

# ELLIOT LAKE COMMISSION OF INQUIRY

---

DAY 30  
April 22, 2013

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ELLIOT LAKE COMMISSION OF INQUIRY

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--- This is Day 30 in the Inquiry proceedings held before the Honourable Justice P.R. Belang r, Commissioner, at the White Mountain Academy of the Arts, 99 Spine Road, Elliot Lake, Ontario, on the 22nd , day of April, 2013 commencing at 9:40 a.m.

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REPORTED BY: Helen Martineau  
Certified Shorthand Reporter

1     A P P E A R A N C E S:  
2     MARK WALLACE, Esq.,  
3     PETER DOODY, Esq.,  
4     DUNCAN AULT, Esq.,           Commission Counsel  
5  
6     ROBERT MACRAE, Esq.,        Robert Wood  
7  
8     PAUL CASSAN, Esq.,          City of Elliot Lake  
9  
10    LEO LONGO, Esq.,            Ontario Building  
11                                    Officials Association  
12  
13    DARREL KLOEZE, Esq.,  
14    JUDITH PARKER, Ms.,        Government of Ontario  
15  
16    ROSS ROMANO, Esq.,         Greg Saunders  
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I N D E X

PAGE

THE COMMISSIONER:

Decision on application for additional  
funding.....6017

MR. DOODY:

Submissions re. representation and  
standing of SAGE and ELMAC.....6017-6028

MR. MYLES:

Submissions re. SAGE on standing and  
funding.....6028-6030

WITNESS

PAUL OFFICER, sworn

EXAMINATION-IN-CHIEF BY MR. WALLACE.....6017-6208

EXAMINATION-IN-CHIEF BY MR. CASSAN.....6208-6223

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INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE
NO. 2342	E-mails between Mr. Doody and Mr.Elliot.	6025
NO. 2343	City of Elliot Lake Job Fact Sheet for the Fire Chief.	6073
NO. 2344.	Phone message dated February 20, 2008 from Brian (Eastwood Mall) to Chief Officer.	6125
NO. 2345	E-mail dated May 24/2011 at 6:13 p.m. from Paul Officer to Rob deBortoli, Dawn Halcrow and Leslie Sprague re. Eastwood Mall.	6213
NO. 2346	Letter dated August 3, 2011 from Paul Officer to Paul Cassan re. Eastwood Mall Pre-Trial.	6216
NO. 2347	Letter dated November 2, 2011 from Paul Cassan to Paul Officer.	6219

1                   --- Upon commencing at 9:40 a.m.

2                   THE COMMISSIONER: Morning. I apologize  
3 for having held everybody up for a few minutes.  
4 There have been developments that came to my  
5 knowledge only this morning and required that we  
6 pause briefly before resuming.

7                   I'd like first to say that in relation  
8 to the applications for additional funding, those  
9 applications have been granted either in whole or  
10 in part in relation to the City of Elliot Lake.

11                  Mr. Cassan, have you seen the order on  
12 the Commission website?

13                  MR. CASSAN: I have, Mr. Commissioner,  
14 and it made for a great weekend. Thank you.

15                  THE COMMISSIONER: So the application  
16 for additional funding for the City of Elliot Lake  
17 has been granted as requested. The application  
18 for funding and standing relating to Mr. Derreck  
19 has been granted with limitations.

20                  Now I began by referring to developments  
21 this morning and I ask Commission Counsel, Mr.  
22 Doody, to make comments at this time.

23                  MR. DOODY: Thank you, Mr. Commissioner.  
24 Mr. Commissioner, I can advise that on Friday,  
25 after Mr. Elliott made his statement about

1 withdrawing, Mr. Myles and Mr. Meyer came to the  
2 Commission Counsel office and spoke with my  
3 colleague Ms. Effendi and advised her that there  
4 had been a breakdown in the relationship between  
5 SAGE and Mr. Elliott. As a result of that I sent  
6 an e-mail to Mr. Elliott Friday at 4:30 and I got  
7 a response from Mr. Elliott just after midnight  
8 this morning.

9 And, sir, I thought it would be  
10 appropriate if I read those e-mails into the  
11 record and then entered them as the next exhibit.

12 THE COMMISSIONER: Thank you.

13 MR. DOODY: My e-mail to Mr. Elliott,  
14 which I sent after 4:33 p.m. on Friday, reads as  
15 follows:

16 "I am writing to advise you that two  
17 representatives of SAGE attended at our  
18 offices this afternoon and indicated that  
19 they had had a falling out with you.  
20 They said that they only learned of your  
21 withdrawal from the Inquiry when they  
22 we're viewing the proceedings this morning  
23 and have had difficulty communicating with  
24 you and your team.

25 We advised them that the issue was

1 one between them and their lawyer and they  
2 should speak to their lawyer, who at the  
3 present time is you.

4 As you know the Commissioner  
5 recommended the level of funding, which is  
6 being used to pay you and your team, on  
7 the basis that that legal team would act  
8 for both ELMAC and SAGE. SAGE was granted  
9 standing on the condition that SAGE be  
10 represented by the same Counsel as ELMAC.

11 The Commissioner's ruling also stated  
12 that should a conflict arise between SAGE  
13 and ELMAC, SAGE would be free to make a  
14 new application for standing.

15 The application which you brought for  
16 a recommendation of increased funding had,  
17 as one of its premises, the time required  
18 to act for both ELMAC and SAGE. The  
19 issues between SAGE and your team must be  
20 resolved before the Commissioner is able  
21 to render a decision on that application.

22 We would hope to be able to be  
23 satisfied that all issues have been  
24 resolved and it is clear to us that SAGE  
25 is content with the matter as soon as



1 possible. Until then the decision will be  
2 held in reserve.

3 I look forward to hearing from you as  
4 soon as possible."

5 Mr. Elliott responded to that e-mail at  
6 12:37 a.m. this morning as follows:

7 "Mr. Doody, we have suspended our  
8 services at the Inquiry due to nonpayment  
9 by the Crown. While I am responding to  
10 this e-mail as a professional courtesy I  
11 regret that I will not be responding to  
12 any further e-mails unless and until  
13 payment has been made. We can not be  
14 required to work for any client for free.

15 Please continue to send us e-mails as  
16 we hope that, despite all the evidence to  
17 the contrary, the Crown will eventually  
18 honour its obligations. We will then  
19 attempt to 'catch up.'

20 With respect, in my view it would be  
21 appropriate for the Commissioner to  
22 reserve any decision on increased funding  
23 for our team until such time as the  
24 funding that was initially promised by the  
25 Crown is forthcoming. There is no actual

1 funding at the moment so any 'increase'  
2 would be illusory.

3 Since our professional reputations  
4 have been impugned by SAGE we are  
5 permitted to reveal confidential  
6 information to the extent required to  
7 defend ourselves.

8 The representatives of SAGE have been  
9 advised on more than one occasion that it  
10 is improper for you to communicate with  
11 them. This advice was necessitated when  
12 Mr. Myles revealed to us some weeks ago  
13 that he and Mr. Meyer had spoken with you  
14 on an earlier occasion. That you did not  
15 advise us of that conversation is a  
16 further concern to us.

17 However, of more immediate concern  
18 are the allegations made against me and  
19 our Counsel team by SAGE and the conduct  
20 of SAGE and its principals.

21 We wish to emphasize at the outset  
22 that we have not been paid and will not be  
23 paid anything for the work done for SAGE  
24 alone to date to the best of my knowledge.  
25 We have exceeded the allocated budget for

1 senior Counsel regularly, as they well  
2 know, so we have had to write off the time  
3 spent with them.

4 Mr. Meyer and Mr. Myles know that time  
5 spent by us addressing their demands and  
6 their conduct is time we can not recover  
7 within the existing budget for our work.  
8 They literally want something for nothing.  
9 This adds injury to the insult of their  
10 criticism.

11 We are familiar with the terms of the  
12 Commissioner's Order on Standing. It has  
13 been explained to Mr. Meyer and Mr. Myles  
14 of SAGE on more than one occasion.  
15 Standing for SAGE is contingent upon SAGE  
16 being represented by the same counsel as  
17 ELMAC. The joint retainer agreement was  
18 carefully crafted, explained to them, and  
19 its terms were accepted by SAGE as  
20 reasonable and practical.

21 To be sure the allegation made by  
22 those SAGE representatives of poor  
23 communications from our team were false  
24 and defamatory. Mr. Broadbent of our team  
25 has been in nearly daily communication

1 with Mr. Myles and there are over 100  
2 e-mails between Mr. Myles and Mr.  
3 Broadbent alone. Other members of our  
4 team have been in communication with Mr.  
5 Myles and others at SAGE frequently,  
6 including me. We have a much higher  
7 volume of communications between SAGE and  
8 our legal team than between ELMAC and our  
9 legal team and ELMAC is content.

10 In fact Mr. Myles had a meeting with  
11 Mr. Aube just prior to his meeting with  
12 you where he explained the withdrawal on a  
13 confidential basis. Mr. Myles expressed  
14 himself satisfied with the explanation.  
15 Despite this Mr. Myles then sought a  
16 meeting with you and did not tell Mr. Aube  
17 or anyone else on our team that he was  
18 doing so. We learned of it for the first  
19 time from you. Mr. Myles' conduct was  
20 discourteous beyond measure.

21 Under the terms of our retainer with  
22 ELMAC we take our instructions on Part 1  
23 from ELMAC not SAGE. In turn SAGE was to  
24 instruct during Phase 2, not ELMAC. This  
25 alternating control was designed precisely

1 to avoid any possibility of conflicting  
2 instructions. Despite their agreement to  
3 these terms SAGE has repeatedly sought to  
4 interfere in the conduct of Part 1 by  
5 ELMAC, to question our instructions and to  
6 engage in ill-informed and ill-advised  
7 criticisms of our strategy. They have  
8 been reminded repeatedly that they are not  
9 entitled to do so and have persisted in  
10 repeatedly violating the terms of our  
11 retainer agreement. Further, our  
12 retainer agreement provided that on behalf  
13 of SAGE we take our instructions from only  
14 one designated person. The person  
15 designated by SAGE's membership was Mr.  
16 Myles. Despite this Mr. Meyer has  
17 demanded the right to instruct us and to  
18 overrule Mr. Myles. This chaotic and  
19 improper mismanagement by Mr. Meyer  
20 has wasted much time.

21 We took on SAGE at the behest of  
22 Commission Counsel. We were careful when  
23 we accepted the additional retainer to  
24 ensure that we would be able to continue  
25 to act for ELMAC in the event that we

1 could no longer act for SAGE.

2 With the full support of ELMAC we  
3 have exercised our rights under our  
4 retainer agreement to terminate our  
5 representation of SAGE. SAGE has been  
6 informed and they have been told that this  
7 means that they no longer have standing.  
8 We no longer represent them. Please  
9 advise the Commissioner accordingly.

10 Since they are no longer our clients  
11 you are now free to speak with SAGE  
12 directly. Please continue to refrain from  
13 communicating with ELMAC directly."

14 Sir, I spoke with Mr. Myles and Mr.  
15 Meyer this morning, gave them a copy of the  
16 e-mails and told them that I would be filing the  
17 mail as an exhibit, which I propose to do now.

18 THE COMMISSIONER: I take it they had  
19 not been copied with that e-mail?

20 MR. DOODY: I did not ask them that,  
21 sir. My impression was that they had not. They  
22 are in the hearing room now. If I could file this  
23 as the next exhibit?

24 MS. KUKA: 2342.

25 EXHIBIT NO. 2342: E-mails between Mr.

1 Doody and Mr. Elliot.

2 MR. DOODY: Mr. Myles and Mr. Meyer  
3 advised me that they did not agree with many of  
4 the allegations of fact made in Mr. Elliott's  
5 letter. I advised them that pursuant to your  
6 Order with respect to standing SAGE no longer has  
7 standing but that we were inviting them to  
8 consider applying for standing. And they advised  
9 me that they intended to do so at the first  
10 reasonable opportunity. And we will be in  
11 communication with them to facilitate that.

12 I can also indicate that Mr. Myles and  
13 Mr. Meyer advised me that, contrary to the  
14 inference which arises from Mr. Elliott's e-mail  
15 to me, neither of them have been advised by Mr.  
16 Elliott prior to his withdrawal of services that  
17 he was intending to do so.

18 I can also indicate, Mr. Commissioner,  
19 with respect to Mr. Elliott's complaint that I did  
20 not advise him of the earlier occasion on which  
21 Mr. Myles and Mr. Meyer spoke with me, I can  
22 indicate that a number of weeks ago they did speak  
23 with me, told me that they had some concerns with  
24 the representation Mr. Elliott was providing to  
25 them. I told them that that was a matter between

1     them and their lawyer.  So long as they had a  
2     lawyer it was inappropriate for me to speak with  
3     them and suggested that they speak with Mr.  
4     Elliott and advised them of that.

5             It was my intention to advise Mr.  
6     Elliott of that meeting.  In fact I thought I had  
7     done so.  I spoke with Mr. -- I was speaking with  
8     Mr. Elliott on numerous occasions over the course  
9     of this inquiry and I thought that he had been  
10    made aware of that.  It appears that he was in  
11    fact aware of it and I do not have a specific  
12    recollection of having communicated that to him in  
13    writing or orally.  And sir, that is what I  
14    intended to put on the record this morning.

15            THE COMMISSIONER:  Thank you, Mr. Doody.  
16    I must say that I'm quite concerned that leave was  
17    not sought of the Commission, among other things,  
18    to be relieved of Mr. Elliott's obligation as  
19    Counsel of record.  I recognize that this is not a  
20    court where leave would normally be sought before  
21    Counsel attempted to be removed from the record,  
22    but at the very least that as a matter of courtesy  
23    Mr. Elliott would have done so, because what he  
24    has done essentially is unilaterally withdrawn his  
25    representation of SAGE jeopardizing both their



1 standing and their funding. We may have to  
2 revisit that issue at a later time.

3 Mr. Myles or Mr. Meyer, do either of you  
4 wish to take a statement this morning? If so come  
5 forward please.

6 MR. MYLES: Morning, Mr. Commissioner.  
7 Thank you. I would like to start by making one  
8 correction to Mr. Doody's presentation and that  
9 was there was a -- I have evidently misunderstood.  
10 We were advised by e-mail that they would be  
11 withdrawing their services on this weekend, sir.  
12 That should be corrected before we're accused of  
13 something else.

14 Our initial meeting did not go well when  
15 we were advised by Mr. Elliott that he was our  
16 lawyer due to the shotgun wedding that was  
17 arranged. It went downhill from there. I would  
18 like to say that it's probably more a  
19 misunderstanding, and we will take responsibility  
20 for a lot of that not being lawyers of our  
21 representation.

22 It was an on-and-off again thing when  
23 they needed something they got it. We fully  
24 supported them through Phase 1, which is still  
25 ongoing. To support what he was doing we were

1 asked to sign documents relating to petitions and  
2 legal submissions and we agreed on one, on one we  
3 did not because we had questions. And the answer  
4 I got when I said I had questions was, You either  
5 sign it or you're out. At which point I said,  
6 We're out. We don't sign things with at least  
7 getting some answers to what they are. SAGE  
8 thinks it's a very big misunderstanding that  
9 increased due to their budget commitments and  
10 financial statements.

11 A hundred documents between Jeff and I  
12 probably correct, including seven different  
13 requests for documentation -- more than seven,  
14 pertaining to Part 2, which I'm told were not  
15 available. As well as seven requests from our  
16 lawyers for my witness list for Part 2, which I  
17 submitted and which was to be turned in on Friday  
18 due to the extension that was given to them. It's  
19 my understanding that that witness list is still  
20 not in. It wouldn't matter if I don't have  
21 standing.

22 SAGE is interested in standing as we're  
23 the only citizen group for the people of Elliot  
24 Lake that is representing the people, other than  
25 the good job the Commission will do I'm sure.

1                   But we have quite a bit of information I  
2 think. My knowledge would add to the Inquiry.  
3 And I'm certain that the people of Elliot Lake  
4 would like to see us here. I would ask that we  
5 have until Friday to apply officially for  
6 standing, when we're advised of the proper way to  
7 do that which Mr. Doody said he would help us  
8 with. And we're sorry for the inconvenience.

9                   I would like to straighten out one point  
10 about Mr. Meyer. Keith is the chair, I'm a  
11 volunteer. I'm not on the executive, but with my  
12 knowledge I was appointed to be lead. And we did  
13 step on each other's toes in the beginning, but  
14 that was well sorted out and has not been an issue  
15 for quite some time. So I should not agree with  
16 Mr. Elliott's statement about the chain of command  
17 that we have. That's very clear and Mr. Meyer I'm  
18 sure would substantiate that comment.

19                   So with your permission, sir, I would  
20 like to ask until Friday to have that submission  
21 for standing put in.

22                   THE COMMISSIONER: Thank you, Mr. Myles.  
23 I look forward to getting your formal application  
24 for standing. Mr. Doody will assist you in that  
25 respect.

1           MR. MYLES: I've been advised by Counsel  
2 that I should tell you that the e-mails we  
3 received were after Mr. Elliott withdrew from  
4 here. That was not to our knowledge. My first  
5 knowledge of that was when Keith phoned me from  
6 his residence when people from SAGE, in attendance  
7 in Court on Friday, phoned Keith and he phone me  
8 at home and he advised me. We immediately went to  
9 -- I made two phone calls to try and get to Jeff.  
10 Again this is my fault, I have his wrong cell  
11 phone number. Obviously I didn't get him on the  
12 cell phone. I phoned his office. It rang six  
13 times. I was flying low, so to speak, at the time  
14 to get up here to find out what was going on so I  
15 didn't wait other than six rings at the office  
16 phone, which was not answered.

17           We, Mrs. Hiley and I went to Mr. Aube's  
18 office for an information session to find out what  
19 was going on. He told us. We made no comment  
20 whether we agreed or didn't. We left and came  
21 here and had a meeting with the people from SAGE  
22 who were here. It was after that that I got  
23 e-mails later this weekend indicating he would  
24 withdraw his services. Thank you, sir.

25           THE COMMISSIONER: Thank you, Mr. Myles,

1 that's noted. Any comments arising out of what  
2 we've heard so far from the other participants?  
3 No? Thank you.

4 We have Mr. Bisceglia's replacement this  
5 morning, Mr. Romano, I understand. Am I  
6 pronouncing your name properly, sir?

7 MR. ROMANO: Good morning, yes. Ross  
8 Romano.

9 THE COMMISSIONER: Yes, Mr. Romano,  
10 you'll be representing Mr. Bisceglia.

11 MR. ROMANO: I am, thank you.

12 THE COMMISSIONER: Thank you. And Mr.  
13 -- I hesitate to say your name. I know you told  
14 me before but I've forgotten how you pronounced  
15 it.

16 MR. KLOEZE: It's Kloeze, Mr.  
17 Commissioner. And I wanted to introduce you to  
18 Judith Parker, she's a colleague of mine from the  
19 Ministry of the Attorney General and she's also on  
20 the Province of Ontario team. She'll be here this  
21 week.

22 I did want to make one further comment  
23 about comments made on Friday and this morning  
24 about payment of the accounts of the Commissioner  
25 and his staff, and also the payment of Counsel

1 that are funded by the Province.

2 As the Commissioner may know the office  
3 of the Ministry of the Attorney General  
4 responsible for payment is separate and apart from  
5 the office that undertakes representation. There  
6 is a wall between us for good reason, and I'm  
7 unaware of the processes that takes place there.  
8 But I can advise the Commission that once we were  
9 aware of the issue on Friday morning we advised  
10 that office as soon as possible that there were  
11 concerns about payment. And I understand that  
12 there are efforts under way right now to ensure  
13 that payments are received as soon as possible.

14 The other comment I wanted to address is  
15 a comment I understood was made criticizing the  
16 Province for not being in attendance at the  
17 Inquiry. And I wanted to assure you, Mr.  
18 Commissioner, and I wanted to assure the community  
19 that the fact that the Province has not been here  
20 every day is not meant in any way as a sign of  
21 disrespect to you or to the community. We are  
22 following the Commission very closely, and I thank  
23 the Commission for setting up the ability to watch  
24 this over the internet. We are watching this  
25 every day and following it very closely. And

1 we're working very hard with Commission Counsel  
2 the make sure that witnesses -- particularly with  
3 respect to Part 2 are going to be available in  
4 Part 2. Our first witness actually is scheduled  
5 to appear later this week. And I'm sure that once  
6 we get into Part 2 you'll see more of us than  
7 you'll wish.

8 At least half of the witnesses currently  
9 scheduled for Part 2 are from the Province of  
10 Ontario and we're working very hard to make sure  
11 that they are available at that time. Thank you,  
12 sir.

13 THE COMMISSIONER: All right, thank you.  
14 I simply make one comment in relation to Counsels'  
15 comments to me. It seems to me as a matter of  
16 basic courtesy that if Counsel are intending to  
17 absent themselves from hearings of the Commission  
18 the very least they can do is inform the  
19 Commission of the fact. In the past Mr. Longo,  
20 Mr. MacRae, Mr. Bisceglia have been quite  
21 attentive to that obligation to courtesy, if  
22 nothing else, to advise the Commission of their  
23 intended absence, and their presence is obviously  
24 not required. But I would certainly expect to be  
25 advised if Counsel are to be absent, or if new

1 Counsel come aboard on occasion to simply identify  
2 themselves to me so that I know that the person's  
3 occupying counsel chairs here are representatives  
4 of people with standing.

5 And so as I say, as a matter of  
6 fundamental courtesy, if nothing else, an intend  
7 absence ought to be announced with an anticipated  
8 return date.

9 All right. That being said we'll leave  
10 these matters aside for the moment. And Mr.  
11 Wallace I gather you're next with your new witness  
12 this morning? Mr. Officer, is that correct?

13 MR. WALLACE: That's correct,  
14 Commissioner, and the Chief Officer is here.

15 MR. DOODY: Mr. Commissioner, with your  
16 leave I will retire.

17 THE COMMISSIONER: Thank you, Mr. Doody.

18 MR. WALLACE: Chief, come forward  
19 please.

20 PAUL OFFICER, sworn.

21 EXAMINATION-IN-CHIEF BY MR. WALLACE:

22 THE COMMISSIONER: When I was making my  
23 comments about Mr. Longo, Mr. MacRae advising me  
24 I forgot to include you, Mr. Cassan. You've  
25 always been here either you or your



1 representative. I didn't insult you by excluding  
2 you from my comments.

3 MR. CASSAN: I took it as you noticed we  
4 were here.

5 THE COMMISSIONER: Thank you. Go ahead,  
6 Mr. Wallace.

7 BY MR. WALLACE:

8 Q. Chief, you can have a seat if you  
9 want.

10 A. Thank you, sir.

11 Q. Sir, you are the current Fire Chief  
12 for the City of Elliot Lake?

13 A. That's correct.

14 Q. And just briefly by way of  
15 background I understand, sir, that you're a  
16 graduate of Fanshawe College and you graduated  
17 with a certificate in Construction Supervision?

18 A. That's correct.

19 Q. And upon your graduation or shortly  
20 after you were employed by the City of Guelph?

21 A. Yes, I was.

22 Q. And you worked for the Buildings  
23 Department for the City of Guelph?

24 A. Yes, I worked in the Building  
25 Department. I actually was the Administrator of

1 the Ontario Home Renewal Program.

2 Q. And following that you obtained  
3 employment as a Building Inspector with the City  
4 of Elliot Lake?

5 A. That's correct.

6 Q. And in fact you started with the  
7 City on the 21st of September, 1981?

8 A. That's correct.

9 Q. And I'll just go through your career  
10 path with the City. You remained as a Building  
11 Inspector between September of '81 until the  
12 retirement of Mr. Pigeau in November of 1999?

13 A. That's correct.

14 Q. And between November of '99 and  
15 April of the year 2000 you were the Acting Chief  
16 Building Official?

17 A. That's correct.

18 Q. And you became a Chief Building  
19 Official on the 1st of May of the year 2000?

20 A. Yes.

21 Q. And you remained in that role up  
22 until the 3rd of February of 2002?

23 A. Yes.

24 Q. And it's my understanding that at  
25 that point in time you became the Deputy Chief of

1 the Fire Department here in Elliot Lake?

2 A. Yes. At that time the former Chief  
3 was off ill with cancer and I was running both  
4 departments at that time.

5 Q. I'm sorry, you were running?

6 A. Both departments. The Building  
7 Controls Department and the Fire Department.

8 Q. So at that point in time then you  
9 were the Deputy Chief as well as the Chief  
10 Building Official?

11 A. That's correct.

12 Q. And it's my understanding that you  
13 became the Chief on the 2nd of June of the year  
14 2000?

15 A. Yes, that was the official date when  
16 I became Chief.

17 Q. And is that the same date that you  
18 would have stopped becoming the Chief Building  
19 Official or is it some time prior to that?

20 THE COMMISSIONER: Did you say 2000 or  
21 2002?

22 MR. WALLACE: 2002.

23 THE COMMISSIONER: I thought you said  
24 2000 but it was 2002.

25 MR. WALLACE: Yes.

1 BY MR. WALLACE:

2 Q. Okay.

3 A. That I'm not sure of. I was  
4 probably still Chief Building Official until I was  
5 replaced by Mr. Allard I believe. So I carried  
6 the two departments until there was a replacement  
7 I believe.

8 THE COMMISSIONER: Did you say Allard or  
9 Howard?

10 BY MR. WALLACE:

11 Q. The cheat sheet I have here  
12 indicates that Mr. Allard became the Chief  
13 Building Official on the 23rd of September of  
14 2002. Does that more or less correspond to your  
15 recollection?

16 A. Yeah, I believe so. I know I was  
17 involved in the hiring process of the Chief  
18 Building -- or my replacement as well.

19 Q. Now during your time as a Building  
20 Inspector specifically, September of '81 until  
21 November of '99 you were working under Mr. Pigeau?

22 A. That's correct.

23 Q. And during that entire timeframe Mr.  
24 Pigeau was the Chief Building Official?

25 A. That's correct.

1 Q. And can you tell us from your  
2 perspective what you understood the inspection  
3 policy for the City of Elliot Lake was with  
4 respect to Property Standards?

5 A. The policy then it was  
6 complaint-driven.

7 Q. Which means what?

8 A. We had to receive a complaint and  
9 they wanted it in writing.

10 Q. And what role if any would you take  
11 in receiving complaints?

12 A. Periodically if I happened to be in  
13 the office and a complaint came in, in those early  
14 days I was mostly in the field, but if I was in  
15 the office and it came in I would take the  
16 complaint.

17 Q. And are you referring to a formal  
18 document in making a complaint, or are you talking  
19 about any sort of correspondence that could come  
20 into the office that would in essence constitute a  
21 complaint?

22 A. Yeah. It could come in in a letter  
23 form, or it could if somebody came in to the  
24 office I would sit down with them and take the  
25 complaint.

1 Q. So if a member of the public walked  
2 in to City Hall, which is where you worked  
3 correct?

4 A. Correct.

5 Q. If they came in to City Hall and  
6 wanted to make a complaint but didn't have it  
7 written out would you assist them in that process?

8 A. Yes.

9 Q. And what if anything information  
10 would you give to the person who's making a  
11 complaint? Would you give them any explanation as  
12 far as the process is concerned?

13 A. Absolutely. Usually what happens,  
14 and it's all complaints. Not only did we just do  
15 Property Standards we had all other various  
16 by-laws that we had to enforce as well. But what  
17 you would do is go through the process with them.  
18 Mostly -- because normally when people come in  
19 they're fed up so they want action.

20 So you would go through the process.  
21 Among the first questions they would ask, okay,  
22 when are you going to get there? So you would  
23 explain the process that you would be going out  
24 doing the inspection. You would give them the  
25 time frames to permit these people to get the work

1 completed and basically explain the process.

2 If it was something that was in a  
3 private dwelling I would run through the process  
4 with them on how to -- the difficulties we would  
5 have on gaining an entry warrant at that time.  
6 Potentially they might have to go to Court to  
7 assist in that matter if they had the visual  
8 knowledge of what was in the dwelling that we'd  
9 have to gain entry.

10 Q. So as far as the Court is concerned  
11 is -- if you're seeking to enter a private  
12 dwelling you require either the consent of the  
13 home -- of the occupier or a warrant, correct?

14 A. That's right.

15 Q. And you may require the assistance  
16 of the complainant in order to obtain that warrant  
17 if one became necessary?

18 A. Yes, because you're trying to enter  
19 that dwelling on the basis of the information  
20 supplied by the complainant.

21 Q. Now as far as the City was  
22 concerned, what was the policy in terms of trying  
23 to ensure -- get compliance of Property Standards  
24 violations?

25 A. Well we would work through the

1 process and get compliance. We were very  
2 successful at it. A lot of the Property Standards  
3 and I would say the majority of the Property  
4 Standards they mainly deal with things like messy  
5 yards, you know, especially -- an example of that  
6 is this time of year as the snow starts melting --  
7 different times of year you get different calls.  
8 The snow is melting and people don't pick up their  
9 dog feces in the backyard so you'd end up getting  
10 calls on that, that's part of the Property  
11 Standards. People are out in the yard and they  
12 have this nasty spell. So those are a large  
13 majority of the types of complaints you would be  
14 dealing with.

15 Q. What I was referring to is that  
16 there is a spectrum of actions that the City can  
17 take in terms of getting compliance, is there not?

18 A. Yeah. You can issue notices or you  
19 can issue Orders on -- for a Property Standards  
20 violation. And if you have to you issue the Order  
21 and the City can eventually move forward. You  
22 supply the people with their appeal process that  
23 they can appeal the orders, and once that's done  
24 you can move forward so you can actually go and do  
25 the work and recover costs through taxes.



1 Q. And there is also the mechanics, is  
2 there not, to prosecute under the Building Code if  
3 necessary?

4 A. Yes. A lot of those changes -- I'm  
5 not quite as familiar with that. A lot of those  
6 changes came out at the end of my career in the  
7 Building Department role. Before it was strictly  
8 by a by-law, a minimum maintenance by-law or  
9 Property Standards By-Law. I think it was in the  
10 late '80s that it moved into the Building Code  
11 Act. And yes, if it's under the Act you can do  
12 enforce it that way.

13 Q. However the policy the City was  
14 trying was to use litigation as a last resort?

15 A. Absolutely.

16 Q. It's first of all from the City's  
17 point of view it's the most costly way of  
18 proceeding, correct?

19 A. That's correct. We try to get  
20 compliance using honey instead of vinegar. And,  
21 you know, 90 percent of the time or more we were  
22 successful doing that.

23 Q. Okay. Now we've heard considerable  
24 evidence concerning the leaking at the mall.  
25 During your time as a Building Inspector, and in

1 fact as Chief Building Officer, were you ever in  
2 receipt of a complaint written or otherwise of  
3 leaking at the mall?

4 A. No, I was not.

5 Q. Okay. What knowledge do you have,  
6 personal knowledge of leaking at the mall?

7 A. My knowledge starts actually in this  
8 job in about the year 2006 where I became involved  
9 with leaks in the mall. Prior to that --

10 Q. We'll get to the 2006 you can be  
11 sure, but my focus right now is prior to that.

12 A. Yeah, prior to that it would have  
13 been, you know, you heard it some place. When I  
14 say that I have absolutely no idea when. I did  
15 learn through this process that this building was  
16 leaking right from day one, that I did not know.  
17 Mind you I was in my early 20's when the mall  
18 opened and I didn't frequent the mall. Canadian  
19 Tire, that's where I went.

20 But through there, or either potentially  
21 through my wife or somebody you would hear about a  
22 leak, or you would hear about, Oh they're working  
23 on the roof again. Through the inspection process  
24 on say either sign by-laws, or small dividing  
25 walls that would go up in the mall that I probably

1 inspected. Which then sometimes I would go on the  
2 roof and park and you would see that they're  
3 working on the mall, on the caulking. Because  
4 they had the different areas sometimes cordoned  
5 off. That would be the extent of my knowledge of  
6 it.

7 Q. And what about signs of leaking that  
8 one could see from inside the mall itself? Did  
9 you ever see any --

10 A. No.

11 Q. -- pails, or hoses the like?

12 A. No, not until later on until after  
13 2006 did I notice those things or seen those.

14 Q. I just want to take you to a  
15 particular episode involving the library. If we  
16 could have Exhibit No. 11-12. And this --

17 A. What's the tab number, sir?

18 Q. Well this is a document that we  
19 talked about when we had our interview but you  
20 didn't have it. It's not the -- I've got the  
21 wrong number here.

22 MS. KUKA: Is it this one?

23 MR. WALLACE: Yes.

24 MS. KUKA: This is 11-11.

25 MR. WALLACE: Thank you.

1 BY MR. WALLACE:

2 Q. This is a letter and I'm just really  
3 interested in your knowledge of what happened  
4 here. This is a letter that was written by Ms.  
5 Taylor, who is the Chairman of the Library Board.  
6 And she wrote the letter to Mr. Liautaud who is  
7 the Manager of the mall. You knew Mr. Liautaud?

8 A. Yes, I did.

9 Q. And she is expressing her concern  
10 over the continuing problems with the mall's roof,  
11 essentially the leaking. And she goes on to say  
12 in the second paragraph,

13 "Since the library opened in the mall, a  
14 major portion of the collection has to be  
15 covered by plastic in order that the books  
16 are not damaged, the floor is littered  
17 with buckets, and many of the ceiling  
18 tiles are missing."

19 Now, at the bottom left of the document  
20 you'll see in handwriting "cc to Mr. Pigeau and cc  
21 to members of Council" and the initials "LB", that  
22 has been identified as Mr. Burling.

23 A. Hmm hmm.

24 Q. Who cc'ed this letter to Mr. Pigeau.  
25 And at the bottom right of the letter is the

1     handwriting of Mr. Pigeau where he says that  
2     he "Met with Mr. Liautaud and he advised that an  
3     engineer has been hired to analyze problem and  
4     report was forth coming."

5             My question is was this matter brought  
6     to your attention? We can see that it was brought  
7     to Mr. Pigeau's attention, but did he bring it to  
8     your attention?

9             A. No.

10            Q. Did he share with you the fact that  
11     he had spoken to Mr. Liautaud and had been advised  
12     that an engineer had analyzed the problem and a  
13     report was forthcoming?

14            A. No.

15            Q. Just as a side issue, when you  
16     examined the content of the letter itself, in your  
17     opinion would this constitute a complaint with  
18     respect to Property Standards? That is the fact  
19     that the roof is not watertight, it's leaking.

20            A. If you can give me a minute to read  
21     it.

22            Q. Sure.

23            A. Yes, I would take that as a  
24     complaint. And I think by Mr. Pigeau's comments  
25     that he took it as a complaint and he has the note

1 that says they're working on it.

2 Q. Now if we could look at Exhibit No.  
3 273. This is Mr. Liautaud's response to this  
4 letter. And Mr. Pigeau is cc'ed on the response.  
5 And in the third paragraph you can see -- well  
6 actually just jump up to the second paragraph.

7 "As you are no doubt aware, we had  
8 continuous problems until 1986, when after  
9 much examination we implemented a new  
10 maintenance procedure which worked  
11 consistently until the string of 1990 with  
12 the exception of one major expansion joint  
13 which had to be redone in July of 1989.  
14 Apart from the latter, we also  
15 waterproofed the deck in 1989 for added  
16 protection."

17 And in the next paragraph he talks  
18 about, that is Mr. Liautaud does,

19 "By the fall of last year after only  
20 marginal success, we conversed with a new  
21 consultant, Trow Consulting Engineering.  
22 After much discussion, a plan was  
23 formulated and on their advice a multitude  
24 of testing should be completed in the  
25 spring of 1991..."

1 Which is the time frame we're talking about here.  
2 "...in order to determine a reliable  
3 recommendation."

4 When Mr. Pigeau testified he indicated  
5 that he specifically asked Mr. Liautaud for a copy  
6 of the report that had been referenced in their  
7 conversation, that is captured in the handwriting  
8 that I showed you in the previous document. And  
9 Mr. Pigeau indicated that he had asked for the  
10 report and Mr. Liautaud refused to provide it to  
11 him. My question to you is, were you made aware  
12 of the fact that Mr. Pigeau had asked for the  
13 report firstly?

14 A. No.

15 Q. And therefore you would not have  
16 been aware of the fact that he had been turned  
17 down, that request had been denied?

18 A. Yeah, that's correct.

19 Q. And I'll just ask you generally  
20 without taking you to them. We've had evidence of  
21 a number of different engineering reports that  
22 were prepared by some firms and provided to  
23 various owners of the mall. And I'll ask you if  
24 you were ever made aware of -- if you ever saw  
25 those reports during the time frame that you were

1 the Inspector or Chief Building Officer? There  
2 was a report in 199 -- sorry, there were reports  
3 in 1991, 1994 and '95 by the Trow Engineering  
4 company did you ever see their reports?

5 A. No.

6 Q. And in 1998 there was a report by an  
7 architectural firm by the name of Nicholls  
8 Yallowega Bélanger and they prepared a building  
9 condition assessment for Elliot Lake Retirement  
10 Living, did you ever see that report?

11 A. No, sir.

12 Q. And in 1999 there was a report by  
13 the Halsall Engineering company again for Elliot  
14 Lake Retirement Living, did you ever see that  
15 report?

16 A. No.

17 Q. I'll ask you, not restricting the  
18 time frame to when you were Chief Building  
19 Official but at any time up until the 23rd of June  
20 of 2012, did you see any of these reports that  
21 I've just mentioned?

22 A. No. I think it would probably help  
23 the Commissioner if maybe I went through some of  
24 the duties of the Chief Building Official.

25 Q. Sure.



1           A. Because it's not just the duties of  
2 the Chief Building Official strictly to do  
3 building.

4           When I was in that department we  
5 actually had a number of by-laws that we did. So  
6 your main principal responsibility was the Ontario  
7 Building Code, but you also had probably at least  
8 a dozen if not 15 by-law enforcement by-laws that  
9 you also maintained. And that was the Property  
10 Standards By-Law, the Zoning By-Law, the Sound  
11 By-Law, the Parking By-Law, the Salvage Yard  
12 By-Law, the Noise By-Law. There's at least 18 or  
13 20 of these if not more.

14           We also managed the West Hill Trailer  
15 Park, we also managed the City Hall building, we  
16 also managed the Police Station at one point. Any  
17 buildings that were -- came back to the City they  
18 ended up coming to us. We were essentially the  
19 complaints department.

20           Another big portion of duties in that  
21 office was lottery licensing which consumed a lot  
22 of the day.

23           So there was quite a -- quite a bit and  
24 it was a fairly large portfolio. We also had the  
25 Animal Control who reported to the Chief Building

1 Official, which took care of all of the Animal  
2 Control -- even bears at one point. We were  
3 trapping bears and taking bears out of the  
4 community. So it was a wide variety.

5 And I thought I would bring this forward  
6 for the simple reason I know you're going to have  
7 some questions coming up a little bit later that  
8 play a little bit a part on, you know, what kind  
9 of prosecutions we did under the Property  
10 Standards. So a lot of these things -- because a  
11 lot of the by-laws are fairly close it's hard to  
12 recollect specific Property Standards when you  
13 might have been prosecuting under the Salvage  
14 By-Law or under -- if you have recollection of  
15 being in Court under the Noise By-Law, but I'll do  
16 the best I can. But it would be helpful if you  
17 knew all of what we were dealing with.

18 THE COMMISSIONER: Just incidentally,  
19 Chief, you mentioned policing. Has Elliot Lake  
20 always been policed by the OPP or did it ever have  
21 its own force?

22 THE WITNESS: Yeah. We didn't do the  
23 policing, we maintained the facility, their  
24 building. When I came it was the Elliot Lake  
25 Police Force. It moved over to the OPP I'm going

1 to say somewhere in the early '90s I believe.  
2 Right around 1990, 1994, and I believe the  
3 building official is still managing that facility  
4 for them as well today.

5 THE COMMISSIONER: All right, thank you.

6 BY MR. WALLACE:

7 Q. Now, you became the Deputy Chief in  
8 February of the year 2002. And while retaining  
9 your position as the Chief Building Official what  
10 is the relationship in terms of skill set for  
11 Chief Building Official and Fire Chief? The  
12 Deputy Chief?

13 A. Well I was already managing the  
14 Building Department. I was always -- I was  
15 already a volunteer so I was already heavy into  
16 the suppression activities, responding to fires.  
17 And I also worked closely with the Fire Prevention  
18 Office of the day, so I had a very good working  
19 knowledge of fire prevention activities.

20 They wanted -- somebody had to manage  
21 the Fire Department when the former Chief took  
22 ill. I actually managed both departments for that  
23 time period. And after the former Chief passed  
24 away, who was a friend of mine as well, because I  
25 did work closely with him. I really didn't even

1 know if I was going to apply. But I had -- I  
2 enjoyed the fire suppression activities and so I  
3 applied and was the successful candidate.

4 THE COMMISSIONER: You said you were a  
5 volunteer, you mean volunteer firefighter.

6 THE WITNESS: Yes, that's correct.

7 THE COMMISSIONER: How long were you a  
8 volunteer fire fighter?

9 THE WITNESS: Eight or nine years I  
10 believe.

11 THE COMMISSIONER: Before your  
12 appointment?

13 THE WITNESS: That's correct.

14 BY MR. WALLACE:

15 Q. And as I understand it, Chief, you  
16 were a volunteer from the years 1994 and when you  
17 got your appointment in the year 2002?

18 A. That would be about right.

19 Q. And this would be happening as you  
20 were the Chief Building Official?

21 A. Yes. And actually even before that,  
22 because I was a Building Inspector. And it was a  
23 number of years even before 1994 that -- to be  
24 honest with you the Fire Prevention Officers were  
25 hounding me to come out as a fire fighter because

1 of my knowledge and -- with the Building Code and  
2 Fire Code and those things.

3 Q. So it sounds like there are  
4 certainly an overlap in terms of the skill set for  
5 both jobs?

6 A. Yes, that's correct.

7 Q. As the Fire Chief who do you report  
8 to?

9 A. I report through the CAO.

10 Q. Sorry, what does that mean?

11 A. I'm sorry, the Chief Administrative  
12 Officer.

13 Q. Okay. But you said "I report  
14 through". I'm not following your meaning here.

15 A. I report to the CAO who reports to  
16 Council. That would be correct.

17 Q. And as the Chief of the -- or the  
18 Fire Chief rather, do you attend Council meetings?

19 A. Yes, I do.

20 Q. And your attendance at Council  
21 meetings would be -- was it part of the job?

22 A. As the Fire Chief yes.

23 Q. You were expected to attend?

24 A. It depended on the CAO. I know  
25 through Troy Specks' term we only had to come if

1 we had something on the docket. I can't recall if  
2 that was for all the CAOs. But in most cases  
3 you would attend. But if you didn't have anything  
4 that we were bringing forward to Council, a report  
5 or something, we didn't have to attend.

6 Q. Now I understand that as the Fire  
7 Chief there are a number of pieces of legislation  
8 that you're concerned with, correct?

9 A. Yes, that's correct.

10 Q. For our purposes is it a fair  
11 statement that the two main pieces of legislation  
12 are the Fire Protection and Prevention Act and the  
13 Fire Code?

14 A. It's one of them. Maybe this would  
15 be a good time to discuss the duties of a Fire  
16 Chief.

17 Q. Okay.

18 A. I spent the weekend going through  
19 some of my documents and I believe I have a -- I  
20 brought forth a job fact sheet that is -- it's  
21 essentially one that I filled out as Fire Chief,  
22 which I believe was done for pay equity purposes.  
23 So it's a little more in-depth detail of my job  
24 duties that would probably assist the Commissioner  
25 in understanding what my functions are as the Fire

1 Chief.

2 Q. Okay.

3 THE COMMISSIONER: Mr. Wallace, you  
4 haven't specified but is it your intention to  
5 recall the Chief for Part 2 of these proceedings?

6 MR. WALLACE: Yes, for sure.

7 THE COMMISSIONER: I would expect so.  
8 And so your evidence for this point is limited to  
9 Part 1.

10 MR. WALLACE: Yes. And the Chief and  
11 Counsel both have been made aware of that.

12 THE COMMISSIONER: I just wanted that on  
13 the record.

14 MR. WALLACE: Sure.

15 BY MR. WALLACE:

16 Q. Go ahead, Chief?

17 A. Would you like me to go through some  
18 of this?

19 Q. Yes.

20 A. I'll try and keep it as brief as I  
21 can. But essentially the main duties of the Fire  
22 Chief are basically the three lines of defense  
23 which are fire prevention, public education and of  
24 course fire suppression. That is basically in a  
25 the nutshell the scope of what a Fire Chief does.

1           But just to give you an idea of what  
2           some of those main functions are and some of the  
3           duties -- and this is just under the  
4           Administration part. Recommend policy changes to  
5           counsel as required to keep a --

6           THE COMMISSIONER: Slow down, sir,  
7           please. Everything you say has to be taken down  
8           by our Stenographer and by our interpreters at the  
9           back.

10          THE WITNESS: I'm sorry. So you  
11          recommend policy changes to Council as required to  
12          keep our mandate current to the trends. Are  
13          responsible for implementing all policies and  
14          development, operating procedures, operating  
15          guidelines to various standards. Reviewing  
16          policies and guidelines to ensure the appropriate  
17          care and protection of all the Fire Department  
18          personnel and Fire Department equipment.

19          THE COMMISSIONER: Going too fast, sir.  
20          They just can't translate that fast. Just read it  
21          slow.

22          THE WITNESS: Sorry. Daily enforcement,  
23          work to rule of the firefighters; attend  
24          provincial workshops, conferences to keep current  
25          with current legislation, which is I think where



1 you're leading; and networking with our peers.  
2 Under the -- and this is still just under the  
3 first section of administration, human resources.  
4 Dealing with collective agreements with the  
5 Professional Fire Fighters Association.

6 Hiring of the volunteer fire fighters,  
7 which is usually about three per quarter that  
8 takes place; hiring full-time fire fighters, which  
9 actually I just hired another one last week and so  
10 I'm happy about that.

11 THE COMMISSIONER: Are you responsible  
12 for their training or is that done by someone  
13 else?

14 THE WITNESS: I will get to that, sir,  
15 if that's okay? Also promotional exams and  
16 interviews that are done. They're written and  
17 oral as the fire fighters move up through the  
18 levels and get the training that they need.

19 Also I'm involved in contract  
20 negotiations with the full-time and then the --  
21 well with the Volunteer Association.

22 THE COMMISSIONER: How many full-time  
23 fire fighters do you have on staff now?

24 THE WITNESS: As of last week, sir,  
25 we're at nine, ten counting myself.

1 THE COMMISSIONER: These are full-time?

2 THE WITNESS: These are full-time fire  
3 fighters. We try to maintain two men per shift.

4 And then I also contribute at senior  
5 management team meetings; liaison with community  
6 groups with the media and other stakeholders;  
7 responsible for budgeting expenditures and the  
8 bottom line for all of our programs, which is our  
9 public education programs.

10 Under the next heading it's under fire  
11 suppression and medical call activities. And what  
12 takes place on that is maintain proper measures  
13 for the control and extinguishment of fire and  
14 protection of life and properties; ensure staffing  
15 24-7 coverage which can get pretty difficult in  
16 the summer time.

17 Ensure all equipment is in a state of  
18 readiness; ensure all staff training keeps the  
19 force in a state of readiness; exercise mandated  
20 powers under the FPPA, which is the Fire  
21 Prevention and Protection Act; actions to control  
22 the spread and prevention of fires as required;  
23 attend Mutual Aid Zone meeting and district  
24 meetings to ensure the state of readiness for  
25 outside assistance when required.

1           Actually I was in the job less than six  
2 months as the Fire Chief and the Ontario Fire  
3 Marshal's office came to our community and asked  
4 if I would be the District Zone Co-ordinator,  
5 which I did for I think it was three to five years  
6 which our district is the Algoma District, which  
7 covers off all the Mutual Aid Agreements from  
8 Spanish to White River and this side of Wawa.

