

THE ELLIOT LAKE INQUIRY
LA COMMISSION D'ENQUÊTE SUR ELLIOT LAKE

* * * * *

**Held at the Ernst Young Center
Room A, Ottawa, Ontario
on Tuesday, November 19, 2013**

**Tenu au Centre Ernst Young,
Salle A,
Ottawa, Ontario
Le mardi, 19 novembre, 2013**

**ROUNDTABLE 2 – IMPROVED SHARING OF REPORTS
AND INFORMATION**

**BEFORE /DEVANT : The Honorable/l'honorable P.R. Bélanger,
Commissioner/Commissaire**

**Steno CAT Reporting Services
275 Slater, Suite 900
Ottawa, Ontario
per: M. Bolduc, C.C.R.
Telephone: (613) 355-0807
e-mail: stenocat@sympatico.ca**

APPEARANCES:

P. K. Doody) Roundtable Mediator

PARTICIPANTS:

R. Froebelius) BOMA
S. Huxley) Association of Ontario Municipalities
V. Wharton-Szatan) Ministry of Labour
R. Stein) Insurance Bureau of Canada
A. Shaw) Ontario Buildings Officials Association
B. Lewis) Ministry of Municipal Affairs and Housing
A. Borooah) City of Toronto
L. Braithwaite) Build Toronto

November 19, 2013

1

Roundtable 2
Improved Sharing
of Reports and Info.

1 ---Upon commencing in Ottawa, Ontario, on Tuesday,
2 November 19, 2013 at 9:00 a.m.

3 **THE COMMISSIONER:** Welcome, Ladies and
4 Gentlemen.

5 Good morning and welcome all of you
6 again this morning.

7 Welcome particularly to our new
8 participants to this, the second of our Roundtables on
9 "Improved Sharing of Reports and Information."

10 I repeat this morning what I said
11 yesterday, that by being here you give up your valuable
12 time and in doing so and sharing your expertise with
13 us, you perform an important service to the people of
14 the Province of Ontario.

15 I and most members of this Commission
16 are not experts on the topics that we will be
17 discussing today.

18 We rely very much on your expertise,
19 your experience, your wisdom in order to craft the most
20 important part of our mandate, and that is the
21 Recommendations that we hope will make the citizens of
22 Ontario safer in their work and in their everyday
23 environment.

24 We cannot change the past, but
25 hopefully we can make some small changes to ensure that

1 safety recommendations will not be made in the abstract
2 and we fully realize that they need to be realistic,
3 they need to be practical, they need to be effective
4 and they need to be implementable.

5 We thank you for giving us the
6 opportunity to attempt doing that in a professional and
7 in a competent manner.

8 That being said, I turn Proceedings
9 over this morning, again, to Mr. Doody, our Moderator.

10 Thank you for being here.

11 **MR. DOODY:** Good morning.

12 For those of you who were here
13 yesterday, you will have to hear a couple of things for
14 the second time and hear introductions read out again.

15 The goal today is to allow as broad a
16 discussion as possible on the subjects that we have
17 asked you to comment on.

18 My role is simply to ensure that
19 everybody has an opportunity to be heard on these
20 issues and to ensure that what input you have is
21 measured to some extent against the evidence that we
22 have heard in Elliot Lake, because these
23 Recommendations that the Commissioner has been asked to
24 make arise out of the evidence that he has heard over
25 the last eight or nine months in Elliot Lake.

1 Really, that is the purpose of a
2 Commission of Inquiry like this, is to determine what
3 the facts are and then measure against those facts, the
4 public policy issues that the Commissioner has been
5 asked to consider, and use those facts as the basis to
6 test whether or not there ought to be any changes to
7 the public policy.

8 So my role is to ensure that there is
9 as broad a discussion of those issues as possible.

10 I would like to introduce the people
11 who are sitting around the table, beginning at my upper
12 left-hand and then going around in clockwise order.

13 Mr. Alan Shaw has been Manager of
14 Building and By-law Enforcement for the City of Sarnia
15 since 2008, where he is the Chief Building Official.

16 Prior to that he was the Chief
17 Building Official for the Municipality of Central Elgin
18 and the Municipality of Sault Lookout.

19 He has a diploma in Architectural
20 Technology from Sheridan College in 1992.

21 He has been Regional Director and Vice
22 President of the Ontario Building Officials Association
23 since 2007; and was Chapter Chair of the OBOA Southwest
24 Chapter in 2006-2007 and Chapter Vice Chair of the OBOA
25 Sunset Chapter from 2002 to 2003.

1 Sitting to Mr. Shaw's left is Stuart
2 Huxley, who appears today on behalf of the Association
3 of Ontario Municipalities.

4 Mr. Huxley is Senior Legal Counsel
5 with the City of Ottawa.

6 He was called to the Ontario Bar in
7 2000.

8 He has worked exclusively as in-house
9 counsel with the City of Ottawa, the City Clerk and the
10 Solicitor's Department since articling with the City in
11 1998.

12 Mr. Huxley leads the City's
13 Prosecution unit and has extensive prosecution
14 experience with regulator matters, including the
15 *Building code, Fire code, Planning Act* and various
16 municipal by-laws before the Ontario Court of Justice.

17 Mr. Huxley also practices municipal
18 law and litigation before the Superior Court of Justice
19 and has represented the municipality on significant
20 matters before coroner's inquests, the Divisional
21 Court, the Court of Appeal for Ontario and the Supreme
22 Court of Canada.

23 To Mr. Huxley's left is Ann Borooah,
24 who is the Executive Director of the City of Toronto,
25 and Chief Building Official for the City of Toronto

1 since November 2001.

2 She oversees a staff of over 400
3 responsible for enforcing the *Building Code Act* in
4 Toronto.

5 And I pause here as I did yesterday
6 and contrast this with the City of Elliot Lake, which
7 has one person who is responsible for enforcing the
8 *Building Code Act*, the Property Standards By-law and
9 indeed all other by-laws in the City of Elliot Lake.

10 I shouldn't say one person. One
11 person who oversees, I think, two others. So I think
12 it is a total of three.

13 And that variance between large
14 municipalities and small municipalities is very much at
15 the heart of many of the issues that we are discussing
16 today.

17 Ms. Borooah has overseen the
18 transition to a new *Building Code Act* and led key
19 initiatives, including a program review of the
20 inspection and enforcement, the implementation of
21 Toronto Standards for Green Roof Construction and a new
22 sign regulation and taxation system for the city.

23 Prior to joining Toronto, Ann held the
24 position of Director of the Development and Buildings
25 Branch in the Ministry of Municipal Affairs for the

1 Province of Ontario, since 1993.

2 In this position she was responsible
3 for the introduction of the 1997 edition of the
4 *Building Code*, the transfer of septic system regulation
5 to the *Building Code* from environmental legislation and
6 the introduction of Bill 124, a comprehensive review of
7 the *Building Code Act* and related legislation, amongst
8 other things.

9 She studied architecture at the
10 University of Waterloo, holds a Bachelor of Arts and
11 Urban Studies in Geography, and a Masters of Science in
12 Urban and Regional Planning from the University of
13 Toronto.

14 She is a registered professional
15 planner and a member of the OBOA.

16 Moving around the corner, Ryan Stein
17 works at the Insurance Bureau of Canada, the National
18 Industry Association representing Canada's private
19 home, car and business insurers.

20 He is the Director of Policy there and
21 he works with insurance companies to develop solutions
22 to the various legislative and regulatory issues they
23 are facing.

24 Mr. Stein holds a Bachelor of
25 International Business and a Masters of Arts and

1 International Affairs from Carleton University.

2 To Mr. Stein's left, Brenda Lewis is
3 Director of the Building and Development Branch of the
4 Ontario Ministry of Municipal Affairs and Housing.

5 She joined the branch in January of
6 2012.

7 She has been with the Ontario Public
8 Service for over 30 years and has held several
9 positions in the Federal and Provincial Governments.

10 Prior to that she held a number of
11 positions in both policy and operations on programs
12 such as the Homelessness Programs, Adoption
13 Information, Disclosure Services, Ontario Disability
14 Support Program, Ontario Works, Deaf Blind Services,
15 Family Benefits, General Welfare Assistance, Finance
16 and Administration and Human Resources.

17 To Ms. Lewis' left is J. Lorne
18 Braithwaite.

19 Mr. Braithwaite is the President and
20 CEO of Build Toronto.

21 He has been an active international
22 commercial developer in California, London, England and
23 Dubai.

24 He was appointed President and CEO of
25 Build Toronto in April 2009 and brings his in-depth

1 industry knowledge to lead the organization in creating
2 value for the City of Toronto through real estate and
3 helping redefine the City building.

4 Prior to joining Build Toronto, he was
5 Founder, Chairman, President and CEO of Cambridge
6 Shopping Centres, now Ivanhoe Cambridge, where he
7 amassed 40 large, enclosed malls after leading the
8 leveraged management buyout in 1980.

9 Internationally, Mr. Braithwaite
10 served as the Worldwide Chairman of the International
11 Council of Shopping Centres from 1995 to 1996.

12 He was President of the Canadian
13 Institute of Public and Private Real Estate companies
14 from 1995 to 1997.

15 He holds a Bachelor of Commerce from
16 the University of Alberta and a Master of Business
17 Administration from the University of Western Ontario.

18 Turning the corner, Vivien Wharton-
19 Szatan has been Program Manager of the Ministry of
20 Labour's Industrial Health and Safety Program in the
21 Mississauga office since April 2008.

22 She is responsible for a team of
23 inspectors who enforce the *Ontario Health and Safety*
24 *Act*, and applicable regulations as they apply to
25 industrial workplaces that are regulated by the

1 industrial program.

2 She has held a variety of positions
3 with the Ministry of Labour and between 1991 and 2005
4 she was an Occupational Health and Safety Officer in
5 Toronto, responsible for enforcing the *Occupational*
6 *Health and Safety Act* and its respective regulations by
7 conducting proactive investigations, investigating
8 complaints, critical injuries, fatalities and
9 prosecuting employers when appropriate.

10 She has a certificate in Occupational
11 Health and Safety from Ryerson Polytechnical Institute
12 and an Honours Bachelor of Science from the University
13 of Toronto with a double specialization in chemistry
14 and biochemistry.

15 And to her left is Randal Froebelius.

16 Mr. Froebelius is Secretary Treasurer
17 of the Building Owners and Manager's Association,
18 usually referred to by its acronym, "BOMA".

19 He is also President and Founder of
20 Equity ICI Real Estate Services.

21 He has over 17 years of experience in
22 the management, development and construction of
23 industrial, commercial office, retail, institutional
24 and residential properties.

25 He holds a Bachelor of Engineering

1 Science degree from the University of Western Ontario
2 and a Masters in Business Administration from the
3 Richard Ivey School of Business.

4 He is a licensed professional engineer
5 in the Province of Ontario.

6 So those are the short bios of the
7 members of the panel.

8 I would like to begin by having a
9 discussion of the first question, which is, and it is a
10 bit of a long one, so bear with me: *"Should the Owner
11 of a building be required to keep a secure record of
12 and provide the information relating to the condition
13 of a building (all private, as well as public,
14 documents and information dealing with the condition of
15 those buildings over their lifetime, including
16 information on the nature and extent of the services
17 provided by an engineer and an architect, the name,
18 identity and contact information of those professionals
19 and any remedial actions taken as a result of
20 inspections) a. to any purchaser or other person
21 seeking to acquire an interest in the building,
22 financial or otherwise; b) to any person or agency
23 conducting or supervising any inspection, assessment,
24 repair or renovation of a building before any such
25 inspection, assessment, repair or renovation begins; c)*

1 *to the municipality whenever a building permit is*
2 *required for repairs and renovations; d) to a*
3 *provincial agency."*

4 This question arose in the context of
5 the evidence that the Commission heard in Elliot Lake,
6 the background is that there is, at present, no
7 obligation on an owner to keep any records, that is no
8 legal obligation to keep any records in respect of the
9 maintenance or repair of a building.

10 And the evidence is that engineering
11 reports, which had been prepared on a number of
12 occasions, starting the building was built in 1979,
13 there were significant engineering reports between 1990
14 and 1995, again when the building was sold for the
15 first time in 1999.

16 And then after its sale to the present
17 owner, there were engineering reports obtained through
18 the course of his ownership.

19 But none of these engineering reports
20 were provided to subsequent purchasers.

21 There is conflicting evidence as to
22 whether they were asked for, but the evidence, at least
23 on one view of it, and again it is not entirely
24 consistent, but on one view of it the evidence is that
25 none of these reports were provided to perspective

1 purchasers.

2 The engineers who were asked to
3 perform analysis of the structural capacity of the
4 building were not provided with -- and this is clear --
5 they were not provided with prior engineering reports.

6 The City was not provided with these
7 reports, at least at the time that they were prepared.

8 And the evidence from a number of
9 witnesses is that if the reports had been provided to
10 them, it would have made a difference.

