

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 61

June 13, 2013



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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is Day 61 in the Inquiry proceedings held
before the Honourable Justice P.R. Bélanger,
Commissioner, taken at the White Mountain Academy
of the Arts, 99 Spine Road, Elliot Lake, Ontario,
on the 13th day of June, 2013, commencing at 9:00
a.m.

REPORTED BY: Deana Santedicola
CSR, CRR, RPR

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(No Exhibits Marked)		

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

2

3 THE COMMISSIONER: Good morning,
4 everybody.

5 MS. EFFENDI: Good morning,
6 Mr. Commissioner.

7 THE COMMISSIONER: Ms. Effendi.

8 MS. EFFENDI: Our next witness this
9 morning is Ms. Judy McCulloch.

10 THE COMMISSIONER: Good morning, ma'am.

11 THE WITNESS: Good morning.

12 JUDY MCCULLOCH: SWORN.

13 EXAMINATION IN-CHIEF BY MS. EFFENDI:

14 Q. Good morning, Ms. McCulloch.

15 A. Good morning.

16 MS. EFFENDI: Mr. Commissioner, for the
17 record, I would just like to note that the exhibits
18 that are new that will be entered during the
19 evidence of the witness today are Exhibits 4237 to
20 4266.

21 THE COMMISSIONER: Thank you.

22 BY MS. EFFENDI:

23 Q. Ms. McCulloch, I would like to
24 start first with some background information. I
25 understand that you are originally from Espanola?

1 A. Yes.

2 Q. And that you were educated at
3 Canadore College in North Bay, where you attended
4 the Small Business Management Program?

5 A. That's correct.

6 Q. And I understand that you moved to
7 Elliot Lake in May 1989?

8 A. Yes.

9 Q. And that when you moved here, you
10 started to work for the Scotiabank branch that was
11 located at the Algo Centre Mall?

12 A. That's correct.

13 Q. And I understand that when you
14 started working at BNS, the branch had actually
15 been opened for almost ten years?

16 A. Yes.

17 Q. And you started working as a
18 teller?

19 A. Right.

20 Q. And you then also worked for a
21 period of time as an Accounting Clerk?

22 A. That's correct.

23 Q. And subsequently, you also worked
24 as a Retail Lending Administration Clerk?

25 A. That's correct.

1 Q. And after that, in August 1998,
2 you were promoted to the position of Manager of
3 Customer Service?

4 A. Yes.

5 Q. And you are still holding that
6 position to date?

7 A. Yes, I am.

8 Q. Mr. Commissioner, you'll recall
9 that during the first day or almost the first day
10 of these hearings, we introduced as exhibits a
11 number of overview reports, and one of those
12 overview reports was Exhibit No. 13, and that is
13 the overview report that is entitled "Leakage at
14 the Algo Centre Mall Scotiabank Branch", and Ms.
15 Kuka has just pulled up that document on the
16 screen.

17 Those overview reports were distributed
18 to the participants prior to being entered as
19 exhibits so that the participants had an
20 opportunity to review them and provide comments.

21 Ms. McCulloch, you have a copy of that
22 overview report just at the back of the index of
23 Volume 1. I understand that you have reviewed that
24 overview report; is that correct?

25 A. Yes, I have, yes.

1 Q. And do you agree with the content
2 of this report, ma'am?

3 A. Yes, I do.

4 Q. And in your view, is it accurate?

5 A. Yes, it is.

6 THE COMMISSIONER: Is there anything in
7 there with which you disagree?

8 THE WITNESS: No.

9 THE COMMISSIONER: Thank you.

10 MS. EFFENDI: So, Mr. Commissioner, the
11 overview report is almost 20 pages long, so I won't
12 be able today to cover all the information that is
13 in it, but of course, given the answers of Ms.
14 McCulloch in relation to its accuracy, I would like
15 for the overview report and its content to be
16 entered as evidence and be used for the truth of
17 its contents.

18 Of course, the participants will have
19 the opportunity to cross-examine Ms. McCulloch
20 about it and ask her questions. But today I --

21 THE COMMISSIONER: Sure. In respect of
22 the initial application by Ms. Effendi, anyone have
23 any specific objections?

24 Thank you. Mr. Aubé -- sorry, I
25 thought I saw you raise your hand.

1 Okay, bad lateral vision.

2 BY MS. EFFENDI:

3 Q. So today I'll just go through some
4 of the key events that happened at Scotiabank.

5 A. Okay.

6 Q. Let's start first with just
7 generally the work at Scotiabank. How many
8 employees did the Elliot Lake Branch have?

9 A. Between 10 and 15.

10 Q. And as we just mentioned a few
11 moments ago, we understand that the branch was in
12 the mall from the time the mall opened in 1980; is
13 that your understanding?

14 A. Yes.

15 Q. And I think it would be helpful
16 for the Commissioner if we could pull, Ms. Kuka,
17 Exhibit No. 3003, and that is the floor plan of the
18 mall and you can indicate to us where the branch
19 was located.

20 So you have the floor plan in front of
21 you on the screen, Ms. McCulloch, and I understand
22 that Scotiabank was located at B1, which is
23 basically the square right next on the right side
24 of the Zellers; is that your understanding?

25 A. Yeah.

1 Q. Okay. And next to it actually I
2 think we have Northern Reflections; is that what it
3 was?

4 A. There was a little space in
5 between the two of us.

6 Q. Okay, can we focus, Ms. Kuka, on
7 B1 and B2. Perfect. So B1 was Scotiabank, and
8 then there was a space next to it and then there
9 was Northern Reflections at B3 and B4?

10 A. That's correct.

11 Q. And then E1 was Zellers on the
12 left?

13 A. Yes.

14 Q. Thank you. How would you describe
15 the condition of the branch when you first started
16 working there in 1989? And we have heard evidence,
17 before I get you to answer that question, that 1989
18 was the period when the mall was owned by Algoma
19 Central Properties.

20 So how would you describe the
21 conditions of the branch when you first started
22 working?

23 A. Honestly, I don't remember
24 specifics. I was just new to the job and just did
25 my own thing.

1 Q. Okay. Were you a customer of
2 other stores in the mall?

3 A. Yeah, yeah.

4 Q. And do you remember anything then
5 subsequently? We have heard evidence that in 1999
6 Retirement Living purchased the mall from Algoma
7 Central Properties. Do you recall anything
8 specific in terms of the condition of the branch at
9 that time? And we are just going to talk generally
10 for now, and I'll ask you specific questions after.

11 A. It progressively got worse as
12 time --

13 Q. And what do you mean by "worse"?

14 A. As far as leaking and basically
15 the leaks, the mould.

16 Q. Okay. And what about generally
17 when the ownership changed to Eastwood Mall Inc.?
18 And that was in August 2005.

19 A. It was bad, very bad.

20 Q. So the leaks increased?

21 A. Very much so.

22 Q. And we'll get into more of the
23 specifics of that. So I gather then that you
24 wouldn't be able to tell us whether or not the
25 branch leaked from day one or not?

1 A. No.

2 Q. Okay. So is it fair to say from
3 your answer that you started noticing leaks in the
4 1999 period when Retirement Living owned the place?

5 A. Probably when I got my job as
6 Manager of Customer Service, because my job then
7 entailed more to that, to the condition of the
8 branch.

9 Q. And that was in 1998; is that
10 correct?

11 A. Yes.

12 THE COMMISSIONER: August of '98; is
13 that right?

14 THE WITNESS: Yes, that's correct.

15 THE COMMISSIONER: Okay, thank you.

16 BY MS. EFFENDI:

17 Q. So basically 1998 is when you
18 started noticing the leaks at the branch?

19 A. Yes, yeah.

20 Q. And when you say that it was more
21 part of your job, can you describe to us what you
22 mean by that?

23 A. When I was a teller, I just -- or
24 an administration clerk, you just kind of go to
25 work and do your job. When I became Manager of

1 Customer Service, the appearance of the branch was
2 something that I was -- not that I was in charge
3 of, but I took quite seriously as part of my job
4 the way it looked to the customers, and
5 corresponding with head office regarding the
6 condition of the branch is something that I would
7 do.

8 Q. And in fact, I understand that the
9 tellers would report to you; is that correct?

10 A. Yes, at that time, yes.

11 Q. So if they had any concerns, then
12 they would report those to you?

13 A. Yes.

14 THE COMMISSIONER: Was there a Branch
15 Manager on top?

16 THE WITNESS: Yes, yes, there was.

17 THE COMMISSIONER: That you reported
18 to?

19 THE WITNESS: Yes, there was.

20 THE COMMISSIONER: That Branch Manager
21 was the next up --

22 THE WITNESS: Yes.

23 THE COMMISSIONER: -- the line?

24 THE WITNESS: Yes.

25 THE COMMISSIONER: All right, thank

1 you.

2 BY MS. EFFENDI:

3 Q. And then I gather that the Branch
4 Manager would report to -- was there a district
5 person?

6 A. Yeah, there was a District Vice
7 President.

8 Q. Okay. And then that Vice
9 President would report to head office?

10 A. Yes.

11 Q. Thank you. So when you started
12 noticing those leaks in August 1998, did you ever
13 see -- did the branch ever use buckets or tarps at
14 the time?

15 A. Yes, quite frequently.

16 Q. So that wasn't an uncommon sight?

17 A. No.

18 Q. And were those also used during
19 the ownership of the mall by Eastwood Mall Inc.?

20 A. Yes.

21 Q. Yes, okay. In fact, I believe
22 that we do have a few pictures where those were
23 taken at the branch where we see the use of
24 buckets, and before I show you these pictures, I
25 would like just to give a bit of background,

1 Mr. Commissioner, as to who took those pictures and
2 when.

3 So, Ms. Kuka, if you could pull Exhibit
4 No. 13-197. And I don't think you need to pull the
5 brief in front of you, Ms. McCulloch. You'll see
6 the document, the e-mail appearing here. And if
7 you just scroll down a bit, Ms. Kuka, at the bottom
8 we see that this is an e-mail from Laurie Wiens
9 from the branch at Elliot Lake it appears, and she
10 was the Branch Manager at the time. That is an
11 e-mail from 2010, and she is sending this e-mail to
12 Wendy Ferreira, who I understand was at head
13 office; is that correct?

14 A. Yes, she was in charge of health
15 and safety.

16 Q. Okay, and she I guess was in
17 charge of that branch as well, your specific
18 branch?

19 A. Yes.

20 Q. And in 2010 it appears that Ms.
21 Wiens had taken pictures of the branch and then
22 sent them over to head office?

23 A. Yes.

24 Q. And one of those pictures that I
25 would like to show you now is one of those that she

1 took actually and sent to head office. Ms. Kuka,
2 if we could pull Exhibit No. 5112. So can you
3 describe to us, Ms. McCulloch, where was this
4 picture taken and what we are looking at?

5 A. This is in our stationery room,
6 and on top of the -- where we had put all of our
7 supplies. And at that time, the roof had already
8 been removed because of leaking, so we just had a
9 tarp for a ceiling.

10 Q. And we'll get into more details
11 about that, but I understand that that took place
12 in 2008; is that correct?

13 A. Yes.

14 Q. And then if we go to Exhibit No.
15 5127, Ms. Kuka, that is kind of a different view of
16 the stationery room, I understand; is that correct,
17 Ms. McCulloch?

18 A. Yes.

19 Q. And then again, we see that there
20 is tarps -- not tarps, sorry, but buckets that are
21 in that room to collect water?

22 A. Yes, and totes.

23 Q. And totes?

24 A. We had to use the totes because
25 the buckets weren't big enough.

1 Q. Okay, thank you.

2 Now, can you describe to us generally
3 where the leaks occurred at the branch? And maybe
4 it would assist the Commissioner at this time if we
5 were to pull the floor plan of the branch. If you
6 take your Volume 1 that you have in front of you,
7 and, Ms. Kuka, it will be Exhibit No. 4238.

8 THE COMMISSIONER: It just strikes me
9 as the evidence develops that I ought perhaps to
10 make a statement that I am a customer of the Bank
11 of Nova Scotia. I have been a customer over the
12 last 35 years.

13 In a normal civil or criminal case
14 involving the branch or the bank, obviously that is
15 something -- it just never struck me as being
16 something I ought to divulge, but I do say it for
17 the record that I am a customer of the Bank of Nova
18 Scotia, not this branch obviously, in Ottawa. And
19 I am just putting that on the record so it is
20 clear.

21 Any objections arising out of that, let
22 me know.

23 MR. LONGO: Sir, if you would like, we
24 could ask the bank not to send you the calendars
25 they send every year to their customers, if you

1 would like that stopped.

2 THE COMMISSIONER: I never got one. I
3 don't remember getting one. Maybe I should start
4 getting one.

5 Thank you, I just thought I would put
6 that on the record.

7 BY MS. EFFENDI:

8 Q. Thank you, Mr. Commissioner.

9 So the document we are looking at right
10 now, Ms. McCulloch, I understand is a document that
11 was prepared by Pinchin Environmental, and we'll go
12 into some of the details of what they did for the
13 branch, but I understand that they had been hired
14 as a consultant; is that correct?

15 A. Yes.

16 Q. So this is a floor plan that was
17 prepared in 2008, I understand. It is very small
18 there, Mr. Commissioner, at the bottom right side
19 of the page, but this is basically the floor plan
20 of the branch; is that correct?

21 A. That's correct.

22 Q. Can you describe to the
23 Commissioner what we are looking at here? So let's
24 start maybe with the bottom left side of the floor
25 plan.

1 A. Okay, at the very bottom is where
2 our night deposits and ABMs were, and then --

3 Q. So if I understand correctly, at
4 the bottom left is where basically people would
5 deposit the money, that little kind of round bubble
6 that we see?

7 A. Yes, yeah.

8 Q. And then on the right, is that the
9 entrance?

10 A. That is the vestibule.

11 Q. Okay, the vestibule, perfect.

12 A. The ABM vestibule, yes.

13 Q. And let's keep on going forward.

14 A. And then up from that would be
15 where the tellers were.

16 Q. So that is on the left, the
17 tellers?

18 A. Yes.

19 Q. So where we see, for example, a
20 little triangle and a round circle on the left?

21 A. Yes.

22 Q. Okay, so the tellers would be all
23 there?

24 A. Yes.

25 Q. Okay.

1 A. Now, the door -- I'm not sure if
2 it was in 2008, the door came right across from
3 where you see the little round thing on the bottom,
4 so the door -- because the door had moved. It was
5 at the very front, and then it moved back in
6 further so that the ABM vestibule was separate.

7 Q. Okay, so people could get into the
8 ABM vestibule?

9 A. Yeah, yes. And --

10 Q. And then past the tellers, we see
11 a box there; you see that on the left?

12 A. Yeah, that is where our mid-office
13 was located, and --

14 Q. And then behind that office, we
15 see kind of a rectangular with -- and again, kind
16 of a circle in front of it. What was that?

17 A. The vault.

18 Q. That was the vault, perfect.

19 A. With the Branch Manager's office
20 right beside.

21 Q. On the right?

22 A. Yes.

23 Q. And then next to that we see that
24 there are kind of -- in one there is a square that
25 says "Office 1", and then there appears to be

1 another office in front of it?

2 A. Office 1 was my office. The one
3 across from me was our Financial Advisor's office,
4 and the one beside me was our Personal Banking
5 Officer's office.

6 Q. And then if we keep on moving to
7 the right, we see that there is the lunchroom, but
8 between the lunchroom and those offices you just
9 described there appear to be two other spaces?

10 A. The first one, right at the bottom
11 where the lunchroom is, is the training room.

12 Q. Okay, so the smaller one is the
13 training room?

14 A. Yeah, and then the one behind that
15 is where our stationery was.

16 Q. Okay, perfect. And then you will
17 see that behind your office and the one next to
18 you, there is kind of, you know, little bars. Were
19 those stairs?

20 A. Yes, in the back hallway.

21 Q. Perfect. And then behind the
22 stationery room where right now there seems to be
23 kind of lines there on the plan, what was that?

24 A. That was where we put our coats.

25 Q. Okay, and behind the coat closet,

1 what was that?

2 A. That is -- the little room is the
3 electrical room.

4 Q. Perfect.

5 A. And the room beside that is where
6 our storage of our files was.

7 Q. Perfect, thank you.

8 So now coming back to my question, can
9 you describe to us generally where the leaks would
10 occur at the branch?

11 A. At the entrance by where the
12 tellers were, it leaked there constantly, where the
13 front door was.

14 Q. Yes.

15 A. In the electrical room constantly,
16 in the stationery room and the training room,
17 because after 2008 they became one room.

18 Q. So we'll get to that in details,
19 but you are saying to us that the small square
20 where the training room was and the stationery
21 became one room with no wall in between?

22 A. That's right.

23 Q. Okay.

24 A. Office number 1, the Financial
25 Advisor's office, the Branch Manager's office, and

1 the hallway that went down beside where the PBO
2 office was, that hallway, the coat room, that all
3 leaked in there.

4 Q. It may be easier --

5 A. The lunchroom.

6 Q. I was going to say is it easier
7 for me to ask you where did it not leak than where
8 it leaked?

9 A. The bathroom, basically, and the
10 vault.

11 Q. Okay. Let me ask you this now.
12 When exactly would it leak? And when I say "when",
13 was it that had to occur for a leak to happen? You
14 know, did it have to be a heavy storm outside in
15 order for leaks to occur inside the branch?

16 A. No. No.

17 Q. So then any kind of rain outside
18 would basically create water infiltration in the
19 branch?

20 A. That's correct, or in the warmer
21 days of the winter, the snow would melt on the
22 roof.

23 Q. Okay, so basically even in the
24 winter, there could be leaks that would occur?

25 A. Oh, yes, yeah.

1 Q. We have heard evidence, in fact,
2 from other tenants, the library and Zellers, that
3 on occasion it leaked so heavily inside their
4 premises that it seemed like it was raining
5 indoors. Do you agree with that statement?

6 A. I do, yeah.

7 Q. Is it fair to say, in light of
8 what you just told us, that it did in fact leak all
9 year long?

10 A. Yes.

11 Q. Now, I would like for you to
12 describe for the Commission how the leaks would
13 impact the branch. Did the leaks damage anything
14 inside the branch?

15 A. Lots of stuff, lots of paperwork,
16 stationery items. Ceiling tiles would collapse
17 sometimes on desks, sometimes unfortunately on one
18 of our teller's head. It was just ridiculous.

19 Q. And you indicated to us that
20 sometimes tiles would fall, so I gather that the
21 sight of stained tiles wasn't something that was
22 uncommon?

23 A. Oh, no.

24 Q. And you would have to replace
25 these tiles, I gather?

1 A. Yes.

2 Q. And how often would you have to
3 replace tiles?

4 A. All the time, and it seemed --

5 Q. On a weekly basis?

6 A. Oh, yeah, and it seemed like the
7 same tiles were getting replaced all the time, all
8 the time, all the time. Because if you didn't
9 replace them, they would just get so saturated that
10 they would just fall.

11 Q. And do you recall who would
12 replace these tiles? Is that something that the
13 branch did, or is it something that a third party
14 did?