9           BY MR. WALLACE:

10           Q. And a Mutual Aid Agreement is simply  
11 what it implies, that is an agreement between  
12 neighbouring fire services to assist one another  
13 if the need arises?

14           A. It's a reciprocal agreement that  
15 municipalities -- it's a plan that's already in  
16 place. If we exceed our capabilities it's help  
17 that we can call for in a controlled fashion, and  
18 I co-ordinated that for a number of years.

19           Ensure that medicals calls are  
20 performed. We have a -- if I say acronyms you're  
21 probably going to have to ask. ADSAB is the  
22 Algoma District Services Administration Board. We  
23 have an agreement with them to respond to medical  
24 calls when all the ambulances are out. So our --  
25 we have an agreement with them that we do training

1 as first responders. When all of the ambulances  
2 are out so we then take those calls and do those  
3 calls.

4 We probably do about -- we average right  
5 around 300 calls per year of various calls in  
6 general. Probably of those would be about 30  
7 medical calls per year, ice water rescue calls.  
8 Between fire calls, false alarms we probably do  
9 about 160 calls a year. And then there's all the  
10 other type calls, carbon monoxide, elevator  
11 rescues, those type of things.

12 THE COMMISSIONER: Cats up trees?

13 THE WITNESS: Yeah, we don't go unless  
14 the tree's on fire, then we can go.

15 We also have an agreement -- I'd like to  
16 back up on the medical calls. Where that becomes  
17 important is with attending to the staff. My fire  
18 fighters when it comes to CISM, and CISM is  
19 Critical Incident Stress Management. And dealing  
20 with medical calls and you're dealing with  
21 fatalities is monitoring the men to ensure that  
22 they're not having difficulties with dealing with  
23 folks that have passed away. And that can be as  
24 simple as taking the time and spend the time with  
25 them and just asking those questions. If you

1 think they need help is to get them the help  
2 they're going to need. Fire fighters are a proud  
3 bunch and they won't admit it in most cases, but  
4 you have to have that bond of trust with them. So  
5 I try to do that as well.

6 We also under the same heading as we  
7 have an MNR Agreement that we also do bush fire  
8 fighting, which consumes a fair amount of calls  
9 for us in the summer time.

10 Under the next heading which I think was  
11 the one you were heading to was "Fire Prevention".  
12 This is review and authorize all fire prevention  
13 inspections; guide and assist inspectors on Fire  
14 and Building --

15 THE COMMISSIONER: Slow down, sir.

16 THE WITNESS: Sorry. Guide and assist  
17 inspectors on Fire and Building Code  
18 interpretations and related matters; establish and  
19 control enforcement consistency between  
20 inspectors.

21 And what that is is, just to go briefly  
22 over our fire prevention program, our inspectors  
23 when they're on day shifts they do fire prevention  
24 inspections. We probably do between 500 and 600  
25 inspections dealing with commercial-type

1 properties, retail, industrial. We do not -- we  
2 do not do homes. Under the Fire Code the minimum  
3 requirement is by complaint or request.

4 BY MR. WALLACE:

5 Q. These are inspections you're talking  
6 about?

7 A. That's correct.

8 Q. And you've indicated, and I want to  
9 jump in here now because you've hit something that  
10 is of significant interest to us here.

11 A. Yes.

12 Q. Between 5 and 600 inspections per  
13 year by your force?

14 A. That's correct.

15 Q. And within your service does  
16 everybody -- do all your fire fighters do  
17 inspections or do you reserve that for the more  
18 senior people? Or how does that work get  
19 distributed?

20 A. Back in 1994 I believe when the  
21 mines closed out we had two full-time Fire  
22 Prevention Officers. There was some pretty  
23 significant cutbacks that took place, when they  
24 closed. Those two Fire Prevention Officers those  
25 positions were eliminated and it was rolled in

1 that the fire fighter staff would do the fire  
2 prevention inspectors. It has its pluses and its  
3 minuses. The pluses are that the inspectors get  
4 out into the community, they also get into those  
5 buildings that if there's a fire then they have  
6 personal knowledge on it. And it also then  
7 permits me to, when I schedule those  
8 inspections -- and we have a pretty good schedule  
9 now, they rotate through.

10 So each time I have different eyes  
11 looking at it which is important because they all  
12 have their strengths and weaknesses. And it is of  
13 assistance that when they go through if something  
14 is missed by one it will be caught the next year.  
15 So it has an advantage on that.

16 Q. So is the answer that all of your  
17 full-time fire fighters do inspections?

18 A. Yes, yes that's correct.

19 Q. Ask you indicated that you conduct  
20 between 5 and 600, what is the program for the  
21 City of Elliot Lake in terms of commercial  
22 premises? How many inspections per year or by  
23 semi-annually, bi-annually?

24 A. Sorry, yes. We do annual  
25 inspections. They changed per the class about

1 five or six years ago. We dropped small retail  
2 shops to bi-annual because they were just too  
3 small. You'd be going in and basically they'd  
4 only have a fire extinguisher and maybe an exit  
5 light that you'd be looking at. Schools we do I  
6 believe it's twice per year. The hospital we do I  
7 believe it's twice per year. So it's broken up by  
8 category.

9 The mall we would do annually I believe,  
10 other than the retail. So the common area would  
11 be done annually, the hotel would be done annually  
12 I believe. Some of the retail shops would be done  
13 bi-annually or every other year.

14 Q. When you say some of the retail  
15 shops being done bi-annually, these would be the  
16 smaller ones is that correct?

17 A. No, I think if I recall it's all of  
18 the retail, so even Zellers would be done every  
19 other year I believe.

20 Q. And typically on these annual or  
21 bi-annual inspections what are you looking for?

22 A. When you're going through you're  
23 basically doing an audit, you know, a fire safety  
24 audit. So you're -- obviously you're looking for  
25 the obvious. But the guys will be going through



1 and they'll be looking for breaches in the fire  
2 separations. An example would be, you know, if  
3 exit lights have -- if they're working correctly.  
4 The emergency lights. If they're maintaining  
5 their records for their monthly checks on those  
6 requirements for the fire extinguishers as well.  
7 If they're doing their six-year and -- their  
8 monthly and six-year maintenance on those fire  
9 extinguishers. Exits, making sure all the exits  
10 are open. If there's combustible materials being  
11 in the wrong place, all of those types of things.

12 Q. What about do you perform any sort  
13 of testing? Like, for example, with fire alarms  
14 or sprinkler systems or things like that?

15 A. No. We don't do destructive testing  
16 or, you know -- if it's a building like this  
17 you're going to go into the building. You're not  
18 holding up tiles and looking in those places. If  
19 a ceiling tile's missing the guys I would think  
20 would look up there. But they would probably also  
21 ask that that ceiling tile be replaced because it  
22 also acts as a barrier to keep the fire down.

23 THE COMMISSIONER: What about fire  
24 drills? Do you deal with that?

25 THE WITNESS: Yeah, we do deal with

1 that. There's probably a host of other things,  
2 I'll answer your question there. There are -- a  
3 lot of times there's directives that come out from  
4 the Office of the Fire Marshal. And a couple of  
5 years ago there was a tragedy in one of the  
6 schools and they found out that some of the  
7 facilities or schools weren't doing the  
8 appropriate drills. So the Fire Marshal put out  
9 the call for all of us to be sure to attend some  
10 fire drills, specifically in regard to the school,  
11 to ensure they're doing the drills and also that  
12 they're doing them right and that they're  
13 maintaining their records. So we do do those  
14 drills.

15 Later on, I guess it doesn't really  
16 matter, we actually did a drill at the mall I  
17 believe in it's either 2010 or 2012, and this was  
18 with regard to the hotel retrofit that we'll be  
19 getting into. And I'm hoping that -- I'd like to  
20 think that by doing that drill the day of the  
21 event that it actually helped those people get out  
22 quickly. And this was done because of some of the  
23 deficiencies we found during the hotel retrofit.

24 Can I just go over the rest of this real  
25 quickly before you move on?

1 BY MR. WALLACE:

2 Q. Sure.

3 A. Because I think it's important. And  
4 this is, Mr. Commissioner, sir, this is one of the  
5 answers you were looking for. I'm also  
6 responsible if the staff training and education.  
7 And this is to ensure the staff fire fighter  
8 training is to the Provincial standard.

9 THE COMMISSIONER: Do they go off site  
10 for training at all?

11 THE WITNESS: We do both. We do a  
12 combination of things. We attend the Ontario Fire  
13 College, sometimes I'll bring instructors in so  
14 that we can do it as a group, where that becomes  
15 important is say things like ice water rescue  
16 training, because you want your team to train  
17 together so everybody's on the same page. Even if  
18 they go off site they're still training to the  
19 same curriculum, but it's better when your team  
20 can work together. So we do that every other year  
21 for ice water rescue training.

22 Another one that we do is I try to bring  
23 in instructors for the incident command, which  
24 we'll get into heavily in the Part 2. And it's  
25 the same reason because I also -- even though

1 they're not required, I offer that training to the  
2 volunteer fire fighters as well so they have an  
3 understanding of how incident command works when  
4 they're working under it. I afford them  
5 opportunity to take the training and get the  
6 certification.

7 And some of that is approving all the  
8 Fire College course applications, directing staff  
9 training as required. Part of that will also be  
10 moving -- that will maybe assist in your concerns,  
11 is the fire prevention inspection programs, we  
12 have firefighters working through that curriculum  
13 as well.

14 Identify budgeting and approval of  
15 specialized training as required; training  
16 conformance with the section 21 guidelines, which  
17 is the fire fighter Health and Safety Regulations.

18 The next is continued on education,  
19 specialized training, and it moves forward though  
20 some of those things that we talked about, ice  
21 water rescue training. These are things that are  
22 first response training for medical response  
23 calls. Which we have -- I talked about earlier,  
24 we have an agreement with.

25 And under "Supervisory Direction

1 Exercised", identify any jobs or work groups --  
2 okay this is one's provide technical and  
3 functional guidance to other staff, maybe Public  
4 Works and the Building Department, Building  
5 Controls Department. Supervise a work group,  
6 assign work to be done, methods to be used, and  
7 responsibility for all the work of the group. And  
8 manage the work practices and procedures of a  
9 unit. Responsible for appraisals discipline and  
10 hiring.

11 I do evaluation of all the staff and  
12 that is always ongoing. As we move forward that  
13 is part of the training and development.

14 MR. CASSAN: Mr. Commissioner, sorry to  
15 interrupt, and I know that it's not my turn. But  
16 Mr. Officer is looking at a document that hasn't  
17 been made an exhibit yet. And I wonder if that  
18 can be put up to assist us in following through.  
19 And it is document CLE14430, and that I believe  
20 that's not being made an exhibit.

21 THE COMMISSIONER: Are you bringing that  
22 up.

23 MS. KUKA: It's on the screen.

24 THE WITNESS: The pages aren't numbered.  
25 We're under "Initiative and Decision Making".

1 MS. KUKA: It will be Exhibit 2343.  
2 EXHIBIT NO. 2343: City of Elliot Lake Job  
3 Fact Sheet for the Fire Chief.  
4 THE WITNESS: We're almost done.  
5 There's only a coupled of pages left. As you can  
6 see under "Initiative and Decision Making" you can  
7 see how it's filled out. Essentially I believe  
8 this ended up being used to actually craft the job  
9 description. And these are some of the highlights  
10 on the decision making process. The fire ground  
11 operations. Review, draft, implement orders,  
12 rules, operating guidelines, procedures.  
13 Reprimand, suspend, dismiss part-time and  
14 recommend dismissal of full-time members.  
15 We talked briefly about the policy  
16 direction and interpretation, items that could  
17 have a legal implication to the City. These are  
18 three decision that I would seek consultation with  
19 my supervisor over, items beyond my scope or  
20 mandate. So this would be something like  
21 responding north of our community, which is an  
22 unorganized territory that periodically those  
23 calls do come up. We had one this winter where it  
24 was an ice water rescue fatality that we assisted  
25 the OPP with this year.

1           That -- the bottom line there is on  
2 budgeting which was back then when this was done  
3 was 1.1. I think our budget this year is going to  
4 be 1.7 million.

5           This also doesn't talk about all the  
6 maintenance, but we did talk briefly about  
7 long-term planning for the fire hall and equipment  
8 replacement. I'm sorry if I threw you off track,  
9 sir.

10           BY MR. WALLACE:

11           Q. No, I think you want to make the  
12 point of what is on your plate in terms of what  
13 you're responsible for.

14           So I want to get back to the inspection  
15 process here. What happens if one of your fire  
16 fighters is doing an inspection and sees something  
17 that is in fact a violation of the Fire Code?  
18 What's the process to rectify it?

19           A. We take a soft approach, but when I  
20 say that the inspector will do an inspection  
21 report, obviously they will bring forward the  
22 concern to the tenant and or owner. The  
23 inspection report will be done and usually there's  
24 a time frame that's given to correct those items.

25           Q. So if the inspector was doing an

1 inspection on a Monday and he saw things would he  
2 write out the report right on the spot, or would  
3 he go back to the office, write the report up and  
4 come back and discuss it? How does that work?

5 A. Most of the time what we try and do  
6 is go through the facility with either the manager  
7 or the owner. As those things are brought up  
8 they're identified, he will make notes on his  
9 inspection sheet, which is essentially last year's  
10 record. So he has last year's record, which has  
11 all of the details on the top of the report. So  
12 he's checking to make sure that the owner's name,  
13 telephone numbers and contact number are all  
14 correct. And then he's going to hand write his  
15 notes on there of the infractions.

16 When he gets back to the fire hall then  
17 he'll do up the inspection report and in most  
18 cases they're mailed out. He's already had a  
19 discussion with the manager and or owner.

20 Q. And what's the follow up?

21 A. It depends on the infraction. In  
22 most cases it's usually around 30 days. This is  
23 back to -- and I thought it was important that you  
24 understand some of the process -- some of the  
25 pros and cons on not having a full-time Fire



1 Prevention Officer we have to schedule those  
2 things to when they're available on the next set  
3 of day shifts. So usually it's a month, 30 days  
4 and then they're going back.

5 Q. For the follow-up?

6 A. Yeah, that's correct. I mean you  
7 also have to remember when you're enforcing the  
8 Code or the -- you're dealing with the Fire  
9 Code -- the Fire Code, and it clearly states in  
10 Act that it's the owner's responsibility to ensure  
11 that they are in compliance with the Fire Code,  
12 basically 365, 24/7. So what we're doing when  
13 we're going through is we're doing an audit of  
14 that facility to ensure that they are -- similar  
15 to what's being done on a building permit process  
16 inspection as well.

17 Q. Speaking of building permits  
18 inspections, what -- is there cooperation between  
19 the Building Inspectors and the Fire Inspectors?  
20 So, for example, if one of your chaps is out doing  
21 an inspection and sees something that is not -- is  
22 not a fire problem per se, a fire violation, but  
23 is a possible Property Standards violation is that  
24 information passed along? And is it reciprocated  
25 the other way around?

1           A. Yes, it is. And when I say that  
2 they have to have knowledge I guess of that  
3 offense. So probably the best example that I can  
4 tell you of that would be in the event we have a  
5 fire, I'll say a house fire. And there's a fire  
6 in the basement that may char half a dozen floor  
7 joists that are a structural concern. It's our  
8 policy then we'll have the fire -- the owner is  
9 made aware and they sign off when we return the  
10 property back to them after fire watch of all the  
11 hazards. And part of that process is to inform  
12 the Building Controls Department so they can get  
13 the appropriate orders on to get the proper  
14 building permits to correct that.

15           On generalized inspections that the guys  
16 are going through, if there's something they see  
17 and they're aware that it is an infraction for the  
18 building controls they would pass it on to us.

19           Q. And it would be in fact your  
20 expectation that if in the course of some building  
21 inspection that they became aware of, something  
22 that looked at least at fist blush, to be a Fire  
23 Code violation that they would pass that  
24 information on to you?

25           A. Yes.

1 Q. Now I'm going to deal specifically  
2 with the library, but -- and matters that arose in  
3 2006, but --

4 THE COMMISSIONER: Perhaps now would be  
5 a good time to take the break, Mr. Wallace.

6 --- Morning break taken at 11:05 a.m.

7 --- Upon resuming at 11:25 a.m.

8 BY MR. WALLACE:

9 Q. Chief, I want to spend some time  
10 dealing with specific inspections 2006 that led to  
11 the discovery of some missing fireproofing, and  
12 you know the areas that we're talking about here?

13 A. Yes.

14 Q. So I want to -- firstly I think it  
15 would be helpful for the Commissioner to  
16 understand how this series of inspections started  
17 in the first place. If we can go to Exhibit No.  
18 11-19 and that would be at your tab 8, Chief.

19 A. Yes.

20 Q. Now, the first e-mail, which is in  
21 fact the last in time, is from Cathy McTaggart who  
22 was the representative from Council on the Board  
23 of the library?

24 A. Okay.

25 Q. You know who she is?

1 A. Yes, I do.

2 Q. And this e-mail was sent Tom  
3 Derreck. And the date is the 21st of October of  
4 2006. And it's my understanding that Mr. Derreck  
5 started on the job on the 10th of October of 2006  
6 as the CAO of the City? Does that roughly meet  
7 with your recollection?

8 A. It would have been around that time  
9 frame, the actual date I'm not sure so.

10 Q. Now she is informing Mr. Derreck, in  
11 the first paragraph,

12 "I read with interest your comment that  
13 'No blame is being laid here, but the  
14 building department's not being in the  
15 picture -- apparently unaware of the  
16 leakage problem -- suggests a need for a  
17 little tightening up in the area of  
18 communications...which is happening as we  
19 go along'."

20 And she's quoting Mr. Derreck it would  
21 appear.

22 But the next paragraph is what I want to  
23 draw to your attention. She says that,

24 "As the appointed representative from  
25 Council to the library Board, I forwarded

1 every e-mail that I received from Sue  
2 Morin about the Library leaks to Council,  
3 to Syl Allard (Bldg Dept.) and Dan  
4 Gagnon, and even to Rob de Bertoli and  
5 Paul Officer and Leslie Sprague, simply  
6 because they are usually at Council  
7 meetings."

8 Do you see that?

9 A. Yes.

10 Q. Is it a fair statement? Does this  
11 e-mail represent the fact that you were being kept  
12 abreast in 2006 of the ongoing leakage problems in  
13 the library by virtue of her forwarding e-mails to  
14 you and others?

15 A. That's what it says, but it doesn't  
16 -- if you look down below I don't see the cc in  
17 there. And we didn't review this earlier so  
18 that's what she said.

19 Q. If you look at the one below it it  
20 says "Original Message From Cathy McTaggart.

21 A. Hmm hmm.

22 Q. And then -- if you scroll up, Cathy  
23 McTaggart. And on the cc, if you turn the page,  
24 you'll see yourself -- on the right hand side  
25 you'll see your name.

1 A. Okay.

2 Q. And it would appear that it was her  
3 intention, and in fact was attempting to keep a  
4 number of people abreast of what was happening in  
5 respect of the leakage at the library?

6 A. Hmm hmm.

7 Q. And just as a general statement, in  
8 this time frame were you aware that there was this  
9 problem at the library with leaking?

10 A. When was the date on this?

11 Q. This is October -- more  
12 specifically the one at the bottom -- the one at  
13 the bottom is in August of 2006.

14 A. Okay.

15 Q. And then one that I directed your  
16 attention to from Cathy McTaggart to Tom Derreck  
17 is in October of 2006.

18 A. Okay. Sorry, your question is?

19 Q. I'm asking, it appears that you are  
20 being kept in the loop as far as the ongoing  
21 leakage problems that the library is having and  
22 the trouble they're having dealing with it?

23 A. Yes, that's probably spurred that  
24 October inspection that we did, or part of the  
25 reason I guess.

1 Q. Yes, okay.

2 A. Because I couldn't answer that I  
3 think when we went -- when we were reviewing  
4 documents. I couldn't remember how it started but  
5 this appears to be how it started.

6 Q. Okay. And if you could look at  
7 Exhibit No. 11-120. This is an e-mail from  
8 Katherine Croxson to Suzanne Morin. And you know  
9 who both those people are?

10 A. Yes, I know Susan and --

11 Q. And Katherine Croxson was the chair  
12 of the Library Board, and Suzanne Morin was the  
13 head librarian?

14 A. Yes. I know Suzanne and I think I  
15 think I dealt with Ms. Croxson. I think she made  
16 a donation to the Fire Department at one time. So  
17 yes I know here her, not in that capacity but I do  
18 know her.

19 Q. Actually that's not the document  
20 that I wanted. It's the same two people but it's  
21 a different -- just give me a second please  
22 because the doc number is cut off on my copy here.  
23 Try Exhibit No. 1705 please. Yes, that's the one  
24 I wanted.

25 This is the same two parties and in this

1 case Ms. Croxson is updating Ms. Morin and saying,  
2 "Thank you for the update, and please  
3 thank the staff for the efforts they are  
4 making. I am sure that I speak for the  
5 entire Board. As Chair of the Board, I  
6 invited Tom Derreck to our next Board  
7 meeting to be held on Nov. 8, 2006. He  
8 was extremely pleased to be invited and  
9 has a long history of support for  
10 libraries. He expressed grave concern  
11 about our situation and wants to be part  
12 of any plans we have to remedy the  
13 situation

14 Personally, I believe that it is time  
15 for the City Council to make immediate  
16 plans to build a library. It is not  
17 feasible to continue paying rent and taxes  
18 to some landlord who is unable and/or not  
19 committed to providing a safe, dry  
20 environment for the library's inventory  
21 much less not covering the cost of damage  
22 to books and other items."

23 And then if you drop down one further  
24 paragraph it says,

25 "Personally, I'm just waiting for a



1 vehicle to go through the roof and/or some  
2 patrons to become very ill from 'spores'  
3 on our materials. If Council thinks that  
4 the cost of a new library would be  
5 impossible, perhaps they ought to give  
6 consideration to the aftermath of such  
7 incidents occurring...a new library would  
8 be a far cheaper solution."

9 And then it says further on,  
10 "These are my thoughts at the moment, Sue.  
11 If you think I should pass them on to  
12 others, please let me know. You and  
13 the staff are doing a wonderful job, as  
14 are the people from the mall staff and  
15 from Quest."

16 Quest is a company that monitors air  
17 quality?

18 A. Yes.

19 Q. Was this e-mail brought to your  
20 attention? I mean it's pretty dramatic.

21 A. Yeah, it is. I don't know. Does it  
22 say I got this?

23 Q. No, it doesn't say you got it.  
24 She's asking at the bottom of it whether or not  
25 Sue thinks that she should share it with others.

1 And I'm just asking you from your recollection,  
2 because it is somewhat of a dramatic statement, if  
3 you recall having seen it or not?

4 A. No, I don't think I seen this. And  
5 yeah -- no. I don't believe so.

6 Q. Okay. And the last one that I want  
7 to show you Exhibit No. 11-124. Yes. If we go  
8 down to the bottom this will explain how those  
9 inspections came about just by -- it's an e-mail  
10 sent on the 18th of October, 2006 from Cathy  
11 McTaggart to Suzanne Morin. And if you see down  
12 in the text,

13 "This e-mail is my confirmation of our  
14 conversation of a few minutes ago in which  
15 you advised me that after a meeting  
16 attended by yourself, Katherine Croxson  
17 and Tanya-Lee Williams with Tom Derreck,  
18 our CAO, Tom has been asked and has agreed  
19 to act on behalf of the Library Board to  
20 perform several tasks, which include  
21 obtaining legal advice on behalf of the  
22 Board, having Syl Allard, our Chief  
23 Building Official perform an inspection of  
24 the Library facilities and file a report  
25 and Tom will also follow through with

1                   several other duties in an effort to try  
2                   to resolve the ongoing 'water' problems  
3                   and resulting damages that have occurred  
4                   to the Library."

5                   And if you go up to the top you will see  
6                   in an e-mail of the same date this is from Cathy  
7                   McTaggart -- sorry, from Tom Derreck to Cathy  
8                   McTaggart. And if you look at the second  
9                   paragraph where Tom Derreck is telling her, "The  
10                  one thing I did do already, was to direct Chris  
11                  Clouthier to go over and do a building inspection  
12                  this afternoon." Chris Clouthier was a Building  
13                  Inspector?

14                  A. That's correct.

15                  Q. It says, "Syl is away today and it  
16                  concerned me that no inspection had been done to  
17                  this point - which could leave the City hanging  
18                  out to dry -- or at least embarrassed."

19                  A. I noticed that I'm not copied in on  
20                  this.

21                  Q. No. The reason I showed these to  
22                  you is when we had our interview you were unsure  
23                  as to why the inspection took place --

24                  A. Yes, okay.

25                  Q. -- when it did on the 24th of

1     October.  And this appears to be the explanation  
2     for it, that is that Tom Derreck urged the  
3     Building Inspections Office to conduct an  
4     inspection of the library?

5             A.  Yeah.  I'm just -- and I understand  
6     that now.  I'm just simply pointing out that she  
7     says she e-mails everybody but here that doesn't  
8     seem to be what's taking place.  So that's --  
9     okay.

10            Q.  The other point is, and I think  
11     you've confirmed it, is that prior to the  
12     inspection that happened on the 24th and we can --  
13     if we go to -- if we go to your tab 10 it would be  
14     Exhibit No. 11-09.  It's Exhibit No. 11-23, sorry.

15            A.  I've got it.  The numbers don't jive  
16     by I have that here.

17            Q.  Sorry?

18            A.  My numbers don't jive with yours.  
19     Are you talking about the number on the bottom of  
20     the document?

21            Q.  No, no, it's tab 10.  But I want to  
22     go to the document -- within that exhibit the last  
23     digit is 4.

24            A.  494?

25            Q.  Yes, 494.0004.

1 A. Okay.

2 Q. And I gather just by way of  
3 background this is the form that the City -- the  
4 Fire Department used to keep track of public  
5 complaints?

6 A. Yes. Yes, okay. And now that you  
7 mention this okay, I do understand what the  
8 e-mail's brought to this.

9 Q. This is the public complaint form of  
10 the 23rd of October 2006. And you can see the  
11 particulars of the complaint. "Syl called," that  
12 would be Mr. Allard?

13 A. Yes.

14 Q. "... with reference to a Property  
15 Standards complaint at the mall. He said during  
16 his inspection at the library and Zellers that he  
17 noticed the fireproofing material protecting the  
18 structural steel has fallen off leaving sections  
19 of the beam exposed. He will be putting a [sic]  
20 order for them to review all structural steel  
21 components, and remedy the leak, he felt the  
22 fireproofing was a Fire Code issue."

23 And then the font changes and you are  
24 directing one of your staff, Ken Barnes?

25 A. Yes.

1 Q. What's his rank?

2 A. He's a captain.

3 Q. So he's a senior -- one of your  
4 senior chaps?

5 A. He's my most senior right now.

6 Q. So you handed it off to him. You  
7 say, "Ken can you go over and take pictures of the  
8 2 area's [sic], prepare and issue an order to  
9 remedy. Give 30 days this may have to be extended  
10 to match the structural review." And then he  
11 reports back to you under -- I assume that's what  
12 the following text is his report to you?

13 A. That's correct.

14 Q. "I went to the Algo Mall, took  
15 pictures of the structural steel that was  
16 visible at the time. Many of the beams  
17 did not have fire proofing. The beams  
18 with fire proofing, had sections that had  
19 fallen off or had been removed, exposing  
20 the steel. And inspection report has been  
21 prepared."

22 And if we look at the next page in the  
23 exhibit this appears to be the "Notice of  
24 Violation" that was -- go right to the bottom.  
25 You'll see that's Mr. Allard concerning this

1 inspection?

2 A. That's correct.

3 Q. So it actually says, if you just go  
4 back to the top of it again. It actually -- the  
5 Notice of Violation is issued on the 24th of  
6 October but it references an inspection on October  
7 19th, 2006, which presumably is the one that we  
8 saw referenced earlier at the behest of Mr.  
9 Derreck.

10 A. Yes, that's what it looks like.

11 Q. Okay. At this point in time, I  
12 guess we haven't said it yet, the owner of the  
13 mall is Eastwood Mall at this time in 2006?

14 A. That's correct.

15 Q. So the notice of Violation is being  
16 directed to Eastwood Mall Inc., correct?

17 A. Yes.

18 Q. And it -- there are two violations  
19 that are enumerated here and the first one deals  
20 with the issue of the leaks. And when you look at  
21 the text, that is the violations, it starts off  
22 with the recital of section 5(1)(a) of the  
23 Property Standards By-Law that says, "The roof of  
24 a building shall be maintained in a watertight  
25 condition so as to prevent leakage of water into

1 the building."

2 And then it goes on in that same  
3 paragraph to make the observation that,

4 "Leakage was observed at various points  
5 within the Algo Centre Mall including  
6 numerous locations in Zellers, Northern  
7 Reflections and the City of Elliot Lake  
8 Public Library."

9 So that is the basis for the Notice of  
10 Violation, correct?

11 A. Yes.

12 Q. And then the Chief Building Officer  
13 is telling Eastwood Mall what is going to be  
14 required to remedy the situation. Firstly to,  
15 "Carry out repairs of the existing mall  
16 roof/parking surface to prevent leakage of water  
17 into the building, including repairs to the roof  
18 drainage system."

19 And they are expected, according to  
20 this,

21 "Within 14 days of receipt of this notice,  
22 provide a written description of a repair  
23 program that will be undertaken to achieve  
24 watertight roof and include a schedule  
25 outlining the time frames necessary to



1           have the work completed."

2       So that's dealing with the issues of the leakage.

3           Dealing with the structural they go on  
4       to say -- again there's a recitation of the text  
5       of the Property Standards By-Law.

6           And then towards the bottom of the  
7       violation it says, "Water leakage over a long  
8       period of time at various locations in the mall  
9       has caused extensive rust on structural members  
10      and their connections in some areas." And then to  
11     remedy the Chief Building Officer is saying it  
12     will be required,

13           "A review by a Professional Engineer of  
14      building structural frame in leakage areas  
15      must be conducted forthwith and a report  
16      certifying the acceptability of the  
17      existing condition or the remediation  
18      steps necessary to be taken to ensure  
19      structural capacity must be provided to  
20      the Chief Building Official by December  
21      15, 2006."

22           Now -- so the owners are given 14 days  
23      to come up with a plan and a schedule for the work  
24      to be done the repair the roof, correct?

25           A. Yes.

1 Q. And they're also given until the  
2 15th of December to come up with a report  
3 certifying that the condition is acceptable, or  
4 what steps are necessary to remediate the problem.

5 Now if we go to the first page of this  
6 exhibit, there is correspondence from yourself to  
7 Mr. Nazarian?

8 A. Yes.

9 Q. And in it you have indicated that an  
10 inspection has taken place on the 23rd. That is  
11 the inspection by Mr. Barnes?

12 A. That's correct.

13 Q. "At which time contraventions of the  
14 Fire Code were noted." And you talk about the two  
15 violation,

16 "Where fire separation between major  
17 occupancies are damaged in a manner so as  
18 to affect the integrity of the  
19 fire-resistance rating, such damaged fire  
20 separations shall be repaired so that the  
21 integrity of the fire separations is  
22 maintained."

23 And then the second one -- and these  
24 references the 2.2.1.1, these are references to  
25 sections of the Fire Code, correct?

1 A. That's correct.

2 Q. And the seconds one.

3 "Where fire separations between rooms,  
4 corridors, shafts and other spaces are  
5 damaged so as to affect the integrity of  
6 the fire-resistance rating, the damaged  
7 fire separations shall be repaired so that  
8 the integrity of the fire separation is  
9 maintained."

10 Now in this regard -- I appreciate that  
11 this is not on any sort of a form, but was this  
12 letter intended to act as a Notice of Violation?

13 A. Yes.

14 Q. Okay. And is there -- I'm not sure  
15 anything turns on this, but is there any reason  
16 you decided to go in this fashion as opposed to  
17 sending an inspection report with the remediation?

18 A. I think what happened here is if you  
19 flip back to the complaint, yes that one. And  
20 scroll down a little bit. On Ken's explanation he  
21 went and took pictures of the structural steel and  
22 then he talks about the fire proofing that was  
23 missing, and then he's got an inspection report  
24 being prepared. I checked our database and we can  
25 not find the pictures. I've spoken to Mr. Barnes

1 and he's refreshed my memory on what was missing  
2 on the beams.

3 And I think what happened here is he  
4 came to me looking for guidance. And we ended up  
5 going this route rather than the standard  
6 inspection because this is all subject to Mr.  
7 Allard's notice because of the water leaks. It  
8 would be pointless in -- and we're trying to  
9 co-ordinate the efforts here. It would be  
10 pointless to put waterproofing on a beam until the  
11 leaks are repaired.

12 Q. Okay. I think I can help you with  
13 that because I found a document last evening  
14 actually that doesn't have an exhibit number, but  
15 the number is CEL\_E000136550.

16 MS. KUKA: Exhibit No. 3369.

17 BY MR. WALLACE:

18 Q. Is that a number that you just gave  
19 it?

20 MS. KUKA: Yes.

21 BY MR. WALLACE:

22 Q. This is an e-mail that you sent to  
23 Mr. Allard on the 24th.

24 A. Hmm hmm.

25 Q. "Attached is a copy of the complaint

1 form and actions taken," which you just simply  
2 sent him back the document we've just reviewed?

3 A. Yes.

4 Q. "I will handle however the notice  
5 not attached, that will give 30 days. As  
6 discussed we can try to co-ordinate the remedial  
7 work so we do not run into conflict." So that's  
8 really essentially what you've just told us?

9 A. Yeah. We're trying to have his part  
10 go first and then we would attack the fireproofing  
11 issue. If you notice in there the actual notice  
12 is not attached and it says that we will give 30  
13 days. If you refer back to the November 1st  
14 letter to the owner and if you -- and I'll read  
15 the bottom line.

16 Q. That would be the first page?

17 A. 494 is the last. So actually what  
18 is in -- and then which I copied Mr. Allard in  
19 somewhere probably through the discussions that  
20 took place with Mr. Allard, if you look at the  
21 bottom line there, it was changed to, "Failure to  
22 correct these violations by the date as determined  
23 by the Chief Building Official may result in  
24 prosecution." And the reason for that was so that  
25 we could tie these two things together and so once

1 the leaks were done then we would chase the  
2 fireproofing.

3 Q. So from your perspective it didn't  
4 make a whole lot of sense to replace the  
5 fireproofing if the leaking was still happening?

6 A. That's correct.

7 Q. Just as a matter of -- did you ever  
8 see the extent of the fireproofing that was  
9 missing? Did you ever go over and look at it  
10 yourself?

11 A. I know I as in the mall. I have  
12 recollect of being in there. I don't recall if it  
13 was before or after I did -- I know I would have  
14 talked to Mr. Barnes. If he said he had pictures  
15 I would have viewed those pictures. And what I  
16 remember about that is that the majority of the  
17 insulation that was missing was mainly chunks off  
18 the bottom flange of the beam. You know,  
19 sometimes there would be marks, water marks or  
20 marks down the side of the beam or it would be  
21 missing. The water would collect I guess at the  
22 bottom of the beam and saturate it and then fall  
23 off, but it wasn't all, you know, it was chunks  
24 here and there.

25 Q. At this stage, that is when you've

1 issued the notice on the 1st of November, have you  
2 seen the notice of violation from Mr. Allard?

3 A. I believe so.

4 Q. What was your expectation as to when  
5 this problem was going to be fixed? Back on the  
6 1st of November when you're sending the letter off  
7 to Mr. Nazarian?

8 A. I mean you hope it gets repaired.  
9 Expectations? I mean it would be similar to I  
10 guess to what Mr. Allard had. You have to permit  
11 opportunity for time to do the repairs and for him  
12 to get his engineering study done.

13 Q. If you look within the same exhibit  
14 the page ending in the number 6. And this is in  
15 the same tab, Chief. You got it there?

16 A. Yes, I do.

17 Q. And this is a letter from Tom  
18 Turner, who is the manager of the mall, to Mr.  
19 Derreck dated the 13th of November?

20 A. Yes.

21 Q. And you can see at the top that you  
22 have been provide a copy as well as Mr. Allard,  
23 Phil Butler, Andrea Leddy and Suzanne Morin. See  
24 that?

25 A. Yes.

1 Q. And do you recall seeing this  
2 letter?

3 A. This is the one during the interview  
4 that I was really struggling with. And the reason  
5 why, if you notice right in the center of that  
6 page is the "Received, November 16, 2006, Elliot  
7 Lake Fire Service."

8 Q. Hmm hmm.

9 A. Everything I read I initial and I  
10 would have initialed it by that stamp. And that's  
11 why I have a hard time saying that I read this.  
12 It could -- you know, like that's the only  
13 hesitation I would have. As for the contents, you  
14 know --

15 THE COMMISSIONER: I'm sorry, I don't  
16 understand why that would lead you to conclude  
17 that you hadn't received it.

18 THE WITNESS: Because whenever I would  
19 get a document right up around by the box, or if  
20 there's no stamp on it I would initial by the  
21 date. But obviously our department received it  
22 so --

23 THE COMMISSIONER: Who was normally  
24 tasked with the responsibility of stamping it? A  
25 secretary?



1 THE WITNESS: Yes it would be. And  
2 typically it would go into my office at that time.  
3 And the only other reason I have a hesitation is  
4 because I take the first two weeks off in November  
5 every year. But -- or it could be as simple as it  
6 was on my desk and I was dealing with it and we  
7 had a fire call and you're gone. And maybe I just  
8 didn't get the initial on it. But we did receive  
9 it, yes.

10 BY MR. WALLACE:

11 Q. Yes. And looking at the -- well  
12 first of all, the reason that the document -- the  
13 letter is sent to you is it appears "For follow-up  
14 as appropriate." See that notation by Mr.  
15 Derreck? See the handwriting up at the top?

16 A. Yes. Okay.

17 Q. Now what the letter does do is it  
18 sets out a time frame. If you can look at the  
19 third paragraph,

20 "As you are aware, this roof has leaked  
21 for the past 25 years and during that time  
22 a multitude of methods were used to patch  
23 joints and plug holes. Contrary to  
24 previous practices, our company has decide  
25 repair the roof completely. As much as we

1           might wish otherwise, this is not an  
2           overnight project. We believe that the  
3           end of August 2007 might be a reasonable  
4           time to expect the completion of the  
5           work."

6           So they have complied at least with part  
7           of what Mr. Allard wanted from his notice of the  
8           24th of October, that is to provide some sort of a  
9           schedule?

10           A. Yes.

11           Q. And then they outline what their  
12           plan is and it's -- it appears on the face of it  
13           quite ambitious.

14           "To replace the aged urethane products in  
15           over 15,000 linear feet of joints....to  
16           replace five major joint expansion  
17           systems; to remove at least ten drains and  
18           install in new ones; to cut out and epoxy  
19           some 12,500 linear feet of crack-line,  
20           and; to repair damaged cement areas and  
21           polymer-cement products..."

22           And then on the next page, "We expect to  
23           have an engineer's report available to us," second  
24           paragraph. "We expect to have an engineer's  
25           report available to us in the near future and I

1 will forward it to you once it is received." And  
2 this is correspondence dated the 6th of -- sorry  
3 the 13th of November 2006.

4 And if we can just go to the page ending  
5 in 12. This is a letter from Tom Turner asking  
6 for clarification as to what the violation in fact  
7 was, correct?

8 A. Yes.

9 Q. And because you'll agree with me  
10 that the notice that you sent him on the 1st of  
11 November was pretty much generic in nature. You  
12 couldn't discern from reading that what the  
13 specific problem was and where it was?

14 A. Yes.

15 Q. Okay. So you answer him --

16 A. Just before you get off of this  
17 page, that chicken scratch that's just below the  
18 stamp that's my initial. So -- and that's exactly  
19 where you would find those things, that's why I  
20 would have hesitation saying I seen that other  
21 one. So --

22 Q. But in this process were you  
23 communicating with Mr. Allard?

24 A. Yes.

25 Q. So you would be aware, even if you

1 had not read this letter --

2 A. Oh yes.

3 Q. You would be aware that they're  
4 going to finish it in August of 2007?

5 A. Yeah, I'd be aware. I might not  
6 have had those details but I'd be aware that  
7 they're moving forward with it, yes.

8 Q. Okay. If we could go to the letter  
9 dated the 28th of November which is the page  
10 ending in 11?

11 A. Yes.

12 Q. If you look at the second paragraph.

13 "I apologize that my letter was not  
14 clear on the areas of concern, but I had  
15 every intention of hand delivering the  
16 letter to you for further discussion prior  
17 to my two week's vacation I took in  
18 November. As you are aware sometimes  
19 there is not enough time in the day to get  
20 done what we would like to do.

21 As per our telephone conversation  
22 today the concern is that the water has  
23 removed the fire proofing on the  
24 structural steel and this leak damage must  
25 be repaired. The areas of concern were

1 the library and Zeller's [sic]. A  
2 Building Permit is required for the repair  
3 application process and must be approved  
4 by the Chief Building Official.

5 You indicated that Bruce Caughill  
6 your consultant will be in town in a few  
7 weeks and you will call for a site meeting  
8 to discuss the matter."

9 Now I gather you -- by virtue of the  
10 fact that you just refer to him as Bruce Caughill  
11 you knew who he was?

12 A. Yes, I did. I've worked with Mr.  
13 Caughill in the past. He's actually an architect  
14 and an engineer.

15 Q. Yes.

16 A. And we've used him in the past as  
17 well. And actually I've recommended Mr. Caughill  
18 to a couple of sticky situations that owners have  
19 gotten themselves into and he was able to help  
20 those folks out.

21 Q. And what -- what was your  
22 expectation as far as -- "You indicated that Bruce  
23 Caughill your consultant would be in town a few  
24 weeks and you will call for a site meeting to  
25 discuss the matter." Were you expecting to be

1 part of that meeting?

2 A. I don't know if part of the meeting,  
3 but with Mr. Caughill and my dealings in the past  
4 I had every confidence in him that this would now  
5 move forward.

6 Q. Okay. And you were -- you felt he  
7 was a competent chap to be -- that had this file?

8 A. Oh, absolutely yes.

9 Q. And that's based on your own  
10 dealings with him or jobs that you had seen him do  
11 in the past?

12 A. Yes. Not so much in the fire but I  
13 dealt with Mr. Caughill when I was the Chief  
14 Building Official and also as an Inspector. And I  
15 have -- I hold him in high regard. He's very  
16 competent.

17 Q. Thank you. Now did you have any --  
18 just jumping ahead for a second here. We know  
19 that this matter didn't ultimately get remediated  
20 and you, your service didn't sign off on until  
21 February of the year 2010, correct?

22 A. Yes, that's correct.

23 Q. So it remained outstanding for over  
24 three years. What I'd like to know at this time,  
25 and we'll go back to 2006, did you have a system

1 and if you did what was it to stay on top of  
2 projects to make sure that they were actually  
3 moving forward in a timely fashion?

4 A. And we will get into some of that.  
5 Usually these are entered into a database program,  
6 basically it's a spreadsheet that tracks the  
7 inspections. I don't really know if this one  
8 would have ended up in there, and it might have  
9 been something we started after. But then we  
10 would probably do, I think I'm up to quarterly  
11 now. I do a review of outstanding issues with the  
12 Inspectors. And I think at the longest it would  
13 go would be about a year that we would find it  
14 again and we would bring it forward and move it.

15 Q. But back in 2006 did you have  
16 anything in place?

17 A. I would hate to say -- I don't know  
18 if we had it then or not. Depending on usually if  
19 it's an outstanding issue it would probably be  
20 brought forward but I don't know if we were  
21 tracking it as closely then, but that's about as  
22 best I can give you there.

23 Q. So you don't know if you had a  
24 system in place?

25 A. Yeah. We tracked the inspections I

1 just -- over the years we've got more and more  
2 formalized on it. And how far back that goes  
3 where we did that, we probably did track them I  
4 just can't remember the frequency of where it  
5 would come up.

6 Q. Just to put this in context, the  
7 actual violations that you're talking about here.  
8 The fact that the fireproofing has come off the  
9 steel, is this a serious matter? Is it not a  
10 serious matter? Educate us please.

11 A. Okay. Essentially in this  
12 particular case I wouldn't get overly excited  
13 about it. And why I would say that is the amount  
14 that was off of the beams were pockets off the  
15 bottom flange. So from what I understand there is  
16 still a large majority on the beams that had the  
17 fireproofing material.

18 In order for a fire -- and this is  
19 strictly dealing with fire now, this has no impact  
20 unless there's a fire and depending on what type  
21 of fire it is.

22 A fire you have to have three things,  
23 you have to have heat, fuel and oxygen or air to  
24 support combustion. And so in order to have a  
25 fire you have to have those three elements. If



1 any one of those are removed the fire is going to  
2 go out.

3           And why I say I wouldn't lose any sleep  
4 on this for the simple reason is that beam would  
5 have to have at least a minimum of 20 minutes of  
6 heat in excess of 700 degrees before it starts  
7 losing its strength, and that's if it's exposed  
8 with no fire proofing whatsoever on it.  
9 Temperatures in this particular case would not get  
10 to that because the building is sprinklered, so  
11 sprinklers heads similar to what we have here and  
12 they do come in different ratings. But if there's  
13 a fire it comes off at about 200 degrees  
14 Fahrenheit. So you're not going to get that much  
15 heat that it's going to cause a structural  
16 concern.

17           Going even with complete failure of say  
18 you have a fire, and we'll use the library as an  
19 example. The library has lot of books and you  
20 think, okay that's a lot of combustibles. If  
21 you've ever tried to light a book on fire, because  
22 it is a solid mass, it's actually difficult to get  
23 going, but once it gets going you have a lot of  
24 fuel.

25           If you had the fire and you had a

1 failure say of the sprinkler system there's a  
2 couple of things that are going happen. You have  
3 that fire, and this is where it gets into  
4 containment. And containment is an important part  
5 of the building construction as well. You want to  
6 contain that fire. Well take an example of the  
7 library. The library in that area, or even a room  
8 of this size, you'll take the back corridor. That  
9 back corridor will definitely be a fire  
10 separation, and this is where I'll talk a bit  
11 about the fire separation.

12 Fire separation, if you have a hole in  
13 that wall and it's right through obviously it's  
14 going to do two things. The smoke's going to  
15 penetrate through that hole, which is then going  
16 to flood the exit corridor with smoke, or it's  
17 going to be drawing air in that's going to be  
18 pulled towards the fire. If the box is sealed and  
19 you had a fire that's going to reach the  
20 temperatures that we need to get to actually  
21 affect that beam, even if the sprinkler system is  
22 not working, that fire is going to burn until it  
23 runs out of oxygen, unless it's replaced. You run  
24 out of oxygen, one of the products of fire -- of  
25 combustion is smoke. That fire is going to free

1 burn until it uses up all the oxygen, and that  
2 takes out that one component of combustion.

3 So that whole compartment is going to  
4 fill up with smoke. You're not going to have any  
5 more oxygen. Then it's going to go back into a  
6 smoldering fire, which is going to be less heat.  
7 So now that heat has to make it through past this  
8 barrier, which is the T-bar ceiling. We'll even  
9 say there's holes in that T-bar, say there's three  
10 or four of the tiles missing. That heat still has  
11 to go up, that beam has to absorb the heat for 700  
12 degrees for at least 20 minutes before it's going  
13 to start losing its properties.

14 So what actually happens, the building  
15 has a fire alarm system, in the duct work is smoke  
16 detectors. As soon as the smoke starts moving  
17 through the building the smoke alarms are going to  
18 go off, which is going to alert the Fire  
19 Department. Our intervention time to the building  
20 is five minutes. It's not -- it is a concern.  
21 And with that all said it is in the Fire Code and  
22 it has to be addressed.

