

# ELLIOT LAKE COMMISSION OF INQUIRY

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DAY 55

June 05, 2013

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ELLIOT LAKE COMMISSION OF INQUIRY

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--- This is Day 55 in the Inquiry proceedings held  
before the Honourable Justice P.R. Belangér,  
Commissioner, at the White Mountain Academy of the  
Arts, 99 Spine Road, Elliot Lake, Ontario, on the  
5th, day of June, 2013 commencing at 9:00 a.m.

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REPORTED BY: Helen Martineau  
Certified Shorthand Reporter

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1 --- Upon commencing at 9:00 a.m.

2 THE COMMISSIONER: Morning everybody.

3 MS. RODRIGUEZ: Morning,  
4 Mr. Commissioner. We have the evidence of  
5 Mr. Phillip Sarvinis this morning.

6 THE COMMISSIONER: Thank you.  
7 Morning, sir.

8 THE WITNESS: Morning.

9 THE REGISTRAR: Could you please  
10 state your name in full and spell it for the record.

11 THE WITNESS: It's Phillip Sarvinis,  
12 P-H-I-L-I-P S-A-R-V-I-N-I-S.

13 THE REGISTRAR: Thank you. Do you  
14 prefer to swear on a religious document or would you  
15 prefer to affirm?

16 THE WITNESS: The Bible is fine.

17 PHILIP SARVINIS, sworn

18 EXAMINATION-IN-CHIEF BY MS. RODRIGUEZ:

19 Q. Good morning, Mr. Sarvinis.

20 A. Morning.

21 Q. I'm going to start by going a  
22 little bit through your background. I understand  
23 you're a professional engineer?

24 A. Correct.

25 Q. And when did you get that

1 designation?

2 A. I believe it was 1991.

3 Q. And you're a civil engineer with  
4 a structural background, is that correct?

5 A. Correct.

6 Q. And where did you study  
7 engineering?

8 A. University of Toronto.

9 Q. And what year did you graduate  
10 from your engineering --

11 A. 1989.

12 Q. Thank you. Now we're going to  
13 talk a little bit about your involvement with the  
14 mall and I understand that that coincides with your  
15 time at Read Jones Christoffersen?

16 A. Correct.

17 Q. And I'm going to refer to it as  
18 RJC because it's a bit easier.

19 A. That's fine.

20 Q. Are you still at RJC?

21 A. Yes, I am.

22 Q. And how long have you been there?

23 A. Since '91 so 22 years.

24 Q. So shortly after you graduated?

25 A. Correct.

1 Q. Okay. And I understand that RJC  
2 does structural engineering, building science and  
3 parking planning work?

4 A. Correct.

5 Q. Is that correct?

6 THE COMMISSIONER: Where are they  
7 located, sir?

8 THE WITNESS: They have offices  
9 across Canada. I'm in the Toronto office.

10 THE COMMISSIONER: You're in the  
11 Toronto office, thank you.

12 BY MS. RODRIGUEZ:

13 Q. And what does Building Science  
14 entail?

15 A. Building Science basically deals  
16 with a building envelope and the function of the  
17 building itself on an existing building. So the  
18 roofing, the walls, the structure, the  
19 deterioration, et cetera.

20 Q. And does that include  
21 waterproofing?

22 A. Correct.

23 Q. And what does parking planning  
24 entail?

25 A. There is two parts to parking

1 planning. One is just functional design which you  
2 lay out parking lots in the most -- I guess the best  
3 functional way for the design of the building that  
4 you're doing it for. And you lay out where the  
5 parking stalls are, where the drive aisles are and  
6 the functional planning, how the cars circulate.

7 And the other side is taking it one  
8 step further and designing the parking lot or the  
9 parking structure.

10 Q. And so are the engineers at RJC  
11 experts in building science and parking planning, or  
12 do some take care of one aspect and others take care  
13 of the other aspect?

14 A. Correct, the second.

15 Q. Okay. And which one would you be  
16 then?

17 A. I would be more the second, the  
18 building science side of things and the parking  
19 planning.

20 Q. Okay. Building science and  
21 parking planning?

22 A. Correct.

23 Q. So the layout of the parking but  
24 also water proofing, building envelope all those  
25 things?



1 A. Correct.

2 Q. And was there anybody else at RJC  
3 involved with the mall other than yourself?

4 A. There were two junior engineers,  
5 well EITs, engineers in training, and their  
6 supervisor as well.

7 Q. And did they have any direct  
8 contact with the owner of the mall or anyone else at  
9 the mall or were you the primary contact?

10 A. I was the primary contact.

11 Q. Okay. But they assisted you in  
12 your work I assume?

13 A. Yes, they did the field work.

14 Q. Okay. Now when did you first  
15 become involved with the mall?

16 A. It would be late November --  
17 probably early November 2010.

18 Q. Okay. And how did that first  
19 come about? Was there a meeting?

20 A. There was a meeting with the  
21 Nazarians.

22 Q. Yes.

23 A. They called us in. They heard  
24 about us and they called us in to see if we could  
25 help them with their property.

1 Q. Okay. And when you say "they"  
2 who were they?

3 A. It was Bob Nazarian and his son  
4 Levon.

5 Q. So Bob and Levon?

6 A. That's right.

7 Q. And so where did the meeting  
8 takes place?

9 A. It took place in their office on  
10 Yonge Street.

11 Q. Okay. And what did they tell you  
12 about why they were contacting you? What was their  
13 issue?

14 A. They had two main issues. The  
15 biggest issue they had was trying to improve the  
16 layout of the parking lot, especially on the grocery  
17 store side. It was becoming a trip and fall hazard,  
18 and it was difficult for people to get to the mall  
19 because of the slope of the land.

20 Q. So not -- that's not the rooftop  
21 parking?

22 A. No, that's the land parking.

23 Q. Right.

24 A. So they wanted to see if they  
25 could come out with a different to lay out that

1 parking lot to make it more level and easier access  
2 to the building. And the second part was with  
3 regards to eliminating the parking on the roof and  
4 waterproofing the roof of the mall, which is the  
5 parking area.

6 Q. And why did they say they wanted  
7 to eliminate the parking on the roof?

8 A. There were ongoing leaks going on  
9 and they just couldn't catch up with fixing them.

10 Q. Okay. And did they come to you  
11 at all looking for a solution to the water issue, or  
12 was it mainly get the parking off the roof and come  
13 up with an alternative parking solution? Or was it  
14 also, waterproof this deck for me or find a solution  
15 to the leaks?

16 A. It was a combination of both.

17 Q. Okay.

18 A. The primary was to get the cars  
19 off the roof.

20 Q. Yes.

21 A. Come up with a solution and see  
22 if we could maximize the use of the property to  
23 eliminate the parking on the roof, and then find out  
24 a way to actually waterproof it without cars there.

25 Q. Okay. When he mentioned the

1 leaking Mr. Nazarian, either Bob or Levon, did  
2 either of them tell you the extent of the leaking or  
3 how long the parking deck had been leaking for?

4 A. No.

5 Q. So what was your understanding of  
6 the leaking problem at that time? The severity of  
7 it?

8 A. The severity was just there were  
9 localized leaks that kept coming back and happening  
10 over and over again. And they did mention that they  
11 were doing repairs. And they did repairs themselves  
12 years ago. And I could tell by the first site visit  
13 that there was a multitude of repairs being done to  
14 the roof.

15 Q. So it was your understanding that  
16 these leaks had been ongoing at least for some  
17 years?

18 A. Ongoing on and off, repair them,  
19 leak, repair, leak type thing.

20 Q. Okay. Did either of them mention  
21 the tenants and whether they were the driving force  
22 behind the issue with the leaks, or they wanted the  
23 leaks repaired or they were having issues?

24 A. Yes, they did. The leaks yes  
25 with regard to Scotiabank was the biggest tenant

1 that was concerned about leaks in their space.

2 Q. Okay, thank you. Now you have a  
3 book of documents in front of you and I'm going to  
4 take you to tab 2 of that brief.

5 MS. RODRIGUEZ: And it's Exhibit No.  
6 733, Ms. Kuka.

7 BY MS. RODRIGUEZ:

8 Q. And this is a document -- I'm  
9 just going to wait for it to come up. There it is.  
10 It's a document dated November 8th, 2010.

11 A. Correct.

12 Q. And it seems to be authored by  
13 you. If we go to the next page at the bottom there  
14 it has your name on it.

15 A. Correct.

16 Q. And so back to the first page.  
17 It's dated November 8th, but in the first paragraph  
18 it says, "Further to our meeting on February 5th,  
19 2010."

20 A. Hmm hmm.

21 Q. I'm wondering if that's an  
22 accurate date or whether that meant to say  
23 November 5th perhaps?

24 A. That meant to say November 5th.  
25 I actually noticed it when this all came up that

1 that's the wrong date.

2 Q. Okay. So that should say  
3 November 5th, 2010 in that first paragraph?

4 A. Correct.

5 Q. Okay. So it's a summary of what  
6 it was that you discussed at this meeting?

7 A. Correct.

8 Q. And it looks like here on the  
9 second page you have your hourly rates.

10 A. Correct.

11 Q. And this is what was agreed to in  
12 terms of your time and what was going to be I guess  
13 charged for the project and for different people and  
14 their hourly rates here?

15 A. Correct.

16 Q. And at this point you understood  
17 your scope to be what you just told me earlier, is  
18 that correct?

19 A. That's right.

20 Q. Okay. And the letter as I notice  
21 here at the top underneath the date on the first  
22 page, it's directed to Yorkdale Group. Did you ever  
23 deal with Eastwood Mall Inc. as a corporation or was  
24 it always Yorkdale Group?

25 A. It was both.

1 Q. It was both, okay.

2 A. It was both. Different things  
3 were coming from both.

4 Q. Okay.

5 A. So when we first met that's the  
6 business card we got so that's where we addressed it  
7 to. And then later on we got Eastwood was signing  
8 back some of the correspondence and sending e-mails.

9 Q. Okay. So you understood these to  
10 be someone interchangeable in your mind?

11 A. Correct.

12 Q. Okay, thank you. And you said  
13 that you visited the mall?

14 A. Yes.

15 Q. Do you recall when? The date or  
16 when you visited?

17 A. Yes, it was November 25, 2010.

18 Q. Okay. And how long were you  
19 there for?

20 A. Just the day.

21 Q. Just the day. And was it just  
22 yourself who went up?

23 A. Just myself, correct.

24 Q. And did anybody take you around  
25 when you were there?

1 A. No.

2 Q. So you went on your own. You  
3 didn't meet anybody there?

4 A. No.

5 Q. Mr. Nazarian wasn't there?

6 A. No, just myself.

7 Q. Did you meet any mall managers  
8 while you were there?

9 A. No.

10 Q. No. And you went up to the  
11 parking deck I assume?

12 A. Correct.

13 Q. And what did you see in terms of  
14 the state of the deck when you were there?

15 A. Basically I noticed that there  
16 was a multitude of repairs, different generations or  
17 repairs, different colours of sealants that you  
18 could tell. There were concrete repairs that were  
19 done localized in the past. There was water ponding  
20 and signs of salting.

21 Q. And what could you say about the  
22 quality of the repairs that had previously been done  
23 if at all?

24 A. Some were working fine, some  
25 looked like they had failed or they may have been



1 years ago done and needed to be replaced, but I  
2 couldn't comment.

3 Q. Okay. And did you go into inside  
4 the mall at all?

5 A. Just to use the men's room.

6 Q. Okay.

7 A. That's all.

8 Q. And did you see any signs of  
9 leaking when you were inside the mall?

10 A. No.

11 Q. No, okay.

12 THE COMMISSIONER: Is that, sir,  
13 because you were not look for signs of leaking or  
14 were you looking for signs of leaking and didn't  
15 find any?

16 THE WITNESS: No, I wasn't looking  
17 for anything.

18 THE COMMISSIONER: All right. Except  
19 the washroom.

20 THE WITNESS: Just the washroom.

21 BY MS. RODRIGUEZ:

22 Q. And so when you were up on the  
23 parking deck what was your purpose for being up  
24 there?

25 A. Trying to get a sense of what the

1 facility looks like so we can design the parking  
2 layout. And the biggest thing was actually looking  
3 at the property, not just the parking deck itself,  
4 to find out how much space we could use. How it was  
5 laid out based, on how it correlates with the  
6 existing drawings we were given.

7 Q. So is it fair to say that you  
8 were there mainly for the parking aspect -- the  
9 parking solution as opposed to the leaking solution  
10 at that time?

11 A. Correct.

12 Q. And did you receive anything in  
13 terms of documents before you got there? In terms  
14 of drawings, original shop drawings or anything like  
15 that?

16 A. No, just the original  
17 architectural and structural drawings.

18 Q. And who provided those to you?

19 A. The Nazarians.

20 Q. Okay. Did you have any copies of  
21 any prior engineering reports with respect to the  
22 mall?

23 A. No.

24 Q. Did you ask for any?

25 A. Yes.

1 Q. And were they provided?

2 A. No.

3 Q. Okay. And were you told that  
4 they didn't exist or that they just were not able to  
5 give them to you?

6 A. No, they said they'd give us  
7 everything they had.

8 Q. And they didn't give those to  
9 you?

10 A. All we got was the drawings.

11 Q. So you weren't aware that  
12 Halsall, and Trow and Nicholls Yallowega Bélanger  
13 and others had been there and had issued reports  
14 before you came?

15 A. Not before this Inquiry.

16 Q. Okay, thank you. And do you  
17 think it would have been helpful for you to have  
18 seen those reports?

19 A. It would have been. It would  
20 have been helpful. We probably would have flagged a  
21 few things to make sure that there may be other  
22 issues we need to look at than just simply the  
23 parking layout.

24 Q. Now you say you didn't speak to  
25 anybody while you were there?

1 A. Correct.

2 Q. Okay. So you didn't speak to  
3 tenants either I assume?

4 A. No.

5 Q. Okay. And if I can take you to  
6 Exhibit No. 732, tab 5 of your book.

7 A. Hmm hmm.

8 Q. This is an e-mail sent from you  
9 to Mr. Nazarian and to Levon Nazarian and cc'ed to  
10 Paul Mitchell. Who was Paul Mitchell?

11 A. Paul Mitchell was an architect  
12 retained to revamp the face of the mall.

13 Q. Was he involved as well with the  
14 parking aspect of it or just --

15 A. Just the exterior face of the  
16 mall.

17 Q. And he was engaged by the  
18 Nazarians I assume not by yourself?

19 A. Correct.

20 Q. Okay. And the surveyor there was  
21 Paul Torrence?

22 A. Correct.

23 Q. And he was involved with -- I  
24 guess you needed a survey of the land in order to  
25 assess the options for the parking?

1           A. Correct. He did a topographic  
2 survey and gave us the lay of the land, the  
3 elevations.

4           Q. Okay. But with respect to the  
5 parking and the leaking it was you, it wasn't  
6 Mr. Mitchell. You were the one in charge of that  
7 aspect?

8           A. Correct.

9           Q. Okay. And in this letter it says  
10 in that first paragraph, maybe about three lines  
11 from the bottom there, that there was a meeting with  
12 the Mayor -- or there was to be a meeting with the  
13 Mayor on December 29th. And that it looks like you  
14 needed -- they needed some documentation for that  
15 meeting. What can you tell us about that meeting?  
16 What was it about?

17           A. All I know is that there was a  
18 presentation of the plan what was going to be done  
19 at the mall, that's all I know.

20           Q. And do you know why that was  
21 being presented to the City?

22           A. No.

23           Q. Okay. And do you know if this  
24 meeting with the Mayor took place on December 29th?

25           A. I don't know.

1 Q. Okay. And in the second  
2 paragraph it says, "...we have completed our  
3 preliminary meeting with the 3 major roofing  
4 manufacturers - Soprema, Carlisle and Firestone."  
5 What was their involvement with the roof?

6 A. The intent was to bring the cars  
7 off the roof and put a regular building roof on to  
8 where the cars park right now, which would eliminate  
9 the cars. But the reason we approached those three  
10 companies is because they were also involved in the  
11 solar panel industry.

12 Q. Okay.

13 A. And they were -- I guess they  
14 were presenting or flogging the ability to put solar  
15 panels on your building, and we'll reroof the  
16 section that we're going to put our solar panels on.  
17 And so we approached them to see if they were  
18 interested

19 Q. Okay. And what was their  
20 proposal?

21 A. They actually all three of them  
22 at the end of the day were not interested. In the  
23 beginning they were interested to put it on. They  
24 went back and put the numbers together and it just  
25 didn't work for them.

1 Q. And so when you say they would  
2 have been involved with the reroofing of the areas  
3 where the solar panels would be, they would  
4 basically redo the roof in the areas -- in those  
5 areas?

6 A. Yes. The intent was -- the way  
7 they were selling the system was that we'll reroof  
8 your building, we'll put our solar panels on, we'll  
9 connect to the grid, collect the money from the FIT  
10 program and then pay you rent for your space.

11 Q. I see.

12 A. And while our solar panels are in  
13 place there would be like a 20 year lease to match  
14 the FIT program. While our solar panels are in  
15 place we'll maintain the roofing for you for that 20  
16 year period and then after that it's all yours.

17 Q. Okay.

18 A. That's what they were flogging  
19 but -- it sounded interesting for this program.

20 Q. But it didn't pan out?

21 A. It didn't pan out.

22 Q. Okay. Now in the third paragraph  
23 there there are two points in terms of the  
24 objectives, or the options rather. One is:

25 "...put a traditional roofing system

1 and eliminate parking on the roof  
2 which will then require us to create  
3 additional parking space on the site  
4 to meet the parking by-laws."

5 And the second is, "to put a traffic  
6 bearing waterproofing system on the roof and keep the  
7 rooftop parking."

8 And then it says: "Either option will  
9 cost in the order of \$4 to \$5 for the  
10 roofing/waterproofing." Did you mean \$4 to \$5 a  
11 square foot there?

12 A. Per square foot.

13 Q. Okay. So which of these options  
14 then was preferable in your view?

15 A. I didn't have a preference.

16 Q. Okay.

17 A. I believe both could work.

18 Q. Both could work. And then it  
19 says just above it:

20 "I know that your primary objectives  
21 were to stop the roof leaks, produce  
22 a relatively flat parking area for  
23 the food store and give the mall a  
24 complete face lift."

25 What did you mean by "a complete face



1 lift"?

2 A. Well the intent was that they  
3 were going to be -- that all the entrances to the  
4 mall Paul Mitchell came up with an idea to create a  
5 new focal point with glass and make really -- change  
6 the look of the mall.

7 Q. Okay.

8 A. That's really what it was from a  
9 face lift point of view.

10 Q. Okay. So these are the options  
11 that you presented to the Nazarians then?

12 A. Correct.

13 Q. And what was their reaction in  
14 term options and the cost?

15 A. It was more than they anticipated  
16 spending.

17 Q. Okay. And at this point did you  
18 feel it was necessary or important at all to have an  
19 inspection or assessment of the condition of the  
20 roof, given the fact that you were going to be, you  
21 know, looking at different options with respect to  
22 solar panels and parking. Was that important at  
23 that time?

24 A. No, we were basing everything on  
25 the original drawing, the load capacity of the

1 original drawings so it didn't come into play in  
2 terms of condition.

3 Q. Okay. So in terms of weight  
4 there was no issue with putting solar panels up  
5 there? You had no issues with that?

6 A. Correct. We were basing  
7 everything on the load capacity shown on the  
8 original drawings.

9 Q. Okay. If I can take you to tab  
10 7, which is Exhibit No. 4709. And this is actually  
11 an e-mail from Mr. Mitchell and it's to Levon  
12 Nazarian and cc'ed to you and to Bob Nazarian. And  
13 on that page -- in the last paragraph, last big  
14 paragraph he talks about the need to appease the  
15 tenants. Was that something that you saw as  
16 important as well?

17 A. No. The discussions with the  
18 tenants were all with Paul Mitchell and Levon.

19 Q. Okay.

20 A. I'm not sure what the tenants'  
21 concerns were.

22 Q. So you didn't have any knowledge  
23 of the concerns of any of the tenants?

24 A. No.

25 Q. And then it says there at the

1 bottom that, "I am waiting for a return phone call  
2 from Dan Gagnon, CAO Elliot Lake to discuss this  
3 process with him in more detail." Did you have any  
4 interactions with anyone from the City?

5 A. No.

6 Q. So you never met Mr. Gagnon?

7 A. No.

8 Q. Okay. And just at tab 10 which  
9 is Exhibit No. 728. This looks to be an e-mail that  
10 sets out in greater detail the options for the roof?

11 A. Correct.

12 Q. And it's from you and it's to  
13 Mr. Mitchell, cc'ed to Levon and to Bob Nazarian.  
14 And in the first paragraph it says:

15 "Further to our last meeting and the  
16 drawings we sent you yesterday,  
17 herein is our opinion of the probable  
18 cost of construction (excluding  
19 taxes, soft costs and engineering  
20 fees) for the various options of  
21 parking modifications reviewed."

22 So can you briefly describe the three  
23 options here? We have the first one as "maintain  
24 rooftop parking". What would this have entailed  
25 then?