15 A. Sometimes the mall maintenance
16 staff did it.

17 Q. Okay.

18 A. If the tile had already collapsed,
19 sometimes we would come into work in the morning
20 and a tile would have collapsed overnight, so
21 whoever was in there first would, you know, clean
22 it up. At one point we had replaced every tile in
23 the branch, and it was my ex-husband that did that.

24 Q. And when was that, Ms. McCulloch?

25 A. I can't remember exactly.

1 Q. Okay, and think we'll get --

2 A. It is in here, but --

3 Q. Okay, we'll get to that document
4 in a moment actually. And would you be able to put
5 a number on the amount of tiles, the number of
6 tiles that the branch changed over the years?

7 A. I couldn't even guess. I mean, we
8 had spare tiles in the branch so that when they
9 came to replace them, they had them already there.

10 Q. So would you say that it is more
11 than a hundred?

12 A. Oh, gosh, yes.

13 Q. Okay.

14 A. Yeah.

15 Q. How much time would the staff
16 dedicate, because you did indicate that when you
17 would come in in the morning or when staff would
18 come, they would see the damage or dropped tiles.
19 I mean, how much of the time of the staff would be
20 dedicated to issues related to the leaks you would
21 say?

22 A. On a daily basis?

23 Q. Daily, weekly, whatever, you know,
24 number you feel is appropriate.

25 A. I would say probably I would say

1 on a weekly basis maybe, depending on the weather,
2 of course, but probably a minimum of ten to fifteen
3 percent, but during heavier -- during worse times
4 sometimes, you know, people would be working all
5 day at it.

6 Q. So we are talking basically
7 hours --

8 A. Oh, yes.

9 Q. -- per week?

10 A. Yeah, yeah.

11 Q. You mentioned to us that on
12 occasion the mall maintenance would actually come
13 and replace the tiles for the branch?

14 A. Yes.

15 Q. And can you tell us, do you recall
16 who these individuals were?

17 A. Ray LeBlanc.

18 Q. Okay.

19 A. Ken occasionally would do it when
20 he was here.

21 Q. And that is Mr. Ken Snow?

22 A. Yeah, Ken Snow. Then after Ray
23 left, I don't even remember the guys' names because
24 there seemed to be quite a big turnover of
25 maintenance staff.

1 Q. Okay. And were those -- do you
2 know whether those were the same individuals that
3 did other kind of work around the mall?

4 A. Yes.

5 Q. And did you ever see these
6 individuals doing any kind of work on the roof?

7 A. Yes.

8 Q. So they were the same team --

9 A. Yeah.

10 Q. -- doing that work?

11 A. Yes.

12 Q. Did the branch have any damaged
13 drywall?

14 A. Oh, yes.

15 Q. And I understand, in fact, that
16 they had quite the damage in 2008?

17 A. That's correct.

18 Q. Okay, and we'll get to that in a
19 moment as well. Was there any evidence of rust in
20 the branch?

21 A. Yes.

22 Q. Can you elaborate on that for us?

23 A. In the stationery and training
24 room, and that is my biggest spot that I remember,
25 there was a big pillar that was in there and it

1 rained down the pillar and the water coming down
2 the pillar was rust-coloured, and we had to keep
3 buckets around the bottom of the pillar all the
4 time because it was constantly leaking there.

5 Q. Is there any other kind of damage
6 that we haven't covered, Ms. McCulloch, that you
7 recall because of the leaks?

8 A. I don't -- I think that is it.

9 Q. Okay.

10 A. I think that is it.

11 Q. And did the branch report all of
12 this damage to head office?

13 A. Yes.

14 Q. And was it reported to the mall
15 management?

16 A. Yes.

17 Q. You had indicated to us just a
18 moment ago that at one point there was even a
19 ceiling tile that fell on the head of a teller?

20 A. Yes.

21 Q. Do you recall anyone being injured
22 because of the leaks?

23 A. No, which is quite miraculous
24 actually considering the places where the ceiling
25 tiles did fall, people just didn't happen to be

1 sitting at their desk at that time, which was a
2 good thing.

3 Q. So did any customer ever get
4 injured because of leaks?

5 A. No.

6 Q. Did the employees suffer from any
7 kind of symptoms as a result of the leaks or which
8 appeared to be related to the leaks?

9 A. Allergies, bad allergies,
10 lethargic, headaches. There was -- we constantly
11 got complaints from customers as well as staff of
12 the smell in the branch.

13 Q. What kind of smell was it?

14 A. Luckily for me, I could never
15 smell it. I don't know why. But it was a musty
16 smell.

17 Q. Okay. Did the branch ever
18 experience vibration within, you know, its --

19 A. Yes.

20 Q. -- space when the cars would drive
21 on the deck?

22 A. Yes.

23 Q. And can you describe that to us?

24 A. At the beginning, it was worse in
25 the wintertime when the snowplow would go over.

1 You always knew when there was a plow or something
2 on the roof because the walls of the offices would
3 shake, or if we were closed, the glass wall, the
4 glass door would --but you could see it vibrate.
5 At the end, it didn't matter. It was -- if it was
6 a car on the roof, the walls would shake.

7 Q. And when you say "at the end", I
8 just want to clarify for the Commissioner, you mean
9 basically the last year that the branch was in the
10 mall, which I understand was 2011; is that correct?

11 A. That's correct, yeah.

12 Q. Okay. Did the leaks ever get
13 better or worse? I gather from your answer --

14 A. They got worse.

15 Q. We have heard evidence from
16 witnesses that worked at Woolco and Zellers that
17 the leaks basically at the end just became a way of
18 life?

19 A. Yes.

20 Q. Would you agree with that?

21 A. Yes, very much so.

22 Q. And, Ms. McCulloch, just before we
23 continue, for Madam Reporter you have to wait for
24 me to finish my answer before you answer --

25 A. Sorry.

1 Q. -- or finish my question before
2 you answer, just to make it easy for her. I'm bad
3 at that as well.

4 Were you aware of other areas of the
5 mall that also experienced leaks?

6 A. Like other stores?

7 Q. Other stores, yes.

8 A. Zellers.

9 Q. Okay.

10 A. The library, the dollar store, the
11 food court, Curves. I didn't know that Northern
12 Reflections had leaked, but I found out after that
13 they did.

14 Q. The stores you just mentioned to
15 us, aside from Northern Reflections, is it because
16 you actually saw the leaks in there?

17 A. Yes.

18 Q. In fact, I understand that Ms.
19 Wiens took also pictures of other areas of the
20 mall, and she was a Branch Manager in relation to
21 that e-mail we were just looking at a few moments
22 ago, and that she took pictures of the mall
23 entrance that was in front of the branch. And
24 maybe we can take a look at that and you can
25 describe to us where that was.

1 If we can go to Exhibit No. 4229, Ms.
2 Kuka. And Ms. Wiens in her e-mail described that
3 photo as "near mall entrance closest to bank". So
4 where would that have been in relation to the bank?

5 A. The mall entrance was right across
6 from the bank.

7 Q. Yes.

8 A. There were doors that led out on
9 to the -- it is on a sidewalk, like a breezeway to
10 come up, and there were a set of double doors
11 there.

12 Q. So that would go basically
13 outside?

14 A. Yes.

15 Q. Okay. And I gather then from this
16 picture that there were also stained tiles and
17 leaks in that area?

18 A. Yes.

19 Q. And you have indicated to us, I
20 believe, that you also noticed leaks in the food
21 court; is that correct?

22 A. That's correct.

23 Q. And I believe that Ms. Wiens also
24 took pictures of that area. If we could pull, Ms.
25 Kuka, Exhibit No. 4233, can you describe to us

1 where that would have been, Ms. McCulloch?

2 A. I'm -- I believe it is beside the
3 escalator to go up.

4 Q. Now, did you know what was causing
5 the leaks?

6 A. The roof.

7 Q. And had you ever had this kind of
8 problem at other locations? And when I say "you",
9 I mean Scotiabank. Were you aware of this kind of
10 leaking problem at other branches?

11 A. No.

12 Q. Did you park on the roof?

13 A. At the beginning when I first
14 started working there, I did, yes. In 1998 I quit.

15 Q. Why is that?

16 A. Because I was more aware of the
17 problem of the leaking roof because of my job, so I
18 parked at the end of the ramp.

19 Q. Okay. I understand that
20 Scotiabank and the branch at Elliot Lake didn't
21 have a Health and Safety Committee; is that
22 correct?

23 A. That's correct.

24 Q. And is that because there wasn't
25 the sufficient number of employees to require such

1 a committee?

2 A. That's right.

3 Q. But I also understand, though,
4 that there were monthly inspections that were
5 conducted by an employee of the branch?

6 A. Yes.

7 Q. And we have seen -- Scotiabank has
8 produced to us quite a number of these Inspection
9 Reports, and I don't intend to go through all of
10 them. We have quite a lot of them here, spanning
11 from 2009 to 2011. But I have taken a look at
12 them, and is it fair to say, Ms. McCulloch, that
13 almost all of these monthly inspections reported
14 leaks at the branch?

15 A. Yes.

16 Q. And I noted that almost all of
17 them noted as well that they were waiting, that the
18 employees were waiting for the repairs to be done
19 on the roof?

20 A. That's correct.

21 Q. And maybe we'll take a look at one
22 of them, just so that the Commissioner can see one
23 of these Inspection Reports. Ms. Kuka, if we could
24 pull Exhibit No. 13-1, and Ms. McCulloch, that will
25 be in your Volume 1, tab 2. And more specifically,

1 Ms. Kuka, I will be looking at the page that ends
2 with 101. So, Ms. McCulloch, you'll see at the
3 bottom right there, there is a page number.

4 A. Uhm-hmm.

5 Q. And it is 101 that I am looking
6 at. And I believe that this is kind of the
7 beginning of one of those Inspection Reports, and
8 if you go, Ms. McCulloch, to the page that ends
9 with 105, I believe that is the last page of that
10 Inspection Report, and it notes that it was dated
11 and prepared on November 29th, 2010. Do you agree
12 with that?

13 A. Yes.

14 Q. So we see that this is the last
15 page of the report. So then if we go now to the
16 page that ends with 102, I see that there is a note
17 there at the top in the middle of the page that
18 says:

19 "Floors wet when branch leaks -
20 mopped immediately and area marked."

21 So I gather that, you know, those were
22 the steps taken by the employees when leaks would
23 happen?

24 A. That's correct.

25 Q. And then a sign would be put up so

1 that the customers wouldn't slip in that area?

2 A. Yeah, we had little cones.

3 Q. Okay. And then if we go to the
4 page that ends with 104, we see that there is a
5 note there of stained tiles at the main entrance,
6 which is what you were describing to us?

7 A. Yes.

8 Q. And we also see that even in front
9 of the vault there was water coming down?

10 A. Yes.

11 Q. I hope not in the vault on the
12 money, though.

13 A. No, no, no.

14 Q. Okay. And if you go, actually,
15 there is another report; if you keep on going, Ms.
16 McCulloch, to page 112, I understand that that's a
17 report that is from 2011, in fact; in fact, it is
18 January 2011. And if we keep on going to the page
19 that ends with 115, we see again the same note
20 about stains in front of the main entrance, the
21 vault and the manager's office this time?

22 A. That's correct.

23 Q. So again, common notes that would
24 be -- that would appear in these Inspection
25 Reports; is that correct?

1 A. That's correct.

2 Q. Was a complaint ever made by an
3 employee of the branch about health and safety
4 conditions?

5 A. To who?

6 Q. To the Ministry of Labour, the
7 Federal Ministry of Labour?

8 A. No.

9 Q. And I understand that of course
10 the branch being governed by federal statute, the
11 provincial MOL was not involved in your activities;
12 is that correct?

13 A. I believe so, yes.

14 Q. And do you ever recall the Federal
15 Ministry of Labour coming in for a visit to conduct
16 an inspection on your premises?

17 A. No.

18 Q. Do you know whether or not the
19 head office ever reported to the Ministry of Labour
20 an unsafe environment at the branch?

21 A. I don't know if they did.

22 Q. Now, I would like to discuss with
23 you kind of we'll go year by year and kind of focus
24 on some of the key elements that happened at the
25 branch.

1 The first few documents that we have
2 relate to 2003, and if you could take Volume 1, tab
3 9, and Ms. Kuka, that is Exhibit No. 13-4. And if
4 we go to the bottom of that page, we see that there
5 was an e-mail sent on June 21st, 2005, by Robert
6 Jurmalietis to Kathleen McLoughlin at Scotiabank.

7 A. Yes.

8 Q. And I gather that Mr. Jurmalietis
9 was the Branch Manager at the time?

10 A. Yes, he was.

11 Q. Okay. And if we go to the next
12 page, he is sending her an e-mail kind of
13 describing the situation at the branch. The
14 paragraph that I'm particularly interested in is
15 the one that starts with "In 2003 [...]"

16 He says to Ms. McLoughlin:

17 "In 2003, we replaced all the
18 ceiling tile in the branch, and in
19 the process discovered considerable
20 mould and mildew resident in the
21 ceiling. With the recurring
22 dampness, we suspect the mould has
23 returned. The smell is quite
24 noticeable, to the point clients
25 comment on it as they come in to the

1 branch."

2 So I gather this is what you were
3 describing to us a few moments ago that in 2003
4 your ex-husband actually came into the branch and
5 replaced all the ceiling tiles?

6 A. That's correct, yes.

7 Q. And that was done in order to --
8 was it as a result of all the stains and the
9 mildew?

10 A. Yes.

11 Q. Okay. Now, if we go to the next
12 page of this document, the one that ends with 3, at
13 the bottom of that page, Ms. Kuka. Now we are
14 jumping ahead to 2005 and at the bottom of this
15 page we see that there is an e-mail, again, it is
16 from the Branch Manager to this time Ms. Lynn Argo
17 who appears to be at head office; is that correct?

18 A. That's correct.

19 Q. And he is describing to her the
20 situation, and that is February 4, 2005, and he
21 says first of all:

22 "Hi Lyn:

23 You will have just received a cc
24 copy of an e-mail I sent to our Mall
25 Manager re water damaged ceiling

1 tile."

2 And that e-mail, in fact, if we can
3 jump to the next page, you'll see is right after.
4 You see that here he says:

5 "Hello Richard".

6 Am I right that that would have been
7 Mr. Richard Quinn?

8 A. Yes.

9 Q. And:

10 "Further to our conversation in
11 the branch last week, would you
12 kindly have your maint folk drop
13 into the branch to replace the water
14 damaged ceiling tile in my office,
15 as well as in the Personal Bankers
16 office area.

17 In addition, we have developed a
18 substantial leak in the ABM area, so
19 a tile or 2 will have to be replaced
20 there as well."

21 So I gather then that the water problem
22 kept on going after 2003, despite having replaced
23 all the ceiling tiles, and they were happening at
24 various areas of the branch; is that correct?

25 A. Yes, that's correct.

1 Q. Now, if we go back to the previous
2 page to that first e-mail of the Branch Manager at
3 the bottom, he explains to Ms. Argo that:

4 "This has been an on going
5 problem" -- "this" being the water
6 damaged ceiling tile -- "and we have
7 had substantial correspondence with
8 your predecessor, and our Real
9 Estate Dept. Leaking ceilings have
10 been a problem here for years, and
11 we are fighting to get things fixed
12 properly."

13 And then he goes on to say that:

14 "Real Estate is aware of the
15 issue", on the next page, "and I
16 imagine all that has to be done from
17 your end is to forward my 1st e-mail
18 to them."

19 So I gather from Mr. -- from the Branch
20 Manager, Mr. Jurmalietis, that he was having
21 difficulty getting mall management to assist him in
22 repairing and kind of dealing with the damage from
23 the water leaks; is that fair?

24 A. Yes.

25 Q. Now, if we go back to the second

1 page of this document, Ms. Kuka, this is the e-mail
2 that we were looking at earlier, Ms. McCulloch,
3 that's dated June 21st, and so that is a few months
4 later. And on the second page, after that
5 paragraph that we read about 2003, Mr. Jurmalietis
6 says:

7 "I am in the process of preparing
8 a lease renewal document for the
9 real estate dept, and as part of
10 that process, I would like to have
11 the ceiling inspected, and have the
12 air quality tested to determine if
13 the mould has indeed returned, and
14 if so, does it present a health risk
15 to the staff."

16 So I gather then that from the records
17 that we have in our possession, that this would
18 have been kind of the first mould testing that
19 would have been requested by the Branch Manager; is
20 that your recollection, Ms. McCulloch?

21 A. Yes, it is.

22 Q. And if we go to the actual report
23 from the consultant, that is found at tab 18 of the
24 brief in front of you, and that is Exhibit No. 750,
25 and I understand that in fact the visits from

1 Pinchin became kind of a regular occurrence at the
2 branch; is that correct?

3 A. Yes.

4 Q. So this is a report that is dated
5 July 28th, 2005, but if we go to the page that ends
6 with 03 in the report, we see here at the top of
7 the page that Pinchin came in to perform an
8 assessment on July 5th, 2005; is that correct?

9 A. Yes, it is.

10 Q. Okay. And I understand that they
11 during their visit interviewed you as part of their
12 assessment; is that correct?

13 A. Yes.

14 Q. And we see the comments that you
15 provided to them at the page that ends with 05. So
16 it is noted here that you would have told them
17 that:

18 "There have been numerous roof
19 leaks in the past years.

20 The landlord changes the ceiling
21 tiles whenever a noticeable stain or
22 damage is present.

23 The carpets are cleaned every
24 night and steam cleaned two times a
25 year."

1 Does that reflect accurately what you
2 remember you told them?

3 A. Yes.

4 Q. Did they meet with other employees
5 during their visits?

6 A. I don't think so, but anybody
7 could go up and talk to them.

8 Q. Okay. I gather from what you have
9 told us earlier that it was your responsibility to
10 provide them with the information in terms of what
11 was going on at the branch; is that correct?

12 A. Yes, it is.

13 Q. Do you recall how long their
14 testing would have taken?

15 A. A few hours.

16 Q. And we see the result of their
17 assessment at the page that ends with 07. They
18 indicate there you'll see in the fourth paragraph
19 under "Discussion of Assessment" that:

20 "Mould growth was identified in
21 the janitor's closet on the drywall
22 where the sink is attached."

23 And then they go on to say in the
24 following paragraph that:

25 "Ceiling tiles with minor water

1 stains were identified in the
2 branch. Staff indicated that
3 ceiling tile water damage is
4 frequent, which indicates that there
5 may be water infiltration from the
6 parking garage above the branch. No
7 musty odours were detected by
8 Pinchin and no mould growth was
9 identified above the ceiling
10 [tile]."

11 And then if we go to the next page, 8,
12 I understand that on July 19th, 2005, the branch
13 took steps to remediate this problem by removing
14 the mould that was found in the janitor's closet;
15 is that correct?

16 A. Yes, it is.

17 Q. And from all the documents that we
18 have, is it fair to say that every time that
19 Scotiabank discovered a mould problem, it would
20 take immediate steps to deal with the situation?

21 A. Yes.

22 Q. And why is that?

23 A. We wanted to make sure that our --
24 the health of our customers and our staff was all
25 right and we wanted to have a branch that looked

1 half-decent to our customers.