23 Q. You have restricted in your  
24 correspondence with Mr. Turner to the -- you've  
25 restricted the areas of concern that you want

1 remediated to the library and Zellers. That is  
2 because I presume that that is the area that Mr.  
3 Barnes looked at, is that correct?

4 A. No. He looked at Zellers, he looked  
5 at I believe Northern Reflections and I believe he  
6 looked at the corridor that comes from Zellers  
7 down to the library. And the only one that he  
8 found was that didn't have it was Zellers and the  
9 library, we will get into later. So when I talked  
10 to Mr. Turner I put both of the items on this  
11 inspection notice.

12 Later it was determined that Zellers  
13 didn't require the fire proofing on the steel  
14 members. And that's a Code section because it's  
15 deemed as a single-storey structure. At that  
16 portion if the building is sprinklered you will  
17 have fire resistance rating all the way up -- like  
18 this column here would have a fire resistance  
19 rating to protect the column all the way up to the  
20 beam, and because it sprinklered the fire  
21 protection for the roof is waved.

22 Q. The point I was asking you about is  
23 that there had not been an entire inspection of  
24 the mall at the time that the notice was given to  
25 Eastwood, correct?

1 A. That's correct.

2 Q. And your notice was based on the  
3 observations and information that Mr. Barnes gave  
4 you?

5 A. That's correct. And I believe those  
6 areas of concern that they were trying to address  
7 was the ones where there were leaks, and that  
8 would -- the leaks would remove the fireproofing  
9 so that's where the focus was.

10 Q. Okay. But you'll agree with me that  
11 there may have well been other areas that the fire  
12 proofing was off that you may not have been aware  
13 of at that time?

14 A. There may well have been, yes.

15 Q. Okay. Now you have been told in  
16 November by Mr. Turner that Bruce Caughill is  
17 going to be on the job. And if we look at Exhibit  
18 No. 162 and that is at your tab 16, sir.

19 A. Yes.

20 Q. This is an e-mail that Mr. Caughill  
21 has addressed to Mr. Allard you are cc'ed on it?

22 A. Hmm hmm.

23 Q. And so he informs him of a number of  
24 things. Number one, that he's been retained?

25 A. Yes.

1 Q. Number two, he's reviewed -- he's  
2 met on site and he says he,  
3 "...provided Mr. Turner with a copy of a  
4 report that we had in our files:  
5 Structural Condition Assessment, prepared  
6 in May 1999 by Halsall Associates Limited.

7 I believe this report addressed the  
8 water penetration and possible  
9 deterioration of structure that is the  
10 subject of the current Notice of Violation  
11 - but in 1999.

12 I have suggested that Mr. Turner  
13 provide a copy of this report for your  
14 records."

15 Did you ask Mr. Turner for a copy of  
16 that report?

17 A. No, I did not.

18 Q. Did you know if Mr. Allard asked  
19 him for a copy of that report.

20 A. No, I do not.

21 Q. Did you discuss the issue of the  
22 report at all with Mr. Allard.

23 A. No.

24 Q. Okay. And then he says, that is Mr.  
25 Caughill says,

1                   "An overall assessment will be  
2                   conducted and a report submitted within  
3                   six months. Copies of inspection reports  
4                   will be submitted as they occur.

5                   Should any changes in our relationship  
6                   with Algo Centre Mall (Eastwood Mall Inc.)  
7                   change in the interim, we will advise you  
8                   immediately."

9                   So based on that was it your expectation  
10                  that you would get a report from Mr. Caughill  
11                  within six month's time?

12                  A. That's correct.

13                  Q. And this in fact would dovetail with  
14                  the statement earlier from Mr. Turner that they  
15                  planned to finish the roof work by August of 2007?

16                  A. Yes.

17                  Q. So six months from February to --  
18                  forward would bring us to August. So they seem to  
19                  be at least on the same page there?

20                  A. Yes.

21                  Q. Now you're also expecting, were you  
22                  not, to be receiving reports prior to the  
23                  expiration of the six month period of time?

24                  A. Yeah. I believe he said the report  
25                  will be done did he not?

1 Q. Yeah. And it says, "Copies of  
2 inspection reports will be submitted as they  
3 occur."

4 A. Yes, but you're going get the report  
5 before you start getting inspection reports.  
6 You're going to get the plan before you start  
7 getting inspection reports, correct?

8 Q. I would assume that would be his  
9 inspection reports.

10 A. I know but he's saying there's a  
11 plan that is going to be prepared. He would have  
12 to get that plan to the building official in order  
13 to get approval. So -- and then after that fact  
14 then you're going to start receiving the  
15 inspection reports.

16 Q. Okay. If you go to the next tab,  
17 Exhibit No. 163. And this e-mail again is the  
18 same date, that is the 22nd of February of 2007.  
19 And this one is directed specifically to you and  
20 Mr. Turner is cc'ed on it.

21 And again he repeats the fact that he's  
22 been retained and he has met. And the third  
23 bullet point, "We noted some mechanical damage to  
24 the fire proofing of steel beams. Further damage  
25 occurs under parking deck leaks." And then he



1 says,

2 "The owner is in the process of  
3 general repair/replace of joint sealants  
4 and where leaks persist, attacking them  
5 individually. Work was suspended in  
6 November by cold weather and will resume  
7 as soon as conditions permit.

8 We will be working with Algo Centre  
9 Mall on a program of repair of the fire  
10 proofing once the sealant process is  
11 substantially complete.

12 An overall assessment will be  
13 conducted and a report submitted within  
14 six months. Copies of inspection reports  
15 will be submitted as they occur."

16 And once again he tells you if there is  
17 a change in his retainer he's going to let you  
18 know. Again he's essentially saying we're not  
19 going to do the fire proofing work until the  
20 sealant work is done.

21 A. That's right.

22 Q. But again he is repeating the six  
23 month period for production of the -- of his  
24 report, correct?

25 A. Yeah. He's saying, "An overall

1 assessment will be conducted and a report  
2 submitted within six months."

3 Q. Now, did you get any sort of a  
4 report from him in the year 2007?

5 A. No.

6 Q. August comes and goes without a  
7 report. Did you, number one, call him up and ask,  
8 Where's the report?

9 A. In 2007? No I would not have been  
10 expecting anything until August.

11 Q. Okay. What I'm asking you is once  
12 August has come and gone and you don't have a  
13 report did you take any steps to find out what's  
14 the progress here?

15 A. No. With Bruce on it sometimes  
16 these things get delayed so I would not have been  
17 concerned with it.

18 Q. And what about Syl Allard did you  
19 ask him, What's happening here?

20 A. I don't remember any particular  
21 discussion on it, no.

22 Q. Okay. Were you aware if anything  
23 was happening?

24 A. In 2007?

25 Q. Hmm hmm.

1           A. Oh gees. Not up -- I don't think up  
2 to that point, no.

3           Q. The library would get an annual  
4 inspection? An annual inspection, right?

5           A. Yes.

6           Q. They were inspected in 2007?

7           A. Yeah, they would likely have been  
8 done, exactly when I don't know.

9           Q. Do you know if anybody in the course  
10 of -- let me ask you this. Did you ask whoever it  
11 was that was going to do the inspection, Would you  
12 have a look and see what's happening over there?

13           A. No. The way they come out they come  
14 out in a spreadsheet and they're categorized.  
15 They come in lumps.

16           Q. What come in lumps?

17           A. The inspections. And when I say  
18 lumps they're grouped. I would say probably in  
19 this particular case the library would be grouped  
20 with its neighboring tenancy spaces. And then  
21 they would be assigned probably in that particular  
22 case, depending on what's due in the tenant space,  
23 they would be lumped all together in one. So  
24 there'd be maybe ten or fifteen that would be  
25 lumped into the same item.

1           Q. Okay. Well did -- and that would be  
2 -- the ten that were lumped together would that be  
3 assigned to the same person?

4           A. Yes.

5           Q. Do you recall if you asked that  
6 person or instructed that person, I guess that is  
7 the better word. Do you instruct that person who  
8 is going to do that inspection, the lump, that  
9 group of inspections, Listen, we've got this thing  
10 on the go here with the fire proofing. Do you  
11 want to just make sure or look and see what's  
12 happening?

13          A. If I would have picked up on it in  
14 the summary that's a possibility. But do I have a  
15 recollection of doing that? I wouldn't be able to  
16 say yes.

17          Q. On the -- if we can go to Exhibit  
18 No. 3411. This is a fax that you sent to Brian  
19 who I understanding Brian England?

20          A. Yes, that's correct.

21          Q. And the date of this is the 20th of  
22 February of 2008?

23          A. Yes.

24          Q. And Brian England took over from Tom  
25 Turner as manager of the mall?

1 A. Yes, he did.

2 Q. And it says,

3 "As discussed, a copy of the  
4 consulting engineer with a repair program  
5 for the fire proofing repairs is attached.

6 I am following up to ensure these  
7 repairs have taken place as my file does  
8 not have any further inspection or  
9 verification..." that should say from  
10 "...Caughill on file. Can you confirm in  
11 writing with the final signoff from  
12 Caughill Consulting that this issue has  
13 been completed?"

14 And I gather that what you believe you  
15 attached was the faxes that -- or the e-mails that  
16 you had received from Mr. Caughill in February of  
17 2007?

18 A. Yes. If you -- I remember I had a  
19 hard time somewhat remembering this. But through  
20 the course of the weekend, going through your  
21 documents and my documents which are the same, but  
22 it was not in there. And it's funny how a little  
23 thing can jog your memory. I came across a phone  
24 message from Mr. England, which I have here and I  
25 believe it is in the Relativity.

1 Q. Do you have a number and we can  
2 bring it up on the screen? So this looks like  
3 it's a phone message? He called you.

4 A. That's correct.

5 Q. On the 20th of February at 11:15 in  
6 the morning regarding --

7 A. "Hotel retrofit."

8 Q. "Hotel retrofit"?

9 A. Yes.

10 Q. "Building audit." That's a  
11 different issue all together is it not?

12 A. It is and it isn't. And that's why  
13 when I seen this that's why I -- it refreshed my  
14 memory on what took place. Brian -- and that's  
15 probably why when I had that conversation, if you  
16 see what's on here that's all I got on the  
17 message. And I believe this is my first  
18 introduction to Mr. England and that was the only  
19 name I had, so -- but I did know it was the new  
20 mall manager.

21 Q. Okay.

22 A. And what that conversation ended up  
23 taking place was he was the mall manager and he  
24 was asking about the hotel retrofit. And what we  
25 got into was the discussion on what needed to be

1 done with the hotel retrofit that he had on his  
2 desk that he was picking up from Mr. Turner.

3 At that time we had discussions about  
4 the hotel retrofit, plus the discussion took place  
5 on the issue of the fire proofing. And where this  
6 ties together -- the hotel retrofit it does tie  
7 into the fire assistance rating issues. Because  
8 the hotel is over a portion of the library, and  
9 that portion that's over the library, because it's  
10 two major tenancies that requires a two-hour fire  
11 resistance rating of the members. And we got  
12 into that discussion that -- so they end up going  
13 part and parcel together. And that's why I  
14 forwarded the information to Mr. England to move  
15 forward with that information.

16 I needed to know if Mr. Caughill had  
17 finished his -- we had the discussions about the  
18 outlay of what needs to takes place for the hotel  
19 retrofit, and to deal with those two issues moving  
20 forward. He seemed, if I remember correctly, he  
21 was a pretty high energy guy and he was excited to  
22 move forward.

23 Q. We know from documents that you and  
24 I have reviewed together that Mr. Caughill  
25 actually stopped working on the job in July of

1 2007, correct?

2 A. Yes.

3 Q. We'll get to those documents, but I  
4 want to put it in the context of this  
5 conversation.

6 A. Yes.

7 Q. Does Mr. England tell you that Bruce  
8 Caughill is still working on the job?

9 A. No. At that point he didn't know  
10 because he was new. And that's what prompted the  
11 fax to Mr. England was to get him that information  
12 about Mr. Caughill.

13 Q. So would it be fair to say that you  
14 would have had a conversation along these lines  
15 where you say to him, What's Bruce Caughill doing  
16 on the job? And he wouldn't know what you're  
17 talking about, is that fair?

18 A. Yes. So I forwarded the information  
19 to him to have. And then also, like I said, the  
20 discussion on the hotel retrofit.

21 Q. Okay. And did you -- were you  
22 expecting him to get back to you with -- having  
23 given him this information about Caughill, were  
24 you expecting him to get back to you with some  
25 answers?



1           A. Yeah. He talked about some of their  
2 plans that they were looking forward to moving  
3 through. I guess his background was I think in  
4 roofing construction. And he talked about doing  
5 repairs on the roof the coming season. This is in  
6 February and he's looking to clear up some old  
7 issues.

8           Q. What I'm referring to is you asked  
9 him a very specific question about Bruce Caughill,  
10 he doesn't know what you're talking about?

11          A. Hmm hmm.

12          Q. You provide him with the  
13 information. And I presume you said, Look, I'll  
14 get you the information and then we'll talk.  
15 Would it be along those lines?

16          A. Yeah. Yeah, it would be. It  
17 would -- the information was given and he seemed  
18 interested to move it forward.

19          Q. Okay. And I gather he didn't get  
20 back to you on Bruce Caughill did he? He didn't  
21 tell you that he's not working for me -- for us  
22 anymore?

23          A. No that's correct.

24          MR. CASSAN: Mr. Commissioner, before my  
25 friend goes further I don't think we've entered

1 this document as an exhibit. We should perhaps do  
2 that.

3 THE COMMISSIONER: Mr. Wallace.

4 MR. WALLACE: Oh, the phone message.

5 MS. KUKA: Exhibit No. 2344.

6 EXHIBIT NO. 2344. Phone message dated  
7 February 20, 2008 from Brian (Eastwood  
8 Mall) to Chief Officer.

9 BY MR. WALLACE:

10 Q. Now if we can go to Exhibit No.  
11 11-169, and that's at tab 22. This is the  
12 minutes of the senior management team on the 23rd  
13 of July of 2008. And you were present at that  
14 meeting?

15 A. That's correct.

16 MR. WALLACE: Ms. Kuka, if you can  
17 scroll down to the bottom, please.

18 BY MR. WALLACE:

19 Q. You'll see under item 5, "C.A.O."  
20 I gather this is a report by the CAO Mr. Bauthus,  
21 is that correct?

22 A. These are the minutes that would be  
23 taken from a manager's meeting. I don't think Mr.  
24 Bauthus kept the notes. It was probably Danielle  
25 Vincent.

1 Q. No, no, I'm sorry. This is  
2 recording what information the CAO is giving to  
3 the group?

4 A. Oh yes, sorry.

5 Q. Yes. And on the third bullet point  
6 it say, "Mall Update - Change in management.  
7 Brian is no longer the Mall Manager and has taken  
8 a different position with East Wood Mall. The  
9 plans to fix the roof have also changed." I  
10 gather this was news to you that Mr. England was  
11 no longer the mall manager?

12 A. That's correct.

13 Q. And in fact was there any  
14 communication between you and Mr. England between  
15 the telephone conversation in February and this  
16 meeting in July of 2008?

17 A. I don't believe there's anything in  
18 the record and I don't have any particular memory  
19 on that. I do know, once I was able to piece  
20 together a little bit of my discussion with Mr.  
21 England and what took place then, this update  
22 would have come from Mr. Bauthus reporting  
23 obviously that Mr. England is gone and the fix and  
24 change to the roof was a proposal -- a big  
25 proposal. They were going to spend over a million

1 dollars and work on the leaks.

2 Q. And go to tab number 26, this would  
3 be Exhibit No. 986.

4 Now this is an e-mail from Mr. Caughill  
5 to both yourself -- actually to Mr. Ewald and  
6 cc'ed to yourself. In this -- at the bottom of  
7 it.

8 "Recent publicity on the leaking parking  
9 deck reminded me of the matter referenced  
10 in the attached letter. The original  
11 letter included a commitment to notify you  
12 if conditions of our engagement changed -  
13 and I have not done that."

14 And he is referencing on the second line  
15 that he was talking with Paul on Tuesday, and you  
16 would be the Paul, correct?

17 A. That's correct.

18 Q. On that previous Tuesday he informed  
19 you of the fact that he had stopped working for  
20 Eastwood, correct?

21 A. That's correct.

22 Q. And in fact if we look at the next  
23 page, ending 04 in the same exhibit. You'll see  
24 Mr. Caughill writes to Mr. Ewald and cc's to  
25 yourself. And says.

1                   "On February 22, 2007 I wrote to CBO  
2                   Syl Allard, copy to CFO Paul Officer,  
3                   regarding this Notice of Violation. It  
4                   was the intent that we would conduct  
5                   inspections and prepare a report within 6  
6                   months (of the February 22, 2007) of that  
7                   letter.

8                   Despite best intentions we were  
9                   unable to coordinate sufficiently with the  
10                  Owner and did not perform any inspections  
11                  and did not submit any reports on this  
12                  matter.

13                  Our service on this and other 151  
14                  Ontario Avenue improvements were  
15                  terminated by Eastwood, in a disagreement  
16                  over payment for services, in July of  
17                  2007".

18                  So he is essentially putting in writing  
19                  what he told you earlier in either a face-to-face  
20                  or a phone conversation, correct?

21                  A. Yes.

22                  Q. And this must have come as quite a  
23                  surprise to you that really he hasn't done a  
24                  thing?

25                  A. Yeah, it was a surprise. I'm almost

1 positive I called Bruce. I wouldn't be able to  
2 say a hundred percent if it was with regard to  
3 this issue or if it was with regard to another  
4 issue, but we definitely did have the  
5 conversation. This might be back to, like you  
6 said, when we're checking on outstanding issues  
7 that might have prompted this activity.

8 Q. Specifically -- now Mr. Ewald has  
9 now taken over for Mr. Allard as the CBO, correct?

10 A. Yes.

11 Q. When the two of you received the  
12 Bruce and Paul e-mail from Mr. Caughill on the  
13 18th of September 2008, did you have any sort of a  
14 discussion with him as to where are we going here?

15 A. Sorry, in what --

16 Q. You received this e-mail, the joint  
17 e-mail?

18 A. Yes.

19 Q. On the 18th of September of 2008?

20 A. Yes.

21 Q. And my question is, did the two of  
22 you have any discussions about what's happening  
23 here?

24 A. I would imagine we did. If you  
25 recall back to the information that was just

1 prior. And it's funny how you can remember these  
2 things when you start reading them. Yes, we would  
3 have had those discussions, because I believe Mr.  
4 Ewald's service started one or two days before the  
5 update at the manager's meeting. And somewhere  
6 through this process I believe that's how I met  
7 Mr. Ewald. We had discussions, and I think it was  
8 like his second day on the job that he was up on  
9 the roof because they were either doing repairs or  
10 having a construction meeting up on the roof. And  
11 after he was complete, or he was there we had  
12 those discussion. That prompted the update from  
13 Mr. Bauthus and somewhere either after that we had  
14 those conversations because they were moving --  
15 it's like they were going to move very heavily on  
16 the roof getting the repairs done.

17 And they actually talked about -- and  
18 why I can remember that conversation is because  
19 they talked about I think it was two option. And  
20 one was -- and I can't remember if they said it  
21 was take off the concrete topping or the wear  
22 topping, but one way or the other the end result  
23 was that they talked about putting an asphalt  
24 layer over top of the entire surface.

25 And the reason I remember that is

1 because my immediate reaction was, Oh, that's an  
2 awful lot of weight you're going to be adding to  
3 that roof structure. And I can remember also  
4 talking about that with Mr. Ewald because he  
5 thought it might have some merit. I wasn't at the  
6 meeting that took place there so I don't know all  
7 of the details, but he seemed to think that it  
8 actually had some merit.

9 THE COMMISSIONER: Can I interrupt you  
10 there, Mr. Wallace, keeping in mind the clock.  
11 And starting again at 2 o'clock.

12 --- Luncheon's break taken at 12:55  
13 p.m.

14 --- Upon resuming at 2:00 p.m.

15 THE COMMISSIONER: Good afternoon.

16 MR. WALLACE: If we could have Exhibit  
17 No. 302, please.

18 BY MR. WALLACE:

19 Q. And, Chief, you'll find that at your  
20 tab 31. What I'm interested in, Chief, is the  
21 handwriting -- the handwritten note on the face of  
22 this e-mail states, "August 25/09. Bruce has this  
23 moved forward? Paul." I assume you're the Paul  
24 in the communication?

25 A. That's correct.



1 Q. And you're writing to Bruce Ewald?

2 A. Yes.

3 Q. And this is dated the 25th of August  
4 of the year 2009. I think we left off this  
5 morning the last involvement we had was in  
6 September of 2008. So my question is, what  
7 prompted this e-mail a year -- almost a year  
8 later?

9 A. I think when we left prior they had  
10 the major expansion -- not expansion, the major  
11 work taking place on the deck in the fall. And I  
12 believe in the spring of 2009 something would have  
13 prompted me to pull this forward and it might have  
14 been that it got pulled forward. It came across  
15 either on an outstanding issue or something made  
16 me bring it forward, or maybe it was that I heard  
17 they were complete by then, or something along  
18 that line.

19 Q. That's a long way of saying you  
20 don't know?

21 A. Well obviously I brought it forward.  
22 And it had to come forward for one and it would  
23 have been one of those reasons I think.

24 Q. Between September of 2008 and  
25 August -- the latter part of August of 2009, did

1 you ever instruct anybody from your office to go  
2 over and just have a look and see if the fire  
3 proofing has been done?

4 A. No, I don't believe so.

5 Q. If we look at --

6 MR. WALLACE: This is a document that  
7 we'll need an -- that will need an exhibit number,  
8 Ms. Kuka, CEL\_E000002960.

9 MS. KUKA: Exhibit No. 3507.

10 MR. WALLACE: Thank you.

11 MS. KUKA: No, sorry, I could be wrong.

12 Hold on, that's the right number.

13 BY MR. WALLACE:

14 Q. If you go to the bottom please.

15 This is an e-mail from yourself to Darren Connors  
16 dated the 14th of September of 2009, a few weeks  
17 after you've sent the inquiry to Mr. Ewald.

18 "As discussed this morning when you  
19 advised the elevators and escalators were  
20 not in operation, I asked you to attend  
21 ensure the firefighting elevator is  
22 working. Also to see if the fire proofing  
23 issue has been corrected."

24 And if you go up to the top of that --  
25 and so you're instructing Mr. Connors to have a

1 look and see what's going on, correct?

2 A. That's correct.

3 Q. And then he gets back to you and  
4 indicates that he and Keith.

5 "...attended the mall and saw Otis  
6 elevator reps starting to fix the  
7 problems. As for the remaining working  
8 elevator it is a firefighter elevator and  
9 available to our use. As for the  
10 fireproofing of the mall's steel  
11 structure, I walked through the mall and  
12 stores and noticed many missing ceiling  
13 tiles and steel structure without any fire  
14 proofing on it. It does not look like any  
15 attempt has been made to rectify the  
16 problem. I also took pictures of the  
17 rusting structural steel on the exterior  
18 of the building which may be of some  
19 interest to the Building Department."

20 So you can confirm I think, Chief, that  
21 in the almost three years that this matter has  
22 been outstanding that this was the first time that  
23 you had asked one of your staff to go over and  
24 look with their own eyes as to whether or not  
25 anything is happening, is that correct?

1           A. Yeah. Something prompted the last  
2 e-mail and that brought then this forward. And  
3 probably the fact that the mall repairs and the  
4 roof repairs are complete that would have prompted  
5 the last e-mail that then again a week or two  
6 later, not getting the answer that I needed, this  
7 was tied in with the elevator and asked Darren to  
8 follow up on it.

9           Q. Are saying that the roof repairs  
10 were complete at some point in time? Like fixed  
11 is what I'm getting to?

12           A. Yeah. Something would have prompted  
13 that communication with Mr. Ewald. Something  
14 brought it to my attention that either the roof  
15 was finished or something that I sent to Mr.  
16 Ewald. And then this would be further follow-up  
17 to actually have Mr. Connors go over. And there  
18 seemed to be a couple of issues there that needed  
19 to be looked at, and Darren verified that, yeah,  
20 there was fire proofing missing. And that's --  
21 yeah.

22           Q. I should have asked you this when we  
23 had the document out, but when you sent Mr. Ewald  
24 the note asking him, Has this moved forward? What  
25 did he say to you?

1           A. I got a feeling that there was  
2 probably something that took place there. I don't  
3 have a -- or at least I haven't had time to go  
4 through everything to find that. If I had any  
5 further communication, which would be maybe even  
6 in this document, that prompted further action,  
7 you know, that either the roof was finished or  
8 they are no longer doing repairs, or something  
9 along that line trying to move it forward.

10           Q. I understand, sir, that as a result  
11 of seeing or having this report back from Mr.  
12 Connors, the fact that nothing has happened, you  
13 sought some legal advice as to next steps from a  
14 Ms. McLean?

15           A. Yeah, that's correct. This is  
16 bringing forward -- Darren's talking about  
17 different areas that was just not the library  
18 anymore, it was -- there were other areas that  
19 were noted, and also the rust on some of the  
20 structural members. And I did seek legal advice  
21 on that.

22           Q. Okay. And I also understand, and  
23 I'm just going to take you through, on the 24th of  
24 September there was a meeting, and this again  
25 needs an exhibit number. The document number is

1 CELE000151561.11.

2 MS. KUKA: Exhibit No. 3515.

3 BY MR. WALLACE:

4 Q. These I understand where the notes  
5 of Mr. Bauthus of a meeting that took place on  
6 September 24th, 2009. You were in attendance,  
7 you're "Paul O"?

8 A. Yes.

9 Q. And Rick H. is Rich Hamilton?

10 A. Yes.

11 Q. Bruce E. is Bruce Ewald?

12 A. Yes.

13 Q. And Virginia is Ms. McLean the  
14 lawyer?

15 A. That's correct.

16 Q. And she participated by phone?

17 THE COMMISSIONER: I take it there are  
18 no privilege issues?

19 MR. CASSAN: Not yet, Mr. Commissioner.

20 THE COMMISSIONER: In relation to this  
21 particular document?

22 MR. CASSAN: No, that's fine.

23 THE COMMISSIONER: Thank you.

24 MR. WALLACE: Thank you.

25

1 BY MR. WALLACE:

2 Q. As a consequence of this meeting on  
3 the 24th, is it fair to say that inspection took  
4 place at the Algo Mall?

5 A. Yes.

6 Q. And if we can look at Exhibit No.  
7 171, please. Now this is a Fire Safety Inspection  
8 Report that you would be the author of, sir?

9 A. Yes.

10 Q. And it notes that the results of an  
11 inspection and present during the inspection are  
12 yourself obviously, Mr. Ewald, correct?

13 A. Yes.

14 Q. And Darren Connors?

15 A. Yes.

16 Q. And Dimitri Yakimov?

17 A. Yes.

18 Q. And he's identified as a mall  
19 representative. Now what was his position?

20 A. I'm not sure how he got involved in  
21 this portion of it. I was working with Mr.  
22 Yakimov with relation to the hotel retrofit.  
23 Which was going on at the same time that this was  
24 taking place. He was working on that particular  
25 document I think probably because he had some

1 construction background that the mall manager of  
2 the day, Ms. McCleery just had him come with us.

3 Q. So you have -- the inspection that  
4 you did you located four different areas where  
5 there were problems with missing fire proofing,  
6 correct?

7 A. That's correct.

8 Q. The first one is identified as.

9 "1) The area location between the lottery  
10 kiosk and the escalator as viewed as the  
11 tiles were open. The two foot beam has  
12 had fire proofing material washed away by  
13 water from the roof leak. Pictures were  
14 taken by Firefighter D. Connors."

15 A. That's correct.

16 Q. The second area is. "The area in the  
17 back right corner in the Dollarama store also  
18 showed a two foot beam with fire proofing material  
19 missing."

20 The third area is, "In the Bargain Shop  
21 at right side of store next to the exterior exit  
22 showed a two foot beam with fire proofing material  
23 missing."

24 And the last one was, "In the service  
25 corridor (exit corridor) behind the Dollarama store



1 there is a two foot beam with fire proofing  
2 material missing from it."

3 And you then go on to repeat the  
4 sections under the Fire Code dealing with the  
5 missing fire proofing material. And at the bottom  
6 of the page it states, "Only four areas were  
7 identified in the inspection, all water damaged  
8 area's [sic] will require inspection and  
9 remediation as required."

10 So you didn't inspect the entire mall I  
11 presume?

12 A. No. We did basically an audit.  
13 Like an example of that would be the Dollarama.  
14 In the Dollarama we would have looked at probably  
15 about four areas in the Dollarama and came up with  
16 that one -- that one issue.

17 Most of this was kind of directed by  
18 where tiles were missing at this point. So -- and  
19 that was the kiosk area, Dollarama. And we ended  
20 up kind of moving through the building that way.  
21 I know we ended up going through the back  
22 corridor. I know we ended up out at the Zellers I  
23 believe. Also -- what were some of the other  
24 locations? Yeah, so it was checked. We didn't go  
25 in every spot. Yeah. There are areas that were

1 checked that aren't on this list. This is what we  
2 came up with.

3 Q. And as I understand it Mr. Ewald,  
4 who was with you at the time, as you were  
5 conducting your inspection for your purposes he  
6 was coincidentally doing his own inspection?

7 A. That's correct. It was actually  
8 Fire Fighter Connors when he mentioned the rust on  
9 the beams. At that point or somewhere either here  
10 or just before this I set the meeting up and I  
11 thought Mr. Ewald should be involved because the  
12 rust leads into the structural component of this.

13 Q. And the inspection report identifies  
14 only the four areas, but you're making it clear  
15 that to remediate it it's going to have to be  
16 every part of the mall is going to have to be  
17 looked at?

18 A. That's right. Any water damaged  
19 areas or any areas that have fire proofing  
20 missing.

21 Q. Now, in addition you located some  
22 other violations of the Fire Code that are set out  
23 on this -- on the next page of the report. And  
24 they are 5, 6, 7 and 8. And they are unrelated to  
25 the fire proofing and leaking issues. These are

1 separate and apart, but things that you saw in the  
2 course of this inspection that you figured should  
3 be included because you saw them?

4 A. Correct.

5 Q. Now, and you also make the notation  
6 of which you describe for us earlier. The fact  
7 that you went to the Zellers store and Mr. Yakimov  
8 indicated that they had about 30 leaks in the  
9 area, and he called them mild leaks. So you're  
10 just drawing this to the owner's attention?

11 A. Yes.

12 Q. Now, the next line underneath is  
13 that "This inspection [is] a separate issue from  
14 Hotel Fire Safety Requirements, Fire Dept letter  
15 dated August the 20th, 2009." That's what you've  
16 been calling the audit or the retrofit?

17 A. Hmm hmm, that's correct.

18 Q. So these things, although they're  
19 happening at the same time, are really distinct  
20 issues?

21 A. They are, except where it blends the  
22 two buildings. Most of these things are dealing  
23 in the mall area. But there are the fire  
24 separation issues when you get underneath the  
25 mall. So I just wanted to try and keep them at

1 this point somewhat separate I guess.

2 Q. So and underneath there you have  
3 "Reinspection Date" and what you're expecting?

4 A. Yes.

5 Q. So you've given the owner until the  
6 24th of October, a month's time because this is  
7 the 24th of September, correct?

8 A. Yes.

9 Q. And you're saying that, "The owner  
10 is requested to provide appropriate documentation,  
11 satisfactory to the Chief Fire Official," that  
12 being you?

13 A. Yes.

14 Q. "...by October 24th, 2009, showing  
15 that a building permit has been applied  
16 for which will result in work being  
17 undertaken to correct the violations.

18 Further, be advised that failure to  
19 correct these violations within 3 days of  
20 the date as determined by the Chief  
21 Building Official may result in  
22 prosecution."

23 It's clear that you're not expecting the  
24 work to be done in 30 days but rather to show  
25 proof that you have a building permit at least?

1           A. Yes, and to move it forward and have  
2 a schedule of restoration.

3           Q. Now, you've been involved in this  
4 particular issue for, almost to the day, three  
5 years and nothing has happened, correct?

6           A. Yes, that's right.

7           Q. Now did you have more -- something  
8 more that you could have issued at this point in  
9 time rather than this request? Could you have  
10 issued an Order at that time?

11          A. Yes, I could. And that's why  
12 earlier before this inspection I seek legal  
13 advice. Because now we were dealing with more  
14 area of the mall, so it's stepping up the --  
15 definitely stepping up the area of concern. And  
16 to be quite frank, in hindsight I could see that I  
17 was being strung along by the owner and I guess  
18 somewhat felt like I had a chump and had a hook in  
19 my mouth and being towed around. This was it.  
20 We're going to push this thing forward and get it  
21 done.

22          Q. If we could go to Exhibit No. 357.  
23 Sorry, Exhibit No. 102. Now if you could go to  
24 page with the last digit 4, please. Okay.

25                 Now this is the document -- the Order

1 that was signed by and issued on the 25th of  
2 September 2009 by Mr. Ewald, the Property  
3 Standards Office. And it was an "Order to Remedy  
4 the Violation of Standards of Maintenance and  
5 Occupancy pursuant to the Building Code." And  
6 this is more than simply an invitation to do  
7 something, is it not? Mr. Ewald at least has  
8 stepped it up. He's not asking, he's telling?

9 A. Yeah. And I believe even -- this is  
10 the next step rather than just a notice. This is  
11 an Order. So --

12 Q. Okay. And was there a reason, given  
13 the fact that he has issued an Order, that you  
14 didn't issue an Order?

15 A. Probably for the fact that we issue  
16 the Orders, and I guess more just the procedure,  
17 we issue the notices and then we do the Orders.  
18 And that was part of the legal advice to get a new  
19 one out, I had that verified before I sent it out  
20 and we still follow that procedure.

21 And I did have discussion with Mr. Ewald  
22 on our approach to this. And we -- a lot of the  
23 items are somewhat duplicate, or the fire proofing  
24 is duplicate using both Acts, the Building Code  
25 Act and the Fire Code Provisions or Regulations to

1 move the issue forward.

2 Q. Okay. So you both had started with  
3 the notices in the first instance three years ago,  
4 you both issued notices, correct?

5 A. Yes. I did, I don't think Mr. Ewald  
6 was there at that time.

7 Q. Well, I'm sorry, the Chief Building  
8 Officer of the day issued a notice back in 2006?

9 A. That's correct.

10 Q. Okay. And when we look at the  
11 actual deficiencies, and we'll find that at the  
12 last page ending with 6.

13 A. What tab are we in, sir?

14 Q. Tab 33. You may or may not actually  
15 have this one that's why it's on the screen. But  
16 you might.

17 A. No.

18 Q. Okay. So the -- it would appear in  
19 the deficiency section the first one is.

20 "An inspection has revealed damaged fire  
21 proofing materials and/or rust due to  
22 long-term water infiltration on structural  
23 steel beams in the following areas: Above  
24 the lottery ticket booth, adjacent to the  
25 food court."

1                   Which is the area that you had  
2 identified in your notice, correct?

3                   A. Yes.

4                   Q. And "Above the Dollarama store."  
5 You identified that as well?

6                   A. Yeah, sorry.

7                   Q. And the long or the short of it is  
8 that the areas that you had identified are covered  
9 in this by this particular Order?

10                  A. Yes.

11                  Q. And then under the "Remedy" section  
12 it says that,

13                         "The owner shall; Have the entire mall  
14 area inspected by Structural Engineer  
15 licensed in the Province of Ontario and  
16 correct all deficiencies noted above and  
17 any further deficiencies which may be  
18 discovered by the engineer in the manner  
19 prescribed by the aforementioned engineer.  
20 Obtain a building permit for the required  
21 work to be undertaken pursuant to Section  
22 8.(1)of the Building Code Act."

23                         And then just stopping there, again the  
24 language is not identical but the idea is the  
25 same. You're not asking the owner to fix just



1 what you see in way of deficiencies, but rather  
2 the whole mall is to be inspected by an engineer.  
3 And anything that shows up in the course of that  
4 inspection is expected to be fixed?

5 A. Correct.

6 Q. And the other remedies are matters  
7 that -- sorry, the other deficiencies are matters  
8 that are unrelated to our purposes.

9 A. That's right. They're just other  
10 infractions that were cleaned up.

11 Q. Now as a consequence of issuing the  
12 Order and the notice on the 25th of September  
13 there was a meeting involving yourself and Mr.  
14 Nazarian and his lawyer?

15 MR. WALLACE: And, Ms. Kuka, if you can  
16 bring up OPP000001594?

17 MS. KUKA: Exhibit No. 3516.

18 BY MR. WALLACE:

19 Q. These are your notes of the meeting  
20 that was held?

21 A. Yes.

22 Q. Okay. Prior to this meeting of the  
23 25th of September, 2009, had you had any  
24 discussions with Mr. Nazarian concerning the  
25 missing fire proofing in the previous three years?

1 A. That I'm not sure of.

2 Q. And the purpose of this meeting was  
3 to explain to Mr. Nazarian what was expected, is  
4 that fair?

5 A. Yes. Yes, that's right.

6 Q. And you indicated in the bottom of  
7 your notes --

8 A. I guess -- okay. Just to go back  
9 and cycle back to your question about Mr.  
10 Nazarian. Most of the dealings -- he was pretty  
11 much absent and not in the picture. And the  
12 dealings were with his mall managers. So -- and  
13 we did have those discussions with the mall  
14 manager with Mr. Brian England and so on.

15 Q. Which you told us about this  
16 morning?

17 A. Yes, that's correct. I don't recall  
18 if I had those until maybe this meeting here with  
19 Mr. Nazarian.

20 Q. Did anybody in the meeting on the --  
21 on the 25th of September take Mr. Nazarian to task  
22 that this matter was outstanding for three years  
23 and there is still not an ounce of fire proofing  
24 been replaced?

25 A. Yeah. We had some pretty frank

1 discussions and we expected this to move forward  
2 and get done.

3 Q. Well we know it got done, you signed  
4 off on the 1st of February of 2010.

5 A. Hmm hmm.

6 Q. When you met in September what was  
7 your expectation as to when it was going to get  
8 done?

9 A. As a result of this meeting?

10 Q. Yes.

11 A. Well with Mr. Nazarian he would come  
12 across that he's going to do this and that --  
13 it's, you know, he'd talk about the costs and the  
14 problems with it. But he said, Yeah, he would be  
15 moving it forward.

16 Q. So he made it seem like he was a  
17 cooperative partner in this venture, is that fair?

18 A. Yes.

19 Q. And was he a cooperative partner in  
20 this venture?

21 A. No. Like I said in hindsight I  
22 think I was taken advantage of. I take people at  
23 face value and later on you find in fact what  
24 they're actually telling you is not even what they  
25 plan on doing. And getting his number I guess you

1 would say.

2 Q. And I just want to get your comment  
3 here. "It was explained to Mr. Fabris why he  
4 needs a building permit." And is the explanation  
5 that "this will ensure an engineer verifies the  
6 structure and controls restoration, proper  
7 fireproofing and so on"?

8 A. Is that on the bottom of this?

9 Q. Yeah, sorry.

10 A. Yeah. At that time, and I believe  
11 Mr. Ewald was at this -- we were determined that  
12 this was going to get taken care of. And it would  
13 have been explained -- Mr. Nazarian had his lawyer  
14 and solicitor there. And it was outlining the  
15 exact direction that this was going to go and the  
16 importance of getting this done.

17 Q. Given the fact that the matter had  
18 been dragging for three years, and on this meeting  
19 of September 25th he's expressing, as I get it,  
20 Listen, no problem. We're going to get this job  
21 done. Is that fair?

22 A. Yes.

23 Q. Did you take that with a grain of  
24 salt or did you just say, Sounds good to me?

25 A. No. And again once -- prior to this

1 meeting I had already engaged our solicitor to  
2 ensure that we were going to move this thing  
3 forward in a positive manner to get it complete.  
4 I'm still listening to him but I have  
5 reservations. I'm a little more happy that Mr.  
6 Fabris is attending the meeting so he'll -- he  
7 seemed to have an interest on moving it forward as  
8 well.

9 But still we're -- like I said in  
10 hindsight you can see. But this is pretty much  
11 some of the first contact I think that, if I  
12 remember right, I might have met him a year  
13 before. So -- but it's.

14 THE COMMISSIONER: Are you talking about  
15 Fabris or Nazarian?

16 THE WITNESS: Mr. Nazarian, sir.

17 BY MR. WALLACE:

18 Q. If we could have Exhibit No. 1324.  
19 This is a letter from Mr. Fabris to Mr. Nazarian  
20 reporting on the same meeting that you were at.  
21 And I just want to get your comment on a couple of  
22 points here?

23 A. Do you have a tab number?

24 Q. Yes, it is tab number 38. He is  
25 reporting to Mr. Nazarian and this letter is dated

1 the 25th. But it's dealing with a meeting that he  
2 had with you and your colleagues on the 25th. It  
3 says,

4 "While initially both the City and  
5 the Building Department were concerned  
6 that there might be some structural  
7 damage, they did voice their opinion that  
8 it was not as serious as they had  
9 initially thought and thus no stop work  
10 violation order had been issued."

11 What comment can you make about that?

12 A. I think that was more along the  
13 lines for the structural concern that the  
14 structure -- there was no evidence that we could  
15 see, or that I think Mr. Ewald could see that was  
16 an immediate issue that you would say, Okay, let's  
17 close the building, or that we could wait and have  
18 it done by an engineer and have a proper  
19 assessment done.

20 Q. So the feeling was that it hadn't  
21 reached the point where the building had to be  
22 closed but rather we still need an engineer to  
23 have a look at it?

24 A. Yes.

25 Q. And it says, "This matter had

1 originally been dealt with in 2006; however, since  
2 then it had been lost the shuffle. I have  
3 received copies of the file from 2006." What's  
4 your comment on that?

5 A. That's like I said, in hindsight you  
6 can see this. And I don't think it was lost in  
7 the shuffle. I think it was steered around quite  
8 craftily by an individual and that's why it's  
9 still there.

10 Q. I think you would agree with me  
11 would you not that you had been less than diligent  
12 yourself in following through?

13 A. I wouldn't say less than diligent.  
14 It was -- again, you have to remember that there's  
15 -- this is the chicken and the egg. Until the  
16 leaks are done you can't get at the fire proofing.  
17 And everything that we've gone through there was  
18 always something new. We went through two or  
19 three mall managers that -- and I tend to think  
20 maybe those individuals when all of a sudden it  
21 comes to get certain work done, next thing they're  
22 gone and somebody else is coming in. So you're  
23 dealing with a new individual who is expressing a  
24 concern to get things done and move forward and  
25 get those leaks finished, and move forward.

1 Somewhere, some place, I think some individual was  
2 holding those purse strings and not permitting  
3 them to get done.

4 Q. And then the correspondence goes on  
5 to say,

6 "The requirements now are that we receive  
7 an engineers report. I have written to  
8 Mr. Wright, and forward a copy of the  
9 violation to obtain a report to satisfy  
10 the order."

11 And then it says, "The City will also  
12 have to obtain a permit to repair the coating of  
13 the steel." That seems to be exactly opposite of  
14 what you told him?

15 A. Yeah, that's not correct. I mean  
16 why would the City obtain a permit? I mean it's  
17 -- I think what he's saying is that he needs to  
18 obtain a permit to do the process so that the  
19 application process is done correctly and under  
20 the supervision of an engineer.

21 You also have to remember too that this  
22 is -- this isn't the only thing that's taking  
23 place in this building as well. This is still  
24 about the at the same time that some of the --  
25 we're still doing inspections in the building.



1 And also I'm still moving forward or trying to get  
2 him to move forward with the hotel retrofit.

3 Q. Now, if you could look at Exhibit  
4 No. 1446, and that's at tab 39. Now this is an  
5 e-mail that you sent to Mr. Ewald on the 28th of  
6 October. And you cc'ed Mr. Bauthus, the Mayor,  
7 Mr. Hamilton, your assistant Trudy Rheaume and  
8 your senior man, Mr. Connors.

9 And it covers a number of topics, but  
10 the one that I'm interested in is the topic that  
11 starts under the header of October 28, 2009. And  
12 you had been dealing with Mr. Yakimov on the  
13 retrofit issue, correct?

14 A. Yes.

15 Q. And he came in to see you on the  
16 28th of October and he gave you some fairly  
17 disturbing information, correct?

18 A. Yes, he came in and informed me that  
19 he was laid off.

20 Q. Okay. Well I don't think that was  
21 the disturbing information.

22 A. Yeah. He came in and said that he  
23 was afraid that the work wasn't going to continue,  
24 and to use the water leak as a means to try and  
25 get delayed. And then I'm passing this

1 information on because this is dealing with --  
2 it's still in -- mainly dealing with the  
3 structural component I think. But -- and then I  
4 put in comments. This could be a sour grape issue  
5 because he was being laid off. Not drawing a  
6 conclusion, but I kind of got that impression  
7 because he was to be doing the hotel retrofit and  
8 all of a sudden he's in bringing this forward.

9 Q. So he's telling you in the first  
10 paragraph that he's concerned that the work is not  
11 going to get done because Mr. Nazarian is asking  
12 him to stall the fire department by using the  
13 leaks. We can't fix the fire proofing until we  
14 get the leaks under control?

15 A. Yeah.

16 Q. Is that a fair summary?

17 A. Yes. But we're not buying so --  
18 like we've not buying into waiting.

19 Q. Okay. So you had bought into it for  
20 the previous three years had you not?

21 A. Yeah. I -- like I said I felt  
22 abused but we're not going on that now.

23 Q. So then he went on to give you  
24 information that was -- that would certainly be of  
25 relevance to the Chief Building Officer as far as

1 the structural integrity of the building is  
2 concerned, correct?

3 A. Yes.

4 Q. And specifically he told you that  
5 he'd just spoken to Mr. Ewald "...and gave him  
6 copies of the drawings as he has concern of 2  
7 panels on the car park level just outside of the  
8 lobby doors and also to the left of the doors."  
9 So he's talking about areas that -- in the area  
10 that subsequently collapsed about two and a half  
11 years later?

12 A. Yes.

13 Q. And he indicated that.

14 "...his hotel audit and dealing with H.R.  
15 Wright inspection with Mr. Bob Wood showed  
16 that the drawings of the area in question  
17 has the core slab and 3 inches of concrete  
18 topping. Upon inspection, the area shows  
19 the core slab and 6 inches of concrete  
20 topping. He is concerned about the added  
21 weight of the extra three inches of  
22 concrete. He also indicated..."

23 go to the next page.

24 "...that there is a substantial amount of  
25 movement on this location. I asked if

1                   this new concern about the integrity of  
2                   the core slab in the scope of work for  
3                   H.R. Wright and he, Dimitri, indicated  
4                   that it was not."

5                   So the scope of the work that Wright had  
6                   been retained for was what as far as Dimitri was  
7                   telling you?

8                   A. Well if you continue on it says, "I  
9                   called Bob Wood...", which is directly after that  
10                  meeting.

11                  "...and discussed his report. He is  
12                  hoping to have it out by the end of the  
13                  week. His main concern is that the  
14                  underside of about 200 linear feet of beam  
15                  is exposed and will be recommending that  
16                  the fire proofing get corrected within 30  
17                  days.

18                  I advised that that would be  
19                  acceptable providing that we had a  
20                  schedule outlining the process i.e.:

- 21                  1. Building Permit.
- 22                  2. Building Controls and Fire Department  
23                  approval of the application process and  
24                  the time schedule.
- 25                  3. Verification of the process by H.R.

1 Wright."

2 So what Mr. Dimitri was talking about  
3 above, and if it was in his scope of the work, I  
4 made that phone call and it was within his scope  
5 of work.