1           A. That would have entailed  
2 waterproofing the roof structure with a thin  
3 waterproofing system, the whole thing and then leave  
4 the cars parking on there.

5           Q. Okay. And why go with the thin  
6 system? Did you understand that that was the only  
7 viable option, or was that the best option?

8           A. That was weight related.

9           Q. Weight related.

10          A. Putting the asphalt. The only  
11 other system is an asphalt waterproofing system.  
12 And the weight of that, based on the original  
13 drawings, we were concerned it was too much weight  
14 to put it on.

15          Q. Okay. And the second option  
16 says, "Ontario Avenue parking field modifications".  
17 So what was that about?

18          A. That is the -- I'm sort of  
19 confused, east west.

20          Q. Yeah.

21          A. But it's the main parking field  
22 in front of the grocery store. The idea was to  
23 modify that to create level areas with designated  
24 slopes for driving only. So that's what that area  
25 was, to modify that and re do the parking layout.

1 Q. Okay. And that didn't really  
2 involve repairing the roof or anything to do with  
3 the rooftop parking. It was just the other --

4 A. Just asphalt, and rock and curbs,  
5 and things that's right.

6 Q. And the third option says,  
7 "Additional parking iste Hillside Drive."

8 A. That was a plan to purchase the  
9 forest area, which is on the back side of the mall  
10 and create a park lot there that would access into  
11 the mall.

12 Q. And that was not owned by the  
13 mall at the time?

14 A. Correct.

15 Q. And do you know who owned the  
16 land?

17 A. I think the City did.

18 Q. Okay. And it looks like you have  
19 some options there costed out?

20 A. Correct.

21 Q. So to maintain the rooftop  
22 parking and to put the thin membrane down would have  
23 been 600 to \$700,000, is that correct? Just at the  
24 bottom of number 2.

25 A. Number 2, that's right. That's

1 with -- that's what it would have been just around  
2 the hotel area.

3 Q. I see. Okay, yes. Because I see  
4 in option number one there are two sub options?

5 A. Correct.

6 Q. So the two sub options the first  
7 one is a thin system and that says 850 to 950?

8 A. With parking everywhere.

9 Q. Parking everywhere. Okay.

10 A. Correct.

11 Q. So what was the second option 600  
12 to \$700,000?

13 A. There was something in one of the  
14 leases that said we had to maintain parking around  
15 the hotel area.

16 Q. Okay.

17 A. So that would be the minimum we'd  
18 have to maintain to keep those spots, and that's  
19 what that number was.

20 Q. Okay.

21 A. And then cover the rest of the  
22 roof with a regular roofing system so that cars  
23 wouldn't access it but it would protect the  
24 building.

25 Q. Okay. So option three there

1 which says, "Additional site parking", would have  
2 required the mall to purchase additional land?

3 A. Correct.

4 Q. In order to satisfy those parking  
5 spots?

6 A. Correct.

7 Q. Okay. And just going back to  
8 option number one there, that first line.

9 "Given the new report on Government  
10 incentive cut back, if the PV panel  
11 option does not materialize something  
12 will need to be done with the roof to  
13 stop the leaks as a minimum and then  
14 if possible add parking on the roof."  
15 Why did you mention this?

16 A. Because they wanted to deal with  
17 the leaks so regardless of the PV system was going  
18 to go ahead you still need to deal with the leaks.

19 Q. Okay. And did you say anything  
20 else to the Nazarians about why the leaks should be  
21 stopped, or why it was necessary to have those leaks  
22 stopped from a structural point of view or from an  
23 engineering point of view?

24 A. No, I didn't mention anything. I  
25 assumed that owning a build you know the leaks are

1 bad.

2 Q. Okay. And if I can take you to  
3 tab 11, which is Exhibit No. 729. And this seems to  
4 be an e-mail from Mr. Mitchell to yourself, Bob  
5 Nazarian and Levon Nazarian. And it says, "The  
6 purpose of the meeting was to understand Sobey's  
7 priorities, acknowledging that cost will not allow  
8 us to do everything." Were you present at this  
9 meeting with Sobey's?

10 A. No.

11 Q. Do you know what it was about?

12 A. It was to present the options  
13 that the Nazarians wanted to do to the mall to  
14 Sobey's.

15 Q. And why did that need to be  
16 presented to Sobey's?

17 A. Well they had issues with the  
18 mall in general. And they were the biggest I guess  
19 entity that was concerned about the slope of the  
20 land, because it was their customers that were  
21 affected by that parking area the most. And I think  
22 there was issues with regard to providing enough  
23 parking on the site if we removed the rooftop  
24 parking.

25 Q. So the issue with Sobey's was not



1 enough parking and not the leaking?

2 A. Correct.

3 Q. To your knowledge?

4 A. To my knowledge.

5 Q. Okay.

6 A. Yeah.

7 Q. Okay. And at this point  
8 Mr. Mitchell is also summarizing the options that  
9 you gave in your previous e-mail there at the  
10 bottom. Did any of these move forward?

11 A. No.

12 Q. No. And why is that?

13 A. Budgets.

14 Q. Budgets.

15 A. Yeah.

16 Q. Okay. Now I understand that  
17 shortly after this there was some issues with  
18 payment of your invoices?

19 A. Correct.

20 Q. And what was the issue briefly?

21 A. Not being paid.

22 Q. And in fact I understand you  
23 registered a lien on the title after not receiving  
24 payment for some time?

25 A. Correct.

1 Q. Okay. And I can take you to  
2 that. It's tab 13 and it's Exhibit No. 734. So  
3 under "consideration" it says \$23,825.45. Is that  
4 the amount that was outstanding that you were not  
5 paid?

6 A. Correct.

7 Q. And your payment would have been  
8 based on that hourly schedule that we saw in your  
9 first proposal?

10 A. Correct.

11 Q. And eventually you issued a  
12 Statement of Claim in relation to this lien, is that  
13 correct?

14 A. Correct.

15 Q. Okay. And how did it all get  
16 resolved, or did it get resolved? Did you get  
17 payment in the end?

18 A. Yeah, we resolved it.

19 Q. Okay. And did you receive a  
20 hundred percent of your payment or was there some  
21 sort of --

22 A. No, we made a deal.

23 Q. You made a deal?

24 A. Yes.

25 Q. Okay. And now from what I

1 understand there was a second engagement with the  
2 Nazarians and with the mall?

3 A. Correct.

4 Q. And if we turn to tab 17, it's  
5 Exhibit No. 107. We'll see there that now we're in  
6 June in 2011?

7 A. Hmm hmm.

8 Q. And this seems to be another  
9 engagement letter, so to speak. Why go back to work  
10 with the mall and with the Nazarians after having  
11 all of the issues with payment to the point where  
12 you had to issue a Statement of Claim?

13 A. It was related to their client  
14 Scotiabank, which is also one of our clients.

15 Q. Okay.

16 A. And they specifically said if RJC  
17 is involved in this we'll consider staying in the  
18 mall. So the Nazarians came back to us and asked us  
19 to help them.

20 Q. Okay.

21 A. That's where this letter was  
22 generated.

23 Q. Okay. And so you were mainly  
24 thinking of your mutual client Scotiabank --

25 A. Correct.

1 Q. -- when you agreed to do this?

2 A. Correct.

3 Q. Okay. And had anything changed  
4 in terms of the options or -- from your perspective  
5 what you could offer and what you could bring to the  
6 table the second time around?

7 A. The only thing that changed was  
8 that in the interim when we weren't working for them  
9 we got involved with a company called Solar Energy  
10 Hub out of the U.S.

11 Q. Yes.

12 A. And they were coming to Canada  
13 and doing the same thing with regards to renting  
14 roof space, putting solar panels. And in working  
15 with them they had indicated to us that if we know  
16 any properties we're prepared to go and take a look  
17 at them. And that's the only thing that changed.

18 And then when we got back in with the  
19 Nazarians we presented that to them that there's a  
20 company out there that's willing to come up. And in  
21 Elliot Lake there's a larger amount of sun. It's a  
22 very good zone for capturing sun. And they were  
23 really interested in meeting with the Nazarians.  
24 That's the only thing that really changed.

25 Q. Okay. And we'll get a little

1 into detail with Solar Energy Hub.

2 So in this letter it says, "Further to  
3 our meeting on June 3rd". So you met with the  
4 Nazarians on June 3rd.

5 A. Correct.

6 Q. And it was Bob and Levon as well,  
7 and yourself?

8 A. Correct.

9 Q. And again it was more of the same  
10 discussion of the options that needed to happen for  
11 the parking and for the lease?

12 A. Yes. They needed a letter from  
13 us to give to Scotiabank and that's what this was.

14 Q. Okay. So they wanted you to  
15 draft a letter saying what?

16 A. That they're going to waterproof  
17 the roof and it's going to stop the leaks.

18 Q. Okay.

19 A. And this is what we're planning  
20 on doing.

21 Q. And did you say that Scotiabank  
22 was threatening the leave the mall? Is that what  
23 was happening?

24 A. Correct.

25 Q. Okay. So this would have

1     appeared them to say, this letter from you?

2                     A.   That's what my understanding was,  
3     yes.

4                     Q.   Okay.   So it looks like you -- or  
5     collectively a choice had been made here in terms of  
6     the option.   It says:

7                     "It is our understanding that the  
8                     Ownership of the Algo Centre Shopping  
9                     Mall has decided to eliminate the  
10                    majority of the rooftop parking at  
11                    the site and waterproof the roof  
12                    structure to eliminate the existing  
13                    leakage problem and protect the  
14                    building for the very long-term."

15                    So the option that was decided on then  
16     was remove the parking from the rooftop, which would  
17     have required then finding additional parking, is  
18     that correct?

19                    A.   Correct.

20                    Q.   And then that was also with the  
21     goal of getting solar panels on the roof, is that  
22     right?

23                    A.   Correct.

24                    Q.   And at tab 18 of your materials,  
25     which is Exhibit No. 4715 we can see the proposal

1 that you put forward?

2 A. Hmm hmm.

3 Q. Also date June 8th. And at the  
4 bottom there were it says 3.0 it says, "Anticipated  
5 Scope of the Retrofit Project." So this would have  
6 been the scope of your engagement.

7 "Installation of a new roofing system  
8 complete with solar panels..."

9 Number 2 on the next page would be:  
10 "Repairing and waterproofing the structure with a  
11 thin set traffic bearing waterproofing."

12 And then the third one would be,  
13 "Construction of a new 174 car parking lot to the  
14 northwest of the Shopping Center..."

15 And number 4 would be:

16 "Provision of structural and building  
17 envelope engineering services for the  
18 reconstruction of two main  
19 entranceways to the mall and the  
20 enclosure of the ground floor  
21 sidewalk."

22 What was number 4 about? Because I  
23 think I understand the purpose of 1, 2 and 3. I'm  
24 not quite sure about number 4.

25 A. Number 4 related to Paul

1 Mitchell's design for the face lift.

2 Q. Okay. So why was that under your  
3 scope of --

4 A. He wanted to give it to us as  
5 well to keep it all in one so he doesn't have to  
6 hire another consultant.

7 Q. I see. But you would not have  
8 been the one actually doing the work, that would  
9 have been Mr. Mitchell?

10 A. Mr. Mitchell would have done the  
11 design for what it's supposed to look like. And the  
12 structural elements and the building envelope,  
13 making sure it doesn't leak, would have been us.

14 Q. Okay. So you would have overseen  
15 everything though?

16 A. Correct.

17 Q. And you would be what would be  
18 called the prime consultant?

19 A. Correct.

20 Q. So you would not actually put the  
21 panels in or construct anything yourself but you  
22 would be the prime consultant, oversee the work,  
23 tender out the work, that type of thing?

24 A. Correct.

25 Q. Okay. And I notice as well that



1 in the proposal there is no provision for a  
2 structural assessment of the structure or of the  
3 roof. Why was that?

4 A. We didn't believe it was  
5 warranted. There was no evidence that would suggest  
6 to us that there was a problem with the roof.  
7 Nothing was presented to us.

8 Q. And before undertaking kind of a  
9 retrofit of the parking lot, and as well of the  
10 mall, would it not be prudent to have such a total  
11 inspection of the structure of the mall?

12 A. I don't think so.

13 Q. Okay. And at tab 21 --

14 THE COMMISSIONER: Why don't you  
15 think so, sir?

16 THE WITNESS: Because we weren't  
17 affecting the whole mall. There was no issue with  
18 regards to putting -- the only area that needed to  
19 be reviewed was the area where the waterproofing was  
20 going to touch to make sure it would stick. There  
21 was nothing brought forward to us to say there was  
22 an issue with the mall, we should look at  
23 everything.

24 THE COMMISSIONER: Thank you.

25

1 BY MS. RODRIGUEZ:

2 Q. And wouldn't the quality of the  
3 steel underneath the concrete affect the options or  
4 basically affect the structure? Wouldn't it have  
5 been important to look at the steel that was holding  
6 up the concrete?

7 A. No, basically we based our  
8 analysis on the loads provided on the original  
9 drawings, and the loading that was being provided by  
10 the solar panel company. And the waterproofing  
11 system had negligible weight to it. So we weren't  
12 really changing anything.

13 Q. Okay. And it didn't occur to you  
14 that the leaks over the number of years could have  
15 affected the structure underneath?

16 A. No, we weren't advised that there  
17 were ongoing leaks, they were just on and off, on  
18 and off. If we were told that the leaks started on  
19 day one and we never fixed it that would be a  
20 different story.

21 Q. And this is perhaps where those  
22 prior engineering reports might have come in handy?

23 A. Correct.

24 Q. Okay. So sorry, I was taking you  
25 to tab 21 which is Exhibit No. 108. And this seems

1 to a revised proposal and it's dated June 13. And  
2 if we go to the next page under the scope of the  
3 work there is 1, 2 and 3 but number 4 has been  
4 eliminated from the scope of the work?

5 A. Correct.

6 Q. Why is that?

7 A. They wanted to keep that as a  
8 separate package once they moved forward.

9 Q. And was this proposal ultimately  
10 agreed to?

11 A. Yes, the revised one.

12 Q. Yes.

13 A. And the other thing changed is  
14 the way the fee structure worked. They wanted to  
15 break it out in terms of the solar panel work and  
16 the actual waterproofing work.

17 Q. And I believe that is at the tab  
18 28 which is Exhibit No. 4724. And it's a revised,  
19 revised proposal. And it's dated June 20th, 2011.

20 A. Hmm hmm.

21 Q. So it does look like it divides  
22 the work into two different phases?

23 A. Correct.

24 Q. And estimates the work for each  
25 phase?

1 A. Correct.

2 Q. And in terms of the price and the  
3 cost, did the Nazarians seem okay with what you were  
4 proposing in terms of the potential costs?

5 A. There was no mention that there  
6 wasn't.

7 Q. Okay. So in your mind everything  
8 was fine in that regard?

9 A. Yes.

10 Q. So you're moving forward?

11 A. Correct.

12 THE COMMISSIONER: What was that  
13 cost? Is it covered in that exhibit, Ms. Rodriguez?

14 MS. RODRIGUEZ: Yes. It says for  
15 their work, for the RJC's work it would be for phase  
16 one -- it breaks it out.

17 THE COMMISSIONER: Where does it  
18 break it out? What page?

19 MS. RODRIGUEZ: The page ending 01,  
20 so the second page of that proposal. So phase one  
21 predesign assessment \$7,500. Design development and  
22 drawings \$10,000. So it breaks it down in that way.

23 THE COMMISSIONER: Okay. Similarly  
24 for phase two?

25 MS. RODRIGUEZ: And similarly for

1 phase two as well. There doesn't seem to be a total  
2 but it's broken down by line item.

3 BY MS. RODRIGUEZ:

4 Q. And again these would be for your  
5 services obviously not for the actual  
6 implementation?

7 A. Correct.

8 Q. Okay. So we're going to talk a  
9 bit about Solar Energy Hub, which you brought up.

10 A. Okay.

11 Q. And they became involved, you  
12 mentioned, because they were in contact with you and  
13 you brought them to the table?

14 A. Correct.

15 Q. Okay. And we can see an  
16 agreement with Solar Energy Hub at tab 19, which is  
17 Exhibit No. 4716. And this seems to be a letter of  
18 intent. And it's from Jim Randolph, so he was the  
19 primary contact at Solar Energy Hub?

20 A. Correct.

21 Q. And it's to Bob Nazarian at  
22 Yorkdale Group. And again you had mentioned what it  
23 would entail, but if you can just remind us of what  
24 the process would be in terms of their leasing out  
25 space, their connecting to the grid. So what would

1 that look like then?

2 A. Their intent -- well part of this  
3 was that -- it originally started off with providing  
4 solar panels, renting the space on the roof. But  
5 they would connect to the grid and collect the money  
6 from the grid. Then it moved forward to, well, can  
7 you waterproof the roof as well and we'll reduce the  
8 rent and we'll work it out that way?

9 Q. Okay.

10 A. And then they agreed to do that  
11 and that's where it was left. So they would  
12 waterproof the roof, put their solar panels on.  
13 This was purely a solar panel company.

14 Q. Right.

15 A. They would put the roofing on,  
16 put the solar panels on, pay a certain amount for  
17 rent and then connect to grid for 20 years.

18 Q. So they didn't have any  
19 waterproofing experience themselves but they would  
20 hire someone to do it and they would pay for it?

21 A. Exactly.

22 Q. So we see in this letter of  
23 intent point number 1 it says, "Investor", that  
24 would be Solar Energy Hub, "will pay the building  
25 owner \$0.50 (USD) a square foot only for the usable

1 amount of space necessary to install the system."

2 And as you mentioned it does seem that  
3 there was some negotiation and the \$0.50 was actually  
4 brought down.

5 A. Hmm hmm.

6 Q. And we can see that at tab 26,  
7 which is Exhibit No. 4722, Ms. Kuka. And if we look  
8 at number 1 there when it comes up, it's been  
9 lowered to \$0.45 from \$0.50. And is your  
10 understanding that this was lowered as a result of  
11 them taking on the cost of repairing and  
12 waterproofing the deck?

13 A. Correct.

14 Q. Okay. And if we go to the  
15 Exhibit No. 4719, which is tab 23 of your materials  
16 there. This is an e-mail from you to Levon Nazarian  
17 and it's dated June 13th, 2011. And it looks like  
18 you are providing him with wording to include in the  
19 letter of intent that accounts for the waterproofing  
20 membrane and the repair of the roof that Solar  
21 Energy Hub was going to do?

22 A. That's correct.

23 Q. Thank you. So then the roof  
24 repair would not cost them any money, is -- I'm just  
25 trying to understand here what that would mean for

1 the mall and for the Nazarians. So they have to  
2 close off the parking on the roof, but does that  
3 mean that then Solar Energy Hub would repair and  
4 waterproof the entire deck, or only those portions  
5 of the deck where they've placed their solar panels?

6 A. Only those portions.

7 Q. And was that the majority of the  
8 deck?

9 A. Correct.

10 Q. So essentially it's as -- is it  
11 fair to say that they're getting a new roof at that  
12 point?

13 A. They would have got a new roof,  
14 yes.

15 Q. Waterproofed?

16 A. New roofing.

17 Q. Yes. And Solar Energy Hub would  
18 have been responsible for the maintenance of that  
19 roof for the entire lease period?

20 A. That's right. The area would  
21 have been cordoned off so no one could go and play  
22 with the solar panels.

23 Q. Right.

24 A. So only approved roofers.

25 Q. Right.



1                   A. By Solar Energy Hub could go  
2 there.

3                   Q. And they would also be receiving  
4 rent from the lease of that rooftop space?

5                   A. Correct.

6                   Q. But there is a down side to this  
7 and that would that they have to eliminate the  
8 parking?

9                   A. Correct.

10                  Q. So that would entail then  
11 providing for additional parking somewhere else?

12                  A. Correct.

13                  Q. Okay. And from your  
14 understanding where was this additional parking  
15 going to come from?

16                  A. The majority of it was going the  
17 come from the forested area once that was purchased.

18                  Q. Okay. And now in the end it  
19 doesn't seem like the agreement with Solar Energy  
20 Hub went forward. Do you know why that is?

21                  A. My understanding was that the  
22 Nazarians wanted them to finance the construction of  
23 the parking lot as well.

24                  Q. Okay.

25                  A. And Solar Energy Hub wasn't in

1 that business and they had to say, there's too many  
2 variables for us we'll have to back out.

3 Q. Okay. And we'll look at that at  
4 Exhibit No. 4739 which is tab 48 of your materials,  
5 and just on the second page there. So this is an  
6 e-mail from Levon Nazarian to you dated August 30th.  
7 And he says:

8 "As per our discussion today, the new  
9 proposal that we have for Solar  
10 Energy Hub, is for them not to pay us  
11 rent if are the 20 year lease, but  
12 pay for all soft and hard costs to  
13 seal the roof with the EPDM 80 mil  
14 (sic) roofing system and to construct  
15 and build the new parking lot you  
16 have proposed."