2 Q. Okay, thank you. This report here
3 is in July 2005. Do you know whether or not
4 Retirement Living, who still owned the mall at the
5 time, was aware of these tests and the results?

6 A. I am not sure if they were aware.

7 Q. Okay. Do you recall Mr. Richard
8 Quinn ever coming into the branch?

9 A. I don't remember him coming in.

10 Q. And what about Mr. Richard
11 Kennealy?

12 A. No.

13 Q. Ms. Rhona Guertin? No?

14 A. No.

15 Q. Now we are moving forward in time
16 to the 2005 period, and more specifically to August
17 2005. We have heard evidence that that's when
18 Eastwood Mall Inc. bought the mall, and Mr. Bob
19 Nazarian is the principal of that company.

20 And when did you learn of the sale of
21 the mall?

22 A. I'm not sure. I don't remember
23 exactly when we learned of it.

24 Q. And did you meet Mr. Nazarian when
25 he first bought the mall?

1 A. No. I do remember him walking
2 around before he bought the mall, but I don't
3 remember him coming into the branch at all to
4 introduce himself.

5 Q. Okay. And so the time you saw him
6 walking around, I guess it was visiting, did he
7 visit Scotiabank at that time?

8 A. I'm not sure if he did or not. I
9 don't -- I'm not a hundred percent sure.

10 Q. Okay, no worries. Now, generally
11 speaking, I understood from your previous answer
12 that you noticed when the change in ownership
13 happened that things really got bad?

14 A. Yes.

15 Q. Now, if we can go to tab 19 of
16 your Volume 1, and that is Exhibit No. 13-11. I
17 understand that in 2006, in fact, the end of 2006
18 was really the expiration of the lease that the
19 branch had had with the Algo Centre Mall for
20 awhile; is that correct?

21 A. Yes.

22 Q. And that the branch then went
23 ahead with the renewal of this lease with Eastwood
24 Mall Inc.?

25 A. Yes.

1 Q. And what we have in front of us is
2 a letter from head office, more specifically,
3 Mr. Harry Manttari, to Eastwood Mall Inc. with
4 respect to the renewal of this lease, and this
5 letter is dated June 1st, 2006. And I understand
6 that -- we will see at the bottom of this first
7 page that the term of the renewal was for five
8 years; is that correct?

9 A. Yes, it is.

10 Q. And we see in the first paragraph
11 of this letter that Mr. Manttari says to Mr.
12 Nazarian:

13 "Further to our recent meeting in
14 which we discussed your recent
15 acquisition of the Algo Centre Mall,
16 the current tenant mix and how you
17 will be making improvements to the
18 parking garage to stop the water
19 penetration into our Premises, as
20 well as the potential relocation of
21 various tenants within the mall."

22 Were you at this meeting, Ms.
23 McCulloch?

24 A. No, I was not.

25 Q. Now, if we go to the second page,

1 I understand that these were basically the terms of
2 the new lease. We looked at the fact that there
3 was five years and there was an increase in rent,
4 but then there was also a specific clause, and
5 let's go to the bottom of that page, Ms. Kuka, a
6 specific clause that was negotiated between
7 Scotiabank and Eastwood Mall with respect to the
8 leaks. Do you recall that, Ms. McCulloch, the
9 "Water Penetration" clause?

10 A. Yes.

11 Q. And if we take a look at this
12 clause, it says:

13 "The Landlord covenants to repair
14 or modify at its cost and expense
15 the parking garage's paving and
16 expansion joints above the Tenant's
17 Premises to prevent moisture from
18 entering the Tenant's Premises. The
19 Landlord covenants and agrees to pay
20 for all reasonable costs resulting
21 from moisture penetrating into the
22 Premises, such payment made within
23 fifteen days of an invoice being
24 supplied to the Landlord. Should
25 the Landlord fail to pay for an

1 invoice supplied to them within the
2 specified time period, the Tenant
3 can at its option deduct the invoice
4 amount from its rent coming due
5 under the lease."

6 That is what the next page says.

7 So basically, this is a provision that
8 head office had negotiated in light of the problems
9 that occurred in the premises over the years?

10 A. That's correct.

11 Q. And the bottom line was the
12 landlord would be responsible for all the damage
13 because of the water penetration?

14 A. That's correct.

15 Q. Now, if we jump ahead in time, and
16 we are looking at 2006, had the leaks stopped in
17 2006?

18 A. No.

19 Q. Let's now jump a couple of years
20 ahead to 2008, and I understand that 2008 was a
21 particularly bad year for the branch?

22 A. It was.

23 Q. If you go to tab 59, and that is
24 Exhibit No. 1575, and that is a document that I
25 will refer to quite a few times today. It appears

1 to be a summary of the various leaking incidents
2 that occurred at the branch; is that correct?

3 A. Yes, it is.

4 Q. Okay. And we see that at the top
5 where it says "First Incident", we have the date
6 and a description of the incident. The first one
7 there is January 29, 2008, and it says that:

8 "Servicemaster was contacted by
9 the branch. The cause of the leaks
10 was a failure in the waterproofing
11 system of the indoor parking
12 garage."

13 So that is basically we are in the
14 winter here of 2008?

15 A. Yes.

16 Q. And why would they have been
17 called?

18 A. Because the branch was very wet,
19 and Servicemaster has big driers that they can
20 bring in to try to dry up the area.

21 Q. Okay. And we'll leave this
22 document for a bit and I'll come back to it in a
23 moment, but if we can go now to -- so that is
24 January 2008 you get help from Servicemaster.

25 Now, if we go to tab 27, the page that

1 ends with 003, and that is Exhibit No. 13-90. I
2 see there at the bottom of the page that it appears
3 to be an e-mail that is sent to Ms. Ferreira, who
4 is the head of the health and safety, you told us?

5 A. Yes.

6 Q. And it says -- it describes the
7 transit. There is a date that is reported of March
8 5th, 2008. It indicates that "IAQ Results
9 Obtained", "To be arranged", so I understand that
10 is an indoor air quality?

11 A. Yes.

12 Q. And then it says "Staff
13 concerns/symptoms", "yes", and then the summary at
14 the bottom says:

15 "Branch has experienced ongoing
16 water leaks over the past few years.
17 Service Master has been commissioned
18 to perform cleanup/drying procedures
19 however staff and customers have
20 noted a musty odour in the premises.
21 Landlord has" -- on the next page --
22 "inspected the roof top and has done
23 a temporary repair pending permanent
24 repairs in Spring.

25 The branch advised that visible

1 mould was found to be present on
2 carpet and boxes [...]"

3 And then in the next paragraph it also
4 indicates that the staff have been experiencing
5 health symptoms such as headaches and lethargy as a
6 result of the suspected mould.

7 Does that reflect what you remember the
8 situation to be at that time?

9 A. Yes.

10 Q. And in fact, you had called in
11 March 2008 Servicemaster a second time; is that
12 correct?

13 A. Yes, it is.

14 Q. I gather that this would have been
15 prompted, as we see here, by the employees raising
16 these concerns?

17 A. Yes.

18 Q. So Pinchin was called again for a
19 second time in March 2008?

20 A. Yes.

21 Q. And let's take a look at their
22 report, and that is at tab 26 and that is Exhibit
23 No. 13-12. We see that following this complaint by
24 staff, a few days later, on March 13, 2008, there
25 was an assessment conducted by Pinchin?

1 A. Yes.

2 Q. And again, as part of your role,
3 you met with Pinchin and provided them with your
4 observations of what was going on at the branch at
5 the time?

6 A. That's correct.

7 Q. And we see again, and I'm not
8 going to go through all of it, but we see that you
9 reported to them that there were roof leaks, that
10 you know, the landlord had installed a gutter
11 system to redirect water infiltration from the
12 roof. And let me stop there for a second. We have
13 heard evidence of the eavestrough system; is that
14 what is described here?

15 A. Yes, it is.

16 Q. And so I gather that the branch
17 also had these installed in its premises?

18 A. Yes.

19 Q. And did they work to kind of avoid
20 and, you know, ensure that there was no water
21 penetration in the branch?

22 A. No.

23 Q. So they really didn't help at all?

24 A. No, they did not.

25 Q. Then you also go on to -- the

1 report describes that you have indicated to the
2 consultant that there is tiles affected, a musty
3 odour, headaches, mould growth, the carpet has
4 leaks on it and that there has been no major
5 renovation.

6 Again, does that reflect what you
7 recall the situation to be?

8 A. Yes, it does.

9 Q. And at the bottom of the page we
10 also see that they had met at the time with
11 Mr. Brian England, who was the mall manager at the
12 time there in March 2008? We see that at the
13 bottom; do you see that?

14 A. Yes.

15 Q. And were you aware that they had
16 met with Mr. England?

17 A. I was not. I know he was supposed
18 to meet with them.

19 Q. Okay.

20 A. He was supposed to meet with them
21 at the branch, but he didn't show up at the branch.

22 Q. Okay. So you wouldn't be able to
23 tell us what was his reaction to this testing that
24 was being conducted?

25 A. No, I'm not sure what it was.

1 Q. Okay. Now, if we take a look at
2 their findings, that is on the next page, we see
3 that they indicate on their report:

4 "Suspect mould growth was
5 identified at the following
6 locations:

7 The full length of the south wall
8 of the branch from floor level to
9 six inches in height."

10 Am I right that this is basically the
11 tellers' area?

12 A. Yes.

13 Q. Okay, and then:

14 "Drywall on the south wall was wet
15 from floor level to two feet in
16 height. Drywall on the south wall
17 in the southwest corner was wet to
18 four feet in height."

19 And then they go on to say that:

20 "On the underside of carpet tile
21 and on the concrete floor beneath
22 the carpet [...]"

23 That they also found some mould there.

24 And then on number 3, they say that
25 they found some on the north wall of the corridor

1 and south and west wall, and then there is also
2 mouldy walls at that area. They go on to describe
3 that there is some suspect mould growth in the
4 electrical room and the coat closet.

5 So I gather then in 2005, the first
6 time they had come in was in -- sorry, in 2008 the
7 situation had become much more worse than what was
8 occurring in 2005?

9 A. That's correct.

10 Q. And if we take a look at page 5 of
11 this document, and Ms. Kuka, this is the floor
12 plan. This is the same one we were looking at
13 earlier when you were describing to us the floor
14 plan, but what I would like to draw your attention
15 here to is those areas, and we see from the legend
16 that the mould growth is identified by those bars;
17 do you see that?

18 A. Yes.

19 Q. So all the areas that have those
20 bars is basically areas I understand that Pinchin
21 had found mould?

22 A. That's correct.

23 Q. And what was your reaction of the
24 staff to that?

25 A. We were quite shocked at the

1 extent. I mean, we could -- you could smell it,
2 but you didn't really know and you couldn't -- it
3 wasn't very visible. Some spots were, but other
4 spots weren't as visible.

5 Q. And if we go back two pages ahead,
6 Ms. Kuka, we see that there are recommendations at
7 the bottom of the page here from Pinchin -- no, the
8 previous page. And they indicate that based on
9 their findings, they are recommending as number one
10 that:

11 "1. Ensure that roof leaks are
12 repaired by landlord.

13 2. Replace water stained [...]
14 tiles [...]

15 3. Install new ceiling tiles
16 [...]"

17 And then they also describe at number
18 4, and I won't go into all that detail, but
19 basically a procedure to follow to remove mouldy
20 material in the branch?

21 A. That's correct.

22 Q. Now, I understand that the
23 remediation steps were not taken by the branch
24 immediately following those findings and those
25 recommendations; is that correct?

1 A. That's correct.

2 Q. And if we go to tab 29 of your
3 brief, and that is Exhibit No. 13-91, to the page
4 that ends with 21, and you start at the bottom of
5 that page -- actually, if we start with page 22,
6 sorry, Ms. Kuka, we see here that this is an e-mail
7 between Pinchin Environmental and the head office
8 with respect to taking steps to do the remediation
9 work, and Valerie Johnston from Pinchin asked
10 whether or not Scotiabank wants to go ahead with
11 that step.

12 And then the response that is provided
13 to her on April 9 at the top there, we see it says:

14 "Since the remediation work is
15 quite big and without knowing for
16 sure when the roof will be replaced,
17 as per the agreement between
18 operation and branch we will do the
19 work once the roof is fixed."

20 So I gather that the bank wanted to
21 wait for the roof to be fixed before doing any of
22 the work, and why is that?

23 A. Because if the roof wasn't fixed,
24 it is just going to keep happening. The same area
25 is going to get wet, and so you might as well wait

1 until the roof is fixed, because at that time we
2 were told the roof was going to be fixed.

3 Q. And that when you say you were
4 told, by the mall owner?

5 A. Yes.

6 Q. So at that time, and you know, we
7 are in April 2008, I gather the branch still had
8 hope that the roof would get fixed and those leaks
9 would disappear?

10 A. Yes, we did.

11 Q. Now, if we take a look at the same
12 document that you are at but the page that ends
13 with number 2, this is an e-mail from Ms. Ferreira
14 again to head office and this time we are looking
15 at July 2008, so a few months later. And I
16 understand that the remediation work between April
17 and July hadn't been done yet?

18 A. No, it hadn't.

19 Q. Okay. And then in this e-mail in
20 July Ms. Ferreira appears to be raising some
21 concerns about the situation deteriorating; am I
22 correct?

23 A. Yes.

24 Q. And she is then requesting that
25 Pinchin returns to the branch to do additional

1 mould and indoor air quality testing?

2 A. That's correct.

3 Q. So I gather, though, that despite
4 those promises that had been made that the roof
5 would be fixed, now you are in July of 2008 and it
6 appears that nothing had been done to try to
7 alleviate the water penetration?

8 A. That's correct.

9 Q. Before I go into -- I understand
10 that following this request, Pinchin indeed came
11 again to the branch?

12 A. Yes, they did.

13 Q. Before jumping into that, I
14 understand we were looking at earlier about how
15 Mr. England had been aware it appears from the
16 situation. Did the branch have any other
17 interaction with any other managers of the mall
18 during Eastwood Mall's ownership? Do you recall
19 any other managers you would have had interaction
20 with?

21 A. Mr. Turner.

22 Q. Okay, and do you recall whether
23 Mr. Turner was receptive to the concerns of the
24 branch?

25 A. I don't remember if he was.

1 Q. Okay.

2 A. Most --

3 Q. And -- sorry, go ahead.

4 A. Most of the time that I remember
5 was with Henri.

6 Q. And that is Ms. Laroue?

7 A. Yes, Henri Laroue.

8 Q. And can you describe to us what
9 you remember from that period of time and your
10 interaction with her?

11 A. Well, any time we had a problem,
12 we would have to e-mail her or call her and tell
13 her that we had an issue, and normally, someone
14 would be sent up and the branch would be looked at.
15 She seemed to be receptive.

16 Q. Okay. And we also heard evidence
17 that subsequently I guess she was replaced by Ms.
18 Bear, but I gather at that time Scotiabank had
19 left; is that correct? Or was there a period of
20 time where it overlapped? I think there might have
21 been.

22 A. Well, yeah, I think Ms. Bear was
23 there in the summer of 2011.

24 Q. That's right. That's right.

25 A. So just before we left.

1 Q. And do you recall any interaction
2 with Ms. Bear?

3 A. I know she came into the branch a
4 couple of times and talked to the manager Laurie,
5 but I don't --

6 Q. Okay. So let's take a look then
7 at the July 2008 assessment of Pinchin. They had
8 become your best friends here it looks like.

9 A. Uhm-hmm.

10 Q. If you go to tab 32, and that is
11 Exhibit No. 13-93. So the e-mail we were looking
12 at from Ms. Ferreira was on July 16, so it looks
13 like on July 21st, a few days later, they came for
14 their assessment at the branch?

15 A. Yes, they did.

16 Q. And they really were conducting
17 kind of a follow-up to what they had done previous,
18 a few months prior?

19 A. That's correct.

20 Q. And again, you had reported to
21 them it appears the same kind of observation, i.e.,
22 there is leaks, there is, you know, a musty odour,
23 and that there is also leaks that affected the
24 storage room, the lunchroom and the stationery
25 room?

1 A. That's correct.

2 Q. Now, if we take a look at their
3 findings, and that is what we see here in this
4 picture -- sorry, on the first page at the bottom,
5 we see again that they indicate the presence of
6 suspect mould growth in various areas, and they
7 identify four areas for us here. It looks like the
8 first one is in relation to the storage room, and
9 then the second one speaks of the Branch Manager's
10 office?

11 A. Yes.

12 Q. And then the third one also goes
13 into more detail about the Branch Manager's office,
14 and then finally number 4 speaks of a wall that was
15 behind a filing cabinet. And there is reference to
16 a number of photos that were taken by them, and I
17 would just like to take maybe some time to take a
18 look at these pictures.

19 And, Ms. Kuka, these pictures will
20 actually be found in a different document because
21 we have them in colour in a different document. So
22 if you could take a look at Exhibit No. 4239, and
23 we'll come back to this one in a moment, Ms.
24 McCulloch, if you want to take a look at those,
25 you will find those at tab 36 and it will be at the

1 page that ends with 4. So I understand that the
2 photo number 1 was a photo of mould in the storage
3 room; is that correct?

4 A. Yes.

5 Q. And then that the photo number 2
6 was again pictures of additional mould growth in
7 that same room?

8 A. Yes.

9 Q. And then finally, at 3 and 4,
10 which is on the next page, we see kind of bubbling
11 drywall at number 3 which is identified as a filing
12 cabinet in office 3. Which office -- whose office
13 was that; do you recall?

14 A. I believe it was the Financial
15 Advisor's office.

16 Q. Okay. And then the page at the
17 bottom, we see that there is quite a lot of
18 bubbling at the top there, and that would have been
19 it is identified as the stationery room; correct?

20 A. Yes, that's correct.

21 Q. Now, Ms. Kuka, if we can go back
22 to Exhibit No. 13-93, and Ms. McCulloch, that is
23 tab 32, and to the floor plan. So that is the last
24 page of the document.

25 So it is the same floor plan we were

1 looking at earlier. This time, however, in
2 addition to the mould growth, Pinchin has
3 identified on the chart water damage, and it
4 appears here that there was quite a lot more mould
5 and water damage that was found from the previous
6 plan we were looking at?

7 A. That's correct.

8 Q. What was the reaction of, again,
9 the branch to this?

10 A. At this point we were getting a
11 little annoyed.

12 Q. Were you worried about the health
13 concerns?

14 A. Yes.

15 Q. And I see here that it appeared
16 that your training room was basically surrounded by
17 mould at the time?

18 A. Yes, it was.

19 Q. And we see that the wall that was
20 being shared between the training room and the
21 stationery was also another area identified as
22 having water damage?

23 A. Yes, it was.

24 Q. And then we also see that there
25 was the closet that had mould in it, the electrical

1 room and your office?

2 A. Yes.

3 Q. And then office number 3, the
4 Financial Advisor's office?

5 A. That's correct.

6 Q. And then there was also more mould
7 that was found in the Branch Manager's office,
8 which is office 4?

9 A. That's correct.

10 Q. And then the teller area remained
11 as containing mould?

12 A. That's right.

13 Q. Now, if we go to page 2 of the
14 report, Ms. McCulloch, I see that it appeared that
15 the recommendations of Pinchin were similar to the
16 recommendations they had made a few months ago,
17 which was you need to have the roof leaks repaired;
18 you need to replace the tiles; and you need to
19 really follow with remediation steps to remove all
20 the mouldy material?