11 The City Chief Building Officials, at
12 least the first two of three Chief Building Officials,
13 testified that had they known about these engineering
14 reports, the City would have taken action differently
15 than they did.

16 And a number of the engineers
17 testified that had they had the earlier engineering
18 reports, it would have affected the reports that they
19 provided and the advice that they gave.

20 So the question is should an owner be
21 required to keep such records and reports, and provide
22 them in the circumstances we have set out in the
23 question.

24 So I wonder if we could start with Mr.
25 Stein from the Insurance Bureau of Canada?

1 I just pick these names out of the
2 air.

3 **MR. STEIN:** I am happy to start this
4 off, thank you.

5 What we have tried to point out in our
6 submission is that there could be some unintended
7 consequences associated with requiring property owners
8 to give the inspection reports to owners or to the
9 government.

10 We understand that there are some
11 reports, whether they are for building permits or
12 construction that those reports are shared publicly
13 with the municipality and could be available through
14 *Municipal Freedom of Information and Protection of*
15 *Privacy Acts.*

16 But with respect to the private
17 inspection reports, the ones that an owner will get
18 just for the regular maintenance, they will get on
19 their own just to see how to assess any issues with the
20 building.

21 We think that if there is a
22 requirement to turn those over, that some owners may be
23 less likely to get them done; or that if there is a
24 risk that that report could portray that there could be
25 a diminished value of a property or could lead to that,

1 then there is an added risk on the person doing the
2 inspection and an added liability put onto them, which
3 could increase the costs, the complexity and that type
4 of thing.

5 One of the other things we wanted to
6 point out in our submission is it depends on the type
7 of report.

8 So for example, insurance reports
9 which are more transactional type of reports for the
10 insurance companies will conduct sometimes before
11 issuing insurance contract to assess the risk. They
12 will look at the occupancy, they will look at the
13 physical hazard, that type of thing.

14 If those reports, which are not really
15 structural engineering reports, if they have to be
16 turned over it will also increase the complexity of
17 those reports.

18 If there is any chance that they could
19 be misinterpreted then what they are, which is an
20 analysis between two contracting parties, then those
21 unintended consequences could increase the complexity
22 and the costs of those types of reports.

23 **MR. DOODY:** Why does the IBC feel
24 that if reports were going to be provided to these
25 people that it would discourage them getting there

1 reports?

2 We heard yesterday, and there was
3 evidence, that it's normal in the real estate,
4 commercial purchase of buildings for the purchaser to
5 ask for production of any and all engineering reports
6 in the possession of the vendor, and those would
7 include reports which were provided for general
8 maintenance purposes.

9 So right now there is a significant
10 potential for these reports being provided to
11 subsequent purchasers.

12 And we also heard that a responsible
13 owner will get these reports anyway, because a
14 responsible owner wants to ensure that his building is
15 maintained, both for public safety purposes, but also
16 to protect his investment.

17 So why would the certainty of
18 disclosure discourage getting these reports when right
19 now there is a significant possibility of subsequent
20 disclosure?

21 **MR. STEIN:** That is something else we
22 pointed out in our submission.

23 That these reports are available in a
24 lot of cases, the purchaser is in a position to request
25 the reports before deciding whether to buy the

1 property.

2 We are just of the view that the force
3 of you have to, you have to give it to the purchaser,
4 you have to give it to the government, you have to give
5 it to a municipal agency, all that is different than
6 having to provide the report as part of a contractual
7 transaction.

8 What we are trying to do is point out
9 a potential risk, and we have seen as part of the
10 private property and casualty insurance industry is
11 heavily regulated and there is costs and benefits
12 associated with the regulation and what we try to
13 encourage is to try to find a balance between
14 encouraging compliance and the costs associated with
15 it, and trying to look at any unintended consequences.

16 We are just of the view that one of
17 the potential ones that we wanted to point out to the
18 Commission when it considers this recommendation is
19 that there is the potential of if you have to turn it
20 over to all these different parties where you might
21 have only thought that you were going to be turning it
22 over to, say, a future purchaser or that type of thing,
23 it could discourage some from getting reports done.

24 We also think that it will increase
25 the complexity of the reports because there is the list

1 that it could lead to unproven diminished value.

2 **MR. DOODY:** The question is being
3 mooted because, as I said, of the evidence from the
4 engineers and from the City that had they known about
5 these things, steps would have been taken and the mall
6 would have been made safer.

7 So speaking only for myself, I was
8 surprised that the insurers were not in favour of this
9 because if the evidence that we have heard is accurate,
10 the result would have been a safer building.

11 So right now in Elliot Lake there are,
12 without a doubt, we don't have any evidence about it,
13 but I have been practicing litigation law for a long
14 time, I am sure that there are significant claims being
15 made on insurers as a result of both the liability
16 issues that have arisen and the property damage issues.

17 So if these reports had been disclosed
18 on the evidence, it would have made a difference.

19 The cost to the insurers would have
20 been less.

21 I am just at a loss to understand why
22 the insurers would not have been in favour of that.

23 But if you have told us everything you
24 can ---

25 **MR. STEIN:** We are trying to just

1 point out a potential unintended consequence or costs
2 associated with that recommendation.

3 From the insurance perspective, when
4 they are assessing risk they are looking at a whole
5 bunch of different factors.

6 I would say one of the biggest ones is
7 the location and weather and that type of thing.

8 They will look at the occupancy, you
9 know, depending on the size of the risk they will
10 inspect the building, but you know, from their
11 perspective there is just not the structural integrity
12 --

13 What happened in Elliot Lake from an
14 insurance perspective is not indicative of, we think,
15 the state of buildings in Ontario.

16 **MR. DOODY:** Mr. Froebelius, were you
17 putting your hand up?

18 **MR. FROEBELIUS:** I think one of the
19 concerns is that if you engage an engineering firm to
20 do a report on behalf of -- if I am an owner and I
21 engage an engineering firm to do a report on my behalf,
22 and that engineering firm then is aware that that
23 report will be relied upon by future potential
24 purchasers of the property, you could end up with a
25 different report than if you had just engaged that

1 engineering firm to do a report for you to address a
2 certain issue.

3 I think what you would end up doing,
4 if you create this mandatory disclosure environment, is
5 that engineers would start to retract, potentially, and
6 be very, very cautious about what they do and do not
7 put in those types of reports, which could create an
8 environment where owners are hesitant to create those
9 reports.

10 So you could benefit far more by
11 keeping it kind of an open environment, where a report
12 is to target a certain issue, but there is no
13 obligation in the future to disclose that.

14 I think we will get into this later,
15 but maybe there is a line where if in fact it is to do
16 with something that affects public safety, then it
17 might be a different aspect, but for example let's say
18 there was a roofing issue and I had a report done ten
19 years ago and the roof was replaced, everything was
20 fine.

21 Is that report still going to be
22 subject to disclosure for a future sale?

23 Because someone doing a purchase pulls
24 out that report and the owners might fear that that
25 report could be used against them in the negotiation of

1 the sale of the property.

2 **MR. DOODY:** But your organization's
3 submission to us said that the present obligation on a
4 purchaser to exercise due diligence is enough.

5 That opportunity to exercise due
6 diligence on the part of a purchaser arises from
7 typically a contractual obligation in the agreement of
8 purchase and sale.

9 The boilerplate language says the
10 vendor will produce any and all reports that have
11 anything to do with the building.

12 And then the lawyer for the purchaser
13 says 'produce the reports', and they are produced.

14 So there is already an obligation,
15 typically a contractual obligation on the vendor to
16 keep and produce these reports.

17 But the thing is they are only given
18 to the subsequent purchaser.

19 And if as happened in Elliot Lake for
20 whatever reason that is not either demanded or complied
21 with as part of the sale, there is an opportunity for
22 reports to be kept secret.

23 But when the engineers do these
24 reports, they realize that there is a significant
25 likelihood that they are going to be produced, at least

1 to subsequent purchasers.

2 **MR. FROEBELIUS:** I don't know that
3 all transactions would state that any previous reports
4 have to be disclosed.

5 **MR. DOODY:** It depends on the
6 contractual issue, but it is not uncommon.

7 So when an engineer is doing the
8 report, he does not know what the owner is going to do
9 with the report, but the owner is at liberty to give it
10 to whoever he wants.

11 **MR. FROEBELIUS:** In fact, in many
12 transactions as well, the current owner will engage
13 engineers to do a current assessment that they can
14 offer as part of an offering package.

15 **MR. DOODY:** That's right.

16 And the engineers have told us that
17 then the do that, they would sure like to see the old
18 reports.

19 So we are just at a loss to understand
20 how the public safety is protected by keeping these
21 reports secret.

22 The Ontario Association of Architects
23 has suggested that these sorts of -- and they are not
24 at the table, but they took the opportunity to comment
25 on these issues -- and they took the position that the

1 reports ought to be filed with the City.

2 The OBOA has a slightly different take
3 on it.

4 Can you speak to that, Mr. Shaw?

5 **MR. SHAW:** The OBOA believes that the
6 responsibility for mandated inspection should remain
7 with the owner.

8 And in the event where an unsafe
9 condition arises during one of these mandatory
10 inspections, that that report would be forwarded to the
11 chief building official.

12 Most municipalities do not have the
13 ability to undertake review of every document coming in
14 in regards to every building within their organized
15 area.

16 We would just encourage legislative
17 changes to identify who qualified individuals are in
18 regards to conducting these inspections, develop a
19 scope and standard of report through the associations
20 of these professionals.

21 And with that, the possibility of
22 amending the Acts so that these professionals, in the
23 case of a perceived unsafe condition for the
24 information to the chief building official.

25 **MR. DOODY:** And in your submission

1 today you said "a perceived unsafe condition."

2 The reports that we have seen that
3 were not provided don't say that at the time they were
4 prepared that the building was unsafe.

5 But many of them say if you don't deal
6 with it appropriately in the set-out options, there
7 will be structural issues arising, some of them said
8 soon.

9 Would the OBOA go so far as to say
10 that a report which pointed out the potential for
11 structural issues, because this -- and we had some
12 discussion about this yesterday, but on the present
13 language of the *Building Code Act* there are remedies
14 which can be ordered by a building official, where
15 there is evidence of present safety issues and the
16 imminent danger.

17 But that, on the evidence we have
18 heard, would not catch the kind of situation that was
19 in Elliot Lake.

20 So would the OBOA go so far as to say
21 if there was a report that showed that there was a
22 potential for structural safety issues, it ought to be
23 provided.

24 **MR. SHAW:** I would tend to agree with
25 that, where there is a perceived or potential, it

1 should be forwarded to the chief building official and
2 it is a responsibility, it is the OBOA's position that
3 it is the responsibility of the chief building official
4 to determine if an unsafe condition under the Act
5 exists.

6 So I would agree with that.

7 **MR. DOODY:** Ms. Borooah from the City
8 of Toronto, can you let us know what the City of
9 Toronto's view is on these issues?

10 **MS. BOROOAH:** Well, similarly I think
11 to the position of the OBOA municipalities in our view
12 or a chief building official should not be repositories
13 for information about routine maintenance where the
14 municipality does not have a role.

15 That sort of record keeping I think
16 would be virtually impossible and also would draw a
17 municipality into a situation where they may not
18 otherwise be involved and could, I guess, change the
19 risk picture in a slightly different way from the
20 earlier example, where should these reports be filed
21 and buried within some kind of page, if a municipality
22 didn't find a paragraph, place some obligation in the
23 future.

24 So in our view, as we discussed
25 yesterday, the responsibility for the routine and other

1 maintenance of the building rests with the owner and
2 that there is a role for professionals in that process.

3 We did suggest that although it would
4 not be completely comprehensive, we should look at the
5 standards in the professional acts with respect to
6 record keeping.

7 And to the extent that professionals
8 have been involved in reports they would be obliged to
9 share those reports, the owners would have an
10 obligation, I think, to disclose if there was such a
11 report in a transaction and if the reports -- the
12 professionals would also know to ask the question, I
13 think, according to a professional practice standard.

14 So yes, not all engineers or
15 architects are there forever, but within a time frame
16 when the report may matter, the odds of those reports
17 being available are high, we would think.

18 **MR. DOODY:** Yesterday and today you
19 and the other representatives from municipalities have
20 talked about the potential for municipal liability here
21 as a driving force behind limiting municipal
22 involvement.

23 And what the evidence that the
24 Commission heard, which drove this request, was the
25 concern that right now the system relies upon a bit of

1 a hodge-podge of attempts to ensure the information
2 gets to the right place.

3 You suggest that professionals,
4 engineers and architects ought to keep the records.

5 The owners ought to be obliged to tell
6 a subsequent purchaser of any reports that were
7 provided.

8 Those things did not -- that and the
9 latter did not happen here.

10 So subsequent purchasers and
11 subsequent engineers did not even know about the
12 earlier reports.

13 So is the driving force behind the
14 concern about documents being registered with the
15 municipality a liability issue?

16 **MS. BOROOAH:** No, I think it's two-
17 fold.

18 It is practical and yes, the municipal
19 role and liability is an issue to take into
20 consideration, less so with this piece of it than
21 perhaps others.