17 Now the new parking lot does that  
18 refer to the land adjacent the land that was owned by  
19 the City?

20 A. Correct.

21 Q. Okay. So he's saying, Don't pay  
22 us rent, Solar Hub, just finance the development of  
23 this land into a parking lot?

24 A. Correct.

25 Q. And on the first page of that

1 document it looks like you respond back to him on  
2 August 30th, and you're giving him the particulars  
3 with respect to that site.

4 And then you give him a price. And in  
5 that paragraph after number 9 it says:

6 "In our opinion, given the  
7 information known at this time, the  
8 probable total project cost,  
9 including all soft and hard costs  
10 will be in the order of \$1.0 to  
11 \$1.4 million."

12 So this was to be provided to Solar  
13 Energy Hub for them to know what this entailed  
14 essentially?

15 A. Correct.

16 Q. Okay. And do you know if they  
17 agreed to this proposal by the Nazarians?

18 A. I'd have to say no they didn't  
19 agree because they backed out.

20 Q. Okay. And after this stage were  
21 you involved with the relationship between the  
22 Nazarians and Solar Energy Hub, or after this point  
23 what was your involvement?

24 A. No. The negotiation with Solar  
25 Energy Hub was purely with the Nazarians and

1 themselves.

2 Q. Okay.

3 A. We were just copied on  
4 information.

5 Q. Okay.

6 A. And asked to comment on once they  
7 made a recommendation how they're going to do  
8 something to comment on that.

9 Q. Okay. So you're not aware of  
10 what happened with their agreements after this  
11 point?

12 A. No.

13 Q. Okay. And I understand that you  
14 were involved with a Ms. Rhonda Bear and her  
15 presentations to City Council. Who did you  
16 understand Mr. Bear to be?

17 A. Ms. Bear was the manager of the  
18 mall.

19 Q. Okay. And what was the extent of  
20 your involvement in terms of presentations to the  
21 City?

22 A. We just sent her one e-mail  
23 outlining what the parking lot would look like.

24 Q. Okay. And what was that for?

25 A. For her presentation. She wanted

1 background information on what was actually being  
2 done because she had to make this presentation.

3 Q. And did she explain what the  
4 purpose of the presentation was?

5 A. I'm assuming to convince Council  
6 to sell it. I don't know.

7 Q. So you're not sure?

8 A. I'm not sure.

9 Q. Okay. So tab 31, Exhibit No.  
10 4727. We'll take a look at that and see if that  
11 helps us out.

12 A. Yeah, that's what I sent her.

13 Q. Right. So this is what you sent  
14 her in order for her to present it to the City?

15 A. Correct.

16 Q. But you never had any contact  
17 with anybody in the City directly yourself?

18 A. No.

19 Q. No. And did you ever meet  
20 Ms. Bear in person or was this all over e-mail?

21 A. All over e-mail.

22 Q. And so you never discussed the  
23 leaks with her?

24 A. No.

25 Q. Now in some of the

1 correspondence, which I may take you to, it does say  
2 that you might be involved in going to the meeting  
3 yourself?

4 A. Hmm hmm.

5 Q. Did that ever happen?

6 A. No.

7 Q. And why was that?

8 A. The Nazarians didn't feel it was  
9 necessary for me to be there.

10 THE COMMISSIONER: I'm sorry, sir?

11 THE WITNESS: The Nazarians didn't  
12 feel it was necessary for me to be there.

13 BY MS. RODRIGUEZ:

14 Q. Now at tab 43 it looks you have  
15 prepared some tender documents. And this would be  
16 with respect to the repair of the parking deck and  
17 the waterproofing?

18 A. Correct, just the portion around  
19 the hotel.

20 Q. Okay. And at this point Solar  
21 Energy Hub is no longer involved, is that right?

22 A. No. They were still -- this is  
23 the same process.

24 Q. This is the same process?

25 A. Yes.

1 Q. Okay. So this was --

2 A. They were happening  
3 simultaneously.

4 Q. I see. So this would have been  
5 for whoever Solar Energy Hub brought on in order for  
6 them -- this would be to tender the work that they  
7 were going to pay for essentially?

8 A. No, this is for the work that the  
9 Nazarians are going to do outside the solar panel  
10 area.

11 Q. Outside of the solar panel area?

12 A. Correct.

13 Q. And they would have had to pay  
14 for this?

15 A. Correct.

16 Q. Okay. And you went with a tender  
17 as opposed to negotiating with a single contractor?

18 A. Correct.

19 Q. And why was that?

20 A. To get competitive bids.

21 Q. And the Nazarians were in  
22 agreement with tendering the work?

23 A. Correct.

24 Q. And did they ever ask you whether  
25 their own employees could carry out this work?

1 A. No.

2 Q. So that was never discussed?

3 A. No.

4 Q. And at page 108 of this tender  
5 document, so it's just at the bottom there, there  
6 are some numbers, document I.D.'s. And it's just  
7 the doc I.D. ending in 108. And it makes reference  
8 to shoring.

9 A. Correct.

10 Q. What is shoring and why was that  
11 necessary?

12 A. There were concrete repairs that  
13 had to be done on the surface of the parking deck in  
14 order to make the surface suitable for  
15 waterproofing. So once the repairs are identified  
16 by the contractor, they typically go underneath the  
17 deck, they will put in a post shore, a temporary  
18 shore, to hold that area up just in case the repair  
19 gets larger than they expected.

20 Q. So this was not related to any  
21 structural concerns that you had?

22 A. No, no. Just for the actual  
23 repair.

24 Q. Okay.

25 A. And this is a guide for the



1 contractor to know what type of shoring to use when  
2 he does this work.

3 Q. Okay. Now I understand that you  
4 also encountered some problems with payment with the  
5 second time around, is that correct?

6 A. Correct.

7 Q. And at tab 51, which is Exhibit  
8 No. 4740, we see that in fact underneath the numbers  
9 there it says:

10 "Please be advised that if we don't  
11 see some form of payment against  
12 these accounts by Friday October 21,  
13 we will be advising our council to  
14 proceed with placing a Lien on the  
15 property on Monday October 24th."

16 So you had to threaten another lien  
17 there?

18 A. Correct.

19 Q. And did you eventually receive  
20 payment for your services?

21 A. Correct, yes.

22 Q. And that was in full?

23 A. In full.

24 Q. Okay, thank you. And if I can  
25 just take you to tab 56, which is Exhibit No. 4744.

1 These are just some handwritten notes. It's dated  
2 November 8th, 2012. Do you recognize this  
3 handwriting?

4 A. Yeah, that's my handwriting.

5 Q. That's your handwriting?

6 A. Yeah.

7 Q. Now November 8th, 2012 would be a  
8 few months ago so I'm just wondering about that  
9 date.

10 A. No, that's not right. That's  
11 2010. These are my notes from preparing the  
12 proposal, the original proposal.

13 Q. I see. And at the bottom it  
14 says: "Come up with design that will convince IGA  
15 to stay." Is that what it says there?

16 A. That's what it says.

17 Q. Okay.

18 A. That was the prime objective.

19 Q. Right. So you had mentioned  
20 Scotiabank before now it's IGA?

21 A. Yes, IGA was the grocery store.

22 Q. Yes.

23 A. Their biggest concern was losing  
24 that anchor tenant at the time, the first phase.  
25 Scotiabank came in the second phase.

1 Q. I see. So this is related to  
2 your first involvement with the mall?

3 A. Yes.

4 Q. And Scotiabank was related to  
5 your second involvement with the mall?

6 A. Correct.

7 Q. And how did your relationship  
8 with the Nazarians end? Why did it end?

9 A. Abruptly.

10 Q. Abruptly. Why is that?

11 A. It just stopped, that was it. We  
12 got paid and we didn't want to see each other again.

13 Q. Okay. And do you know why it was  
14 that the Nazarians did not want to continue with  
15 you?

16 A. I think they were -- I'd have to  
17 be guessing, but I'm speculating that they were  
18 bitter that we took legal action against them to get  
19 paid.

20 Q. And I understand that you also  
21 declined to work with the Nazarians after the mall  
22 collapse?

23 A. Correct.

24 Q. And why is that?

25 A. Twice bitten I guess.

1 THE COMMISSIONER: Sorry?

2 THE WITNESS: Twice bitten.

3 BY MS. RODRIGUEZ:

4 Q. Now, was it ever discussed -- I  
5 know you have said that you were not concerned with  
6 the structure of the mall at the time, but did it  
7 ever occur to you that the structural integrity of  
8 the mall could be compromised if the leaks were not  
9 stopped?

10 A. No, it didn't occur to me. Just  
11 based on the fact that someone was doing repairs to  
12 the mall on and off, on and off, it didn't occur to  
13 me that there would be an issue with the mall.

14 Q. Did you ever express concerns to  
15 Mr. Nazarian about what the ongoing leakage could be  
16 doing to the slabs or the steel structure?

17 A. No, no.

18 Q. And did you ever explain to him  
19 what could happen if the leaks weren't stopped in  
20 terms of the structural integrity of the steel?

21 A. No.

22 Q. And did he ever express concerns  
23 to you about what the leaks could be doing to the  
24 structure in terms of the steel?

25 A. No.

1 Q. No. And in any of this did you  
2 ever recommend to Mr. Nazarian that -- or to Levon  
3 Nazarian that they obtain a thorough inspection of  
4 the beams and connections to determine if the  
5 ongoing leakage had caused any kind of structural  
6 damage?

7 A. No.

8 Q. And you never actually looked at  
9 the steel structure yourself, correct?

10 A. No, correct.

11 Q. Okay. And if we can just go to  
12 tab 58 of your materials. And to the page ending in  
13 3305. I'm going to take you to the coloured version  
14 of this one which is Exhibit No. 00111. And it's  
15 page 6 of that document. It's the same photo. It's  
16 just the photo of the rusted beam there. You have  
17 it in black and white, it will show up in colour on  
18 the screen. It's page 6 and it will say photo  
19 number 7. That's the photo at the top there of that  
20 rusted beam. And you have it at page ending 305 in  
21 tab 58.

22 So this is a photo that was taken in  
23 2012. But if you had seen this kind of a beam in  
24 this kind of a state what would you have done?

25 A. I probably wouldn't have been

1 alarmed right away because corrosion makes things  
2 looks worse. I probably would have recommended to  
3 clean it so we can actually measure this actual  
4 sectional loss and determine if there's any issues  
5 with integrity.

6 Q. Okay. So you would have taken a  
7 sample?

8 A. No, I don't think I would have  
9 taken a sample. There is ways to clean off all the  
10 rust to get back to the bare metal.

11 Q. Oaky.

12 A. And then we would have used a  
13 caliper to measure the actual thickness of member  
14 section loss.

15 Q. Okay, I see.

16 A. And then it's an empirical  
17 calculation you can do to figure out if there's any  
18 issue.

19 Q. And would seeing this have  
20 changed at all your approach in what you did with  
21 the mall?

22 A. Likely not.

23 Q. Is there anything else that I  
24 haven't asked you about that you would like to tell  
25 us?

1 A. No, I don't think so.

2 Q. Perfect, thank you. Those are my  
3 questions and my friends may have some questions for  
4 you.

5 THE COMMISSIONER: Thank you.  
6 Cross-examination. Mr. Bisceglia.

7 CROSS-EXAMINATION BY MR. BISCEGLIA:

8 Q. I have a few questions. Good  
9 morning, sir.

10 A. Good morning.

11 Q. My name is Joe Bisceglia I'm  
12 counsel for Greg Saunders, an engineer with M.R.  
13 Wright. How large is your firm, sir?

14 A. Across Canada we're now probably  
15 425 people.

16 Q. And during the course of your  
17 testimony you indicated that the Bank of Nova Scotia  
18 was a client?

19 A. Correct.

20 Q. And I'm suspecting that you have  
21 a number of large corporate clients that you do work  
22 for?

23 A. Correct.

24 Q. And just perhaps we get a clear  
25 picture here, when you first met with the Nazarians

1 you said it was in Toronto on Yonge Street was that  
2 at your office or their office?

3 A. Their office.

4 Q. And in discussing the mall in  
5 Elliot Lake were you given any history as to the  
6 nature and extent of the leak or leaks over the  
7 history of their ownership?

8 A. No.

9 Q. Were you given any indication as  
10 to the type of structure that they had on the roof  
11 involving hollow core slab without a membrane?

12 A. We knew that -- from the  
13 photographs that they had -- they had some I guess  
14 aerial photographs of the site, maybe presentation  
15 photographs. It looked like it was a bare concrete  
16 slab. We didn't know what it was until after.

17 Q. And did you get any information  
18 as to the number of other engineers and/or experts  
19 that they had hired before you came along, and any  
20 of the recommendations that may have been made by  
21 those individuals?

22 A. No.

23 Q. Did they discuss with you the  
24 idea of them considering various options to deal  
25 with the roof leaks since they'd had ownership of



1 the mall?

2 A. No. The only thing they  
3 mentioned was that they'd been were doing ongoing  
4 repairs because of the leaks, that's all.

5 Q. Would I be fair, sir, in saying  
6 that the impression that you had, after discussing  
7 the matter of the roof or their structure, is that  
8 they had leaks but that they were repairing those  
9 leaks and eliminating those leaks on an ongoing  
10 basis?

11 A. Correct.

12 Q. And is it for that reason that  
13 you, as a professional engineer with a P.Eng.  
14 designation for the Province of Ontario, considered  
15 it unnecessary to conduct a survey as to the  
16 soundness of the structure?

17 A. That would be one reason, the  
18 other reason is we weren't engaged to do that.

19 Q. Well at some point though you  
20 were engaged to plan out a proposal that would have  
21 had solar panels on the roof --

22 A. Correct.

23 Q. -- in a particular area. And in  
24 addition to that one of the options was to continue  
25 using the roof for parking?

1 A. Correct.

2 Q. And it's my understanding, with  
3 my limited knowledge of the subject, that by putting  
4 solar panels on this roof that you are enhancing or  
5 increasing significantly wind shear factor.

6 A. Hmm hmm.

7 Q. Would that not be something you  
8 had to consider the soundness of the structure to  
9 deal with?

10 A. Yes, for the transfer of the  
11 loading from the solar panels.

12 Q. Right. So there may be some  
13 debate as to the extent of that force that would  
14 come about, but would that not be impacted by your  
15 knowledge and information as to the soundness of the  
16 steel supporting structure?

17 A. Yeah. We would have first done  
18 an analysis based on the original design.

19 Q. Right.

20 A. And then we probably would have  
21 recommended to make sure it's built as per the  
22 original design.

23 Q. The point that I'm making, sir,  
24 is that notwithstanding what the original design  
25 was, and the load bearing capacity as set out in

1 that design, you felt sufficiently comfortable,  
2 based upon the information you had from the  
3 Nazarian, that you didn't need to look at the  
4 soundness of the steel beams to be able to support  
5 the new proposal.

6 A. Correct.

7 Q. And since this Inquiry and since  
8 this -- I should say since this collapse and this  
9 Inquiry has commenced I gather you've received some  
10 information as to the historical problems that  
11 involved this mall?

12 A. Yes.

13 Q. And given the number of engineers  
14 and the number of issues that historically have  
15 plagued this mall, had you known any of that  
16 information would you have set about making these  
17 proposals without doing a complete structural  
18 review?

19 A. No.

20 Q. I get the impression that your  
21 firm firstly didn't get the historical information  
22 and/or the problems that faced the mall, which may  
23 have led you to diagnose or misdiagnose the  
24 situation, but also that your firm was used at  
25 various times to write letters on behalf of the

1 Nazarians to appease whether it's the City or  
2 appease a tenant. Is that true? That you were  
3 being used by that --

4 A. We didn't feel we were being  
5 used. I was honestly under the impression that  
6 Mr. Nazarian was going do this work.

7 Q. And that's why you did that. And  
8 obviously none of that materialized?

9 A. Correct.

10 Q. And what ultimately happened with  
11 respect to the Bank of Nova Scotia? The second time  
12 that you were involved you did so because of the  
13 Bank of Nova Scotia being a client?

14 A. Correct.

15 Q. What was the interest of the Bank  
16 of Nova Scotia, other than to see the mall enhanced  
17 and the roof repaired and so on? Is that their  
18 interest?

19 A. I think they had a leak in their  
20 space and they just wanted it stopped.

21 Q. And was that done by your firm to  
22 help the Bank of Nova Scotia?

23 A. I don't understand the question.

24 Q. Well, I understand your evidence  
25 you did work for Mr. Nazarian. And then an issue

1     arose with respect to nonpayment and you stopped  
2     doing work.  You then came aboard the second time,  
3     and you testified that the reason you came aboard  
4     the second time is because Nazarians wanted you the  
5     do some work and then involve another client, the  
6     Bank of Nova Scotia?

7                     A.  Correct.

8                     Q.  And what was it specifically that  
9     the bank of Nova Scotia wanted your firm to deal  
10    with that brought you back on board?

11                    A.  My understanding was that a  
12    gentleman by the name of John Malaby at the Bank of  
13    Nova Scotia specifically mentioned to Bob or Levon  
14    I'm not sure which one, that if Philip Sarvinis from  
15    RJC is doing this we will consider staying.

16                    Q.  Doing what?

17                    A.  Roofing on the mall.

18                    Q.  I see.  So my impression is then,  
19    from your evidence, that the Bank of Nova Scotia  
20    seemed to be putting some pressure on Nazarian to  
21    get the roof fixed?

22                    A.  Correct.

23                    Q.  Okay.  and just so that I  
24    understand this, you were going to design a roof  
25    system to stop the leaks.  And for that purpose did

1 your firm do any tests as to the soundness of the  
2 slabs?

3 A. Just from the surface to make  
4 sure it would pick up all the detailing.

5 Q. I see. But you didn't check for  
6 chlorides, you didn't check for the soundness of the  
7 slabs or any of that kind?

8 A. No.

9 Q. You didn't feel that you had to?

10 A. No.

11 Q. You exercised your engineering  
12 judgement based upon a visual inspection of the  
13 premises, is that fair?

14 A. Correct.

15 Q. And that's not an unusual process  
16 for an engineer to do or to apply that visual  
17 inspection given the information that the owner  
18 gives you?

19 A. And what your task is, yes.

20 Q. Thank you very much, sir. Those  
21 are all my questions.

22 A. Thank you.

23 THE COMMISSIONER: Mr. MacRae.

24 MR. MACRAE: Good morning, Mr.  
25 Commissioner.

1 CROSS-EXAMINATION BY MR. MACRAE:

2 Q. Good morning, sir.

3 A. Morning.

4 Q. My name is Rob MacRae and I'm a  
5 lawyer for Mr. Bob Wood, he has standing here at  
6 this Commission.

7 I just have one question, or an area  
8 or questions with respect to you indicated you made  
9 inquiries of Mr. Nazarian as to what existed, and you  
10 were provided with the structural and architectural  
11 drawings as well?

12 A. Correct.

13 Q. Is there a formal procedure that  
14 you use in your practice to obtain existing  
15 information with respect to buildings that you're  
16 being asked to do work on?

17 A. Not a formal, like a letter or a  
18 form or anything like that you mean?

19 Q. Right.

20 A. No, usually it's just a phone  
21 call or e-mail depending on what's easier, more  
22 convenient.

23 Q. And would you agree with me that  
24 you have to rely upon your client to provide you  
25 with all the information they have?

1 A. Correct.

2 Q. And in the event that they don't  
3 you have no way of knowing that there's additional  
4 information available that your client doesn't  
5 disclose to you?

6 A. Correct.

7 Q. Okay. Those are my questions.  
8 Thank you.

9 THE COMMISSIONER: Thank you.  
10 Mr. Cassan.

11 MR. CASSAN: Thank you, Mr.  
12 Commissioner.

13 CROSS-EXAMINATION BY MR. CASSAN:

14 Q. Mr. Sarvinis, my name is Paul  
15 Cassan. I'm Counsel for the City of Elliot Lake.

16 A. Hello.

17 Q. Good morning. I understand that  
18 you did not have any dealings with any officials  
19 from the City when you were doing the work for  
20 Mr. Nazarian?

21 A. Correct.

22 MR. CASSAN: I wonder if we could  
23 have a look at Exhibit No. 4744, Ms. Kuka.

24 BY MR. CASSAN:

25 Q. I think this is your handwritten



1 note?

2 A. Those are my notes.

3 Q. And it indicates the primary  
4 objective is to stop leaks through the roof.

5 A. Hmm hmm.

6 Q. And did you get to a point where  
7 you understood the extent of the leaks in order to  
8 proceed with this?

9 A. I don't really know what you're  
10 asking there.

11 Q. Well, it seems to me if you're  
12 looking at coming up with a plan to stop the leaks  
13 that you need to understand where the leaks are and  
14 what the extent of the leak are, right?

15 A. Okay.

16 Q. Am I wrong?

17 A. That's true.

18 Q. Well can I --

19 A. It's true if you're locally  
20 repairing them.

21 Q. I see. Because you're putting a  
22 whole new system overtop you don't care what it  
23 looks like underneath it?

24 A. That's right.

25 Q. I see. At any time in your

1 discussions with Mr. Nazarian about how this work is  
2 going to be done did you talk about the necessity of  
3 a building permit?