21 A. That's correct.

22 Q. And this, just to refresh our
23 memory, was done on July 21st, 2008.

24 Now, if you go to tab 30 and the second
25 page of that tab, Ms. Kuka, that is Exhibit No.

1 13-14.

2 MS. KUKA: Is that the second page of
3 that?

4 BY MS. EFFENDI:

5 Q. Yes, thank you. We see here that
6 we are looking at a fax that is sent from Irene
7 Nazarian to Andrew Watt, dated July 21st, 2008, and
8 I don't imagine that you would see that at the
9 time; is that correct?

10 A. Yes, I didn't see it.

11 Q. Okay, but it appears that Ms.
12 Nazarian is telling Mr. Watt, who I understand was
13 at the head office of BNS, she says:

14 "This is to confirm the receipt of
15 your fax dated July 17, 2008. We
16 regret the inconvenience caused by
17 the leaks from the roof. For your
18 information our crew is presently
19 working very hard on this matter to
20 ensure a permanent solution. We
21 greatly appreciate your patience.
22 Regarding the Pinchin Environmental
23 invoice, in return we need their
24 report and the result of their
25 tests."

1 So let's talk about the summer of 2008,
2 that period of time of time in July. Do you recall
3 seeing workers on the roof?

4 A. Yes.

5 Q. Can you describe to us what you
6 saw?

7 A. They were maintenance, it was
8 basically maintenance staff, I believe, and they
9 were doing what they always did, which was taking
10 the caulking out and repairing the -- replacing the
11 caulking in the joints.

12 Q. And do you recall whether or not
13 that permanent solution quote/unquote referred to
14 by Ms. Nazarian resulted in a stop to the leaks in
15 the branch?

16 A. It did not.

17 Q. Do you know what Ms. Nazarian's
18 role was as part of Eastwood Mall?

19 A. No, I do not.

20 Q. We see here that she has made the
21 request for a copy of this report. I understand
22 that if you go to tab 34, Ms. Kuka, Exhibit No.
23 13-95, we see at the top here that a few days later
24 Mr. Watt from head office provided her with a copy
25 of the report; do you see that?

1 A. Yes.

2 Q. I gather that BNS attempted to
3 keep the landlord informed of all the steps they
4 were taking?

5 A. Yes.

6 Q. And the results they were getting
7 from the consultants?

8 A. Yes.

9 Q. So it is fair to say that at least
10 Ms. Nazarian would have been aware of the results
11 and the findings of Pinchin, which was that there
12 was quite a lot of mould in the branch?

13 A. Yes.

14 Q. And I would like now to take you
15 just to tab 36, and that is Exhibit No. 4239. This
16 you will see is entitled a "Revised" report from
17 Pinchin and it is in relation to the same situation
18 we just looked at of July 21st, 2008. And I did
19 the comparison between the two reports, and it
20 appears that they are identical except for if we go
21 to the second page, in the paragraph just preceding
22 the enumeration, there is like "Based on these
23 findings [...]" and then the paragraph above it
24 starts with "Air samples [...]"; do you see that?

25 A. Yes.

1 Q. I noted that what they had changed
2 in their report is actually the last sentence.
3 They have added in their revised report that the
4 mould growth -- well, let's read the last sentence:

5 "The elevated levels are likely
6 due to the mould growth previously
7 identified in the teller area and
8 indicate that the air quality in the
9 teller area is being negatively
10 impacted by mould growth."

11 And that last part of that sentence is
12 what they appear to have included in this.

13 So I gather then that the musty smell
14 and the symptoms that were being experienced by the
15 tellers and others were in relation to the air
16 quality that had been affected by all the leaks?

17 A. Yes.

18 Q. So this was confirming what the
19 staff suspected?

20 A. Yes.

21 Q. I understand that, again, if we go
22 back to that famous table at tab 59, and that is
23 Exhibit No. 1575, that if we take a look at the
24 second incident, you see that it says July 29,
25 2008; do you see that?

1 A. Yes.

2 Q. I understand that again
3 Servicemaster was called for a second time to deal
4 and remediate with the situation with the leaks?

5 A. Yes, they were.

6 Q. And if we go to tab 30, Ms.
7 McCulloch, the first page, it appears -- oh, sorry,
8 Exhibit No. 13-14. Again, consistent with their
9 practice, it appeared that this revised report we
10 were looking at was again sent to the landlord for
11 their information?

12 A. That's correct.

13 Q. Am I right that at the end of
14 July, though, and beginning of August, and just so
15 that we are clear, no remediation steps had been
16 taken aside from getting Servicemaster in, but it
17 appears that a decision was made in that time
18 frame, July/August, that the work had to be done,
19 that the mouldy material had to be removed?

20 A. That's correct.

21 Q. The situation was basically
22 becoming unbearable; is that fair?

23 A. Yes.

24 Q. It appears that the landlord,
25 Eastwood Mall, had in fact agreed with BNS to

1 proceed with these steps, and if we go back to
2 Exhibit No. 1575, that is tab 59, at the bottom of
3 the chart, you see there is a note at the bottom of
4 that chart and it says the:

5 "Branch experienced many roof
6 leaks from the parking deck above
7 which LL", landlord, "was requested
8 to fix and agreed for BNS to
9 commence as he did not know who to
10 contract. Branch was closed due to
11 excessive mould growth during August
12 14 to August 22, 2008."

13 So I gather that head office had been
14 in contact with Eastwood Mall and had received
15 permission to go ahead and do the remediation work?

16 A. Yes.

17 Q. Do you know whether or not
18 Eastwood Mall paid for the work?

19 A. I don't think they did.

20 Q. And in fact, I understand that
21 later on Scotiabank requested that he pay for the
22 amount spent?

23 A. Yes.

24 Q. And he never paid for it?

25 A. No, he did not.

1 Q. If we go to -- so we see from this
2 note then the branch was closed for almost a week,
3 August 14 to 22nd?

4 A. That's correct.

5 Q. However, if we go to tab 52, that
6 is Exhibit No. 13-15, this is an article I
7 understand that appeared in the local newspaper,
8 and there is an article in the middle there about
9 Scotiabank and the fact that it "hopes to open
10 tomorrow", "tomorrow" being August 21st because we
11 see that the article was published on the 20th.

12 So I gather that really the bank's
13 expectation before they started the work was that
14 it would be closed from the 14th to the 20th?

15 A. Yes.

16 Q. Okay. And the work was done by a
17 different company, but Pinchin assisted with the
18 remediation work that was done at the time?

19 A. Yes.

20 Q. So if we take a look at tab 41,
21 that is Exhibit No. 13-100, I understand that what
22 is being described here by Pinchin is the fact that
23 prior to them starting their remediation work, they
24 did an air quality testing and then throughout the
25 work they kept on doing air quality testing until

1 they ensured that there was no mould found?

2 A. That's correct.

3 Q. Okay. And the report is indeed
4 found at tab 42, and that is the next exhibit, Ms.
5 Kuka, Exhibit No. 13-101. So we see here that the
6 testing was done on August 15th, 2008, prior to the
7 work being started; is that correct?

8 A. Yes.

9 Q. And we see that at the
10 paragraph -- the second paragraph below the table
11 it indicates basically that they had found mould
12 growth which was negatively impacting the air
13 quality of the branch?

14 A. That's correct.

15 Q. I understand that the bank advised
16 Mr. Nazarian of these results; is that your
17 understanding?

18 A. That is, yes.

19 Q. Okay. Can you describe to us the
20 decontamination work that took place during that
21 week and explain to us what happened, just, you
22 know, so that the Commissioner understands?

23 A. The branch of course was closed
24 off. There were tarps and tarps ovetop of
25 computers. Furniture was moved all around. There

1 was like a decontamination area set up in the back
2 of the branch in front of the manager's office and
3 the vault. Everyone going in there was wearing the
4 suits and the masks. And it was pretty scary to
5 see actually.

6 Q. And I gather the staff of course
7 didn't work during that time?

8 A. Four of us worked in the ABM
9 vestibule to help customers with -- at the bank
10 machine, and the rest of the staff went to the
11 branch in Spanish.

12 Q. Okay. So I gather that the
13 customers were affected, quite affected by this
14 closure?

15 A. Very much so.

16 Q. What was the reaction of the
17 customers?

18 A. Very angry, upset, some of them
19 were -- knew that figured it would happen one day.
20 We just tried to do our best to serve everyone and
21 try not to have it not impact too negatively on
22 them.

23 Q. And from what you saw of the
24 people going in that were doing the work, the
25 remediation work, do you think that the mall

1 maintenance people could have done that work?

2 A. No.

3 Q. They were really people that were
4 experienced in this area and that had the equipment
5 to do this kind of work?

6 A. Yes.

7 Q. And in fact, I believe that we
8 have pictures that were taken by Pinchin at the
9 time when this was being done. Ms. Kuka, if we can
10 go to Exhibit No. 4254, and there should be a
11 coloured version of this photo. So is this what
12 you were describing to us?

13 A. Yes.

14 Q. So this is behind the tellers,
15 everything was closed off?

16 A. Yes.

17 Q. And then if we go to -- we have
18 kind of a different view of it at Exhibit No. 4256.
19 Again, it looks like an entire area of the branch
20 was closed off?

21 A. Yes.

22 Q. And it appears that during the
23 same time period that Pinchin took another picture
24 which I would like to show you, Exhibit No. 4258.
25 Can you tell us what we are looking at? And we

1 have seen a lot of these --

2 A. The bladder system?

3 Q. Yes, so I gather the branch had
4 them as well?

5 A. Yes, we did. This is the pillar
6 in the stationery room.

7 Q. Okay.

8 A. And going up into the ceiling.

9 Q. Did the mall manager or Mr.
10 Nazarian come to visit the branch during the week
11 where the remediation were happening?

12 A. At one point I saw Mr. Nazarian
13 and he stopped at the branch and looked in and said
14 that this work was completely unnecessary.

15 Q. And what was your reaction to
16 that?

17 A. I said if it was unnecessary, we
18 wouldn't be doing it.

19 Q. And what did he say?

20 A. He walked away.

21 Q. And I gather in your view, as you
22 indicated to him, and the head office view, it was
23 something that had to be done?

24 A. Yes.

25 Q. And again, is it fair to say that

1 it had to be done in order to ensure the health and
2 safety of the staff and the customers?

3 A. Correct.

4 Q. If we go to tab 50, that is
5 Exhibit No. 13-108.

6 MS. KUKA: 13-108?

7 MS. EFFENDI: Yes, it is an e-mail. Do
8 I have the wrong number there, Ms. Kuka? Maybe I
9 can ask the question --

10 MS. KUKA: No, no.

11 MS. EFFENDI: No, I think you are
12 right, I do have the wrong number. I should have
13 just trusted you. I'll ask the question to the
14 witness, and if we need the document, we'll go to
15 it.

16 BY MS. EFFENDI:

17 Q. I understand that, as we were
18 talking to you earlier, the branch was supposed to
19 open on basically the 21st of August; do you recall
20 that?

21 A. Yes.

22 Q. So it was supposed initially to be
23 open -- it was supposed to be closed from the 14th
24 to the 20th, and it initially was supposed to
25 re-open on the 21st?

1 A. Yes.

2 Q. However, it did not because the
3 branch, the consultant discovered additional mould?

4 A. Yes.

5 Q. Okay. In fact, I understand that
6 they found additional mould in the storage and the
7 closet area?

8 A. Yes.

9 Q. Now, if we can go to tab 55, and
10 that is Exhibit No. 13-112. So again, these
11 appear -- this is I understand a report of the
12 testing that was conducted by Pinchin following
13 that initial test of October 15th?

14 A. That's correct.

15 Q. And those were air quality testing
16 and mould testing; correct?

17 A. Yes.

18 Q. And I understand that we see at
19 the top of the page that there was an inspection
20 done on August 18th, and then they discovered a few
21 deficiencies which they corrected?

22 A. Uhm-hmm.

23 Q. And then there was an air sample
24 taken on the 19th of August, and we see that in the
25 third paragraph?

1 A. That's correct.

2 Q. So they discovered that based on
3 those, they discovered that there was additional
4 problems, and as a result, we see at the bottom of
5 the page they instructed that the teller and
6 enclosure area basically be cleaned again?

7 A. That's correct.

8 Q. And then if we turn the page, we
9 see that they did a second testing on August 21st
10 in the hopes that they could open, but again, they
11 discovered that there were problems with the air
12 quality and that they had to do additional
13 remediation work?

14 A. That's correct.

15 Q. And finally, it appears that then
16 they took some final rounds of testing on August
17 22nd, and we see that at the bottom of the page,
18 and then we see that the result on the next page,
19 they were then able to confirm that nothing was
20 found and that the bank could open?

21 A. That's correct.

22 Q. So I understand that basically the
23 bank opened on August 23rd?

24 A. Yes.

25 Q. Now, the bank didn't look the same

1 after all of this work, did it?

2 A. No.

3 Q. And I believe that we have a few
4 photos.

5 Mr. Commissioner, I'm looking at the
6 clock. I didn't know whether you wanted to take a
7 break before we jumped into this next area.

8 THE COMMISSIONER: We'll take our
9 morning break now.

10 Thank you.

11 -- RECESSED AT 10:30 A.M.

12 -- RESUMED AT 10:50 A.M.

13 BY MS. EFFENDI:

14 Q. So before the break, Ms.
15 McCulloch, I had just asked you about how the bank
16 looked after all the work that had been done in
17 August 2008, and I recall that you indicated to us
18 that it was quite a different sight in the branch;
19 is that correct?

20 A. That's correct.

21 Q. Can you generally describe to us
22 what it looked like before we get to the pictures
23 and the impression of the staff?

24 A. It looked like a mess, unfinished,
25 unprofessional, lots of drywall missing, walls

1 missing. For the most part, I think the customers
2 wouldn't know because they -- behind the tellers
3 where most of the customers would see there was
4 many filing cabinets and that along the wall, so
5 you wouldn't notice as much. But if you went
6 around the corner, then you would notice that.

7 Q. Okay. So let's take a look at
8 some of those pictures of what happened
9 post-remediation work. Ms. Kuka, if we can go to
10 Exhibit No. 5113. And as we go through these
11 photos, Ms. McCulloch, if you could just describe
12 to us the room we are looking at?

13 A. This is the stationery room
14 looking into the training room, the wall had to be
15 removed in between the two rooms so it is now one
16 room.

17 Q. So the wall was I gather at the
18 pillar? Is that where the wall was?

19 A. Yes.

20 Q. And now basically the stationery
21 room and the training room was one full room?

22 A. That is correct.

23 Q. And on the left, that is the door
24 leading out of that room, of the --

25 A. That is the door going into the

1 kitchen.

2 Q. Okay, perfect. And we see here
3 that the entire ceiling was gone and now it was a
4 big tarp?

5 A. That's correct.

6 Q. If we can go now to Exhibit No.
7 5113, I believe it is the same room but a different
8 perspective. Before we leave this picture, sorry,
9 Ms. Kuka, I see here, is that where we see on the
10 white pillar that there is stains, is that what you
11 were describing to us --

12 A. Yes.

13 Q. -- about the rusting that came
14 down?

15 A. Yes, that is.

16 Q. Okay. Actually, Ms. Kuka, we can
17 skip 5114. Let's go to Exhibit No. 5124. Is that
18 a familiar sight?

19 A. That is my office.

20 Q. Okay. And I gather that -- and
21 the carpet issue we'll come back to. That was
22 removed later on; correct?

23 A. Yes.

24 Q. But your wall was also the drywall
25 had been removed and that is why now we see the

1 concrete?

2 A. That's right.

3 Q. Okay. And if we go to Exhibit No.
4 4255 --

5 MS. KUKA: You said 4255?

6 MS. EFFENDI: Yes. Okay, let me just
7 check and make sure here. The document I'm looking
8 for, Ms. Kuka, is the one that finishes with 264
9 for the document ID, SB. We can come back to it
10 later.

11 MS. KUKA: It is Exhibit No. 5100.

12 BY MS. EFFENDI:

13 Q. Thank you. Yes, thank you.

14 Ms. McCulloch, can you tell us what we
15 are looking at here?

16 A. This is looking up into the
17 ceiling from the stationery room.

18 Q. Okay, so basically that up the
19 ceiling there was nothing and you can see the beams
20 up there and the fireproofing it looks like?

21 A. Yes.

22 Q. Now, if we go to Exhibit No. 5101,
23 what are we looking at here?

24 A. That is the kitchen.

25 Q. So there was also drywall removed

1 in the kitchen and replaced by plastic?

2 A. That's correct.

3 Q. And Exhibit No. 5102?

4 A. That is the manager's office.

5 Q. So he had also suffered the same
6 fate and drywall removed, concrete now?

7 A. Yes.

8 Q. And Exhibit No. 5104. What are we
9 looking at here?

10 A. That is the hallway going down
11 towards our electrical room, storage room, kitchen,
12 bathrooms.

13 Q. So the door at the back, is that a
14 door that led to a hallway in the mall?

15 A. No -- well, the door at the very
16 back?

17 Q. Yes.

18 A. Yes, yeah, that went out into the
19 back corridor.

20 Q. And then on the right that little
21 kind of -- we see that there is a frame of a door
22 here next to the fire extinguisher?

23 A. Yes.

24 Q. That led to the electrical room?

25 A. Yes.

1 Q. Okay. So I gather that that
2 hallway also had suffered the same fate of having
3 its drywall removed?

4 A. That's correct.

5 Q. And then, finally, just so that we
6 can see what the tellers were working with, if we
7 go to Exhibit No. 5110, I understand that that was
8 the sight behind the tellers?

9 A. That's correct.

10 Q. So also paper replacing now the
11 drywall?

12 A. That's correct.

13 Q. Why did the bank not proceed with
14 the reconstruction of the wall immediately?

15 A. Because the roof was still
16 leaking.

17 Q. Okay. So I gather that the branch
18 wanted the roof fixed and the leaking stopped
19 before it went ahead with reconstructing the walls?

20 A. That's correct.

21 Q. Now, if we can go to tab 57 of
22 your Volume 1, and that is Exhibit No. 13-20, I
23 understand that this is another letter from
24 Mr. Manttari who is at head office to Eastwood
25 Mall, Mr. Nazarian, and that letter is dated August

1 25th, 2008, and he writes in the second paragraph:

2 "As you know, we have been asking
3 you to complete this work since
4 January 2008 [...]"

5 And the work he is referring to is roof
6 replacement of the building and the branch
7 remediation. And he goes on to say:

8 "[...] and have since then sent
9 you numerous faxes and e-mails on
10 this matter, and discussed this
11 issue with you during numerous
12 telephone conversations as well.

13 We understand that weather plays
14 an important role in the timing of a
15 roof replacement. However, it is
16 very difficult for us to accept that
17 there has not been, to date, a
18 one-week window of opportunity to
19 replace the roof since the start of
20 our warmer weather in April 2008.
21 We also understand that, over the
22 past few months, there have been
23 several contractors working on the
24 roof that have since been dismissed
25 before the conclusion of the

1 repairs."