6 Q. Did you pass on the information  
7 concerning the potential overloading of the roof  
8 deck?

9 A. I believe this is an e-mail to Mr.  
10 Ewald, correct?

11 Q. Yes. What I mean is did you pass  
12 that on to Mr. Wright -- or Wood rather?

13 A. This is the discussion with Mr. Wood  
14 that I just read.

15 Q. No, I know that. But did you tell  
16 him what Mr. Yakimov told you about the concrete  
17 being six inches?

18 A. Yes, that's why I called.

19 Q. So he was given that information at  
20 that point in time?

21 A. Yes.

22 Q. Now, if we could see Exhibit No.  
23 342. This is a follow-up inspection done by Mr.  
24 Connors to follow up on the inspection done on the  
25 24th of September, correct?

1                   A. Yeah, that's not tab 40 for me. You  
2                   said 40?

3                   Q. Yeah. Can you follow on the screen?

4                   A. I can try, yes. October 30th,  
5                   follow-up inspection, that's correct.

6                   Q. And the areas with the missing fire  
7                   proofing were still unattended to, correct?

8                   A. Yes.

9                   Q. And if you go to the next page just  
10                  down a little further, please. So it states that  
11                  under the "Reinspection Date: The owner is  
12                  required to complete deficiencies -- items 5) thru  
13                  to 8) - 15 days after November 5, 2009." What is  
14                  the significance of November the 5th?

15                  A. I think I'd have to go back to that  
16                  last inspection. It might be a compliance date.

17                  Q. Okay. Let's just stick with that  
18                  for a second here.

19                                 "For items 1) through 4) a schedule  
20                                 of compliance is to be submitted - 15 days  
21                                 after November 5, 2009 for those items  
22                                 outlined in HR Wrights report; for which  
23                                 the work will have to be done within 30  
24                                 days after November 5, 2009.

25   It must be shown that a building

1 permit has been issued. Non-compliance  
2 will result in prosecution."

3 Am I -- do I take it that the Wright  
4 report -- and if we go to tab -- to sorry to  
5 Exhibit No. 102 the Wright report is contained in  
6 that. So if you go to page 11. Okay. This  
7 appears to be a draft of the Wright report dated  
8 the 28th of October of 2009, and it's addressed to  
9 Ms. McCleery the manager of the mall?

10 A. Yes.

11 Q. And I take it, given the fact that  
12 in your -- in the reinspection notes from the 30th  
13 of October, talking about the items from the --  
14 M.R. Wright's report, you had seen the report or  
15 actually had it in your possession in order to  
16 make reference to it?

17 A. Yeah, you're talking about Mr.  
18 Connor's notes right?

19 Q. Yes?

20 A. Yes. So if that November 5th date,  
21 this is showing that he was there on October 5th I  
22 believe. And I believe we allowed him the 30  
23 days, so that would have tagged on to the November  
24 5th date.

25 Q. I don't want to get into a debate on

1 this, but he was there on the 30th of October.

2 A. "As per you request we visited the  
3 above noted Mall Complex on Monday, October 5,  
4 2009."

5 Q. That's Mr. Wood talking.

6 A. Yes. But you did ask me earlier  
7 about the November 5th date.

8 Q. Okay. If we can just quickly run  
9 through this. At the bottom line -- the bottom  
10 line of the first page, "The review of the  
11 building consisted of a visual inspection in areas  
12 of significant leakage within the mall below the  
13 parking deck."

14 The instructions that have been given by  
15 Mr. Ewald was not limiting it to the areas of --  
16 that were identified in the order, correct?

17 A. Right.

18 Q. And in fact his direction, in terms  
19 of what was expected of the engineer's report, was  
20 to look at the entire mall and not just the four  
21 areas that were identified in the -- or five or  
22 six areas that were identified in the order,  
23 correct?

24 A. Yeah. He wanted something to pick  
25 up the areas. So -- while we're on this page



1 maybe too I think this is about where we started  
2 having, as you can see.

3 "The precast concrete and concrete  
4 topping provided a 2 hour fire resistance  
5 rating. To achieve a rated assembly  
6 however the supporting steel structure  
7 must also be fire rated. This fire rating  
8 is presently achieved through a sprayed on  
9 fire proofing material."

10 He's talking there -- the two hour there  
11 he's talking the area that's separating the hotel  
12 from the rest of the structure. And I believe  
13 through here we're starting to have discussions  
14 that this take place to be in compliance with the  
15 hotel retrofit.

16 Q. But your interest in the inspection  
17 is not the same issue as the retrofit?

18 A. It is and it isn't. It does tie  
19 together later on, you'll see that.

20 Q. And he deals with that, that is Mr.  
21 Wood, on the next page. He deals with three areas  
22 specifically in his report where he makes remarks  
23 as far as the -- the loss of fire proofing, but in  
24 addition he makes observations as far as the  
25 structural integrity is concerned.

1                   If you look at under Zellers, the second  
2 paragraph.

3                   "The structural steel is not  
4 firerated throughout Zellers. The primer  
5 painted structural steel had surface  
6 rusting, but in all areas inspected no  
7 loss of steel section was observed."

8 See that?

9                   A. Yes.

10                  Q. Okay. On the -- dealing with the  
11 service corridor he says:

12                  "The steel is rusting particularly on  
13 top of the bottom flange, however, we are  
14 of the opinion that the rusting has not  
15 created any structural loss of beam  
16 capacity."

17                  And then with the main mall, the ticket  
18 kiosk, "Similar to other areas inspected much of  
19 the exposed steel has only minor surface rusting  
20 with exposed original primer paint..."

21                  THE COMMISSIONER: Where is that?

22                  MR. WALLACE: It's under paragraph  
23 number 3.

24                  BY MR. WALLACE:

25                  Q. "Similar to other areas inspected

1 much of the exposed steel has only minor  
2 surface rusting with the exposed original  
3 primer paint, where the fireproofing has  
4 fallen off due to water saturation."

5 And then if you look at the next page,  
6 second paragraph.

7 "Based upon the above it is our  
8 opinion that our inspection revealed no  
9 visual structural concerns both with the  
10 structural steel or prestressed slabs.  
11 The positive camber on the slabs appear to  
12 inhibit surface drainage. This indicates  
13 structurally that the slabs have  
14 significant additional load carrying  
15 capacity."

16 And then he goes on to say, for your  
17 point of interest,

18 "Our major concern is the loss of  
19 fire proofing on the bottom flange of the  
20 steel beams that are required to have  
21 complete fire protection. We are  
22 recommending that in areas where the  
23 original fireproofing has fallen away that  
24 the top and bottom surfaces of the bottom  
25 flange be cleaned off and suitably sprayed

1 with a fireproofing product that is not  
2 water absorbent."

3 And then at the very end he says:

4 "Even though the mall is fully  
5 sprinklered, we must recommend that the  
6 repairs to the sprayed-on fire proofing be  
7 conducted as soon as a contractor can be  
8 scheduled to complete the repairs."

9 And that of course is what you've been  
10 wishing for for a number of years now, correct?

11 A. Yes, because there is more areas  
12 that don't have the fire proofing so it definitely  
13 steps up the urgency.

14 If we could go back I want to make sure  
15 you're clear. If we can go back one page.

16 Zellers. "The structural steel is not firerated  
17 throughout Zellers. The primer painted structural  
18 steel has surface rusting..." It's the first  
19 comment that he has on there. Zellers there's no  
20 -- I think I mentioned this this morning. There  
21 is no Code requirement to have that area have the  
22 fire rating on the structural steel and I don't  
23 think he's indicating that. He's just making a  
24 statement that the structural steel is not fire  
25 rated throughout Zellers.

1 Q. If we could go and have a look at  
2 tab 45, this is Exhibit No. 123.

3 This is a reinspection on the 8th of  
4 December of 2009. And it's noting that

5 "A reinspection was conduct on  
6 December 8, 2009, at which time it was  
7 found that items 5)through 8) noted on the  
8 inspection of October 20, 2009 have been  
9 attended to. The following infractions  
10 remain outstanding:"

11 And it's isolating the four areas that  
12 had been identified in the first inspection as  
13 still outstanding.

14 A. Yes.

15 Q. And if you would go to Exhibit No.  
16 124. This is a further inspection on the 16th of  
17 December of 2009. And it appears that at this  
18 time the items 1 through 4, that was the original  
19 four from September, have been looked after.

20 A. Yes.

21 Q. But in the course of the inspection  
22 other areas were located that had lost their fire  
23 proofing?

24 A. Yes.

25 Q. And it was brought home that if you

1 look at the middle of the page just scroll down a  
2 bit at the top that we can see here. "However, as  
3 stated in the original inspection of October 20,  
4 2009, all water damaged areas will require  
5 inspection and remediation, as required."

6 And then they say,

7 "For example, upon inspection,  
8 December 16, 2009, the following two  
9 exposed areas were noted, in addition to a  
10 couple of other areas - to require  
11 fireproofing."

12 And he notes main loading area and  
13 Bargain Shop.

14 A. Yes.

15 Q. And the owner was told that you've  
16 got to do it all, not just the things that we  
17 outlined before?

18 A. Yes. So out of all the areas that  
19 Mr. Connor would have checked he would have -- he  
20 found obviously two more.

21 Q. And the last one at Exhibit No.  
22 1462. And this is the 1st of February of 2010.  
23 And in the middle of the page.

24 "A reinspection was conducted, on the  
25 above-noted date, at which time all

1                   infractions from report dated September  
2                   24, 2009 were remedied. Your cooperation  
3                   has been appreciated."

4                   So by my calculation by 30 -- 39 months  
5 after the original inspection the work is finally  
6 done?

7                   A. Yes.

8                   Q. And I'm sure you will agree with me  
9 that 39 months is not a reasonable period of time  
10 in order to do this work, correct?

11                  A. Yes. Originally we were dealing  
12 with the library. Actually when I say "all of the  
13 work is complete" it's not quite all complete.  
14 The work is complete on the fire resistance rating  
15 of those members, but we're still working on the  
16 hotel lobby with them.

17                  Q. Now we'll deal with the hotel audit.  
18 And this is a process that is mandated through the  
19 Fire Code, correct?

20                  A. That's correct.

21                  Q. And it is to provide for the  
22 upgrading of existing buildings through a  
23 retrofit, is that correct?

24                  A. Yeah, the audit is a check on older  
25 hotels to ensure they meet the minimum life-safety

1 requirements that were set by the Province to  
2 ensure life safety. So examples of that would be  
3 that they have the compartmentization of say the  
4 rooms, along with the proper door closures. If  
5 they require to have smoke alarms. It's an audit  
6 that goes through the building that helps -- that  
7 the owner has to do to ensure that he's in  
8 compliance with that minimum set of requirements  
9 that they're setting out. And it is a timetable  
10 over I believe over the course of four years that  
11 they come in in phases the various different  
12 things, because it's expensive to do a hotel  
13 retrofit that the owner has to do this. It's his  
14 responsibility.

15 Q. So just so we understand, the audit  
16 is a cataloguing of what is in the building,  
17 correct?

18 A. Yeah, basically that's correct.

19 Q. And they measure what's in the  
20 building against what is expected to be in the  
21 building at that point in time, is that correct?

22 A. Yes. Because the audit -- or let's  
23 get back to the building. This legislation is  
24 drafted, it could be covering anything from a  
25 hundred years old to say in this case this was



1 built in 1979. So there will be various Codes  
2 prior to '75 there was no Building Code, it would  
3 have been probably done under the National Code.  
4 And what it does is raise the bar to a minimum  
5 standard that they're trying to achieve to ensure  
6 life safety. And in that it will have the  
7 prescriptive requirements of what's required in  
8 the physical part of the building.

9 Q. So the owner, or someone acting on  
10 his behalf, then reports as to what is actually  
11 there, and then it's looked at as against what  
12 should be there now that there are different  
13 requirements, correct?

14 A. No get to the new 9.9, that's  
15 correct.

16 Q. And 9.9 is that section of the Fire  
17 Code dealing with hotels.

18 A. Yes, which is the hotel retrofit.  
19 That's correct.

20 Q. Now, a hotel audit, at least as I  
21 understand it, has nothing to do with whether or  
22 not the equipment is actually work or not, is that  
23 correct?

24 A. Right. It doesn't -- the audit is  
25 to reflect what is actually there. In this

1 particular case, as I was having difficulties with  
2 Mr. Nazarian, I had that discussion with Mr. Woods  
3 and he was interested and sure that the systems  
4 that were there for the hotel actually did work as  
5 well as I was. And it tended up going in that  
6 direction with his assistance actually.

7 Q. But my original point is correct is  
8 it not, that is that the audit does not concern  
9 itself the operability of the materials that are  
10 present, but rather with whether they had them or  
11 not?

12 A. Yeah, that's right.

13 Q. Okay. And in this particular case  
14 in the course of this audit, in addition to  
15 finding out what was there or what wasn't there,  
16 you also found out that certain things weren't  
17 working as they should?

18 A. Correct.

19 Q. Okay. And that I guess we could  
20 look at as a by-product of the audit as opposed to  
21 the purpose of the audit?

22 A. Yes.

23 Q. Okay if we could have a look at  
24 Exhibit No. 3523. And this is a letter that you  
25 wrote to Mr. Nazarian in connection with the

1 audit. And if you could just succinctly describe  
2 for us what the issue was about the four-storey  
3 building, the height of the building or the size  
4 of the building, what that issue was?

5 A. Yeah. This was I guess a draft that  
6 came in that was trying to identify that the grade  
7 was at the back, so that would be the west  
8 entrance of the hotel tower, that that's the front  
9 entrance. And I believe the purpose of Mr.  
10 Nazarian trying to show that is that it -- when  
11 you get up to six storeys or more the requirements  
12 go up for that particular type of building. And  
13 essentially that wasn't correct. The building was  
14 designed for the front entrance to be the  
15 principal entrance of the building with the hotel  
16 lobby directly in past the escalator. The fire  
17 panel, the enunciator panel is right at the front  
18 door, which it's supposed to be for our purposes  
19 to be able to identify where in the building that  
20 the fire alarm is going off, or the sprinkler  
21 system is going off.

22 Q. So he was trying to say that the  
23 front door is the back door?

24 A. Yes, to put it plain and simple.  
25 And that's to skirt those more stringent Code

1 requirements.

2 Q. And as it turns out the way the Fire  
3 Code is drafted, in terms of ascribing how many  
4 storeys a building is you take into consideration  
5 the entire building on a square footage basis.  
6 And because of the existence in this particular  
7 case of the mall, even though to someone's eyes it  
8 might be six storeys for the building -- from Fire  
9 Code purposes it wasn't?

10 A. For Building Code purposes, yeah.

11 Q. For Building Code purposes.

12 A. Because the Fire Code in this  
13 particular case would refer back to the Building  
14 Code. And it's set on average grade. And -- now  
15 I haven't been in the Building Code in ten years  
16 so if I'm not quite right you'll have to forgive  
17 me. It's set on average grade and what you're  
18 doing is try to identify where the first storey  
19 is. And when you take the average grade, so if  
20 you go on the west side of the building, which is  
21 up on the roof deck at the back, the grade is  
22 actually at the roof back there. So you work that  
23 around -- the designer would have taken the entire  
24 footprint of the entire building. And then I  
25 believe in order to be the first storey it has to

1 be so many feet above the average grade, and  
2 that's how you designate the number of storeys.  
3 And it's not a -- what he was trying to achieve it  
4 was not correct.

5 Q. So he was trying to essentially  
6 redesign the building calling the back door the  
7 front door with a view to circumventing certain  
8 aspects of the Building Code when in fact he  
9 didn't have to do that in any event?

10 A. No. I think what he was worried  
11 about he was trying to get it down so that the  
12 tower was only four storeys, where in fact it's  
13 got to be I think over five where it becomes an  
14 issuing, so it really wouldn't have helped help  
15 him anyways.

16 Q. If you can now look tab 52, and that  
17 is Exhibit No. 3565. This is a draft dated the  
18 19th of March of 2010, provided by Mr. Wood of the  
19 hotel retrofit office, correct?

20 A. Yes.

21 Q. Just move in one more page. Now in  
22 his covering letter he is suggesting a meeting on  
23 site. And my understanding that you did have a  
24 meeting on the 30th of April on site with Mr.  
25 Wood?

1 A. That's correct.

2 Q. Okay. And that is at tab 55, that's  
3 Exhibit No. 835. And this is a letter you have  
4 written to Mr. Nazarian?

5 A. That's correct.

6 Q. Bringing him up to speed on the site  
7 visit and the inspection.

8 "The Algo Hotel Inn was inspected on  
9 April 28th, 2010 for the Hotel Retrofit  
10 Audit Section 9.9 of the Ontario Fire Code  
11 by...[Mr. Wood and yourself]. The  
12 inspection was completed and Mr. Wood will  
13 forward to my office recommendations to  
14 meet the Hotel Retrofit requirements. One  
15 mediate concern that was discovered was  
16 the lack of smoke alarms in guest rooms.  
17 These rooms have a heat detection device  
18 monitored by the fire alarm system.

19 The purpose of this notice prior to  
20 the recommendations by your engineer is  
21 because of the immediate concern for the  
22 safety of your guests. Although the rooms  
23 have heat detectors, which was the  
24 Building Code requirement in the 1970s,  
25 smoke alarms activate much more quickly to

1 smoke to warn or wake up the occupant.

2 And you cite a section of the Fire Code  
3 that mandates the smoke alarms to be in every  
4 guest room, is that correct?

5 A. Correct.

6 Q. And you tell him at the second last  
7 paragraph,

8 "Because of the serious nature of  
9 having working smoke alarms - all occupied  
10 rooms shall have a smoke alarm installed  
11 immediately and the remaining rooms must  
12 be completed by the end of the day  
13 Thursday May 6th, 2010. A reinspection  
14 will takes place at 10:00 a.m. May 7th,  
15 2010."

16 And I understand that you took steps at  
17 that time to ensure that that was complied with?

18 A. Yeah, that's correct. If I remember  
19 correctly the number of guest that they had I  
20 wouldn't leave until the guest had the smoke  
21 alarms installed in those. And if they had any  
22 more guest come in they had to have them in the  
23 room for that night. And then the date would pick  
24 up the rest.

25 Q. Now if we can go to tab 59, Exhibit

1 No. 938. This matter had started in August of  
2 2009, correct?

3 A. Yes.

4 Q. You issued the letter requesting  
5 this in 2009?

6 A. Yes.

7 Q. And we are in August and you still  
8 do not have a copy of the -- a final copy of the  
9 audit, is that correct?

10 A. Yeah, I have the draft I believe.

11 Q. And you were having some difficulty  
12 reaching Mr. Wood in terms of he was the person  
13 who was going to be preparing it?

14 A. Hmm hmm, that's correct. I think at  
15 this point Mr. Wood was experiencing payment  
16 issues. I was pretty comfortable with the  
17 location that we were at. The audit was pretty  
18 much finished. I think I even say in there about  
19 90% of the work's complete. But there were a few  
20 more things that I felt should be checked and I  
21 think Mr. Woods felt should be checked that we  
22 wanted to complete. The building was in general  
23 conformance, now we're into the maintenance part  
24 of it.

25 THE COMMISSIONER: So when you say



1 architect you mean engineer?

2 THE WITNESS: Yes, that's correct, sir.

3 BY MR. WALLACE:

4 Q. If we could go to tab number 60,  
5 that's Exhibit No. 3577. And this is a letter to  
6 Mr. Nazarian from Mr. Wood, and you have been cc  
7 on that, if you look at the last page of the  
8 document?

9 A. Yeah.

10 Q. And he has outlined a number of  
11 areas, but I want to draw your attention to the  
12 reference to a company by the name of Vipond?

13 A. Yes.

14 Q. And what -- and they are on the  
15 third page, the page number ending in 02. Now  
16 bearing in mind this is a letter Mr. Wood is  
17 writing to Mr. Nazarian. He says, "We understand  
18 that the annual inspection is scheduled with  
19 Vipond and would request the following:" He  
20 wants, number one, last year's Vipond inspection  
21 report. First of all who is Vipond?

22 A. Vipond is a testing company that do  
23 fire alarm testing and sprinkler testing to the  
24 different NFPA -- sprinklers are NFPA 13 and the  
25 NFPA for fire alarm systems.

1 Q. NFPA and that's the National Fire  
2 Protection Act?

3 A. Yes.

4 Q. And that's the standards  
5 association?

6 A. Yes. That's the standards that are  
7 referenced in the Fire Code and the Building Code.

8 Q. Now I as I understand it all persons  
9 who have commercial establishments who have smoke  
10 alarms and sprinkler systems are required to have  
11 them inspected annually?

12 A. That's correct.

13 Q. And when Vipond does an inspection  
14 they will leave with the owner a certificate  
15 saying the facility or the equipment has been  
16 tested, correct?

17 A. That's correct. They're saying it  
18 is -- how does it go? What they say is that it  
19 has been tested in accordance with the standard.  
20 Just tested.

21 Q. It just simply tells you it's been  
22 tested, it tells you nothing about the result?

23 A. That's right.

24 Q. So anybody -- so somebody who came  
25 through with flying colour would get the same

1 certificate as somebody whose system failed  
2 completely?

3 A. Yes.

4 Q. So this certificate is absolutely of  
5 no use to you as someone enforcing the Fire Code?

6 A. All it tells me is that it was  
7 tested.

8 Q. Okay.

9 A. That's it.

10 Q. So what Mr. Wood is asking for here  
11 is he's look for the actual inspection report that  
12 would cast some light on what's -- how things are  
13 working?

14 A. That's correct. And this is a part  
15 that I asked Mr. Wood's help on. When I say that  
16 he -- you know, we wanted to make sure that the  
17 fire alarm and sprinkler system worked for the  
18 hotel. And then of course I have concern that  
19 everything else is correct throughout the mall for  
20 both of those things.

21 Q. Now, are you able to go to Vipond  
22 yourself as the fire chief and say, Send me the  
23 report?

24 A. Yeah, you can. Practice is though  
25 we work through the owner. If I did that I guess

1 I would have to put an Order on to go through the  
2 courts I guess to get those documents.

3 Q. Now if we could look at tab 63, that  
4 is Exhibit No. 1752. Now you are writing to Mr.  
5 Nazarian?

6 A. Yes.

7 Q. And you are -- you want this  
8 inspection material yourself, correct?

9 A. Yes, and so does Mr. Woods I believe  
10 too.

11 Q. So you state:

12 "The August 12, 2010 inspection  
13 report outlines the basic fire protection  
14 systems within the Eastwood Mall. Mr.  
15 Wood is asking to meet with Vipond to make  
16 further determinations that the systems  
17 are verified to be fully operational and  
18 signed off as such. Once Mr. Woods has  
19 gathered the remainder of his required  
20 information he should then be able to go  
21 through the 15 pages of prescriptive  
22 requirements of section 9.9 of the Ontario  
23 Fire Code and comment on each section that  
24 they either comply or they do not. Any  
25 deficiencies shall be brought forward with

1                    recommendations that the deficiency be  
2                    brought up to the minimum retro fit  
3                    requirement."

4                    And then it says,

5                    "Further to our meeting on Wednesday  
6                    I understood that the completed audit was  
7                    to be provided to me by today's date or  
8                    Tuesday at the latest. I also expressed  
9                    concern with the length of time it is  
10                   taking to receive the audit.

11                   Because this deadline date has come  
12                   and gone without completion but you did  
13                   supply the inspection...."

14                   That would be the certificate?

15                   A. No. It was the inspection of Mr.  
16                   Woods I believe. "...the audit due date has been  
17                   extended to September 30, 2010, after which legal  
18                   action will be taken."

19                   You have a note up here "September 22,  
20                   2010. Rene Fabris advised engineering will have  
21                   the plan in by end of the month." When you sent  
22                   this letter to Mr. Nazarian did you have any  
23                   communication with him? Did you ever talk to him?

24                   A. I'm not sure. I don't want to get  
25                   my dates mixed up but I had a meeting with Mr.

1 Nazarian and Mr. Fabris over this issue and it was  
2 in August. Yes. So I had spoken to Mr. Fabris.  
3 I believe at this time though the main contact was  
4 still the mall manager Henry McCleery.

5 Q. Okay.

6 A. And as we go along if I can remember  
7 I'll come back and clarify that more for you, sir.

8 Q. And on the next tab --

9 THE COMMISSIONER: Perhaps we can take  
10 the break now.

11 MR. WALLACE: Okay.

12 --- Afternoon break taken at 3:30 p.m.

13 --- upon resuming at 3:50 p.m.

14 THE COMMISSIONER: Go ahead, Mr.  
15 Wallace.

16 MR. WALLACE: Thank you, Commissioner.

17 BY MR. WALLACE:

18 Q. Mr. Chief, if you would turn to  
19 Exhibit No. 3583, please. I just want to jump  
20 ahead here so we can contextualize this as we  
21 we're moving forward, Chief. You ended up in  
22 early February laying two charges under the Fire  
23 Protection Act against Eastwood Mall Inc.,  
24 correct?

25 A. That's correct.

1 THE COMMISSIONER: Of 2011?

2 MR. WALLACE: Yes, 2011.

3 BY MR. WALLACE:

4 Q. And they related to the sprinkler  
5 system and the fire alarm system, correct?

6 A. That's correct.

7 Q. Now as we look at this document  
8 here, that is audit dated the 29th of September  
9 2010, on the front page under "B) Page 9 Remarks.  
10 All smoke detectors (ie. approximately 30 units in  
11 corridor ceilings) in the hotel area over 20 years  
12 old and need to be replaced." Is this part of the  
13 fire alarm violation that was ultimately charged  
14 factually based on these smoke detectors?

15 A. In part.

16 Q. Yeah.

17 A. Yes. So just to give you some  
18 clarification on that. What we're talking about  
19 is the smoke detectors in the corridor. So those  
20 are the hardwired unit that are attached to the  
21 fire alarm system. And the notation above is  
22 "smoke alarms" which are a different animal.

23 Q. Yes.

24 A. And it has no bearing on the smoke  
25 detectors. The units in the corridors they worked

1 but they're of an age that they need to be  
2 replaced.

3 Q. And if they were not replaced that  
4 would constitute a violation of the Fire Code?

5 A. It's not quite that clear. What  
6 happens is the testing agencies, because of the  
7 age of the smoke detectors, they have a hard  
8 time -- I don't believe they can test them  
9 accurately to ensure that they work. So the newer  
10 ones they send a signal down and it bounces back  
11 and it says, Yeah, I'm working. Yes, I'm  
12 monitoring. I'm not a technician but all I can  
13 tell you is that the smoke detectors work, but it  
14 becomes an issue to do the annual verifications.

15 Q. So if we go to the next page right  
16 at the bottom. So the conclusion he comes to  
17 right before he closes off, that is Mr. Wood  
18 closes off.

19 "Based upon our review, it is our  
20 opinion that the Algo Inn Hotel is in  
21 compliance with the requirements of the  
22 Hotel Fire Safety Audit. We must  
23 recommend that the 28 corridor ceiling  
24 smoke detectors be replaced with new units  
25 by an electrical contractor, at the



1 earliest opportunity."

2 And then if we could go to tab 66 and  
3 Exhibit No. 3589.

4 A. When was the tab?

5 Q. I have it in tab 66, it's Exhibit  
6 No. 3589. This is a document that we alerted your  
7 Counsel to that was going to be in addition to  
8 tabs so you may not actually have it in your brief  
9 there, sir.

10 A. Oh, okay.

11 Q. This is a letter from yourself to  
12 Mr. Nazarian. You've now received the audit dated  
13 the 29th of September. And then he says, "I have  
14 read the audit by Mr. Woods" -- sorry. You say,  
15 "I have read the audit by Mr. Woods and he has  
16 found that the Algo Inn Hotel is in general  
17 compliance with the Hotel Retro Fit requirements  
18 except for the following concerns." And then he  
19 goes on to -- you cite three items. "Vipond to  
20 supply pressure and flow testing reports.  
21 Corridor Smoke Detectors need to be replaced.  
22 Lock Box for Sprinkler Fire Pump Room" as well.

23 And then you go on.

24 "The annual fire alarm and sprinkler  
25 testing verifications final certificates

1           have not been received that will indicate  
2           any and all deficiency items during the  
3           inspection have been corrected."

4           This would be information from Vipond,  
5           is that correct?

6           A. For the corridors?

7           Q. No, the annual fire alarm and  
8           sprinkler testing verifications?

9           A. Yes, yes, or whoever the agency is  
10          that did the testing.

11          Q. Okay. So this is -- you want the  
12          documentation behind the certificate?

13          A. Yes.

14          Q. That is to say what works and what  
15          doesn't work and hopefully everything works?

16          A. Yes.

17          Q. Okay.

18                 "The audit was completed on September  
19                 29, 2010 so I would assume that the  
20                 recommendations must be complete or well  
21                 underway. Could you please have these  
22                 items completed and verification forwarded  
23                 to my office before January 31, 2011."

24                 So you have given him a deadline but  
25                 what are you asking for? What is he supposed to

1 do by the 30th of January -- 31st of January of  
2 2011?

3 A. Give me the Vipond records.

4 Q. And --

5 A. And then work at getting the lock  
6 box done for the sprinkler room, which is a box  
7 that's located outside for our purposes. The flow  
8 testing was still outstanding, which was the  
9 testing of the stand pipe system and the top of  
10 the hotel tower, that we were still waiting for  
11 that information as well.

12 Q. Okay. So getting back to the last  
13 paragraph that is what you're wanting from Vipond  
14 is you want the results of -- you want really two  
15 things. You want the results of the Vipond  
16 testing on the sprinkler and the fire alarm  
17 system. So you want what happened in the test,  
18 correct?

19 A. Yes.

20 Q. And you also want verification that  
21 any defects that they find are fixed, is that  
22 correct?

23 A. Yes.

24 Q. And those two items are to be  
25 produced by the 31st of January 2011?

1 A. Yes.

2 Q. Okay. Now if you could turn to tab  
3 68, and this is Exhibit No. 940. Okay. And this  
4 is a memo to file from yourself. It captures a  
5 phone call that you had with Clarke Bridge of  
6 Vipond. This is a chap I assume you know?

7 A. Yes. He works for Vipond. I think  
8 he's one of the supervisors there.

9 Q. And this is the 28th of January.  
10 "Clarke advised me that Mr. Nazarian called and  
11 spoke to him about the hotel smoke detectors in  
12 the hallway as per the inspections..." These are  
13 the very things that Mr. Wood had highlighted in  
14 his audit, correct?

15 A. That's correct.

16 Q. "...and said he is not going to do  
17 it and will put battery alarms in." That's a  
18 different animal all together is it not?

19 A. Exactly.

20 Q. And battery alarms are not intended  
21 nor are they a substitute for smoke detectors?

22 A. That's correct. And I believe Mr.  
23 Clarke Bridge tried to have that discussion with  
24 him.

25 Q. "Clarke tried to advise him and Mr.

1 Nazarian said he is not fucking doing it.  
2 Clarke advised it is a fire Code  
3 requirement and Mr. Nazarian advised him  
4 that he doesn't care about the fucking  
5 fire decode. That basically concluded his  
6 call.

7 I advised Clarke that I will be  
8 charging Mr. Nazarian next week as all the  
9 deficiencies will not be completed by  
10 January 31st."

11 And you in fact charged Mr. Nazarian  
12 with two counts. If we can look at tab 70. Oh  
13 sorry, Exhibit No. 1132. Next page, thank you.  
14 This is the count that relates to the fire  
15 alarm -- the fail to maintain in operating  
16 condition the fire alarm system, as required by  
17 division B, of the regulation which is the fire  
18 Code portion of Fire Protection and Prevention  
19 Act, correct?

20 A. That's correct.

21 Q. And you laid a similar count with  
22 respect to the sprinkler system?

23 A. That's correct. And I also went to  
24 the work of outlining I think it was another 18  
25 charges that were drafted and prepared. And did

1 all of that work with regards to an inspection  
2 that was done. And as of the -- they did get  
3 those things done before I laid the charge, or I  
4 didn't charge him on that but I did charge them on  
5 these.

6 And just back to Mr. Bridges' comments.  
7 At this point I'm not a happy camper and quite  
8 take aback by the comments. Because now it was a  
9 direct in-your-face, I'm not doing it and that was  
10 it. From this I took steps here to charge him and  
11 get these things corrected.

12 Out of all the inspections that we do,  
13 and we do a lot of them per year, we have a very  
14 good success rate. I've never come across an  
15 individual like this before. I've only -- we've  
16 only laid two charges that we've had to lay. A  
17 big part of the inspection program is the  
18 education with the owners so that they understand  
19 why these things need to be done. And it was  
20 obviously clear now that there's -- he just  
21 doesn't care, period.

22 Q. If the deficiencies with respect to  
23 the sprinkler are contained in Exhibit No. 3618.

24 A. Is there a tab number for that, Mr.  
25 Wallace?

1           Q. Again, I think you're going to come  
2 up short. It's tab 69 and it would be the page  
3 ending 633.

4           So these are the things that Vipond  
5 disclosed to you as to where the sprinkler system  
6 in the mall was not up to Code?

7           A. That's correct.

8           Q. In some cases, for example, it's not  
9 a question whether the sprinkler worked or didn't  
10 work, but it was the location of the sprinkler  
11 that was the issue?

12          A. Yes. That's like in number two  
13 sprinkler head -- sorry. "Shoppers Drugmart has  
14 two sprinklers too close together." So somewhere  
15 along the line these heads are too close to get  
16 the proper pattern. The system still works but it  
17 might not be quite as effective and there is a  
18 standard that has to be followed.

19          Q. And I'll take a stab at this,  
20 Exhibit No. 3576. These are the deficiencies that  
21 Vipond disclosed to you with respect to the smoke  
22 detector, fire alarm system?

23          A. Yes.

24          Q. And it's -- these are the factual  
25 bases for the two charges that were laid against

1 Eastwood Mall Inc.?

2 A. That's correct. If you want we can  
3 just touch really quickly on some of these items.  
4 As you look through here like number 1, "THE  
5 FOLLOWING BELLS NEED REPLACING." It probably  
6 didn't. It probably worked but it still wasn't  
7 loud enough. If you go to number 2, "2ND FLOOR  
8 SMOKE DETECTOR NEAR 208 IS DAMAGED AND NEEDS  
9 REPLACING." The "SHOPPERS DRUG MART PULLSTATION  
10 BACKBOX NEEDS SECURING." So the equipment is there  
11 but it's not snug. So these are basically  
12 maintenance items that need attention.

13 Q. And of course item 7 is the one that  
14 was originally brought to your attention, that is  
15 the need to replace all those smoke detectors in  
16 the hallways?

17 A. Yes.

18 Q. Now obviously the laying of the  
19 charge did nothing -- does nothing to absolve the  
20 company from remediating the situation, correct?

21 A. No, that's right. They still -- you  
22 still want them to fix it.

23 Q. Yeah. So the charge was laid in  
24 early February of 2011?

25 A. That's correct.



1 Q. And it wasn't until March of 2012  
2 that in fact the situation was corrected. And if  
3 we can turn to tab number 80, Exhibit No. 3718.

4 Chief, you see that it says, "As of  
5 today's date..." this is the 15th of March of  
6 2012.

7 "...this is to acknowledge the correction  
8 of all of the Fire Alarm and Sprinkler  
9 deficiencies from the August, 2010 and  
10 August, 2011 Fire Alarm and Sprinkler  
11 annual inspections."

12 And so as of 15th of March this chapter  
13 was closed as far as getting compliance, correct?

14 A. Yes, it was closed but there was  
15 still difficulties along the way. What they were  
16 trying to do was get done before the Court case in  
17 order to enter a plea agreement. And I had a  
18 minimum fines that I was trying to get which was  
19 5,000 per count.

20 Prior to this Mr. Nazarian actually told  
21 the Courts that the work was completed. Upon  
22 subsequent inspection they were not completed.  
23 And then eventually we ended up getting here and  
24 completing these items. And we ended up with a  
25 plea agreement that he had all the work completed.

1 He agreed to -- or there was a five thousand  
2 charge. He plead guilty to the two counts.

3 He ended up getting a year to pay for  
4 these infractions, which I checked just a week  
5 ago, which they would have been up on April 15th  
6 of this year and both those charges have not been  
7 paid yet.

8 This ended up costing me -- not costing  
9 me, excuse me. But costing the municipality  
10 \$24,000 and a lot of time. I did go to Council  
11 when -- and told them I would be spending their  
12 money on chasing these infractions. And they -- I  
13 had their full support to do so.

14 Q. And if we could just have a quick  
15 look Exhibit No. 3720. This is Mr. Cassan's  
16 reporting letter to you, because I gather you  
17 weren't actually in Court when the plea was  
18 entered?

19 You'll see his correspondence is dated  
20 the 26th, but he's confirming that he attended at  
21 the Provincial Court -- Provincial Offenses Court  
22 here on the 22nd. "...pleas were entered and the  
23 Court ordered that a \$5,000.00 fine be imposed per  
24 count." Which is completely consistent with what  
25 you've indicated, that is that you did an

1 inspection prior to the plea being entered by Mr.  
2 Nazarian's company, correct?

3 A. Yes.

4 Q. You weren't going to take the plea  
5 and then accept his promise to do the work in some  
6 time?

7 A. No, absolutely not.

8 Q. Sort of like the cheque's in the  
9 mail, right?

10 A. Oh yeah, exactly.

11 Q. There's just one final area.

12 A. I wasn't in attendance that day as  
13 well.

14 Q. Yeah. Now this is a document you  
15 haven't seen the typed version, you've seen the  
16 rough version here. And this doesn't have an  
17 exhibit number OPPE000003757.0007.

18 MS. KUKA: Exhibit No. 3709.

19 BY MR. WALLACE:

20 Q. This is a -- as we can see it is a  
21 Fire Inspection Report from February the 7th,  
22 2012. And I want to draw your attention to the  
23 last two items that your Captain Connors found.  
24 "Various holes in ceiling of mall common area in  
25 need of repair." And "Fire proofing material has

1     fallen off steel beam in back hallway behind  
2     Dollarama." So we can see that the fireproofing  
3     problem has resurfaced?

4             A. That's correct.

5             Q. And the inspection date is the 7th  
6     of February. And a reinspection date is the  
7     12th -- sorry March of 2012, doesn't specify the  
8     particular date.

9             And if we go to tab 78, which is Exhibit  
10    No. 243. And if you go into page 1836. So there  
11    is a -- this appears to be the work of Darren  
12    Connors again?

13            A. That's correct.

14            Q. And he's gone back on the 5th of  
15    March and if we look at his handwriting -- the  
16    handwritten notations. On the bottom two  
17    deficiencies.

18            "Various holes in ceiling of mall common  
19    area in need of repair. Not done.  
20    Fireproofing material has fallen off steel  
21    beam in back hallway behind Dollarama.  
22    Not done."

23            did you have any conversation with  
24    anybody from Eastwood as a result of this --  
25    either the inspection report of February or this

1 reinspection report?

2 A. This one I probably wouldn't have  
3 been involved yet.

4 Q. And the next document that I would  
5 like you to look at is if you could look at the  
6 page -- the page previous to this, 1835. These  
7 are handwritten notes. Is this Darren Connor's  
8 writing?

9 A. I believe so.

10 Q. Okay. And this is a notation of 1st  
11 of May of 2012.

12 "Received a letter from Rhonda from  
13 engineer MRW [M.R. Wright] regarding  
14 caulking to be used on roof cracks. Does  
15 not refer to Berain DF (tar) that they are  
16 really using. Also received info from  
17 Rhonda referring to driveway sealant  
18 (water logged) to be used as final coat.  
19 Again, no reference to Berain DF.

20 Also, no time frame from Rhonda as to  
21 completion still"

22 What is the significance of this  
23 notation here?

24 A. They were working on the roof and  
25 they had brought in -- and this is around where I

1 did get involved. And some of the significance  
2 here is that they brought in this waterproofing  
3 material that was water based. And during his  
4 reinspection Darren came across this material and  
5 he was concerned that they had more -- too much  
6 fire load. I mean it's tar right? And that's  
7 exactly what he was looking for to see if it was  
8 in fact -- chasing Rhonda to ensure that it was a  
9 water-based material and the stuff is not going to  
10 pose a problem.

11 The thinking at this time she was  
12 getting pretty annoyed with Darren. I received a  
13 telephone call from her advising that he's  
14 harassing here because he's talking about this,  
15 and also talk about getting the fireproofing  
16 material done. I reinforced and supported Darren  
17 and shortly right around this time I believe I  
18 advised them we're not going to fool around with  
19 this and we'll just charge.

20 Q. The missing fireproofing this would  
21 be a consequence of continuation of the leaks,  
22 correct?

23 A. I don't know if it was from the  
24 leaks. I think did it not say it was a  
25 mechanical -- that it was knocked off mechanical?

1 Like I think somebody hit it and knocked it off?

2 Q. Okay. If you go to the page 1834,  
3 on the right hand side you see some handwritten  
4 notes there. You'll see "April 20/12 Bob will be  
5 here April 30/12." See that?

6 A. May 1st. Okay, yeah. "Bob a  
7 no-show."

8 Q. Yeah. And then beside the note of  
9 "Bob will be here April 30/12" there's a  
10 handwritten note Rhonda to I presume submit time  
11 plan?

12 A. Timeline. Yeah, I believe that was  
13 for the correction of fireproofing material.

14 Q. And then beside the note of May 1,  
15 2012 "Bob a no-show, still waiting for fire  
16 separation fix. Asked for time line chief  
17 said..." and I just can't read the rest of it  
18 there. In any event, you had -- Darren on your  
19 behalf had been asking for a schedule as far as  
20 getting this work done, correct?

21 A. Yes.

22 Q. And if you look at the page ending  
23 1833. Now I think we should be looking at the top  
24 of the page. Here we now have a Fire and Safety  
25 Inspection Order?

1 A. Yes.

2 Q. This is the first time that an order  
3 has been issued against Eastwood, correct?

4 A. Yes.

5 Q. And the rationale behind this is  
6 that you've just run out of patience?

7 A. Yes.

8 Q. And it's dated the 31st of May of  
9 2012?

10 A. Yes.

11 Q. And how does -- how does this differ  
12 from the Fire Safety Inspection Reports?

13 A. The order is spoken to in the Fire  
14 Code. I believe it will give you more teeth.

15 Q. Well in fact there's actually an  
16 offense under the Fire Protection and Prevention  
17 Act of failing to comply with an order made under  
18 the Fire Code, correct?

19 A. That's right.

20 Q. So failure to satisfy this order, in  
21 and of itself could form the basis of a  
22 prosecution?

23 A. Then you charge with fail to comply.

24 Q. Fail to comply with the order?

25 A. Yes.



1 Q. Okay. And it lays out the basis for  
2 it and it said, if you look at the middle of the  
3 page.

4 "Inspection Report(s) Dated: February 7,  
5 2012, March 5, 2012. Visits on April 20,  
6 2012 & May 1, 2012 no inspection reports  
7 as I was advised by Chief to allow Rhonda  
8 to create a time line as to when to expect  
9 work to be completed."

10 And it goes on to say that the work  
11 still remains outstanding. And the date for the  
12 reinspection is set for the 15th of June?

13 A. That's correct.

14 Q. What was expected to be done by the  
15 15th of June?

16 A. That we have that timeline. When I  
17 spoke to Rhonda, when she was actually complaining  
18 about Darren and we went through all of the past  
19 history and items that this needs to get done.  
20 And she reassured me, now you have to remember  
21 that Rhonda's fairly new. I've been working with  
22 her probably for a year now, or probably a little  
23 over a year.

24 She brought up their hotel fire safety  
25 plan. Those other 18 items that were going to be

1 charged on she goes those cleaned up. Her problem  
2 was that she couldn't get Mr. Nazarian to move  
3 forward on the fire alarm and sprinkler systems.  
4 But she seemed much more attentive to get these  
5 things done, and I was assured we were going to  
6 get them done.

7 Now she -- and this was passed on to  
8 Darren. Might even have a notation somewhere to  
9 that. I believe Mr. Connors was -- ended up off  
10 on that reinspection date and the next set of days  
11 was the week of the 25th which by then he would  
12 have been back.

13 Q. So if we could just have a look at  
14 the last page in this exhibit, it's page 1842.  
15 And I guess I should have probably asked you that  
16 last question after having shown you this  
17 document. This is from Darren Connors to Rhonda  
18 Bear. And he's giving her this letter at the same  
19 time as he's providing her with the order dated  
20 the 31st of May, and the correspondence that's  
21 dated the 31st of May. See that?

22 A. I'm not on the same document.

23 Q. You can see he is reciting to her  
24 the history and the fact that he hasn't received  
25 anything yet. And the last paragraph is.

1                    "In order to move this issue forward  
2                    and avoid unnecessary prosecution, please  
3                    provide the fire department with a time  
4                    line and completion date of the roof and  
5                    fire separation work by the end of the  
6                    day, Thursday May 31st, 2012."

7                    So I think we can agree that the date on  
8                    the order of the 15th of June was not to produce  
9                    the timeline, because he's not giving her to the  
10                  15th of June he's giving her to that business day  
11                  to produce it.

12                  So I have two questions. Number one,  
13                  did she produce a timeline to your knowledge?

14                  A. That I don't know unless it's in  
15                  here.

16                  Q. You're not aware of one having been  
17                  produced?

18                  A. No, no.

19                  Q. And I think we can agree that if she  
20                  produced one on the 31st of May you would have  
21                  been informed because you don't issue these orders  
22                  very often do you?

23                  A. No. No. And that's what I said. I  
24                  can remember having this discussion with Mr.  
25                  Connors that we were not going to let this go.

1 Q. And can we not agree then that at  
2 least on the 31st of May she didn't produce a  
3 timeline otherwise you'd be able to tell us if she  
4 did?

5 A. No. I mean at this point Darren is  
6 dealing with this. If it's not in the records  
7 then she probably did not.

8 Q. Okay. And the other thing is, do  
9 you have any idea then what the significance of  
10 the 15th of June was when he gave her to 15th of  
11 June -- or just said the reinspection date of the  
12 15th of June? Do you know what the significance  
13 of that is?

14 A. Yes, if it wasn't done then we  
15 probably would have charged. That was the  
16 direction given to Darren to move it forward,  
17 which we would have charged with fail to comply.

18 Q. And if the work had not been done we  
19 the 15th of June should they be charged with fail  
20 to comply?

21 A. Yeah. Like I said, we had the time  
22 to -- or had the discussion to move that forward.  
23 I don't believe he was in that day though.

24 Q. And you don't -- do you have any  
25 information to indicate that he followed up on it

1 at any point in time prior to the collapse? That  
2 is the 23rd of June.

3 A. No I don't.

4 Q. Okay. Chief, those are my  
5 questions. Thank you very much.

6 THE COMMISSIONER: Mr. Cassan.

7 MR. CASSAN: Thank you, Mr.  
8 Commissioner. I will be brief.

9 CROSS-EXAMINATION BY MR. CASSAN:

10 Q. Good afternoon, Chief. I understand  
11 that you had an opportunity be involved with  
12 inspections of the mall both during the tenure of  
13 Elliot Lake Retirement Living and under Mr.  
14 Nazarian. And I'm wondering if you can compare  
15 your experience with inspections under the tenure  
16 of each owner?

17 A. When Retirement Living owned the  
18 mall we did not have issues like we dealt with Mr.  
19 Nazarian. The place was clean. The tiles were in  
20 place. Their fire safety, fire alarm system and  
21 sprinkler system testing was done on an annual  
22 basis. And the repairs, if needed, were done. I  
23 had very little recollection of the guys coming  
24 and saying there was a problem when Retirement  
25 Living had -- had the mall. With that said, we

1 also dealt with Retirement Living with a lot of  
2 their large apartments. And they knew what needed  
3 to be done to pass their inspections. So that --  
4 they were good at it.

5 When it came to Mr. Nazarian and his  
6 occupancy it seemed the slowly migrate downwards.  
7 Which was probably due to a reduction in staff,  
8 and that's where we ended up having more issues.

9 Q. And how about their level of  
10 cooperation? Do you have any observations to  
11 compare the two owners in that respect?

12 A. Retirement Living would rarely get  
13 to a second notice. If they were -- if they were  
14 given a notice on what to do when you came back it  
15 was complete.