4 A. I believe it's in our proposal  
5 that we'd apply more a building permit once it goes  
6 up to tender.

7 Q. And was there any discussion with  
8 Mr. Nazarian, or any response from him with respect  
9 to that?

10 A. Besides whatever is required,  
11 that's all he said.

12 Q. Did he tell you anything or give  
13 you any instructions about the City officials,  
14 Building Inspectors, anything like that?

15 A. No.

16 Q. After the presentation you've  
17 told us about that you assisted with Ms. Bear, she  
18 was asked by Council to provide further information.  
19 Did she contact you to get more information about  
20 the construction project with respect to the new  
21 parking lot?

22 A. The only information I provided  
23 her was that one e-mail.

24 Q. And that's in advance of the --

25 A. I believe it was in advance.

1 Q. Okay. So there's no contact  
2 after that?

3 A. No.

4 Q. Thank you, sir.

5 A. Okay.

6 THE COMMISSIONER: Ms. Smith.

7 MS. SMITH: No questions.

8 THE COMMISSIONER: Thank you.

9 Mr. Richard or Mr. Broadbent.

10 CROSS-EXAMINATION BY MR. RICHARD:

11 Q. Good morning.

12 A. Morning.

13 Q. My name is Shawn Richard and I'm  
14 one of the counsel for ELMAC. I have a few  
15 questions for you. Just bear with me for a second.  
16 Okay. You said earlier that you performed a visual  
17 review of the roof?

18 A. Correct.

19 Q. And that you noticed cracks?

20 A. Correct.

21 Q. And you saw joints?

22 A. Correct.

23 Q. And that some of the repairs  
24 looked as though they had failed?

25 A. Correct.

1 Q. Are you familiar with the term  
2 "methods of construction"?

3 A. Yes.

4 Q. What -- can you explain what that  
5 means?

6 A. Methods of construction?

7 Q. Yeah.

8 A. So the means and methods is  
9 usually the contractor's responsibility for how he  
10 actually puts in or does his work. So either, you  
11 know, repairing concrete, the guidelines are given  
12 in the specifications, but the actual means and  
13 methods that he uses to actually do the work is his  
14 responsibility.

15 Q. As you're examining the roof and  
16 seeing the work that had been done, did you reach  
17 any conclusions about how the methods of  
18 construction had contributed to the leaks?

19 A. Um ... besides the fact that the  
20 sealant in some areas failed?

21 Q. All right.

22 A. That was it.

23 Q. Okay. When you were up there did  
24 you see evidence of damage from snowplows?

25 A. Correct, yeah.

1 Q. Did you see evidence of salt  
2 having been used?

3 A. Yes, staining. Salt stains.

4 Q. After your visual inspection what  
5 was your overall impression about the condition of  
6 the roof?

7 A. My overall impression is that  
8 it's been repaired multiple times and it's gone  
9 through a rough life, was my first opinion.

10 Q. A moment ago when my friend was  
11 examining you I believe you said when you met with  
12 the Nazarians you understood that they were making  
13 ongoing repairs?

14 A. Correct.

15 Q. And so when you saw the roof did  
16 you understand the ongoing repairs to be basically  
17 filling in the sealants, and the cracks, and the  
18 joints?

19 A. That was part of it. And then  
20 concrete repairs had been seen to be done. Drain  
21 replacements, there were different kinds of drains  
22 here and there. So over the years someone's changed  
23 the drains. Different things were happening.

24 Q. And at that time you knew that  
25 the leaks were still ongoing?

1                   A. That there were still leaks  
2 occurring, correct.

3                   Q. What conclusions if any did you  
4 come to about what they were doing to address the  
5 leaks, the effectiveness?

6                   A. It seemed like they were just  
7 chasing their tails.

8                   Q. And by chasing their tails you  
9 mean?

10                  A. Ongoing maintenance, they  
11 couldn't keep up with it.

12                  Q. It wasn't effective at preventing  
13 the leaks?

14                  A. The repair areas that were  
15 repaired were probably effective, but then they'd  
16 break down and you have to redo them.

17                  Q. Yeah.

18                  A. Because some of the areas looked  
19 like they were fine, other areas looks poor and I  
20 didn't know how old they were.

21                  Q. Did you do any analysis to  
22 determine whether the repairs that they had done  
23 that looked fine were actually effective?

24                  A. No.

25                  Q. So you had no way of knowing

1 whether or not --

2 A. Just purely visual.

3 Q. And earlier you presented -- my  
4 understanding is that you presented three options to  
5 the Nazarians. Option one is to maintain the  
6 rooftop parking. I think there's sub-options, you  
7 could have a thin I guess waterproofing system over  
8 the entire roof or part of the roof?

9 A. Correct.

10 Q. Option two was to have parking  
11 field modifications involving Ontario Avenue. And  
12 option 3 was additional parking site at Hillside  
13 Drive?

14 A. Correct.

15 Q. In your mind were there any other  
16 options available to the Nazarians to address the  
17 issue of stopping the leaks?

18 A. No.

19 Q. Do you know if the Nazarians  
20 appreciated that there was no other option?

21 A. I believe they did, yeah.

22 Q. So there was no option 4 which  
23 was to continue the status quo of what they'd been  
24 doing?

25 A. No, we didn't present that to

1 them. We didn't feel it was viable.

2 Q. You just answered some questions  
3 about evaluating the assessing structural steel --  
4 what training if any did you undergo to be in a  
5 position to assess structural steel?

6 A. Just my knowledge of  
7 deterioration.

8 Q. Did you learn something in school  
9 about deterioration like corrosion?

10 A. Yeah, we learned corrosion in  
11 school in the Building Science courses, yeah. And  
12 my years of experience in watching buildings  
13 corrode.

14 Q. Had you assessed corrosion of  
15 structural steel before your involvement with the  
16 Nazarians?

17 A. In other properties, yes.

18 Q. How many times would you say?

19 A. Difficult to say. Over 20 years  
20 at least a dozen.

21 Q. Okay. Could we have Exhibit No.  
22 111, page 6, the picture of the beam. I believe my  
23 friend asked you if you had seen this beam what you  
24 have done. And your answer was you would have  
25 cleaned the beam and measured the sectional loss?



1 A. Correct.

2 Q. Are these the normal steps to  
3 evaluate the degree of corrosion?

4 A. That's the first step, yeah.

5 Q. Okay. Are there any other steps?

6 A. Yeah. The next step is you  
7 determine where the deterioration is and how that  
8 affects what the beam is doing. Because the beams  
9 are designed in different ways in terms of simply  
10 supported or multiple spans, so the stresses in the  
11 beam are different. In areas where you may see a  
12 lot of corrosion it may not but taking a lot of load  
13 in that area, or a lot of stress in that area so you  
14 can live with a little bit of loss or sectional  
15 loss. So that's where you'd have to determine where  
16 along the length of that beam the deterioration is  
17 and then you're going to do an analysis, a numerical  
18 analysis, based on that new section area what the  
19 actual capacity of the beam is.

20 Q. So if you see this -- sorry, just  
21 to paraphrase what you're saying. If you see say  
22 just this amount of corrosion in one spot you're  
23 going to explore where the corrosion leads to?

24 A. On that beam, yes.

25 Q. Yes.

1 A. That's right.

2 Q. Would you also look at the  
3 connections?

4 A. You would look at the ends, yeah.

5 Q. And are the connections any more  
6 vulnerable than the beams to corrosion?

7 A. It would all depend -- the answer  
8 would be no. I would say no.

9 Q. You'd have --

10 A. The beam and the connection are  
11 both vulnerable to corrosion depending on where the  
12 water is coming from, at the same rate they would be  
13 corroding.

14 Q. Okay.

15 A. So if there's a leak directly  
16 over the connection, yeah it's more vulnerable than  
17 the rest of the beam. If there's a leak over the  
18 beam and not the connection then the beam is more  
19 vulnerable than the connection. So it all depends  
20 on where it is relative to the actual structure  
21 above it.

22 Q. Are there any other factors that  
23 affect it like, for example, the thickness of the  
24 steel?

25 A. No.

1 Q. So a connection, say a weld --

2 A. Correct.

3 Q. -- would you have any -- if you  
4 knew that there were welds holding the beam and the  
5 column, would you look to the weld out of any  
6 particular concern that it may be more vulnerable to  
7 I guess failure from corrosion than the beam?

8 A. No.

9 Q. Okay. Those are my questions.

10 A. Thank you.

11 THE COMMISSIONER: Thank you.

12 Mr. Myles.

13 MR. MYLES: No questions.

14 THE COMMISSIONER: Thank you.

15 Re-examination?

16 RE-EXAMINATION BY MS. RODRIGUEZ:

17 Q. Just one quick question. My  
18 friend just asked you about corroding of the weld  
19 and the beam and the rates of corrosion and whether  
20 one is more susceptible than the other. If the weld  
21 and the beam are both exposed to moisture, say  
22 theoretically at the same rate and the same amount  
23 of leaking, is the weld at that point more  
24 vulnerable to corrosion and failure than the beam if  
25 they're both being exposed at the same rate?

1 A. The corrosion would probably be  
2 the same.

3 Q. The same?

4 A. Yes.

5 Q. And would failure -- would it be  
6 more likely that failure would occur with respect to  
7 the weld as opposed to the beam at that point?

8 A. Yeah. It's -- it's not really  
9 the weld that's deteriorating it's the actual  
10 structure around the weld that's going to be rusting  
11 first.

12 Q. Right.

13 A. Which is the other steel. So the  
14 failure mechanism is different. The failure of a  
15 connection is a sudden failure. The failure of the  
16 beam would sort of an overstressing and deflecting  
17 and you'd see it fail before it actually does fail.

18 Q. Right. So the failure at the  
19 weld area is more of a sudden event?

20 A. Yeah, it's more critical.

21 Q. It's more critical.

22 A. Correct.

23 Q. And if they're both, the beam and  
24 weld area, are being exposed to moisture then  
25 failure would likely occur at the weld as opposed to

1 the beam, is that fair?

2 A. That's fair to say.

3 Q. Thank you, that's all my  
4 questions.

5 THE COMMISSIONER: Thank you. Thank  
6 you very much for your help, Mr. Sarvinis. That's  
7 all thank you.

8 THE WITNESS: Thank you.

9 MS. RODRIGUEZ: I think this is a  
10 good time to take our morning break before our next  
11 witness.

12 THE COMMISSIONER: Thank you. That's  
13 what we'll do. The next witness you're doing him,  
14 Mr. Ault, and that is Mr. Regan?

15 MR. AULT: That's correct,  
16 Commissioner, yes.

17 THE COMMISSIONER: All right, thank  
18 you.

19 --- Morning break taken at 11:20 a.m.

20 --- Upon resuming at 11:50 a.m.

21 MR. AULT: Mr. Commissioner, our next  
22 witness is Mr. Ralph Regan who was an inspector with  
23 the Ministry of Labour from 1981 to 2005. Mr. Regan.

24 THE REGISTRAR: Good morning, sir.

25 THE COMMISSIONER: Mr. Kloeze, you'll

1 be appearing for Mr. Regan.

2 MR. KLOEZE: Yes.

3 THE REGISTRAR: Can you please state  
4 your name and spell it for the record.

5 THE WITNESS: Ralph, R-A-L-P-H  
6 Regan, R-E-G-A-N.

7 THE REGISTRAR: Thank you. Do you  
8 prefer to swear on a religious document or would you  
9 rather affirm?

10 THE WITNESS: Affirm.

11 RALPH REGAN, affirmed

12 EXAMINATION-IN-CHIEF BY MR. AULT:

13 Q. Good morning, Mr. Regan?

14 A. Morning.

15 Q. Mr. Regan, I understand that you  
16 moved to Elliot Lake in 1957.

17 A. Correct.

18 Q. And where are you from  
19 originally?

20 A. Kirkland Lake.

21 Q. And I understand that when you  
22 moved here you finished your high school education  
23 here in Elliot Lake?

24 A. Correct.

25 Q. And after finishing high school

1 you received training as an electronics technician  
2 from Cambrian College in Sault Ste. Marie?

3 A. Correct.

4 Q. And when was that, Mr. Regan?

5 A. Um ... that would be '68, '69 I  
6 think. '69.

7 Q. 1968, 1969?

8 A. Yeah.

9 Q. And other than the period that  
10 you were attending Cambrian College in Sault Ste.  
11 Marie you have lived in Elliot Lake your entire life  
12 since 1957?

13 A. Since I was 16.

14 Q. Since you were 16?

15 A. Yes.

16 Q. And following your training at  
17 Cambrian College, Mr. Regan, I understand that you  
18 were employed with the Canmet Organization in  
19 radiation related research?

20 A. Correct.

21 Q. And was that here in Elliot Lake?

22 A. Yes, it was.

23 Q. And was that here in this  
24 building, Mr. Regan, just by way of interest?

25 A. No, it wasn't.

1 Q. And the research that was  
2 primarily related to radiation-related issues, did  
3 that have a focus on the mining industry?

4 A. Yes. Totally.

5 Q. And now, Mr. Regan, I'd like to  
6 ask you questions relating to your experience  
7 getting started with the Ministry of Labour. When  
8 did you start working for the Ministry of Labour?

9 A. 1981.

10 Q. And at that time what position  
11 did you apply for?

12 A. It would be working environment  
13 inspector.

14 Q. An environmental inspector?

15 A. Working environment inspector  
16 they called it.

17 Q. And is that the same kind of  
18 inspector that today we know as a Health and Safety  
19 Inspector?

20 A. Yeah, well you did both. So at  
21 that time we had instrumentation so that's why they  
22 called it working environment. But they changed all  
23 that and took away the instrumentation so that made  
24 us just a straight inspector, enforcement inspector.

25 Q. Enforcement inspector?



1 A. Yeah.

2 Q. And why did you want to work for  
3 the Ministry of Labour?

4 A. Um ... I was just -- no reason  
5 really. I thought it was a good job and I went with  
6 them. Get away from the first job was Federal and I  
7 wanted to go Provincial.

8 Q. Go Provincial?

9 A. Yeah.

10 Q. And when you were hired as an  
11 inspector what training did you receive from the  
12 Ministry of Labour? Can you recall?

13 A. As an inspector?

14 Q. As an inspector.

15 A. We had different courses  
16 periodically, but I can't recall any specific one.  
17 We did stuff like WHMIS, and stuff like that.

18 Q. But I take it from your evidence  
19 that that was ongoing training. I'd like you to  
20 think about the training that you received as an  
21 inspector when you started with the Ministry of  
22 Labour in 1981 or 1982. Can you recall any training  
23 that you received at that time?

24 A. No.

25 Q. Do you recall receiving any --

1                   A. I can recall it, I didn't have  
2 any at that time.

3                   Q. None at that time?

4                   A. No.

5                   Q. You didn't receive any classroom  
6 training with respect to the provisions of the  
7 Occupation Health and Safety Act?

8                   A. When I came from Canmet to the  
9 Ministry of Labour it was doing basically the same  
10 job. They didn't train me at all really so.

11                  Q. When you started as an inspector  
12 I take it then that you didn't receive any formal  
13 training in the different provisions of the  
14 Occupational Health and Safety Act?

15                  A. I don't recall.

16                  Q. Mr. Regan, when you started as an  
17 inspector then and you would go into mines how would  
18 you know what to enforce?

19                  A. Well we had the Occupational  
20 Health and Safety Act and Regulations that we went  
21 by. And I had quite a bit of experience in mining  
22 at that point so I knew what to look for.

23                  Q. And so you would just read the  
24 Act and based on what you read you would apply that  
25 to the course of your inspection?

1 A. Yes.

2 Q. When you started as a mining  
3 inspector how many mines were there in Elliot Lake?

4 A. Elliot Lake there was about  
5 eight.

6 Q. And did you inspect mines in any  
7 other areas other than Elliot Lake?

8 A. Yes, I covered the area from  
9 Schreiber, which is about eight and a half hours  
10 from Elliot Lake. I did Schreiber and Henlow Camp,  
11 Wawa, and Manitouwadge and I think Geco Camp. That  
12 is in Manitouwadge, Geco.

13 Q. Thank you, Mr. Regan. When you  
14 were employed as a mining inspector did you conduct  
15 inspections of workplaces other than mines?

16 A. No.

17 Q. Just mines?

18 A. Just mines, yeah.

19 Q. And, Mr. Regan, when did you  
20 become an industrial inspector?

21 A. I can't recall the exact date but  
22 I would say it was around 1992 or 3, somewhere  
23 around there.

24 Q. And why did you become an  
25 industrial inspector?

1           A. The mines in Elliot Lake were  
2 closing down so I was losing work. So the Ministry  
3 they were talking about transferring me to Wawa to  
4 live and I disagreed with that. So then they gave  
5 me industrial to go with the mining. They gave me  
6 enough work.

7           Q. So there weren't enough mines to  
8 keep you busy. You didn't want to leave Elliot  
9 Lake.

10          A. That's true.

11          Q. So the Ministry gave you the  
12 designation also of Industrial Inspector?

13          A. That's right.

14          Q. And when you received this  
15 designation of Industrial Inspector did you receive  
16 any additional training from the Ministry of  
17 Labour?

18          A. Not really. Just one section of  
19 it was the logging, but I shadowed another inspector  
20 for a while in the logging industry. And then we  
21 took some courses in chain saws and fork lifts and  
22 stuff like that where you get into that.

23          Q. When you became an industrial  
24 inspector the types of workplaces that you had to  
25 inspect were quite different than mines, is that

1 right?

2 A. Not really because in the mining  
3 industry we had large mills, and they are very  
4 similar to industrial stuff.

5 Q. Well as an industrial inspector,  
6 Mr. Regan, as I understand it it would include such  
7 businesses as retail businesses.

8 A. Right.

9 Q. And a store, for example, a store  
10 located in a mall is quite different than either a  
11 mill or a mine, isn't that right?

12 A. Right.

13 Q. And so you didn't, I take it from  
14 your evidence, receive any additional training in  
15 how to conduct a health and safety inspection of a  
16 retail business than what you had received in the  
17 course of your inspections of mines or industrial  
18 mills, is that right?

19 A. Do that again, please.

20 Q. Pardon me. You didn't receive  
21 any training on how to inspect a store, for example?

22 A. No, not directly, no. Just from  
23 my prior knowledge.

24 Q. Right.

25 A. Of doing large like mills and

1 stuff like that.

2 Q. And did you find that it was  
3 quite a different experience conducting a health and  
4 safety inspection of a store as opposed to a mill or  
5 a mine?

6 A. No.

7 Q. Why not?

8 A. Because a lot of the stuff is  
9 exactly the same. Like guarding of equipment and  
10 stuff like that.

11 Q. Right.

12 A. Like in a grocery store where you  
13 get saws that aren't guarded and stuff like that.

14 Q. Right. And the types of  
15 businesses that you started to inspect as an  
16 industrial inspector in Elliot Lake would include  
17 the Algo Centre Mall?

18 A. Correct.

19 Q. And the businesses that were  
20 located in the Algo Centre Mall?

21 A. Hmm hmm, correct.

22 Q. And at that time, Mr. Regan, did  
23 you continue as a mining inspector? And I'm talking  
24 now about the time shortly after you received your  
25 designation as an Industrial Inspector, which you

1 told us was around 1992 or 1993?

2 A. Yes, I was doing both.

3 Q. And can you tell us briefly what  
4 percentage of your inspections were mining versus  
5 industrial inspections?

6 A. Well I was trying to do 50-50 on  
7 that, 50% of each.

8 Q. 50-50?

9 A. Yeah.

10 Q. When you became an industrial  
11 inspector how many other industrial inspectors were  
12 there in Elliot Lake?

13 A. There was none, just myself.

14 Q. And were you responsible for any  
15 areas other than Elliot Lake in your capacity as an  
16 industrial inspector?

17 A. Yes. I did Spanish and for a  
18 while I did Blind River and Elliot Lake.

19 Q. Mr. Regan, when you worked as an  
20 inspector in Elliot Lake where were your offices  
21 located?

22 A. Doing industrial or mining?

23 Q. The entire time that you were  
24 doing inspecting in Elliot Lake if you can track  
25 where your offices were located in town?

1                   A.   Okay.   You have to repeat that  
2 question, please.

3                   Q.   I understand, Mr. Regan, that for  
4 a time the Ministry of Labour, when you were an  
5 inspector, had an office located in the upper plaza,  
6 is that correct?

7                   A.   That's correct.

8                   Q.   And when you worked in the upper  
9 plaza were you a mining inspector?

10                  A.   Mining.

11                  Q.   Not industrial?

12                  A.   Not industrial.

13                  Q.   And when you became an industrial  
14 inspector, Mr. Regan, I understand that the Ministry  
15 of Labour office moved to the Algo Centre Mall, is  
16 that correct?

17                  A.   Not doing industrial, no.

18                  Q.   When you worked in the Algo  
19 Centre Mall you were only doing mining inspections?

20                  A.   Only mining.

21                  Q.   Do you recall -- do you recall  
22 what the Ministry of Labour office moved to the Algo  
23 Centre Mall?