2 How did the branch, how did BNS learn
3 about the dismissal of these contractors?

4 A. We heard about it in the mall.

5 Q. Okay, so people were talking about
6 it?

7 A. Yes.

8 Q. The tenants?

9 A. Yes.

10 Q. And then he goes on to say on
11 August 13th, 2008, that Mr. Nazarian gave him
12 authorization to have Pinchin in.

13 And then at the next page he indicates
14 that the bank has incurred costs as a result of the
15 water penetration, and he then refers to the June
16 1st, 2006 agreement we looked at earlier about the
17 responsibility of the landlord with respect to the
18 damage as a result of water penetration.

19 So basically expressing his concerns to
20 the landlord; is that correct?

21 A. Yes, it is.

22 Q. Now, if we go to tab -- and that
23 was August 2008. Now, if we jump to September
24 2008, if we go to tab 60, Exhibit No. 13-14. I'm
25 having issues with my exhibits this morning, Ms.

1 Kuka. This is not the exhibit I want.

2 MS. KUKA: What is the document number?

3 BY MS. EFFENDI:

4 Q. It ends with SB and it ends with
5 7. Exhibit No. 13-114, sorry. Thank you.

6 So this is an e-mail from head office
7 again, this time to it appears someone else. It is
8 an internal e-mail, And it is dated September 10,
9 2008. And Mr. Syed reports to Mr. Watt the
10 following:

11 "The Landlord of the Mall at
12 Elliot Lake called me yesterday and
13 confirmed that the repairs of the
14 roof of the branch has been
15 completed on his part. He said that
16 the recent water leak was not from
17 the roof but from the drain pipe
18 which has been replaced by him
19 during the recent repair work. I
20 told him that we were hiring an
21 Engineer to inspect the roof and
22 review the repair work and I am
23 going to meet the Engineer on site
24 next week. I invited him to meet us
25 on site during the inspection, but

1 he refused to meet us there."

2 So I gather then that in September 2008
3 Scotiabank was being told that the leaks were
4 fixed?

5 A. That's correct.

6 Q. Do you recall whether or not the
7 water penetration stopped following that fall?

8 A. No, it did not.

9 Q. Okay. And do you know what this
10 issue of the drainpipes that is being referred to
11 is about?

12 A. I don't remember.

13 Q. Is it fair to say that, as far as
14 you were concerned, the leaks were as a result of
15 the roof?

16 A. Yes.

17 Q. And aside from the normal
18 maintenance staff that were working on the roof
19 caulking, as you described to us earlier, do you
20 recall seeing anything else in that time frame,
21 September 2008, in terms of other consultants being
22 up there, other engineers doing some work on the
23 roof?

24 A. In September I don't recall anyone
25 up there.

1 Q. So I gather then that Scotiabank
2 was now taking this seriously and wanted its own
3 engineer to confirm whether repairs had actually
4 been done?

5 A. That's correct.

6 Q. So if we go to Volume 2, to tab
7 67 --

8 A. Sorry.

9 Q. Exhibit No. 13-118. So I
10 understand that Scotiabank hired Mr. Bruce
11 Caughill?

12 A. Yes.

13 Q. And what we are looking at right
14 now is the report that Mr. Caughill provided to
15 Scotiabank in September 2008, and if we go to the
16 next page -- but before we are looking at
17 Mr. Caughill's introduction here, the Commission
18 has heard evidence that Mr. Caughill had worked for
19 not only Eastwood Mall but the previous owners of
20 the mall. Did Mr. Caughill advise the bank of his
21 prior work for the owners of the mall?

22 A. I'm not sure if he did or not.

23 Q. Okay. So if we take a look at the
24 introduction of the report, he indicates here at
25 number 1 that the branch had sustained

1 environmental damage. He talks at 1.2 that:

2 "Water intrusion to the leased
3 space and the adjacent public
4 corridors has been a long-standing
5 problem but recently has increased
6 sufficiently to be a threat to the
7 health and safety of the staff and
8 customers."

9 Then he goes on to say that:

10 "The landlord has a repair process
11 underway. As evidenced by ongoing
12 leaks, there is a question as to the
13 effectiveness of the repairs."

14 And then he presents his report.

15 He then goes on to say at number 2

16 that:

17 "The structure directly above the
18 branch is concrete parking deck,
19 this deck is the 'roof' for the
20 branch."

21 He describes the deck as steel framed
22 with a hollow core with a concrete topping wearing
23 surface.

24 Then on the next page at number 3, he
25 indicates that he came to the branch on September

1 11, 2008, and met with you; is that correct?

2 A. Yes.

3 Q. And then we see after that -- so I
4 gather that, again, similarly to what you would do
5 with Pinchin, you provided him with your
6 observation of what was going on at the time?

7 A. That's correct.

8 Q. And then he describes in his
9 finding at number 4 what he saw. He indicates that
10 "The premises were dry" when he went there, but:

11 "There was evidence of significant
12 water leaks. A restoration
13 contractor had removed all wet wall,
14 ceiling and flooring materials, had
15 erected tarps over vulnerable spots
16 and [there was also] [...] a
17 dehumidifier/air purifier."

18 He indicates that the leaks at the
19 branch, at 4.1.3, appeared to be at two locations,
20 the stationery and the manager's office, as well as
21 the vault. And he goes on to explain that there is
22 also rust on structural steel and damage to sprayed
23 fire protection in the service corridor behind the
24 branch.

25 And then at 4.1.5 he says a deck floor

1 drain appears to be the major source of major water
2 leakage.

3 And then he goes on to discuss what he
4 saw outside at 4.2 in terms of what he observed the
5 crew was doing. And if we just scroll down a bit,
6 Ms. Kuka, he indicates that he didn't see anyone on
7 the deck doing any repairs when he went there, but
8 he saw above -- over the branch, but he saw repairs
9 being done over the Zellers, and he describes what
10 he saw there.

11 He also attached a few photos to his
12 report, and if we can take a look at them, they are
13 at the page that finishes with 08. And I'm
14 interested in the two photos at the bottom because
15 the photos at the top I understand are photos from
16 outside.

17 So we see here at the bottom he says
18 it's the "Floor Drain From Within Branch". I
19 gather the photo on the bottom left was looking up
20 at the ceiling?

21 A. That's correct.

22 Q. And then the photo on the right
23 was that famous pillar in the stationery room?

24 A. Yes.

25 Q. And then if we look at the next

1 page, Mr. Caughill provides a photo of what he
2 describes as "Corrosion and Fire Protection Damage"
3 on the top left, and then also of -- is that the
4 stationery room on the top right?

5 A. Yes, it is, yes.

6 Q. Thank you. And then if we go back
7 to his actual opinion, and that is found at the
8 page that ends with 5, under the heading "6.
9 Opinion", he indicates at 6.1.1 that:

10 "It is my opinion that the
11 effectiveness of the procedures
12 being used by the Landlord to
13 protect the leased premises from
14 water in-flow is doubtful."

15 He outlines here and he notes that
16 there is a lack of technical supervision and
17 quality control. He also says that:

18 "Previous repairs to the area of
19 the bank [...] appear similar to
20 current work [...]"

21 So the work hasn't really changed. And
22 then he goes on to describe that there is sealant,
23 you know, abutting the wall joints that are not
24 being adequately addressed.

25 And then he ends by saying that the:

1 "[...] water has caused the
2 removal of structural fire
3 protection that should be restored."

4 At then at number 7 he indicates what
5 his recommendations are, and if we just can scroll
6 down, Ms. Kuka, we see that he recommends that:

7 "The Landlord should provide a
8 report, prepared by a Professional
9 Engineer, outlining the condition
10 [...] of the premises."

11 And that he also should provide a
12 report that confirms the structural integrity of
13 the steel and the concrete and then also restore
14 all structural fire protection with the lease.

15 Do you know what the reaction of
16 Scotiabank was after it got this report from Mr.
17 Caughill which appeared effectively to say that
18 nothing had changed and it didn't appear that there
19 was new work being conducted on the roof?

20 A. Well, for head office, I'm not
21 sure what their reaction was. For the branch it
22 was we knew this because we have been doing the
23 same thing over and over and it hasn't fixed the
24 problem yet, so --

25 Q. Okay. Do you know whether head

1 office ever received any structural engineering
2 report from Mr. Nazarian as a result of this
3 report?

4 A. I'm not sure if they did or not.

5 Q. Okay. I understand, though, that
6 this report was shared with Eastwood Mall; is that
7 your understanding as well?

8 A. Yes.

9 Q. Okay. Now, if we move in time a
10 bit later in September, I understand, and we have
11 heard previous evidence about this, that on
12 September 15th, 2008, there was a tenants meeting
13 that happened; do you recall that?

14 A. Yes.

15 Q. And this is a meeting I understand
16 that was called by the mall management, that they
17 are the ones that invited all the tenants to
18 attend; is that your understanding?

19 A. Yes.

20 Q. If we can go to tab 69, Exhibit
21 No. 12-123, this is an e-mail from Kim McAllister.
22 I understand that she was in the Real Estate
23 Department at Scotiabank?

24 A. Yes, she was.

25 Q. And she oversaw the branch here in

1 Elliot Lake?

2 A. Yes.

3 Q. And she is writing an e-mail to a
4 number of people, including Ms. Ferreira, who was
5 in the Health and Safety Department, and she
6 describes to them that she had a visit on September
7 15th to Elliot Lake. So am I to understand that
8 Ms. McAllister came down from head office for that
9 meeting?

10 A. Yes, she did.

11 Q. And then she -- and why is it that
12 they came down specifically for that meeting? Do
13 you know?

14 A. Because of the ongoing issues with
15 the leaking.

16 Q. Okay, and they wanted to see the
17 branch?

18 A. Yes.

19 Q. Okay.

20 A. And see what was being done for
21 repairs to the roof.

22 Q. And she describes her day here.
23 She says that she viewed the premises and Zellers.
24 Do you know why she also viewed Zellers?

25 A. She came down with the Zellers

1 representatives from Toronto as well.

2 Q. Okay. And then they visited the
3 parking deck and then they had conversations with
4 workers, and then they had a meeting with Henri,
5 and that would have been Ms. Laroue?

6 A. Yes.

7 Q. Okay, at 5:30, and then she also
8 said that they then attended the tenants meeting.

9 Were you present at that 5:30 meeting?

10 A. No, I was not.

11 Q. Were you present at the tenants
12 meeting?

13 A. Yes, I was.

14 Q. Well, let's talk about that
15 tenants meeting. Who was chairing that meeting?

16 A. I believe it was Henri.

17 Q. Okay. And if you go to at the
18 back of your tab 69, you should have a stapled
19 document there. And, Ms. Kuka, if you could pull
20 Exhibit No. 12-70. Do you have that at the back?
21 No, there is no document there?

22 A. No.

23 Q. Well, we'll pull it on the screen
24 here. So we have heard that these are actually
25 minutes of that meeting that occurred on September

1 15th which you attended, and can you tell us what
2 you generally recall of this meeting, Ms.
3 McCulloch?

4 A. I remember that they were telling
5 us that there was no way that the roof would
6 collapse, because that was one of the issues that
7 was brought up, and that the owner was going to be
8 repairing the roof, spending a great deal of money
9 to repair the roof and that the mall is open for
10 business.

11 Q. Okay. And do you recall, is it
12 Ms. Laroue who said to the participants that there
13 was no fear of the roof collapsing?

14 A. I can't remember if it was her. I
15 thought it was somebody else with -- like an
16 engineer, but I can't remember exactly.

17 Q. And another thing that we see in
18 these notes, if we scroll down, Ms. Kuka, we see at
19 the bottom it says "rumours" and it says "mold",
20 and I gather that Ms. Laroue advised people that
21 testing had been done and no mould found in the
22 mall; do you recall that?

23 A. Yes.

24 Q. And do you recall whether or not
25 she said anything about the fact that BNS had found

1 mould in its premises?

2 A. She never mentioned it.

3 Q. Okay. Was it common knowledge
4 among tenants that BNS actually had mould?

5 A. Yes, because Denise, our manager
6 at the time, had told them.

7 Q. Okay, had told "them" being the
8 other tenants?

9 A. The other tenants, yes.

10 Q. Do you recall whether or not
11 anyone spoke up and said, look, that is false,
12 there is actually mould in these premises here in
13 BNS?

14 A. I don't remember if anybody did or
15 not.

16 Q. And if we go to the top, Ms. Kuka,
17 we see that present at that meeting was Mayor
18 Hamilton; do you see that?

19 A. Yes.

20 Q. Do you recall him being there?

21 A. I didn't recall him being there,
22 no.

23 Q. So you wouldn't be able to tell us
24 whether or not he said anything at that meeting?

25 A. No, I'm not sure.

1 Q. If we can go back, Ms. Kuka, to
2 Exhibit No. 12-123, and that is the document you
3 had at tab 69.

4 A. Okay.

5 Q. And we see that it appears that
6 certain promises were made by mall management to
7 Ms. McAllister during the meeting that she had with
8 them, and you will see here there is several
9 bullets in this e-mail and she starts off first by
10 saying:

11 "Henri agreed to install ceiling
12 tiles were missing and stained
13 ceiling tiles so that they could
14 determine any new leaks. This way
15 they wouldn't get confused from old
16 leaks to new leaks."

17 So I gather that they promised on a
18 going-forward basis mall management would take
19 charge of that?

20 A. Yes.

21 Q. Then she also indicated that:

22 "[She] would have their staff" --
23 "she" being Henri -- "review our
24 premises daily to be aware of any
25 new leaks and to rectify them as

1 quickly as possible."

2 So did the mall management come to BNS
3 on a daily basis following this on September 15th?

4 A. It wasn't mall management. It was
5 maintenance.

6 Q. Okay.

7 A. And at the beginning they came
8 every day. They had a sheet that they had to sign
9 and date.

10 Q. Yes.

11 A. And then it kind of fell by the
12 wayside and they came sporadically.

13 Q. And then if we go on to the fourth
14 bullet, you will see it says:

15 "Henri noted that they will
16 reconstruct our branch, however I
17 have advised that this is fine with
18 us after there is no leaks for a
19 minimum of 3 weeks at which time we
20 will need to retest and if all is
21 clear, at that time the Landlord can
22 reconstruct the premises."

23 Why is it that this condition was put
24 before reconstruction could be done?

25 A. Because it kept leaking and there

1 is no sense to repair the damage that was done from
2 the remediation if it is just going to get damaged
3 again.

4 Q. So Scotiabank wanted to have the
5 comfort of knowing that at least for a certain
6 period of time there had been no leaks?

7 A. That's correct.

8 Q. Okay. And now if we go to tab --
9 in your Volume 2, sorry, at tab 70, and that is
10 Exhibit No. 13-120. It looks like this is the end
11 of September, September 29th, and Ms. McAllister
12 was following up again with Ms. Laroue with respect
13 to certain things that were promised such as
14 certain specs for products and that kind of stuff,
15 and she hadn't received an answer yet.

16 A. That's correct.

17 Q. And at that time, at the end of
18 September, was the mall maintenance coming in on a
19 daily basis? Were they doing that and were they
20 replacing the tiles?

21 A. Yes, at that time.

22 Q. So when is it that they stopped
23 kind of being proactive?

24 A. After a couple of months, I
25 believe.

1 Q. Now, if we go to tab 72, and that
2 is Exhibit No. 4240, I understand that Pinchin was
3 asked to provide a final report covering the last
4 year of testing that they had done at BNS. I'm not
5 going to go through this. The only thing that I
6 wanted to draw the attention of the Commission to
7 is if we go to the "Executive Summary", which is
8 the next page, it appears here that in this report
9 that they submitted in October 2008 they emphasized
10 again the fact that the roof had to be repaired?

11 A. Yes.

12 Q. And that was really the constant
13 recommendation they made from the first time they
14 came in; is that correct?

15 A. Yes, it is.

16 Q. And again, was this report
17 provided to Eastwood Mall, Ms. McCulloch?

18 A. I would think it was.

19 Q. Okay. So the landlord was aware
20 of the fact that Scotiabank really wanted these
21 repairs done once and for all?

22 A. That's correct.

23 Q. And if we go to tab 73, and that
24 is Exhibit No. 13-122, this is another e-mail from
25 Ms. McAllister to Ms. Laroue, this one in October,

1 so we were looking at one in September and this one
2 is now on October 9th, and it looks like again she
3 is following up with her, telling her that they
4 haven't received the information following their
5 meeting but that it looks like it is positive
6 because there was rain and that there was only one
7 leak at the branch?

8 A. Yes.

9 Q. Okay. That is October. Now, I
10 understand there was no response to this, because
11 if we go to tab 76, which is Exhibit No. 13-124,
12 Ms. McAllister is again following up with Ms.
13 Laroue and asking her for a response to her
14 previous e-mail; is that correct?

15 A. Yes, it is.

16 Q. And in this e-mail, though, she
17 advises her, if we look at the bottom of the
18 e-mail, we see that there is an e-mail from the
19 Branch Manager, which has changed now and this is
20 Denise Crepeau, and in November she reports ten new
21 leaks?

22 A. That's correct.

23 Q. So, well, basically the happy
24 moments of thinking that the leaks had disappeared
25 and there was only one were really short?

1 A. Yes.

2 Q. That didn't last very long?

3 A. No, it did not.

4 Q. So despite the promises, nothing
5 had changed; is that fair?

6 A. That is fair.

7 Q. And this lack of responsive from
8 mall maintenance and mall management in this case,
9 Ms. Laroue not responding, was that something that
10 was a regular occurrence?

11 A. I'm not sure.

12 Q. Now if we go to tab 78, which is
13 Exhibit No. 13-24, again, it looks like she is
14 following up with Ms. Laroue, having not received
15 any response, and she also highlights the fact that
16 mall maintenance was supposed to check in every day
17 but by then, and this is December, they had stopped
18 doing that?

19 A. That's correct.

20 Q. And who was replacing -- were they
21 replacing those ceiling tiles at this time in
22 December, or was that something that Scotiabank had
23 to take upon itself to do?

24 A. We were not doing that.

25 Q. So the mall maintenance were doing

1 that?

2 A. Yes.

3 Q. And did you have to call them? I
4 gather you did, because they weren't showing up on
5 a daily basis anymore?

6 A. Yes, that's correct.

7 Q. And by then, I'm just thinking
8 back to that condition of that three weeks without
9 leaks, had there been three consecutive weeks
10 without leaks by then, December 2008?

11 A. No.

12 Q. So basically, the branch still
13 looked the same way as it did in those pictures we
14 looked at?

15 A. That is correct.

16 Q. Now, if we go to tab 279 -- sorry,
17 tab 79, and that is Exhibit No. 13-125, so we see
18 that on December 17th in the middle of the page Ms.
19 Laroue responds to Ms. McAllister. If we could
20 just pull it down, Ms. Kuka, so we can see who is
21 signing here, we see it is Henri that is signing
22 the e-mail and she tells Ms. McAllister the
23 following:

24 "I have not been advised that our
25 staff has not been checking in daily

1 with your branch. I created a sign
2 in sheet for them and left it with
3 Judy in the Branch. No-one has
4 contacted me to say otherwise."
5 What is your reaction to this, Ms.
6 McCulloch?