16 Obviously with Mr. Nazarian it wasn't  
17 the case, it seemed to get progressively worse  
18 through the years where it would take longer to  
19 get the items corrected.

20 Q. Because Mr. Wallace did such a  
21 thorough job my questions are going to seem to  
22 jump around a bit. But with respect the your  
23 experience about prosecutions, and this is either  
24 in the Building Department or the Fire Department.  
25 If a person or a landowner was working on a

1 problem that you had received a complaint about,  
2 how would that affect your decision to prosecute?

3 A. If they're working on it you would  
4 give them opportunity to finish. As I said, you  
5 take people at face value and you think that  
6 they're telling you the truth. And 99% of the  
7 time they do. Most people want to comply, they  
8 just don't know necessarily what they need to  
9 comply with. And obviously others they don't  
10 care.

11 Q. Taking you now to the issue of the  
12 hotel retrofit. In addition to the Algo Inn what  
13 other hotel retrofit audits did you perform? And  
14 tell me about the owners of those properties?

15 A. We did I believe it was Dunlop  
16 Lodge, it was a couple that owned that. It's a  
17 small hotel with dining facilities off of it.  
18 That one was completed. And also Denison House,  
19 which was owned by Retirement Living. I had  
20 somewhat -- had some difficulties with that one.  
21 They couldn't meet the requirements and it  
22 basically came to the point of shutting them down.  
23 And when it came to that, shutting them down, they  
24 closed it on their own.

25 Q. And so with respect to the hotel

1 retrofit audit program, was that something that  
2 was focused principally on Mr. Nazarian?

3 A. No, no. We did -- we did all of our  
4 -- the hotels in our community. And it took them  
5 quite a bit to get through it as well.

6 MR. CASSAN: Now, Mr. Commissioner, I  
7 some questions about the prosecution. And I know  
8 my friend Mr. Wallace asked some questions about  
9 that. I'm having trouble making up my mind if  
10 they're appropriate now or for re-exam. But  
11 because there are a number of exhibits I'm going  
12 to be asking to enter I think they should be dealt  
13 with now. If you are of a different opinion  
14 please let me know and I'll hold them until the  
15 end.

16 THE COMMISSIONER: Mr. Wallace?

17 MR. WALLACE: I don't have a problem if  
18 he wants to enter them now.

19 THE COMMISSIONER: Anybody else?

20 MR. CASSAN: It may allow my friends to  
21 ask questions on the documents as entered now.  
22 Ms. Kuka, can you pull up Exhibit No. 3610.

23 BY MR. CASSAN:

24 Q. I think this is at your tab 68,  
25 Chief.



1           A. Not quite but I can work off of  
2 this.

3           Q. I would like you to identify that  
4 document and your involvement with it.

5           A. Basically what it's saying is, "The  
6 mall deadline for fire alarm and sprinkler system  
7 is January 31, 2011. After speaking to the  
8 testing agency...", which was that call I made to  
9 Clarke Bridge from Vipond.

10           "...today it's apparent that the work will  
11 not be completed by the end of day Monday.

12           Therefore I have made arrangements  
13 and have our Ontario Fire Protection  
14 Advisor come Monday afternoon. We will  
15 proceed Tuesday to complete the charges  
16 against the mall. I have tried to work  
17 with the owner but it has come to the  
18 enforcement that must now takes place."

19           This is notifying the Council that I'm  
20 going to be charging the individual and I'll be  
21 spending money, that's it's a nonbudgeted item.

22           Q. And in order to proceed with charges  
23 did you need Council's permission.

24           A. No, I didn't. I'm just advising  
25 them that I'm going to charge. They do not really

1 have a say, but it is spending taxpayer's money  
2 and they have a right to know. And I actually had  
3 Council's full support.

4 MR. CASSAN: Ms. Kuka, this next  
5 document has not been entered as an exhibit but  
6 it's CEL3299.

7 THE COMMISSIONER: Exhibit number 2345.

8 EXHIBIT NO. 2345: E-mail dated May  
9 24/2011 at 6:13 p.m. from Paul Officer to  
10 Rob deBortoli, Dawn Halcrow and Leslie  
11 Sprague re. Eastwood Mall.

12 BY MR. CASSAN:

13 Q. And, Chief, I'm just wondering if  
14 you can just tell me about the information that  
15 you received and relayed in this document?

16 A. Can we just go back down a little  
17 bit so I can catch the front of this? Okay. I  
18 believe at that point Mr. deBortoli is the CAO  
19 or the Chief Administrative Officer. I have also  
20 cc'ed Mr. Bruce Ewald and copied my assistant as  
21 well.

22 This is related to a conversation that I  
23 had with Henry Laroue who was the mall manager. I  
24 believe at this point she was a former mall  
25 manager well maybe not. Anyway, what this is

1 dealing with is a problem that owner was bringing  
2 in people that -- low-income folks and renting the  
3 units out on a monthly basis. Which in fact I was  
4 asking for help from Bruce Ewald, who is the Chief  
5 Building Official, who also takes care of the  
6 Zoning By-Law, that the intent of the hotel is to  
7 have the traveling public come in and not to be  
8 used as apartments. Because if they're used as  
9 apartments they become -- it's a use that's not  
10 permitted under the Zoning By-Law, and that's not  
11 what the intended function of that hotel was.  
12 Because then we start ending up getting hot plates  
13 and things like that, and more contents.

14 Q. And so is that a concern from a Fire  
15 Code FPPA enforcement issue?

16 A. Yes, it was. We went through  
17 this -- I believe they actually got granted  
18 standing at the Rent Review Board. It took a bit  
19 of a process, which to be honest I was quite  
20 surprised. But they actually got that and they  
21 had to go through that process. Eventually this  
22 was all cleaned up and we worked to make sure that  
23 didn't happen.

24 There was an issue that was brought  
25 forward from Ms. Laroue, I believe it's the fourth

1 paragraph -- or fourth sentence down. "She also  
2 advised me of an electrical issue that I will deal  
3 with the ESA Inspector." And what this was was  
4 baseboard heaters that were being put in by the  
5 owner when the wall units would fail. And they  
6 actually had baseboard heaters that were  
7 appliances, or using them as appliances. I ended  
8 up contacting the ESA Inspector and we got that  
9 cleaned up as well.

10 And again this is back to dealing with  
11 Rhonda Bear I believe at this time, or pretty darn  
12 close to it. I believe it is this time. And when  
13 she found out she was a little more attentive to  
14 getting these things taken care of.

15 Q. And, Chief, the first paragraph  
16 indicates that you've "...had a conversation with  
17 Henry Laroue and she had to resign as she 'do  
18 [sic] to many illegal activities'." What was that  
19 about? Do you recall?

20 A. Yeah. Part of that was I believe  
21 through some of these activities with the monthly  
22 renters. She was instructed to actually go into  
23 the units and do whatever she needed to do without  
24 following the notice provisions that are required  
25 if you're going to enter a dwelling. That's at

1 least one that she expressed to me. And I know  
2 there was another one but I'm not pulling it out  
3 of my hat right now. So if I think of it I'll try  
4 and bring it forward for you.

5 THE COMMISSIONER: This is a lot of  
6 hearsay.

7 MR. CASSAN: I know it is hearsay, Mr.  
8 Commissioner, but Henri Laroue is going to be  
9 called as a witness.

10 THE COMMISSIONER: Then we should hear  
11 from that lady then.

12 MR. CASSAN: I can move on to document  
13 CL678, Ms. Kuka. Again that's not an exhibit.  
14 Exhibit No. 2346.

15 EXHIBIT NO. 2346: Letter dated August 3,  
16 2011 from Paul Officer to Paul Cassan re.  
17 Eastwood Mall Pre-Trial.

18 BY MR. CASSAN:

19 Q. And I've certainly seen this before,  
20 Chief, but if you can take us through what was  
21 going on with this letter?

22 THE COMMISSIONER: What's the date of  
23 it?

24 MR. CASSAN: August the 3rd, 2011.

25 THE WITNESS: I'm going to have to read

1 this. Essentially can you just go down a little  
2 bit? Sorry, the other way.

3 "I am in receipt of your letter to me  
4 dated July 28, 2011 and your letter to Mr.  
5 Fabris that is also dated July 28, 2011.

6 I have not read the lease supplied by  
7 Mr. Fabris for his client's defense as it  
8 is of no consequence to the charges. The  
9 hotel is only a portion of the entire mall  
10 complex and the two charges against  
11 Eastwood Mall Inc. are for the entire mall  
12 complex which includes the hotel. If he  
13 contracted out portions of his maintenance  
14 to another party, be it by lease or  
15 contract, it still does not release him of  
16 his responsibility.

17 The request for the file back to his  
18 time of purchase does not have any bearing  
19 on the charges and I would like to inform  
20 you that Mr. Fabris can ask his client for  
21 a copy of all inspections as Eastwood Mall  
22 Inc. have been copied in on every  
23 inspection that has been conducted at the  
24 mall since their purchase."

25 Actually he would have it and the mall

1 manager would have one

2 "I believe they are fully aware of the  
3 multitude of inspections that take place  
4 each year and are just looking to stall  
5 matters. I have no issue giving them  
6 information again but it will triple the  
7 brief size, take an enormous amount of  
8 staff size and add to our legal costs.

9 As you stated the primary mandate is  
10 to ensure public fire safety, so I would  
11 entertain the \$10,000 fine with an mediate  
12 compliance date for the sprinkler and  
13 alarm systems just to get the systems in  
14 compliance. Mr. Nazarian has shown  
15 complete disregard for fire safety and I  
16 believe that we will require a minimum of  
17 a plea agreement. My second obligation is  
18 to the taxpayers of Elliot Lake and to  
19 complete this issue in the most economical  
20 manner."

21 This is basically my instruction to you  
22 on how I would like to move forward.

23 Q. Okay. And the next document is  
24 ELFD1687?

25 MS. KUKA: Exhibit No. 2347.

1 EXHIBIT NO. 2347: Letter dated November  
2 2, 2011 from Paul Cassan to Paul Officer.  
3 BY MR. CASSAN:

4 Q. Just wondering if you can tell me  
5 about your recollection of what happened in this  
6 event?

7 A. What it's saying.

8 "Mr. Cassan attended on a pretrial of  
9 this matter which was conducted by  
10 telephone conference today, November 2nd,  
11 2011. He has provided to me by email, a  
12 previous summary of the events that took  
13 place at the pretrial I relay to you as  
14 follows: 'All issues apparently  
15 repaired.'

16 Mr. Cassan has asked that you arrange  
17 to have the premises inspected as soon as  
18 possible with a view to having this matter  
19 resolved by Tuesday, November 15th, 2011."  
20 This is where they said all things were  
21 done. I did an inspection and it was not done.

22 Q. And what did you think about that?

23 A. Well not much. I mean coming to  
24 Court but it's done. I wasn't very happy.

25 MR. CASSAN: If I can get you to pull



1 up, Ms. Kuka, Exhibit No. 3692.

2 BY MR. CASSAN:

3 Q. I guess that just confirms what you  
4 told us?

5 A. Yes.

6 Q. And do you recall what the plan was  
7 at that point?

8 A. Just continue on with the charges  
9 with the -- what this is saying is that.

10 "For your information, contrary to my  
11 attendance on the pre-trial, the  
12 deficiencies have not been rectified.  
13 Please advise what your intentions will be  
14 at Court at the next return date of  
15 November 16th, 2011."

16 I believe we were still trying to move  
17 this forward. It actually ended up being dragged  
18 out the very last minute. And I believe, if I  
19 remember correctly, the plea agreement was a day  
20 or two, maybe even the day before the actual  
21 trial. We made arrangements to have Ms. Laroue  
22 come back to Elliot Lake. She was living out in  
23 Alberta. Those arrangements and costs were  
24 already covered by the municipality. We were  
25 moving ahead one way or the other. And we ended

1 up getting that plea agreement and we weren't able  
2 to get refunded for that ticket.

3 MR. CASSAN: And finally, Ms. Kuka, can  
4 you pull up Exhibit No. 136.

5 BY MR. CASSAN:

6 Q. Now I understand this is your report  
7 after the conviction?

8 A. Yeah. Essentially I report through  
9 the -- it was called then the By-Law and Planning  
10 Committee. And it's with regards to the charges  
11 that were done on 2011. And.

12 "After months of trying to work with  
13 the owner to complete deficiencies, the  
14 Eastwood Mall was charged under the Fire  
15 Protection and Prevention Act on March 23,  
16 2011 for two counts:

17 1. Did fail to maintain in operating  
18 condition the fire alarm system.

19 2. Did fail to maintain in operating  
20 condition the sprinkler system.

21 It took the mall --"

22 THE COMMISSIONER: I don't think we need  
23 -- that's the letter you wrote?

24 BY MR. CASSAN:

25 Q. I'm wondering if I can draw your

1 attention to the very last paragraph, Chief. And  
2 --

3 A. Yes, thank you. And essentially  
4 what it's saying is.

5 "If the need ever arises that we have  
6 to re-issue charges against this same  
7 corporation, with a conviction already on  
8 record the second-time offender will have  
9 shown a pattern and will be dealt with in  
10 a severe manner by the court."

11 Q. And my friend Mr. Wallace was asking  
12 you about the subsequent inspections and default,  
13 and I just wonder if that played into your  
14 strategy the second time around?

15 A. Yes, it did. To be honest with you  
16 at this time I wanted to cream him.

17 Q. I have no further questions, thank  
18 you.

19 THE COMMISSIONER: Who is going to want  
20 to cross-examine? I think I'm about ready to  
21 close shop today, gentlemen.

22 MR. LONGO: I certainly intend to, sir.  
23 Half an hour.

24 MR. MACRAE: I intend to as well.

25 THE COMMISSIONER: All right. Be here

1 at 9:00 tomorrow morning, Chief Officer. We'll  
2 start begin at that time.

3 --- Whereupon the Inquiry proceedings  
4 adjourned for the day at 4:55 p.m.

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REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, 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  
accurate transcript of my shorthand notes so  
taken.

Dated this day 29th day April of 2013.

Helen Martineau

PER: Helen Martineau

Certified Shorthand Reporter

<b>\$</b>	<b>12,500</b> 6101:19	<b>18th</b> 6085:10 6129:13,19	<b>2002</b> 6037:22 6038:21,22,24 6039:14 6054:8 6055:17	6206:6
<b>\$10,000</b> 6218:11	<b>123</b> 6168:2	<b>1970s</b> 6177:24		<b>208</b> 6195:8
<b>\$24,000</b> 6197:10	<b>124</b> 6168:16	<b>1979</b> 6172:1	<b>2006</b> 6045:8,10 6046:13 6078:3, 10 6079:4,5 6080:12 6081:13, 17 6083:7 6088:10 6090:7, 13 6092:21 6099:6 6102:3 6105:25 6106:15 6146:8 6154:1,3	<b>20th</b> 6119:21 6121:5 6142:15
<b>\$5,000.00</b> 6197:23	<b>12:55</b> 6131:12	<b>1981</b> 6037:7		<b>21</b> 6071:16
<b>0</b>	<b>12th</b> 6199:7	<b>1986</b> 6049:8		<b>21st</b> 6037:7 6079:3
<b>02</b> 6180:15	<b>13</b> 6180:24	<b>1989</b> 6049:13,15		<b>22</b> 6125:11 6128:1,6 6184:19
<b>04</b> 6127:23	<b>1324</b> 6152:18	<b>199</b> 6051:2		<b>22nd</b> 6115:18 6197:22
<b>1</b>	<b>13th</b> 6098:19 6102:3	<b>1990</b> 6049:11 6054:2		<b>2343</b> 6073:1,2
<b>1</b> 6139:9 6159:21 6161:19 6168:18 6195:4 6202:14 6204:6	<b>14</b> 6091:21 6092:22	<b>1991</b> 6049:25 6051:3	<b>2007</b> 6101:3 6103:4 6114:15 6115:18 6117:4,9, 24 6118:6 6120:17 6128:1,6, 17	<b>2344</b> 6125:5,6
<b>1.1</b> 6074:3	<b>1446</b> 6156:4	<b>1994</b> 6051:3 6054:2 6055:16, 23 6065:20		<b>2345</b> 6213:7,8
<b>1.7</b> 6074:4	<b>1462</b> 6169:22	<b>1998</b> 6051:6	<b>2008</b> 6119:22 6125:7,13 6126:16 6129:13, 19 6132:6,24	<b>2346</b> 6216:14,15
<b>10</b> 6087:13,21	<b>14th</b> 6133:16	<b>1999</b> 6051:12 6113:6,11		<b>2347</b> 6218:25
<b>102</b> 6144:23 6162:5	<b>15</b> 6052:8 6092:21 6161:13, 20 6183:21	<b>19th</b> 6090:7 6176:18	<b>2009</b> 6132:4,12, 25 6133:16 6137:6 6142:15 6143:14 6145:2 6148:23 6156:11 6161:13,21,24 6162:8 6168:4,6, 8,17 6169:4,8 6179:2,5	<b>23rd</b> 6039:13 6051:19 6093:10 6125:12 6208:2
<b>10:00</b> 6178:14	<b>15,000</b> 6101:15	<b>1st</b> 6037:19 6096:13 6098:1,6 6102:10 6150:4 6169:22 6200:10 6202:6		<b>24</b> 6170:2
<b>10th</b> 6079:5	<b>151</b> 6128:13	<b>2</b>		<b>24-7</b> 6061:15
<b>11</b> 6103:10 6162:6	<b>15th</b> 6093:2 6196:5,12 6197:5 6204:12,15 6206:8, 6207:10, 12,19	<b>2</b> 6034:3,4,6,9 6058:5 6070:24 6089:8 6131:11 6158:6 6159:22 6164:4 6195:7		<b>24/2011</b> 6213:9
<b>11-09</b> 6087:14	<b>16</b> 6099:6 6112:18 6169:8	<b>2.2.1.1</b> 6093:24		<b>24/7</b> 6076:12
<b>11-11</b> 6046:24	<b>160</b> 6063:9	<b>20</b> 6052:13 6108:5 6110:12 6125:7 6168:8 6169:3 6186:11 6204:5		<b>243</b> 6199:10
<b>11-12</b> 6046:16	<b>162</b> 6112:18	<b>20's</b> 6045:17		<b>24th</b> 6086:25 6087:12 6090:5 6095:23 6101:8 6136:23 6137:6 6138:3 6143:6,7, 14 6160:25
<b>11-120</b> 6082:7	<b>163</b> 6115:17	<b>20/12</b> 6202:4		<b>25</b> 6100:21
<b>11-124</b> 6085:7	<b>16th</b> 6168:16	<b>200</b> 6108:13 6159:14		<b>25/09</b> 6131:22
<b>11-169</b> 6125:11	<b>1705</b> 6082:23	<b>2000</b> 6037:15,19 6038:14,20,24		<b>25th</b> 6132:3 6145:1 6148:12, 23 6149:21 6151:19 6153:1,2 6205:11
<b>11-19</b> 6078:18	<b>171</b> 6138:7			<b>26</b> 6127:2
<b>11-23</b> 6087:14	<b>1752</b> 6183:4			<b>26th</b> 6197:20
<b>1132</b> 6192:13	<b>18</b> 6052:12 6192:24 6204:25			<b>273</b> 6049:3
<b>11:05</b> 6078:6	<b>1833</b> 6202:23			<b>28</b> 6156:11 6187:23 6217:4,5
<b>11:15</b> 6121:5	<b>1834</b> 6202:2			
<b>11:25</b> 6078:7	<b>1835</b> 6200:6			
<b>12</b> 6102:5 6183:12	<b>1836</b> 6199:10			
	<b>1842</b> 6205:14			

<b>28th</b> 6103:9 6156:5,16 6162:8 6191:9	<b>357</b> 6144:22	<b>500</b> 6064:24	<b>8.(1)of</b> 6147:22	6182:4 6198:7
<b>29</b> 6189:19	<b>3576</b> 6194:20	<b>52</b> 6176:16	<b>80</b> 6196:3	<b>absolve</b> 6195:19
<b>29th</b> 6186:8 6188:13	<b>3577</b> 6180:5	<b>55</b> 6177:2	<b>80s</b> 6044:10	<b>absorb</b> 6110:11
<b>2:00</b> 6131:14	<b>3583</b> 6185:19	<b>59</b> 6178:25	<b>81</b> 6037:11 6039:20	<b>absorbent</b> 6167:2
<b>2nd</b> 6038:13 6195:7	<b>3589</b> 6188:3,6	<b>5th</b> 6161:14 6162:20,21,24 6163:7 6199:14	<b>835</b> 6177:3	<b>abused</b> 6157:22
<hr/> <b>3</b> <hr/>	<b>3610</b> 6211:22	<hr/> <b>6</b> <hr/>	<b>8th</b> 6168:3	<b>accept</b> 6198:5
<b>3</b> 6143:19 6158:17 6159:25 6165:23 6216:15	<b>3618</b> 6193:23	<b>6</b> 6098:14 6128:5 6141:24 6146:12 6158:19	<hr/> <b>9</b> <hr/>	<b>acceptability</b> 6092:16
<b>30</b> 6063:6 6075:22 6076:3 6089:9 6096:5,12 6142:8 6143:24 6159:16 6161:23 6162:22 6170:4 6184:17 6186:10	<b>365</b> 6076:12	<b>60</b> 6180:4	<b>9</b> 6186:9	<b>acceptable</b> 6093:3 6159:19
<b>30/12</b> 6202:5,9	<b>3709</b> 6198:18	<b>600</b> 6064:24 6065:12 6066:20	<b>9.9</b> 6172:14,16 6177:10 6183:22	<b>accordance</b> 6181:19
<b>300</b> 6063:5	<b>3718</b> 6196:3	<b>63</b> 6183:3	<b>90</b> 6044:21	<b>accounts</b> 6032:24
<b>302</b> 6131:17	<b>3720</b> 6197:15	<b>633</b> 6194:3	<b>90%</b> 6179:19	<b>accurately</b> 6187:9
<b>30th</b> 6161:4 6162:12 6163:1 6176:24 6190:1	<b>38</b> 6152:24	<b>66</b> 6188:2,5	<b>90s</b> 6054:1	<b>achieve</b> 6091:23 6172:5 6176:3
<b>31</b> 6131:20 6189:23 6212:7	<b>39</b> 6170:4,9	<b>68</b> 6191:3 6211:24	<b>938</b> 6179:1	<b>achieved</b> 6164:8
<b>31st</b> 6190:1,25 6192:10 6203:8 6205:20,21 6206:6,20 6207:2	<b>3:30</b> 6185:12	<b>69</b> 6194:2	<b>940</b> 6191:3	<b>acknowledge</b> 6196:7
<b>33</b> 6146:14	<b>3:50</b> 6185:13	<b>6:13</b> 6213:9	<b>95</b> 6051:3	<b>acronyms</b> 6062:20
<b>3369</b> 6095:16	<b>3rd</b> 6037:22 6216:24	<b>6th</b> 6102:2 6178:13	<b>986</b> 6127:3	<b>act</b> 6044:11 6057:12 6061:21 6076:10 6085:19 6094:12 6145:25 6147:22 6181:2 6185:23 6192:19 6203:17
<b>3411</b> 6119:18	<hr/> <b>4</b> <hr/>	<hr/> <b>7</b> <hr/>	<b>99</b> 6037:14 6039:21	<b>acting</b> 6037:15 6172:9
<b>342</b> 6160:23	<b>4</b> 6087:23 6144:24 6161:19 6168:18	<b>7</b> 6141:24 6195:13 6204:4	<b>99%</b> 6210:6	<b>action</b> 6041:19 6136:6 6184:18
<b>3507</b> 6133:9	<b>40</b> 6161:1,2	<b>70</b> 6192:12	<b>a.m.</b> 6078:6,7 6178:14	<b>actions</b> 6043:16 6061:21 6096:1
<b>3515</b> 6137:2	<b>45</b> 6168:2	<b>700</b> 6108:6 6110:11	<b>aback</b> 6193:8	<b>activate</b> 6177:25
<b>3516</b> 6148:17	<b>494</b> 6087:24 6096:17	<b>75</b> 6172:2	<b>ability</b> 6033:23	<b>activities</b> 6054:16,19 6055:2 6061:11 6215:21
<b>3523</b> 6173:24	<b>494.0004</b> 6087:25	<b>78</b> 6199:9	<b>aboard</b> 6035:1	<b>activities'</b> 6215:18
<b>3565</b> 6176:17	<hr/> <b>5</b> <hr/>	<b>7th</b> 6178:14 6198:21 6199:5	<b>above-noted</b> 6169:25	
	<b>5</b> 6065:12 6066:20 6125:19 6141:24 6161:12, 13,21,24 6163:3 6204:5	<hr/> <b>8</b> <hr/>	<b>abreast</b> 6080:12 6081:4	
	<b>5(1)(a)</b> 6090:22	<b>8</b> 6078:18 6083:7 6141:24 6161:13 6168:6,7	<b>absence</b> 6034:23 6035:7	
	<b>5)through</b> 6168:7		<b>absent</b> 6034:17, 25 6149:11	
	<b>5,000</b> 6196:19		<b>absolutely</b> 6041:13 6044:15 6045:14 6105:8	

<b>activity</b> 6129:7	6192:2,3,7	<b>alarm</b> 6110:15	<b>and/or</b> 6083:18	<b>applied</b> 6055:3
<b>acts</b> 6068:22	6201:18 6204:7	6174:20 6177:18	6084:1 6146:21	6143:15
6145:24	6215:2	6178:10 6180:23,	<b>Andrea</b> 6098:23	<b>apply</b> 6055:1
<b>actual</b> 6079:9	<b>advising</b>	25 6182:17	<b>animal</b> 6052:25	<b>appointed</b>
6096:11 6107:7	6035:23 6201:13	6186:5,13,21	6053:1 6186:22	6079:24
6182:11	6212:24	6188:24 6189:7	6191:18	<b>appointment</b>
<b>add</b> 6218:8	<b>Advisor</b> 6212:14	6190:16 6192:15,	<b>announced</b>	6055:12,17
<b>added</b> 6049:15	<b>affect</b> 6093:18	16 6194:22	6035:7	<b>appraisals</b>
6158:20	6094:5 6109:21	6196:8,10 6205:3	<b>annoyed</b>	6072:9
<b>adding</b> 6131:2	6210:2	6208:20 6212:6	6201:12	<b>appreciated</b>
<b>addition</b>	<b>afford</b> 6071:4	6218:13	<b>annual</b> 6066:24	6170:3
6141:21 6164:24	<b>aforementione</b>	<b>alarms</b> 6063:8	6067:20 6118:3,4	<b>approach</b>
6169:9 6173:14	<b>d</b> 6147:19	6068:13 6110:17	6180:18 6187:14	6074:19 6145:22
6188:7 6210:12	<b>afraid</b> 6156:23	6171:5 6177:16,	6188:24 6189:7	<b>approval</b>
<b>additional</b>	<b>aftermath</b>	25 6178:3,9,21	6196:11 6208:21	6071:14 6115:13
6166:14	6084:6	6181:10 6186:22	<b>annually</b>	6159:23
<b>address</b>	<b>afternoon</b>	6191:17,20	6067:9, 6181:11	<b>approved</b>
6033:14 6112:6	6086:12 6131:15	<b>alert</b> 6110:18	<b>answers</b> 6070:5	6104:3
<b>addressed</b>	6185:12 6208:10	<b>alerted</b> 6188:6	6123:25	<b>approving</b>
6110:22 6112:21	6212:14	<b>Algo</b> 6089:14	<b>anticipated</b>	6071:7
6113:7 6162:8	<b>age</b> 6187:1,7	6091:5 6114:6	6035:7	<b>approximately</b>
<b>adjacent</b>	<b>aged</b> 6101:14	6116:8 6138:4	<b>anymore</b>	6186:10
6146:24	<b>agencies</b>	6177:8 6187:20	6124:22 6136:18	<b>April</b> 6037:15
<b>administration</b>	6187:6	6188:16 6210:12	<b>apartments</b>	6176:24 6177:9
6059:4 6060:3	<b>agency</b> 6189:9	<b>Algoma</b> 6062:6,	6209:2 6214:8,9	6197:5 6202:4,5,9
6062:22	6212:8	22	<b>apologize</b>	6204:5
<b>Administrative</b>	<b>agree</b> 6102:9	<b>Allard</b> 6039:5,8,	6103:13	<b>architect</b>
6056:11 6213:19	6154:10 6170:8	12 6080:3	<b>apparent</b>	6104:13 6180:1
<b>Administrator</b>	6206:7,19 6207:1	6085:22 6088:12	6212:10	<b>architectural</b>
6036:25	<b>agreed</b> 6085:18	6089:25 6095:23	<b>apparently</b>	6051:7
<b>admit</b> 6064:3	6197:1	6096:18,20	6079:15	<b>area</b> 6067:10
<b>ADSAB</b> 6062:21	<b>agreement</b>	6098:2,10,22	<b>appeal</b> 6043:22,	6079:17 6109:7
<b>advantage</b>	6062:10,11,14,23,	6101:7 6102:23	23	6111:2 6139:9,16,
6066:15 6150:22	25 6063:15	6112:21 6113:18,	<b>appears</b>	20 6140:19
<b>advice</b> 6049:23	6064:7 6071:24	22 6117:18	6081:19 6082:5	6142:9,23
6085:21 6136:13,	6196:17,25	6128:2 6129:9	6087:1 6089:23	6144:14,15
20 6144:13	6218:17	<b>Allard's</b> 6095:7	6100:13 6101:12	6147:1,14 6158:9,
6145:18	<b>agreements</b>	<b>allowed</b> 6162:22	6162:7 6168:17	16,18 6164:11
<b>advise</b> 6033:8	6060:4 6062:7	<b>along'</b> 6079:19	6199:11	6167:21 6169:12
6034:22 6114:7	<b>ahead</b> 6036:5	<b>ambitious</b>	<b>appliances</b>	6198:11,24
6191:25	6058:16 6105:18	6101:13	6215:7	6199:19
<b>advised</b> 6033:9	6185:14,20	<b>ambulances</b>	<b>application</b>	<b>area's</b> 6140:8
6034:25 6048:2,	<b>Aid</b> 6061:23	6062:24 6063:1	6104:3 6155:19	<b>areas</b> 6046:4
11 6085:15	6062:7,10	<b>amount</b> 6064:8	6159:23	6078:12 6092:10,
6133:19 6159:18	<b>air</b> 6084:16	6107:13 6158:24	<b>applications</b>	14 6101:20
6184:20 6191:10	6107:23 6109:17	6218:7	6071:8	6103:14, 6110:25
		<b>analyze</b> 6048:3		6112:6,11
		<b>analyzed</b>		6136:17,18
		6048:12		



6139:4 6140:6,15, 25 6141:14,19 6146:23 6147:8 6158:9 6161:6 6163:11,15,21,22, 25 6164:21 6165:6,18,25 6166:22 6168:11, 22 6169:4,9,10,18 6180:11 <b>arises</b> 6062:13 <b>arising</b> 6032:1 <b>arose</b> 6078:2 <b>arrangements</b> 6212:12 <b>ascribing</b> 6175:3 <b>aspects</b> 6176:8 <b>asphalt</b> 6130:23 <b>assembly</b> 6164:5 <b>assessment</b> 6051:9 6113:5 6114:1 6116:12 6117:1 6153:19 <b>assign</b> 6072:6 <b>assigned</b> 6118:21 6119:3 <b>assist</b> 6042:7 6057:24 6062:12 6064:13,16 6071:10 6072:18 <b>assistance</b> 6042:15 6061:25 6066:13 6122:7 6173:6 <b>assistant</b> 6156:7 6213:20 <b>assisted</b> 6073:24 <b>Associates</b> 6113:6 <b>association</b> 6060:5,21 6181:5 <b>assume</b> 6089:11 6115:8 6131:23 6189:19 6191:6	<b>assure</b> 6033:17, 18 <b>assured</b> 6205:5 <b>attached</b> 6095:25 6096:5, 12 6120:5,15 6127:10 6186:20 <b>attack</b> 6096:10 <b>attacking</b> 6116:4 <b>attempt</b> 6134:15 <b>attempting</b> 6081:3 <b>attend</b> 6056:18, 23 6057:3,5 6061:23 6069:9 6070:12 6133:20 <b>attendance</b> 6033:16 6056:20 6137:6 6198:12 <b>attended</b> 6085:16 6134:5 6168:9 6197:20 <b>attending</b> 6063:17 6152:6 <b>attention</b> 6048:6,7,8 6079:23 6081:16 6084:20 6135:14 6142:10 6180:11 6195:12,14 6198:22 <b>attentive</b> 6034:21 6205:4 6215:13 <b>Attorney</b> 6032:19 6033:3 <b>audit</b> 6067:23,24 6076:13 6121:10 6140:12 6142:16 6158:14 6170:17, 24 6171:5,15,22 6172:20,24 6173:8,14,20,21 6174:1 6177:10 6179:9,17 6184:6, 10,16 6186:8 6187:22 6188:12, 14,15 6189:18	6191:14 6211:1 <b>audits</b> 6210:13 <b>August</b> 6081:13 6101:3 6103:4 6114:15,18 6117:6,10,12 6131:22 6132:3, 25 6142:15 6179:1,7 6183:12 6185:2 6196:9,10 6216:15,24 <b>author</b> 6138:8 <b>authorize</b> 6064:12 <b>Avenue</b> 6128:14 <b>average</b> 6063:4 6175:14,17,19 6176:1 <b>avoid</b> 6206:2 <b>aware</b> 6033:9 6049:7 6050:11, 16,24 6058:11 6077:9,17,21 6081:8 6100:20 6102:25 6103:3,5, 6,18 6112:12 6117:22 6206:16 6218:2 <b>awful</b> 6131:2	6175:13,21,22 6176:6 6185:7 6187:10 6190:12 6193:6 6199:1,14, 21 6205:12 6209:14 6213:16 6215:10 6217:17 <b>BACKBOX</b> 6195:10 <b>background</b> 6036:15 6124:3 6139:1 <b>backyard</b> 6043:9 <b>bar</b> 6172:4 <b>Bargain</b> 6139:20 6169:13 <b>Barnes</b> 6088:24 6093:11 6094:25 6097:14 6112:3 <b>barrier</b> 6068:22 6110:8 <b>baseboard</b> 6215:4,6 <b>based</b> 6105:9 6112:2 6114:9 6166:7 6186:14 6187:19 6201:3 <b>basement</b> 6077:6 <b>bases</b> 6194:25 <b>basic</b> 6034:16 6183:13 <b>basically</b> 6042:1 6058:22, 24 6067:3,23 6076:12 6106:6 6140:12 6171:18 6192:5 6195:11 6210:22 6212:5 6218:21 <b>basis</b> 6042:19 6091:9 6175:5 6203:21 6204:1 6208:22 6214:3 <b>battery</b> 6191:17, 20	<b>Bauthus</b> 6125:20,24 6126:22 6130:13 6137:5 6156:6 <b>beam</b> 6088:19 6095:10 6097:18, 20,22 6108:4 6109:21 6110:11 6111:20 6139:11, 18,22 6140:1 6159:14 6165:15 6199:1,21 <b>beams</b> 6089:16, 17 6095:2 6107:14,16 6115:24 6141:9 6146:23 6166:20 <b>Bear</b> 6205:18 6215:11 <b>bearing</b> 6180:16 6186:24 6217:18 <b>bears</b> 6053:2,3 <b>behalf</b> 6085:19, 21 6172:10 6202:19 <b>behest</b> 6090:8 <b>BELLS</b> 6195:5 <b>Berain</b> 6200:15, 19 <b>Bertoli</b> 6080:4 <b>bi-annual</b> 6067:2,21 <b>bi-annually</b> 6066:23 6067:13, 15 <b>big</b> 6052:20 6126:24 6193:17 <b>Bisceglia</b> 6032:10 6034:20 <b>Bisceglia's</b> 6032:4 <b>bit</b> 6052:23 6053:7,8 6094:20 6109:10 6126:20 6169:2 6209:22 6211:5 6213:17 6214:18 6217:2
--	--	---	--	--

<p><b>blame</b> 6079:13</p> <p><b>bldg</b> 6080:3</p> <p><b>blends</b> 6142:21</p> <p><b>blush</b> 6077:22</p> <p><b>Board</b> 6047:5 6078:22 6079:25 6082:12 6083:5,6 6085:19,22 6214:18</p> <p><b>Bob</b> 6158:15 6159:9 6202:4,6, 9,15</p> <p><b>bond</b> 6064:4</p> <p><b>book</b> 6108:21</p> <p><b>books</b> 6047:15 6083:22 6108:19</p> <p><b>booth</b> 6146:24</p> <p><b>bottom</b> 6047:19, 25 6061:8 6074:1 6081:12,13 6084:24 6085:8 6087:19 6089:24 6092:6 6096:15, 21 6097:18,22 6107:15 6125:17 6127:6 6133:14 6140:5 6149:6 6151:8 6163:9 6165:13 6166:19, 24 6199:16</p> <p><b>bought</b> 6157:19</p> <p><b>bounces</b> 6187:10</p> <p><b>box</b> 6099:19 6109:18 6188:22 6190:6</p> <p><b>breaches</b> 6068:1</p> <p><b>break</b> 6078:5,6 6131:12 6185:10, 12</p> <p><b>Brian</b> 6119:18, 19,24 6121:14 6126:7 6149:14</p> <p><b>Bridge</b> 6191:5, 23 6212:9</p>	<p><b>Bridges'</b> 6193:6</p> <p><b>briefly</b> 6036:14 6064:21 6073:15 6074:6</p> <p><b>bring</b> 6048:7 6053:5 6070:13, 22 6074:21 6106:14 6114:18 6121:2 6148:16 6216:4</p> <p><b>bringing</b> 6057:4 6072:21 6136:16 6157:8 6177:6 6214:1</p> <p><b>broken</b> 6067:7</p> <p><b>brought</b> 6048:5, 6 6057:20 6075:7 6084:19 6088:8 6106:20 6132:21 6135:2,14 6183:25 6184:2 6195:14 6200:25 6201:2 6214:24</p> <p><b>Bruce</b> 6104:5, 10,22 6112:16 6117:15 6123:7, 15 6124:9,20 6129:1,12 6131:22 6132:1 6137:11 6213:20 6214:4</p> <p><b>buckets</b> 6047:17</p> <p><b>budget</b> 6074:3</p> <p><b>budgeting</b> 6061:7 6071:14 6074:2</p> <p><b>build</b> 6083:16</p> <p><b>building</b> 6036:24 6037:3, 10,16,18 6038:6, 10,18 6039:4,13, 18,19,24 6044:2, 7,10,25 6045:1,15 6051:1,8,18,24 6052:2,3,7,15,25 6053:24 6054:3,9, 11,14 6055:20,22 6056:1 6064:14, 17 6068:16,17</p>	<p>6072:4 6076:15, 17,19 6077:12,14, 18,20 6079:14 6085:23 6086:11, 12 6087:3 6090:24 6091:1, 12,17 6092:11,14, 20 6096:23 6104:2,4 6105:14 6108:10 6109:5 6110:14,17,19 6111:16 6115:12 6121:10 6134:18, 19 6140:20 6143:15,21,25 6145:5,24 6146:7 6147:20,22 6151:4 6153:5,17, 21 6155:23, 6157:25 6158:1 6159:21,22 6161:25 6163:11 6171:6,16,20,21, 23 6172:2,8 6174:3,4,12,13, 15,19 6175:4,5,8, 10,11,13,15,20,24 6176:6,8 6177:24 6179:22 6181:7 6209:24 6214:5</p> <p><b>buildings</b> 6036:22 6052:17 6066:5 6170:22</p> <p><b>built</b> 6172:1</p> <p><b>bullet</b> 6115:23 6126:5</p> <p><b>bunch</b> 6064:3</p> <p><b>Burling</b> 6047:22</p> <p><b>burn</b> 6109:22 6110:1</p> <p><b>bush</b> 6064:7</p> <p><b>business</b> 6206:10</p> <p><b>Butler</b> 6098:23</p> <p><b>buying</b> 6157:17, 18</p> <p><b>by-law</b> 6044:8,9 6052:8,10,11,12 6053:14,15 6090:23 6092:5</p>	<p>6214:6,10</p> <p><b>by-laws</b> 6041:16 6045:24 6052:5,8 6053:11</p> <p><b>by-product</b> 6173:20</p> <p><b>by...[mr.]</b> 6177:11</p> <p><b>Bélanger</b> 6051:8</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>C.A.O.</b> 6125:19</p> <p><b>calculation</b> 6170:4</p> <p><b>call</b> 6061:11 6062:17 6069:9 6104:7,24 6117:7 6160:4 6191:5 6192:6 6201:13 6212:8</p> <p><b>called</b> 6088:11 6121:3 6129:1 6159:9 6160:18 6191:10 6216:9</p> <p><b>calling</b> 6142:16 6176:6</p> <p><b>calls</b> 6043:7,10 6062:19,24 6063:2,3,5,7,8,9, 10,16,20 6064:8 6073:23</p> <p><b>camber</b> 6166:11</p> <p><b>camper</b> 6193:7</p> <p><b>Canadian</b> 6045:18</p> <p><b>cancer</b> 6038:3</p> <p><b>candidate</b> 6055:3</p> <p><b>CAO</b> 6056:9,15, 24 6079:6 6085:18 6125:20 6126:2 6213:18</p> <p><b>CAOS</b> 6057:2</p>	<p><b>capabilities</b> 6062:16</p> <p><b>capacity</b> 6082:17 6092:19 6165:16 6166:15</p> <p><b>captain</b> 6089:2 6198:23</p> <p><b>captured</b> 6050:7</p> <p><b>captures</b> 6191:4</p> <p><b>car</b> 6158:7</p> <p><b>carbon</b> 6063:10</p> <p><b>care</b> 6053:1 6059:17 6151:12 6192:4 6193:21 6210:10 6214:5 6215:14</p> <p><b>career</b> 6037:9 6044:6</p> <p><b>carried</b> 6039:5</p> <p><b>Carry</b> 6091:15</p> <p><b>carrying</b> 6166:14</p> <p><b>case</b> 6083:1 6107:12 6108:9 6118:19,22 6171:25 6173:1, 13 6175:7,13 6196:16 6209:17</p> <p><b>cases</b> 6057:2 6064:3 6075:18, 22 6194:8</p> <p><b>Cassan</b> 6035:24 6036:3 6072:14 6124:24 6137:19, 22 6208:6,7,9 6211:6,20,23 6213:4,12 6216:7, 12,16,18,24</p> <p><b>Cassan's</b> 6197:15</p> <p><b>cast</b> 6182:12</p> <p><b>cataloguing</b> 6171:16</p> <p><b>catch</b> 6213:17</p>
--	---	--	--	---

<b>categorized</b> 6118:14	<b>center</b> 6099:5	<b>chase</b> 6097:1	23	6210:24
<b>category</b> 6067:8	<b>Centre</b> 6091:5 6114:6 6116:8	<b>chasing</b> 6197:12 6201:8	<b>circumventing</b> 6176:7	<b>closely</b> 6033:22, 25 6054:17,25 6106:21
<b>Cathy</b> 6078:21 6080:20,22 6081:16 6085:10 6086:6,7	<b>certificate</b> 6036:17 6181:14 6182:1,4 6184:14 6189:12	<b>cheaper</b> 6084:8	<b>CISM</b> 6063:18	<b>closes</b> 6187:17, 18
<b>Cats</b> 6063:12	<b>certificates</b> 6188:25	<b>cheat</b> 6039:11	<b>cite</b> 6178:2 6188:19	<b>closures</b> 6171:4
<b>Caughill</b> 6104:5, 10,13,17,23 6105:3,13 6112:16,20 6113:25 6120:10, 12, 6122:16,24 6123:8,12,15,23 6124:9,20 6127:4, 24 6129:12	<b>certification</b> 6071:6	<b>check</b> 6170:24	<b>City</b> 6036:12,20, 23 6037:3,7,10 6040:3 6041:2,5 6042:21 6043:16, 21 6044:13 6052:15,17 6066:21 6073:2, 17 6079:6 6083:15 6086:17 6088:3 6091:7 6153:4 6155:11, 16	<b>Clouthier</b> 6086:11,12
<b>caught</b> 6066:14	<b>certifying</b> 6092:16 6093:3	<b>checked</b> 6140:24 6141:1 6169:19 6179:20, 21 6197:4	<b>City's</b> 6044:16	<b>co-ordinate</b> 6095:9 6096:6
<b>caulking</b> 6046:3 6200:14	<b>CFO</b> 6128:2	<b>checking</b> 6075:12 6129:6	<b>CL678</b> 6216:13	<b>co-ordinated</b> 6062:18
<b>caused</b> 6092:9	<b>chair</b> 6082:11 6083:5	<b>checks</b> 6068:5	<b>clarification</b> 6102:6 6186:18	<b>Co-ordinator</b> 6062:4
<b>CBO</b> 6128:1 6129:9	<b>Chairman</b> 6047:5	<b>cheque's</b> 6198:8	<b>clarify</b> 6185:7	<b>coat</b> 6200:18
<b>cc'ed</b> 6047:24 6049:4 6112:21 6115:20 6156:6 6213:20	<b>chairs</b> 6035:3	<b>chicken</b> 6102:17 6154:15	<b>Clarke</b> 6191:5, 10,23,25 6192:2,7 6212:9	<b>coating</b> 6155:12
<b>cc's</b> 6127:24	<b>change</b> 6114:7 6116:17 6126:6, 24	<b>chief</b> 6035:14,18 6036:8,11 6037:15,18,25 6038:2,9,13,16,18 6039:4,12,17,24 6051:1,18,24 6052:2,25 6053:19 6054:7,9, 11,12,21,23 6055:15,20 6056:7,11,17,18, 22 6057:7,16,21 6058:1,5,10,16, 22,25 6062:2 6073:3 6078:9,18 6085:22 6091:12 6092:11,20 6096:23 6098:15 6104:4 6105:13 6125:8 6131:19, 6134:20 6143:11, 20 6146:7 6157:25 6182:22 6185:18,21 6196:4 6202:16 6204:7 6208:4,10 6211:25 6213:13, 19 6214:4 6215:15 6216:20	<b>class</b> 6066:25	<b>Code</b> 6044:2,10 6052:7 6056:1,2 6057:13 6064:17 6065:2 6074:17 6076:8,9,11 6077:23 6088:22 6093:14,25 6110:21 6111:14 6140:4 6141:22 6145:5,24,25 6147:22 6167:21 6170:19 6172:2,3, 17 6174:25 6175:3,9,10,11, 12,14,15 6176:8 6177:10,24 6178:2 6181:7 6182:5 6183:23 6187:4 6192:2,18 6194:6 6203:14, 18 6214:15
<b>ceiling</b> 6047:17 6068:21 6110:8 6134:12 6187:23 6198:24 6199:18	<b>changed</b> 6066:25 6096:21 6126:9 6127:12	<b>chips</b> 6076:20 6089:4	<b>CLE14430</b> 6072:19	<b>Codes</b> 6172:1
<b>ceilings</b> 6186:11	<b>chap</b> 6105:7 6191:6	<b>chapter</b> 6196:12	<b>clean</b> 6208:19	<b>coincidentally</b> 6141:6
<b>CEL3299</b> 6213:6	<b>char</b> 6077:6	<b>charge</b> 6193:3,4, 10 6195:19,23 6197:2 6201:19 6203:23 6212:25	<b>cleaned</b> 6148:10 6166:25 6205:1 6214:22 6215:9	<b>cold</b> 6116:6
<b>CEL_</b> <b>E00002960</b> 6133:8	<b>charge</b> 6193:3,4, 10 6195:19,23 6197:2 6201:19 6203:23 6212:25	<b>charged</b> 6186:13 6192:11 6205:1 6207:15, 17,19	<b>clear</b> 6103:14 6124:6 6141:14 6143:23 6167:15 6187:5 6193:20	<b>collapse</b> 6208:1
<b>CEL_</b> <b>E000136550</b> 6095:15	<b>charges</b> 6185:22 6192:25 6193:16 6194:25 6197:6 6212:15, 22 6217:8,10,19	<b>charging</b> 6192:8 6212:20	<b>client</b> 6217:20	<b>collapsed</b> 6158:10
<b>CELE00015156</b> <b>1.11.</b> 6137:1		<b>Chris</b> 6086:10,12	<b>client's</b> 6217:7	<b>colleague</b> 6032:18
<b>celling</b> 6068:19		<b>chump</b> 6144:18	<b>clock</b> 6131:10	
<b>cement</b> 6101:20		<b>chunks</b> 6097:17,	<b>close</b> 6053:11 6153:17 6194:14, 15 6215:12	
			<b>closed</b> 6065:21, 24 6153:22 6196:13,14	

