the issue
21 with you of the library?

22 A. Not that I recall.

23 Q. During this time frame, we have
24 heard evidence of pails and troughs and all sorts
25 of devices to catch water. Were any of those in

1 evidence when he was up here?

2 A. I don't know what the weather was
3 when he was here. I know the roof was in fairly
4 good -- or a good position other than the library.
5 It wasn't perfect. So what he saw or didn't see
6 when he was up, I don't know.

7 Q. Were there any discussions
8 about -- I know that you have told us that it was
9 important to keep the people that had been working
10 on the roof employed, but was there any discussions
11 about the Halsall Report, and by that I mean just
12 in broad terms that we had a study done a number of
13 years ago and they recommended this and this and
14 this is what we are doing? Was there any
15 discussion about exactly what it was you were
16 doing?

17 A. I remember Mr. Kennealy talking
18 about joint profiles and the routing and the
19 sealing and explaining to Mr. Nazarian how it
20 actually worked.

21 Q. Uhm-hmm.

22 A. Other than that, I don't recall a
23 whole -- like a lot of specifics of discussions,
24 but --

25 Q. When you met Mr. Nazarian, would

1 he be a alone or would he be accompanied by
2 somebody?

3 A. Rarely alone. The first few trips
4 there was either the real estate agent, Mr. Sobhi,
5 I think came up several times, and I think his wife
6 came up.

7 Q. That would be Irene?

8 A. Irene.

9 Q. Yes.

10 A. Those were the people I initially
11 saw while we were in the process of him buying the
12 property.

13 Q. Did he ever come up with anybody
14 who appeared to be a technical person or somebody
15 at all familiar with maintenance?

16 A. Not that I recall.

17 Q. Okay. As you have indicated, the
18 responsibility for maintaining the roof was
19 Mr. Quinn's. He has told us that he had a budget
20 within which he operated. Who set the budget for
21 Mr. Quinn?

22 A. Mr. Quinn would set his own
23 budget, and it would then ultimately end up at the
24 Board of Directors where the whole entire budget
25 would be approved.

1 Q. And so the approval of his budget
2 would just be part of the process of establishing
3 an annual budget?

4 A. For the entire organization, yes.

5 Q. If we could have a look at Exhibit
6 No. 2334. These are the charts that were made
7 pulling together all the line items on your annual
8 statements that I believe Mr. Kearns showed you the
9 last couple of days.

10 A. Do I have them?

11 Q. I'm not sure if you have got hard
12 copies, but you certainly --

13 A. Okay, I can go from here.

14 Q. These -- you have reviewed these
15 charts?

16 A. If they are -- I'm assuming they
17 are the same ones that I saw the other day, yes.

18 Q. I think we can agree on that.

19 A. Yeah, I think we'll agree on that.

20 Q. And you will agree that they are
21 an accurate reflection of the figures that were
22 contained in the annual statements of either Elliot
23 Lake Retirement Living or NorDev, as whatever the
24 case may be?

25 A. Yes, I checked them and they were.

1 Q. If we look at the total revenue on
2 the first page here, the total revenue from
3 commercial rents, starting at 1999 up to 2004,
4 generally speaking, not on a hundred percent, but
5 generally the rents went up or the revenue went up
6 every year?

7 A. Yes.

8 Q. And again, the same could be said
9 for the revenue, the total revenue, which would
10 include both the mall and the hotel?

11 A. Yes.

12 Q. Okay. And the retained earnings
13 between 1999 to 2004 went from \$157,000, roughly,
14 to \$601,000?

15 A. Yes.

16 Q. And again, with the exception of
17 one year, your earnings after interest and before
18 amortization and expenses was on an upward climb
19 just about every year? There is two years where it
20 didn't.

21 A. Yes.

22 Q. And it went from \$247,000 to
23 \$585,000?

24 A. Yes.

25 Q. And if you go to the next one,

1 this chart captures the flow of payments from
2 NorDev to Elliot Lake Retirement Living which
3 primarily constituted two different categories of
4 payments. First of all, Elliot Lake Retirement
5 Living paid a management fee of \$60,000 a year to
6 Elliot Lake Retirement Living?

7 A. NorDev paid a management fee to
8 Retirement Living.

9 Q. Yes. I did not say that, no?

10 A. No, Retirement Living --

11 Q. Okay, NorDev was paying Elliot
12 Lake Retirement Living?

13 A. Yes, \$5,000 a month to do the
14 bookkeeping and office suppliers and overhead
15 and --

16 Q. Right.

17 A. Actually, it was meant to be on a
18 cost recovery basis, but we just flat-lined it so
19 we didn't have to keep track of time.

20 Q. And in addition to that,
21 Retirement Living had loaned NorDev some money and
22 so that there were interest payments due to
23 Retirement Living?