7 A. I find it hard to believe that she
8 didn't know.

9 Q. In light of those previous e-mails
10 also?

11 A. Exactly.

12 Q. And I gather that the mall
13 maintenance, while they weren't coming daily, were
14 called regularly by the branch to come and repair
15 and replace those ceiling tiles?

16 A. That's correct.

17 Q. And she then goes on to say in the
18 next paragraph that:

19 "On Sunday December 14th, Elliot
20 Lake experienced disastrous weather,
21 it rained for approximately 24 hours
22 and all of our snow became slush,
23 trapping water and not allowing it
24 to reach drains. The maintenance
25 guys were on it first thing Monday

1 morning. We called our snow plow
2 contractor and he came to clear away
3 the build up of slush.

4 The Branch reported only 4 leaks.
5 The guys paced out the source and
6 all were along the back edge of the
7 property, not any of the work that
8 was already completed this past
9 summer."

10 What is your reaction to this, that
11 there was only four leaks? She seemed to be saying
12 it is a good thing.

13 A. At this point there shouldn't have
14 been any. The roof was supposedly fixed, so why
15 are we still getting leaks.

16 Q. Okay. Now, if we go to the next
17 tab, tab 80, Ms. Kuka, that is Exhibit No. 13-25,
18 and if we go to the page that ends with 2, it
19 appears that at this time the Branch Manager had
20 changed to Ms. Laurie Wiens?

21 A. That's correct.

22 Q. And she was reporting 20 ceiling
23 tiles that were damaged, so it looks like there was
24 20 leaks in the branch at the time?

25 A. Yes.

1 Q. So you'll recall that a few
2 moments ago we discussed how in November there was
3 ten leaks and now it had doubled to 20?

4 A. Yes.

5 Q. So the situation clearly wasn't
6 improving?

7 A. No.

8 Q. And if we go to the first page,
9 Ms. Kuka, again, we see that Ms. McAllister in her
10 e-mail to Eastwood Mall, but also it appears that
11 she is e-mailing this to Mr. Nazarian, indicates
12 that:

13 "[...] it is imperative that the
14 wet material doesn't remain for any
15 period of time."

16 And that it be removed. And when she
17 says "wet materials", is she referring to the wet
18 ceiling tiles and the wet drywall?

19 A. And the carpeting.

20 Q. And why is it that head office was
21 so adamant that the wet material had to be removed?

22 A. Because it was mould growth.

23 Q. And do you recall whether or not
24 in that particular incident the wet material was
25 indeed removed by the mall maintenance?

1 A. I don't know when it was removed.

2 Q. I understand that in fact they
3 never came in to remove it, and Servicemaster was
4 called in to remove the wet material?

5 A. Yes.

6 Q. Would you agree with that?

7 A. Yes, I would.

8 Q. Now, if we go to tab 82, and that
9 is Exhibit No. 13-26, this is a letter from head
10 office to Eastwood Mall in which they indicate to
11 Eastwood Mall that Scotiabank has incurred a number
12 of costs and expenses as a result of the continual
13 roof leaks, and the letter goes on to say:

14 "These charges include
15 environmental testing, mold
16 remediation and several emergency
17 clean-ups."

18 And they attached the charges and
19 services, and they indicate that the cost totals
20 approximately \$113,000. And I understand that they
21 are asking Eastwood Mall to cover the cost of this
22 remediation and this testing in light of the clause
23 that they had in their lease agreement?

24 A. That's correct.

25 Q. And I understand from your

1 previous answer that Mr. Nazarian never paid for
2 those?

3 A. No, he did not.

4 Q. And then if we go to tab 84, by
5 then we are in February '09, and that is Exhibit
6 No. 13-127. And it appears again here that the
7 branch was indicating in February '09 that they
8 were suffering from leaks and this time in the
9 voucher room where it hadn't rained in a number of
10 years, so it was kind of a new location where leaks
11 appeared?

12 A. Yes, it was.

13 Q. So again, I gather that the three
14 weeks of consecutive no leaking hadn't occurred
15 yet?

16 A. No.

17 Q. If we go to tab 86, that is
18 Exhibit No. 4241. This is again in the same time
19 period, in February '09, and Ms. McAllister is
20 writing to Ms. Laroue and Mr. Nazarian. And you
21 will see that at the end of her e-mail she
22 indicates that, you know, the branch is
23 experiencing leaks, that she wants the roof repair
24 completed, but she also says:

25 "Your other tenants including the

1 Library has been maintained and
2 isn't with several walls missing or
3 tarps as our premises is."

4 Is it fair to say, it appears that when
5 I read this, that the tenants were kind of
6 competing against each other to get the mall
7 maintenance attention to get some of this work and
8 the repairs done?

9 A. Yes.

10 Q. And is it because there weren't
11 enough people to do all the work?

12 A. That's correct.

13 Q. Were you aware at the time, Ms.
14 McCulloch, in February 2009 that the library was
15 actually renegotiating a lease with the landlord?

16 A. No, I was not.

17 Q. And then if we go to tab 87, that
18 is Exhibit No. 13-129, I understand again this is
19 an e-mail of February 17, '09. It looks like the
20 branch and head office had had enough and the head
21 office was advising Mr. Nazarian that the work
22 would be done by Servicemaster, given that none of
23 his mall maintenance people had come in to remove
24 the wet material; is that correct?

25 A. Yes, it is.

1 Q. But they also advised him that
2 that would be done at his own cost?

3 A. Yes.

4 Q. Now, if we go to tab 89, Exhibit
5 No. 13-27, this is a letter dated February 23rd
6 from Mr. René Fabris to Ms. McAllister in which he
7 says the following:

8 "Further to your email of February
9 17th, 2009 to Mr. Nazarian and Ms.
10 McCleary, please be advised that we
11 are the solicitors for Eastwood
12 Mall. We have been following the
13 roof situation closely, and note
14 that in the past the branch has been
15 excessive in the removal of
16 materials. If you are to remove any
17 materials, please claim from your
18 insurance.

19 As far as we are aware the leaks
20 have been dealt with. Please advise
21 if more leaks develop as this is a
22 continuing repair process. I note
23 no mold has been detected as per
24 previous fear."

25 Let me start off first with his first

1 paragraph where he says that the removal of
2 material had been excessive. What is your reaction
3 to that? Do you agree with that statement, Ms.
4 McCulloch?

5 A. No, I do not.

6 Q. And why is that?

7 A. Because there was a significant
8 amount of mould in the branch, so why would we keep
9 it? Like I don't understand why he is saying that
10 the removal is excessive. We removed what we had
11 to remove.

12 Q. In your view, that was a
13 necessity; is that fair?

14 A. Yes, it was.

15 Q. And do you recall whether or not
16 Mr. Fabris ever visited the branch?

17 A. I don't remember that he ever did.

18 Q. Okay. Did Mr. Nazarian or Ms.
19 Laroue ever visit the premises after the drywall
20 had been ripped in August 2008?

21 A. I can't -- Mr. Nazarian I don't
22 think has. Henri I'm sure must have.

23 Q. Okay. And with respect to his
24 comments that the leaks have been dealt with, is it
25 fair, based on your previous comments and

1 responses, that you wouldn't agree with that?

2 A. I would totally disagree with that
3 statement.

4 Q. And then what about the no mould
5 issue, what is your reaction to that?

6 A. I don't understand how he can say
7 that. It is evident. At the time we were not
8 aware of these, because these went to our head
9 office.

10 Q. Yes.

11 A. So we weren't aware of these
12 e-mails or letters.

13 Q. Okay, thank you. Now, if we go to
14 tab 96, and that is Exhibit No. 13-133, and it is
15 an e-mail at the bottom here from the Branch
16 Manager to Ms. Ferreira where she describes a
17 conversation it appears that she was having with
18 the manager of Zellers, and she reports back that
19 damaged property at Zellers was the responsibility
20 of the landlord.

21 Do you recall who at Zellers that the
22 Branch Manager would have spoken to?

23 A. It would have been Brian.

24 Q. Mr. Cuthbertson?

25 A. Yes.

1 Q. So I gather that Zellers and
2 Scotiabank, we heard from Mr. Cuthbertson, they
3 would speak pretty regularly about their situation?

4 A. Oh, yes, every day.

5 Q. Every day?

6 A. Yes.

7 Q. And do you recall what the gist of
8 those conversations would normally be?

9 A. We would go over there to see what
10 new leaks he had; he would come over to our
11 location and see what new leaks we had, talk about
12 if they are getting fixed, where else is leaking.

13 Q. Sharing your concerns?

14 A. Yeah, sharing information.

15 Q. Okay. Now, if we go to tab 98,
16 Exhibit No. 13-135, this is on April 30th, 2009,
17 and it is one of those complaint forms that we were
18 looking at earlier, and it appears that again on
19 this date there were concerns raised by the staff
20 with respect to water leaking; is that correct?

21 A. Yes.

22 Q. And further testing was requested
23 from the branch to deal with the situation and
24 those concerns?

25 A. That's correct.

1 Q. So I gather then that almost a
2 year later, in April 2009, Pinchin was called back
3 to the branch?

4 A. Yes.

5 Q. And if we take a look at their
6 report, and you will find that report, Ms.
7 McCulloch, at tab 101 and it should be at the back
8 of that. There is a one-pager, but then at the
9 back there should be a document there that is loose
10 or stapled?

11 A. Yes.

12 Q. And that, Ms. Kuka, is Exhibit No.
13 13-29. And if we go to the next page, as per their
14 previous practice, Pinchin when they came in on May
15 11, 2009, they came in and interviewed you again?

16 A. Yes, they did.

17 Q. And at the time you provided them
18 with the following, you indicated to them that the:

19 "Water continues to leak through
20 the ceiling [...] in the teller
21 waiting area, open office area and
22 kitchen."

23 And that there were buckets all over
24 the place?

25 A. That's correct.

1 Q. And you also indicated that the
2 walls had been removed a year previous?

3 A. That's right.

4 Q. And that there was still a musty
5 odour that was noticeable by the staff in the
6 branch?

7 A. That's correct.

8 Q. And then in the report we see that
9 Pinchin indicates that they found suspect mould
10 growth in various areas, including we see at 1, 2,
11 3 and 4, the photocopy area, the open space, the
12 teller area, the storage room, and they provide us
13 with a few pictures.

14 Unfortunately, Mr. Commissioner, we
15 don't have these in colour, but if we go to the
16 page that ends with 5, Ms. McCulloch, these are
17 pictures that were taken by Pinchin. And does that
18 reflect what you remember the situation in the
19 branch to be at the time?

20 A. Yes.

21 Q. And so we see here that that
22 appears to be at the top, photo 1, a photo of the
23 photocopy area; is that correct?

24 A. Yes.

25 Q. And then we see that photo number

1 2 is carpet, on the carpet tile and office number
2 4?

3 A. Yes.

4 Q. And then if we go to the other
5 page, this is identified as a carpet tile in the
6 teller area. And then finally, we see that at the
7 bottom of that page it is the storage room.

8 So it looks like there was evident
9 presence of mould in the branch that the staff
10 could see?

11 A. That's correct.

12 Q. And did the staff continue to
13 suffer from those health problems you indicated to
14 us happened?

15 A. Yes.

16 Q. Yes, okay. Now, again, if we go
17 to the page that ends with 3, we see that we have
18 their findings and their recommendation, and again,
19 it appears to be a similar recommendation that we
20 have seen before, repair the roof?

21 A. Yes.

22 Q. And remove the wet material?

23 A. Yes.

24 Q. They also indicate here though
25 that the material that had to be removed that was

1 wet was basically the carpet; is that correct?

2 A. Yes, it is.

3 Q. And if we go to just the page 14,
4 we see that that's the floor plan?

5 A. Yes.

6 Q. And that is the last page. We see
7 that the only area that was new mould that they
8 found was this B01 area; is that correct?

9 A. Yes, it is.

10 Q. We see though here, which is
11 interesting, is that the storage room now was the
12 entire space where before when we looked at it, it
13 had the training and the storage?

14 A. That's correct.

15 Q. I understand that again this
16 report was shared with mall maintenance and --
17 sorry, mall management and the owner?

18 A. Yes.

19 Q. You indicated to us that you spoke
20 to Zellers, and both the Zellers and Scotiabank
21 were experiencing a similar situation. Did you
22 speak with any of the other tenants of the problems
23 you were having?

24 A. I don't believe so, no.

25 Q. Now, as per their practice,

1 Pinchin always starts with an initial report and
2 then they provide a final report. If we go to
3 their final report in relation to this incident,
4 that is at tab 109 and it is Exhibit No. 5146. And
5 at 109, Ms. McCulloch, you should have a
6 separate, like a loose document at the back.

7 A. Yes.

8 Q. And that is the one I'm interested
9 in. And I am not going to go through it. Again,
10 they basically reproduce some of the findings we
11 just looked at from their initial report. But if
12 we go to the page that ends with 5, they indicate
13 at the bottom there that they have prepared a table
14 that presents -- actually, the table is the next
15 page, sorry, Ms. Kuka -- a table that basically
16 outlines all the location of areas where they found
17 mould. And we see that those areas are the teller
18 area, waiting area, open office, photocopy, office
19 number 4, corridor, storage room and lunchroom.
20 And then if we turn the page, those rooms were not
21 identified as having mould at the time; is that
22 correct?

23 A. Yes, it is.

24 Q. And I understand that if we go to
25 the page that ends with 9 where it says

1 "Description of Remediation Work", that the work
2 that they had recommended which was the removal of
3 the wet carpet was actually undertaken by
4 Scotiabank?

5 A. Yes.

6 Q. So the carpet in its entirety in
7 the entire branch was removed?

8 A. Yes, it was.

9 Q. And we do have a few pictures of
10 that. Ms. Kuka, if you could pull Exhibit No.
11 5115, so again, this is -- which office are we
12 looking at here, Ms. McCulloch?

13 A. This is the manager's office.

14 Q. Okay, so for a period of time
15 there was no carpet in the entire branch, as we can
16 see here?

17 A. That's correct.

18 Q. And if we go to Exhibit No. 5118,
19 I think it is a similar picture, and which area are
20 we looking at here?

21 A. This is behind the tellers.

22 Q. Okay. So on the right where we
23 have here the piece of paper that is on the wall,
24 was that the wall being shared with Zellers?

25 A. Yes, it is.

1 Q. And I understand that eventually,
2 though, tiles were installed in the branch?

3 A. Yes.

4 Q. Now, if we go to tab 111, that is
5 Exhibit No. 13-155, this is a letter dated June
6 26th, 2009. And if we go to the second page, the
7 paragraph that starts with "In the meantime [...]",
8 we have a Director of Real Estate here,
9 Mr. Rosenblum, who indicates to Eastwood Mall:

10 "[...] we again ask you to kindly
11 reimburse us for the outstanding sum
12 of \$113,889.72 to cover the costs
13 and expenses which was incurred
14 [...]"

15 So I gather that Mr. Nazarian hadn't
16 made any payments yet with respect to the amounts
17 spent by Scotiabank?

18 A. No, he had not.

19 Q. Now, if we go to tab 113, and that
20 is Exhibit No. 13-32, and this letter is dated July
21 2nd, 2009, and it appears that again there is a
22 further request for the cost of the remediation
23 work to be repaid by the landlord?

24 A. That's correct.

25 Q. And then at the bottom of the page

1 we see that -- and this letter is authored by
2 Mr. Rosenblum, that he is providing a copy of the
3 Caughill report and he says that he is providing an
4 additional copy because he has already shared it
5 with him, with Mr. Nazarian, in September 2008.
6 And he says at the bottom:

7 "We remain concerned about the
8 statements made by the engineers in
9 Section 6 of that report and would
10 ask you to please address each of
11 the points raised in that Section.
12 In particular, we are especially
13 concerned about whether structural
14 and fireproofing [...]"

15 And if we go to the next page:

16 "[...] elements, critical to the
17 safety of our customers and
18 employees, may have been
19 compromised, and what steps you have
20 taken to investigate the concerns
21 and resolve any findings."

22 So I gather that the bank was taking
23 the conclusion and finding of Mr. Caughill very
24 seriously?

25 A. Yes.

1 Q. And I wasn't able to find in any
2 of the documents provided to us by Scotiabank any
3 response from Mr. Nazarian. Are you aware whether
4 or not he responded?

5 A. I am not sure whether he did.

6 Q. Okay. And if we go to tab 116,
7 which is Exhibit No. 13-160, a further letter from
8 Scotiabank but this time requesting, again, the
9 amount of money not being paid; correct?

10 A. That's right.

11 Q. Except that here we see that the
12 amount had increased to \$155,000 as a result of the
13 latest Pinchin assessment?

14 A. That's correct.

15 Q. And again, am I right that that
16 money had not been -- was not paid by Mr. Nazarian?

17 A. That's correct.

18 Q. Now, if we go to 118, as a result
19 of this non-payment, so that is Exhibit No. 13-33,
20 and this is in July 2009, I understand that
21 Scotiabank was fed up and that basically they were
22 advising Mr. Nazarian that they would offset the
23 amount that he owed against the rent?

24 A. That's correct.

25 Q. And that is the action that the

1 bank proceeded to take?

2 A. Yes.

3 Q. Now if we go to --

4 THE COMMISSIONER: What was the monthly
5 rent?

6 THE WITNESS: I believe it was about
7 \$8,650.

8 THE COMMISSIONER: Thank you.

9 BY MS. EFFENDI:

10 Q. Now, if we go to tab 120, which is
11 Exhibit No. 13-35, this is a letter from Mr. Fabris
12 to Mr. Rosenblum in which he indicates:

13 "Further to your correspondence of
14 July 23, 2009", which we just looked
15 at, "my client is taking the
16 position that your claim should be
17 with your insurer, and not with
18 Eastwood Mall. My client will not
19 be paying out the account."

20 And then if we look at tab 121, which
21 is Exhibit No. 13-165, I understand that Scotiabank
22 took the position that it was not up to its insurer
23 but the landlord; is that your understanding?

24 A. Yes.

25 Q. And kept on offsetting the amount

1 owed with the rent?

2 A. That's correct.

3 Q. Now, if we can go to, Ms. Kuka,
4 Exhibit No. 4245, and Ms. McCulloch, if you go to
5 tab 122, at the back of that tab you will see there
6 is a package stapled.

7 A. Yes.

8 Q. And the first letter that you
9 should have is a letter dated September 16th, 2009?

10 A. Yes.

11 Q. And that is another letter from
12 Mr. Fabris to Mr. Rosenblum at Scotiabank, and he
13 says the following:

14 "Further to your correspondence of
15 August 5th, 2009, I have enclosed
16 for your reference a copy of an
17 article which appeared in the Elliot
18 Lake Standard, where sources from
19 the bank indicated that there was no
20 mold found on the premises."

21 Now, let me stop here. Unfortunately,
22 we didn't have that attachment so we weren't able
23 to look at it, but do you recall that, Ms.
24 McCulloch, that people from the bank would have
25 spoken to the newspaper?

1 A. It wouldn't have been at the
2 branch level. It would have been higher up than
3 that.

4 Q. Okay, and why do you say that?

5 A. We didn't -- we had to -- anything
6 that we spoke to the newspaper about had to be
7 cleared with public relations.