<b>colleagues</b> 6153:2	6033:2,18 6034:13 6035:14, 15,17,22 6036:5 6038:20,23 6039:8 6051:23 6053:18 6054:5 6055:4,7,11 6057:24 6058:3,7, 12 6059:6,19 6060:11,22 6061:1 6063:12 6064:15 6068:23 6070:4,9 6072:14, 21 6078:4, 6099:15,23 6124:24 6125:3 6131:9,15 6137:17,19,20,23 6152:14 6165:21 6179:25 6185:9, 14,16 6186:1 6208:6,8 6211:6, 16,19 6213:7 6216:5,8,10,22	<b>compare</b> 6208:14 6209:11	<b>completion</b> 6101:4 6184:12 6200:21 6206:4	<b>conclusion</b> 6157:6 6187:16
<b>collect</b> 6097:21		<b>compartment</b> 6110:3	<b>complex</b> 6163:3 6217:10,12	<b>concrete</b> 6130:21 6158:17, 19,22 6160:16 6164:3
<b>collection</b> 6047:14		<b>compartmentiz ation</b> 6171:3	<b>compliance</b> 6042:23 6043:1, 17 6044:20 6076:11 6161:16, 20 6164:14 6171:8 6187:21 6188:17 6196:13 6218:12,14	<b>condition</b> 6051:9 6090:25 6092:17 6093:3 6113:5 6192:16
<b>collective</b> 6060:4		<b>competent</b> 6105:7,16	<b>complied</b> 6101:6 6178:17	<b>conditions</b> 6116:7 6127:12
<b>College</b> 6036:16 6070:13 6071:8		<b>complainant</b> 6042:16,20	<b>comply</b> 6183:24 6203:17,23,24 6207:17,20 6210:7,9	<b>conduct</b> 6066:19 6087:3 6128:4 6168:5
<b>colour</b> 6181:25		<b>complaining</b> 6204:17	<b>component</b> 6110:2 6141:12 6157:3	<b>conducted</b> 6092:15 6114:2 6116:13 6117:1 6167:7 6169:24 6217:23
<b>column</b> 6111:18,19		<b>complaint</b> 6040:8,13,16,18, 21,25 6041:6,11 6045:2 6048:17, 24,25 6065:3 6088:9,11,15 6094:19 6095:25 6210:1	<b>components</b> 6088:21	<b>conducting</b> 6141:5
<b>combination</b> 6070:12		<b>complaint- driven</b> 6040:6	<b>concern</b> 6047:9 6074:22 6077:7 6083:10 6103:14, 22,25 6108:16 6110:20,25 6112:6 6144:15 6153:13 6154:24 6158:6 6159:1,13 6166:18 6173:8 6177:15,21 6182:18 6184:9 6214:14	<b>conferences</b> 6059:24
<b>combustible</b> 6068:10		<b>complaints</b> 6040:11 6041:14 6043:13 6052:19 6088:5	<b>concerned</b> 6041:12 6042:10, 22 6057:8 6086:16 6117:17 6153:5 6157:10 6158:2,20 6164:25 6201:5	<b>confidence</b> 6105:4
<b>combustibles</b> 6108:20		<b>complete</b> 6108:17 6130:11 6132:17 6135:4, 10 6152:3 6161:12 6166:21 6167:8 6170:13, 14 6179:19,22 6189:20 6218:15, 19	<b>confirm</b> 6120:10 6134:20	<b>confirmation</b> 6085:13
<b>combustion</b> 6107:24 6109:25 6110:2	<b>commitment</b> 6127:11	<b>complaint- driven</b> 6040:6	<b>confirmed</b> 6087:11	<b>confirming</b> 6197:20
<b>comfortable</b> 6179:16	<b>committed</b> 6083:19	<b>complaints</b> 6040:11 6041:14 6043:13 6052:19 6088:5	<b>conforming</b> 6197:20	<b>conflict</b> 6096:7
<b>command</b> 6070:23 6071:3	<b>committed</b> 6083:19	<b>complaints</b> 6040:11 6041:14 6043:13 6052:19 6088:5	<b>conformance</b> 6071:16 6179:23	<b>connection</b> 6173:25
<b>comment</b> 6032:22 6033:14, 15 6034:14 6079:12 6151:2 6152:21 6153:11 6154:4 6167:19 6183:23	<b>common</b> 6067:10 6198:24 6199:18	<b>complete</b> 6108:17 6130:11 6132:17 6135:4, 10 6152:3 6161:12 6166:21 6167:8 6170:13, 14 6179:19,22 6189:20 6218:15, 19	<b>connections</b> 6092:10	<b>Connor</b> 6169:19
<b>comments</b> 6032:1,23 6034:15 6035:23 6036:2 6048:24 6157:4 6193:6,8	<b>common</b> 6067:10 6198:24 6199:18	<b>complete</b> 6108:17 6130:11 6132:17 6135:4, 10 6152:3 6161:12 6166:21 6167:8 6170:13, 14 6179:19,22 6189:20 6218:15, 19	<b>concerns</b> 6033:11 6071:10 6166:9 6188:18	<b>Connor's</b> 6162:18 6200:7
<b>commercial</b> 6066:21 6181:9	<b>communicatin g</b> 6102:23	<b>complete</b> 6108:17 6130:11 6132:17 6135:4, 10 6152:3 6161:12 6166:21 6167:8 6170:13, 14 6179:19,22 6189:20 6218:15, 19	<b>conclude</b> 6099:16	<b>Connors</b> 6133:15,25
<b>commercial- type</b> 6064:25	<b>communicatio n</b> 6126:14 6131:24 6135:13 6136:5 6184:23	<b>completed</b> 6042:1 6049:24 6092:1 6120:13 6178:12 6184:6 6189:18,22 6192:9 6196:21, 22,25 6204:9 6210:18 6212:11	<b>concluded</b> 6192:5	
<b>Commission</b> 6033:8,22,23 6034:1,17,19,22	<b>communicatio ns...which</b> 6079:18	<b>completed</b> 6042:1 6049:24 6092:1 6120:13 6178:12 6184:6 6189:18,22 6192:9 6196:21, 22,25 6204:9 6210:18 6212:11		
<b>Commissioner</b> 6032:9,12,17,24	<b>community</b> 6033:18,21 6053:4 6061:5 6062:3 6066:4 6073:21 6211:4	<b>completely</b> 6100:25 6182:2 6197:24		
	<b>company</b> 6051:4,13 6084:16 6100:24 6180:12,22 6195:20 6198:2	<b>completing</b> 6196:24		

6135:17 6136:12 6139:14 6156:8 6160:24 6198:23 6199:12 6205:9, 17 6206:25	<b>contained</b> 6162:5 6193:23	6103:21 6121:15, 22 6123:5,14 6126:15 6128:20 6129:5 6130:18 6199:23 6213:22 6215:16	25 6094:1 6096:22 6097:6 6102:7 6105:21, 22 6111:3,25 6112:1,5 6114:12 6115:7 6116:24 6119:20 6121:4 6123:1 6124:23 6125:15,21 6126:12 6127:16, 17,20,21 6128:20 6129:9 6131:25 6134:1,2,25 6137:15 6138:12 6139:6,7,15 6141:7 6142:4,17 6143:7,17,19 6144:5 6146:4,9 6147:2,16 6148:5 6149:17 6155:15 6156:13,17 6158:2 6160:10, 25 6161:5,7 6163:16,23 6170:10,19,20,23 6171:17,18,21 6172:13,15,19,23 6173:7,18 6174:13 6176:4, 19 6177:1,5 6178:4,5,18 6179:2,9,14 6180:2 6181:12, 16,17 6182:14,19 6183:8 6185:24, 25 6186:5,6 6189:5 6190:18, 22 6191:14,15,22 6192:19,20,23 6194:7 6195:2,20, 25 6196:13 6198:2 6199:4,13 6201:22 6202:20 6203:3,18 6204:13	<b>correspond</b> 6039:14
<b>cons</b> 6075:25	<b>containment</b> 6109:4	<b>conversations</b> 6130:14	<b>corresponden</b> <b>ce</b> 6040:19 6093:6 6102:2 6110:24 6155:4 6197:19 6205:20	
<b>consent</b> 6042:12	<b>content</b> 6048:16	<b>conversed</b> 6049:20	<b>corridor</b> 6109:8, 9,16 6111:6 6139:25 6140:22 6186:11,19 6187:23 6188:21	
<b>consequence</b> 6138:2 6148:11 6201:21 6217:8	<b>contents</b> 6214:13	<b>cooperation</b> 6076:18 6170:2 6209:10	<b>corridor)</b> <b>behind</b> 6139:25	
<b>considerable</b> 6044:23	<b>context</b> 6107:6 6123:4	<b>cooperative</b> 6150:17,19	<b>corridors</b> 6094:4 6186:25 6189:6	
<b>consideration</b> 6084:6 6175:4	<b>contextualize</b> 6185:20	<b>coordinate</b> 6128:9	<b>cost</b> 6083:21 6084:4	
<b>consisted</b> 6163:11	<b>continuation</b> 6201:21	<b>copied</b> 6086:19 6096:18 6213:20 6217:22	<b>costing</b> 6197:8, 9	
<b>consistency</b> 6064:19	<b>continue</b> 6083:17 6156:23 6159:8	<b>copies</b> 6114:3 6115:1 6116:14 6154:3 6158:6	<b>costly</b> 6044:17	
<b>consistent</b> 6197:24	<b>continued</b> 6071:18	<b>copy</b> 6050:5 6082:22 6095:25 6098:22 6113:3, 13,15,19 6120:3 6128:2 6179:8 6217:21	<b>costs</b> 6043:25 6150:13 6218:8	
<b>consistently</b> 6049:11	<b>continuing</b> 6047:10	<b>cordoned</b> 6046:4	<b>Council</b> 6047:21 6056:16,18,20 6057:4 6059:11 6078:22 6079:25 6080:2,6 6083:15 6084:3 6197:10 6212:19	
<b>constitute</b> 6040:20 6048:17 6187:4	<b>continuous</b> 6049:8	<b>core</b> 6158:17,19 6159:2	<b>Council's</b> 6212:23 6213:3	
<b>construction</b> 6036:17 6109:5 6124:4 6130:10 6139:1	<b>contract</b> 6060:19 6217:15	<b>corner</b> 6139:17	<b>counsel</b> 6032:25 6034:1, 16,25 6035:1,3 6058:11 6059:5 6188:7	
<b>consultant</b> 6049:21 6104:6, 23	<b>contracted</b> 6217:13	<b>correct</b> 6035:12, 6036:13,18 6037:5,8,13,17 6038:11 6039:22, 25 6041:3,4 6042:13 6044:18, 19 6050:18 6055:6,13 6056:6, 16 6057:8,9 6065:7,14 6066:18 6067:16 6074:24 6075:14 6076:6 6086:14 6089:13 6090:2, 14,16 6091:10 6092:24 6093:12,	<b>counsel</b> 6034:14	
<b>consultation</b> 6073:18	<b>contractor</b> 6167:7 6187:25	<b>corrected</b> 6133:23 6159:16 6189:3 6193:11 6196:2 6209:19	<b>count</b> 6192:14, 21 6196:19 6197:24	
<b>consulting</b> 6049:21 6120:4, 12	<b>Contrary</b> 6100:23	<b>correction</b> 6196:7 6202:13	<b>counting</b> 6060:25	
<b>consumed</b> 6052:21	<b>contraventions</b> 6093:13	<b>correctly</b> 6068:3 6122:20 6178:19	<b>counts</b> 6192:12 6197:2	
<b>consumes</b> 6064:8	<b>contribute</b> 6061:4			
<b>contact</b> 6075:13 6152:11 6185:3	<b>control</b> 6052:25 6053:2 6061:13, 21 6064:19 6157:14			
<b>contacting</b> 6215:8	<b>controlled</b> 6062:17			
	<b>controls</b> 6038:7 6072:5 6077:12, 18 6151:6 6159:22			
	<b>conversation</b> 6050:7 6085:14			

<p><b>couple</b> 6069:4                      6104:18 6109:2                      6135:18 6152:21                      6169:10 6210:16</p> <p><b>coupled</b> 6073:5</p> <p><b>court</b> 6042:6,10                      6053:15 6146:25                      6196:16 6197:17,                      21,23</p> <p><b>courtesy</b>                      6034:16,21                      6035:6</p> <p><b>courts</b> 6183:2                      6196:21</p> <p><b>coverage</b>                      6061:15</p> <p><b>covered</b>                      6047:15 6147:8</p> <p><b>covering</b>                      6083:21 6171:24                      6176:22</p> <p><b>covers</b> 6062:7                      6156:9</p> <p><b>crack-line</b>                      6101:19</p> <p><b>cracks</b> 6200:14</p> <p><b>craft</b> 6073:8</p> <p><b>craftily</b> 6154:8</p> <p><b>create</b> 6204:8</p> <p><b>created</b> 6165:15</p> <p><b>Critical</b> 6063:19</p> <p><b>criticizing</b>                      6033:15</p> <p><b>CROSS-                      EXAMINATION</b>                      6208:9</p> <p><b>Croxson</b>                      6082:8,11,15                      6083:1 6085:16</p> <p><b>current</b> 6036:11                      6059:12,24,25                      6113:10</p> <p><b>curriculum</b>                      6070:19 6071:12</p>	<p><b>cut</b> 6082:22                      6101:18</p> <p><b>cutbacks</b>                      6065:23</p> <p><b>cycle</b> 6149:9</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>Daily</b> 6059:22</p> <p><b>damage</b>                      6083:21 6103:24                      6115:23,24                      6153:7</p> <p><b>damaged</b>                      6047:16 6093:17,                      19 6094:5,6                      6101:20 6140:7                      6141:18 6146:20                      6169:4 6195:8</p> <p><b>damages</b>                      6086:3</p> <p><b>Dan</b> 6080:3</p> <p><b>Danielle</b>                      6125:24</p> <p><b>darn</b> 6215:11</p> <p><b>Darren</b> 6133:15                      6135:7,19                      6138:14 6199:11                      6200:7 6201:4,12,                      16 6204:18                      6205:8,17 6207:5,                      16</p> <p><b>Darren's</b>                      6136:16</p> <p><b>database</b>                      6094:24 6106:5</p> <p><b>date</b> 6035:8                      6038:15,17                      6079:3,9 6081:10                      6086:6 6096:22                      6099:21 6115:18                      6119:21 6143:3,                      20 6161:11,16                      6162:20,24                      6163:7 6169:25                      6178:23 6184:7,                      11,16 6199:5,6,8                      6204:11 6205:10                      6206:4,7 6207:11</p>	<p>6216:22 6218:12</p> <p><b>dated</b> 6098:19                      6102:2 6103:9                      6125:6 6132:3                      6133:16 6142:15                      6152:25 6162:7                      6170:1 6176:17                      6186:8 6188:12                      6197:19 6203:8                      6204:4 6205:19,                      21 6213:8                      6216:15 6217:4,5</p> <p><b>dates</b> 6184:25</p> <p><b>Dawn</b> 6213:10</p> <p><b>day</b> 6033:20,25                      6045:16 6052:22                      6054:18 6064:23                      6069:20 6076:3                      6103:19 6130:8                      6139:2 6144:4                      6146:8 6198:12                      6206:6,10                      6207:23 6212:11</p> <p><b>days</b> 6040:14                      6075:22 6076:3                      6089:9 6091:21                      6092:22 6096:5,                      13 6130:4                      6143:19,24                      6159:17 6161:13,                      20,24 6162:23                      6205:10</p> <p><b>de</b> 6080:4</p> <p><b>deadline</b>                      6184:11 6189:24                      6212:6</p> <p><b>deal</b> 6043:4                      6068:24,25                      6078:1 6122:19                      6170:17 6215:2</p> <p><b>dealing</b> 6043:14                      6053:17 6060:4                      6063:19,20,22                      6064:25 6076:8                      6078:10 6081:22                      6092:2,3 6100:6                      6107:19 6140:4                      6142:22 6144:13                      6153:1 6154:23                      6156:12 6157:1,2                      6158:14 6165:10</p>	<p>6170:11 6172:17                      6207:6 6214:1                      6215:10</p> <p><b>dealings</b>                      6105:3, 6149:10,                      12</p> <p><b>deals</b> 6090:19                      6164:20,21</p> <p><b>dealt</b> 6082:15                      6105:13 6154:1                      6208:18 6209:1                      6211:12</p> <p><b>debate</b> 6162:25</p> <p><b>debortoli</b>                      6213:10,18</p> <p><b>December</b>                      6092:20 6093:2                      6168:4,6,17                      6169:8</p> <p><b>decide</b> 6100:24</p> <p><b>decided</b>                      6094:16</p> <p><b>decision</b>                      6072:25 6073:6,                      10,18 6210:2</p> <p><b>deck</b> 6049:15                      6115:25 6127:9                      6132:11 6160:8                      6163:13 6175:21</p> <p><b>decode</b> 6192:5</p> <p><b>deemed</b>                      6111:15</p> <p><b>defects</b> 6190:21</p> <p><b>defense</b>                      6058:22 6217:7</p> <p><b>deficiencies</b>                      6069:23 6146:11                      6147:16,17                      6148:1,7 6161:12                      6183:25 6192:9                      6193:22 6194:20                      6196:9 6199:17</p> <p><b>deficiency</b>                      6146:19 6184:1                      6189:2</p> <p><b>degrees</b> 6108:6,                      13 6110:12</p>	<p><b>delayed</b> 6117:16                      6156:25</p> <p><b>delivering</b>                      6103:15</p> <p><b>denied</b> 6050:17</p> <p><b>Denison</b>                      6210:18</p> <p><b>department</b>                      6036:23,25                      6038:1, 6044:7                      6052:4,19                      6054:14,21                      6059:17,18                      6072:4,5 6077:12                      6082:16 6088:4                      6099:21 6134:19                      6153:5 6157:12                      6159:22 6206:3                      6209:24</p> <p><b>department's</b>                      6079:14</p> <p><b>departments</b>                      6038:4, 6039:6                      6054:22</p> <p><b>depended</b>                      6056:24</p> <p><b>depending</b>                      6106:18 6107:20                      6118:22</p> <p><b>depends</b>                      6075:21</p> <p><b>Dept</b> 6080:3                      6142:14</p> <p><b>Deputy</b> 6037:25                      6038:9 6054:7,12</p> <p><b>Derreck</b> 6079:3,                      4,10,20 6081:16                      6083:6 6085:17                      6086:7,9 6087:2                      6090:9 6098:19                      6100:15</p> <p><b>describe</b> 6142:6                      6174:1</p> <p><b>description</b>                      6073:9 6091:22</p> <p><b>designate</b>                      6176:2</p>
---	---	--	---	---

<b>designed</b> 6174:14	<b>diligent</b> 6154:11,13	<b>discussions</b> 6096:19 6122:3, 17 6129:22 6130:3,7 6148:24 6149:13 6150:1 6164:13	6211:21	<b>drop</b> 6083:23
<b>designer</b> 6175:23	<b>Dimitri</b> 6138:16 6159:3,6 6160:2	<b>dismiss</b> 6073:13	<b>dog</b> 6043:9	<b>dropped</b> 6067:1
<b>desk</b> 6100:6 6122:2	<b>dining</b> 6210:17	<b>dismissal</b> 6073:14	<b>Dollarama</b> 6139:17,25 6140:13,14,15,19 6147:4 6199:2,21	<b>DRUG</b> 6195:9
<b>destructive</b> 6068:15	<b>direct</b> 6086:10 6193:9	<b>disregard</b> 6218:15	<b>dollars</b> 6127:1	<b>Drugmart</b> 6194:13
<b>detail</b> 6057:23	<b>directed</b> 6081:15 6090:16 6115:19 6140:17	<b>disrespect</b> 6033:21	<b>donation</b> 6082:16	<b>dry</b> 6083:19 6086:18
<b>details</b> 6075:11 6103:6 6131:7	<b>directing</b> 6071:8 6088:24	<b>distinct</b> 6142:19	<b>Doody</b> 6035:15, 17	<b>duct</b> 6110:15
<b>detection</b> 6177:17	<b>direction</b> 6071:25 6073:16 6151:15 6163:18 6173:6 6207:16	<b>distributed</b> 6065:19	<b>door</b> 6171:4 6174:18,23 6176:6,7	<b>due</b> 6118:22 6146:21 6166:4 6184:16 6209:7
<b>detector</b> 6194:22 6195:8	<b>directives</b> 6069:3	<b>district</b> 6061:23 6062:4,6,22	<b>doors</b> 6158:8	<b>Dunlop</b> 6210:15
<b>detectors</b> 6110:16 6177:23 6186:10,14,19,25 6187:7,13,24 6188:21 6191:11, 21 6195:15	<b>directly</b> 6159:9 6174:16	<b>disturbing</b> 6156:17,21	<b>doubt</b> 6049:7	<b>duplicate</b> 6145:23,24
<b>deterioration</b> 6113:9	<b>disagreement</b> 6128:15	<b>dividing</b> 6045:24	<b>dovetail</b> 6114:13	<b>duties</b> 6051:24 6052:1,20 6057:15,24 6058:21 6059:3 6086:1
<b>determinations</b> 6183:16	<b>discern</b> 6102:12	<b>division</b> 6192:17	<b>dozen</b> 6052:8 6077:6	<b>dwelling</b> 6042:3,8,12,19 6215:25
<b>determine</b> 6050:2	<b>discipline</b> 6072:9	<b>doc</b> 6082:22	<b>draft</b> 6073:11 6162:7 6174:5 6176:17 6179:10	<hr/> <b>E</b> <hr/>
<b>determined</b> 6096:22 6111:12 6143:20 6151:11	<b>disclosed</b> 6194:5,21	<b>docket</b> 6057:1	<b>drafted</b> 6171:24 6175:3 6192:25	<b>e-mail</b> 6078:20 6079:2 6080:1,11 6082:7 6084:19 6085:9,13 6086:6 6095:22 6112:20 6115:17 6127:4 6129:12,16,17 6131:22 6132:7 6133:15 6135:2, 6156:5 6160:9 6213:8
<b>development</b> 6059:14 6072:13	<b>discovered</b> 6147:18 6177:15	<b>document</b> 6046:18 6047:19 6050:8 6072:16, 6082:19 6087:20, 22 6095:13 6096:2 6099:19 6100:12 6125:1 6133:6 6135:23 6136:6,25 6137:21 6144:25 6180:8 6186:7 6188:6 6198:14 6200:4 6205:17, 22 6212:4 6213:5, 15 6216:12 6218:23	<b>dragging</b> 6151:18	<b>e-mail's</b> 6088:8
<b>device</b> 6177:17	<b>discovery</b> 6078:11	<b>documentation</b> 6143:10 6189:12	<b>drainage</b> 6091:18 6166:12	<b>e-mails</b> 6080:13 6087:7 6120:15
<b>DF</b> 6200:15,19	<b>discuss</b> 6057:15 6075:4 6104:8,25 6113:21	<b>documents</b> 6057:19 6082:4 6120:21 6122:23 6123:3 6183:2	<b>drains</b> 6101:17	<b>earlier</b> 6071:23 6080:17 6090:8 6114:14 6128:19 6142:6 6144:12 6163:6
<b>differ</b> 6203:11	<b>discussed</b> 6096:6 6120:3 6133:18 6159:11		<b>dramatic</b> 6084:20 6085:2	<b>earliest</b> 6188:1
<b>difficult</b> 6061:15 6108:22	<b>discussion</b> 6049:22 6075:19 6103:16 6117:21 6121:25 6122:4, 12 6126:20 6129:14 6130:12 6145:21 6160:13 6173:2 6191:23 6206:24 6207:22		<b>draw</b> 6079:23 6180:11 6198:22	<b>early</b> 6040:13 6045:17 6054:1
<b>difficulties</b> 6042:4 6063:22 6173:1 6196:15 6210:20			<b>drawing</b> 6109:17 6142:10 6157:5	
<b>difficulty</b> 6179:11			<b>drawings</b> 6158:6,16	
<b>digit</b> 6087:23 6144:24			<b>drill</b> 6069:16,20	
			<b>drills</b> 6068:24 6069:8,10,11,14	
			<b>driveway</b> 6200:17	

6185:22 6195:24 <b>East</b> 6126:8 <b>eastwood</b> 6090:13,16 6091:13 6111:25 6114:6 6125:7 6127:20 6128:15 6183:14 6185:23 6195:1 6199:24 6203:3 6213:11 6216:17 6217:11, 21 <b>economical</b> 6218:19 <b>Educate</b> 6107:10 <b>education</b> 6058:23 6061:9 6070:6 6193:18 <b>effective</b> 6194:17 <b>effort</b> 6086:1 <b>efforts</b> 6033:12 6083:3 6095:9 <b>egg</b> 6154:15 <b>electrical</b> 6187:25 6215:2 <b>elements</b> 6107:25 <b>elevator</b> 6063:10 6133:21 6134:6,8 6135:7 <b>elevators</b> 6133:19 <b>ELFD1687</b> 6218:24 <b>eliminated</b> 6065:25 <b>Elliot</b> 6036:12 6037:4 6038:1 6040:3 6051:9,13 6053:19,24 6066:21 6073:2 6091:7 6099:6 6208:13 6218:18 <b>embarrassed</b> 6086:18	<b>emergency</b> 6068:4 <b>employed</b> 6036:20 <b>employment</b> 6037:3 <b>end</b> 6043:9 6044:6 6101:3 6122:12 6130:22 6159:12 6167:3 6178:12 6184:21 6206:5 6211:15 6212:11 <b>ended</b> 6052:18 6073:8 6095:4 6106:8 6121:22 6140:19,21,22 6185:21 6196:23, 24 6197:3,8 6205:9 6209:8 6215:7 <b>ending</b> 6098:14 6102:4 6103:10 6127:23 6146:12 6180:15 6194:3 6202:22 6214:12 <b>energy</b> 6122:21 <b>enforce</b> 6041:16 6044:12 <b>enforcement</b> 6052:8 6059:22 6064:19 6212:18 6214:15 <b>enforcing</b> 6076:7 6182:5 <b>engaged</b> 6152:1 <b>engagement</b> 6127:12 <b>engineer</b> 6048:3,12 6092:13 6104:14 6120:4 6147:14, 18,19 6148:2 6151:5 6153:18, 22 6177:20 6180:1 6200:13 <b>engineer's</b> 6101:23,24 6163:19	<b>engineering</b> 6050:21 6051:3, 13 6098:12 6184:20 <b>engineers</b> 6155:7 <b>England</b> 6119:19, 6120:24 6121:18 6122:14 6123:7,11 6126:10,14,21,23 6149:14 <b>enjoyed</b> 6055:2 <b>enormous</b> 6218:7 <b>ensure</b> 6033:12 6042:23 6059:16 6061:14,17,18,24 6062:19 6063:21 6069:11 6070:7 6076:10,14 6092:18 6120:6 6133:21 6151:5 6152:2 6170:25 6171:2,7 6172:5 6178:17 6187:9 6201:8 6218:10 <b>enter</b> 6042:11,18 6196:17 6211:12, 18 6215:25 <b>entered</b> 6106:5 6124:25 6197:18, 22 6198:1 6211:21 6213:5 <b>entertain</b> 6218:11 <b>entire</b> 6039:23 6083:5 6111:23 6130:24 6140:10 6147:13 6163:20 6175:5,23,24 6217:9,11 <b>entrance</b> 6174:8,9,14,15 <b>entry</b> 6042:5,9 <b>enumerated</b> 6090:19 <b>enunciator</b> 6174:17	<b>environment</b> 6083:20 <b>episode</b> 6046:15 <b>epoxy</b> 6101:18 <b>equipment</b> 6059:18 6061:17 6074:7 6172:22 6181:15 6195:10 <b>equity</b> 6057:22 <b>ESA</b> 6215:3,8 <b>escalator</b> 6139:10 6174:16 <b>escalators</b> 6133:19 <b>essence</b> 6040:20 <b>essentially</b> 6047:11 6052:18 6058:21 6073:7 6075:9 6096:8 6107:11 6128:18 6174:13 6176:5 6217:1 <b>establish</b> 6064:18 <b>establishment</b> <b>s</b> 6181:9 <b>evaluation</b> 6072:11 <b>evening</b> 6095:13 <b>event</b> 6069:21 6077:4 6176:9 6202:18 <b>eventually</b> 6043:21 6196:23 6214:21 <b>everybody's</b> 6070:17 <b>evidence</b> 6044:24 6050:20 6058:8 6153:14 <b>Ewald</b> 6127:5,24 6129:8 6130:7 6131:4 6132:1	6133:17 6135:13, 16,23 6137:11 6138:12 6141:3, 11 6145:2,7,21 6146:5 6151:11 6153:15 6158:5 6160:10 6163:15 6213:20 6214:4 <b>Ewald's</b> 6130:4 <b>exact</b> 6151:15 <b>examination</b> 6049:9 <b>EXAMINATION</b> <b>-IN-CHIEF</b> 6035:21 <b>examined</b> 6048:16 <b>examples</b> 6171:2 <b>exams</b> 6060:15 <b>exceed</b> 6062:16 <b>exception</b> 6049:12 <b>excess</b> 6108:6 <b>excited</b> 6107:12 6122:21 <b>excluding</b> 6036:1 <b>excuse</b> 6197:9 <b>exercise</b> 6061:19 <b>Exercised</b> 6072:1 <b>exhibit</b> 6046:16 6049:2 6072:17, 20 6073:1,2 6078:17 6082:7, 23 6085:7 6087:14,22 6089:23 6093:6 6095:14,16 6098:13 6119:17 6125:1,5,6,10 6127:3,23 6131:16 6133:7,9 6136:25 6137:2 6138:6 6144:22,
---	--	---	--	---



23 6148:17 6152:18 6156:3 6160:22 6162:5 6168:2,15 6169:21 6173:24 6176:17 6177:3 6178:25 6180:5 6183:4 6185:19 6188:3,5 6191:3 6192:13 6193:23 6194:20 6196:3 6197:15 6198:17, 18 6199:9 6205:14 6211:22 6213:5,7,8 6216:13,14,15 6218:25	<b>expenditures</b> 6061:7 <b>expensive</b> 6171:12 <b>experience</b> 6208:15 6209:23 <b>experiencing</b> 6179:15 <b>expiration</b> 6114:23 <b>explain</b> 6041:23 6042:1 6085:8 6149:3 <b>explained</b> 6151:3,13 <b>explanation</b> 6041:11 6087:1 6094:20 6151:4 <b>exposed</b> 6088:19 6108:7 6159:15 6165:19, 20 6166:1,2 6169:9 <b>exposing</b> 6089:19 <b>expressed</b> 6083:10 6184:8 6216:1 <b>expressing</b> 6047:9 6151:19 6154:23 <b>extended</b> 6089:9 6184:17 <b>extensive</b> 6092:9 <b>extent</b> 6046:5 6097:8 <b>exterior</b> 6134:17 6139:21 <b>extinguisher</b> 6067:4 <b>extinguishers</b> 6068:6,9 <b>extinguishmen</b> t 6061:13	<b>extra</b> 6158:21 <b>extremely</b> 6083:8 <b>eyes</b> 6066:10 6134:24 6175:7 <hr/> <b>F</b> <hr/> <b>Fabris</b> 6151:3 6152:6,15,19 6184:20 6185:1,2 6217:5,7,20 <b>face</b> 6101:12 6131:21 6150:23 6210:5 <b>face-to-face</b> 6128:19 <b>facilities</b> 6069:7 6085:24 6210:17 <b>facility</b> 6053:23 6054:3 6075:6 6076:14 6181:15 <b>fact</b> 6034:19 6037:6 6045:1 6048:10,18 6050:12,16 6057:20 6073:3 6074:17 6077:19 6078:21 6080:11 6081:3 6102:6 6104:10 6107:8 6115:13,21 6126:13 6127:19, 22 6135:3 6136:12 6142:6 6145:13,15 6150:23 6151:17 6162:11 6163:18 6176:8,12 6192:11 6196:2 6201:8 6203:15 6205:24 6214:3 <b>factual</b> 6194:24 <b>factually</b> 6186:14 <b>Fahrenheit</b> 6108:14 <b>fail</b> 6192:15 6203:23,24	6207:17,19 6215:5 <b>failed</b> 6182:1 <b>failing</b> 6203:17 <b>failure</b> 6096:21 6108:17 6109:1 6143:18 6203:20 <b>fair</b> 6057:10 6064:8 6080:10 6123:13,17 6138:3 6149:4 6150:17 6151:21 6157:16 <b>fairly</b> 6052:24 6053:11 6156:16 6204:21 <b>fall</b> 6049:19 6097:22 6132:11 <b>fallen</b> 6088:18 6089:19 6166:4, 23 6199:1,20 <b>false</b> 6063:8 <b>familiar</b> 6044:5 <b>Fanshawe</b> 6036:16 <b>fashion</b> 6062:17 6094:16 6106:3 <b>fast</b> 6059:19,20 <b>fatalities</b> 6063:21 <b>fatality</b> 6073:24 <b>fax</b> 6119:18 6123:11 <b>faxes</b> 6120:15 <b>feasible</b> 6083:17 <b>February</b> 6037:22 6054:8 6105:21 6114:17 6115:18 6119:22 6120:16 6121:5 6124:6 6125:7 6126:15 6128:1,6 6150:4 6185:22 6195:24 6198:21 6199:6,25 6204:4	<b>feces</b> 6043:9 <b>fed</b> 6041:19 <b>feeling</b> 6136:1 6153:20 <b>feet</b> 6101:15,19 6159:14 6176:1 <b>felt</b> 6088:21 6105:6 6144:18 6157:21 6179:20, 21 <b>field</b> 6040:14 <b>fifteen</b> 6118:24 <b>fighter</b> 6055:8, 25 6066:1 6070:7 6071:17 6141:8 <b>fighters</b> 6060:5, 6,8,17,23 6061:3 6063:18 6064:2 6065:16 6066:17 6071:2 6074:16 <b>fighting</b> 6064:8 <b>figured</b> 6142:2 <b>file</b> 6085:24 6120:7,10 6154:3 6191:4 6217:17 <b>files</b> 6113:4 <b>fill</b> 6110:4 <b>filled</b> 6057:21 6073:7 <b>final</b> 6120:11 6179:8 6188:25 6198:11 6200:18 <b>finally</b> 6170:5 <b>find</b> 6094:25 6102:19 6117:13 6131:19 6136:4 6146:11 6150:23 6190:21 <b>finding</b> 6173:15 <b>fine</b> 6137:22 6197:23 6218:11 <b>fines</b> 6196:18 <b>finish</b> 6103:4 6114:15 6210:4
--	--	--	---	--

<p><b>finished</b> 6122:17 6135:15 6136:7 6154:25 6179:18</p> <p><b>fir</b> 6108:8</p> <p><b>fire</b> 6036:11 6038:1,7 6054:11, 17,19,21 6055:2, 8,24,25 6056:2,7, 18,22 6057:6,12, 13,15,21,25 6058:21,23,24,25 6059:17,18 6060:5,6,8,17,23 6061:2,10,13,20 6062:2,12 6063:8, 14,17 6064:2,7, 11,12,13,17,22,23 6065:2,16,21,24 6066:1,5,17 6067:4,23 6068:1, 6,8,13,22,23 6069:4,8,10 6070:7,12 6071:2, 8,11,17 6073:3,10 6074:7,15,17 6075:16,25 6076:8,9,11,19,22 6077:5,8,10,22 6082:16 6088:4, 22 6089:17,18 6093:14,16,19,21, 25 6094:3,7,8,22 6100:7 6103:23 6105:12 6107:18, 19,20,21,22,25 6108:1,13,18,21, 25 6109:3,6,9,11, 12,18,19,22,24,25 6110:6,15,18,21 6111:13,17,18,20 6112:11 6115:24 6116:9,19 6119:10 6122:5,7, 10 6133:2,22 6134:13 6135:20 6138:7 6139:5,12, 18,22 6140:1,4,5 6141:8,19,22,25 6142:14,23 6143:11 6145:23, 25 6146:20 6148:25 6149:23 6154:16 6157:12, 13 6159:16,22</p>	<p>6161:6 6164:4,7, 9,23 6166:19,21 6167:6,12,22,24 6168:22 6170:14, 19 6174:16,20 6175:2,8,12 6177:10,18 6178:2 6180:23, 25 6181:1,7 6182:5,17,22 6183:13,23 6185:22 6186:5, 13,21 6187:4, 6188:22,24 6189:7 6190:16 6192:2,5,14,16, 17,18 6194:22 6196:8,10 6198:21,25 6201:6 6202:15, 24 6203:12,13,16, 18 6204:24 6206:3,5 6208:20 6209:24 6212:6, 13 6214:14 6218:10,15</p> <p><b>fire-resistance</b> 6093:19 6094:6</p> <p><b>firefighter</b> 6055:5 6134:8 6139:14</p> <p><b>firefighters</b> 6059:23 6071:12</p> <p><b>firefighting</b> 6133:21</p> <p><b>fireproofing</b> 6078:11 6088:17, 22 6096:10 6097:2,5, 6107:8, 17 6112:8 6134:10 6151:7 6166:3,23 6167:1 6169:11 6199:2, 20 6201:15,20 6202:13</p> <p><b>firerated</b> 6165:4 6167:16</p> <p><b>fires</b> 6054:16 6061:22</p> <p><b>firm</b> 6051:7</p> <p><b>firms</b> 6050:22</p>	<p><b>firstly</b> 6050:13 6091:14</p> <p><b>fist</b> 6077:22 6146:3,19</p> <p><b>fit</b> 6184:2 6188:17</p> <p><b>fix</b> 6126:9,23 6134:6 6147:25 6157:13 6195:22 6202:16</p> <p><b>fixed</b> 6098:5 6135:10 6148:4 6190:21</p> <p><b>flange</b> 6097:18 6107:15 6165:13 6166:19,25</p> <p><b>flip</b> 6094:19</p> <p><b>flood</b> 6109:16</p> <p><b>floor</b> 6047:16 6077:6 6195:7</p> <p><b>flow</b> 6188:20 6190:7</p> <p><b>flying</b> 6181:25</p> <p><b>focus</b> 6045:11 6112:9</p> <p><b>focused</b> 6211:2</p> <p><b>folks</b> 6063:23 6104:20 6214:2</p> <p><b>follow</b> 6075:20 6085:25 6135:8 6145:20 6160:24 6161:3</p> <p><b>follow-up</b> 6076:5 6100:13 6135:16 6160:23 6161:5</p> <p><b>font</b> 6088:23</p> <p><b>food</b> 6146:25</p> <p><b>fool</b> 6201:18</p> <p><b>foot</b> 6139:11,18, 22 6140:1</p> <p><b>footage</b> 6175:5</p> <p><b>footprint</b> 6175:24</p> <p><b>force</b> 6053:21,25</p>	<p>6061:19 6065:13</p> <p><b>forgive</b> 6175:16</p> <p><b>forgot</b> 6035:24</p> <p><b>forgotten</b> 6032:14</p> <p><b>form</b> 6040:23 6088:3,9 6094:11 6096:1 6203:21</p> <p><b>formal</b> 6040:17</p> <p><b>formalized</b> 6107:2</p> <p><b>formulated</b> 6049:23</p> <p><b>forthcoming</b> 6048:13</p> <p><b>forthwith</b> 6092:15</p> <p><b>forward</b> 6035:18 6043:21,24 6053:5 6057:4 6071:19 6072:12 6074:21 6102:1 6103:7 6105:5 6106:3,14,20 6114:18 6122:15, 20,22 6124:2,18 6131:23 6132:13, 14,16,21,22 6135:2,24 6136:9, 16 6144:1,20 6150:1,15 6152:3, 7 6154:24,25 6155:8 6156:1,2 6157:8 6177:13 6183:25 6185:21 6205:3 6206:1 6207:16,22 6214:25 6216:4 6218:22</p> <p><b>forwarded</b> 6079:25 6122:14 6123:18 6189:22</p> <p><b>forwarding</b> 6080:13</p> <p><b>found</b> 6069:6,23 6095:13 6111:8 6168:7 6169:20 6188:16 6198:23 6215:13</p>	<p><b>four-storey</b> 6174:2</p> <p><b>fourth</b> 6214:25 6215:1</p> <p><b>FPPA</b> 6061:20 6214:15</p> <p><b>frame</b> 6050:1,25 6051:18 6074:24 6079:9 6081:8 6092:14 6100:18 6200:20</p> <p><b>frames</b> 6091:25</p> <p><b>frank</b> 6144:16 6149:25</p> <p><b>free</b> 6109:25</p> <p><b>frequency</b> 6107:4</p> <p><b>frequent</b> 6045:18</p> <p><b>Friday</b> 6032:23 6033:9</p> <p><b>friend</b> 6054:24 6124:25 6211:8</p> <p><b>friends</b> 6211:20</p> <p><b>front</b> 6174:8,14, 17,23 6176:7 6186:9 6213:17</p> <p><b>fucking</b> 6192:1, 4</p> <p><b>fuel</b> 6107:23 6108:24</p> <p><b>full</b> 6197:13 6213:3</p> <p><b>full-time</b> 6060:8, 20,22 6061:1,2 6065:21 6066:17 6073:14 6075:25</p> <p><b>fully</b> 6167:4 6183:17 6218:2</p> <p><b>function</b> 6214:11</p> <p><b>functional</b> 6072:3</p> <p><b>functions</b> 6057:25 6059:2</p>
--	---	--	---	--

<b>fundamental</b> 6035:6	6151:24 6193:14 6208:10 6209:4	<b>guilty</b> 6197:2	<b>happening</b> 6055:19 6079:18 6081:4 6097:5 6117:19,23 6119:12 6129:22 6134:25 6142:19	<b>heavy</b> 6054:15
<b>funded</b> 6033:1	<b>grade</b> 6174:6 6175:14,17,19,21 6176:1	<b>guy</b> 6122:21	<b>happy</b> 6060:10 6152:5 6193:7	<b>height</b> 6174:3
<b>funny</b> 6120:22 6130:1	<b>graduate</b> 6036:16	<b>guys</b> 6067:25 6068:19 6077:15 6208:23	<b>harassing</b> 6201:14	<b>held</b> 6083:7 6148:20
<b>future</b> 6101:25	<b>graduated</b> 6036:16	<b>H</b>	<b>hard</b> 6034:1,10 6099:11 6120:19 6187:7	<b>helped</b> 6069:21 6176:14
<b>G</b>	<b>graduation</b> 6036:19	<b>H.R.</b> 6158:14 6159:3,25	<b>hardwired</b> 6186:20	<b>helpful</b> 6053:16 6078:15
<b>Gagnon</b> 6080:4	<b>grain</b> 6151:23	<b>Halcrow</b> 6213:10	<b>hat</b> 6216:3	<b>helps</b> 6171:6
<b>gain</b> 6042:9	<b>granted</b> 6214:17	<b>half</b> 6034:8 6077:6 6158:10	<b>hate</b> 6106:17	<b>Henri</b> 6216:8
<b>gaining</b> 6042:5	<b>grape</b> 6157:4	<b>hall</b> 6041:2,5 6052:15 6074:7 6075:16	<b>hazards</b> 6077:11	<b>Henry</b> 6185:4 6213:23 6215:17
<b>gather</b> 6035:11 6088:2 6104:9 6120:14 6124:19 6125:20 6126:10 6197:16	<b>grave</b> 6083:10	<b>hallway</b> 6191:12 6199:1,21	<b>he'll</b> 6075:17 6152:6	<b>hesitate</b> 6032:13
<b>gathered</b> 6183:19	<b>ground</b> 6073:10	<b>hallways</b> 6195:16	<b>head</b> 6194:13	<b>hesitation</b> 6099:13 6100:3 6102:20
<b>gave</b> 6095:18 6112:3 6156:16 6158:5 6207:10	<b>group</b> 6070:14 6072:5,7 6119:9 6126:3	<b>Halsall</b> 6051:13 6113:6	<b>header</b> 6156:11	<b>high</b> 6105:15 6122:21
<b>gees</b> 6118:1	<b>grouped</b> 6118:18,19	<b>Hamilton</b> 6137:9 6156:7	<b>heading</b> 6061:10 6064:6, 10,11	<b>highlighted</b> 6191:13
<b>general</b> 6032:19 6033:3 6063:6 6081:7 6116:3 6179:22 6188:16	<b>groups</b> 6061:6 6072:1	<b>hand</b> 6075:14 6080:24 6103:15 6202:3	<b>heads</b> 6108:11 6194:15	<b>highlights</b> 6073:9
<b>generalized</b> 6077:15	<b>Guelph</b> 6036:20, 23	<b>handed</b> 6089:6	<b>Health</b> 6071:17	<b>Hill</b> 6052:14
<b>generally</b> 6050:19	<b>guess</b> 6069:15 6077:2 6081:25 6090:12 6097:21 6098:10 6119:6 6124:3 6143:1 6144:17 6145:16 6149:8 6150:25 6173:19 6174:5 6182:25 6183:2 6205:15	<b>handle</b> 6096:4	<b>hear</b> 6045:21,22 6216:10	<b>hindsight</b> 6144:16 6150:21 6152:10 6154:5
<b>generic</b> 6102:11	<b>guest</b> 6177:16 6178:4,19,20,22	<b>handwriting</b> 6047:20 6048:1 6050:7 6100:15 6131:21 6199:15	<b>heard</b> 6032:2 6044:23 6045:13 6132:16	<b>hired</b> 6048:3 6060:9
<b>give</b> 6041:10,11, 24 6048:20 6059:1 6082:21 6084:5 6089:9 6096:5,12 6106:22 6157:23 6186:17 6190:3 6203:14 6210:4	<b>guests</b> 6177:22	<b>handwritten</b> 6131:21 6199:16 6200:7 6202:3,10	<b>hearings</b> 6034:17	<b>hiring</b> 6039:17 6060:6,8 6072:10
<b>giving</b> 6126:2 6205:18 6206:9, 10 6218:5	<b>guidance</b> 6072:3 6095:4	<b>hanging</b> 6086:17	<b>hearsay</b> 6216:6, 7	<b>history</b> 6083:9 6204:19 6205:24
<b>good</b> 6032:7 6033:6 6054:18 6057:15 6066:8 6078:5 6131:15	<b>guide</b> 6064:13, 16	<b>happen</b> 6109:2 6214:23	<b>heat</b> 6107:23 6108:6,15 6110:6, 7,10,11 6177:17, 23	<b>hit</b> 6065:9 6202:1
	<b>guidelines</b> 6059:15, 6071:16 6073:12	<b>happened</b> 6040:12 6047:3 6087:12 6094:18 6095:3 6136:12 6144:5 6190:17	<b>heaters</b> 6215:4, 6	<b>hold</b> 6105:15 6133:12 6211:14
			<b>heavily</b> 6070:24 6130:15	<b>holding</b> 6068:18 6155:2