24 A. Yes, yes, to replace the loss of
25 income.

1 Q. And on the sale of the mall, a 1
2 million dollar dividend was declared to Retirement
3 Living?

4 A. Yes.

5 Q. And Retirement Living was also
6 paid a commission for services rendered in
7 connection with the sale of the mall and that
8 commission was \$186,000; correct?

9 A. Correct.

10 Q. And over the span of the ownership
11 of the mall, NorDev paid to Retirement Living the
12 sum of roughly 2.2 million dollars?

13 A. Yes.

14 Q. And if we have a look at the last
15 chart, this shows the financial performance between
16 1999 and 2005 of Retirement Living and we can see
17 that the total revenue between 1999 and 2005 went
18 from 7 million dollars a year to \$9,700,000 a year
19 in 2005?

20 A. Well, conceptually, yes. I just
21 noticed that the first two years, though, are
22 consolidated numbers and the last ones are
23 non-consolidated, but generally, I think you are
24 looking for the trend?

25 Q. Yes.

1 A. Yes.

2 Q. You agree with that?

3 A. Yeah.

4 Q. Yes, and again, the same thing --
5 well, not without exception, though -- is in the
6 case of excess of revenue over expenses between
7 1999 and 2005 you go from \$722,000 to 2.2 million,
8 and then there is a couple of years where there --
9 well, actually, the one year of 2002 where it has
10 dipped below the \$612,000. But again, the general
11 trend is there; correct?

12 A. Correct.

13 Q. And you could say the same both in
14 the category of the current assets, it is an upward
15 trend between 1999 and 2005?

16 A. Yes.

17 Q. And the total assets between 1999
18 and 2005, they increased about a million dollars,
19 from 24 million in '99 to 25 million in 2005?

20 A. Yes.

21 Q. The financial situation as
22 disclosed here by both NorDev and Elliot Lake
23 Retirement Living disclosed two businesses that
24 were both enjoying increased profits over the time
25 span of 1999 to 2005; correct?

1 A. Yes.

2 Q. And during that time, the company
3 chose a manner, and I appreciate that you didn't
4 make this decision, but the company chose a
5 fashion, a manner or strategy on how to deal with
6 the leaking roof problem; correct?

7 A. The company had a plan, yes.

8 Q. Yes, and the plan was a
9 maintenance plan?

10 A. As -- yes.

11 Q. And a continuation of the plan
12 that had been put in place by Algoma; correct?

13 A. With modifications to -- I know
14 you have heard the testimony, with modifications to
15 the joint profile.

16 Q. Well, as far as that is concerned,
17 Mr. Snow gave evidence that it was business as
18 usual, that there was never any change from the
19 time he was working for Algoma and he worked with
20 your company right until Mr. Nazarian bought it;
21 correct?

22 A. He did give that -- I heard that
23 testimony, yes.

24 Q. Yes, okay. And it is clear from
25 looking at the financial performance of both

1 companies that a different strategy could have been
2 employed that would have involved a capital
3 expenditure along the lines as was being proposed
4 by Halsall, a one-time capital expenditure?

5 A. Halsall gave us two options.

6 Q. Right.

7 A. They recommended the first and
8 that is what we implemented. If you are asking is
9 there availability for capital projects? Yes, the
10 financial statements show that there is
11 availability for capital projects.

12 MR. WALLACE: Okay, thank you. Those
13 are my questions.

14 THE WITNESS: Thank you.

15 THE COMMISSIONER: Thank you, we'll
16 take our afternoon break at this point.

17 After the break, I would just ask
18 counsel to bear in mind the fact that we have lost
19 one of our interpreters, so it is just a fact of
20 life, she had to return to Sudbury to catch a plane
21 this afternoon.

22 -- RECESSED AT 3:35 P.M.

23 -- RESUMED AT 3:47 P.M.

24 THE COMMISSIONER: Mr. Kearns?

25 MR. KEARNS: I have nothing at this

1 stage.

2 THE COMMISSIONER: All right, thank
3 you.

4 Who wants to go first then?
5 Mr. Cassan? Mr. Picone, or Mr. Picone? I'll get
6 that right yet.

7 Of course not you, sir.

8 MR. MacRAE: No.

9 THE COMMISSIONER: Am I missing
10 anybody?

11 No.

12 So re-examination?

13 RE-EXAMINATION BY MR. KEARNS:

14 Q. And I just have a couple of
15 questions.

16 We spent a little bit of time on the
17 application by Retirement Living to lower the taxes
18 for the mall based on the reduction in price that
19 reflected what we paid for it.

20 What advantages would that carry with
21 it to Retirement Living and to the store owners in
22 the mall?

23 A. A majority of the property taxes
24 were actually paid by the tenants through their
25 leases, you know, similar to the common area

1 charges, but the number of people that paid
2 property taxes was a bit more. So most of the tax
3 savings actually would have been passed on to the
4 individual tenants, and then we would have, again,
5 as in the common area charges, we would have
6 benefitted from some of that reduction.