22 But I think what we said in the
23 context of responding to these questions is they have
24 to be read together with the previous recommendations,
25 that there be a periodic review required of elements

1 that seem to create a potential risk for public safety
2 and those reports be filed with the municipality only
3 when the need for remedial action is identified.

4 So you are narrowing the scope of
5 where the regulation intersects with government in that
6 case.

7 However, that also can be read with
8 the role of professionals.

9 And I think if you read the PO
10 submission, although it is not on this Roundtable, they
11 talk about their practice standards as well more
12 thoroughly, I think, than you see in the context of the
13 architects submission.

14 But in that case they talk about when
15 they would have an obligation to disclose as well.

16 So the things would run in parallel, I
17 think.

18 And yesterday I talked about the
19 three-legged stool, that you don't want to shift the
20 balance on the three-legged stool that you want to
21 improve the performance of all players or increase the
22 role of all players, but only to the degree necessary.

23 I would recommend that you don't sort
24 of use the municipality as a fall back where the
25 municipality does not have a direct role.

1 **THE COMMISSIONER:** Can you not
2 protect legislatively the liability that you speak of?

3 And the other concern I have, and that
4 came out of our Elliot Lake experience involved the
5 preservation of records.

6 **MS. BOROOAH:** I think that gets into
7 some of the additional questions.

8 But I think the sort of practice of
9 preserving records is improving with legislation and
10 time.

11 Some of the records that were relevant
12 in Elliot Lake at the time, at a time when the sort of
13 laws around record keeping were less formed.

14 Maybe Mr. Huxley has a better sense of
15 that than I do.

16 But there certainly are obligations on
17 municipalities to keep records.

18 And I think the practice is
19 increasingly common that those records are available
20 for a longer period of time, partly because they can be
21 retained electronically, and they are easier to
22 retrieve.

23 So while we are not quite there yet, I
24 think you should not duplicate that system.

25 You may want to tweak it, but that

1 system is in place and it is associated with laws that
2 govern all the records of the municipality, not just
3 building records.

4 **MR. DOODY:** Yes.

5 But what you are talking about is the
6 obligation on the municipality to keep its record,
7 typically arising as a result of things like MFIPPA.

8 But the reports that we are talking
9 about here, if there is no obligation to give them to
10 the municipality there would be nothing to keep, right?

11 **MS. BOROOAH:** Yes, but as I said, you
12 should not expect a municipality to keep a record when
13 they don't have a direct role in the issue.

14 So simply to file the report with a
15 municipality where they are taking no action does not
16 make sense to me.

17 If a permit is required or if a
18 remedial action is required that will require an action
19 on the municipality; that is when it makes sense for
20 the municipality to keep those records.

21 Municipalities are not record keepers
22 of everyone's records.

23 **MR. DOODY:** No, I understand that.

24 But as I say, the evidence in this
25 case was that if the municipality had seen the records

1 going back, even the records that did not say this is a
2 serious situation that needs to be fixed, it would have
3 given them a broader base of knowledge to be able to
4 make an order that did protect the safety.

5 In other words, to put it simply, if
6 the reports had all been provided, they would have
7 known that the building leaked from 1978, even before
8 it was opened, and the leakage had continued for 30
9 some years.

10 And that, in the words of some of the
11 professionals who testified, was shocking.

12 And if the reports had been provided
13 on a regular basis, that history would have been
14 apparent and the public would have been protected.

15 **MS. BOROOAH:** So yesterday we talked
16 about the circumstances when reports should be
17 forwarded to the municipality.

18 **MR. DOODY:** That was about specific
19 reports of periodic inspection, as required.

20 **MS. BOROOAH:** Based on the idea of a
21 periodic inspection, which would cover what we think
22 the risk picture should be.

23 So that would provide additional
24 protection.

25 It is not currently in place today.

1 Having said that, to think that even
2 the City of Toronto would not come close to having the
3 capacity to be able to review and document and analyse
4 and think about every report that has ever been created
5 for a building owner.

6 I think that is not realistic.

7 And only in cases where an action is
8 required, that is to address a potential and safe
9 condition I think would that engage the municipality.

10 Having said that, that if a
11 municipality had reason to believe and wanted more
12 history on the property, perhaps you might want to
13 enhance, like we discussed yesterday, the powers under
14 section 18 to request reports you could, in that order,
15 request all history if you thought it was necessary.

16 **THE COMMISSIONER:** You seem to be
17 saying that these reviews have to be contemporaneous.

18 **MS. BOROOAH:** I am sorry?

19 **THE COMMISSIONER:** You seem to be
20 saying that the reviews of the file documentation has
21 to be contemporaneous.

22 What is the problem with simply
23 receiving the material and then inventorying it,
24 leaving it there, possibly never to be used again, but
25 at least to be there?

1 It is certainly not with the modern
2 technology a huge cost issue, is it?

3 **MS. BOROOAH:** Yes it is. I beg to
4 differ, Sir.

5 **THE COMMISSIONER:** I don't know why.
6 You tell me.

7 **MS. BOROOAH:** Let me just give you a
8 bit of context.

9 Currently building records are,
10 certainly in our experience and I would venture,
11 probably consistent across local municipalities, not
12 upper tiers.

13 The largest records that
14 municipalities are obliged to retain today.

15 And I have a huge project to try to
16 digitize as much of that information as I can and it is
17 a flagship for the organization, but it is not for the
18 faint of heart.

19 These are not small records,
20 typically.

21 **THE COMMISSIONER:** Is it because you
22 are digitizing retroactively that it is such a huge
23 problem?

24 **MS. BOROOAH:** We are moving
25 backwards. But going forward, these records are being

1 created digitally. They come in digitally and so on.

2 So in the future this will be easier,
3 but having said that, whatever space you are talking
4 about, it is either a virtual space or physical space.

5 They are large records associated with
6 buildings and adding all of the potential maintenance
7 records for any building at any time, not just the one
8 percent or two percent that comes forward for permits
9 in any given year, would be a huge record keeping
10 system.

11 My record keeping system is already a
12 challenge.

13 I do not think it is a no-brainer.

14 **MR. DOODY:** Mr. Braithwaite, can you
15 from your experience, background in real estate
16 development and management, can you give us your views?

17 **MR. BRAITHWAITE:** Yes, thank you.

18 I start out my comments from a
19 slightly different perspective.

20 There is three periods of time in a
21 given project where things happen and you need records
22 and information and knowledge and there are a number of
23 people that potentially plug into that array of
24 knowledge.

25 Obviously when you build a project is

1 a key point in time.

2 If you are doing a significant
3 renovation, there is another key point in time.

4 And if you sell it.

5 And often, historical records from the
6 perspective of an owner, and that is where I am coming
7 from, is good information but not necessarily good
8 enough, depending on the timeline in terms of when you
9 might be acquiring the building.

10 You may have a report that is 20 years
11 old that at that stage is irrelevant.

12 You are actually going to spend the
13 time and money as part of your due diligence and get up
14 to date, knowledge and information on structural and
15 other issues, environmental and so on, and you are
16 going to, as a potential seller or a buyer, someone in
17 the private sector is going to pay for that
18 information.

19 That information, that is a good
20 period of time for the public sector to plug in and
21 piggy-back on that information, because it is going to
22 be there in those three scenarios.

23 In between those three points in time
24 I don't think that the public sector need or should get
25 involved and I think it is expensive and difficult for

1 them, and I am not sure it adds a lot to the process.

2 **MR. DOODY:** In the scenario where a
3 building was not sold, so if this building had been
4 built in 1979, had never been sold and never been
5 renovated, in fact, it had never been significantly
6 renovated, there were issues we discussed yesterday
7 about whether the repairs that were done were
8 significant enough to require a building permit, there
9 is dispute about that.

10 But if it was never renovated and
11 never sold, on your scenario the owner would be able to
12 keep the information to himself and the opportunity for
13 the public to be protected seems to be absent.

14 From the evidence we have heard there
15 seems to be a public interest which requires
16 consideration in these sorts of things.

17 We heard Ms. Lewis and others talk
18 about the necessity to consult stakeholders before any
19 changes are made.

20 But one of the stakeholders who is
21 often not at the table in these sorts of discussions is
22 the public and the interest of public safety.

23 So what we are interested in is, on
24 your proposal, that there be no obligation except in
25 those sales or renovation situations to share.

1 Where does the public interest get
2 protected?

3 **MR. BRAITHWAITE:** Well, going back to
4 your original example, what was wrong in your original
5 example is in 1978 when they built it?

6 They did not have proper and adequate
7 records at that point in time on structural or
8 environmental or whatever, obvious in terms of what has
9 gone on, and that information should be exposed and be
10 available to the public sector at that time.

11 **MR. DOODY:** But the evidence from the
12 independent engineer retained by the Ontario Police was
13 that the building met the *Building Code*. It may have
14 been a narrow thing, but it met the *Building Code* in
15 1978, 1979 when it was built.

16 So what would have been missing in the
17 scenario is the experience developed over the years of
18 the ongoing leaks and the issues that engineers who
19 were retained pointed out, which was that there are
20 potential structural problems which are going to be
21 developing if you don't do a, b or c.

22 So if the owner is allowed to keep
23 those documents to itself, isn't there a risk that we
24 saw come to fruition?

25 We will never know.

1 **MR. BRAITHWAITE:** There is a risk.
2 But doesn't that come back that the
3 *Building Code* at the time was inadequate. That's what
4 it really says. We didn't have proper structural
5 reports, so they got a building permit that was flawed.

6 **MR. DOODY:** Does that mean that if
7 the *Building Code* was inadequate that there is no
8 protection going forward for members of the public who
9 are occupying a building that was built under a Code?

10 It is not that the Code was flawed, at
11 least the engineers I am sure would not say that.

12 They would say that we learned things
13 since 1978, so that we have got changes in the Code.
14 That happens all the time.

15 But going forward, that means there is
16 potential for issues with the engineers when they are
17 retained in 1989 and 1999, now they know different
18 things and they say 'well there is an issue here.'

19 So where is the ---

20 **MR. BRAITHWAITE:** Let me try and
21 answer or respond by I started out in this industry in
22 1978.

23 My first job was a property manager of
24 very large mixed use project in downtown Edmonton.

25 I was part of the process as it was

1 being built, and I have poured through all of these in
2 those days, which were paper drawings of structural
3 engineering reports and everything else.

4 There was a tremendous amount of
5 reliance on the Code of the day in terms of whether or
6 not we are going to get the building permit as we build
7 it.

8 We started with the building permit
9 and then as we execute it we get it signed off.

10 So what worried me in a hearing of
11 this nature is there is obviously a problem in 1978 in
12 terms of the *Building Code*.

13 We are potentially looking at adding
14 more costs to the structure and monitoring and so on,
15 and yet the base of where you start it in my opinion is
16 where a good portion of the problem has to lie.

17 So it seems to me that you have got to
18 take a look at some of these older buildings that have
19 timelines associated with different standards that are
20 proving today are not adequate.

21 So to sort of take the entire industry
22 and put it to a higher standard because of some other
23 problems historically, in my opinion, it needs to be
24 looked at very carefully.

25 **MR. DOODY:** Mr. Huxley, we have not

1 heard from you yet.

2 **MR. HUXLEY:** Certainly this
3 discussion about secure record keeping dovetails with
4 yesterday's discussion on whether there should be
5 mandatory inspections.

6 Certainly AMO's position yesterday was
7 that that should be owner-based or the owner's
8 professional.

9 And there is obligations that would
10 arise from a professional having a report that
11 indicated that there was an urgent need or a need for
12 remedial action.

13 But it's AMO's position that it should
14 be the building owners who should be responsible to
15 maintain accurate and complete records of their
16 building.

17 What the municipality is seeking is to
18 have timely access to that information.

19 The record keeping as we suggested
20 yesterday was not novel, we used the example of the
21 fire inspection and testing system where owners are
22 required to do that.

23 And they are required to maintain that
24 and keep that information on site and to provide that
25 to the relevant authorities.

1 So when an emergency occurs or when
2 there is a report that suggests there is a remedial
3 issue that has to be addressed, that should be provided
4 to the appropriate authorities, to the building
5 officials.

6 The discussion that is raised with
7 respect to municipalities maintaining this information,
8 I would agree with the comments from the City of
9 Toronto in the sense that to what end does a
10 municipality hold this information.

11 The concern would be, obviously, an
12 avalanche of information that would be brought into a
13 municipal environment and repeat the concerns of
14 resources and also the liability considerations for
15 that.

16 The onus again, from the Code is on
17 the owner.

18 The owner should be responsible to be
19 maintaining those records as they presumably are now.

20 With respect to the concerns about the
21 Code that existed in 1978, obviously the codes vary
22 from time to time as building officials learn more
23 about buildings and building systems. The codes are
24 advanced and are amended.

25 There is a new *Building Code* that is

1 coming into force in a couple of years; that is going
2 to reflect any changes.