8 Q. At the head office?

9 A. Yes, and they had somebody that
10 looked after it.

11 Q. But from what you understood in
12 September 2009, was there still any mould in the
13 premises or had it all been ripped out with the
14 carpet and everything?

15 A. It was my understanding that with
16 the carpet gone, it was gone.

17 Q. Okay. And he goes on to say:

18 "We certainly understand that you
19 have not been paying rent for the
20 last two months. My clients have
21 expressed concern that the repairs
22 were done without approval or the
23 possibility that their own staff
24 could do the remedial work."

25 Again, let me stop here.

1 I thought I understood from your
2 previous answer that, particularly in the August
3 2008 incident, that in your view, there is no way
4 mall maintenance would have been able to do that
5 kind of work that occurred at the time?

6 A. No, they wouldn't have.

7 Q. Okay.

8 A. And he had already agreed to do
9 that work.

10 Q. And given oral permission to
11 Scotiabank?

12 A. Exactly.

13 Q. And then he goes on to say:

14 "No mold was found in the vicinity
15 of the bank. I have attached for
16 your reference a copy of the M.R.
17 Wright report for Zellers, which had
18 far more leaks than the bank ever
19 had."

20 What is your reaction to that?

21 A. What does Zellers leaking have to
22 do with us? Who cares if Zellers leaked? It still
23 had nothing to do with us.

24 Q. So now, you will see that at the
25 back of that you should have a yellow sticky that

1 distinguishes that letter from another letter dated
2 October 6th, 2009, and that is Exhibit No. 5147.
3 So this is a month later, and it is a letter from
4 Mr. Fabris to Mr. Rosenblum, and in the second
5 paragraph he refers to Mr. Nazarian and says:

6 "[Mr. Nazarian] agrees to resolve
7 this matter as follows: Eastwood
8 Mall will fix the damaged drywall in
9 the bank, fix the ceiling, as well
10 as replace the carpet where damage
11 has occurred due to leakage.

12 However, where no leakage occurred
13 in the balance of the branch, he
14 does not agree to change the
15 carpet."

16 And he goes on to say:

17 "You can either provide us with
18 the type of carpeting, or indicate
19 the type that you wish, and we will
20 do the appropriate purchases."

21 And then he says:

22 "I understand from speaking with
23 mall management, and from living in
24 the community, that we have had rain
25 for the past almost week and a half,

1 and there are no discernible leaks
2 or moisture in the bank, we hope
3 that we can resolve this matter, as
4 such, we request that rent begin
5 once again as of October 1st, 2009."

6 What is your reaction to the fact that
7 there was no leaks in October 2009?

8 A. I can't remember the specifics,
9 but in my recollection, the only time the mall did
10 not leak was when there was no rain. So if there
11 was no rain, we wouldn't have a leak.

12 Q. Okay. And then if we go to tab
13 123, and that is Exhibit No. 13-168, that is a
14 response from Mr. Rosenblum to Mr. Fabris and he
15 appears to concur with what you just told us. He
16 says in the second paragraph in his letter to
17 Mr. Fabris:

18 "As I mentioned during our
19 telephone conversation on October
20 2nd, we explained to Mr. Nazarian
21 that we need 3 weeks during rainy
22 season without leaks before we will
23 allow the Landlord to restore our
24 premises [...]"

25 So basically, it wasn't just three

1 weeks with sun, but you wanted evidence that the
2 water outside wasn't penetrating inside the branch?

3 A. That's correct.

4 Q. And as of October 2009, that had
5 not happened yet?

6 A. That's correct.

7 Q. Now, if we go to tab 124, Exhibit
8 No. 4246, this is an e-mail from Ms. McAllister to
9 mall management and Mr. Nazarian as well as Ms.
10 Nazarian, dated October 13, 2009, and you see in
11 the first paragraph that Ms. McAllister indicates
12 the following:

13 "We have been advised that
14 contractors have been coming to the
15 Branch and expressing that they will
16 be starting construction."

17 Let me stop here for a moment. Do you
18 recall that?

19 A. I remember somebody coming in and
20 talking to Laurie.

21 Q. Okay.

22 A. And she said basically that
23 nothing would be done until she had approval from
24 head office.

25 Q. Okay, and am I right that there

1 hadn't been -- the condition hadn't been met yet?

2 A. That is correct.

3 Q. And that is why the reaction of
4 the Branch Manager as well as head office in terms
5 of the contractors not being allowed to come in?

6 A. That's right.

7 Q. And then she actually goes on at
8 the bottom of her e-mail where she says:

9 "Please don't send any more trades
10 to our branch with first advising us
11 who the company and the name of the
12 person is that will be attending
13 including date and approximate time
14 as we do need to advise the branch
15 prior to their arrival."

16 And then she also says that there are
17 security measures put in place because it is a
18 financial institution?

19 A. That's correct.

20 Q. So I gather that not anyone can
21 just show up in the branch and wander around?

22 A. That's right.

23 Q. Did you find it odd that, you
24 know, we were discussing earlier, for example, how
25 you had to go and ask for mall maintenance when you

1 needed them to come in because they had stopped
2 coming in daily, but then all of a sudden they are
3 showing up wanting to repair?

4 A. Yes, it was very strange.

5 Q. Did you question them about it?

6 A. I didn't. I'm not sure if Laurie
7 did or not.

8 Q. Now, if we go to tab 126, Exhibit
9 No. 4247, that is an e-mail a few days later, in
10 fact, a week later on October 22nd, 2009, from
11 Ms. McAllister to Irene and Bob Nazarian, as well
12 as mall management, and she described here a
13 situation where someone from the mall staff came in
14 asking the branch to sign a sheet basically
15 confirming that no leaks had occurred for the past
16 three weeks; do you recall that?

17 A. I do not recall that.

18 Q. I understand from this e-mail that
19 this sheet wasn't signed because it hadn't -- the
20 three weeks without leaks hadn't occurred yet?

21 A. That's right.

22 Q. Now, if we go to tab 127, Exhibit
23 No. 13-169, this is a letter from Mr. Fabris again
24 to Ms. McAllister where he indicates that they have
25 retained, "they" being the mall owners, M.R. Wright

1 Consulting to conduct some mould testing in the
2 branch. Were you present when that occurred, Ms.
3 McCulloch?

4 A. I don't remember them being there,
5 but based on stuff that I have seen since, I was.

6 Q. Okay. Now, if we go to tab 128,
7 Exhibit No. 13-38, October 26, 2009, Mr. Fabris
8 writes to Mr. Rosenblum and he says the following:

9 "I have spoken with my client, and
10 can advise it has been four weeks
11 without leaks, and we have had
12 considerable rain, contrary to Ms.
13 Kim McAllister's email dated October
14 22nd, 2009, we have been receiving
15 torrential downpours throughout the
16 course of October up to and
17 including today's date. There are
18 no leaks inside the Scotia Bank."

19 And then he goes on to tell them how he
20 was willing to forgive the past rent that hasn't
21 been paid, and then he says:

22 "My client's position is that
23 repairs performed were premature;
24 they were done prior to completion
25 of the repairs on the roof and as

1 such were done without cause."

2 Let me address this last paragraph I
3 just read first. What is your reaction to the fact
4 that their position was the work basically
5 shouldn't have been done?

6 A. That is ridiculous.

7 Q. And why is that?

8 A. The only work that had been done
9 was the removal of affected materials. It hadn't
10 been fixed yet, so it wasn't really a repair. The
11 carpet was removed and that was repaired with tile,
12 but it was done because there was mould and it was
13 clearly evident in the reports from Pinchin that
14 there was mould.

15 So I don't know how he can say that
16 they were premature and done -- they were done
17 prior to completion of the roof being repaired
18 because the roof was never repaired. And the fact
19 that the materials had to be removed, it was a
20 horrendous small.

21 Q. And here in his letter of October
22 26th he is saying there are no leaks at the time.
23 And I would like to draw your attention, if we can
24 go to tab 129, and keep that date of October 26th
25 in your mind here, if we go, Ms. Kuka, to Exhibit

1 No. 4248, the page that ends with 01, at the bottom
2 of that page there is an e-mail from Ms. Wiens to
3 Ms. Ferreira, copying you, dated October 26th. And
4 I understand that there is a report of dripping in
5 the storage room, there is a leak in the rear
6 entrance, and then there is also leaking in the
7 electrical room and then the ceiling dripping in
8 the storage and the electrical room as well.

9 So in the same day that letter was sent
10 there was actually leaking ongoing at the branch?

11 A. That is correct.

12 Q. If we go to tab 137, Exhibit No.
13 13-40, this is an internal memo at head office
14 dated November 27th, 2009, entitled "Alternative
15 Branch Location". And I gather you wouldn't have
16 seen this document at the time, Ms. McCulloch; is
17 that right?

18 A. That's correct.

19 Q. But we see that at the top of that
20 memo the first thing that is addressed by the
21 author, who is Mr. Harry Manttari, is the fact that
22 they are investigating the possibility of
23 relocating the branch "due to the ongoing problems
24 with water penetrating into the branch". So I
25 gather that the main reason Scotiabank wanted to

1 leave was because of the leaks?

2 A. That's correct.

3 Q. And at the bottom of this memo,
4 the first page, sorry, Ms. Kuka, at the bottom of
5 the first page we see that there is a note that
6 says the "Con" of basically remaining at the mall
7 is the following:

8 "Current landlord does not have
9 the financial resources to have the
10 roof leaks professionally repaired,
11 so he is engaging his on-site staff
12 to make the parking deck repairs."

13 Do you know where head office would
14 have received that information that the landlord
15 didn't have the funds?

16 A. I have no idea.

17 Q. If we go to tab 140, Exhibit No.
18 4250, and if we go to the page -- at the bottom of
19 this page we see that there is an e-mail on
20 December -- at the bottom of the page, Ms. Kuka,
21 yes, that e-mail just there. Thank you. It is an
22 e-mail from Ms. Nazarian to Ms. McAllister on
23 December 9, 2009, and if we go to the next page, we
24 see that this is what Eastwood Mall is telling
25 Scotiabank:

1 "We have received Kim's email
2 dated December 7, 2009, however we
3 were not able to open and read it.
4 As you know we have completed the
5 roof repair. It is high time to
6 clear our situation and possibly
7 continue a better relation[ship]."

8 This is December 2009. Do you recall
9 if they were doing any repairs that was different
10 than what they had been doing so far, which was
11 re-caulking the roof?

12 A. No.

13 Q. No, you don't recall that kind of
14 work being done?

15 A. No, there was just the same old
16 work being done.

17 Q. Now, if you go to the first page,
18 Ms. Kuka, you'll see Ms. McAllister responds to Ms.
19 Nazarian, and in her third paragraph she says:

20 "We have been advised that one of
21 your mall maintenance took pictures
22 of our branch including the
23 electrical panel and the walls.
24 Could you please send us copies of
25 these pictures? This was not

1 requested from our office and it
2 seems that someone just showed up at
3 the branch. We hope you can
4 understand that pictures of a Bank
5 Branch are very confidential and a
6 security risk."

7 Do you recall that happening, Ms.
8 McCulloch?

9 A. No, I don't remember that.

10 Q. So you wouldn't be able to tell us
11 why those pictures were being taken?

12 A. I'm not sure.

13 Q. I understand that later in
14 December 2009, in addition to the water
15 infiltration problem, there were also problems with
16 lights and the icy conditions on the parking and
17 the breezeway; do you recall that?

18 A. Yes.

19 Q. So I gather that maintenance was
20 lacking when it came to the icy condition as a
21 result of the winter conditions?

22 A. Yes.

23 Q. And lights weren't changed; is
24 that what was going on?

25 A. There were -- the lights weren't

1 working on the ramp, on the breezeway, so it was
2 dark walking down there.

3 Q. And when you say "the breezeway",
4 is that basically the area around the walkway? Is
5 that what the breezeway is?

6 A. Yes, yes.

7 Q. I understand that eventually,
8 after we looked at that memo that was an internal
9 memo about the different alternative locations for
10 the branch, eventually the decision of head office
11 was to relocate and move out of the mall?

12 A. That's correct.

13 Q. And that happened at the end of
14 December 2011?

15 A. Yes. December 9th, I think.

16 Q. Okay. So now jumping ahead to
17 2010 and 2011, I understand that in 2010 the leaks
18 kept on going?

19 A. Yes.

20 Q. And if you can take your third
21 volume, Ms. McCulloch, tab 151, Exhibit No. 13-44,
22 and I particularly like that e-mail exchange. If
23 we go to the last page -- actually, the before-last
24 page -- actually, sorry, Ms. Kuka, let's go to the
25 last one, because it is really good too.

1 We see that it is an e-mail actually
2 from you to Wendy Ferreira, and this is in March
3 2010, and you tell her the following:

4 "It is exciting to see the sun.

5 So far, no leaks, but haven't seen
6 any rain yet either. We did have a
7 customer fall on our floor though.

8 As we do not have carpeting, the
9 chairs slide right along the floor."

10 So then you keep on describing the
11 situation with the floor. So I gather you were
12 happy, while you were concerned about the issue
13 with the customer, you were happy there was no
14 leaks in the branch?

15 A. Correct.

16 Q. And if we go to the previous page,
17 again you report back on April -- that is April 7th
18 then at the top there that you don't have any leaks
19 yet, and this is April, a month later?

20 A. Yes.

21 Q. But then if we go to the previous
22 page, unfortunately, the next day you tell her:

23 "Guess what??? We have a leak.

24 It is in the Stationary Room, and it
25 sounds/looks like there is more than

1 one leak, and it's making quite the
2 mess in there."

3 So basically, the no leaks lasted for
4 less than a month?

5 A. Yes.

6 Q. And then if we go to the first
7 page -- actually, if you go to tab 152, Exhibit No.
8 13-45 -- in fact, Ms. Kuka, you don't need to pull
9 it. I understand that the mall owner was advised
10 of these recent leaks in April 2010?

11 A. That's correct.

12 Q. Okay. And then in May 2010, if
13 you go to tab 154, Ms. Kuka, Exhibit No. 13-46,
14 this is a letter from Mr. Fabris, and I am really
15 only interested in the first two lines. He says:

16 "It has been quite some time since
17 I last wrote to you."

18 This is May 11, 2010. And he says:

19 "I have been advised that there
20 have been no leaks at the Scotiabank
21 premises."

22 I understand, in fact, that a month
23 later in June 2010, less than a month, there were
24 actually leaks happening at the branch; is that
25 your recollection, Ms. McCulloch?

1 A. Yes.

2 Q. And let's go to that document. It
3 is tab 158, Exhibit No. 13-191, the page that ends
4 with 02 at the bottom. And at the bottom of the
5 page we see that you are reporting leaks in the
6 electrical room and in the front of the branch?

7 A. Yes.

8 Q. So it is fair to say that the no
9 leaks that was being reported by Mr. Fabris was
10 short-lived?

11 A. That's correct.

12 Q. During that time period, was the
13 branch -- did the branch still have this musty
14 smell going on?

15 A. Yes.

16 Q. So did that ever disappear?

17 A. No.

18 Q. And in fact, I understand that the
19 staff in September 2010, if we go to Exhibit No.
20 13-50, tab 161, that the staff complained about
21 suffering from various symptoms as a result of the
22 state of the branch; is that correct?

23 A. Yes, it is.

24 Q. And again, it appears that that
25 led to additional testing being done by Pinchin; is

1 that correct?

2 A. Yes, it did.

3 Q. And we can find that report at tab
4 165, Exhibit No. 13-51. So Pinchin came in
5 following that complaint of September 2010 and
6 basically again did another assessment of the
7 branch?

8 A. That's correct.

9 Q. And they met with you?

10 A. Yes, they did.

11 Q. And you reported to them that
12 there were leaks in the teller area, waiting area,
13 office area and kitchen/storage during periods of
14 heavy rain?

15 A. Yes.

16 Q. And again, the same musty odour
17 was experienced?

18 A. That's correct.

19 Q. And we can see here that they
20 indicated that they observed water staining in
21 different locations, and they attached a number of
22 pictures. This time, though, they did indicate
23 that they did not find the presence of concealed
24 mould growth; however, they recommended that the
25 roof be repaired again?

1 A. Yes.

2 Q. If we look at those pictures,
3 though, at the page that ends with 03, we can see
4 that this is what was going on. I guess the first
5 picture is of the janitor's closet?

6 A. Yes.

7 Q. And then the second one we see
8 kind of a bulging tile?

9 A. Yes. That is at the front.

10 Q. The front of the branch?

11 A. Yes.

12 Q. And then if we go to the next
13 page, this is the beam you were talking to us
14 about?

15 A. Yes.

16 Q. And the orange, is that from the
17 leaking occurring on the beam, the orange streaks
18 on the white beam?

19 A. No, that is the rust.

20 Q. That is the rust, okay.
21 Basically, the rust because of the water?

22 A. Okay.

23 Q. And again, I understand that as
24 per previous practices, this report recommending
25 that the roof be repaired was provided to Eastwood

1 Mall?

2 A. That's correct.

3 Q. Do you know whether or not
4 Eastwood Mall took any different steps to remedy
5 the roof that wasn't what they normally did with
6 the caulking of the joints?

7 A. I do not believe that they did,
8 no.

9 Q. Okay. Now, if we go to tab 172,
10 Exhibit No. 13-53, this is a letter dated October
11 4th, 2010, from Mr. Fabris to Ms. McAllister and he
12 says the following:

13 "I was provided with a copy of
14 your emails by Mr. Nazarian. I find
15 that the actions of your staff
16 appear to mirror their wish to have
17 a new facility built, which is
18 clearly their intentions of the Bank
19 of Nova Scotia.

20 You can proceed with your mould
21 testing, however please be advised
22 that my client will not be
23 responsible for the costs. We had
24 mould testing completed in the fall
25 of last year, with negative results;

1 you have a copy of that report.
2 There have been no substantial leaks
3 in the area, I think that hysteria
4 is taking over your staff. I would
5 however appreciate receiving a copy
6 of the report and if it is negative,
7 I am sure the Bank will cover the
8 costs themselves and not seek
9 recovery by my client.

10 We have verified that the tiles
11 are not as you state 'mouldy', there
12 is some water staining and we are
13 addressing the issue however I would
14 ask for yourself and your staff to
15 limit yourselves to the premises
16 that you are now leasing."

17 What is your reaction? You didn't see
18 that letter at the time, Ms. McCulloch, right?

19 A. No, no, I did not.

20 Q. What is your reaction to the
21 characterization by Mr. Fabris of the staff as
22 being basically hysterical?

23 A. Very angry. I can't really say
24 what I think.

25 Q. In polite words.

1 A. It is ridiculous. If he had to --
2 if his office was where we were, do you not think
3 he would have done something about that? If one of
4 his staff or one of his family members was working
5 for us, do you not think that he would not be
6 acting like this?

7 Q. So you disagree; is that fair to
8 say?

9 A. Oh, that is very fair to say.

10 Q. And is it fair to say that
11 throughout this, I mean, the primary goal of
12 Scotiabank was to ensure a safe environment?