24                  A.   Oh no, I can't recall.

25                  Q.   Mr. Regan, it's our understanding



1 that the Ministry of Labour office in Elliot Lake  
2 was located in the Algo Centre Mall at least until  
3 1995. Do you agree that you were conducting  
4 industrial inspections until 1995 -- or in 1995 I  
5 should say?

6 A. No, I wasn't.

7 Q. Mr. Regan, you had earlier told  
8 us that you think you had started to do industrial  
9 inspections in 1992 and 1993. Now thinking about it  
10 are you of the view that you were only doing mining  
11 inspections at that time, or were you also an  
12 industrial inspector in 1993, 1994 and 1995, and  
13 this is not a trick question. I should tell you  
14 that we'll soon go to documents, Mr. Regan, which  
15 will indicate that you were in fact conducting  
16 inspections as an industrial inspector in 1993, 1994  
17 and 1995?

18 A. Well when we were in the mall --  
19 when the office was in the mall I didn't do  
20 industrial inspections, it was strictly mining.

21 Q. Strictly mining?

22 A. Yeah.

23 Q. Mr. Regan, where in the mall was  
24 your office located?

25 A. We were on the rooftop, in the

1 parking area. We could drive our car up to the door  
2 and walk into the office.

3 Q. And was that then across the way  
4 from the entrance to the hotel?

5 A. Same side.

6 Q. Same side?

7 A. Yeah.

8 Q. And I understand, Mr. Regan that  
9 after the Ministry of Labour office left the Algo  
10 Centre Mall it moved to the Service Ontario building  
11 on Hillside?

12 A. Correct.

13 Q. And that's where you worked until  
14 you retired?

15 A. Right.

16 Q. And I understand that you retired  
17 in the spring of 2005?

18 A. Right.

19 Q. Mr. Regan, I'd like to ask you  
20 some questions now generally about the framework of  
21 the Occupational Health and Safety Act. And I'll  
22 start by asking you, in your view what is the  
23 purpose of the Occupational Health and Safety Act?

24 A. The purpose of it? To keep  
25 workers safe, that's one reason.

1 Q. And I understand, Mr. Regan, that  
2 one way of keeping workers safe is for the Ministry  
3 of Labour to have inspectors, such as yourself,  
4 conduct inspections of workplace?

5 A. Correct.

6 Q. And in general terms, Mr. Regan,  
7 I understand that there are two types of inspections  
8 really. There are pro-active inspections and  
9 reactive inspections?

10 A. Right.

11 Q. Mr. Regan, what is the difference  
12 between a pro-active visit and a reactive visit?

13 A. Pro-active you just go in  
14 unannounced, just doing straight inspections looking  
15 for a problem. Reactive is when you get a complaint  
16 and you're called in to do something.

17 Q. And in doing pro-active  
18 inspections, these inspections that are unannounced,  
19 in your experience as a Ministry of Labour  
20 inspector, what workplaces would you focus on?

21 A. Probably the high risk ones. And  
22 -- yeah probably high risk places.

23 Q. And in your work as an industrial  
24 inspector what were the types of high risk  
25 workplaces?

1           A. High risk would be where you have  
2 a -- more workers than a dress shop or a small  
3 business. You want like a big food store where you  
4 got 40, 50 people.

5           Q. So number of employees --

6           A. Number of employees.

7           Q. -- would matter?

8           A. Yeah.

9           Q. And, Mr. Regan, what about record  
10 of compliance? If a particular workplace had a poor  
11 track record would you tend to make more pro-active  
12 inspections?

13          A. Yes.

14          Q. And if a particular workplace had  
15 a large number of complaints that had been made  
16 against it would you tend to make more pro-active  
17 visits at that workplace?

18          A. Yes.

19          Q. And on that point, Mr. Regan,  
20 when you were working as an inspector was there a  
21 filing system in place where before making a  
22 pro-active inspection you could look up the previous  
23 history of a workplace?

24          A. Not really, no, unless it was in  
25 Sault Ste. Marie or Sudbury maybe, but we didn't

1 have one in Elliot Lake.

2 Q. So then you would not have a lot  
3 of information available to you, I take it, about  
4 which workplaces in Elliot Lake had a poor track  
5 record unless you personally were aware of it?

6 A. Yeah, just my own.

7 Q. Just your own?

8 A. Yeah.

9 Q. And, Mr. Regan, can you please  
10 describe what you would do on a pro-active visit?  
11 Just describe how the inspection would go.

12 A. Pro-active I'd go in, look up the  
13 owner or the manager and get a hold of the health  
14 and safety people and just go through the business  
15 or the -- and start doing your inspection looking  
16 for problems.

17 Q. And you mentioned that you would  
18 meet with the health and safety people. Is that the  
19 members of the Health and Safety Committee at the  
20 workplace?

21 A. I don't understand that one.

22 Q. You mentioned that when you would  
23 go and do an inspection you would meet with the  
24 health and safety people?

25 A. Yeah.

1 Q. Are you referring to the members  
2 of the Health and Safety Committee at a workplace?

3 A. Right.

4 Q. Okay. And would you ask the  
5 members of the Health and Safety Committee about any  
6 concerns they might have?

7 A. Yes, I do.

8 Q. And, Mr. Regan, what is the  
9 purpose of a reactive visit?

10 A. Reactive?

11 Q. Reactive.

12 A. If I get a complaint I have to go  
13 in and investigation. Why? What's the complaint?

14 Q. And you've mentioned complaints.  
15 How are complaints made to the Ministry of Labour  
16 when you were an inspector?

17 A. Well telephone, if somebody had a  
18 complaint could meet you on the street and complain.  
19 Probably always on a complaint probably to a -- one  
20 of our managers. Could be in Sault Ste. Marie.

21 Q. So you've mentioned different  
22 types here including, for example, a complaint being  
23 registered over the telephone. If a complaint was  
24 made over the telephone would that be made to you  
25 personally or would that be made to a -- some sort

1 of repository of complaints or a head office?

2 A. Later stages was going to the  
3 manager who sat in Sault Ste. Marie. We didn't have  
4 a manager here in Elliot Lake.

5 Q. So you reported to a manager that  
6 was located in Sault Ste. Marie?

7 A. Sault Ste. Marie, yeah.

8 Q. And was that a district office of  
9 the Ministry of Labour?

10 A. Yeah. It would be, yeah.

11 Q. And if a call was received in the  
12 district office in Sault Ste. Marie how would you  
13 become aware of it?

14 A. The manager would call me or get  
15 a hold of me. Because a lot of the time I was out  
16 in the field so he knew about when to get a hold of  
17 me at the end of the day or whatever.

18 Q. And I understand, Mr. Regan, that  
19 typically when a complaint was made to the district  
20 office there would be a form that was filled out  
21 that would provide the details of the complaint, is  
22 that right?

23 A. I don't recall any form.

24 Q. You don't recall any form?

25 A. No.

1 Q. Mr. Regan, when you were a health  
2 and safety inspector you indicated that people would  
3 complain to you directly?

4 A. The odd time, yes.

5 Q. And what sort of complaints did  
6 you receive personally?

7 A. You want mining or industrial?  
8 Industrial eh?

9 Q. I prefer industrial.

10 A. Okay. Industrial I got  
11 complaints about ventilation in the businesses. And  
12 there was people complaining about nausea, being  
13 sick, tired, stuff like that.

14 Q. And when you received a complaint  
15 personally I imagine it was often here in Elliot  
16 Lake?

17 A. Yeah.

18 Q. And having been a resident of  
19 Elliot Lake for so long, a lot of people around town  
20 would know you?

21 A. Right.

22 Q. And they would just come up to  
23 you and mention whatever complaint they had on their  
24 mind?

25 A. True.



1 Q. And you had indicated, Mr. Regan,  
2 that you don't remember any form that would be  
3 filled out when you received a complaint, is that  
4 right?

5 A. That's right.

6 Q. So you wouldn't officially  
7 register a complaint that was made to you  
8 personally?

9 A. No, not until after I  
10 investigated it first.

11 Q. Right. And in passing  
12 conversations if somebody mentioned to you something  
13 that they thought might be a Health and Safety  
14 concern would you treat that as complaint?

15 A. Probably would, yes.

16 Q. So how would you determine which  
17 complaints you received directly warranted an  
18 inspection?

19 A. Usually if a couple of people  
20 complained about the same problem. A lot of times  
21 you get one person just complaining because they  
22 don't like the boss sort of deal.

23 Q. Right.

24 A. Yeah.

25 Q. And so typically you would want

1 to hear from more than one person about the same  
2 concern before you would make an inspection?

3 A. Not always, no.

4 Q. And what about the types of  
5 concerns that were described to you? How would you  
6 evaluate the types of concerns that people that you  
7 would know on the street would come up to you and  
8 talk to you about? How would you assess the  
9 severity of them without making a decision?

10 A. Assess it by what the complaint  
11 was. You can usually tell if it's a ventilation  
12 problem or something like that then I would be  
13 looking at that.

14 Q. Mr. Regan, how would you view a  
15 complaint about a leaking roof, for example, or a  
16 leaking ceiling?

17 A. I don't recall getting any  
18 complaints directly to me about a leaky ceiling.

19 Q. Nobody complained to you directly  
20 that there was water coming into the workplaces?

21 A. No.

22 Q. If somebody had come up to you,  
23 and we'll get to documents that may refresh your  
24 memory on this point a little bit later. I'm just  
25 now trying to get your general impression and

1 general practice.

2 A. Hmm hmm.

3 Q. But if somebody came up to you,  
4 Mr. Regan, and said, I think there's water coming  
5 into my workplace. I think this is creating some  
6 health issues. How would you view that, if you can  
7 recall?

8 A. I would do a pro-active  
9 inspection on it to see if I can figure out what the  
10 problem was.

11 Q. You'd go and have a look?

12 A. Yeah.

13 Q. Mr. Regan, I'd like to before we  
14 go into the specific inspections that you conducted  
15 as a Health and Safety Inspector, look at a few  
16 sections of the Occupational Health and Safety Act.

17 MR. AULT: And, Ms. Kuka, if we could  
18 pull up Exhibit No. 4222, 1A.

19 BY MR. AULT:

20 Q. Mr. Regan, this is not in the  
21 volume in front of you but it will appear on the  
22 screen in front of you here.

23 MR. AULT: Mr. Commissioner, we're  
24 going to now review some sections of the  
25 Occupational Health and Safety Act. You'll recall

1 that in the evidence of Ms. Dennis we also looked at  
2 the same provisions. Those provisions, as we  
3 indicated then, had been amended in 2011. We're  
4 looking now at the provisions from the statute that  
5 was enforced throughout the time that Mr. Regan was  
6 an inspector with the Ministry of Labour.

7 THE COMMISSIONER: Thank you.

8 BY MR. AULT:

9 Q. And so, Mr. Regan, looking at the  
10 top line it reads: "An inspector may, for the  
11 purposes of carrying out his or her duties and  
12 powers under this Act." Under subheading (a),  
13 "subject to subsection (2), enter in or upon any  
14 workplace at any time without warrant or notice."  
15 Mr. Regan, this is following along what you told us  
16 about the powers during a pro-active inspection  
17 without notice, without advance warning, you go and  
18 you make an inspection.

19 If we could look at subsection C. An  
20 inspector may "require the production of any  
21 drawings, specifications, licence, document, record  
22 or report and inspect, examine and copy the same."

23 Mr. Regan, in your understanding would  
24 this include an engineering report, for example, that  
25 an employer or a building owner had had commissioned?

1 A. Yes, for sure it would.

2 Q. And, Mr. Regan, in your  
3 experience did you ever request or require the  
4 production of an engineering report?

5 A. I don't recall doing that.

6 MR. AULT: If we could look at  
7 subsection G, just down the page bit, Ms. Kuka.

8 BY MR. AULT:

9 Q. An inspector may:  
10 "in any inspection, examination,  
11 inquiry or test, be accompanied and  
12 assisted by or take with him or her  
13 any person or persons having special,  
14 expert or professional knowledge of  
15 any matter, take photographs, and  
16 take with him or her and use any  
17 equipment or materials required for  
18 such purpose."

19 Now, Mr. Regan, I take it that this  
20 would empower a Ministry of Labour inspector to have  
21 a specialist come along in the course of an  
22 inspection, is that right?

23 A. True.

24 Q. And when you were an industrial  
25 inspector, are you aware whether any structural

1 engineers were on staff with the Ministry of Labour?

2 A. A structural engineer? We had  
3 engineers in Sudbury that we could call upon.  
4 Ministry of Labour Engineers.

5 Q. And did you ever call upon the  
6 services of those engineers in your work as an  
7 industrial inspector?

8 A. A couple of times, yes.

9 Q. And can you recall what the  
10 circumstances were?

11 A. One was a power dam down near  
12 Thessalon. There was a crack in the dam that I  
13 wasn't sure of so our civil engineer come in and  
14 check it out.

15 And another one was a burned out  
16 building where they were still working in there. So  
17 he checked that out to make sure it was safe for  
18 people to be in there. It was burnt -- not burned  
19 right down, it had been burned.

20 Q. And so when I take it that you  
21 had a concern about the structural integrity of a  
22 building, or something like a dam, you would call in  
23 an engineer?

24 A. Right.

25 Q. So that you could be satisfied

1 that in fact it was not safe or it was safe?

2 A. Right.

3 Q. And I take it that this section  
4 would also empower you to call in medical  
5 consultants or hygienists?

6 A. Correct.

7 MR. AULT: If we could turn over the  
8 page, Ms. Kuka.

9 BY MR. AULT:

10 Q. And look at M, perfect. Thank  
11 you. A health and safety inspector may:

12 "require in writing an owner,  
13 constructor employer to provide, at  
14 the expense of the owner, constructor  
15 or employer, a report bearing the  
16 seal and signature of a professional  
17 engineer stating..."

18 And if we focus it on 2, little i.

19 "(ii) that a floor, roof or temporary  
20 work is capable of supporting or  
21 withstanding the loads being applied  
22 to it or likely to be applied to it,  
23 or;

24 (iii) that a floor, roof or temporary  
25 work, or part of a building,

1 structure or temporary work is  
2 capable of supporting or with  
3 standing all loads to which it may be  
4 subjected without causing the  
5 materials therein to be stressed,  
6 beyond the allowable unit stresses  
7 established under the Building Code  
8 Act or established by regulation."

9 Mr. Regan, did you ever invoke your  
10 powers under this section in your experience as an  
11 industrial inspector?

12 A. I don't recall doing that.

13 MR. AULT: If we could please turn,  
14 Ms. Kuka, to Exhibit 4220A.

15 BY MR. AULT:

16 Q. And these are, Mr. Regan, the  
17 duties of an employer as set out in the Occupational  
18 Health and Safety Act. And looking at section 25,  
19 sub (1), sub (e). An employer shall ensure that:

20 "a floor, roof, wall, pillar support  
21 or other part of a workplace is  
22 capable of supporting all loads to  
23 which it may be subjected without  
24 causing the materials therein to be  
25 stressed beyond the allowable unit



1 stresses established under the  
2 Building Code."

3 Mr. Regan, first of all did you have  
4 experience or any training in the Building Code?

5 A. No, not really.

6 Q. Did you ever issue any orders or  
7 see any contraventions pursuant to section 25, sub  
8 (1), sub (e) of the Occupational Health and Safety  
9 Act?

10 A. No.

11 MR. AULT: If we could lower the  
12 page, Ms. Kuka, to the last subsection that's noted  
13 there.

14 BY MR. AULT:

15 Q. And it reads:

16 "Without limiting the strict duty  
17 imposed by subsection (1), an  
18 employer shall...

19 (h) take every precaution reasonable  
20 in the circumstances for the  
21 protection of a worker."

22 Mr. Regan, that's quite a broad duty  
23 on an employer isn't it?

24 A. Right.

25 Q. And I would imagine that you

1 would issue many orders under this subsection of the  
2 Act?

3 A. Yeah, I probably would but I  
4 don't recall doing which ones.

5 Q. Thank you, Mr. Regan.

6 MR. AULT: Ms. Kuka, we're finished  
7 with that exhibit.

8 BY MR. AULT:

9 Q. Mr. Regan, I would like to ask  
10 you now questions relating to your recollections of  
11 the Algo Centre Mall itself. Do you remember when  
12 the mall was built?

13 A. No.

14 Q. How would you describe the Algo  
15 Centre Mall? What memories do you have of it?

16 A. Well as a shopping area really.

17 Q. What about the condition of the  
18 mall? Was it generally well maintained?

19 A. Seemed to be to me.

20 Q. When you had an office in the  
21 mall, Mr. Regan, were you in the mall every work  
22 day?

23 A. No.

24 Q. Were you in the mall every day  
25 that -- let me ask you this, how often were you in

1 the mall when you had an office in the mall?

2 A. I can't recall that. Not often.

3 Q. Mr. Regan, I understand that your  
4 wife owned a salon in the mall for a significant  
5 period of time?

6 A. Correct.

7 Q. In fact for 30 years?

8 A. I can't recall the length of  
9 time.

10 Q. And even when she had a business  
11 in the mall I take it that you were not in the mall  
12 that often?

13 A. True, just maybe doing shopping  
14 or something.

15 Q. How often would you shop in the  
16 mall?

17 A. Oh ... I can't recall that.

18 Q. Would it be once a week? Twice a  
19 week?

20 A. Just whenever need be I guess.

21 Q. And would you shop in Woolco, for  
22 example?

23 A. Not really, no.

24 Q. Would you visit the food court,  
25 Mr. Regan?

1 A. Not usually, no.

2 Q. What do you remember about leaks  
3 in the mall?

4 A. I don't recall anything about  
5 leaks. I never saw any leaks in the mall.

6 Q. Did you see any leaks in the  
7 Woolco store?

8 A. Not leaks, no.

9 Q. You don't recall seeing any  
10 stained ceiling tiles in the Woolco or in the food  
11 court?

12 A. It was pointed out stained tiles,  
13 but I didn't see any leaks.

14 Q. Were you a patron of the library,  
15 Mr. Regan?

16 A. No.

17 Q. So you don't remember the leaks  
18 getting worse I take it? You don't remember leaks.  
19 You don't remember if the leaks got better or if the  
20 leaks got worse, is that fair?

21 A. After I retired I saw where they  
22 got worse, but during my employment I didn't notice  
23 them, no.

24 Q. So prior to your retirement in  
25 spring of 2005 you don't recall seeing leaking in

1 the mall that often. And we'll go to some  
2 inspections that you had conducted, and I'm not  
3 trying to trick you. I'm just trying to get your  
4 general impression of the mall itself.

5 A. Hmm hmm.

6 Q. Is that fair that prior to 2005  
7 you don't recall seeing leaking in the mall?

8 A. No. I didn't see any water  
9 drips, no.

10 Q. And prior to 2005, prior to your  
11 retirement, do you recall complaints about leaks in  
12 the mall?

13 A. Not directly, no.

14 Q. Okay. If we could turn now to  
15 some of the specific inspections that you made of  
16 the Algo Centre Mall.

17 MR. AULT: Ms. Kuka, could we please  
18 see Exhibit No. 3834.

19 BY MR. AULT:

20 Q. And in the book in front of you,  
21 Mr. Regan, that's at tab 12.

22 Oh pardon me, I misread my note, Ms.  
23 Kuka, that is Exhibit No. 3843.

24 A. Same tab?

25 Q. Same tab, yes, sir. And it's a

1 bit faded, Mr. Regan, but can you make out that this  
2 I was a field visit report, is that correct?

3 A. Right.

4 Q. And this is a field visit report  
5 in --

6 THE COMMISSIONER: Lower it just a  
7 bit, Ms. Kuka, so I can see the top of the page.  
8 Thank you.

9 BY MR. AULT:

10 Q. And this was a field visit report  
11 in connection with an inspection that you made of  
12 the Elliot Lake library?

13 A. Right.

14 Q. And we see that the date on it is  
15 the 22nd of September, 1995, is that right?

16 A. Right.

17 Q. And in the narrative description  
18 you've written -- well I should ask this, Mr. Regan.  
19 At the bottom of the page we see that you signed  
20 this report. Is this your report and did you write  
21 it?

22 A. Yes.

23 Q. Under the narrative description  
24 it says that you met with Barbara Fazekas, the Chief  
25 Librarian. Do you recall Ms. Fazekas, Mr. Regan?

1 A. Yes.

2 Q. And you met with Phil Butler.

3 Cochair, H&S Committee Management, that's Health and  
4 Safety Committee?

5 A. Right.

6 Q. And Debbie Quinn, cochair  
7 workers? And does that mean that she was the worker  
8 representative --

9 A. Worker rep, yeah.

10 Q. -- on the Health and Safety  
11 Committee.

12 A. I don't recall her to much.

13 Q. And it says below that,  
14 "Dr. Woychuck Ministry of Labour, discussed air  
15 quality in library." Who was Dr. Woychuck?

16 A. He was a medical consultant out  
17 of Sudbury.

18 Q. Is it fair to say, Mr. Regan,  
19 that this would have been a reactive inspection  
20 because you wouldn't bring a medical consultant with  
21 you on a pro-active visit?