3 But it gets back to yesterday's
4 discussion on mandatory inspections that,
5 notwithstanding what the Code may have been in 1978 or
6 if a structure was built without any Code regard
7 because of the age of it, the mandatory inspection by
8 the owner or the owner's professional will address
9 those issues.

10 And keeping a record of that, when
11 there is an issue first responders can, when they are
12 on scene, can access that information, as well as
13 building officials can access that information.

14 And it's not only the building that is
15 in question, you have to remember that in some of these
16 situations it would be helpful for the building
17 official to have access to adjacent buildings that may
18 be affected by a particular building situation.

19 And having that information be able to
20 say the neighbouring property, what is the situation,
21 there is an imminent collapse for example, how would
22 that impact the neighbouring property.

23 And having access to that information,
24 from a neighbouring property owner, again would assist
25 first responders and again assist building officials in

1 how they would respond to the matter.

2 **MR. DOODY:** You say you expect
3 responsible building owners would be keeping these
4 records anyway and the obligation should be on the
5 owner.

6 What do you do with the irresponsible
7 building owners?

8 Because frankly, as we heard
9 yesterday, if there is a responsible building owner
10 there is unlikely to be a problem.

11 A responsible building owner will be
12 having periodic inspections and will be budgeting for
13 and performing the necessary maintenance and repair to
14 protect the investment, if nothing else.

15 And the evidence that the Commission
16 has heard suggests that, depending on the view of the
17 evidence that is taken, that not all the owners could
18 be described as responsible.

19 So is there a way to ensure that this
20 information is simply available even if an owner is
21 less than responsible, without requiring that it be
22 filed somewhere?

23 **MR. HUXLEY:** I think that gets back
24 to yesterday's discussion and that would be again
25 perhaps by operation of law, an owner is required to

1 maintain this.

2 Currently the *Building Code Act* does
3 not required these types of documents be maintained.

4 But as we looked at, for example,
5 section 34(2) of the *Building Code Act*, if a regime
6 were to be set up, it would appear to be reasonable to
7 expect or to require that information to be maintained,
8 and if it is not maintained, there would be a legal
9 mechanism to deal with that.

10 As we discussed yesterday, the simple
11 reality of having a standard or incorporating that type
12 of standard in the regulation may achieve compliance
13 for those property owners, certainly the Commission and
14 building officials are concerned about.

15 **MR. DOODY:** Ms. Borooah?

16 **MS. BOROOAH:** Just a small point.

17 I think your last question begged the
18 question about, and it goes to resources, what would
19 happen if the owners did not file and how would the
20 municipality know if they did not?

21 **MR. DOODY:** And it's not just the
22 municipality, it is other engineers and purchasers and
23 ---

24 **MS. BOROOAH:** I guess the question is
25 if the obligation is for them to file, what is the

1 mechanism to ensure they file that goes beyond an
2 obligation that they retain?

3 I think it is unreasonable to think
4 you could have some kind of enforcement mechanism to
5 make that happen.

6 It would be completely unknown
7 information to the municipality about the fact that
8 they have or have not got a report, any building owner
9 had or had not got a report.

10 **MR. DOODY:** We do presently have a
11 system whereby, as we heard yesterday, under the *Fire*
12 *Code* legislation the owner is required to have regular
13 inspections and be able to provide the municipality
14 with proof of it on demand.

15 The threat of potential charges for
16 some people at the table yesterday is sufficient to
17 assist with compliance.

18 So I think we are actually agreeing
19 then?

20 **MR. DOODY:** I am not saying anything,
21 I am just asking questions.

22 **MS. BOROOAH:** We are agreeing on a
23 point.

24 **MR. DOODY:** You misunderstand my role
25 here.

1 your finger in the air.

2 **MR. SHAW:** I think in regards to an
3 enforcement mechanism for these type of reports, if
4 they are mandated there are certain touchstones that
5 municipalities and other legislative bodies do enter
6 onto properties.

7 Ministry of Labour during their
8 inspections of buildings, if legislative could ask for
9 these type of reports to be produced.

10 We referred to the fire service, under
11 the *Landlord Tenant Act* it could be a requirement to
12 produce in the event of a case there.

13 In regards to receiving a property
14 standards complaint a property standards officer could
15 go out and ask for those reports to be produced.

16 So I think there are mechanisms for
17 enforcement that would actually hold true to the owner
18 maintaining his records.

19 **MR. DOODY:** And property standards
20 complaint in a municipality which had a property
21 standards by-law, which covered the issue of concern.

22 Mr. Froebelius?

23 **MR. FROEBELIUS:** Just the fact that
24 the concept of an obligation on behalf of an owner to
25 submit a report to the City.

1 If it came to that and it wasn't
2 coupled with the requirement to do the annual
3 inspection or the bi-annual or whatever term would be
4 agreed to.

5 What could end up happening is that
6 those types of owners just would not do the reports.

7 So knowing that as soon as they have a
8 report they have to give it to the City, the owner
9 might just say 'I'll get my friend who is a water
10 proofer to come out and have a look and tell me what he
11 thinks.'

12 No report, it's leaking, yes it's
13 really bad, you had better do something.

14 You won't have a report.

15 Is that a better concept than having
16 an owner who feels free to get an engineer to come out
17 and give them an assessment and a report that they have
18 the ability to look at and digest themselves rather
19 than arbitrarily have to submit it to the City?

20 You could create an environment where
21 they are afraid to do that.

22 So unless you have that mandatory
23 inspection every two or three years or whatever the
24 "periodicity" of the ---

25 **MR. DOODY:** That's a word that is

1 definitely becoming popular.

2 **MR. FROEBELIUS:** You could create
3 that, you just the reports where the reports aren't
4 done with some of these owners.

5 **MR. DOODY:** This might be a useful
6 time to move on to the next question.

7 And I said at the beginning we are
8 going to do them in the order, but I am now reserving
9 my right to juggle it a bit.

10 That is, I would like really to talk
11 about the Questions 2 and 4 together, because Question
12 2 is: *"Should the owner of a building..."* and perhaps
13 those who prepared the building information *"...be*
14 *required to register the information relating to the*
15 *condition of a building on the title to the property?"*

16 And number 4 is: *"If there is no*
17 *requirement to register the information relating to the*
18 *condition of a building on title to the property,*
19 *should the information be made accessible to the public*
20 *by some other means such as a central registry? Or*
21 *should they at least be filed with the Chief Building*
22 *Official?"*

23 And everybody, I think to a person in
24 their response to should they be required to register
25 on title said well that is out of sync with the purpose

1 of the land titles or the land registers, which is to
2 record information that goes to title.

3 This information does not go to title,
4 so you register mortgages or you register liens, or you
5 register documents that show of an interest in the
6 land, that is something that goes to title.

7 So if we can combine Question 2 and
8 Question 4 and say the question really is should there
9 be an opportunity for the public to learn about the
10 condition of buildings to which the public has access
11 by requiring the filing of reports that outline the
12 condition of the building in a public place, publicly
13 accessible place, so that for example if there is a
14 potential problem with a building, there is another
15 opportunity for someone to learn about it and have it
16 fixed?

17 This in the context of the evidence
18 that we heard, in addition to what I have described
19 earlier today, but there was also evidence from the
20 initial owner who owned the building for 20 years that
21 it was their practice to never disclose any information
22 about the buildings that they owned, including the
23 physical condition of the building to anybody unless
24 they had to, and even in the context of the due
25 diligence investigation when they were selling it, they

1 required the purchaser to enter into a non-disclosure
2 agreement which required all of the information, not
3 just the financial, but the physical condition
4 information to be limited to specified individuals in
5 the corporate purchaser and then returned if the deal
6 did not go through.

7 And it was the evidence of a witness
8 from that company that that was the way that they
9 operated, because disclosing this information caused
10 potential problems.

11 And so in the context of that evidence
12 and the concerns for public safety and the buildings to
13 which the public has access, should there be some
14 obligation to file information about the condition of a
15 building on a public register.

16 So if we could go around the table,
17 perhaps starting with the City of Toronto.

18 I think this may be something you have
19 already spoken to, Ms. Borooh, but this is a slightly
20 different wrinkle on it.

21 **MS. BOROAH:** I have not spoken to
22 the interception with the land titles and registry
23 system.

24 So we have limited experience, but
25 experience with resistance to registering much

1 information about our activities on the land registry
2 and title system.

3 I have talked to a number of my
4 municipal counterparts here and asked where about
5 practices with respect to certain types of uses where
6 the registry system has agreed to register basically
7 orders where there is an outstanding defect identified.

8 The current case in point is where we
9 have marijuana grow operations where municipalities
10 are, by statute, required to inspect and render them
11 safe or conclude that they are safe under the -- I
12 forget the title of the legislation, but it is possible
13 to find it anyway.

14 So there is a positive obligation on
15 municipalities to inspect those situations and there is
16 also, I think generally, although I may vary it a bit
17 across the Province when the registry system has
18 accepted those orders.

19 We are counselled though as soon as
20 they are resolved to remove them from title.

21 **MR. DOODY:** Because they no longer
22 affect the title.

23 **MS. BOROOAH:** That's right.

24 And I have to say that based on that
25 experience we have seen the lenders and insurers

1 engaged quite actively should we neglect that
2 obligation to remove those orders.

3 So the system essentially is fairly
4 limited in terms of building-related information. But
5 only in a situation where a defect that may have some
6 interest to the public have they accepted documents.

7 **MR. DOODY:** What about a situation
8 like -- and somebody put this in their submission --
9 there is presently in Ontario a legislation which
10 created a registry called the "Record of Site Condition
11 Registry."

12 This is for environmental reports, so
13 that a landowner who obtains an environmental
14 assessment of his or her property can register that
15 assessment report on this public register, which does
16 two things.

17 It gives the public and any potential
18 purchasers of that land notice of what the condition
19 is, environmentally speaking, of the land in question
20 so that they are buying with their eyes open.

21 It also protects the existing
22 landowner, should it be sold from a subsequent claim
23 for pollution-related damages because there is evidence
24 of what the condition of the building was at the time
25 of the report.

1 Because it is always a problem in
2 these sorts of circumstances when did the pollution
3 arise?

4 Because if the pollution arose when
5 you owned it, it is pretty hard to avoid some
6 liability.

7 So this protects.

8 It both gives notice to potential
9 purchasers and the public, and it protects the existing
10 owner and it has become widely used, as I am sure the
11 lawyers around the table know, certainly in commercial
12 real estate transactions to search the record as part
13 of the due diligence.

14 What about creating a register like
15 that for reports of the structural condition of a
16 building where they could be filed, but then not be
17 filed with the municipality, it might solve your
18 concerns about having possession of information that it
19 is difficult to control or keep track of and liability
20 issues.

21 But it would provide subsequent
22 engineers with a baseline and information that they
23 could use when they are preparing a report.

24 It would provide subsequent or
25 potential purchasers with information and perhaps most

1 importantly it could provide the public with knowledge
2 about buildings to which they have access with.

3 What would your reaction be to that?

4 **MS. BOROOAH:** I do have some
5 experience with that Registry.

6 I did work with the Ministry of the
7 Environment in the work leading up to creating such a
8 registry for the purposes you described, which really
9 relates to the potential long-term liability around
10 environmental conditions associated with soil.

11 And of course, as the Chief Building
12 Official, I am responsible to ensure that it is an
13 applicable law under the *Building Code Act*, a record of
14 site condition is required prior to the issuance of a
15 building permit.

16 So we are the gatekeeper for this
17 legislation.

18 But I think you need to keep in mind
19 that that is a much narrower data set or body of
20 transactions or situations where this is required then
21 would be the case for all buildings in the Province
22 within a certain category.

23 **MR. DOODY:** What do you mean by a
24 "narrower data set"?

25 **MS. BOROOAH:** Well, we are only

1 talking about contaminated sites where the potentially
2 contaminated sites basically when they convert from a
3 sensitive or less sensitive to a more sensitive land
4 use, basically, and even that is fairly narrowly
5 defined in the legislation.

6 So I would venture, compared to the
7 building stock in the Province, the number of reviews
8 or records required to be filed would be substantially
9 smaller.

10 **MR. DOODY:** Under the record of site
11 condition?

12 **MS. BOROOAH:** Under the record of
13 site conditions.

14 So that is something that could be
15 discussed further.

16 I would agree with you if the Province
17 chose to set this up, it would make sense as a
18 provincial record as opposed to local municipal record
19 for consistency and ease of access to that information.

20 But I think the provincial agencies
21 who might have some kind of role in that would probably
22 have comments on how practical it might be if you think
23 about the number of buildings in the Province that
24 might be subject to the registration process.

25 **MR. DOODY:** Ms. Lewis?

1 I did not throw you that football!
2 The City of Toronto did.

3 **MS. LEWIS:** I think my colleague, Ms.
4 Borooah actually indicated very applicable statement,
5 how affective would it be given the building stock in
6 Ontario.

7 I think in our submission we put out
8 there that in consideration going forward and in all
9 good policy making you have to look at what are the
10 resources available and who are the players at the
11 table.