13 A. That's correct.

14 Q. And that is the reason why
15 eventually they left?

16 A. That is correct.

17 Q. I understand that the leaking
18 continued throughout 2011 before the branch left
19 the mall?

20 A. Yes, that is correct.

21 Q. And did the bank ever reconstruct
22 the walls before it left?

23 A. No.

24 Q. And is that because the leaking
25 never stopped?

1 A. That's correct.

2 Q. Now, if we go to tab 191, and that
3 is Exhibit No. 13-62, this is an e-mail of October
4 20th, 2011, and it describes a situation about
5 electrical issues. Do you recall that incident?

6 A. Oh, yes.

7 Q. Can you describe to us what
8 happened in October 2011 with respect to electrical
9 problems?

10 A. The -- it was raining. The branch
11 was leaking in the electrical room on the
12 electrical panel. We called mall maintenance.
13 They came in and there was also water on the floor.
14 And they came in and there was -- they did
15 something, I'm not sure what, and the power surged,
16 the power went off. It came back on and they left.
17 And then we could smell burning wires, and we had
18 to call 911 and evacuate.

19 Q. And what happened? Who arrived at
20 the scene when you called 911?

21 A. The Fire Department.

22 Q. And do you recall what they said,
23 if anything?

24 A. Well, they didn't want to go in
25 and shut the power off.

1 Q. Okay.

2 A. Because of the water standing on
3 the floor, it was a -- you could be electrocuted.

4 Q. Yes.

5 A. I believe one of the young
6 maintenance guys shut it off.

7 Q. Okay.

8 A. And --

9 Q. And -- sorry, go ahead.

10 A. And then they went in and looked
11 around and did their thing and determined what the
12 cause was.

13 Q. And what did they say the cause
14 was?

15 A. It was a -- I can't remember what
16 the name of it is. It is not a transformer, I
17 don't think. Something was leaking right on top of
18 it which caused it to blow.

19 Q. Okay.

20 A. I don't know what the -- so we
21 needed then an electrician.

22 Q. Okay, and who came in? We heard
23 that Mr. Collett came in?

24 A. Yes, he did.

25 Q. Is that correct?

1 A. Yes.

2 Q. And do you recall what Mr. Collett
3 said when he was -- when he came in to do the
4 repairs?

5 A. That he was pretty much the only
6 person that would do the repairs because Mr.
7 Nazarian never paid his bills, but he knew that if
8 Bob didn't pay, that the bank would.

9 Q. Okay.

10 A. So he would do the repairs.

11 Q. And so I gather then that
12 Mr. Collett did the necessary repairs there?

13 A. Yes, he did.

14 Q. Okay. And then was there anything
15 else about that incident that you recall?

16 A. That day, not specifically.

17 Q. Okay.

18 A. We got the approval at the end of
19 the day, I think it was about 8 o'clock at night or
20 9 o'clock at night, that it was safe to go back in
21 and we could open the next day.

22 Q. Okay. And we heard that there was
23 also an inspection conducted later on by the
24 Electrical Safety Board; do you recall that?

25 A. Yes.

1 Q. And were you present then?

2 A. I believe I was.

3 Q. Okay, do you --

4 A. Myself and Laurie, the manager.

5 Q. Do you recall what the inspector
6 indicated?

7 A. He said that he was doing us a
8 favour by passing us.

9 Q. Did you inquire what he meant by
10 doing us a favour?

11 A. Well, we told him that he wasn't
12 doing us a favour. He was doing Bob Nazarian a
13 favour. And Laurie asked him why don't you shut
14 the place down, and he said it was far too
15 political.

16 Q. Do you recall whether or not the
17 Fire Department came to do a re-inspection
18 following the incident?

19 A. I'm not sure if they did.

20 Q. And two months later -- a month
21 and a half later the branch was out of the mall?

22 A. Yes.

23 Q. Now, I'm almost done. I would
24 like to ask you just a couple of general questions.

25 Did it ever occur to you that the

1 leaking could affect the structure of the building?

2 A. At the time? Not really.

3 Q. Did anyone at the bank ever
4 consider making a complaint to the City or, more
5 specifically, the Building Department about the
6 issues they were suffering from?

7 A. No.

8 Q. Did the Building Department ever
9 come in to the branch and conduct an inspection?

10 A. Not that I remember ever, no.

11 Q. Did the Fire Department ever come
12 and conduct an inspection, aside from this incident
13 we just discussed?

14 A. They came in to -- at one point, I
15 can't remember the exact date, but they had served
16 Mr. Nazarian with an order because there were -- in
17 the back hallway, they were using it as storage and
18 they weren't allowed to do that, and the emergency
19 lights were not working. So they had come in to go
20 to view from our back hallway if the area had been
21 cleaned up.

22 Q. Okay, and was anything mentioned
23 by the inspector? First of all, let me ask you do
24 you remember who it was that inspected?

25 A. From the Fire Department?

1 Q. Yes.

2 A. No, I do not remember who it was.

3 Q. Do you remember if that person
4 said anything to the staff of the branch as they
5 were walking through?

6 A. He looked to the right where the
7 hallway was in between the coat room and the
8 electrical room, and there was a tarp. The
9 lightbulb -- the tarp was under the light and he
10 walked by and said, Oh, I don't want to see that,
11 and kept walking to the emergency exit.

12 Q. I would like to end by just
13 looking at a few pictures, Ms. McCulloch, and then
14 we will be done. If you can take your Volume 4, if
15 we can go to tab 33, and that is Exhibit No. 5136.
16 Was that the hallway you were just describing to us
17 leading to the electrical room?

18 A. Yeah, I believe so.

19 Q. So we can see some sort of mouldy
20 material here in that tarp. If we go to 67, and
21 that is Exhibit No. 5107, again, this appears to be
22 a tarp with mould. Do you recall where that
23 picture -- which room that picture was taken in?

24 A. I'm pretty sure that is the
25 electrical room.

1 Q. Sorry, the electrical?

2 A. The electrical room, yes.

3 Q. In fact, we do have a picture of
4 the electrical room. If you go to the next tab,
5 Exhibit No. 4260 -- wrong exhibit number? I
6 believe I have the wrong exhibit number. The one
7 that I'm looking at ends with 274.

8 MS. KUKA: PEC?

9 MS. EFFENDI: SB.

10 MS. KUKA: Exhibit No. 5108.

11 BY MS. EFFENDI:

12 Q. Okay, thank you.

13 So this is again the electrical room;
14 is that correct, Ms. McCulloch?

15 A. Yes, it is.

16 Q. So this is where the leaking would
17 have happened and that incident that you just
18 described to us?

19 A. Yes.

20 Q. The last picture I would like to
21 show you is at tab 62, and that is Exhibit No.
22 5103, I think. Yes. What are we looking at here,
23 Ms. McCulloch? I see that there is bins, clearly
24 it looks like recycle bins, and then there is the
25 paper on the wall where it looks like there was

1 drywall there before.

2 A. Yes. This is -- that wall behind
3 is the training room which goes -- on the other
4 side of the training room is the kitchen. And what
5 we ended up doing was if we were in the kitchen or
6 in the bathroom and something happened, whether
7 there would be a fire in the electrical room or if
8 the roof collapsed, we had no way to get out of
9 there. So we moved the three furthest to the
10 right, the three recycling bins, and opened up the
11 paper so we had an escape route from the kitchen to
12 the rest of the branch.

13 Q. And I think it would be helpful if
14 we could pull up the floor plan so that you can
15 explain to us what you mean by looking at the
16 different spaces. Ms. Kuka, if you could pull
17 Exhibit No. 13-29 and go to the last page. So as I
18 understood you describing basically that area, is
19 that where we see those little stripes of the
20 mould?

21 A. Yes.

22 Q. Okay.

23 A. Yeah.

24 Q. So that wall was opened up?

25 A. Yes.

1 Q. And the concern was that if
2 someone was in the lunchroom and wasn't able to
3 come out through the hallway in front of the
4 electrical room, someone can go through the storage
5 room and crawl within that escape route?

6 A. That is correct.

7 Q. And I gather that the purpose of
8 that is that people feared for their safety and
9 that is why that was done?

10 A. That is correct.

11 Q. Ms. McCulloch, those are all of my
12 questions. Is there anything else you would like
13 to share with the Commissioner?

14 A. I don't think so, no, thanks.

15 Q. My friends may have some questions
16 for you. Thank you.

17 THE COMMISSIONER: I'm looking at the
18 time. Do you want to start now, or do you want to
19 start at 2:00? It doesn't make any difference to
20 me.

21 MS. EFFENDI: I'm in your hands.

22 THE COMMISSIONER: Anybody want to go?

23 MS. EFFENDI: Maybe no one has any
24 questions and that is why.

25 THE COMMISSIONER: Well, I can start

1 polling.

2 Mr. MacRae?

3 MR. MacRAE: I have no questions,
4 Mr. Commissioner.

5 THE COMMISSIONER: Thank you.

6 MR. LONGO: I will only be one or two
7 minutes at most.

8 THE COMMISSIONER: Well, why don't you
9 go ahead.

10 Ms. Smith?

11 MS. SMITH: No questions.

12 THE COMMISSIONER: Mr. Cassan?

13 Mr. Aubé?

14 MR. AUBÉ: Three or four minutes for
15 me.

16 THE COMMISSIONER: Well, let's go ahead
17 and see if we can finish this off. Go ahead,
18 please.

19 MR. AUBÉ: She asked all the good
20 questions.

21 THE COMMISSIONER: There may be nothing
22 left for you.

23 CROSS-EXAMINATION BY MR. LONGO:

24 Q. Madam, my name is Leo Longo, and I
25 represent the Ontario Building Officials

1 Association. I'm just interested in the last part
2 of your testimony about never contacting the City.

3 There has been a lot of evidence at
4 this Inquiry about the existence of a municipal
5 Property Standards By-Law that establishes
6 requirements that buildings be watertight and
7 structurally sound.

8 Do I take it that you and your
9 organization were unaware of the existence of that
10 by-law?

11 A. I was unaware of that for sure,
12 yes.

13 Q. And from your inquiries within
14 your organization, do you know if anyone else was
15 aware of that by-law?

16 A. I'm not sure about our head
17 office. I'm not positive on that.

18 Q. Okay. One issue that might be
19 worth exploring is the issue of a municipality
20 advising its citizenry of the by-laws that it has
21 enacted for the benefit of the citizens.

22 Would you be supportive of a
23 municipality being required to periodically notify
24 citizens of by-laws that had been passed in the
25 public interest for the citizens?

1 A. Yes.

2 Q. Thank you. Those are my
3 questions.

4 THE COMMISSIONER: Thank you,
5 Mr. Longo.

6 Mr. Aubé.

7 CROSS-EXAMINATION BY MR. AUBÉ:

8 Q. Hello, Ms. McCulloch.

9 A. Hello.

10 Q. I am the solicitor today for
11 ELMAC, Elliot Lake Mall Action Committee.

12 And, Your Worship, for the record, Ms.
13 McCulloch is an old acquaintance -- no, she has
14 been an acquaintance for a number of years. She is
15 not old. She is also a client. And I too have had
16 a lot of years with the bank.

17 Ms. Effendi has done a great job of
18 reviewing the information with you. I just want to
19 touch a couple of points.

20 You have been working in that branch
21 for a number of years, and to my knowledge, all
22 your co-workers are women?

23 A. Yes.

24 Q. And over the last four or five
25 years, how many people worked there at the branch?

1 A. We had a bit of a turnover.
2 Probably 20 to 30.

3 Q. Uhm-hmm?

4 A. In that time span.

5 Q. At any one time?

6 A. At any one time, between 10 and
7 15.

8 Q. And you have to be a rather
9 serious and responsible person to work in a bank?

10 A. Yes.

11 Q. And what was the mood of your
12 co-workers when faced with all these leaks and
13 stuff and whatever? How did they bear up with
14 this?

15 A. It was -- unfortunately, it was
16 just a regular everyday occurrence. We were just
17 used to it.

18 Q. You put up with it?

19 A. We put up with it.

20 Q. Uhm-hmm. And I understand from
21 your testimony that when there was a leak or when
22 there was a problem, if nobody came to help from
23 the mall maintenance, you did what you had to do?

24 A. That's correct.

25 Q. And you did that because

1 collectively you wanted your branch to work and you
2 wanted to do your job?

3 A. That's right, and we wanted to
4 maintain the safety of our customers and our staff.

5 Q. So this is not the work of
6 hysterical women, is it?

7 A. No, it is not.

8 Q. All right. Now, just one more --
9 two more incidents. My friend asked you questions
10 about when Mr. Collett went in to fix the problem.
11 I guess that was in the fall of 2011?

12 A. Yes.

13 Q. Okay. Now, correct me if I have
14 got this wrong here. I understand that in the
15 electrical room there was a bladder?

16 A. Yes.

17 Q. One of the big orange things with
18 a hose underneath?

19 A. That's correct.

20 Q. And I understand from
21 Mr. Collett's testimony that this bladder fed into
22 a bucket?

23 A. Yes.

24 Q. And I understand this bucket was
25 on a ladder?

1 A. That's correct.

2 Q. Now, who put that there?

3 A. It would have been mall
4 maintenance.

5 Q. So they installed the bladder?

6 A. Yes.

7 Q. And put the bucket on a ladder?

8 A. That's correct.

9 Q. And I understand that what
10 happened was that the bucket filled up, nobody
11 emptied it, and it fell onto the wall and shorted
12 out an electrical thing, a transformer or
13 something?

14 A. Yeah, something like that, yeah.
15 I mean, it was raining in the room as well. It was
16 leaking in the room that day as well.

17 Q. And what would have happened after
18 a rain with the buckets in the branch? Who took
19 care of that?

20 A. The mall maintenance was supposed
21 to take care of it. I mean, some of the buckets,
22 we didn't use buckets; we used the RubberMaid
23 roughneck totes because it leaked so much, well, we
24 couldn't lift them to empty them. So mall
25 maintenance was supposed to come back and empty --

1 Q. Well, that was my next question.
2 How did you lift all of those heavy buckets full of
3 water?

4 A. Yeah, no, it was supposed to be
5 mall maintenance that was supposed to come back and
6 do that.

7 Q. Uhm-hmm. And of course, they
8 hadn't and that was the cause of that breakdown.

9 You commented on one of the -- I can't
10 remember if it was a fireman who, when they were
11 doing an inspection, said that the reporting of
12 this stuff was too political.

13 A. That was the electrical safety
14 inspector.

15 Q. Okay. So what did you understand
16 him to mean by that?

17 A. He didn't want to close the mall
18 down because too many people would be out of work
19 or it would be bad for the economy of Elliot Lake.

20 Q. All right. Well, thank you, Ms.
21 McCulloch. I think this was a really -- it was a
22 long -- oh, one last question. Did you know in the
23 fall of 2010 that the bank was considering -- that
24 head office was considering moving?

25 A. In the fall of 2010, no, we

1 weren't aware of that yet.

2 Q. So I go back to the letter from
3 Mr. Fabris there where he says that clearly:

4 "I find that the actions of your
5 staff appear to mirror their wish to
6 have a new facility built [...]"

7 A. Yeah, we weren't aware of that
8 happening, so --

9 Q. So you would have been content if
10 they had just fixed the place and it stopped
11 leaking?

12 A. Exactly. I mean, the pro of being
13 in the mall is that it is one-stop shopping for
14 customers. It is very convenient for customers.
15 So it was a very good location for us to be located
16 in. And if he would have fixed the repair, fixed
17 the leaking problem, we never would have left.

18 Q. All right. And the other thing,
19 it never stopped leaking for more than three weeks?

20 A. No. Only if it was sunny.

21 Q. Only if it was sunny. Thank you,
22 Ms. McCulloch.

23 A. Thank you.

24 THE COMMISSIONER: Thank you, Mr. Aubé.
25 Mr. Myles?

1 CROSS-EXAMINATION BY MR. MYLES:

2 Q. I have one question,
3 Mr. Commissioner.

4 Ms. McCulloch, I'm Chuck Myles. I
5 represent SAGE, the Seniors Action Group of Elliot
6 Lake. And I am not a lawyer.

7 You worked from '89?

8 A. July 15th, 1990.

9 Q. 1990?

10 A. Yes.

11 Q. In all that time, when was the
12 first time you saw a Fire Inspector do an
13 inspection; do you recall?

14 A. We had someone come in annually to
15 check the fire extinguishers and the emergency
16 lighting, but that was it.

17 Q. Okay. And did a City Inspector
18 ever come around?

19 A. No.

20 Q. Okay, that was my questions.
21 Thank you, ma'am.

22 A. Thanks.

23 THE COMMISSIONER: I think we have been
24 around the room.

25 Ms. Effendi?

1 MS. EFFENDI: I actually have no
2 questions in re-examination, Mr. Commissioner, but
3 if I may take just 30 seconds of your time -- thank
4 you, Ms. McCulloch -- just to indicate on the
5 record that unfortunately the Commission Counsel
6 team will be losing quite an important member of
7 its team after tomorrow, and this is Ms. Ivana
8 Nenadic who is going to be leaving us. She is
9 going to be called to the Bar as a lawyer later
10 this month.

11 We are very proud of her, and I just
12 wanted to take a few minutes to say that we would
13 not have been able to do all our work without her.
14 Her work is invaluable to the Commission, and I
15 think I can even speak for Counsel for certain
16 participants that she has worked with that they
17 have all enjoyed working with her.

18 We are very proud of her, and she will
19 be greatly missed and I'm sure that her career as a
20 lawyer will be illustrious.

21 Thank you.

22 THE COMMISSIONER: Thank you. I echo
23 your comments, Ms. Effendi, and I congratulate
24 Ivana on this important achievement.

25 For those who don't know, Ivana is

1 trilingual. She is fully bilingual in relation to
2 Canada's official languages, and I mean truly
3 fluent, but she is also fluent in Serbian and she
4 has taught me a couple of words.

5 We certainly wish her success and
6 fulfillment in relation to any of her future
7 endeavours. We are sad to see her go. Certainly
8 she was a most valuable member of our team. I
9 remember when I hired her last summer how excited
10 she was. She has continued to be bright,
11 energetic, and she has a wonderful smile, and that
12 has always brightened our offices.

13 So good-bye, Ivana, keep in touch and
14 let us know what is going on with you.

15 MS. NENADIC: Thank you very much.

16 THE COMMISSIONER: But you still have
17 another day and a half's work. Otherwise, you
18 don't get paid for the week.

19 Thank you very much, ma'am, that was
20 very helpful.

21 I take it there is no further evidence
22 for today?

23 MS. EFFENDI: No, there isn't,
24 Mr. Commissioner. Tomorrow we will have a
25 representative of Pinchin who will be testifying

1 and that will be the -- the evidence will be led by
2 Mr. Ault.

3 THE COMMISSIONER: Okay, and
4 Mr. Hudson, the Ministry of Labour.

5 MS. EFFENDI: Yes, and that will be led
6 by Mr. Wallace.

7 THE COMMISSIONER: Thank you very much.
8 So we'll rise until 9 o'clock tomorrow
9 morning.

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11 -- Adjourned at 12:45 p.m.

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were
taken before me at the time and place therein set
forth;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 13th day of June, 2013.

Deana Santedicola

NEESON & ASSOCIATES

COURT REPORTING AND CAPTIONING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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