<p><b>hole</b> 6109:12,15</p> <p><b>holes</b> 6100:23 6110:9 6198:24 6199:18</p> <p><b>home</b> 6037:1 6042:13 6168:25</p> <p><b>homes</b> 6065:2</p> <p><b>honest</b> 6055:24 6214:19</p> <p><b>honey</b> 6044:20</p> <p><b>hook</b> 6144:18</p> <p><b>hope</b> 6098:8</p> <p><b>hoping</b> 6069:19 6159:12</p> <p><b>hoses</b> 6046:11</p> <p><b>hospital</b> 6067:6</p> <p><b>host</b> 6069:1</p> <p><b>hot</b> 6214:12</p> <p><b>hotel</b> 6067:11 6069:18,23 6121:7,8,24 6122:1,4,6,8,18 6123:20 6138:22 6142:14 6156:2 6157:7 6158:14 6164:11,15 6170:16,17 6171:12 6172:18, 20 6173:4 6174:8, 15 6176:19 6177:8,9,14 6182:18 6186:11 6187:20,22 6188:16,17 6190:10 6191:11 6204:24 6210:12, 13,17,25 6214:6, 11 6217:9,12</p> <p><b>hotels</b> 6170:25 6172:17 6211:4</p> <p><b>hounding</b> 6055:25</p> <p><b>hour</b> 6164:4,10</p> <p><b>house</b> 6077:5 6210:18</p> <p><b>Howard</b> 6039:9</p>	<p><b>HR</b> 6161:22</p> <p><b>human</b> 6060:3</p> <p><b>hundred</b> 6129:2 6171:25</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>i.e.</b> 6159:20</p> <p><b>ice</b> 6063:7 6070:15,21 6071:20 6073:24</p> <p><b>idea</b> 6045:14 6059:1 6147:24 6207:9</p> <p><b>identical</b> 6147:24</p> <p><b>identified</b> 6047:22 6075:8 6138:18 6139:8 6140:7 6147:2,5,8 6163:16,21,22 6168:12</p> <p><b>identifies</b> 6141:13</p> <p><b>identify</b> 6035:1 6071:14 6072:1 6174:6,19 6175:18 6212:3</p> <p><b>ill</b> 6038:3 6054:22 6084:2</p> <p><b>illegal</b> 6215:18</p> <p><b>imagine</b> 6129:24</p> <p><b>immediately</b> 6114:8 6178:11</p> <p><b>impact</b> 6107:19</p> <p><b>implement</b> 6073:11</p> <p><b>implemented</b> 6049:9</p> <p><b>implementing</b> 6059:13</p> <p><b>implication</b> 6073:17</p> <p><b>implies</b> 6062:11</p>	<p><b>importance</b> 6151:16</p> <p><b>important</b> 6063:17 6066:11 6070:3,15 6075:23 6109:4</p> <p><b>imposed</b> 6197:23</p> <p><b>impossible</b> 6084:5</p> <p><b>impression</b> 6157:6</p> <p><b>improvements</b> 6128:14</p> <p><b>in-depth</b> 6057:23</p> <p><b>in-your-face</b> 6193:9</p> <p><b>inches</b> 6158:17, 19,21 6160:17</p> <p><b>incident</b> 6063:19 6070:23 6071:3</p> <p><b>incidentally</b> 6053:18</p> <p><b>incidents</b> 6084:7</p> <p><b>include</b> 6035:24 6085:20 6091:24</p> <p><b>included</b> 6127:11 6142:3</p> <p><b>includes</b> 6217:12</p> <p><b>including</b> 6091:5,17</p> <p><b>indicating</b> 6167:23</p> <p><b>individual</b> 6154:8,23 6155:1 6193:15 6212:20</p> <p><b>individually</b> 6116:5</p> <p><b>individuals</b> 6154:20</p> <p><b>industrial</b> 6065:1</p>	<p><b>infiltration</b> 6146:22</p> <p><b>info</b> 6200:16</p> <p><b>inform</b> 6034:18 6077:11 6217:19</p> <p><b>information</b> 6041:9 6042:19 6077:24 6112:3 6122:14,15 6123:11,18,23 6124:13,14,17 6126:2 6129:25 6156:17,21 6157:1,24 6160:6, 19 6183:20 6189:4 6190:11 6207:25 6213:14 6218:6</p> <p><b>informed</b> 6156:18 6206:21</p> <p><b>informing</b> 6079:10</p> <p><b>informs</b> 6112:23</p> <p><b>infraction</b> 6075:21 6077:17</p> <p><b>infractions</b> 6075:15 6148:10 6168:9 6170:1 6197:4,12</p> <p><b>inhibit</b> 6166:12</p> <p><b>initial</b> 6099:9,20 6100:8 6102:18</p> <p><b>initialed</b> 6099:10</p> <p><b>initially</b> 6153:4,9</p> <p><b>initials</b> 6047:21</p> <p><b>Initiative</b> 6072:25 6073:6</p> <p><b>Inn</b> 6177:8 6187:20 6188:16 6210:12</p> <p><b>inquiry</b> 6133:17</p> <p><b>inside</b> 6046:8</p> <p><b>inspect</b> 6140:10</p> <p><b>inspected</b> 6046:1 6118:6</p>	<p>6147:14 6148:2 6165:6,18,25 6177:8 6181:11</p> <p><b>inspection</b> 6040:2 6041:24 6045:23 6071:11 6074:14,16,20,23 6075:1,9,17 6076:16, 6077:21 6081:24 6085:23 6086:11,16,23 6087:4,12 6088:16 6089:20 6090:1,6 6093:10, 11 6094:17,23 6095:6 6111:11, 23 6114:3 6115:2, 5,7,9,15 6116:14 6118:4,11 6120:8 6138:3,7,11 6139:3 6140:7,8 6141:5,6,13 6142:2,13 6144:12 6146:20 6148:4 6158:15, 18 6160:23,24 6161:5,16 6163:11 6164:16 6168:8,12,16,21 6169:3,5,7 6170:5 6177:7,12 6180:18,20 6181:13 6182:11 6183:8,12 6184:13,15 6189:3 6193:1,17 6196:22 6198:1, 21 6199:5, 6202:25 6203:12 6204:4,6 6217:23</p> <p><b>inspections</b> 6064:13,24,25 6065:5,12,17 6066:8,17,22,25 6067:21 6076:18 6077:15 6078:10, 16 6085:9 6087:3 6106:7,25 6118:17 6119:9 6128:5,10 6155:25 6193:12 6196:11 6208:12, 15 6209:3 6217:21 6218:3</p>
---	--	---	--	--

<p><b>inspector</b>                      6037:3,11                      6039:20 6044:25                      6051:1 6055:22                      6074:20,25                      6086:13 6105:14                      6215:3,8</p> <p><b>inspectors</b>                      6064:13,17,20,22                      6066:2,3 6076:19                      6106:12</p> <p><b>install</b> 6101:18</p> <p><b>installed</b>                      6178:10,21</p> <p><b>instance</b> 6146:3</p> <p><b>instruct</b> 6119:7                      6133:1</p> <p><b>instructed</b>                      6119:6 6215:22</p> <p><b>instructing</b>                      6133:25</p> <p><b>instruction</b>                      6218:21</p> <p><b>instructions</b>                      6163:14</p> <p><b>instructors</b>                      6070:13,23</p> <p><b>insulation</b>                      6097:17</p> <p><b>insult</b> 6036:1</p> <p><b>integrity</b>                      6093:18,21                      6094:5,8 6159:1                      6164:25</p> <p><b>intend</b> 6035:6</p> <p><b>intended</b>                      6034:23 6094:12                      6191:20 6214:11</p> <p><b>intending</b>                      6034:16</p> <p><b>intent</b> 6128:4                      6214:6</p> <p><b>intention</b>                      6058:4 6081:3                      6103:15</p>	<p><b>intentions</b>                      6128:8</p> <p><b>interest</b> 6065:10                      6079:12 6134:19                      6152:7 6164:16                      6166:17</p> <p><b>interested</b>                      6047:3 6124:18                      6131:20 6156:10                      6173:3</p> <p><b>interim</b> 6114:7</p> <p><b>internet</b> 6033:24</p> <p><b>interpretation</b>                      6073:16</p> <p><b>interpretations</b>                      6064:18</p> <p><b>interpreters</b>                      6059:8</p> <p><b>interrupt</b>                      6072:15 6131:9</p> <p><b>intervention</b>                      6110:19</p> <p><b>interview</b>                      6046:19 6086:22                      6099:3</p> <p><b>interviews</b>                      6060:16</p> <p><b>introduce</b>                      6032:17</p> <p><b>introduction</b>                      6121:18</p> <p><b>inventory</b>                      6083:20</p> <p><b>invitation</b>                      6145:6</p> <p><b>invited</b> 6083:6,8</p> <p><b>involved</b>                      6039:17 6045:8                      6060:19 6138:20                      6141:11 6200:3                      6201:1 6208:11</p> <p><b>involvement</b>                      6132:5 6212:4</p> <p><b>involving</b>                      6046:15 6148:13</p>	<p><b>isolating</b>                      6168:11</p> <p><b>issue</b> 6033:9                      6043:18,19,20                      6048:15 6088:22                      6089:8 6090:20                      6096:11 6106:19                      6113:21 6120:12                      6121:11 6122:5                      6129:3,4 6132:15                      6133:23 6140:16                      6142:13 6144:4                      6145:14,15,17                      6146:1 6153:16                      6156:13 6157:4                      6164:17 6174:2,4                      6185:1 6187:14                      6194:11 6206:1,                      21 6210:11                      6214:15,24                      6215:2 6218:5,19</p> <p><b>issued</b> 6090:5                      6098:1 6144:8,10                      6145:1,13 6146:4,                      8 6153:10 6162:1                      6179:4 6203:3</p> <p><b>issues</b> 6092:2                      6106:11 6122:7,                      19 6124:7 6129:6                      6137:18 6141:25                      6142:20,24                      6179:16 6208:18                      6209:8</p> <p><b>issuing</b> 6148:11                      6176:14</p> <p><b>item</b> 6118:25                      6125:19 6195:13                      6212:21</p> <p><b>items</b> 6073:16,                      19 6074:24                      6083:22 6111:10                      6145:23 6161:12,                      19,21 6162:13                      6168:7,18                      6188:19 6189:2,                      22 6190:24                      6195:3,12                      6196:24 6198:23                      6204:19,25                      6209:19</p>	<p style="text-align: center;"><b>J</b></p> <hr/> <p><b>January</b>                      6189:23 6190:1,                      25 6191:9                      6192:10 6212:7</p> <p><b>jive</b> 6087:15,18</p> <p><b>job</b> 6045:8                      6056:21 6057:20,                      23 6062:1 6073:2,                      8 6079:5 6084:13                      6112:17 6122:25                      6123:8,16 6130:8                      6151:20 6209:21</p> <p><b>jobs</b> 6056:5                      6072:1 6105:10</p> <p><b>jog</b> 6120:23</p> <p><b>joint</b> 6049:12                      6101:16 6116:3                      6129:16</p> <p><b>joints</b> 6100:23</p> <p><b>joints....to</b>                      6101:15</p> <p><b>joists</b> 6077:7</p> <p><b>Judith</b> 6032:18</p> <p><b>July</b> 6049:13                      6122:25 6125:13                      6128:16 6217:4,5</p> <p><b>jump</b> 6049:6                      6065:9 6185:19                      6209:22</p> <p><b>jumping</b>                      6105:18</p> <p><b>June</b> 6038:13                      6051:19 6204:12,                      15 6206:8,                      6207:10,11,12,19                      6208:2</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>Katherine</b>                      6082:8,11                      6085:16</p> <p><b>keeping</b>                      6131:10</p>	<p><b>Keith</b> 6134:4</p> <p><b>Ken</b> 6088:24                      6089:7</p> <p><b>Ken's</b> 6094:20</p> <p><b>kind</b> 6053:8                      6140:17,20                      6157:6</p> <p><b>kiosk</b> 6139:10                      6140:19 6165:18</p> <p><b>Kloeze</b> 6032:16</p> <p><b>knew</b> 6047:7                      6053:17 6104:11                      6209:2</p> <p><b>knocked</b>                      6201:25 6202:1</p> <p><b>knowledge</b>                      6042:8 6045:5,6,7                      6046:5 6047:3                      6054:19 6056:1                      6066:6 6077:2                      6206:13</p> <p><b>Kuka</b> 6046:22,24                      6072:23 6073:1                      6095:16,20                      6125:5,16 6133:8,                      9,11 6137:2                      6148:15,17                      6198:18 6211:22                      6213:4 6216:13                      6218:25</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>lack</b> 6177:16</p> <p><b>lady</b> 6216:11</p> <p><b>laid</b> 6079:13                      6156:19 6157:5                      6192:21 6193:3,                      16 6194:25                      6195:23</p> <p><b>Lake</b> 6036:12                      6037:4 6038:1                      6040:3 6051:9,14                      6053:19,24                      6066:21 6073:2                      6099:7 6208:13                      6218:18</p> <p><b>landlord</b></p>
---	--	---	--	--

6083:18	6201:21,24	11 6049:18	<b>listening</b> 6152:4	<b>losing</b> 6108:7
<b>landowner</b>	<b>learn</b> 6045:15	6050:5,10	<b>litigation</b>	6110:13
6209:25	<b>lease</b> 6217:6,14	<b>Liautaud's</b>	6044:14	<b>loss</b> 6164:23
<b>language</b>	<b>leave</b> 6035:9,16	6049:3	<b>littered</b> 6047:16	6165:7,15
6147:24	6086:17 6178:20	<b>librarian</b>	<b>Living</b> 6051:10,	6166:18
<b>large</b> 6043:12	6181:14	6082:13	14 6208:13,17,25	<b>lost</b> 6154:2,6
6052:24 6107:16	<b>leaving</b> 6088:18	<b>libraries</b>	6209:1,12	6168:22
6209:2	<b>led</b> 6078:10	6083:10	6210:19	<b>lot</b> 6043:2 6044:4,
<b>Laroue</b> 6213:23	<b>Leddy</b> 6098:23	<b>library</b> 6046:15	<b>load</b> 6166:14	5 6052:21
6214:25 6215:17	<b>left</b> 6047:19	6047:5,13 6078:2,	6201:6	6053:10,11
6216:8	6073:5 6132:4,9	23 6079:25	<b>loading</b> 6169:12	6069:3 6097:4
<b>late</b> 6044:10	6158:8	6080:2,13 6081:5,	<b>lobby</b> 6158:8	6108:19,20,23
<b>latest</b> 6184:8	<b>legal</b> 6073:17	9,21 6082:12	6174:16	6131:2 6145:22
<b>lawyer</b> 6148:14	6085:21 6136:13,	6083:16 6084:4,7	<b>located</b> 6139:4	6193:13 6197:10
6151:13	20 6144:12	6085:19,24	6141:21 6168:22	6209:1 6216:5
<b>lay</b> 6193:16	6145:18 6184:17	6087:4 6088:16	6190:7	<b>lottery</b> 6052:21
<b>layer</b> 6130:24	6218:8	6091:8 6104:1	<b>location</b> 6139:9	6139:9 6146:24
<b>laying</b> 6185:22	<b>legislation</b>	6108:18,19	6158:25 6179:17	<b>loud</b> 6195:7
6195:18	6057:7,11	6109:7 6111:1,7,9	6194:10	<b>low-income</b>
<b>lays</b> 6204:1	6059:25 6171:23	6118:3,19 6122:8,	<b>locations</b>	6214:2
<b>LB</b> 6047:21	<b>length</b> 6184:9	9 6136:17	6091:6 6092:8	<b>lump</b> 6119:8
<b>lead</b> 6099:16	<b>Leslie</b> 6080:5	6170:12	6140:24	<b>lumped</b>
<b>leading</b> 6060:1	6213:10	<b>library's</b>	<b>lock</b> 6188:22	6118:23,25
<b>leads</b> 6141:12	<b>let's'</b> 6171:22	6083:20	6190:5	6119:2
<b>leak</b> 6045:22	<b>letter</b> 6040:22	<b>licensed</b>	<b>Lodge</b> 6210:16	<b>lumps</b> 6118:15,
6088:21 6103:24	6047:2,4,6,24,25	6147:15	<b>logged</b> 6200:18	16,18
6139:13 6156:24	6048:16 6049:4	<b>licensing</b>	<b>long</b> 6055:7	<b>Luncheon's</b>
<b>leakage</b> 6079:16	6094:12 6096:14	6052:21	6083:9 6092:7	6131:12
6080:12 6081:5,	6098:6,17 6099:2	<b>life-safety</b>	6132:19 6147:7	
21 6090:25	6100:13,17	6170:25	<b>long-term</b>	<b>M</b>
6091:4,16 6092:2,	6102:5 6103:1,8,	<b>life</b> 6061:14	6074:7 6146:22	<b>M.R.</b> 6162:14
7,14 6163:12	13,16 6127:10,11	6171:2 6172:6	<b>longer</b> 6126:7,	6200:13
<b>leaked</b> 6100:20	6128:7 6142:14	<b>lights</b> 6068:3,4	11 6136:8	<b>Macrae</b> 6034:20
<b>leaking</b> 6044:24	6152:19,25	<b>limited</b> 6058:8	6209:18	6035:23
6045:3,6,16	6173:24 6176:22	6113:6	<b>longest</b> 6106:12	<b>made</b> 6032:23
6046:7 6047:11	6177:3 6179:4	<b>limiting</b> 6163:15	<b>Longo</b> 6034:19	6033:15 6050:11,
6048:19 6081:9	6180:5,16	<b>linear</b> 6101:15,	6035:23	24 6058:11
6097:5 6127:8	6184:22 6188:11	19 6159:14	<b>looked</b> 6077:22	6072:17,20
6141:25	6197:16 6200:12	<b>lines</b> 6058:22	6111:3,4,6	6077:9 6134:15
<b>leaks</b> 6045:9	6205:18 6216:15,	6123:14 6124:15	6135:19 6140:14	6150:16 6160:4
6080:2 6090:20	21 6217:3,4	6153:13	6141:17 6168:19	6203:17 6212:8,
6095:7,11 6097:1	<b>level</b> 6158:7	<b>list</b> 6141:1	6172:11	12
6112:7,8 6115:25	6209:9	<b>Listen</b> 6119:9	<b>loop</b> 6081:20	<b>mail</b> 6198:9
6116:4 6127:1	<b>levels</b> 6060:18	6151:20	<b>lose</b> 6108:3	<b>mailed</b> 6075:18
6142:8,9 6154:16,	<b>liaison</b> 6061:5	<b>Liautaud</b>		<b>main</b> 6052:6
25 6157:13,14	6047:6,7 6048:2,			6057:11 6058:21

6059:2 6159:13 6165:17 6169:12 6185:3 <b>maintain</b> 6061:3,12 6192:15 <b>maintained</b> 6052:9 6053:23 6090:24 6093:22 6094:9 <b>maintaining</b> 6068:4 6069:13 <b>maintenance</b> 6044:8 6049:10 6068:8 6074:6 6145:4 6179:23 6195:12 6217:13 <b>major</b> 6047:14 6049:12 6101:16 6132:10 6166:18 <b>majority</b> 6043:3, 13 6107:16 <b>make</b> 6032:22 6034:2,10,14 6041:6 6074:11 6075:8,12 6083:15 6091:3 6097:4 6106:2 6110:7 6119:11 6142:5 6153:11 6162:16 6167:14 6182:16 6183:15 6214:22 <b>makes</b> 6164:22, 24 <b>making</b> 6035:22 6040:18 6041:10 6068:9 6072:25 6073:6,10 6083:4 6141:14 6167:23 6211:9 <b>mall</b> 6044:24 6045:3,6,9,17,18, 25 6046:3,8 6047:7,13 6050:23 6067:9 6069:16 6084:14 6088:15 6089:14 6090:13,16 6091:5,13,15 6092:8 6097:11	6098:18 6111:24 6114:6 6116:9 6119:25 6121:20, 23 6125:8 6126:6, 7,8,11 6134:5,11 6135:3 6138:4,18 6139:1 6140:10 6141:16 6142:23, 25 6144:14 6147:13 6148:2 6149:12,13 6154:19 6162:9 6163:3,12,20 6165:17 6167:4 6175:7 6182:19 6183:14 6185:4, 23 6194:6 6195:1 6198:24 6199:18 6208:12,18,25 6212:6,16 6213:11,23,24 6216:17 6217:9, 11,21,24,25 <b>mall's</b> 6134:10 <b>man</b> 6156:8 <b>manage</b> 6054:20 6072:8 <b>managed</b> 6052:14,15,16 6054:22 <b>management</b> 6061:5 6063:19 6125:12 6126:6 <b>manager</b> 6047:7 6075:6,19 6098:18 6119:25 6121:20,23 6126:7,11 6139:1 6149:14 6162:9 6185:4 6213:23, 25 6218:1 <b>manager's</b> 6125:23 6130:5 <b>managers</b> 6149:12 6154:19 <b>managing</b> 6054:3,13 <b>mandate</b> 6059:12 6073:20 6218:9	<b>mandated</b> 6061:19 6170:18 <b>mandates</b> 6178:3 <b>manner</b> 6093:17 6147:18 6152:3 6218:20 <b>March</b> 6176:18 6196:1,5,12 6199:7,15 6204:5 <b>marginal</b> 6049:20 <b>marks</b> 6097:19, 20 <b>Marshal</b> 6069:4, 8 <b>Marshal's</b> 6062:3 <b>MART</b> 6195:9 <b>mass</b> 6108:22 <b>match</b> 6089:10 <b>material</b> 6107:17 6139:12, 18,22 6140:2,5 6164:9 6183:8 6198:25 6199:20 6201:3,4,9,16 6202:13 <b>materials</b> 6068:10 6084:3 6146:21 6173:9 <b>matter</b> 6034:15 6035:5 6042:7 6048:5 6069:16 6097:7 6104:8,25 6105:19 6107:9, 10 6127:9 6128:12 6134:21 6149:22 6151:17 6153:25 6179:1 <b>matters</b> 6035:10 6064:18 6078:2 6148:6,7 6218:5 <b>Mayor</b> 6156:6 <b>Mccleery</b> 6139:2 6162:9 6185:4	<b>Mclean</b> 6136:14 6137:13 <b>Mctaggart</b> 6078:21 6080:20, 23 6081:16 6085:11 6086:7,8 <b>meaning</b> 6056:14 <b>means</b> 6040:7 6156:24 <b>meant</b> 6033:20 <b>measure</b> 6171:19 <b>measures</b> 6061:12 <b>mechanical</b> 6115:23 6201:25 <b>mechanics</b> 6044:1 <b>media</b> 6061:6 <b>mediate</b> 6177:15 6218:11 <b>medical</b> 6061:11 6062:23 6063:7, 16,20 6071:22 <b>medicals</b> 6062:19 <b>meet</b> 6079:6 6170:25 6177:14 6183:15 6210:21 <b>meeting</b> 6061:23 6083:7 6085:15 6104:7, 24 6105:1,2 6125:14,23 6126:16 6130:5, 10 6131:6 6136:24 6137:5 6138:2 6141:10 6148:13,19,22 6149:2,18,20 6150:9 6151:18 6152:1,6,20 6153:1 6159:10 6176:22,24 6184:5,25 <b>meetings</b> 6056:18,21	6061:5,24 6080:7 <b>melting</b> 6043:6, 8 <b>member</b> 6041:1 <b>members</b> 6047:21 6073:14 6092:9 6111:14 6122:11 6136:20 6170:15 <b>memo</b> 6191:4 <b>memory</b> 6095:1 6120:23 6121:14 6126:18 <b>men</b> 6061:3 6063:21 <b>mention</b> 6088:7 <b>mentioned</b> 6051:21 6053:19 6141:8 6167:20 <b>merit</b> 6131:5,8 <b>message</b> 6080:20 6120:24 6121:3,17 6125:4, 6 <b>messy</b> 6043:4 <b>met</b> 6113:2 6115:22 6150:6 6152:12 <b>methods</b> 6072:6 6100:22 <b>middle</b> 6169:1, 23 6204:2 <b>migrate</b> 6209:6 <b>mild</b> 6142:9 <b>million</b> 6074:4 6126:25 <b>mind</b> 6045:17 6131:10 6180:16 6211:9 <b>mine</b> 6032:18 6054:24 <b>mines</b> 6065:21 <b>minimum</b> 6044:8 6065:2 6108:5 6170:25
---	--	--	--	---

6171:8 6172:4 6184:2 6196:18 6218:16 <b>Ministry</b> 6032:19 6033:3 <b>minor</b> 6165:19 6166:1 <b>minuses</b> 6066:3 <b>minute</b> 6048:20 <b>minutes</b> 6085:14 6108:5 6110:12,20 6125:12,22 <b>missed</b> 6066:14 <b>missing</b> 6047:18 6068:19 6078:11 6094:23 6095:1 6097:9,17, 21 6110:10 6134:12 6135:20 6139:5,19,23 6140:2,5,18 6141:20 6148:25 6161:6 6201:20 <b>mixed</b> 6184:25 <b>MNR</b> 6064:7 <b>moment</b> 6084:10 <b>Monday</b> 6075:1 6163:3 6212:11, 14 <b>money</b> 6197:12 6212:21 6213:1 <b>monitored</b> 6177:18 <b>monitoring</b> 6063:21 6187:12 <b>monitors</b> 6084:16 <b>monoxide</b> 6063:10 <b>month</b> 6076:3 6116:23 6184:21 <b>month's</b> 6114:11 6143:6	<b>monthly</b> 6068:5, 8 6214:3 6215:21 <b>months</b> 6062:2 6114:3,17 6116:14 6117:2 6128:6 6170:4,9 <b>Morin</b> 6080:2 6082:8,12 6083:1 6085:11 6098:23 <b>morning</b> 6032:5,7,23 6033:9 6035:12 6121:6 6132:5 6133:18 6149:16 6167:20 <b>mouth</b> 6144:19 <b>move</b> 6043:21, 24 6060:17 6069:25 6072:12 6105:5 6122:14, 22 6124:18 6130:15 6136:9 6150:1 6152:2 6154:24,25 6156:2 6176:21 6205:2 6206:1 6207:16,22 6216:12 6218:22 <b>moved</b> 6044:10 6053:25 6131:23 6135:24 <b>movement</b> 6158:25 <b>moves</b> 6071:19 <b>moving</b> 6071:10 6103:7 6106:3 6110:16 6122:19 6124:2 6130:14 6140:20 6150:15 6152:7 6156:1 6185:21 <b>MRW</b> 6200:13 <b>multitude</b> 6049:23 6100:22 6218:3 <b>municipalities</b> 6062:15 <b>municipality</b> 6197:9	<b>Mutual</b> 6061:23 6062:7,10 <hr/> <b>N</b> <hr/> <b>nasty</b> 6043:12 <b>National</b> 6172:3 6181:1 <b>nature</b> 6102:11 6178:8 <b>Nazarian</b> 6098:7 6148:14,24 6149:3,10,19,21 6150:11 6151:13 6152:15,16,19,25 6157:11 6173:2, 25 6174:10 6177:4 6180:6,17 6183:5 6184:22 6185:1 6188:12 6191:10 6192:1,3, 8,11 6196:20 6205:2 6208:14, 19 6209:5,16 6211:2 6218:14 <b>Nazarian's</b> 6198:2 <b>necessarily</b> 6210:8 <b>needed</b> 6121:25 6122:16 6135:6, 18 6208:22 6209:2 6215:23 <b>negotiations</b> 6060:20 <b>neighboring</b> 6118:20 <b>neighbouring</b> 6062:12 <b>networking</b> 6060:1 <b>newer</b> 6187:9 <b>news</b> 6126:10 <b>NFPA</b> 6180:24, 25 6181:1 <b>Nicholls</b> 6051:7 <b>night</b> 6178:23	<b>no-show</b> 6202:7,15 <b>Noise</b> 6052:12 6053:15 <b>Non-compliance</b> 6162:1 <b>nonbudgeted</b> 6212:21 <b>north</b> 6073:21 <b>Northern</b> 6091:6 6111:5 <b>notation</b> 6100:14 6142:5 6186:21 6200:10, 23 6205:8 <b>notations</b> 6199:16 <b>note</b> 6048:25 6131:21 6135:24 6184:19 6202:8, 10,14 <b>noted</b> 6032:1 6093:14 6115:23 6136:19 6147:16 6163:3 6168:7 6169:9 <b>notes</b> 6075:8,15 6125:24 6137:4 6138:10 6148:19 6149:7 6162:12, 18 6169:12 6200:7 6202:4 <b>notice</b> 6046:13 6089:23 6090:5, 15 6091:9,21 6094:12 6095:7 6096:4,11 6098:1, 2 6099:5 6101:7 6102:10 6111:11, 24 6112:2 6113:10 6128:3 6145:10 6146:8 6147:2 6148:12 6177:19 6209:13, 14 6215:24 <b>noticed</b> 6036:3 6086:19 6088:17 6134:12	<b>notices</b> 6043:18 6145:17 6146:3,4 <b>notify</b> 6127:11 <b>notifying</b> 6212:19 <b>noting</b> 6168:4 <b>Nov</b> 6083:7 <b>November</b> 6037:12,14 6039:21 6096:13 6098:1,6,19 6099:6 6100:4 6102:3,11 6103:9, 18 6112:16 6116:6 6161:13, 14,21,24 6162:20, 23 6163:7 <b>number</b> 6046:17, 6050:21 6052:5 6055:23 6057:7 6062:18 6075:13 6081:4 6082:22 6087:19 6095:14,15,18 6098:14 6112:23, 24 6113:1 6117:7 6121:1 6127:2 6133:7,12 6150:25 6152:23, 24 6156:9 6165:23 6167:10 6176:2 6178:19 6180:4,10,15,20 6193:24 6194:12 6195:4,7 6196:3 6198:17 6206:12 6211:11 6213:7 <b>numbered</b> 6072:24 <b>numbers</b> 6075:13 6087:15, 18 <b>numerous</b> 6091:6 <b>nutshell</b> 6058:25 <hr/> <b>O</b> <hr/> <b>obligation</b>
---	---	---	--	---



6034:21 6218:17 <b>observation</b> 6091:3 <b>observations</b> 6112:3 6164:24 6209:10 <b>observed</b> 6091:4 6165:7 <b>obtain</b> 6042:16 6147:20 6155:9, 12,16,18 <b>obtained</b> 6037:2 <b>obtaining</b> 6085:21 <b>obvious</b> 6067:25 <b>occasion</b> 6035:1 <b>occupancies</b> 6093:17 <b>occupancy</b> 6145:5 6209:6 <b>occupant</b> 6178:1 <b>occupied</b> 6178:9 <b>occupier</b> 6042:13 <b>occupying</b> 6035:3 <b>occur</b> 6114:4 6115:3 6116:15 <b>occurring...a</b> 6084:7 <b>occurred</b> 6086:3 <b>occurs</b> 6115:25 <b>October</b> 6079:3, 5 6081:11,17,24 6085:10 6087:1 6088:10 6090:6 6101:8 6143:6,14 6156:6,11,16 6161:4 6162:8,13, 21 6163:1,3 6168:8 6169:3	<b>offense</b> 6077:3 6203:16 <b>Offenses</b> 6197:21 <b>offer</b> 6071:1 <b>office</b> 6033:2,5, 10 6040:13,15,20, 24 6052:21 6054:18 6062:3 6069:4 6087:3 6100:2 6133:1 6145:3 6176:19 6177:13 6189:23 <b>Officer</b> 6035:12, 14,20 6051:1 6056:12 6072:16 6076:1 6080:5 6091:12 6092:11 6125:8 6128:2 6146:8 6157:25 6213:9,19 6216:16 <b>Officers</b> 6055:24 6065:22, 24 <b>official</b> 6037:16, 19 6038:10,15,19 6039:4,13,24 6051:19,24 6052:2 6053:1 6054:3,9,11 6055:20 6085:23 6092:20 6096:23 6104:4 6105:14 6115:12 6143:11, 21 6214:5 <b>older</b> 6170:24 <b>one's</b> 6072:2 <b>ongoing</b> 6080:12 6081:20 6086:2 <b>Ontario</b> 6032:20 6034:10 6037:1 6052:6 6062:2 6070:12 6128:14 6147:15 6177:10 6183:22 6212:13 <b>open</b> 6068:10 6139:11	<b>opened</b> 6045:18 6047:13 <b>operability</b> 6173:9 <b>operating</b> 6059:14 6073:12 6192:15 <b>operation</b> 6133:20 <b>operational</b> 6183:17 <b>operations</b> 6073:11 <b>opinion</b> 6048:17 6153:7 6165:14 6166:8 6187:20 6211:13 <b>OPP</b> 6053:20, 6073:25 <b>OPP000001594</b> 6148:16 <b>OPPE0000037</b> <b>57.0007.</b> 6198:17 <b>opportunity</b> 6071:5 6098:11 6188:1 6208:11 6210:4 <b>opposed</b> 6094:16 6173:20 <b>opposite</b> 6155:13 <b>option</b> 6130:19 <b>oral</b> 6060:17 <b>order</b> 6042:16 6043:20 6047:15 6050:2 6088:20 6089:8 6107:18, 24 6115:12 6144:10,25 6145:3,11,13,14 6147:9 6148:12 6155:10 6162:15 6163:16,22 6170:10 6175:25 6183:1 6196:17 6202:25 6203:2, 13,17,20,24	6205:19 6206:1,8 6212:22 <b>ordered</b> 6197:23 <b>orders</b> 6043:19, 23 6073:11 6077:13 6145:16, 17 6206:21 <b>original</b> 6080:20 6127:10 6165:20 6166:2,23 6168:18 6169:3 6170:5 6173:7 <b>originally</b> 6154:1 6170:11 6195:14 <b>Otis</b> 6134:5 <b>ounce</b> 6149:23 <b>outlay</b> 6122:18 <b>outline</b> 6101:11 <b>outlined</b> 6161:22 6169:17 6180:10 <b>outlines</b> 6183:13 <b>outlining</b> 6091:25 6151:14 6159:20 6192:24 <b>outstanding</b> 6105:23 6106:11, 19 6129:6 6132:15 6149:22 6168:10,13 6190:8 6204:11 <b>overlap</b> 6056:4 <b>overloading</b> 6160:7 <b>overly</b> 6107:12 <b>overnight</b> 6101:2 <b>owned</b> 6208:17 6210:16,19 <b>owner</b> 6074:22 6075:7,19 6077:8 6090:12 6096:14 6116:2 6128:10 6143:5,9 6144:17 6147:13,25	6161:11 6169:15 6171:7,13 6172:9 6181:14 6182:25 6208:16 6212:17 6214:1 6215:5 <b>owner's</b> 6075:12 6142:10 <b>owners</b> 6050:23 6092:22 6193:18 6209:11 6210:14 <b>oxygen</b> 6109:23, 24 6110:1,5 <hr/> <b>P</b> <hr/> <b>p.m.</b> 6131:13,14 6185:12,13 6213:9 <b>pages</b> 6072:24 6073:5 6183:21 <b>paid</b> 6197:7 <b>pails</b> 6046:11 <b>paint</b> 6165:20 6166:3 <b>painted</b> 6165:5 6167:17 <b>panel</b> 6174:17 <b>panels</b> 6158:7 <b>paragraph</b> 6047:12 6049:5,6, 17 6079:11,22 6083:24 6086:9 6091:3 6100:19 6101:24 6103:12 6157:10 6165:2, 22 6166:6 6178:7 6190:13 6205:25 6215:1,15 <b>parcel</b> 6122:13 <b>park</b> 6046:2 6052:15 6158:7 <b>Parker</b> 6032:18 <b>parking</b> 6052:11 6115:25 6127:8 6163:13 <b>part</b> 6034:3,4,6,9 6043:10 6053:8
---	---	---	--	---

6056:21 6058:5,9 6059:4 6070:24 6071:9 6072:13 6077:11 6081:24 6083:11 6096:9 6101:6 6105:1,2 6109:4 6122:13 6132:25 6141:16 6145:18 6172:8 6179:23 6182:14 6186:12,15 6193:17 6215:20	<b>pay</b> 6057:22 6197:3 <b>paying</b> 6083:17 <b>payment</b> 6032:24,25 6033:4,11 6128:16 6179:15 <b>payments</b> 6033:13 <b>peers</b> 6060:1 <b>penetrate</b> 6109:15 <b>penetration</b> 6113:8 <b>people</b> 6035:4 6041:18,25 6043:8,11,22 6065:18 6069:21 6081:4 6082:9,20 6084:14 6150:22 6210:5,7 6214:2 <b>percent</b> 6044:21 6129:2 <b>perform</b> 6068:12 6085:20, 23 6128:10 6210:13 <b>performed</b> 6062:20 <b>period</b> 6054:23 6092:8 6116:23 6170:9 6193:21 <b>periodically</b> 6040:12 6073:22 <b>permission</b> 6212:23 <b>permit</b> 6041:25 6076:15 6098:10 6104:2 6116:7 6143:15,25 6147:20 6151:4 6155:12,16,18 6159:21 6162:1 <b>permits</b> 6066:7 6076:17 6077:14 <b>permitted</b> 6214:10	<b>permitting</b> 6155:2 <b>persist</b> 6116:4 <b>person</b> 6041:10 6119:3,6,7 6179:12 6209:25 <b>person's</b> 6035:2 <b>personal</b> 6066:6 <b>Personally</b> 6083:14,25 <b>personnel</b> 6059:18 <b>persons</b> 6181:8 <b>perspective</b> 6040:2 6097:3 <b>phases</b> 6171:11 <b>Phil</b> 6098:23 <b>phone</b> 6120:23 6121:3 6125:4,6 6128:20 6137:16 6160:4 6191:5 <b>physical</b> 6172:8 <b>pick</b> 6043:8 6163:24 6178:23 <b>picked</b> 6119:13 <b>picking</b> 6122:2 <b>picture</b> 6079:15 6149:11 <b>pictures</b> 6089:7, 15 6094:21,25 6097:14,15 6134:16 6139:13 <b>piece</b> 6126:19 <b>pieces</b> 6057:7, 11 <b>Pigeau</b> 6037:12 6039:21,24 6047:20,24 6048:1 6050:4,9, 12 <b>Pigeau's</b> 6048:7,24 <b>pipe</b> 6190:9	<b>place</b> 6033:7 6045:13 6060:8 6061:12 6062:16 6065:23 6068:11 6078:17 6086:23 6087:8 6093:10 6096:20 6106:16, 24 6120:7 6121:14,23 6122:4,18 6126:21 6131:6 6132:11 6136:2 6137:5 6138:4,24 6155:1,23 6178:14 6208:19, 20 6212:18 6218:3 <b>places</b> 6068:18 <b>plain</b> 6174:24 <b>plan</b> 6049:22 6062:15 6092:23 6101:12 6115:6, 11,12 6150:25 6184:21 6202:11 6204:25 <b>planned</b> 6114:15 <b>planning</b> 6074:7 <b>plans</b> 6083:12, 16 6124:2 6126:9 <b>plastic</b> 6047:15 <b>plate</b> 6074:12 <b>plates</b> 6214:12 <b>play</b> 6053:8 <b>plea</b> 6196:17,25 6197:17 6198:1,4 6218:17 <b>plead</b> 6197:2 <b>pleas</b> 6197:22 <b>pleased</b> 6083:8 <b>plug</b> 6100:23 <b>pluses</b> 6066:2,3 <b>pockets</b> 6107:14 <b>point</b> 6037:25 6038:8 6044:17 6052:16 6053:2	6058:8 6074:12 6086:17 6087:10 6090:11 6111:22 6115:23 6118:2 6123:9 6126:5 6135:10 6140:18 6141:9 6143:1 6144:8 6153:21 6160:20 6166:17 6171:21 6173:7 6179:15 6193:7 6207:5 6208:1 6210:22 6213:18, 24 <b>pointing</b> 6087:6 <b>pointless</b> 6095:8,10 <b>points</b> 6091:4 6152:22 <b>Police</b> 6052:16 6053:25 <b>policed</b> 6053:20 <b>policies</b> 6059:13,16 <b>policing</b> 6053:19,23 <b>policy</b> 6040:3,5 6042:22 6044:13 6059:4,11 6073:15 6077:8 <b>polymer- cement</b> 6101:21 <b>portfolio</b> 6052:24 <b>portion</b> 6047:14 6052:20 6111:16 6122:8,9 6138:21 6192:18 6217:9 <b>portions</b> 6217:13 <b>pose</b> 6201:10 <b>position</b> 6054:9 6126:8 6138:19 <b>positions</b> 6065:25 <b>positive</b> 6129:1 6152:3 6166:11
---	--	--	--	---

<b>possession</b> 6162:15	6084:20 6102:11 6122:21 6149:10, 25 6152:10 6179:16,17 6201:12 6215:11	<b>problems</b> 6047:10 6049:8 6080:12 6081:21 6086:2 6134:7 6139:5 6150:14	6116:9 6120:4 6193:17 6211:1	<b>properties</b> 6061:14 6065:1 6110:13 6210:14
<b>possibility</b> 6119:14			<b>programs</b> 6061:8,9 6071:11	<b>property</b> 6040:4
<b>potential</b> 6160:7	<b>prevent</b> 6090:25 6091:16	<b>procedure</b> 6049:10 6145:16, 20	<b>progress</b> 6117:14	6041:15 6042:23 6043:2,3,10,19 6044:9 6048:18 6053:9,12 6076:23 6077:10 6088:14 6090:23 6092:5 6145:2
<b>potentially</b> 6042:6 6045:20	<b>prevention</b> 6054:17,19 6055:24 6057:12 6058:23 6061:21, 22 6064:11,12,22, 23 6065:22,24 6066:2 6071:11 6076:1 6192:18 6203:16	<b>proceed</b> 6212:15,22	<b>progressively</b> 6209:17	
<b>powers</b> 6061:20		<b>proceeding</b> 6044:18	<b>project</b> 6101:2	
<b>Practice</b> 6182:24		<b>proceedings</b> 6058:5	<b>projects</b> 6106:2	<b>proposal</b> 6126:24,25
<b>practices</b> 6072:8 6100:24		<b>process</b> 6039:17 6041:7, 12,17,20,23 6042:1,3 6043:1, 22 6045:15,23 6073:10 6074:15, 18 6075:24 6076:15 6077:11 6102:22 6104:3 6116:2,10 6130:6 6155:18,19 6159:20,23,25 6170:18 6214:19, 21	<b>promise</b> 6198:5	<b>pros</b> 6075:25
<b>Pre-trial</b> 6216:17	<b>previous</b> 6050:8 6100:24 6127:18 6148:25 6157:20 6200:6	<b>processes</b> 6033:7	<b>promotional</b> 6060:15	<b>prosecute</b> 6210:2
<b>precast</b> 6164:3	<b>primary</b> 6218:9	<b>produce</b> 6206:8, 11,13 6207:2	<b>prompted</b> 6123:10 6129:7 6130:12 6132:7, 13 6135:1,4,12 6136:6	<b>prosecuting</b> 6053:13
<b>premises</b> 6066:22	<b>primer</b> 6165:4, 20 6166:3 6167:17	<b>produced</b> 6190:25 6206:17, 20	<b>pronounced</b> 6032:14	<b>prosecutions</b> 6096:24 6143:22 6162:2 6203:22 6206:2 6211:7
<b>prepare</b> 6089:8 6128:5	<b>principal</b> 6052:6 6174:15	<b>product</b> 6167:1	<b>pronouncing</b> 6032:6	<b>protect</b> 6111:19
<b>prepared</b> 6050:22 6051:8 6089:21 6094:24 6113:5 6115:11 6192:25	<b>principally</b> 6211:2	<b>production</b> 6116:23	<b>proof</b> 6143:25	<b>protecting</b> 6088:17
<b>preparing</b> 6179:13	<b>prior</b> 6038:19 6045:9,11,12 6087:11 6103:16 6114:22 6130:1 6132:9 6148:22 6151:25 6172:2 6177:19 6196:20 6208:1	<b>products</b> 6101:14,21 6109:24	<b>proofing</b> 6089:17,18 6094:22 6103:23 6108:8 6111:13 6112:12 6115:24 6116:10,19 6119:10 6122:5 6133:3,22 6134:14 6135:20 6139:5,12,18,22 6140:1,5 6141:19, 25 6145:23 6146:21 6148:25 6149:23 6154:16 6157:13 6159:16 6161:7 6164:9,23 6166:19 6167:6, 12 6168:23 6198:25	<b>protection</b> 6049:16 6057:12 6059:17 6061:14, 6166:21 6181:2 6183:13 6185:23 6192:18 6203:16 6212:13
<b>prescribed</b> 6147:19	<b>private</b> 6042:3, 11	<b>Professional</b> 6060:5 6092:13	<b>proven</b> 6061:12 6077:13 6151:6 6153:18 6171:4 6194:16	<b>providing</b> 6205:19
<b>prescriptive</b> 6172:7 6183:21	<b>privilege</b> 6137:18	<b>program</b> 6037:1 6064:22 6066:20 6091:23 6106:5	<b>properly</b> 6032:6	<b>Province</b> 6032:20 6033:1,
<b>presence</b> 6034:23	<b>problem</b> 6048:3, 12 6076:22 6079:16 6081:9 6093:4 6098:5 6102:13 6134:16 6151:20 6199:3 6201:10 6205:1 6208:24 6210:1 6211:17 6214:1			
<b>present</b> 6125:13 6138:11 6173:10				
<b>presently</b> 6164:8				
<b>pressure</b> 6188:20				
<b>prestressed</b> 6166:10				
<b>presume</b> 6111:2 6124:13 6140:11 6202:10				
<b>pretty</b> 6061:15 6065:22 6066:8				