12 So again, you look at the building,
13 what are the responsibilities of the building owner
14 versus the municipality versus the province, and what
15 we would certainly be considering is linking all of
16 this together, you know, with the mandatory inspection,
17 who is responsible for what and different mechanisms
18 that would be available to us in order to get the right
19 people informed about what is going on.

20 And if it is the public that is being
21 informed, some of the considerations would be what
22 tools are there available and would it be most
23 effective, like I know there has been talk about
24 publicly making available these inspection reports that
25 are done by engineers.

1 Quite frankly, one of the things that
2 the government would be considering is what is the
3 ability and the capacity of the public to understand
4 them?

5 I know I have read engineering reports
6 and I am responsible for the *Building Code* and I have
7 to go out and talk to my engineers to get a full
8 understanding of what the implication is. So how
9 effective is that?

10 So what tools would there be to help
11 the public understand what the conditions of the
12 buildings are?

13 And that might be something that we
14 would want to work with the sector to actually figure
15 out how best to inform the public.

16 **MR. DOODY:** Your last comment
17 intrigues me because the reason access to information
18 legislation was brought in, I think about 30 years ago,
19 was because of the comment, I think it was epitomized
20 by a comment by an American Supreme Court Judge: "the
21 best disinfectant is sunlight". That public access to
22 information has a number of beneficial results.

23 It ensures that information for which
24 there is no good reason to keep it private, is made
25 accessible, and that leads to people who can understand

1 it, being able to read it.

2 And the evidence that we have heard
3 here is that if the engineers had known, they would
4 have affected their reports.

5 If the City had known it would have
6 affected their actions.

7 And I dare say if members of the
8 public in Elliot Lake had known.

9 You know, the justice system in
10 Ontario rests, to a great extent, upon the jury system
11 and 20 years ago you used to be able to get a jury
12 struck and dismissed from a civil action if it was
13 anything that involved science or medicine or
14 engineering because it was too complicated for the
15 public to understand.

16 The courts dismissed that about 15 or
17 20 years ago.

18 The recognition is that members of the
19 public are actually smarter than you might think.

20 So what we are trying to understand is
21 what is the harm?

22 Particularly if it is the mandated
23 inspections, what is the harm?

24 **MS. LEWIS:** Again, I think you are
25 misunderstanding my statement. I am not saying not

1 disclose.

2 But government would be considering a
3 variety of mechanisms.

4 If someone wants that full engineering
5 report and it is mandated by law, everything that is
6 mandated by law would be considered public information.

7 **MR. DOODY:** Only if it is filed with
8 the government.

9 **MS. LEWIS:** True.

10 And that is all the things that we
11 would be considering in making recommendations going
12 forward to government on how best to handle the
13 recommendations from the Commission.

14 But as a government we also have a
15 responsibility to make sure that all members of the
16 public would be able to understand.

17 So there are mechanisms that we would
18 want to consider on how best we can make sure that we
19 are meeting the vast majority of the public needs.

20 So it could be full disclosure
21 reports, it could be a variety of mechanisms that we
22 could use.

23 **MR. DOODY:** Mr. Froebelius?

24 **MR. FROEBELIUS:** I am a bit at the
25 same point.

1 The record of site condition I would
2 like to refer to, actually, because during due
3 diligence that is something that we do all look at.

4 Again, I would just repeat that if we
5 developed a system with suspended parking structures or
6 parking structures in general, there is an annual or
7 however frequency we discussed that that had to be
8 deposited somewhere, then that could be a resource.

9 But there would have to be a
10 mechanism, very importantly, to have it removed from
11 the record once an issue was corrected, et cetera,
12 because it is not fair to keep that on the title of the
13 property or in whatever database if it has been
14 addressed sufficiently in the future.

15 **MR. DOODY:** Ms. Wharton-Szatan, how,
16 from the view point of the MOL would it be of
17 assistance to an inspector under the *Occupational*
18 *Health and Safety Act* if he or she had access to a
19 record of these sorts of inspection reports so that
20 they could be accessed?

21 **MS. WHARTON-SZATAN:** I would just
22 like to couch my response under the framework of the
23 *Occupational Health and Safety Act*, whereby its
24 foundations is the internal responsibility system where
25 the employer would be the one that would be responsible

1 for the health and safety of the workplace parties with
2 each workplace party having a role.

3 So if an inspector was to enter into a
4 workplace and in the course of the duties conducting an
5 inspection or investigation requiring an engineering
6 report, they could ask the employer to provide a copy
7 of that report under their powers of the Act under
8 section 54.

9 Thus, that would help them in making a
10 determination as to what the next steps would be to
11 address whatever the issue was that they came across to
12 their attention.

13 So it is really, to answer the
14 question, it would be helpful for the inspector, but it
15 is typically the authority to obtain that report is
16 within our mandate, it is in the Act already, and it is
17 an employer's responsibility to be aware and to look at
18 and maintain their workplace in accordance with the
19 *Occupational Health and Safety Act*.

20 **MR. DOODY:** And that includes the
21 obligation, obviously, to keep it structurally sound?

22 **MS. WHARTON-SZATAN:** Absolutely,
23 absolutely.

24 Maintaining good condition,
25 absolutely.

1 **MR. DOODY:** And is there presently
2 under the OHSA an obligation to maintain such records?

3 **MS. WHARTON-SZATAN:** Under the Act
4 no, not for the employer, but if the inspector does
5 obtain a copy of an engineering report during the
6 course of their conducting their duties, that record
7 will be kept under our retention schedules and would be
8 available under the *Freedom Of Information Act*, should
9 a third party request it.

10 Additionally, should someone complain
11 and that actually initiated the investigation or
12 inspection by the inspector and they did obtain a
13 report during the course of their investigation then
14 that information or the field visit report would be
15 available to them under section 57(10) of the Act.

16 **MR. DOODY:** What is your experience
17 with FIPPA requests, the *Freedom of Information and*
18 *Protection of Privacy Act*?

19 The experience that I have heard
20 anecdotally is that they are not as quick to get the
21 information as would be if it was on a public register.

22 Is that ---

23 **MS. WHARTON-SZATAN:** We have a 15-day
24 turnaround.

25 It takes time.

1 We have to pull the paper records and
2 you have to review them and remove personal information
3 and photocopy and then send it out, so it does take a
4 bit of time.

5 **MR. DOODY:** Do you know what the
6 compliance rate in terms of that 15-day goal is?

7 **MS. WHARTON-SZATAN:** No. No, I
8 don't, sorry.

9 **MR. DOODY:** Ms. Borooah?

10 **MS. BOROOAH:** I just wanted to talk
11 about -

12 I actually should not have put my hand
13 up I think!

14 --(Laughter)

15 **MR. DOODY:** But you can't help
16 yourself.

17 **MS. BOROOAH:** I can't help myself.

18 So going back to when the document is
19 a municipal record, and I mentioned the electronic
20 records, I think certainly in our case these documents
21 will come in as electronic record today, we have a 99
22 percent success rate in disclosing the information
23 routinely.

24 The target is 30 days, but we make it
25 largely in pen, and when it is an electronic document,

1 often you can get it by e-mail immediately.

2 So I think the world is changing in
3 this sort of situation and where they are filed with
4 the municipalities they should be available.

5 **MR. DOODY:** Mr. Stein, we have not
6 heard from you on this point.

7 If there was a requirement to file
8 reports, either regularly obtained reports or if there
9 were a mandated required report on a periodic basis,
10 from the IBC's perspective would that be of assistance
11 to insurers?

12 **MR. STEIN:** And we are talking about
13 structural engineering reports, correct?

14 **MR. DOODY:** As I say, the question as
15 framed is broader than that.

16 So it is any engineering or
17 professional review or only the reviews which might be
18 required on a periodic basis in respect of a structural
19 issue.

20 Both of those things are on the table.

21 **MR. STEIN:** It's hard to say.

22 Each company, when they sell or offer
23 an insurance product, is going to look for different
24 types of information, they are going to look at
25 different risk factors, that type of thing.

1 So it is kind of hard to say from an
2 industry perspective whether having all these reports
3 and all this information is very specific detailed
4 information would be helpful from an industry
5 perspective.

6 There are just so many different risk
7 factors that they look at.

8 To have every single piece of
9 information for all those risk factors, you know, maybe
10 for some companies, maybe other companies there won't
11 be -- it kind of depends on what their underwriting
12 criteria is.

13 **MR. DOODY:** Wouldn't the more
14 information be the better?

15 **MR. STEIN:** You know you go back a
16 long time ago, a few decades, I am sure there would
17 have been 'oh, wouldn't it be great if we knew this or
18 if we knew that?'

19 And in this day and age there is so
20 much information available, but there is always the
21 risk of information overload and you are constantly
22 trying to get more and more information.

23 The next thing you know, from a
24 company perspective, someone else is provided coverage
25 to a potential client.

1 So you know, certain companies will
2 focus more on certain areas of a risk, and perhaps that
3 type of information would be helpful for them.

4 But to say it from an industry
5 perspective, it is hard to say just because each
6 company, they look at different things and they have
7 different needs and it depends on the specific risk as
8 well.

9 **THE COMMISSIONER:** One of the
10 concerns I have often heard, I heard particularly
11 during the period of my residence in Elliot Lake, it
12 was a significant and frequently expressed concern,
13 particularly in a small municipality environment, that
14 there was a "cozy, unspoken old boys club type of
15 arrangement between owners and regulators not to rock
16 the boat."

17 Whether that perception was justified
18 or not is something that the Commission may have to
19 determine.

20 But the fact remains that with
21 publicity and with exposure through registration,
22 individuals in a type of municipality such as we have
23 seen in Elliot Lake, a lot of retired folks who have a
24 lot of time on their hands and love to explore these
25 issues would have at least the satisfaction of knowing

1 that things involving their personal safety and the
2 public safety of the community is out there.

3 I just make that comment generally.

4 Yes, Mr. Froebelius?

5 **MR. FROEBELIUS:** I was going to add
6 that buildings are very complex and there are many more
7 issues within a building than structural-related
8 issues.

9 There is an electrical safety
10 authority; there is the TSSA with respect to elevators
11 and HVAC systems.

12 There are many, many systems in
13 buildings that can affect public safety.

14 I think you do have to look at, if you
15 were to put all of the energy into the creation of,
16 say, a structural database, if that is the best -- and
17 pardon the expression -- but is it the best bang for
18 their buck.

19 Because there are other systems and
20 other issues that are within buildings that can affect
21 safety as well.

22 **THE COMMISSIONER:** You can walk into
23 an elevator and see the certificate right on the wall
24 there saying it has been inspected.

25 **MR. FROEBELIUS:** You see a license in

1 the elevator, you don't see that it has been inspected.
2 You do not know that there might be an order to comply
3 on the elevator.

4 There are a lot of things, electrical
5 safety authority as well, contractors could have done
6 work, it might not have been signed off by the ESA
7 inspector.

8 So if you want to have the public to
9 be able to type in an address and see everything that
10 was wrong with First Canadian Place or whatever.

11 I mean there could be a myriad of
12 things other than just structural.

13 I think it is a cautionary note.

14 **MR. DOODY:** Mr. Huxley?

15 **MR. HUXLEY:** Yes, thank you.

16 AMO's position in its submission is
17 that it would appear that a central registry would
18 create unnecessary information, work and resources.

19 But let me try to answer this
20 question.

21 We assume that there are going to be
22 periodic, mandatory inspections by the owner.

23 That may address some of the concerns
24 you have by the various stakeholders looking at a
25 building.

1 The first would be a purchaser or
2 subsequent owner.

3 Through the real estate transaction,
4 exercising due diligence, that purchaser or subsequent
5 owner would have access to that information.

6 Similarly, a subsequent professional
7 looking at the building should have access to the prior
8 professional reports, and that perhaps is an issue that
9 the next component of the Roundtable, information
10 sharing amongst professionals, can be a matter of
11 discussion.

12 The chief building official or
13 building official, whatever that threshold is, as to
14 when the report would have to be provided by a
15 professional or an owner to the building official,
16 because there is remedial action required and I don't
17 know what that threshold is and that is certainly
18 something for discussion; the chief building official
19 would then be made aware of that situation.

20 With respect to the public then, and
21 again the public interest is -- or other inspectors,
22 whether it be the Ministry of Labour, but the chief
23 building officials do act in the interest of public
24 safety, that is the way the act is garnered.

25 So the public would be aware if this

1 process is to proceed through its logical route, would
2 be if an order were to be issued, as is currently,
3 orders are posted at the premises.

4 It may be an order requiring certain
5 action be undertaken, or it may be an order prohibiting
6 occupancy all together.

7 But the public would have information
8 as to the concerns that a chief building official may
9 have with respect to the Act in its current regime by
10 posting orders, et cetera.

11 I am sure that is helpful.

12 **MR. DOODY:** In a situation where the
13 order is posted, in your scenario, the public is not
14 given access to the information that underlay the
15 order.