22 A. Yeah, it would be reactive.

23 Q. So this visit would have been  
24 preceded by a complaint? A complaint would have  
25 been made to you?

1                   A. Yes, I got complaints from Mrs.  
2 Fazekas' workers.

3                   Q. I beg your pardon?

4                   A. Mrs. Fazekas' workers or staff a  
5 couple of them complained before Dr. Woychuck was  
6 brought in.

7                   Q. What did they complain about?

8                   A. Nausea, tiredness, sick. Stuff  
9 like that.

10                  Q. And these were symptoms that they  
11 say they suffered in the library?

12                  A. Right.

13                  Q. And would you have conducted a  
14 preliminary inspection?

15                  A. I don't really recall doing it  
16 but probably I would, but I don't recall.

17                  Q. But you were concerned enough  
18 about the complaint that was made that you called in  
19 a hygienist or a consultant?

20                  A. Right. They were complaining  
21 about mould that was making them sick.

22                  Q. Did they say anything, Mr. Regan,  
23 about what they said was causing the mould in the  
24 library?

25                  A. Mrs. Fazekas pointed out stained



1 tiles that had been wet so they figured that was  
2 what was causing the mould.

3 Q. Did you ask where the water was  
4 coming from?

5 A. No.

6 Q. If the ceiling tiles were stained  
7 would it with fair to assume that the water was  
8 coming from above the ceiling?

9 A. I suppose, yes.

10 MR. AULT: Ms. Kuka, if we could  
11 please turn to Exhibit No. 3844.

12 BY MR. AULT:

13 Q. Which is in the book in front of  
14 you, Mr. Regan, at tab 13. We see, Mr. Regan, that  
15 this is a report from Dr. Woychuck?

16 A. Right.

17 Q. And it's dated September 27,  
18 1995. And we see on the right hand side of the page  
19 that the visit date was the 22nd of September 1995.  
20 So this report relates back to the visit that you  
21 made with Dr. Woychuck that we just looked at?

22 A. Hmm hmm.

23 Q. And if we scroll down and look at  
24 the section under "Abstract", Dr. Woychuck has  
25 written: "This field visit was made to address

1 complaints of workers working in the city library."  
2 And if we turn to page 2 of this report under the  
3 "Comment" section, Mr. Regan, this report confirms  
4 what you just told us, or that Dr. Woychuck was told  
5 the same thing. That workers in the library  
6 complained about experiencing, and then we see a  
7 list, symptoms such as fatigue, headaches, nausea  
8 and stomach cramps, dry skin, sore dry throats and  
9 thirst, and chest tightness.

10 Mr. Regan, are these symptoms that  
11 could be a Health and Safety concern? Are these  
12 symptoms that would draw your attention as an  
13 inspector?

14 A. Well definitely.

15 Q. And if you had reason to believe  
16 that a contravention of the Occupational Health and  
17 Safety Act was causing these symptoms you could  
18 write an Order about that contravention?

19 A. If I found a contravention I  
20 could, yes.

21 Q. And you could write an Order that  
22 would require that contravention to be fixed?

23 A. Right.

24 Q. And if we look at point 3, this  
25 is now Dr. Woychuck's report.

1 "Contacts advise that, at  
2 different times of the year there is  
3 water leakage through the ceiling  
4 sufficient enough to warrant covering  
5 shelves of library books with plastic  
6 sheets, using containers as large as  
7 a plastic garbage can to catch the  
8 water running down from the ceiling,  
9 etc.

10 On this field visit, 28  
11 water-stained ceiling tiles were  
12 observed in one section of the  
13 library, 11 tiles in the  
14 meeting/office room, and 8 stained  
15 tiles in the main section of the  
16 library; which would tend to confirm  
17 ceiling leakage."

18 Mr. Regan, do you recall seeing that  
19 same evidence of leaking in the library?

20 A. No.

21 Q. You were -- sorry, go on.

22 A. The only thing I did see was the  
23 stained tiles that Mrs. Fazekas pointed out to me.

24 Q. Do you recall that those ceiling  
25 tiles numbered as many as 47 that are described here

1 by Dr. Woychuck?

2 A. I don't recall that.

3 Q. Do you recall there being a  
4 significant number of ceiling tiles that were  
5 stained in the library?

6 A. I don't recall how many were.  
7 There I just recall seeing some.

8 Q. And do you recall it being more  
9 than one or two, more than dozen? Can you be a bit  
10 more specific?

11 A. I don't recall that.

12 Q. Do you recall being advised that  
13 the library staff had to take steps such as covering  
14 shelves with tarps in order to protect it from the  
15 water that was coming from the ceiling?

16 A. I never saw any of that.

17 Q. And I take it then you weren't  
18 told that?

19 A. Yeah, I was told that later on.

20 Q. Were you told that in this visit  
21 in 1995?

22 A. No.

23 Q. Were you with Dr. Woychuck when  
24 he made his inspection?

25 A. No, I wasn't.

1 Q. You did not accompany him?

2 A. No. I took him in 'and  
3 introduced him to people and that was it.

4 Q. And then you left --

5 A. I left doing something else, yes.

6 Q. You didn't stay in the library  
7 during the course of that visit?

8 A. No, no. They were looking for  
9 mould. That was what their job was.

10 Q. Do you recall receiving this  
11 report, Mr. Regan?

12 A. No, I don't recall.

13 Q. If we turn over the page and we  
14 look at "Advice to Management"and the Health and  
15 Safety Committee," we see under the first point:  
16 "Strong consideration should be given to take  
17 appropriate action to stop water from leak through  
18 the ceiling into the library."

19 Do you recall, Mr. Regan, whether this  
20 report was given to Ms. Fazekas or not?

21 A. I don't recall that.

22 Q. If this report was sent to you,  
23 would it be your habit or your practice to provide  
24 this report to Ms. Fazekas?

25 A. Yeah, probably would be, yeah.

1 Q. And if this is advice that is  
2 given to the management and the Health and Safety  
3 Committee, what would be your expectation about what  
4 the Health and Safety Committee would do with this  
5 recommendation?

6 A. The Health and Safety Committee  
7 would make sure it was being followed up to correct  
8 the problems.

9 Q. And, Mr. Regan, would you follow  
10 up to ensure that the Health and Safety Committee  
11 followed up with that recommendation?

12 A. I can't recall if I did or not.

13 Q. And we see the last sentence in  
14 this point 1 under "Advice to Management and the  
15 Health and Safety Committee" it says, "Refer to  
16 comment number 3."

17 And if we could go back to page,  
18 Ms. Kuka, please.

19 In the last sentence under point 3, so  
20 this is part of what the advice to the Health and  
21 Safety Committee was referring the committee to. It  
22 reads, "For this reason, the source of the water  
23 leakage should be identified and corrected to protect  
24 workers from airborne moulds." Did you have any  
25 discussion with Dr. Woychuck about this

1 recommendation?

2 A. I don't recall.

3 Q. Mr.Regan, at this time you would  
4 have had the power to write an Order in connection  
5 with this issue. Do you agree with me that the  
6 source of water leakage could be a contravention of  
7 the Occupational Health and Safety Act?

8 A. I didn't think so at the time  
9 because I didn't see any water coming through.

10 Q. And so even in the face of these  
11 recommendations from Dr. Woychuck you didn't think  
12 there was a contravention that you should write an  
13 Order in respect of?

14 A. No.

15 MR. AULT: If we could please turn,  
16 Ms. Kuka, to Exhibit No. 1434.

17 BY MR. AULT:

18 Q. Which is tab 14, Mr. Regan in the  
19 book in front of you. Mr. Regan, you will see that  
20 this is another field visit report, is that right?

21 A. Hmm hmm.

22 Q. And this was also of the Elliot  
23 Lake library?

24 A. Right.

25 Q. On December 19th, 1995. And

1 under description it reads that you met with Barbara  
2 Fazekas, again Phil Butler and Debbie Quinn, the two  
3 Health and Safety Committee reps, and you conducted  
4 an air quality survey with Bob Wright of the  
5 Ministry of Labour and we see that no Orders were  
6 issued.

7 Mr. Regan, on this visit did you  
8 discuss with the members of the Health and Safety  
9 Committee or with Ms. Fazekas the leaking situation  
10 in the library?

11 A. I don't recall doing that, no.

12 Q. Do you recall whether Ms. Fazekas  
13 or the members of the Health and Safety Committee  
14 had said that the leaking had gotten better?

15 A. No, I don't recall that.

16 Q. And do you recall whether they  
17 said it had gotten worse or stayed the same?

18 A. No.

19 MR. AULT: If we could please turn  
20 to, Ms. Kuka, Exhibit No. 3845.

21 BY MR. AULT:

22 Q. Which, Mr. Regan, is the next  
23 tab, tab 15 of the book in front of you.

24 Once again it is a field visit report  
25 at the Elliot Lake library about seven months later



1 in July of 1996. And you describe that you met with  
2 Ms. Fazekas and you presented the Exposure Assessment  
3 Report that had been done by Mr. Wright.

4 Now was this the assessment that was  
5 conducted the previous December?

6 A. I don't recall that one. Bob  
7 Wright was a hygienist out of Sudbury that came out  
8 with Dr. Woychuck.

9 Q. And do you recall what the  
10 results of this assessment were, Mr. Regan?

11 A. No, I don't recall that.

12 Q. And do you recall again whether  
13 Ms. Fazekas, or anybody else in the library,  
14 described whether the leaks in library had gotten  
15 better or worse or stayed the same?

16 A. No, I don't recall her saying  
17 anything.

18 Q. At this time we're about 10  
19 months after your September 22nd, 1995 visit to the  
20 library. Did you follow up with anybody in the  
21 library about whether the recommendations that  
22 Dr. Woychuck had made to the Health and Safety  
23 Committee had been followed up with?

24 A. I don't recall.

25 Q. Would it have been your practice

1 to follow-up with the Health and Safety Committee on  
2 a recommendation that had been made to them?

3 A. Probably would be, yeah.

4 Q. But you don't recall whether you  
5 did in this case or not?

6 A. I don't recall whether I did or  
7 not, no.

8 MR. AULT: Ms. Kuka, if we could  
9 please turn to Exhibit No. 3848.

10 BY MR. AULT:

11 Q. And that's at tab 18 of the book  
12 in front of you, Mr. Regan. This is a field visit  
13 report of a March 29th, 2001 visit that you made to  
14 the SAAN store, is that right?

15 A. Right.

16 MR. AULT: And if we could turn,  
17 Mrs. Kuka, to the second page of that document.

18 BY MR. AULT:

19 Q. And if we look under -- at the  
20 middle provision there you have written a series of  
21 orders to SAAN. And we see that the third order is  
22 under section 25(2)(h) of the Occupational Health  
23 and Safety Act, which is the section we looked at  
24 earlier, which is that an employer has a duty to  
25 take every precaution reasonable in the

1 circumstances for the protection of a worker, is  
2 that right, Mr. Regan?

3 A. Right.

4 Q. And the Order is that the,  
5 "Employer shall have the ceiling tiles and area  
6 above the tiles shall be checked for mould by a  
7 competent person." Mr. Regan, do you recall why you  
8 made this Order in particular?

9 A. Probably because they were  
10 complained about mould in the library, and there was  
11 stained tiles in the SAAN. So I wrote an Order for  
12 them to check them and make sure there was none in  
13 the SAAN.

14 Q. There were stained tiles and did  
15 the staining so the ceiling tiles suggest that there  
16 was water leaking on to those tiles?

17 A. Well they had been wet at some  
18 time, yeah.

19 Q. And so you made this Order to  
20 have the employer confirm that there was no mould  
21 above the ceiling?

22 A. Right.

23 Q. And that was something that was  
24 prompted by your experience in the library?

25 A. Right.

1 Q. And you gave them a comply date  
2 of April 6, 2001. So you weren't giving them a lot  
3 of time to get this sorted out?

4 A. Right.

5 Q. Before we leave that exhibit, Mr.  
6 Regan, do you recall where in the mall the SAAN was  
7 located?

8 A. Down on east side of the mall  
9 down at the end.

10 Q. And do you recall if you noticed  
11 evidence of leakage at that area of the mall or  
12 others areas of the mall at that time?

13 A. No, I can't recall.

14 Q. Just in the SAAN?

15 A. Yeah.

16 Q. If we could please turn to  
17 Exhibit No. 3849. Which is tab 19 in the book in  
18 front of you.

19 A. Okay.

20 Q. Mr. Regan, this is a 2001 visit  
21 that you made to the Zellers store?

22 A. Hmm hmm.

23 Q. And we understand that the  
24 Zellers store, we've heard evidence opened in  
25 October of 2001. And so I take it then that --

1 MR. AULT: If we turn to the previous  
2 page, Ms. Kuka.

3 BY MR. AULT:

4 Q. You're just making an  
5 administrative visit and making sure that a Health  
6 and Safety Committee is in place, is that right?

7 A. Yeah. I think checking on WHMIS  
8 as well.

9 Q. Do you recall whether you would  
10 have made an inspection of the Zellers store in this  
11 type of visit?

12 A. I don't recall.

13 Q. And what if anything did you  
14 notice about leaking in the Zellers store at that  
15 time, Mr. Regan?

16 A. I don't recall whether I saw the  
17 tiles or what was going on there.

18 Q. You didn't see any buckets on the  
19 ground?

20 A. No.

21 Q. You didn't see any tarps that  
22 were --

23 A. No.

24 Q. -- put up the collect water?

25 A. No.

1 Q. If we could turn to Exhibit No.  
2 3850, which is tab 20 in the book in front of you,  
3 Mr. Regan. We see this is May of 2002. And again  
4 you're in the library meeting with Barbara Fazekas  
5 on a routine visit. And would a routine visit be a  
6 pro-active inspection or a reactive inspection, or  
7 could it be both, Mr. Regan?

8 A. Routine is probably pro-active.

9 Q. And you've issued an Order  
10 relating to the lighting in the library. Do you  
11 recall what that order was about, or what that issue  
12 was about?

13 A. Diffusers on the lights.

14 Q. Right.

15 A. That's about all I know about it,  
16 that I can recall about it.

17 Q. At this time, Mr. Regan, did you  
18 take any steps to inquire about the state of the  
19 leaking in the library?

20 A. No.

21 Q. Did you take any steps to follow  
22 up on the recommendation that had been made to the  
23 Health and Safety Committee that the source of  
24 leaking be identified and corrected?

25 A. No, I don't recall doing that.

1 Q. Did anyone tell you whether the  
2 leaking situation had improved in the library?

3 A. I don't recall that.

4 Q. If we could please turn to  
5 Exhibit No. 3851, which is the next tab in the book  
6 in front of you, Mr. Regan. We're now in November  
7 of 2003. And you're making another inspection of  
8 the Zellers store.

9 Mr. Regan, we've heard evidence before  
10 this inquiry that the Zellers store from the day it  
11 opened and progressively from there suffered from  
12 chronic leaking. And the leaking was so bad that it  
13 necessitated buckets on the floor, it necessitated  
14 tarps being put down over merchandise to protect it  
15 from water.

16 In making this visit do you recall  
17 seeing any evidence of leaking?

18 A. Just the stained tiles, the odd  
19 stained tile. I never saw any water or buckets at  
20 that time.

21 Q. But you did see stained ceiling  
22 tiles?

23 A. Yeah.

24 Q. But you didn't think that a  
25 stained ceiling tile could be a contravention of the

1 Health and Safety Act?

2 A. Not really.

3 Q. And you met with the Health and  
4 Safety Committee representatives at the Zellers  
5 store in the course of this visit? And we can see  
6 that under "summary" or "comments" in the middle of  
7 the page here on the screen before us. Do you see  
8 that?

9 MR. AULT: If we just scroll up a  
10 bit, Ms. Kuka.

11 BY MR. AULT:

12 Q. "Summary or Comments: Inspected  
13 promise with Aimee Waschuck - Health and Safety Rep.  
14 and Roger Wake - manager."

15 A. I don't recall her.

16 Q. Did you recall Mr. Wake?

17 A. No.

18 Q. Do you recall whether anybody  
19 either on the Health and Safety Committee or in the  
20 store commented to you about leaking in the store?

21 A. No, I don't recall.

22 Q. Did you reviewing the Health and  
23 Safety Committee meeting minutes in the Zellers  
24 store?

25 A. I don't recall.



1 MR. AULT: Ms. Kuka, if we could  
2 please turn to Exhibit 1436.

3 BY MR. AULT:

4 Q. And, Mr. Regan, that's at tab 23  
5 in front of you. We're now in May of 2005 and  
6 you're making another inspection of the library.  
7 And we see under "Summary or Comments" that no  
8 Orders were issued. Do you see that?

9 A. Hmm hmm.

10 Q. Now I'd like to ask you about the  
11 circumstances, if you can recall them, that gave  
12 rise to this visit. Do you recall whether you would  
13 have received a complaint prior to making this  
14 visit?

15 A. I don't recall any complaints at  
16 that time.

17 Q. And this is not a trick question,  
18 but hopefully I can refresh your memory here,  
19 Mr. Regan.

20 MR. AULT: Ms. Kuka, if we can turn  
21 up Exhibit No. 11-89.

22 BY MR. AULT:

23 Q. And in the book in front of you  
24 that is tab 32. And it's not the first page at tab  
25 32, but if turn over the first page there's a

1 document that's been stapled there. And, Mr. Regan,  
2 you see that this is a memorandum from Ms. Fazekas  
3 to Andrea Leddy, the personnel manager. Do you  
4 recall Ms. Leddy?

5 A. No, I don't recall her.

6 Q. If I could turn your attention to  
7 third numbered paragraph Ms. Fazekas writes:

8 "Since both Mr. Gagnon and  
9 Ms. Morin asked me to have the air  
10 quality in the Library checked, I  
11 called Mr. Reagan from the Ministry  
12 of Labour to see if this could be  
13 done as he was the one when arranged  
14 it several years ago. He replied  
15 that he could no longer do this due  
16 to a shortage of manpower. He  
17 referred me to the Industrial  
18 Accident Prevention Association.  
19 When I checked their website, this  
20 type of testing appeared not to be  
21 included in their mandate. As its  
22 nearest office is in Sudbury, I tried  
23 other resources."

24 MR. AULT: And if we could turn over  
25 the page, Ms. Kuka, please.

1 BY MR. AULT:

2 Q. We see in the fifth numbered  
3 paragraph Ms. Fazekas writes:

4 "On April 28th, Mr. Reagan called  
5 back to say that he had a hygienist  
6 with the Ministry available to do  
7 some testing on the following Tuesday  
8 or Wednesday."

9 And so, Mr. Regan, based on this  
10 document would it be fair to say that sometime before  
11 April 28th Ms. Fazekas called you to complain about  
12 at least air quality in the library?

13 A. I don't recall her calling me.

14 Q. Do you recall telling her that  
15 the Ministry of Labour did not have the resources to  
16 test air quality in the library?

17 A. No, I don't recall that.

18 Q. Do you recall that that was  
19 something that you typically had to say to people  
20 that would complain to you? Sorry, I can't come.  
21 We don't have the resources?

22 A. I don't recall saying that, no.

23 Q. If we could please turn back to  
24 Exhibit No. 1436, which is back on tab 23,  
25 Mr. Regan.

1 MR. AULT: And if we could turn to  
2 the second page please, Ms. Kuka.

3 BY MR. AULT:

4 Q. And this narrative description  
5 here, Mr. Regan, in my understanding this is a  
6 typed-up version of your handwritten notes, is that  
7 right?

8 A. That's correct.

9 Q. And it reads.

10 "Accompanied by Tony Fontana -  
11 M.O.L. hygienist. Tony did some air  
12 monitoring in throughout the library  
13 and will provide a report at a later  
14 date. We also met with Robert  
15 Sterling, Chemnorth Systems and  
16 Service Company Ltd. to discuss the  
17 removal of wet drywall and possible  
18 mold in some areas."

19 Mr. Regan, do you recall meeting with  
20 Robert Sterling of Chemnorth Systems?

21 A. I don't really recall talking to  
22 him. But -- no, I don't really recall that.

23 Q. Do you recall that he was there  
24 for the purpose of testing for mould and possibly  
25 removing mould from the library?

1 A. I know he was there, yeah.

2 Q. And so you were aware then that  
3 the purpose of this visit was very similar to the  
4 visit that you had made in 1995 which was air  
5 quality and potential mould?

6 A. No, because they hadn't found  
7 mould at that point. What they were going to do is  
8 remove carpeting and stuff where mould could be  
9 formed because of being wet.

10 Q. But mould was a concern?

11 A. Yeah, mould was a concern.

12 Q. That's the reason why you were  
13 there?

14 A. Yeah.

15 Q. Do you recall in the course of  
16 this visit what Ms. Fazekas told you about the  
17 conditions in the library?

18 A. No, I can't recall that.

19 Q. Did she describe to you how it  
20 was affecting the workers, do you remember?

21 A. No, she didn't.

22 Q. I'm going to try and refresh your  
23 memory, Mr. Regan. If we could please turn to  
24 Exhibit No. 1145, which, Mr. Regan, is at tab 96 in  
25 the book in front of you. And this is an e-mail

1 that was written by Ms. Morin. Do you recall who  
2 Ms. Morin was, Mr. Regan?