16,19 6034:9 6147:15 6171:1	<b>Q</b>	<b>reached</b> 6153:21	<b>receiving</b> 6040:11 6114:22 6115:14	<b>refer</b> 6096:13 6104:10 6175:13 6200:15
<b>provincial</b> 6059:24 6070:8 6197:21	<b>quality</b> 6084:17	<b>reaching</b> 6179:12	<b>Recent</b> 6127:8	<b>reference</b> 6088:14 6162:16 6180:12 6200:19
<b>provisions</b> 6145:25 6215:24	<b>quarter</b> 6060:7	<b>reaction</b> 6131:1	<b>reciprocal</b> 6062:14	<b>referenced</b> 6050:6 6090:8 6127:9 6181:7
<b>public</b> 6041:1 6058:23 6061:9 6072:3 6088:4,9 6091:8 6214:7 6218:10	<b>quarterly</b> 6106:10	<b>read</b> 6059:20 6079:12 6096:14 6099:9,11 6103:1 6188:14,15 6202:17 6216:25 6217:6	<b>reciprocated</b> 6076:24	<b>references</b> 6090:6 6093:24
<b>publicity</b> 6127:8	<b>Quest</b> 6084:15, 16	<b>readiness</b> 6061:18,19,24	<b>recital</b> 6090:22	<b>referencing</b> 6127:14
<b>pull</b> 6132:13 6211:22	<b>question</b> 6048:5 6050:11 6069:2 6081:18 6124:9 6129:21 6132:6 6149:9 6158:16 6194:9 6205:16	<b>reading</b> 6102:12 6130:2	<b>recitation</b> 6092:4	<b>referring</b> 6040:17 6043:15 6124:8 6200:17
<b>pulled</b> 6109:18 6132:14	<b>questions</b> 6041:21 6053:7 6063:25 6206:12 6208:5 6209:21 6211:7,8,21	<b>real</b> 6069:24	<b>reciting</b> 6205:23	<b>reflect</b> 6172:25
<b>pulling</b> 6216:2	<b>quick</b> 6197:14	<b>reason</b> 6053:6 6081:25 6086:21 6094:15 6096:24 6099:4 6100:3,12 6108:4 6130:25 6145:12	<b>recollect</b> 6097:12	<b>Reflections</b> 6091:7 6111:5
<b>PULLSTATION</b> 6195:9	<b>quickly</b> 6069:22, 25 6163:8 6177:25 6195:3	<b>reasonable</b> 6101:3 6170:9	<b>recollection</b> 6039:15 6053:14 6079:7 6085:1 6119:15 6208:23	<b>refreshed</b> 6095:1 6121:13
<b>Pump</b> 6188:22	<b>quoting</b> 6079:20	<b>reasons</b> 6132:23	<b>recommend</b> 6059:4,11 6073:14 6167:5 6187:23	<b>refused</b> 6050:10
<b>purchase</b> 6217:18,24	<b>R</b>	<b>reassured</b> 6204:20	<b>recommendati on</b> 6050:3	<b>regard</b> 6069:10, 18 6094:10 6105:15 6129:2,3
<b>purpose</b> 6149:2 6173:21 6174:9 6177:19	<b>raise</b> 6172:4	<b>recall</b> 6057:1 6058:5 6067:17 6085:3 6097:12 6099:1 6119:5 6129:25 6149:17 6215:19	<b>recommendati ons</b> 6177:13,20 6184:1 6189:20	<b>regulation</b> 6192:17
<b>purposes</b> 6057:10,22 6141:5 6148:8 6174:18 6175:9, 10,11 6190:7	<b>rank</b> 6089:1	<b>receipt</b> 6045:2 6091:21 6217:3	<b>recommended</b> 6104:17	<b>Regulations</b> 6071:17 6145:25
<b>purse</b> 6155:2	<b>rarely</b> 6209:12	<b>receive</b> 6100:8 6155:6 6184:10	<b>recommending</b> 6159:15 6166:22	<b>reinforced</b> 6201:16
<b>pursuant</b> 6145:5 6147:21	<b>rate</b> 6193:14	<b>received</b> 6033:13 6080:1 6099:6,17,21 6102:1 6120:16 6129:11,16 6154:3 6188:12 6189:1 6200:12, 16 6201:12 6205:24 6210:1 6213:15	<b>record</b> 6058:13 6075:10 6126:18	<b>reinspection</b> 6143:3 6161:11 6162:12 6168:3,5 6169:24 6178:13 6199:6 6200:1 6201:4 6204:12 6205:10 6207:11
<b>push</b> 6144:20	<b>rated</b> 6164:5,7 6167:25	<b>receiving</b> 6033:13 6080:1 6099:6,17,21 6102:1 6120:16 6129:11,16 6154:3 6188:12 6189:1 6200:12, 16 6201:12 6205:24 6210:1 6213:15	<b>recording</b> 6126:2	<b>related</b> 6064:18 6186:4 6213:22
<b>put</b> 6069:8 6072:18 6095:10 6107:6 6111:10 6157:4 6174:24 6183:1 6191:17 6215:4	<b>rating</b> 6093:19 6094:6 6111:17, 19 6122:7,11 6164:5,7 6167:22 6170:14	<b>recovered</b> 6043:25	<b>records</b> 6068:5 6069:13 6113:14 6190:3 6207:6	<b>relates</b> 6192:14
<b>putting</b> 6088:19 6128:18 6130:23	<b>ratings</b> 6108:12	<b>redone</b> 6049:13	<b>recover</b> 6043:25	<b>relation</b> 6034:14 6137:20 6138:22
	<b>rational</b> 6203:5	<b>reduction</b> 6209:7	<b>rectify</b> 6074:18 6134:15	<b>relationship</b> 6054:10 6114:5
	<b>re-exam</b> 6211:10		<b>redesign</b> 6176:6	
	<b>reach</b> 6109:19		<b>redone</b> 6049:13	

<b>Relativity</b> 6120:25	6206:24	<b>replacement</b> 6032:4 6039:6,18 6074:8	6036:1 6078:22 6079:24 6138:19	<b>rescues</b> 6063:11
<b>relayed</b> 6213:15	<b>remembering</b> 6120:19	<b>REPLACING</b> 6195:5,9	<b>representative</b> s 6035:3	<b>reservations</b> 6152:5
<b>release</b> 6217:15	<b>reminded</b> 6127:9	<b>report</b> 6048:4,13 6050:6,10,13 6051:2,6,10,12,15 6056:7,9,13,15 6057:4 6074:21, 23 6075:2,3,11,17 6085:24 6089:12, 20 6092:15 6093:2 6094:17, 6101:23,25 6113:4,7,13,16, 19,22 6114:2,10, 24 6115:4 6116:13,24 6117:1,4,7,8,13 6125:20 6128:5 6136:11 6138:8 6141:13,23 6155:7,9 6159:11 6161:22 6162:4,5, 7,14 6163:19 6164:22 6170:1 6180:21 6182:11, 23 6183:13 6198:21 6199:25 6200:1	<b>representing</b> 6032:10	<b>reserve</b> 6065:17
<b>relevance</b> 6157:25	<b>remove</b> 6101:17 6112:8	<b>Report(s)</b> 6204:4	<b>Reprimand</b> 6073:13	<b>resign</b> 6215:17
<b>reliable</b> 6050:2	<b>removed</b> 6089:19 6103:23 6108:1	<b>reported</b> 6052:25	<b>Reps</b> 6134:6	<b>resistance</b> 6111:17,18 6122:11 6164:4 6170:14
<b>remain</b> 6168:10	<b>Rene</b> 6184:20	<b>reporting</b> 6126:22 6152:20, 25 6197:16	<b>request</b> 6050:17 6065:3 6144:9 6163:2 6180:19 6217:17	<b>resolve</b> 6086:2
<b>remainder</b> 6183:19	<b>Renewal</b> 6037:1	<b>reports</b> 6050:21, 25 6051:2,4,20 6056:15 6089:11 6114:3,22 6115:2, 5,7,9,15 6116:14 6128:11 6172:10 6188:20 6203:12 6204:6	<b>requested</b> 6143:10	<b>resort</b> 6044:14
<b>remained</b> 6037:10,21 6105:23	<b>rent</b> 6083:17 6214:18	<b>Report(s)</b> 6204:4	<b>requesting</b> 6179:4	<b>resources</b> 6060:3
<b>remaining</b> 6134:7 6178:11	<b>renters</b> 6215:22	<b>reporting</b> 6126:22 6152:20, 25 6197:16	<b>require</b> 6042:12, 15 6111:13 6140:8 6169:4,10 6171:5 6218:16	<b>respect</b> 6034:3 6040:4 6048:18 6081:5 6193:22 6194:21 6209:11, 22 6210:25
<b>remains</b> 6204:11	<b>renting</b> 6214:2	<b>Report(s)</b> 6204:4	<b>required</b> 6034:24 6059:5, 11 6061:22,25 6071:1,9,15 6091:14 6092:12 6104:2 6140:9 6147:20 6161:12 6166:20 6169:5 6172:7 6181:10 6183:19 6192:16 6215:24	<b>respond</b> 6062:23
<b>remarks</b> 6164:22 6186:9	<b>repair</b> 6091:22 6092:24 6100:25 6101:20 6104:2 6116:9 6120:4 6155:12 6198:25 6199:19	<b>reported</b> 6052:25	<b>requirement</b> 6065:3 6167:21 6177:24 6192:3	<b>responders</b> 6063:1
<b>remedial</b> 6096:6	<b>repair/replace</b> 6116:3	<b>reporting</b> 6126:22 6152:20, 25 6197:16	<b>requirements</b> 6068:6 6142:14 6155:6 6171:1,8 6172:7,13 6174:11 6175:1 6177:14 6183:22 6187:21 6188:17 6210:21	<b>responding</b> 6054:16 6073:21
<b>remediate</b> 6093:4 6141:15	<b>repaired</b> 6093:20 6094:7 6095:11 6098:8 6103:25	<b>reporting</b> 6126:22 6152:20, 25 6197:16	<b>response</b> 6049:3,4 6071:22	<b>responsibility</b> 6052:6 6072:7 6076:10 6099:24 6171:14 6217:16
<b>remediated</b> 6105:19 6111:1	<b>repairs</b> 6091:15, 17 6098:11 6120:5,7 6124:5 6130:9,16 6135:3, 4,9 6136:8 6167:6,8 6208:22	<b>reporting</b> 6126:22 6152:20, 25 6197:16	<b>responsibility</b> 6052:6 6072:7 6076:10 6099:24 6171:14 6217:16	<b>responsible</b> 6033:4 6059:13 6060:11 6061:7 6070:6 6072:9 6074:13
<b>remediating</b> 6195:20	<b>repeat</b> 6140:3	<b>reports</b> 6050:21, 25 6051:2,4,20 6056:15 6089:11 6114:3,22 6115:2, 5,7,9,15 6116:14 6128:11 6172:10 6188:20 6203:12 6204:6	<b>response</b> 6049:3,4 6071:22	<b>rest</b> 6069:24 6164:12 6178:24 6202:17
<b>remediation</b> 6094:17 6140:9 6169:5	<b>repeating</b> 6116:22	<b>reporting</b> 6126:22 6152:20, 25 6197:16	<b>responsibility</b> 6052:6 6072:7 6076:10 6099:24 6171:14 6217:16	<b>restoration</b> 6144:2 6151:6
<b>remedied</b> 6170:2	<b>repeats</b> 6115:21	<b>reports</b> 6050:21, 25 6051:2,4,20 6056:15 6089:11 6114:3,22 6115:2, 5,7,9,15 6116:14 6128:11 6172:10 6188:20 6203:12 6204:6	<b>responsibility</b> 6052:6 6072:7 6076:10 6099:24 6171:14 6217:16	<b>restricted</b> 6110:23,25
<b>remedies</b> 6148:6	<b>replace</b> 6097:4 6101:14,16 6195:15	<b>reporting</b> 6126:22 6152:20, 25 6197:16	<b>responsibility</b> 6052:6 6072:7 6076:10 6099:24 6171:14 6217:16	<b>restricting</b> 6051:17
<b>remedy</b> 6083:12 6088:21 6089:9 6091:14 6092:11 6145:3 6147:11	<b>replaced</b> 6039:5 6068:21 6109:23 6149:24 6186:12 6187:2,3,24 6188:21	<b>represent</b> 6080:11	<b>requires</b> 6122:10	
<b>remember</b> 6076:7 6082:4 6097:16 6107:4 6117:20 6120:18 6122:20 6130:1, 18,20,25 6131:3 6152:12 6154:14 6155:21 6178:18 6185:6 6204:20		<b>representation</b> 6033:5	<b>rescue</b> 6063:7 6070:15, 6071:21 6073:24	

<p><b>result</b> 6096:23 6130:22 6136:10 6143:16,21 6150:9 6162:2 6181:22 6199:24</p> <p><b>resulting</b> 6086:3</p> <p><b>results</b> 6138:10 6190:14,15</p> <p><b>resume</b> 6116:6</p> <p><b>resuming</b> 6078:7 6131:14 6185:13</p> <p><b>resurfaced</b> 6199:3</p> <p><b>retail</b> 6067:1,10, 12,14,18</p> <p><b>retained</b> 6112:24 6115:22 6159:6</p> <p><b>retainer</b> 6116:17</p> <p><b>retaining</b> 6054:8</p> <p><b>retire</b> 6035:16</p> <p><b>retirement</b> 6037:12 6051:9, 14 6208:13,17,24 6209:1,12 6210:19</p> <p><b>retro</b> 6184:2 6188:17</p> <p><b>retrofit</b> 6069:18, 23 6121:7,8,24 6122:1,4,6,19 6123:20 6138:22 6142:16 6156:2, 13 6157:7 6164:15,17 6170:23 6171:13 6172:18 6176:19 6177:9,14 6210:12,13 6211:1</p> <p><b>return</b> 6035:8 6077:9</p> <p><b>revealed</b> 6146:20 6166:8</p>	<p><b>review</b> 6064:12 6073:11 6080:17 6088:20 6089:10 6092:13 6106:11 6163:10 6187:19 6214:18</p> <p><b>reviewed</b> 6096:2 6113:1 6122:24</p> <p><b>reviewing</b> 6059:15 6082:3</p> <p><b>Rheaume</b> 6156:7</p> <p><b>Rhonda</b> 6200:12,17,20 6201:8 6202:10 6204:7, 6205:17 6215:11</p> <p><b>Rhonda's</b> 6204:21</p> <p><b>Rich</b> 6137:9</p> <p><b>Rick</b> 6137:9</p> <p><b>River</b> 6062:8</p> <p><b>Rob</b> 6080:4 6213:10</p> <p><b>role</b> 6037:21 6040:10 6044:7</p> <p><b>rolled</b> 6065:25</p> <p><b>Romano</b> 6032:5,7,8,9,11</p> <p><b>roof</b> 6045:23 6046:2 6047:10 6048:19 6084:1 6090:23 6091:17, 6092:24 6100:20, 25 6111:21 6114:15 6124:5 6126:9,24 6130:9, 10,16 6131:3 6135:4,9,14 6136:7 6139:13 6160:7 6175:21, 22 6200:14,24 6206:4</p> <p><b>roof/parking</b> 6091:16</p> <p><b>roofing</b> 6124:4</p>	<p><b>room</b> 6109:7 6178:4,23 6188:22 6190:6</p> <p><b>rooms</b> 6094:3 6171:4 6177:16, 17,22 6178:10,11</p> <p><b>Ross</b> 6032:7</p> <p><b>rotate</b> 6066:9</p> <p><b>rough</b> 6198:16</p> <p><b>roughly</b> 6079:6</p> <p><b>route</b> 6095:5</p> <p><b>rule</b> 6059:23</p> <p><b>rules</b> 6073:12</p> <p><b>run</b> 6042:3 6096:7 6109:23 6163:8 6203:6</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>safe</b> 6083:19</p> <p><b>safety</b> 6067:23 6071:17 6138:7 6142:14 6171:2 6172:6 6187:22 6202:24 6203:12 6204:24 6208:20 6218:10,15</p> <p><b>salt</b> 6151:24</p> <p><b>Salvage</b> 6052:11 6053:13</p> <p><b>satisfactory</b> 6143:11</p> <p><b>satisfy</b> 6155:9 6203:20</p> <p><b>saturate</b> 6097:22</p>	<p><b>saturation</b> 6166:4</p> <p><b>schedule</b> 6066:7,8 6076:1 6091:24 6092:23 6101:9 6144:2 6159:20,24 6202:19</p> <p><b>scheduled</b> 6034:4,9 6167:8 6180:18</p> <p><b>school</b> 6069:10</p> <p><b>schools</b> 6067:5 6069:6,7</p> <p><b>scope</b> 6058:25 6073:19 6159:2,5 6160:3,4</p> <p><b>scratch</b> 6102:17</p> <p><b>screen</b> 6072:23 6121:2 6146:15 6161:3</p> <p><b>scroll</b> 6080:22 6094:20 6125:17 6169:1</p> <p><b>sealant</b> 6116:10, 20 6200:17</p> <p><b>sealants</b> 6116:3</p> <p><b>sealed</b> 6109:18</p> <p><b>season</b> 6124:5</p> <p><b>seat</b> 6036:8</p> <p><b>seconds</b> 6094:2</p> <p><b>secretary</b> 6099:25</p> <p><b>section</b> 6060:3 6071:16 6090:22 6111:14 6146:19 6147:11,21 6165:7 6172:16 6177:10 6178:2 6183:22,23</p> <p><b>sections</b> 6089:18 6093:25 6140:4</p> <p><b>SECURING</b> 6195:10</p>	<p><b>seek</b> 6073:18 6136:20 6144:12</p> <p><b>seeking</b> 6042:11</p> <p><b>sees</b> 6074:16 6076:21</p> <p><b>semi-annually</b> 6066:23</p> <p><b>send</b> 6182:22 6187:10</p> <p><b>sending</b> 6094:17 6098:6</p> <p><b>senior</b> 6061:4 6065:18 6089:3,4, 5 6125:12 6156:8</p> <p><b>sense</b> 6097:4</p> <p><b>sentence</b> 6215:1</p> <p><b>separate</b> 6033:4 6142:1,13 6143:1</p> <p><b>separating</b> 6164:11</p> <p><b>separation</b> 6093:16 6094:8 6109:10,11,12 6142:24 6202:16 6206:5</p> <p><b>separations</b> 6068:2 6093:20, 21 6094:3,7</p> <p><b>September</b> 6037:7,11 6039:13,20 6129:13,19 6132:6,24 6133:16 6136:24 6137:6 6143:7 6145:2 6148:12, 23 6149:21 6150:6 6151:19 6160:25 6168:19 6170:1 6184:17, 19 6186:8 6188:13 6189:18</p> <p><b>series</b> 6078:16</p> <p><b>service</b> 6065:15 6099:7 6105:20 6128:13 6130:4 6139:24 6165:11</p>
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<p><b>services</b> 6062:12,22 6128:16</p> <p><b>set</b> 6054:10 6056:4 6076:2 6141:10,22 6171:1,8 6175:14, 17 6204:12 6205:10</p> <p><b>sets</b> 6100:18</p> <p><b>setting</b> 6033:23 6171:9</p> <p><b>shafts</b> 6094:4</p> <p><b>share</b> 6048:10 6084:25</p> <p><b>She'll</b> 6032:20</p> <p><b>sheet</b> 6039:11 6057:20 6073:3 6075:9</p> <p><b>shift</b> 6061:3</p> <p><b>shifts</b> 6064:23 6076:3</p> <p><b>Shop</b> 6139:20 6169:13</p> <p><b>Shoppers</b> 6194:13 6195:9</p> <p><b>shops</b> 6067:2, 12,15</p> <p><b>short</b> 6147:7 6194:2</p> <p><b>shortly</b> 6036:19 6201:17</p> <p><b>show</b> 6085:7 6143:24 6174:10</p> <p><b>showed</b> 6050:8 6086:21 6139:18, 22 6158:15</p> <p><b>showing</b> 6143:14 6162:21</p> <p><b>shown</b> 6161:25 6205:16 6218:14</p> <p><b>shows</b> 6148:3 6158:18</p> <p><b>shuffle</b> 6154:2,7</p>	<p><b>shutting</b> 6210:22,23</p> <p><b>sic</b> 6088:19 6089:8 6104:1 6140:8 6215:18</p> <p><b>side</b> 6048:15 6062:8 6080:24 6097:20 6139:21 6175:20 6202:3</p> <p><b>sign</b> 6033:20 6045:24 6077:9 6105:20</p> <p><b>signal</b> 6187:10</p> <p><b>signed</b> 6145:1 6150:3 6183:18</p> <p><b>significance</b> 6161:14 6200:22 6201:1 6207:9,12</p> <p><b>significant</b> 6065:10,23 6163:12 6166:14</p> <p><b>signoff</b> 6120:11</p> <p><b>signs</b> 6046:7</p> <p><b>similar</b> 6076:14 6098:9 6108:11 6165:18,25 6192:21</p> <p><b>simple</b> 6053:6 6063:24 6100:5 6108:4 6174:24</p> <p><b>simply</b> 6034:14 6035:1 6062:10 6080:5 6087:6 6096:1 6145:6 6181:21</p> <p><b>single-storey</b> 6111:15</p> <p><b>sir</b> 6032:6 6034:12 6036:10, 11,15 6046:17 6051:11 6059:6, 19 6060:14,24 6064:15 6070:4 6074:9 6112:18 6136:10 6138:8 6146:13 6152:16 6180:2 6185:7 6188:9</p>	<p><b>sit</b> 6040:24</p> <p><b>site</b> 6070:9,18 6104:7,24 6113:2 6176:23,24 6177:6</p> <p><b>situation</b> 6083:11,13 6091:14 6195:20 6196:2</p> <p><b>situations</b> 6104:18</p> <p><b>six-year</b> 6068:7, 8</p> <p><b>size</b> 6109:8 6174:3 6218:7,8</p> <p><b>skill</b> 6054:10 6056:4</p> <p><b>skirt</b> 6174:25</p> <p><b>slab</b> 6158:17,19 6159:2</p> <p><b>slabs</b> 6166:10, 11,13</p> <p><b>sleep</b> 6108:3</p> <p><b>slow</b> 6059:6,21 6064:15</p> <p><b>slowly</b> 6209:6</p> <p><b>small</b> 6045:24 6067:1,3 6210:17</p> <p><b>smaller</b> 6067:16</p> <p><b>smoke</b> 6109:16, 25 6110:4,15,16, 17 6171:5 6177:16,25 6178:1,3,9,10,20 6181:9 6186:10, 14,19,22,24 6187:7,13,24 6188:21 6191:11, 6194:21 6195:8, 15</p> <p><b>smoke's</b> 6109:14</p> <p><b>smoldering</b> 6110:6</p> <p><b>snow</b> 6043:6,8</p>	<p><b>snug</b> 6195:11</p> <p><b>soft</b> 6074:19</p> <p><b>solicitor</b> 6151:14 6152:1</p> <p><b>solid</b> 6108:22</p> <p><b>solution</b> 6084:8</p> <p><b>someone's</b> 6175:7</p> <p><b>sort</b> 6040:19 6068:12 6094:11 6101:8 6117:3 6129:13 6198:8</p> <p><b>sought</b> 6136:13</p> <p><b>Sound</b> 6052:10</p> <p><b>sounds</b> 6056:3 6151:24</p> <p><b>sour</b> 6157:4</p> <p><b>space</b> 6118:22</p> <p><b>spaces</b> 6094:4 6118:20</p> <p><b>Spanish</b> 6062:8</p> <p><b>speak</b> 6083:4</p> <p><b>speaking</b> 6076:17 6212:7</p> <p><b>specialized</b> 6071:15,19</p> <p><b>specific</b> 6053:12 6078:10 6102:13 6124:9</p> <p><b>specifically</b> 6039:20 6050:5 6069:10 6078:1 6081:12 6115:19 6129:8 6158:4 6164:22</p> <p><b>Specks'</b> 6056:25</p> <p><b>spectrum</b> 6043:16</p> <p><b>speed</b> 6177:6</p> <p><b>spell</b> 6043:12</p> <p><b>spend</b> 6063:24 6078:9 6126:25</p>	<p><b>spending</b> 6197:11 6212:21 6213:1</p> <p><b>spent</b> 6057:18</p> <p><b>spoke</b> 6191:11 6204:17</p> <p><b>spoken</b> 6048:11 6094:25 6158:5 6185:2 6203:13</p> <p><b>spores'</b> 6084:2</p> <p><b>spot</b> 6075:2 6140:25</p> <p><b>Sprague</b> 6080:5 6213:11</p> <p><b>sprayed</b> 6164:8 6166:25</p> <p><b>sprayed-on</b> 6167:6</p> <p><b>spread</b> 6061:22</p> <p><b>spreadsheet</b> 6106:6 6118:14</p> <p><b>spring</b> 6049:25 6132:12</p> <p><b>sprinkler</b> 6068:14 6109:1, 21 6174:20 6180:23 6181:10 6182:17 6186:4 6188:22,24 6189:8 6190:6,16 6192:22 6193:23 6194:5,9,10,13 6196:8,10 6205:3 6208:21 6212:6 6218:12</p> <p><b>sprinklered</b> 6108:10 6111:16, 20 6167:5</p> <p><b>sprinklers</b> 6108:11 6180:24 6194:14</p> <p><b>spurred</b> 6081:23</p> <p><b>square</b> 6175:5</p> <p><b>stab</b> 6194:19</p> <p><b>staff</b> 6032:25 6060:23 6061:18 6063:17 6066:1</p>
--	---	--	---	---

6070:6,7 6071:8 6072:3,11 6083:3 6084:13,14 6088:24 6134:23 6209:7 6218:8	<b>statement</b> 6057:11 6080:10 6081:7 6085:2 6114:14 6167:24	12	<b>subsequently</b> 6158:10	<b>supply</b> 6043:22 6184:13 6188:20
<b>staffing</b> 6061:14	<b>states</b> 6076:9 6131:22 6140:6 6161:10	<b>strength</b> 6108:7	<b>substantial</b> 6158:24	<b>support</b> 6083:9 6107:24 6197:13 6213:3
<b>stage</b> 6097:25	<b>Station</b> 6052:16	<b>Stress</b> 6063:19	<b>substantially</b> 6116:11	<b>supported</b> 6201:16
<b>stakeholders</b> 6061:6	<b>stay</b> 6106:1	<b>strictly</b> 6044:7 6052:2 6107:19	<b>substitute</b> 6191:21	<b>supporting</b> 6164:6
<b>stall</b> 6157:12 6218:4	<b>steel</b> 6088:18,20 6089:15,20 6094:21 6103:24 6107:9 6111:13 6115:24 6134:10, 13,17 6146:23 6155:13 6164:6 6165:3,5,7,12,19 6166:1,10,20 6167:16,18,22,24 6199:1,20	<b>string</b> 6049:11	<b>success</b> 6049:20 6193:14	<b>supposed</b> 6174:18 6189:25
<b>stamp</b> 6099:10, 20 6102:18	<b>steered</b> 6154:7	<b>stringent</b> 6174:25	<b>successful</b> 6043:2 6044:22 6055:3	<b>suppression</b> 6055:2 6058:24 6061:11
<b>stamping</b> 6099:24	<b>Stenographer</b> 6059:8	<b>strings</b> 6155:2	<b>succinctly</b> 6174:1	<b>supression</b> 6054:16
<b>stand</b> 6190:9	<b>step</b> 6145:10	<b>structural</b> 6077:7 6088:18, 20 6089:10,15 6092:3,9,14,19 6094:21 6103:24 6108:15 6113:5 6134:17 6136:20 6141:12 6146:22 6147:14 6153:6, 13 6157:3 6158:1 6164:25 6165:3,5, 15 6166:9,10 6167:16,17,22,24	<b>sudden</b> 6154:20 6157:8	<b>surface</b> 6091:16 6130:24 6165:5, 19 6166:2,12 6167:18
<b>standard</b> 6070:8 6172:5 6181:19 6194:18	<b>stepped</b> 6145:8	<b>structurally</b> 6166:13	<b>Sue</b> 6080:1 6084:10,25	<b>surfaces</b> 6166:24
<b>standards</b> 6040:4 6041:15 6042:23 6043:2,4, 11,19 6044:9 6048:18 6053:10, 12 6059:15 6076:23 6088:15 6090:23 6092:5 6145:3, 6181:4,6	<b>stepping</b> 6144:14,15	<b>structure</b> 6111:15 6113:9 6131:3 6134:11, 13 6151:6 6153:14 6164:6, 12	<b>sufficiently</b> 6128:9	<b>surprise</b> 6128:23,25
<b>standing</b> 6035:4 6214:18	<b>steps</b> 6092:18 6093:4 6167:13 6178:16 6193:10	<b>struggling</b> 6099:4	<b>suggested</b> 6113:12	<b>surprised</b> 6214:20
<b>start</b> 6110:13 6115:5,6,14 6130:2 6214:12	<b>stick</b> 6161:17	<b>strung</b> 6144:17	<b>suggesting</b> 6176:22	<b>Susan</b> 6082:10
<b>started</b> 6037:6 6078:16 6079:5 6082:4,5 6106:9 6130:4 6146:2 6179:1	<b>sticky</b> 6104:18	<b>strug</b> 6144:17	<b>suggests</b> 6079:16	<b>suspend</b> 6073:13
<b>starting</b> 6131:11 6134:6 6164:13	<b>stop</b> 6153:9	<b>study</b> 6098:12	<b>suitably</b> 6166:25	<b>suspended</b> 6116:5
<b>starts</b> 6043:6 6045:7 6090:21 6108:6 6110:16 6156:11	<b>stopped</b> 6038:18 6122:25 6127:19	<b>stuff</b> 6201:9	<b>summary</b> 6119:14 6157:16	<b>Suzanne</b> 6082:8,12,14 6085:11 6098:23
<b>state</b> 6061:17,19, 24 6183:11	<b>stopping</b> 6147:23	<b>subject</b> 6095:6 6113:10	<b>summer</b> 6061:16 6064:9	<b>sworn</b> 6035:20
<b>stated</b> 6169:3 6218:9	<b>store</b> 6139:17, 21,25 6142:7 6147:4	<b>submit</b> 6128:11 6202:10	<b>Supervise</b> 6072:5	<b>Syl</b> 6080:3 6085:22 6086:15 6088:11 6117:18 6128:2
	<b>stores</b> 6134:12	<b>submitted</b> 6114:2,4 6115:2 6116:13,15 6117:2 6161:20	<b>supervision</b> 6036:17 6155:20	<b>system</b> 6091:18 6105:25 6106:24 6109:1,21 6110:15 6174:21 6177:18 6182:1, 17 6186:5,21 6190:9,17 6192:16,22
	<b>storey</b> 6175:18, 25	<b>subsequent</b> 6196:22	<b>supervisor</b> 6073:19	
	<b>storeys</b> 6174:11 6175:4,8 6176:2,		<b>supervisors</b> 6191:8	
			<b>Supervisory</b> 6071:25	
			<b>supplied</b> 6042:20 6217:6	



6194:5,16,22 6208:20,21 6212:6 <b>systems</b> 6068:14 6101:17 6173:3 6180:25 6181:10 6183:14, 16 6205:3 6218:13	<b>talking</b> 6040:18 6050:1 6065:5 6078:12 6087:19 6107:7 6123:17 6124:10 6127:15 6131:4 6136:16 6152:14 6158:9 6160:2 6162:13, 17 6163:5 6164:10,11 6186:18 6201:14	<b>ten</b> 6060:25 6101:17 6118:24 6119:2 6175:15	6071:20,21 6075:1,7 6076:2 6096:25 6102:19 6107:22 6109:2, 14 6112:24 6117:16 6130:2 6142:1,18,22 6154:24 6169:16 6171:12 6173:16 6179:20 6182:12, 20 6190:15 6191:13 6193:3, 11,19 6194:4 6205:5 6214:13 6215:14	25 6050:1,25 6051:18,19 6054:23 6057:15 6061:16 6063:24 6064:9 6066:10 6074:24 6078:5,9, 21 6081:8 6082:16 6083:14 6089:16 6090:11, 13 6091:25 6092:8 6093:13 6099:11 6100:2, 18,21 6101:4 6103:19 6105:24 6110:19 6111:24 6112:13 6114:11, 23 6120:19 6122:3 6134:22 6135:10 6136:3 6138:23 6141:4 6142:19 6143:6 6144:9,10 6146:6 6151:10 6159:24 6160:20 6168:6, 18 6169:25 6170:9 6171:21 6178:17 6184:9 6185:3 6187:8 6197:10 6198:6 6200:20 6201:11, 17 6202:10,16 6203:2 6204:8 6205:19 6206:3 6207:21 6208:1 6210:7 6215:11, 12 6217:18
<hr/> <b>T</b> <hr/>	<b>talks</b> 6049:17 6094:22	<b>tenancy</b> 6122:10	<b>thinking</b> 6201:11	6122:3 6134:22 6135:10 6136:3 6138:23 6141:4 6142:19 6143:6 6144:9,10 6146:6 6151:10 6159:24 6160:20 6168:6, 18 6169:25 6170:9 6171:21 6178:17 6184:9 6185:3 6187:8 6197:10 6198:6 6200:20 6201:11, 17 6202:10,16 6203:2 6204:8 6205:19 6206:3 6207:21 6208:1 6210:7 6215:11, 12 6217:18
<b>T-bar</b> 6110:8,9	<b>Tanya-lee</b> 6085:17	<b>tenant</b> 6118:22	<b>thinks</b> 6084:3,25	<b>timeframe</b> 6039:23
<b>tab</b> 6046:17 6078:18 6087:13, 21 6098:15 6112:18 6115:16 6125:11 6127:2 6131:20 6146:13, 14 6152:23,24 6156:4 6161:1 6162:4 6168:2 6176:16 6177:2 6178:25 6180:4 6183:3 6185:8 6188:2,4,5 6191:2 6192:12 6193:24 6194:2 6196:3 6199:9 6211:24	<b>tar</b> 6200:15 6201:6	<b>tended</b> 6173:5	<b>thought</b> 6038:23 6053:5 6075:23 6131:5 6141:11 6153:9	<b>timeline</b> 6202:12 6204:16 6206:9,13 6207:3
<b>task</b> 6149:21	<b>taxes</b> 6043:25 6083:17	<b>tenure</b> 6208:12, 15	<b>thoughts</b> 6084:10	<b>timely</b> 6106:3
<b>tasked</b> 6099:24	<b>taxpayer's</b> 6213:1	<b>term</b> 6056:25	<b>thousand</b> 6197:1	<b>times</b> 6043:7 6069:3
<b>tasks</b> 6085:20	<b>taxpayers</b> 6218:18	<b>terminated</b> 6128:15	<b>threw</b> 6074:8	<b>timetable</b> 6171:9
<b>taxes</b> 6043:25 6083:17	<b>Taylor</b> 6047:5	<b>terms</b> 6042:22 6043:17 6054:10 6056:4 6066:21 6074:12 6163:18 6175:3 6179:12	<b>Thursday</b> 6178:13 6206:6	<b>Tire</b> 6045:19
<b>technical</b> 6072:2	<b>team</b> 6032:20 6061:5 6070:16, 19 6125:12	<b>territory</b> 6073:22	<b>ticket</b> 6146:24 6165:17	<b>today</b> 6054:4 6086:15 6103:22 6212:10
<b>technician</b> 6187:12	<b>technical</b> 6072:2	<b>test</b> 6187:8 6190:17	<b>tie</b> 6096:25 6122:6 6164:18	<b>today's</b> 6184:7 6196:5
<b>teeth</b> 6203:14	<b>technician</b> 6187:12	<b>tested</b> 6181:16, 19,20,22 6182:7	<b>tied</b> 6135:7	
<b>telephone</b> 6075:13 6103:21 6126:15 6201:13	<b>teeth</b> 6203:14	<b>testified</b> 6050:4	<b>ties</b> 6122:6	
<b>telling</b> 6086:9 6091:13 6145:8 6150:24 6157:9 6159:7 6210:6	<b>team</b> 6032:20 6061:5 6070:16, 19 6125:12	<b>testing</b> 6049:24 6068:13,15 6180:22,23 6187:6 6188:20, 25 6189:8,10 6190:8,9,16 6208:21 6212:8	<b>tightening</b> 6079:17	
<b>tells</b> 6116:16 6181:21,22 6182:6	<b>technical</b> 6072:2	<b>text</b> 6089:12 6090:21 6092:4	<b>tile</b> 6068:21	
<b>temperatures</b> 6108:9 6109:20	<b>technician</b> 6187:12	<b>there'd</b> 6118:24	<b>tile's</b> 6068:19	
	<b>teeth</b> 6203:14	<b>thing</b> 6086:10 6119:9 6120:23 6128:24 6144:20 6152:2 6154:21 6155:22 6207:8	<b>tiles</b> 6068:18 6110:10 6134:13 6139:11 6140:18 6208:19	
	<b>team</b> 6032:20 6061:5 6070:16, 19 6125:12	<b>things</b> 6043:4 6046:13 6053:10 6056:2 6068:11, 14 6069:1 6070:12,15	<b>time</b> 6034:11 6037:25 6038:2,4, 8, 6039:19 6041:25 6042:5 6043:6 6044:21,	

<p><b>told</b> 6032:13 6096:8 6112:15 6128:19 6149:15 6155:14 6158:4 6160:16 6169:15 6196:20 6197:11</p> <p><b>Tom</b> 6079:2 6081:16 6083:6 6085:17,18,25 6086:7,9 6087:2 6098:17 6102:5 6119:24</p> <p><b>top</b> 6075:11 6086:5 6090:4 6098:21 6100:15 6106:1 6133:24 6165:13 6166:24 6169:2 6190:9 6202:23</p> <p><b>topic</b> 6156:10</p> <p><b>topics</b> 6156:9</p> <p><b>topping</b> 6130:21,22 6158:18,20 6164:4</p> <p><b>touch</b> 6195:3</p> <p><b>towed</b> 6144:19</p> <p><b>tower</b> 6174:8 6176:12 6190:10</p> <p><b>town</b> 6104:6,23</p> <p><b>track</b> 6074:8 6088:4 6107:3</p> <p><b>tracked</b> 6106:25</p> <p><b>tracking</b> 6106:21</p> <p><b>tracks</b> 6106:6</p> <p><b>tragedy</b> 6069:5</p> <p><b>Trailer</b> 6052:14</p> <p><b>train</b> 6070:16</p> <p><b>training</b> 6060:12, 6061:18 6062:25 6070:6,8, 10,16,18,21 6071:1,5,9,15,19, 21,22 6072:13</p> <p><b>translate</b> 6059:20</p>	<p><b>trapping</b> 6053:3</p> <p><b>traveling</b> 6214:7</p> <p><b>tree's</b> 6063:14</p> <p><b>trees</b> 6063:12</p> <p><b>trends</b> 6059:12</p> <p><b>triple</b> 6218:6</p> <p><b>trouble</b> 6081:22 6211:9</p> <p><b>Trow</b> 6049:21 6051:3</p> <p><b>Troy</b> 6056:25</p> <p><b>Trudy</b> 6156:7</p> <p><b>trust</b> 6064:4</p> <p><b>truth</b> 6210:6</p> <p><b>Tuesday</b> 6127:15,18 6184:8 6212:15</p> <p><b>turn</b> 6072:15 6080:23 6185:18 6191:2 6196:3</p> <p><b>turned</b> 6050:16</p> <p><b>Turner</b> 6098:18 6102:5 6110:24 6111:10 6112:16 6113:3,12,15 6114:14 6115:20 6119:25 6122:2</p> <p><b>turns</b> 6094:15 6175:2</p> <p><b>two-hour</b> 6122:10</p> <p><b>type</b> 6063:10,11 6107:20 6174:12</p> <p><b>typed</b> 6198:15</p> <p><b>types</b> 6043:13 6068:11</p> <p><b>typically</b> 6067:20 6100:2</p> <hr/> <p style="text-align:center"><b>U</b></p> <hr/> <p><b>ultimately</b> 6105:19 6186:13</p>	<p><b>unable</b> 6083:18 6128:9</p> <p><b>unattended</b> 6161:7</p> <p><b>unaware</b> 6033:7 6079:15</p> <p><b>underneath</b> 6142:12,24 6143:2</p> <p><b>underside</b> 6159:14</p> <p><b>understand</b> 6032:5 6033:11 6055:15 6057:6 6075:24 6078:16 6087:5 6088:7 6099:16 6107:15 6136:10,22 6137:4 6141:3 6171:15 6172:21 6178:16 6180:17 6181:8 6193:18 6208:10</p> <p><b>understanding</b> 6037:24 6038:12 6057:25 6071:3 6079:4 6119:19 6176:23</p> <p><b>understood</b> 6033:15 6040:2 6184:6</p> <p><b>undertaken</b> 6091:23 6143:17 6147:21</p> <p><b>undertakes</b> 6033:5</p> <p><b>underway</b> 6189:21</p> <p><b>unit</b> 6072:9 6186:20</p> <p><b>units</b> 6186:10,25 6187:24 6214:3 6215:5,23</p> <p><b>unnecessary</b> 6206:2</p> <p><b>unorganized</b> 6073:22</p>	<p><b>unrelated</b> 6141:24 6148:8</p> <p><b>unsure</b> 6086:22</p> <p><b>upcoming</b> 6052:18</p> <p><b>update</b> 6083:2 6126:6,21 6130:5, 12</p> <p><b>updating</b> 6083:1</p> <p><b>upgrading</b> 6170:22</p> <p><b>urethane</b> 6101:14</p> <p><b>urged</b> 6087:2</p> <p><b>urgency</b> 6167:13</p> <hr/> <p style="text-align:center"><b>V</b></p> <hr/> <p><b>vacation</b> 6103:17</p> <p><b>variety</b> 6053:4</p> <p><b>vehicle</b> 6084:1</p> <p><b>venture</b> 6150:17,20</p> <p><b>verification</b> 6120:9 6159:25 6189:22 6190:20</p> <p><b>verifications</b> 6187:14 6188:25 6189:8</p> <p><b>verified</b> 6145:19 6183:17</p> <p><b>verifies</b> 6151:5</p> <p><b>version</b> 6198:15,16</p> <p><b>view</b> 6044:17 6176:7</p> <p><b>viewed</b> 6097:15 6139:10</p> <p><b>Vincent</b> 6125:25</p> <p><b>vinegar</b> 6044:20</p>	<p><b>violation</b> 6043:20 6074:17 6076:22, 6077:23 6089:24 6090:5, 15 6091:10 6092:7 6093:15 6094:12 6098:2 6102:6 6113:10 6128:3 6145:4 6153:10 6155:9 6186:13 6187:4</p> <p><b>violations</b> 6042:24 6090:18, 21 6096:22 6107:7 6141:22 6143:17,19</p> <p><b>Vipond</b> 6180:12, 19,20,21,22 6181:13 6182:21 6183:15 6188:19 6189:4 6190:3,13, 15 6191:6,7 6194:4,21 6212:9</p> <p><b>Virginia</b> 6137:13</p> <p><b>virtue</b> 6080:13 6104:9</p> <p><b>visible</b> 6089:16</p> <p><b>visit</b> 6177:7</p> <p><b>visited</b> 6163:2</p> <p><b>Visits</b> 6204:5</p> <p><b>visual</b> 6042:7 6163:11 6166:9</p> <p><b>voice</b> 6153:7</p> <p><b>volunteer</b> 6054:15 6055:5,8, 16 6060:6,21 6071:2</p> <hr/> <p style="text-align:center"><b>W</b></p> <hr/> <p><b>wait</b> 6153:17</p> <p><b>waiting</b> 6083:25 6157:18 6190:10 6202:15</p> <p><b>wake</b> 6178:1</p> <p><b>walked</b> 6041:1 6134:11</p>
---	---	--	---	--

<p><b>wall</b> 6033:6 6109:13 6215:5</p> <p><b>Wallace</b> 6035:11,13,18,21 6036:6,7 6038:22, 25 6039:1,10 6046:23,25 6047:1 6054:6 6055:14 6058:3,6, 10,14,15 6062:9 6065:4 6070:1 6074:10 6078:5,8 6095:17,21 6100:10 6125:3,4, 9,16,18 6131:10, 16,18 6133:6,10, 13 6137:3,24 6138:1 6148:15, 18 6152:17 6165:22,24 6180:3 6185:11, 15,16,17 6186:2,3 6193:25 6198:19 6209:20 6211:8, 16,17</p> <p><b>walls</b> 6045:25</p> <p><b>wand</b> 6190:17</p> <p><b>wanted</b> 6032:17 6033:14,17,18 6040:9 6041:6 6054:20 6058:12 6082:20,24 6101:7 6142:25 6163:24 6179:22 6182:16</p> <p><b>wanting</b> 6190:13</p> <p><b>warn</b> 6178:1</p> <p><b>warrant</b> 6042:5, 13,16</p> <p><b>washed</b> 6139:12</p> <p><b>watch</b> 6033:23 6077:10</p> <p><b>watching</b> 6033:24</p> <p><b>water</b> 6063:7 6070:15, 6071:21 6073:24 6090:25 6091:16 6095:7 6097:19,21</p>	<p>6103:22 6113:8 6139:13 6140:7 6141:18 6146:22 6156:24 6166:4 6167:2 6169:4 6200:18 6201:3</p> <p><b>water'</b> 6086:2</p> <p><b>water-based</b> 6201:9</p> <p><b>waterproofed</b> 6049:15</p> <p><b>waterproofing</b> 6095:10 6201:2</p> <p><b>watertight</b> 6048:19 6091:24</p> <p><b>waved</b> 6111:21</p> <p><b>Wawa</b> 6062:8</p> <p><b>weaknesses</b> 6066:12</p> <p><b>wear</b> 6130:21</p> <p><b>weather</b> 6116:6</p> <p><b>Wednesday</b> 6184:5</p> <p><b>week</b> 6032:21 6034:5 6060:9,24 6135:5 6159:13 6192:8 6197:4 6205:11</p> <p><b>week's</b> 6103:17</p> <p><b>weekend</b> 6057:18 6120:20</p> <p><b>weeks</b> 6100:4 6104:7,24 6133:16</p> <p><b>weight</b> 6131:2 6158:21</p> <p><b>west</b> 6052:14 6174:7 6175:20</p> <p><b>whatsoever</b> 6108:8</p> <p><b>White</b> 6062:8</p> <p><b>wide</b> 6053:4</p> <p><b>wife</b> 6045:21</p> <p><b>Williams</b></p>	<p>6085:17</p> <p><b>winter</b> 6073:23</p> <p><b>wishing</b> 6167:10</p> <p><b>witnesses</b> 6034:2,8</p> <p><b>wonderful</b> 6084:13</p> <p><b>wondering</b> 6208:14 6213:13</p> <p><b>Wood</b> 6126:8 6158:15 6159:9 6160:12,13 6163:5 6164:21 6176:18,25 6177:11, 6179:12, 15 6180:6,16 6182:10 6183:15 6187:17 6191:13</p> <p><b>Wood's</b> 6182:15</p> <p><b>Woods</b> 6173:2 6179:21 6183:9, 18 6184:16 6188:14,15</p> <p><b>word</b> 6119:7</p> <p><b>work</b> 6054:25 6059:23 6065:18 6070:20 6072:1,5, 6,7,8 6075:4 6092:1,23 6096:7 6101:5 6114:15 6116:5,19,20 6127:1 6132:11 6143:16,24 6147:21 6153:9 6154:21 6156:23 6157:10 6159:2,5 6160:3,5 6161:23 6170:5,10,13,14 6172:22 6173:4 6175:22 6182:25 6187:9,13 6189:15 6190:5 6192:24 6193:1 6194:10 6196:21, 25 6198:5 6199:11 6202:20 6204:9,10 6206:5 6207:18 6212:1, 10,16</p> <p><b>work's</b> 6179:19</p>	<p><b>worked</b> 6036:22, 24 6041:2 6049:10 6054:17 6104:12 6182:17 6186:25 6194:9 6195:6 6214:22</p> <p><b>working</b> 6034:1, 10 6039:21 6045:22 6046:3 6049:1 6054:18 6068:3 6071:4,12 6109:22 6116:8 6122:25 6123:8 6124:21 6127:19 6133:22 6134:7 6138:21,24 6170:15 6173:17 6178:9 6182:13 6187:11 6200:24 6204:21 6209:25 6210:3</p> <p><b>works</b> 6071:3 6072:4 6189:14, 15 6191:7 6194:16</p> <p><b>workshops</b> 6059:24</p> <p><b>worried</b> 6176:10</p> <p><b>worse</b> 6209:17</p> <p><b>Wright</b> 6155:8 6158:15 6159:3,5 6160:1,12 6162:3, 5,7 6200:13</p> <p><b>Wright's</b> 6162:14</p> <p><b>Wrights</b> 6161:22</p> <p><b>write</b> 6075:2,3,14</p> <p><b>writes</b> 6127:24</p> <p><b>writing</b> 6040:9 6120:11 6128:18 6132:1 6180:17 6183:4 6200:8</p> <p><b>written</b> 6041:7 6045:2 6047:4 6060:16 6091:22 6155:7 6177:4</p> <p><b>wrong</b> 6046:21 6133:11</p>	<p><b>wrote</b> 6047:6 6128:1 6173:25</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>Yakimov</b> 6138:16,22 6142:7 6156:12 6160:16</p> <p><b>Yallowega</b> 6051:8</p> <p><b>yard</b> 6052:11</p> <p><b>yards</b> 6043:5</p> <p><b>year</b> 6037:15,19 6038:13 6043:6,7 6045:8 6049:19 6054:8 6055:17 6063:5,7,9 6065:13 6066:14, 22 6067:6,7,13,19 6070:20 6073:25 6074:3 6100:5 6105:21 6106:13 6132:4,7 6152:12 6193:13 6197:3,6 6204:22,23 6218:4</p> <p><b>year's</b> 6075:9,10 6180:20</p> <p><b>years</b> 6055:9,16, 23 6062:5,18 6067:1 6069:5 6100:21 6105:24 6107:1 6134:21 6144:5 6146:3 6148:25 6149:22 6151:18 6157:20 6158:11 6171:10, 25 6175:15 6186:11 6209:18</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>Zeller's</b> 6104:1</p> <p><b>Zellers</b> 6067:18 6088:16 6091:6 6111:1,4,6,8,12 6140:22 6142:7 6165:1,4 6167:16, 17,19,25</p>
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<b>Zone</b> 6061:23 6062:4	
<b>Zoning</b> 6052:10 6214:6,10	