16 In other words, there is no public
17 opportunity to look at the activity of the CBO.

18 So if you have a CBO who fell down on
19 the job, you have missed an opportunity.

20 And again, there is evidence that
21 could be interpreted from Elliot Lake where precisely
22 that happened.

23 And what we are trying to understand
24 is what is the downside?

25 We have heard about the cost of filing

1 reports in a registry.

2 But with the modern data management
3 ability, is that a serious concern when weighed against
4 the issues of public safety?

5 **MR. HUXLEY:** I think the resources of
6 any registry need to be examined and is there a better
7 way to get that information.

8 And orders are generally pretty
9 detailed and again, if anyone wishes to challenge an
10 order, whether anyone agrees, it could be a member of
11 the public they have that option.

12 The experience would be of putting
13 orders on title, and I think there was some discussion
14 about that, and it may be akin to our central registry.

15 Typically the only -- and I heed the
16 Commissioner's response, that there may be members of
17 the public that look to this information, but some
18 municipalities used to put property standards orders on
19 title.

20 Really the only entity that would ever
21 be concerned about that would be a subsequent
22 purchaser.

23 So if you are getting the information
24 through the due diligence of a real estate transaction,
25 the central registry may serve only that point, it

1 would be only of interest to purchasers.

2 Not to diminish that there may be
3 members of the public that may be looking at
4 information, but there may be other information through
5 a real estate transaction in addition to the reports
6 that may give a bigger picture of the status of the
7 building that may not be available through a central
8 registry.

9 **MR. DOODY:** I noticed Mr. Stein your
10 hand was up, so we will get to you.

11 The City of Toronto indicated in its
12 submission that since the advent of title insurance,
13 the number of requests for outstanding municipal work
14 orders has diminished significantly.

15 And I understand that that is a
16 similar situation across the Province.

17 Probably everybody is intimately
18 familiar with the title insurance, but it covers just
19 about everything.

20 So it seems that in an effort to save
21 some money, some purchasers or purchaser's lawyers are
22 saying we don't need to do the search for outstanding
23 work orders because if there is a problem the insurer
24 will make our client whole, will make the purchaser
25 whole.

1 So the concept of the due diligence,
2 bringing this information to bear, seems to be
3 diminishing with the advent of title insurance.

4 When I read that in the City of
5 Toronto's submission, I thought 'well that seems to be
6 a safeguard which is becoming of limited utility, and
7 making information publicly available would, to some
8 extent, offset that.'

9 Does anybody have a comment on that?

10 Ms. Borooah?

11 **MS. BOROOAH:** I thought we were going
12 to talk about that a bit later, so I don't want to ---

13 **MR. DOODY:** Okay, we will talk about
14 it later then.

15 I have thrown the pebble into the
16 water.

17 Let's come back to it later.

18 Mr. Stein, you indicated you wanted to
19 say something.

20 **MR. STEIN:** I just wanted to add one
21 thing to when you had asked the question about insurers
22 wanting that information.

23 There is a provision in most insurance
24 contracts for the client to disclose information that
25 is material to the risk.

1 So there is that built in kind of
2 process to get information that, you know if there is a
3 known structural issue here that that type of
4 information -- I am not a lawyer, but I guess would
5 fall into that category of something that would have to
6 be disclosed.

7 **MR. DOODY:** Yes. Having dealt with
8 some of those, there is always an issue as to whether
9 the information that was not disclosed is in fact
10 material to the risk and whether the insured knew or
11 ought to have known that it was material to the risk.

12 But you are right.

13 Mr. Braithwaite, I am not sure we have
14 heard from you on this point.

15 **MR. BRAITHWAITE:** The only comment I
16 would make that might be helpful that is not
17 duplicating what has been said earlier, if you look at
18 the environmental area, which is a very high risk, and
19 building owners tend to focus on high risk and trying
20 to understand how do you control risk and mitigate it.

21 The record of site condition in terms
22 of environmental I think has been a fairly successful
23 program, even though it's quite expensive.

24 It has been a successful program in
25 the sense that it defines a baseline in a relatively

1 high risk area that enables two parties to put a
2 transaction together with the benefit of a record of
3 site condition on the environmental side.

4 So if that has been a successful
5 intervention in the process, if you will, can you
6 transfer that same idea to other areas?

7 And I think that is part of the debate
8 of what we are talking about here in the discussion.

9 I think a lot of it has to be filtered
10 with risk.

11 The higher the risk then you are going
12 to get more acceptance from the private sector in
13 particular, but this is something that would be
14 helpful.

15 This is something that will define
16 baseline; this is something that will enable the market
17 place to be more effective.

18 **MR. DOODY:** Mr. Huxley?

19 **MR. HUXLEY:** I guess this is just to
20 further the question, and I can see obviously the issue
21 of public interest and public safety.

22 I direct the question perhaps then to
23 the building industry and if we are assuming that the
24 periodic inspections are being conducted by the owner
25 and that there is a repository on-site with the

1 responsible owner, landlord for that information, and
2 that information be made accessible to building
3 officials or Ministry of Labour inspectors, I guess the
4 question would be if the public were interested in that
5 information, would the landlord or owner make that
6 information either at an administrative office or on
7 the particular building's website?

8 So that it is not a central registry,
9 but you know, those landlords or owners that wish to
10 make that information available, and I suspect there
11 are landlords and property owners that make that
12 information available today as property management et
13 cetera.

14 So maybe that is an avenue for the
15 public to access information, not through a central
16 portal, but through similar information where members
17 of the public may access information on any business.

18 **MR. DOODY:** You are talking about
19 voluntary on the part of the owners,

20 **THE COMMISSIONER:** As opposed to
21 mandatory?

22 **MR. HUXLEY:** I would put it out first
23 as a question of what is the current status of that
24 situation?

25 And what would the building industry's

1 response be to that on a voluntary basis?

2 And then the next question would be
3 where do you go if that is not the case?

4 **MR. DOODY:** Do you want to comment on
5 that, Mr. Froebelius?

6 **MR. FROEBELIUS:** Frankly, I do not
7 see that happening where managers would voluntarily
8 disclose or come into the office and have a look at the
9 reports. I do not think that would happen.

10 But I would counter that by saying
11 that again, back to responsible owners, if you are a
12 member of BOMA, BOMA has certification programs, we
13 have a certification program called "BOMA Best", we
14 have a certificate of excellence program, we have the
15 Toby Award programs and many of our members participate
16 in those types of certifications.

17 You might walk into a mall and see the
18 BOMA Best level 1-4 banner hanging at the entrance to
19 the mall.

20 If you have gone through that process,
21 it's a voluntary process, it costs the owner a fair bit
22 of money to do it, and time and effort, but it puts you
23 through a process where it should reassure the public
24 that this building has been assessed and it is managed
25 in a very professional fashion.

1 And all of the checklists on those
2 certifications include a myriad of different things.

3 So that is the type of thing I think
4 that the industry would prefer to do. Self-certify and
5 make sure things are in place.

6 **THE COMMISSIONER:** The Securities
7 Industry, obviously are forced to comply with
8 disclosure, and do it.

9 Mind you, anybody reading the material
10 they produce are not -- I am certainly, in any event,
11 not advanced by the material I get.

12 But there is an example of imposed
13 disclosure, legislatively imposed disclosure.

14 And it works.

15 **MR. DOODY:** It is now almost 10:40,
16 Mr. Commissioner.

17 Perhaps this would be a good time?

18 **THE COMMISSIONER:** Let's have a
19 coffee and return here at 11 o'clock.

20 --- RECESSED AT 10:40 A.M.

21 --- RESUMED AT 11:00 A.M.

22 **MR. DOODY:** Question number 3 was if
23 there was a requirement to register information in
24 respect of the condition of a building, somewhere,
25 should that obligation apply to all buildings or only

1 commercial buildings?

2 How do you think ought to be defined
3 the stock of buildings to which it would apply?

4 We had a similar discussion yesterday
5 when we were talking about should there be periodic
6 inspections and to what kind of buildings should it
7 apply.

8 We have some different people at the
9 table today, so I am just interested in the reaction.

10 **THE COMMISSIONER:** Should it be
11 publicly accessible commercial buildings, that kind of
12 thing.

13 **MR. DOODY:** Right, yes.

14 Mr. Froebelius?

15 **MR. FROEBELIUS:** Yesterday, we talked
16 about risk assessment and I think the determination for
17 any type of registry would have to be based on the
18 accepted level of risk.

19 So as you just stated, you know the
20 publicly accessible buildings start from there, but it
21 could be as focussed as, you know, parking structures
22 built prior to 1985, that type of thing.

23 I think you could have a very broad
24 scope.

25 But I think there would have to be an

1 exercise to determine what level of risk warranted.

2 To say all buildings across the
3 Province I think would be insurmountable, frankly.

4 But I think it would be based on risk.

5 **MR. DOODY:** Why would it be
6 insurmountable, assuming you had a lead in time to
7 accomplish that, when right now there is an obligation
8 to inspect any and all building before it can be
9 occupied under the *Building Code Act*.

10 **MR. FROEBELIUS:** For every existing
11 building in the Province ---

12 **MR. DOODY:** Any existing building to
13 which the public has open access.

14 **MR. FROEBELIUS:** I agree.

15 It would be narrowed to the point
16 where we came to an acceptable level of what could be
17 handled and where the importance was.

18 But certainly publicly accessible.

19 **MR. DOODY:** Mr. Shaw?

20 **MR. SHAW:** I would echo with regards
21 to the requirement not be placed on all buildings,
22 simply by the sheer numbers it would be overwhelming
23 and probably somewhat ineffective.

24 Having stated that, I do believe that
25 there is merit for public buildings, publicly

1 accessible buildings and that further consultation with
2 stakeholders and so on, identifying size, use and
3 occupancy and elements should be undertaken to identify
4 not just buildings accessed by the public, but other
5 sensitive uses and buildings.

6 So I would feel that with further
7 input from the stakeholders that we could actually have
8 a somewhat reasonable safety blanket placed.

9 **MR. DOODY:** What kind of other
10 sensitive uses are you thinking of?

11 **MR. SHAW:** Well, there is certain
12 buildings that are considered.

13 We have referred several times in
14 regards to the condo situations.

15 Condos are privately owned, but there
16 are public spaces in them.

17 So these are all things that you would
18 have to consider.

19 Would you restrict the -- say for a
20 high-rise -- would you restrict access or a review of
21 high-rise buildings?

22 There might be merit for the inclusion
23 of high-rise buildings in these type of reviews.

24 So those are just some thoughts and I
25 am sure if we get together, because it is such a

1 complex issue, consultation with other individuals,
2 stakeholders in the group, I believe that we could
3 efficiently identify what buildings need to be
4 included.

5 **MR. DOODY:** Mr. Braithwaite, any
6 thoughts?

7 **MR. BRAITHWAITE:** I reiterate the
8 same point in terms of high-rise residential buildings.

9 For example, if you look at Toronto
10 right now there are something like 192 buildings that
11 are at various stages of approval and under
12 construction.

13 **MR. DOODY:** How many? I am sorry?

14 **MR. BRAITHWAITE:** 192.

15 That is more than the growth rate
16 announced in the top five cities in the U.S.

17 So it is just a huge amount of growth
18 coming in the form of high-rise residential buildings.

19 I think the ownership structure of
20 those buildings is very much impacted by the
21 association of owners that run them.

22 I think there is definite need for
23 regulation, if you will, to make sure that those high-
24 rise buildings are properly inspected.

25 So I think it goes beyond commercial.

1 I think you have to seriously take a
2 look at that as part of the program.

3 **MR. DOODY:** Ms. Wharton-Szatan, from
4 the viewpoint of the MOL and I may have asked you a
5 variation of this question earlier today. But would
6 there be a benefit to having some sort of an obligation
7 on workplaces?

8 **MS. WHARTON-SZATAN:** I think within
9 the framework of the Act itself there is provisions
10 already in place for monthly inspections for the Health
11 and Safety representatives or from the Joint Health and
12 Safety Committee or the worker rep to conduct
13 inspections and bring to the attention, to their
14 employer, any hazards that they observed or
15 deficiencies.

16 So if they observed something that
17 might be questionable about the structure of the
18 building then they could take that to their employer
19 for further investigation, which could in turn generate
20 a report.

21 But I think the responsibility of the
22 workplace and maintaining of the workplace should
23 reside with the employer or the owner of the building.

24 **MR. DOODY:** And if there was no
25 obligation to register those sort of reports, then how

1 do the employees learn about it?

2 **MS. WHARTON-SZATAN:** If the employer
3 is conducting any testing in the workplace, then they
4 are obliged under the structure of the legislation to
5 advise the worker representative at the commencing of
6 the testing that it is taking place.

7 So this is one way in which a joint
8 health and safety committee or worker representative
9 would be aware of any testing taking place, and then in
10 turn the Committee would be party to or could ask for
11 that information, and then it could be disseminated
12 through the workplace.

13 **MR. DOODY:** So would testing include,
14 for example, a structural engineering review of the
15 building?

16 **MS. WHARTON-SZATAN:** If the engineer
17 undertook structural forensic testing or anything like
18 that, then that would be included as well.