3 A. No, I don't recall.

4 Q. She describes herself here as an  
5 employee of the Public Library. And this is an  
6 e-mail written on April 27th, 2005 just six days  
7 prior to the visit that you made to the library, and  
8 just a day before you called Ms. Fazekas back to let  
9 her know that in fact you could conduct an  
10 inspection of the library with a hygienist. And if  
11 we can look at the second paragraph Ms. Morin  
12 writes:

13 "Most of you are aware that the  
14 library has been experiencing water  
15 damage from the leaks of the mall  
16 roof. The leaks occur every time it  
17 rains or snows.

18 Just this morning we have closed  
19 off half of the fiction area to  
20 public and staff because of the water  
21 leaks from the roof. We had so many  
22 buckets in the aisles that we felt it  
23 was an accident waiting to happen.  
24 Many ceiling tiles were either  
25 removed or got so wet from the leaks

1                   that they have collapsed. Water  
2                   pools into the light fixtures."

3           Skipping down a paragraph.

4                   "I was off work sick two days last  
5                   week because of respiratory problems  
6                   due to possible mold or mildew in the  
7                   ceiling. I have noticed that in the  
8                   three years I have been working here  
9                   that I am always plagued with either  
10                  headaches, respiratory problems,  
11                  coughs, itchy eyes and throat, etc."

12                  Mr. Regan, do you recall being told  
13                  anything similar to what's described in this e-mail?

14                  A. Just the first time I went in  
15                  Ms. Fazekas' staff had some of the same problem,  
16                  that's the only other time.

17                  Q. And when you say "first time I  
18                  went in" When did you mean? Do you mean 2005 or do  
19                  you mean in 1995?

20                  A. In '95.

21                  Q. So at the very least you're  
22                  saying that the same problems that you inspected in  
23                  1995 are still occurring in 2005, ten years later,  
24                  is that right?

25                  A. According to her, yeah.

1 Q. According to her?

2 A. Yeah.

3 Q. And it's your evidence that  
4 Ms. Fazekas and the other patrons or staff in the  
5 library did not describe to you anything that is  
6 described in this e-mail?

7 A. No, I can't recall.

8 Q. Did anybody describe to you that  
9 the roof was leaking a lot in the library?

10 A. No.

11 Q. I would like to ask you now about  
12 what you observed in the course of making this  
13 inspection in 2005. Did you see ceiling tiles that  
14 had been removed?

15 A. No. I can't recall seeing them,  
16 no.

17 Q. Do you recall whether there were  
18 any tarps covering books?

19 A. No, I don't recall that.

20 Q. Just to try and refresh your  
21 memory, if we could see Exhibit No. 2037, Ms. Kuka.  
22 Which is tab 82 in the book in front of you,  
23 Mr. Regan.

24 These are just representative pictures  
25 that were taken we understand around 2005 or 2006, we



1 can't be more specific about the date. Just looking  
2 at this photograph, Mr. Regan, in 2005 or at any time  
3 did you see this type of tarp in the library?

4 A. No.

5 Q. And you didn't see a bucket that  
6 was used to collect water?

7 A. No.

8 Q. If we could please see Exhibit  
9 No. 2041. Mr. Regan, that is the next tab in the  
10 book in front of you. Here we see a photograph of  
11 not only water-stained ceiling tiles, but a  
12 significant number of ceiling tiles removed. Did  
13 you see anything like this in the library when you  
14 made your inspection in 2005 or at any time,  
15 Mr. Regan?

16 A. No, I don't recall seeing  
17 anything like that.

18 Q. When you were in the library it  
19 looked normal?

20 A. Stained tiles, that was it.

21 Q. Just stained tiles?

22 A. Yeah.

23 Q. Do you recall how many stained  
24 tiles?

25 A. No.

1 Q. Do you recall it being a  
2 significant number of stained ceiling tiles?

3 A. No, I don't recall.

4 Q. If we could please turn to  
5 Exhibit No. 11-31, which Mr. Regan is tab 24 in the  
6 book in front of you. This is the report of Tony  
7 Fontana, do you see that?

8 A. Hmm hmm.

9 Q. And we see that the visit date  
10 was May 3rd, 2005. So this was the report that was  
11 done in connection with the visit that you made with  
12 Mr. Fontana that we just looked at. And we see in  
13 the first paragraph Mr. Fontana writes:

14 "This visit was made in response  
15 to concerns expressed by library  
16 staff about air quality and the  
17 presence of visible mould in the  
18 workplace. One employee has  
19 experienced several symptoms  
20 including persistent cough, headache,  
21 itchy eyes and congestion, while  
22 others have, at times, also  
23 complained of headaches and a mouldy  
24 smell."

25 Mr. Regan, I take it though that you

1 don't recall receiving complaints about these  
2 symptoms in 2005 just 1995, is that right?

3 A. No, I don't recall this one at  
4 all.

5 MR. AULT: And if we could scroll to  
6 the bottom of that page please, Ms. Kuka.

7 BY MR. AULT:

8 Q. Mr. Fontana writes:

9 "The south portion of the Library  
10 is situated under the building's  
11 parking lot and reportedly has had  
12 previous problems with water  
13 infiltration. Many of the drop  
14 ceiling tiles are stained, showing  
15 evidence of previous water  
16 infiltration."

17 I take it, Mr. Regan, that you don't  
18 recall and cannot then dispute or agree with  
19 Mr. Fontana's observations that many of the drop  
20 ceiling tiles are stained?

21 A. I can't recall being there with  
22 him.

23 MR. AULT: And if we turn over the  
24 page, Ms. Kuka, please.

25

1 BY MR. AULT:

2 Q. And looking at the top paragraph  
3 and starting in the middle of the paragraph, here  
4 Mr. Fontana is summarizing the results of the  
5 testing that Chemnorth did in the library. And he  
6 writes:

7 "The semi-quantitative analysis  
8 (direct microscopic examination)  
9 showed no evidence of mould growth on  
10 the insulation or ceiling tile  
11 samples. The carpet sample showed  
12 sparse growth of Ulocladium species  
13 and a few spores of Aspergillus  
14 species and Penicillium species,  
15 while the drywall paper sample showed  
16 abundant growth of both Aspergillus  
17 and Penicillium species."

18 So that translates into there's is a  
19 whole lot of mould in the drywall, is that right,  
20 Mr. Regan?

21 A. Is that mould or is that could  
22 become mould if left?

23 Q. Either way, Mr. Regan, it's not  
24 good.

25 A. It's not good, right.

1 Q. And it's evidence of water  
2 infiltration?

3 A. Yeah, probably. Yeah.

4 Q. Do you recall receiving this  
5 report, Mr. Regan?

6 A. No.

7 Q. If we look at "Recommendations,"  
8 and specifically the second recommendation:

9 "The Most effective way to manage  
10 mould is to prevent the conditions  
11 that promote its growth in the first  
12 place. Sources of water infiltration  
13 should ideally be identified and  
14 eliminated. When water infiltration  
15 does occur, it should be removed in a  
16 timely manner."

17 Mr. Regan, that recommendation is  
18 remarkably similar to the recommendation that Dr.  
19 Woychuck made in 1995, is that right?

20 A. I'd say so, yes.

21 Q. And in fact they're so similar I  
22 just --

23 MR. AULT: For the purposes of our  
24 discussion if we could turn on the overhead  
25 projector, Mr. Bernard.

1 BY MR. AULT:

2 Q. These are just extracts from the  
3 documents -- from two of the documents we've looked  
4 at this morning. An extract from the recommendation  
5 from the 1995 Ministry of Labour report, and the  
6 2005 Ministry of Labour report. The first being by  
7 Dr. Woychuck, the second being by Mr. Fontana. And  
8 in the 1995 report we see that Dr. Woychuck wrote  
9 that:

10 "The source of water should be  
11 identified and corrected to protect  
12 workers from airborne moulds. Strong  
13 consideration should be given to take  
14 appropriate action to stop water from  
15 leaking through the ceiling into the  
16 library."

17 And then in 2005 Mr. Fontana writes  
18 that, "Water infiltration should ideally be  
19 identified and eliminated." Now these are reports  
20 taken ten years apart, Mr. Regan, and they are  
21 recommending almost the very same thing to the  
22 library, is that right?

23 A. Hmm hmm.

24 Q. And these are reports that were  
25 written in connection with inspections you had made

1 of the library, is that right?

2 A. My inspections or the doctor?

3 Q. Well the doctor -- pardon me, the  
4 doctor was accompanying you on your inspections.

5 A. I can't recall that.

6 Q. Do you recall getting the 1995  
7 report, Mr. Regan, do you recall seeing the 1995  
8 report from Dr. Woychuck?

9 A. Dr. Woychuck? That was the  
10 hygienist wasn't it, Fontana?

11 Q. He was.

12 A. Dr. Woychuck wasn't there in  
13 2005.

14 Q. Sorry, I was referring to the  
15 upper paragraph.

16 A. Okay.

17 Q. And that's an extract from his  
18 report.

19 A. Okay.

20 Q. You knew that there were concerns  
21 about water leaking in the library in 1995, is that  
22 right?

23 A. Hmm hmm, yeah.

24 Q. And you knew that there were  
25 concerns about water leaking in the library in 2005,

1 is that right?

2 A. Hmm hmm.

3 Q. And you had no basis to conclude  
4 that the water situation had improved between 1995  
5 and 2005, is that right?

6 A. Probably yeah. Probably right.

7 Q. And, Mr. Regan, you know that a  
8 building, and in a particular retail building,  
9 should be watertight, should keep water out, is that  
10 right?

11 A. It should for sure, yeah.

12 Q. And you know that water can have  
13 a corrosive effect on a building?

14 A. Right.

15 Q. And water can cause steel to  
16 corrode?

17 A. Hmm hmm.

18 Q. And so, Mr. Regan, in 2005, given  
19 that you knew that this had been an ongoing problem,  
20 did it occur to you that perhaps the structural  
21 integrity of the mall itself was being jeopardized?

22 A. No, because I didn't really know  
23 anything about the Building Code at that point.

24 Q. Well even the Building Code  
25 aside, you know that water can have a corrosive



1 effect on a building?

2 A. Yeah.

3 Q. Just as a matter of common sense?

4 A. Hmm hmm.

5 Q. Ask you know that water has been  
6 leaking into at least the library and other parts of  
7 the mall for at least ten years. And you had the  
8 power, Mr. Regan, as an inspector to call in a  
9 Ministry of Labour engineer, or to have either the  
10 employer of any of the businesses in the mall, or  
11 the owner of the mall itself, have a report  
12 commissioned about the building, is that right?

13 MR. KLOEZE: Mr. Commissioner, I just  
14 take a bit of an objection to the -- one of the  
15 premises of the question. I'm not sure that  
16 Mr. Regan has testified that he knew that water was  
17 leaking into the building over a ten year period.

18 THE COMMISSIONER: I'm not certain  
19 how the objection relates to the specific question.  
20 The premise to your question is?

21 MR. AULT: The premise to my  
22 question, Mr. Commissioner, is that as Mr. Regan has  
23 acknowledged in his evidence today, there was a  
24 concern about water leaking into the mall in 1995;  
25 he's observed that there was water leaking into the

1 mall in the interim period; he has had no basis to  
2 conclude that that water leaking situation had  
3 improved at all. And so I'm asking you now about  
4 conclusions that he made or did not make in 2005 in  
5 the face of this inspection and this report.

6 THE COMMISSIONER: All right. Well  
7 is your objection, Mr. Kloeze, that he has not said  
8 that there was no evidence from this witness that he  
9 had a basis to conclude that water was leaking into  
10 the building?

11 MR. KLOEZE: It may have been just  
12 the way that the question was raised. I had  
13 understood the question being that Mr. Regan was  
14 confirming that there was water leakage over a  
15 ten-year period, and I didn't hear that in  
16 Mr. Regan's evidence at all. The way that Mr. Ault  
17 has now rephrased the question in terms of there was  
18 some indication of stained ceiling tiles at  
19 different points of the ten year period, I think  
20 that's appropriate. However I don't think that that  
21 leads to the conclusion that Mr. Regan had the  
22 evidence or the knowledge that there was leaking  
23 over a ten year period, continual leaking over a  
24 ten-year period.

25 MR. AULT: Mr. Regan has in his

1 evidence already confirmed that the ceiling tiles  
2 that were stained, that he saw in the interim  
3 period, were likely from ceiling leaks, but I don't  
4 quarrel with anything that Mr. Kloeze said.

5 THE COMMISSIONER: All right. Then  
6 rephrase or restate your question.

7 BY MR. AULT:

8 Q. Mr. Regan, why did you not take  
9 steps in 2005 to have the structural integrity of  
10 the building inspected either by a Ministry of  
11 Labour engineer coming in, which you could have  
12 done, or by requiring an owner or an employer to do  
13 the same?

14 A. Because I didn't see any leaks at  
15 the time I was in there. I didn't think it was  
16 necessary to call in the engineer, or the engineer  
17 from the Ministry to check it out.

18 Q. Okay. We see that these are two  
19 reports here on the screen before us, extracts from  
20 two reports.

21 A. Hmm hmm.

22 Q. That were submitted to the Health  
23 and Safety Committee of the library. And both  
24 reports say that the water source should be  
25 identified and corrected in one case and eliminated

1 in the other.

2 And we've already discussed,  
3 Mr. Regan, that an employer has a duty to take every  
4 precaution reasonable in the circumstances to protect  
5 the health and safety of the workers, is that right?

6 A. Right.

7 Q. And the employer in this case of  
8 library Workers would be the City of Elliot Lake, is  
9 that right?

10 A. Right.

11 Q. Now did you think that the City  
12 of Elliot Lake was taking every precaution  
13 reasonable in the circumstances to protect the  
14 workers in the library?

15 A. I didn't know what the  
16 circumstances were behind the City of Elliot Lake.  
17 I was dealing with Ms. Fazekas who was more or less  
18 the manager of the library at the time.

19 Q. And did Ms. Fazekas tell you what  
20 steps were being taken by the employer, by the City  
21 of Elliot Lake, to protect the workers?

22 A. No.

23 Q. So you didn't know what the City  
24 of Elliot Lake was doing?

25 A. No idea, no.

1 Q. And you didn't make any inquiries  
2 about what the City of Elliot Lake was doing to  
3 protect the worker in the library?

4 A. No. I didn't spend a whole lot  
5 of time at the mall either. I had a very wide area  
6 that I covered so I wasn't there every day sort of  
7 thing.

8 Q. Mr. Regan, looking at this report  
9 now, and I'm talking about the 2005 Ministry of  
10 Labour report, do you think that you could have  
11 issued an Order under section 25(2)(h) of the  
12 Occupational Health and Safety Act with respect to  
13 the water infiltration of the library?

14 A. I didn't really see a  
15 contravention so I wouldn't have written an order on  
16 it.

17 Q. But, Mr. Regan, you've  
18 acknowledged here that you didn't know what the  
19 employer was doing to protect the workers in the  
20 library, which is the employer's duty under section  
21 25, is that right?

22 A. Hmm hmm.

23 Q. So you didn't know whether there  
24 was a contravention?

25 A. Right.

1 Q. So you could have issue an Order  
2 under section 25(2)(h), is that right?

3 MR. KLOEZE: The conditional behind  
4 that sentence, Mr. Regan has already testified that  
5 he didn't see a contravention. Obviously he could  
6 write an Order if he saw a contravention, but in  
7 this case he didn't see a contravention.

8 MR. AULT: But he further testified  
9 that he didn't know whether there was a  
10 contravention.

11 THE COMMISSIONER: I know that. I  
12 think you've pretty well gone as far as you can  
13 along this particular line, Mr. Ault. The  
14 Commission will make its own -- will draw its own  
15 conclusions.

16 MR. AULT: Thank you,  
17 Mr. Commissioner.

18 BY MR. AULT:

19 Q. I'd like to move now to a  
20 slightly different topic, Mr. Regan, and that is  
21 what you did with the 2005 report from Mr. Fontana  
22 physically. Do you recall getting the report?  
23 Actually receiving the report?

24 A. No, I don't recall getting it  
25 even.

1 Q. And when you receive a report  
2 like this would it be your practice to provide a  
3 copy, for example, to Ms. Fazekas?

4 A. That report might have went to  
5 Sault Ste. Marie and then I was gone, I was retired.

6 Q. You were retired?

7 A. Yeah.

8 Q. If we could turn to Exhibit No.  
9 2023 which is at tab 27. And if we scroll down to  
10 the bottom of the page. We are see an e-mail from  
11 Ms. Fazekas to Mr. Fontana dated June 2nd, 2005, and  
12 Ms. Fazikas writes:

13 "Good morning, Tony: I know that  
14 you have contacted Bob Stirling about  
15 the testing results from May 3, 2005;  
16 however, the City's Joint Health and  
17 Safety Committee requires that I  
18 receive a written report of your  
19 findings as well.

20 Would you please send me a copy as  
21 soon as possible."

22 And about a week later Mr. Fontana  
23 replies to Ms. Fazekas and he writes:

24 "Hi Barbara, I have forwarded a  
25 copy of my report to Ralph Regan on

1                   May 10 but I guess he didn't have a  
2                   chance to deliver it to you prior to  
3                   his retirement. A copy of the report  
4                   is attached."

5                   So is it your evidence that you  
6                   retired before you had a chance to deliver this  
7                   report to Ms. Fazekas?

8                   A. I don't recall. That's why I  
9                   said it probably went to the Sault, to the Sault  
10                  office to our manager.

11                  Q. Right. Turning you briefly,  
12                  Mr. Regan, to your retirement itself. Can we take  
13                  it from this exchange of correspondence that you  
14                  retired some time between May 3rd, 2005 and  
15                  June 2nd, 2005?

16                  A. Yeah.

17                  Q. Can you recall with any more  
18                  detail when you retired exactly?

19                  A. No. Not in detail, no.

20                  Q. And after you retired, Mr. Regan,  
21                  you testified that you were the only industrial  
22                  inspector in Elliot Lake. Did another industrial  
23                  inspector replace you as having main responsibility  
24                  for Elliot Lake?

25                  A. Yes, came out of the Sault.



1 Q. And do you recall who that person  
2 was?

3 A. Um...Ed Hudson was one of them.

4 Q. And did you ever meet with  
5 Mr. Hudson? Did you ever chat with him about the  
6 situation in Elliot Lake?

7 A. No, nothing to do with it.

8 Q. Did you ever meet him at all?

9 A. Oh yeah, I met him maybe for a  
10 coffee that's about it.

11 Q. After he became --

12 A. Yeah.

13 Q. -- the inspector for Elliot Lake?

14 A. Yeah. I never discussed anything  
15 about the job though.

16 Q. Didn't discuss the conditions of  
17 any particular workplace?

18 A. No.

19 Q. And you didn't tell him about the  
20 library situation?

21 A. No.

22 Q. And you didn't give him any  
23 documents that you may have had?

24 A. No.

25 Q. Is there any reason why you

1 wouldn't have said, Oh, Mr. Hudson, by the way  
2 there's a situation in the library that I've been  
3 dealing were for ten years?

4 A. Maybe he didn't want to hear it.  
5 I don't know.

6 Q. Mr. Regan, you've told us that  
7 your wife had a salon in the mall for a significant  
8 number of years?

9 A. Right.

10 Q. Did she ever have problems with  
11 leaks in her salon?

12 A. No, because it was under the  
13 hotel.

14 Q. Right.

15 A. And there was no leaks coming  
16 through the hotel.

17 Q. Right. Could we please pull up  
18 Exhibit No. 10-130.

19 A. What tab number is that?

20 Q. That is tab 73 of the book in  
21 front of you, Mr. Regan. Mr. Regan, are you aware  
22 that your wife spoke with the OPP after the mall  
23 collapsed?

24 A. Yeah.

25 MR. AULT: And if we could please

1 turn, Ms. Kuka, to the second page of that document.

2 BY MR. AULT:

3 Q. I'd just like to focus in on one  
4 element of the statement that she made to the OPP  
5 and that's at the bottom of the page. And this  
6 witness synopsis statement reads, "She", being  
7 Ms. Regan.

8 "...always knew that the mall was  
9 going to go down and hoped she  
10 wouldn't be in it when it happened.  
11 Things would shake and rattle when  
12 the snowplow went by. In her..."

13 Just turning over the page.

14 "...years at the mall, the roof  
15 leaked almost from the time she moved  
16 in. Each owner of the mall had done  
17 work on the roof. She thought  
18 Retirement Living put the most work  
19 and money into the roof to get the  
20 mall up to standard. Not too much  
21 has been done since Mr. Nazarian took  
22 over. She thought all of the leaks  
23 would cause this and never thought it  
24 would happen on a nice sunny day."

25 Mr. Regan, did your wife ever convey

1 that to you?

2 A. I don't recall.

3 Q. She never said to you she thought  
4 the mall was going to come down?

5 A. Not to me, no.

6 Q. Your wife mentioned that the  
7 building would "shake and rattle". Do you recall  
8 ever being in the mall perhaps when the snowplow  
9 went by that you would feel shaking in the building?