7 Q. Okay. Of the two options that
8 Halsall gave, it appears that they may have both
9 been identified as capital expenses; would you
10 agree with me that that appears to be what people
11 are talking about?

12 A. Yeah, generally when you look at a
13 lump sum like that, you would think that.

14 Q. If it was phased in in the way
15 that Halsall said was a possibility, would that
16 change it from a capital to an operating expense?

17 A. Yeah, with a phase-in program that
18 will require, you know, regularly doing it, yes,
19 that would be more of a -- we would tend to lean
20 that towards an operating expense.

21 Q. If it was a capital expense,
22 either the 800,000 or the 400,000, I gather that is
23 something that is paid for directly initially by
24 the landlord. Are any of those costs recovered
25 from the tenants, or is that just a bill that is

1 eaten by the landlord?

2 A. No, they would -- we would
3 actually depreciate the expenditure, and then we
4 would pass that cost along to the tenants through
5 the common area charges.

6 Q. Can you tell me an example of how
7 that would work?

8 A. So a million dollar capital
9 expense that has a life of ten years would be
10 depreciated at about \$100,000 a year. That
11 \$100,000 would then go into the calculations for
12 the common area charges as depreciation, and it
13 would then be proportionately billed to the tenants
14 that pay the exterior charges -- or the common area
15 charges, sorry.

16 Q. The last thing just had to do with
17 the last exhibit, Ms. Kuka, please, the one that
18 was up, and I want to just look -- not that page.
19 Yeah, this is the page here.

20 These reflect payments between NorDev
21 and Retirement Living and they add up to the 2.27.
22 But could you just describe for me what services,
23 if any, NorDev received from Retirement Living for
24 the \$60,000 that they were charged yearly?

25 A. So the services included my

1 management of -- you know, my roles with respect to
2 NorDev, Mr. Quinn's roles, our Marketing Manager's
3 functions, Mr. Kennealy's role as a General
4 Manager, and I know on top of that my accounting
5 staff then had to pick up the extra work associated
6 with doing all of the accounting. We had licence
7 fees for accounting software; we had telephone
8 systems; we had long distance charges; we had
9 office expenses.

10 I'm sure there is probably more than
11 that, but it was meant to pick up the actual costs
12 of administering NorDev.

13 Q. Okay, and the last question I have
14 for you has to do with the interest paid by NorDev
15 to Retirement Living, and you mentioned something
16 to my friend about a replaced loss of income is
17 what you said to my friend. What did you mean by
18 that?

19 A. So surplus cash in Retirement
20 Living is normally invested in -- at this point in
21 time anyways it would have been invested in bonds,
22 government bonds, corporate bonds. We actually had
23 an investment advisor that would work that through
24 with us. So we were taking the money out of the
25 bonds and then placing it into NorDev, so we just

1 replaced the income by charging NorDev an interest
2 charge.

3 Q. So did that result in a net
4 increase of income for Retirement Living?

5 A. Maybe a little bit. We were
6 getting, you know, 5, 5 and a half percent at the
7 time that we started, anyways, and we replaced it
8 with, oh, I think we were 6 and a half percent that
9 we charged to NorDev.

10 MR. KEARNS: Okay, those are all my
11 questions.

12 THE WITNESS: Okay, thank you.

13 THE COMMISSIONER: Anything arising out
14 of that, Mr. Wallace?

15 MR. WALLACE: No, thank you.

16 THE COMMISSIONER: So that is it then,
17 Ms. Guertin. Thank you very much for your patience
18 and your cooperation, ma'am.

19 THE WITNESS: Thank you.

20 THE COMMISSIONER: And so we rise until
21 Monday at 9 o'clock.

22 Has there been a change in the
23 scheduling?

24 MR. WALLACE: Well, we are hoping to go
25 on Monday at 9 o'clock with Mr. Officer, and I have

1 spoken to Mr. Cassan about that.

2 THE COMMISSIONER: Okay, anything
3 arising out of that, Mr. Cassan?

4 MR. CASSAN: I have made some inquiries
5 with Mr. Officer but haven't heard back yet, so
6 I'll certainly advise my friend as soon as I hear
7 from him.

8 THE COMMISSIONER: As I have indicated,
9 I'll be rendering a decision Monday morning on the
10 funding issues that have arisen, including yours
11 obviously.

12 Thank you.

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14 -- Adjourned at 3:50 p.m.

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were
taken before me at the time and place therein set
forth;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 19th day of April, 2013.

Deana Santedicola

NEESON & ASSOCIATES

COURT REPORTING AND CAPTIONING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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