19 **THE COMMISSIONER:** One of the
20 problems we saw was that there may have been an
21 implication of Health and Safety in relation to one end
22 of the shopping centre, but that was not necessarily
23 known to or available to in terms of information, the
24 people that are way at the other end or on another
25 floor. I mean these are all distinct individual

1 locations.

2 How do you deal with that?

3 **MS. WHARTON-SZATAN:** I think if it is
4 a structural issue then -- and that workplace party
5 workplace would have reported it to their employer, I
6 would believe that the employer, in turn, would speak
7 with the owner of the facility.

8 In that case, the owner would take
9 appropriate action, and that is one way in which that
10 information could be shared with the other workplace
11 parties, is through the contractual agreements, but
12 that is really outside of our scope.

13 **THE COMMISSIONER:** I agree that there
14 are associations of business owners within larger
15 centres, that kind of thing.

16 But the fellow or gal working in the
17 accounts department at Zellers may not necessarily know
18 what is going on at the Bank of Nova Scotia at the
19 other end on another floor.

20 **MR. DOODY:** There was certainly some
21 evidence that the extent of the problem in Store "A"
22 was not known to the people that worked in Store "B".

23 And yet the building is all one
24 building, obviously.

25 **MS. WHARTON-SZATAN:** Yes, with one

1 owner.

2 **MR. DOODY:** Well, one owner and when
3 the engineers came in after the collapse and looked at
4 it, these structural issues were spread throughout the
5 entire mall, which it's not surprising.

6 **MS. WHARTON-SZATAN:** But there are
7 duties for the employer -- I should say the owner of
8 the structure, of the building, to maintain it in good
9 condition and I think that is their role as the owner.

10 And that is embedded in the Act; it's
11 an owner duty.

12 **MR. DOODY:** Right, that is their
13 role.

14 But at this stage we are talking about
15 spreading the information so that others can make sure
16 that the actually perform their role.

17 That was the problem we saw, at least
18 arguably, that one or more of the owners might not have
19 performed their role properly.

20 **MS. WHARTON-SZATAN:** Right.

21 **MR. DOODY:** Ms. Borooah?

22 **MS. BOROOAH:** I just wanted to pick
23 up on the point raised earlier about condominiums.

24 As we discussed yesterday there are
25 regulations that apply separately to condominium

1 corporations around reviewing the physical building
2 itself.

3 And to avoid duplication, that might
4 be a case in point where you would look at whether you
5 could incorporate the requirement opposed or register
6 into those roles as opposed to duplicating them.

7 The *Condominium Act* does not speak
8 directly, I don't believe, to reporting any
9 deficiencies found in the manner we talked about for
10 the buildings to the municipality, but there would be a
11 mechanism for that. I think it is seen as a fairly
12 effective self-contained system.

13 So you might want to look at how you
14 notify within that system, as opposed to in the system
15 we have talked about to apply to other buildings.

16 **MR. DOODY:** Right. I think within
17 that system right now perspective purchasers can get
18 access to the last engineering report as part of the
19 due diligence process, but there might be some benefit
20 to making it more widely available.

21 As you say, it might not actually
22 cause any more work to be done, it is just
23 accessibility to the information issue.

24 Mr. Froebelius?

25 **MR. FROEBELIUS:** Just back to the

1 health and safety aspect.

2 I just wondered because the employees
3 of the building manager would be the only employees
4 that I take it the entire mall would apply as a
5 workplace, perhaps the scope of the OHNS should be such
6 in a shared facility like that where if one particular
7 tenant or employee of a tenancy was to complain that
8 somehow it would apply to a larger portion of the
9 address or the property, right?

10 **MR. DOODY:** Ms. Wharton-Szatan?

11 **MS. WHARTON-SZATAN:** I would like to
12 point out though that if our inspector did go into a
13 workplace within a large workplace such as a mall, and
14 they were addressing a concern brought to their
15 attention, they would leave a field visit report and it
16 would be posted in the workplace, accessible to view.

17 So I think if the other employees,
18 like those of the owner were going in to do
19 maintenance, they would be able to see those posted
20 workplace reports and should they have any questions
21 about them, they could contact the inspector as their
22 information is on the field visit report.

23 **MR. DOODY:** I guess what all of this
24 is driving is if there is already provision to make
25 this sort of information available, albeit by posting

1 it on a bulletin board in the cafeteria where somebody
2 might see it or might not see it, what is the harm in
3 making it publicly available by posting it on a
4 website?

5 The amount of information that is now
6 accessible by going to the web was unfathomable 50
7 years ago.

8 But ought we still to be relying upon
9 somebody posting it on a bulletin board and somebody
10 happen to look at it, but it could be made more easily
11 available by posting it on a central registry.

12 **THE COMMISSIONER:** And posting it on
13 the bulletin board available just to employees is cold
14 comfort to the member of the public who attends there
15 maybe once or twice a month or once or twice a week
16 that does not have access to all those bulletin boards.

17 **MR. DOODY:** Does anybody else have
18 anything to say on this?

19 Mr. Huxley?

20 **MR. HUXLEY:** With respect to Question
21 3, obviously AMO is responding in the alternative.

22 But I think there is a logical
23 starting place if there is going to be such a system to
24 tie it to the risk management or the risk assessment
25 that we talked about yesterday, at least as a

1 preliminary step, and then you move forward.

2 But there is going to be a number of
3 questions, there are buildings that are mixed use,
4 there are buildings that have residential and
5 commercial and they are viewed as one structure, but
6 different components.

7 So I think the starting place would be
8 looking at that risk assessment as been previously
9 noted.

10 **MR. DOODY:** And when that risk
11 assessment based list is being compiled as one of the
12 principles, would it make sense to suggest it be over-
13 inclusive?

14 In other words, if there is potential
15 for error, error on the over-inclusiveness side rather
16 than the under-inclusiveness side?

17 Does that make sense?

18 **MR. HUXLEY:** There is two ways.

19 That is one approach.

20 Or the other approach would be to take
21 preliminary steps to start off and identify those
22 buildings that we talked about in this forum at least,
23 certain buildings of a certain age.

24 So to develop something it may be more
25 appropriate to start small, if I may say that, than to

1 have too far reaching that it may be too cumbersome and
2 too difficult to handle.

3 So there is two approaches to that,
4 and I appreciate the comment, more inclusive would have
5 a larger umbrella than coverage, but I think there is
6 some merit also to consider preliminary steps to see
7 what the scope is and if it is working from that
8 perspective to expand it.

9 **MR. DOODY:** Is there a risk that if
10 you do that it will take 20 years before there is
11 adequate protection?

12 The buildings at risk are the
13 buildings that have been around for a while.

14 So as time marches on, if you have
15 missed a building the risk is going to increase, isn't
16 it?

17 So if you wait too long trying to
18 figure out what to put on the list, you are going to
19 miss putting them on the list.

20 Isn't that a risk?

21 **MR. FROEBELIUS:** I think you could
22 argue though that if you build this platform that you
23 could add things to the platform as potentially other
24 issues develop as well.

25 So if you invest initially in the

1 database or the structure of the database that can be
2 used to archive things like this then as further issues
3 develop in the buildings community, then it could
4 potentially be added to that structure or that
5 database.

6 **MR. DOODY:** Some might say that we
7 wouldn't even be talking about this if the mall hadn't
8 collapsed and these buildings across the Province would
9 still be in a situation where there was no inspection
10 required of any of them and no information sharing
11 required of any of them and the common risk.

12 So if you start small, what is going
13 to be the impetus to move bigger?

14 I am just asking the question because
15 that is my role here.

16 But I am sure there would be some say
17 why would we wait for another disaster before we move
18 bigger?

19 **MR. FROEBELIUS:** But there was a
20 debate, I believe in the City of Toronto in the last
21 month about bridges, for example.

22 **MR. DOODY:** That is because pieces of
23 concrete kept falling off the Gardner.

24 **MR. FROEBELIUS:** Exactly.

25 So as infrastructure ages and the

1 building stock ages, then I think the public will
2 become more demanding of that.

3 And I believe the debate was about
4 whether or not bridges that are closed in the City of
5 Toronto, I think there is only one that is closed, the
6 Dufferin Street Bridge.

7 But whether or not those bridges
8 should be posted on the website, and there was quite a
9 lengthy debate about it, as to whether the public
10 should know which bridges are condemned, for example.

11 So I think as building stock and
12 infrastructure ages there will be more demand for that
13 type of disclosure.

14 **MR. DOODY:** And I guess two
15 questions.

16 One is do we have to wait until
17 concrete falls off the Gardner. I drove under it last
18 week and it is a bit of a scary proposition when you
19 look at it.

20 Why would there be any argument
21 against letting the public know what bridges have been
22 condemned?

23 Just from a public policy perspective
24 what is the downside?

25 **MR. FROBELIUS:** If I am in the

1 Economic Development Department of the City of Toronto
2 and trying to attract businesses to the City of
3 Toronto, and there is a list on the website of 25
4 bridges that are, you know, in poor condition.

5 Is that the type of thing that the
6 Economic Development Department wants to see advertised
7 about the City?

8 I am not saying that is the right
9 answer, by any means, but is that a ---

10 **MR. DOODY:** Is that a valid concern
11 is the question I would ask?

12 **MR. FROEBELIUS:** Does the public --
13 it can create a whole other set of issues, I think.

14 **MR. DOODY:** Don't let the public know
15 because they are better off not knowing?

16 **MR. FROEBELIUS:** I am not -- that is
17 not my personal -- I am just playing devil's advocate.

18 **MR. DOODY:** Does anybody else want to
19 say anything on this issue?

20 --(No response)

21 **MR. DOODY:** Question number 5 is the
22 following: *"Should the building owner be required to*
23 *complete an Affidavit as mandatory closing document*
24 *that states at a minimum the following: 1. The owner*
25 *has disclosed all engineering reports that have been*

1 *conducted while the building has been owned by the*
2 *present owner. 2. That the owner has undertaken*
3 *appropriate inquiry in order to obtain the history of*
4 *all engineering reports on the property and they are*
5 *stated here. 3. There are no reports or documents*
6 *that the owner is aware of with respect to this real*
7 *property that deal in any way with the structural*
8 *assessment or condition of the building that has not*
9 *been disclosed to the purchaser."*

10 And I think there are two issues
11 related to this.

12 One is; is it something which ought to
13 be done from the viewpoint of public safety?

14 And secondly, how do you do it?

15 Because right now any such obligation
16 is essentially a contractual one.

17 You put it in the agreement of
18 purchase and sale and it's required. If you don't,
19 it's not.

20 But if we could deal with the first
21 question first, that may assist.

22 Is it a good idea to require such an
23 obligation on a vendor of property?

24 Ms. Borooah, I see that Toronto takes
25 the position, at least in the submission, that the

1 building condition is the owner's responsibility.

2 Am I over-simplifying?

3 **MS. BOROOAH:** I think we have taken
4 the position that the building condition is the owner's
5 responsibility and that is inherent in our
6 recommendation around requiring the owner to conduct a
7 periodic review in relation to the first days
8 discussion.

9 Having said that, it seems like in
10 part we are getting into an area which is not directly
11 certainly the expertise of building regulators, we are
12 talking about real estate transactions.

13 So exactly what mechanisms you are
14 thinking you might use in this case, perhaps others can
15 comment on that more directly.

16 **MR. DOODY:** That is why I separated
17 the question of mechanism with "is it a good idea?"

18 So from the City's perspective,
19 setting aside for the moment the question of how would
20 one go about enforcing such a requirement, from the
21 City's perspective would it make a good idea to require
22 this information to be passed on from a vendor to a
23 purchaser so that at one of the three stages that Mr.
24 Braithwaite has said are important, we know that at
25 least the purchaser has access to that information.

1 **MS. BOROOAH:** So in keeping with my
2 earlier responses in this day's discussions.

3 The City of Toronto thinks that it is
4 a good idea for purchasers to have information about
5 municipal orders and outstanding matters with the
6 municipality.

7 And we, like all municipalities,
8 provide a service to give that information or virtually
9 all municipalities and that that is a diminishing
10 business, as we stated earlier, because it is our
11 experience that increasingly purchasers, especially for
12 smaller properties, are relying on title insurance and
13 not requesting information about outstanding municipal
14 matters, open permits, orders issued, et cetera.

15 So yes, we think it's a good idea, but
16 we think probably the place to have that discussion is
17 with the Law Society and with the practice standards
18 around real estate transactions should incorporate
19 that, where title insurance is normally secured.

20 **THE COMMISSIONER:** There is an
21 important element of public protection here.

22 We had the experience in Elliot Lake
23 of a purchaser saying 'I am prepared to waive all
24 conditions if you reduce the price by a million bucks.
25 I don't care what condition the building is in.

1 Essentially, you make it worth my while and I am not
2 going to ask any questions.'

3 We end up with somebody purchasing a
4 shopping centre here which has proven to be fatal to
5 members of the public.

6 **MR. DOODY:** And if the purchaser is
7 less and less asking for even the work orders, then
8 there is less and less protection for the public, the
9 owner is only interested in ensuring that his economic
10 interests are looked at.