10 A. Yes.

11 Q. And can you describe what that  
12 shaking was like?

13 A. Just like a vibration when they  
14 were plowing snow on top with heavy equipment.

15 Q. And was it a significant  
16 vibration?

17 A. I can't recall how much it was.  
18 You could feel it, that's for sure.

19 Q. Did you ever conduct an  
20 inspection related to the shaking or the vibrations  
21 that you would feel from the snowplows passing  
22 overhead?

23 A. No.

24 Q. Do you remember whether there  
25 were gates at the ramp entrance to the rooftop

1 parking deck?

2 A. Yes, there was.

3 Q. And were those gates moveable or  
4 were they locked into place?

5 A. Moveable.

6 Q. And because they were moveable  
7 would that allow heavy equipment and trucks to pass  
8 onto the roof?

9 A. Yes.

10 Q. Should those gates, in your view,  
11 have been locked into place, Mr. Regan?

12 A. They should have been, yes.

13 Q. Did you ever conduct an  
14 inspection or issue an Order with respect to those  
15 gates?

16 A. No.

17 Q. Mr. Regan, the mall itself when  
18 it was owned by Algoma Central, and Retirement  
19 Living, and Mr. Nazarian employed people as mall  
20 employees, is that right?

21 A. Hmm hmm.

22 Q. And the workplace for those mall  
23 employees would be the entire mall itself, is that  
24 right?

25 A. Right.

1 Q. And did you ever conduct an  
2 inspection of the entire mall itself in the course  
3 of conducting a visit on the mall owner?

4 A. I can't really recall doing it,  
5 no.

6 MR. AULT: Mr. Commissioner, if I  
7 could just have one moment?

8 BY MR. AULT:

9 Q. And, Mr. Regan, just one further  
10 question. When you would make a visit on an  
11 employer would it be your practice to speak with the  
12 management side as well as the employee side and get  
13 perspectives from both the manager or the employer  
14 as well as the employee?

15 A. I would start out with the  
16 management first.

17 Q. But would it be your practice to  
18 speak with an employee as well to get their  
19 perspective?

20 A. Definitely, yes.

21 Q. Definitely?

22 A. Yes.

23 Q. Those are my questions. Thank  
24 you very much, Mr. Commissioner. I think my  
25 friends, Mr. Regan, might have some questions for

1 you.

2 THE COMMISSIONER: Further evidence  
3 or questions in-chief, Mr. Kloeze?

4 MR. KLOEZE: No, thank you.

5 THE COMMISSIONER: Cross-examination.

6 MR BISCEGLIA: I have no questions,  
7 Mr. Commissioner, thank you.

8 MR. MACRAE: No questions.

9 THE COMMISSIONER: Question from the  
10 City?

11 MR. CASSAN: No questions.

12 THE COMMISSIONER: ELMAC?

13 MR. BROADBENT: If we could have five  
14 minutes?

15 THE COMMISSIONER: We'll take our  
16 break until 2:00.

17 --- Luncheon break taken at 12:40.

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

19 THE COMMISSIONER: Yes, Mr.

20 Broadbent.

21 MR. BROADBENT: Thank you, sir.

22 Before I begin I should have announced my arrival  
23 this week. I know you like us to check in and out  
24 so you know who is here. When I arrived you had  
25 already started yesterday and I felt uncomfortable

1 for interrupting.

2 THE COMMISSIONER: Someone from your  
3 firm is here, that's the same thing.

4 MR. BROADBENT: Thank you. I don't  
5 mean to be discourteous, that's all.

6 CROSS-EXAMINATION BY MR. BROADBENT:

7 Q. Sir, my name is Broadbent and I  
8 represent ELMAC and I think you're probably familiar  
9 with that agency, or that organization rather as a  
10 community interest here in Sault Ste. -- or Elliot  
11 Lake. I'm taking myself home early.

12 I understand that you've not been well  
13 and I'm sorry. And if you're not feeling well, or  
14 you feel uncomfortable at any time during my  
15 questions please don't hesitate to ask for a break or  
16 what have you, if that's fine with you.

17 I won't be very long. I have a few  
18 questions. Most of my questions will be directed at  
19 policy and training and that sort of thing, what you  
20 had to guide you in doing your job, okay?

21 A. Hmm hmm.

22 Q. Sir, I understand that as an  
23 investigator with the Ministry of Labour what you do  
24 is really about protecting workers in the workplace.  
25 Keeping them safe, trying to avoid bodily injury and



1 even death, is that fair?

2 A. That's correct, yes.

3 Q. Trying to prevent these things  
4 from happening?

5 A. Yes.

6 Q. And workplaces are not exclusive  
7 of the public, that is to say workplaces are often  
8 shared places with the public, like the mall, is  
9 that fair?

10 A. True.

11 Q. So by extension the work that you  
12 do protects not just workers but also members of the  
13 public like shoppers and what have you going to  
14 visit the mall?

15 A. True, yes.

16 Q. Okay. And one of my friends  
17 asked you about structural inspections, why you  
18 hadn't made Orders with respect to structural  
19 inspections. I think your answer was that you  
20 didn't feel you had needed to.

21 I'm wondering, in the earlier  
22 inspection in which you conducted with Dr. Woychuck,  
23 and I believe that was back in 1995, someone had  
24 observed to you -- someone on your team had observed  
25 to you that there was "heavy rusting on steel beams."

1 Do you remember that?

2 A. I remember the comment, yes.

3 Q. Right.

4 A. I can't say who said it.

5 Q. No, I understand that. And I  
6 suspect you're like the rest of us, your memory is  
7 better closer to an incident than it is with the  
8 passage of time?

9 A. Eighteen years, yes.

10 Q. Sure. But in any event you're  
11 confident that the comment was made?

12 A. Yes.

13 Q. Yes. And I understand your wife  
14 had her facility in the mall, her business. And it  
15 was -- was it proximate to the parking lot as well?

16 A. It was at the parking lot next to  
17 the elevator door.

18 Q. Right. And that's fairly close  
19 to the area of the collapse?

20 A. Hmm hmm.

21 Q. Yes?

22 A. Yeah, right in front of it.

23 Q. Okay. And I understand that she  
24 was making observations at one point about the door  
25 in the shop shifting and coming out of place over

1 time. Do you -- you're nodding your head. I gather  
2 you remember her making comments about that?

3 A. I don't really recall her saying  
4 it, but she could have, yeah.

5 Q. Yeah? Okay. Do you remember  
6 though -- did you have any conversations with her  
7 back at that time while she was in that location  
8 about her door shifting in place?

9 A. No.

10 Q. But if she says that it occurred  
11 you wouldn't doubt that?

12 A. If she said it, I guess, yeah.

13 Q. All right. Remember she might be  
14 watching.

15 A. She's here.

16 Q. Okay.

17 A. I gotta watch what I say.

18 Q. I know the feeling.

19 THE COMMISSIONER: Your wife could be  
20 watching you.

21 MR. BROADBENT: I'm probably  
22 concerned about that, sir.

23 BY MR. BROADBENT:

24 Q. And you would agree with me that  
25 a door shifting in its frame and such as I'm

1 describing would be a potential indication of a  
2 structural change with the building?

3 A. Not necessarily, no.

4 Q. Well can you think of any --

5 A. Could be frost moving it,  
6 whatever.

7 Q. I see. Okay. But you would  
8 certainly agree with me that heavy rusting is  
9 something that should be examined as a potential  
10 clue to structural issues?

11 A. Yeah. I don't know the extent of  
12 the rusting, it wasn't mentioned to me.

13 Q. No. Well it was mentioned to you  
14 that there was heavy rusting at the time, you've  
15 indicated that somebody mentioned to you 18 years  
16 ago that there was heavy rusting? Yes?

17 A. Somebody mentioned it, yeah.

18 Q. So what I'm suggesting to you is  
19 that heavy rusting could be a clue that there might  
20 be structural issues that need to be examined.  
21 Would you agree with that?

22 A. Not necessarily. If it's steel  
23 could be just heavy rusting from the moisture in the  
24 air.

25 Q. Sure.

1 A. Yeah.

2 Q. But I guess the point is we don't  
3 know what it was do we? Because there was no  
4 investigation, no follow up with that.

5 A. No. Not on our part, no.

6 Q. No. Do you know why you or  
7 someone else with the Ministry of Labour wouldn't  
8 have followed up with that comment and explored  
9 further the heavy rusting?

10 A. Well the doctor was the one, and  
11 the hygienist were the ones that were up looking for  
12 mould and made the comment, one of the two so.

13 Q. Right, okay. But we know that  
14 under the Occupational Health and Safety Act  
15 structural soundness is something that, you know, we  
16 need to be concerned about. We don't want workers  
17 to be crushed or to be injured in the workplace if a  
18 structure is not sound. Isn't that true?

19 A. True.

20 Q. Yeah. So again I'm wondering why  
21 you or someone else, maybe there was someone else  
22 who was involved in that investigation, maybe there  
23 was someone else who should have or could have  
24 followed up with "heavy rusting." Was there?

25 A. I can't recall anybody, no.

1 Q. And you would agree with me that  
2 you don't need a complaint before you start an  
3 investigation?

4 A. No, just a pro-active inspection.

5 Q. Sure. But even if you are on a  
6 reactive inspection, such as you were on the  
7 occasion we've been speaking about, and somebody  
8 observes heavy rusting, then the Ministry of Labour  
9 can initiate an investigation about that issue,  
10 isn't that true?

11 A. That's true, yeah.

12 Q. Okay. And in fact you would  
13 agree with me, sir, that you or someone else on your  
14 team could have contacted the Ministry of Labour  
15 civil engineer in Sudbury that you told us about?

16 A. Hmm hmm, yes.

17 Q. And you could have relayed to him  
18 that somebody's observed heavy rusting. We don't  
19 know what it's indicative of, the Occupational  
20 Health and Safety Act mandates that structural  
21 soundness be preserved or respected. Maybe you  
22 better come and have a look at this and tell us what  
23 it's all about. Is that true?

24 A. I don't recall at the time, it  
25 didn't seem that important at the time.

1 Q. Okay. Well I guess in  
2 hindsight it seems important now?

3 A. Well it does now yeah, sure.

4 Q. And I want to be fair with you  
5 because you go into the sector of inspections that  
6 you do from mining. And I think you told us that  
7 you really had no significant training in respect of  
8 those new responsibilities, is that true?

9 A. For industrial you're talking?

10 Q. Yes.

11 A. With the exception of logging,  
12 no.

13 Q. Right.

14 A. Yeah.

15 Q. Okay. So you never had any  
16 training with respect to structural issues, how to  
17 examine for structural soundness? What the  
18 hallmarks might be of a failing structure? There  
19 was never any of that type of training provided to  
20 you by the Ministry of Labour, is that true?

21 A. Not totally true because doing  
22 the mills and the mines --

23 Q. Yes?

24 A. -- you find all kinds of things  
25 rusted here and rusted there, whatever.

1 Q. Okay.

2 A. It's common --

3 Q. All right.

4 A. -- to a big building like that.

5 Q. All right. So I gather from that  
6 then that you'd have some insight and experience  
7 with respect to rust and structures?

8 A. Not a whole lot, no.

9 Q. And was there any policy that  
10 mandated that you or your associates with the  
11 Ministry of Labour follow up with this observation  
12 of heavy rusting?

13 A. I don't quite understand the  
14 question.

15 Q. Was there any policy -- would you  
16 -- was there a policy in place that required you to  
17 follow up with this observation, heavy rusting?

18 A. No.

19 Q. With respect to the work that you  
20 did did you have a supervisor or -- I don't  
21 understand, or I'm not familiar with the structure  
22 of the Ministry of Labour at least as it then was.  
23 Did you have someone when overlooked your work,  
24 guided you, assessed your work, evaluated it and  
25 said, you know -- provided you with insight as to



1 whether you're doing what you needed to be doing?

2 A. Oh yeah. We had a manager who  
3 sat in the Sault and we inputted everything on  
4 computers so he could review everything in the  
5 computer.

6 Q. All right. So he would sit in  
7 the Sault and review your work by computer?

8 A. Yeah.

9 Q. So he wouldn't come down to  
10 Elliot Lake for instance?

11 A. Oh occasionally he would but not  
12 on a regular basis.

13 Q. But what I'm getting at is would  
14 anybody ever attend, anybody in a supervisory role  
15 attend with you at a scene such as the one we've  
16 considered with Dr. Woychuck? Would anybody come  
17 and look at what you're doing with you and be on the  
18 scene and say, Well, you've missed this, or maybe  
19 you should follow up with the heavy rusting, for  
20 instance, and that sort of thing?

21 A. No.

22 Q. So the supervision -- the  
23 assessment of your work was essentially done  
24 remotely, and with no opportunity by the assessor to  
25 actually look at the scene that you were dealing

1 with?

2 A. No.

3 Q. Okay. Is there a policy with  
4 respect to when, how and how often to conduct  
5 investigations and visits and follow-  
6 investigations?

7 A. No, no policy.

8 Q. Is there any policy on training?

9 A. Pardon?

10 Q. Is there any policy or training  
11 on structural inspections?

12 A. No.

13 Q. I know that you have monthly  
14 blitzes, or the Ministry of Labour has monthly  
15 blitzes with respect to issue, you're familiar with  
16 that? You know what I'm talking about?

17 A. Monthly blitzes?

18 Q. You're not familiar with this?

19 A. No.

20 Q. It may be a new thing since your  
21 retirement?

22 A. I think it must be, yeah.

23 Q. It must be.

24 MR. KLOEZE: To be fair to Mr. Regan,  
25 I think Ms. Dennis testified that was something that

1 came out in 2004.

2 MR. BROADBENT: So just before your  
3 retirement.

4 MR. KLOEZE: Perhaps a couple of  
5 years later, so I'm not sure Mr. Regan --

6 MR. BROADBENT: Thank you, sir,  
7 that's fine. Thank you.

8 BY MR. BROADBENT:

9 Q. And you would agree with me that  
10 you had significant powers to investigate and make  
11 Orders at that time?

12 A. For any contraventions we'd make  
13 Orders, yeah.

14 Q. And it would have been within the  
15 scope of your authority to make an Order in respect  
16 to the heavy rusting. You could have directed that  
17 there be an engineer's report prepared assessing  
18 that rust?

19 A. Yeah. We could issue the Order  
20 if there was a contravention for sure I was aware  
21 of.

22 Q. Okay. I take it there was no  
23 policy or directive regarding how, when, how often  
24 and what to investigate regarding structural issues?

25 A. No.

1 Q. Did you do any structural testing  
2 yourself?

3 A. Not testing, no.

4 Q. All right. What would you do  
5 with respect to structural assessments.

6 A. If I had any doubt I would call  
7 in our engineers.

8 Q. All right. But how do you get to  
9 a state of doubt? I mean you examine a structure in  
10 some way?

11 A. An obvious flaw in it or  
12 something.

13 Q. All right. So something that  
14 strikes you as being an obvious flaw? That would  
15 trigger a follow-up, is that what you're saying.

16 A. Correct. Cracks in the wall or  
17 stuff like that.

18 Q. And you've told us about  
19 corrosion and rust from your experience in the  
20 mining industry?

21 A. Yeah.

22 Q. And that could be an issue that  
23 would warrant follow-up that would cause doubt, is  
24 that fair?

25 A. Yeah. Depends on the amount

1 probably of rust or whatever.

2 Q. Okay.

3 A. If it's falling apart there is a  
4 problem. If it's a bit of rust on steel it's  
5 common.

6 Q. But if it's heavy rusting it  
7 warrants a report?

8 A. Well who's to decide what's heavy  
9 rusting?

10 Q. Well you are, is that fair?

11 A. Yeah.

12 Q. I mean as an investigator you  
13 would agree with me that really it's for you to  
14 decide, isn't that true?

15 A. Yeah.

16 Q. But you would agree with me that  
17 it appears there was no decision made either way.  
18 Well I guess the decision appears to be was not to  
19 follow up with any investigation with respect to the  
20 heavy rusting?

21 A. Would you ask me that again,  
22 please?

23 Q. That's fine, I'll leave it and  
24 we'll continue on.

25 And when you're doing investigations I

1 gather from your evidence that it's fair to conclude  
2 that water leaks, and the kind of leaks we've heard  
3 about in this Inquiry, they didn't really capture  
4 your attention in any way?

5 A. I didn't see any water leaking.

6 Q. All right. And if you had  
7 noticed any Building Code violations would you have  
8 reported those violations to the City building  
9 officials?

10 A. No, I wouldn't.

11 Q. No? Why not?

12 A. Because I didn't deal with the  
13 City directly.

14 Q. All right. But I gather that --  
15 and let me ask the same question in respect of the  
16 Property Standards By-Laws and observation about  
17 Property Standards. If you observed any concerns or  
18 problems with Property Standards, structural issues  
19 water leaking, would you report those to the City  
20 Building Department?

21 A. No.

22 Q. You would agree with me though  
23 that matters of the Building Code and Property  
24 Standards that authorities deal with are essentially  
25 matters that touch upon safety? The structural

1 integrity of a building really goes to safety, is  
2 that true?

3 A. For sure.

4 Q. Okay. And that's a perfect  
5 overlap with what you're doing as an investigator,  
6 because you're all about safety in the workplace, is  
7 that fair?

8 A. Hmm hmm.

9 Q. Yes?

10 A. Sure.

11 Q. So, you know, if you detect  
12 structural issues that pose some threat to safety in  
13 the workplace, or compromising safety in the  
14 workplace why wouldn't you report those to the  
15 municipal authorities?

16 A. Well we don't go from one client  
17 find problems and go and tell another client. To me  
18 the City was a separate client from the businesses.  
19 So we'll deal with the manager in the business.

20 Q. All right. So there's no policy  
21 that says that you should co-operate with, or  
22 communicate with, or co-ordinate with the Building  
23 Department people?

24 A. No.

25 Q. All right. Thank you for your

1 time, sir.

2 A. Thank you.

3 THE COMMISSIONER: Thank you,  
4 Mr. Broadbent. Mr. Myles.

5 CROSS-EXAMINATION BY MR. MYLES:

6 Q. Afternoon, Mr. Regan. My name is  
7 Chuck Myles. I'm not a lawyer. I represent SAGE,  
8 Seniors Action Group of Elliot Lake and my questions  
9 are basically on policy and management.

10 You were pretty busy because you had  
11 quite a large area to look after, is that correct?

12 A. Right.

13 Q. And your reports, when you filled  
14 out an inspection report, a copy of that would go to  
15 your manager?

16 A. Right, in the computer.

17 Q. In the computer?

18 A. Yeah.

19 Q. Was there follow-up from them on  
20 any of these reports with you? Did they review once  
21 a year or something?

22 A. No, we handled that pretty well  
23 ourselves.

24 Q. You had a --

25 A. The follow-ups.



1 Q. So if you did the mall, for  
2 instance, would there be a file just for the mall  
3 with your reports on that?

4 A. No, it's general.

5 Q. Just general?

6 A. Yeah.

7 Q. And did they ever come down and  
8 review any of your reports with you or --

9 A. No.

10 Q. They never did that. So really  
11 it was all left to you?

12 A. Yeah.

13 Q. There was not much follow-up at  
14 all?

15 A. No.

16 Q. Thank you, sir, those are my  
17 questions.

18 THE COMMISSIONER: Re-examination?  
19 Go ahead, Mr. Kloeze.

20 RE-EXAMINATION BY MR. KLOEZE:

21 Q. I have one question. Good  
22 afternoon, Mr. Regan, I just have one question  
23 following up on the questions you were asked by  
24 Mr. Broadbent, who was the first gentleman who spoke  
25 to you this afternoon.

1                   In 1995 when Dr. Woychuck's team was  
2 doing an inspection somebody commented to you that  
3 they noticed rust on the beams?

4                   A.    Hmm hmm.

5                   Q.    And I wanted to know whether or  
6 not that person who told you that information also  
7 told you that they were concerned about the rust on  
8 beams?

9                   A.    No, they didn't.

10                  Q.    Okay, thank you.  Those are all  
11 my questions.  Thank you, sir.

12                  THE COMMISSIONER:  Mr. Ault?

13                  MR. AULT:  Commission Counsel has no  
14 re-examination, Mr. Commissioner.

15                  THE COMMISSIONER:  Thank you very  
16 much.  That's all for you today.

17                  MR. AULT:  Mr. Commissioner, we have  
18 no more witnesses scheduled today but Mr. Saunders  
19 is scheduled to appear tomorrow morning.

20                  THE COMMISSIONER:  Mr. Saunders at  
21 9:00 tomorrow morning.

22                  MR. AULT:  Mr. Carr-Harris will be  
23 leading that evidence.

24                  THE COMMISSIONER:  Thank you  
25 everybody.  We'll rise until 9:00 o'clock tomorrow

1 morning.

2                    --- Whereupon the proceedings were  
3 adjourned for t-he day at 2:30 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 12th day of June 2013.

Helen Martineau

PER: Helen Martineau  
Certified Shorthand Reporter

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