11 I don't see how the Law Society could
12 go anything about this.

13 Right now, the lawyer acting for the
14 purchaser can only require the vendor to produce the
15 information that is in the agreement of purchase and
16 sale.

17 So whether it is a good idea for a
18 lawyer to ask for that information or not, there is no
19 obligation.

20 So again, the question is; is there
21 benefit to doing this, setting aside how you do it, and
22 what is the harm?

23 Wouldn't it produce, if the
24 information was actually disclosed, wouldn't it produce
25 better buildings and less of a headache for the city?

1 **MS. BOROOAH:** At the end of the day,
2 I am not sure you can insert regulatory role into the
3 owner's due diligence of purchasing a property.

4 In that case it would seem the owner
5 was not concerned about what the condition of the
6 property is. That is not universal, but that was the
7 case.

8 And I understand, I think through
9 discussion with our counsel, the only influence we
10 might have on a real estate transaction in that case is
11 through lawyers encouraging their clients to exercise
12 due diligence, whatever that may be.

13 **MR. DOODY:** But again, setting aside
14 the question of how you do it?

15 Wouldn't the City benefit from having
16 as much information as possible about the structural
17 condition of the building required to be passed to
18 purchasers from vendors, assuming it can be done
19 somehow?

20 **MS. BOROOAH:** In principle I would
21 agree with you.

22 And that is, I think, why
23 municipalities have encouraged and provided information
24 that is within their domain.

25 So if there is other information, it

1 is kind of outside of our domain to determine what that
2 information should be.

3 But if it is within our domain, we
4 encourage future purchasers to obtain that.

5 **MR. DOODY:** Mr. Braithwaite, what do
6 you think?

7 **MR. BRAITHWAITE:** Well, this is one
8 that I support.

9 I think there is a big advantage to
10 both the buyer and the seller in the general
11 marketplace in terms of how business is normally done.

12 You may not necessarily catch the bad
13 operator, but if you have got rules and regulations
14 that make it mandatory that they have to disclose that
15 to the lawyers of the purchaser that are doing the due
16 diligence, then lawyer on the due diligence side of the
17 purchaser won't always necessarily rely totally on
18 those documents, but they will use it as background
19 information and decide if they have to in fact go in
20 and do an update and study to satisfy themselves that
21 what they are buying here is not a pig in a poke.

22 In other words, they know what they
23 are getting.

24 But I think this is one area that I
25 support.

1 I think it would improve the operation
2 of the marketplace; and I think it is information that
3 if we felt there was a need on the public side, that
4 they could piggy-back on it because that information
5 isn't going to be available.

6 **MR. DOODY:** Mr. Froebelius?

7 **MR. FROEBELIUS:** In our submission we
8 wrote the clause a little bit and limited it to
9 structural.

10 When we circulated it, the feeling was
11 that it could be onerous to put an obligation on owners
12 to produce something over the history of the property.

13 So you know, in fairness, if a
14 property is 30 or 40 years old and a current owner has
15 had it for seven or eight years, it could be onerous
16 for them to have to produce reports from previous
17 ownerships et cetera.

18 So I think it would have to be limited
19 to current ownerships and probably limited to
20 structural or anything that affects the safety of the
21 public.

22 So for example, you could have an
23 engineering report done on this complex if it was going
24 to be sold.

25 And the engineering report, it might

1 be related to the heating ventilating and air
2 conditioning systems and there might be something that
3 says you know, the main room is great as long as it is
4 limited to 500 people.

5 But if you go to 700 people, there is
6 not enough air conditioning to cool the room or
7 whatever.

8 Is that something that is necessarily
9 something that has to be a requirement in the public
10 domain?

11 Or is that something that is a
12 proprietary business issue?

13 So there are lots of engineering
14 reports that could be associated with the building, and
15 which of those should be in the public domain I think
16 is debatable.

17 But anything to do with public safety
18 should be.

19 **MR. DOODY:** And for the HVAC example,
20 if the purchaser wanted to make that a condition he
21 would be free to put it into the agreement, and the
22 vendor could say "yeah" or "neigh".

23 **MR. FROBELIUS:** Right.

24 **MR. DOODY:** Ms. Lewis, do you have a
25 comment on this suggestion:?

1 **MS. LEWIS:** No, I don't think I do.

2 **MR. DOODY:** Okay.

3 Mr. Stein?

4 **MR. STEIN:** In our submission, we
5 grouped this question with a few of the others that
6 have to do with mandatory disclosure and that type of
7 thing and relating it to the system is already in place
8 between two contractual parties, so I don't have
9 anything more to add than what I said earlier.

10 **MR. DOODY:** In terms of how you would
11 bring it about, I think several people have said it
12 that right now it would have to be a condition of the
13 agreement of purchase and sale.

14 But it would be certainly within the
15 jurisdiction of the legislature to enact legislation,
16 probably you would need legislation to insert such a
17 requirement in every transaction.

18 If somebody here has a good idea as to
19 how to achieve it other than by legislation, we would
20 be delighted to hear about it.

21 Nobody has any great ideas?

22 **MR. FROBELIUS:** The real estate
23 boards are, you know, like RICO and ORIA, they do have
24 standard ---

25 **MR. DOODY:** Standard, yes.

1 **MR. FROEBELIUS:** Which might be an
2 avenue.

3 **MR. DOODY:** Which is how your
4 formaldehyde standard clause found its way in, it is in
5 those standard agreements, but not everybody uses them.

6 **MR. FROEBELIUS:** Right.

7 **MR. DOODY:** Question number 6:
8 *"Should any and all engineers and architects who have*
9 *provided services to an owner of a building make*
10 *available all information in their possession to*
11 *successor engineers or architects requesting such*
12 *information?"*

13 Should there be such an obligation?

14 The City of Toronto had indicated that
15 that would be something that would be supported and it
16 could be done by putting it in the professional
17 standards obligations of the engineer or architect.

18 Can you share with us the City's views
19 and reasons for that suggestion?

20 Ms. Borooah?

21 **MS. BOROOAH:** I think in response to
22 this and other questions, particularly in the context
23 of the first Roundtable yesterday, we think that it is
24 a matter of practice and certainly in the risk and
25 liability regimes that have applied two professionals

1 to date, that records are kept for a long period of
2 time, even after some of the principles have passed
3 away and their heirs and the science may in fact have
4 some liability associated even in cases that occur at
5 that point.

6 So we think that it would be
7 reasonable to look at their standards of practice for
8 both retention and sharing of documents, particularly
9 sharing, that have that -- maybe it's a discussion for
10 tomorrow, but that it would support the other
11 recommendations we have discussed yesterday and today.

12 **THE COMMISSISONER:** Has that question
13 been put to PEO?

14 **MR. DOODY:** I am not sure.

15 They will be here tomorrow.

16 Mr. Froebelius?

17 BOMA's submission said yes, with the
18 consent of the present owner.

19 Can you explain the rationale behind
20 that?

21 **MR. FROEBELIUS:** The idea was that if
22 I engage an engineer to perform a report on our behalf
23 or on our company's behalf that that report I think is
24 private in a way to that company and to that
25 engagement.

1 If it is to be available to successors
2 then it would have to be under the permission -- I
3 think this is really in the domain of tomorrow's
4 discussion.

5 I think the OAA has regulations in
6 this regard and I know that PEO does as well.

7 But I think it would be best for them,
8 but I would say that right now in our world that if we
9 engage an engineer to do a report, if we had done a
10 condition assessment on a garage, potentially we were
11 not happy with the findings, say, and we wanted to have
12 another engineer do that, that engineer has to converse
13 with the engineer that did the first report.

14 It is professional practice that you
15 have to inform the engineer who did the original that
16 you are reviewing their work and/or commenting or
17 taking it further.

18 So I think that there is a mechanism
19 in place for that type of exchange and it could be
20 extended.

21 Again, in the interest of public
22 safety, we would support that.

23 **MR. DOODY:** But because the
24 requirement for consent of the owner, when I read that,
25 my reaction was that that explicitly allows the owner

1 to keep that information secret.

2 And as I say, we have already heard
3 evidence from at least one owner that that information,
4 if it was shared it would be subject to very, very
5 strict controls and the question is, where there is
6 public safety issues doesn't that trump the owner's
7 privacy concerns?

8 **MR. FROEBELIUS:** Yes.

9 But there are, again, other
10 engineering reports where I don't think that that would
11 be a concern.

12 **MR. DOODY:** The safety issue would be
13 the limiting factor.

14 **MR. FROEBELIUS:** Right.

15 And that would tie back again to the
16 requirement of those reports in our response to
17 Question 4, you know, any authors of any reports that
18 are prepared that contain any findings or information
19 that could cause harm to the public should be required
20 to notify the owner immediately of any concerns and
21 require them to notify the authorities having
22 jurisdiction immediately if there is an imminent
23 threat. That type of thing.

24 **MR. DOODY:** Mr. Braithwaite?

25 **MR. BRAITHWAITE:** I am of a similar

1 mind.

2 I think that it should be with the
3 owner's permission.

4 I think there should be legal language
5 that not too unreasonably withheld sort of thing.

6 But I think it improves the overall
7 communication between the current circumstances in the
8 given building with a history of how it was put
9 together initially and helps the transition in terms of
10 looking forward.

11 **MR. DOODY:** So you would put in, not
12 to be unreasonably withheld, I understood Mr.
13 Froebelius to be saying that it would have to be
14 disclosed in respect of issues of public safety without
15 the necessity for consent.

16 Was I misunderstanding you, Mr.
17 Froebelius?

18 **MR. FROEBELIUS:** If there was public
19 safety issues involved then not to unreasonably
20 withheld, it would be unreasonable to withhold if it
21 was public safety, would it not?

22 **THE COMMISSIONER:** Wouldn't the
23 engineers today say we have that responsibility as it
24 is?

25 **MR. FROEBELIUS:** I think they would

1 say that now.

2 **THE COMMISSIONER:** Regardless of the
3 owner's view of the situation on confidentiality.

4 **MR. DOODY:** That might have to be
5 explored tomorrow.

6 But I think that you might hear them
7 say where there are existing imminent safety issues
8 rather than safety issues which are perspective if you
9 don't do something.

10 Ms. Lewis, from the Province's
11 perspective, do you have any comments on this?

12 **MS. LEWIS:** On making all information
13 available?

14 **MR. DOODY:** Yes. In requiring
15 engineer "A" to give any and all reports, at least
16 dealing with structural safety issues to engineer "B",
17 looking at the same building.

18 **MS. LEWIS:** Again, we are listening
19 closely to see what recommendations are made.

20 But some of the considering factors
21 that we would be looking at are similar to what has
22 been raised, what level of disclosure is needed to make
23 sure that the structural integrity of the building.

24 So those imminent versus those that
25 are potential, those are all the same considerations

1 that we would be looking at if the recommendation was
2 to make the requirement a law.

3 **MR. DOODY:** Do you think the same
4 considerations would apply to making these reports
5 public as to requiring them to be passed on?

6 In other words, should there be a
7 broader requirement to pass on than to make public?

8 **MS. LEWIS:** I think you would have to
9 look at those -- any recommendations that Commission is
10 looking at, you are going to have to look at it in a
11 whole, not only what has been discussed today, but what
12 was discussed yesterday.

13 If there is mandatory periodic
14 inspection requirements, part of the policy that
15 government would be looking at was how do you measure
16 compliance, the building history over time.

17 All of this is going to pertain to it,
18 so I don't think you can look at one thing in isolation
19 of the other.

20 To make good public policy now, we are
21 going to have to look at it from the beginning to the
22 end and what is the history and how best do you make
23 that.

24 Part of the implications that we would
25 be looking at is also the impact and the capacity of

1 how you are going to implement this.

2 So if you are looking at periodic
3 inspections, government would have to look at how you
4 would phase this in because the capacity of the sector
5 to be able to handle the upload if every building had
6 to be inspected in Year 1, I don't think there is
7 enough engineers to do that and you would have that
8 cyclical responsibility.

9 Again, if you are going to disclose
10 everything how do you wade through to determine the
11 relevant information?

12 There could be a number of factors
13 that are indicated within a report that may need
14 maintenance that are the responsibility of the building
15 owner, but does not have imminent potential danger to
16 the public.

17 Again, ---

18 **MR. DOODY:** Why would imminent be the
19 issue?

20 Because if imminent was the standard,
21 none of the reports that we have seen in Elliot Lake
22 would have had to be passed on, disclosed, registered,
23 anything.

24 And yet almost all of them said not
25 imminent, but it's coming.

1 **MS. LEWIS:** Well, that is part of
2 what we were discussing yesterday also is what
3 information then needs to be passed on to the building
4 official who has responsibility for enforcement?

5 How do you do that?

6 Phased in implementation of the life
7 cycle of a building to ensure that the proper
8 maintenance is required?

9 Perhaps that would be looking at how
10 best to make those previous records available.

11 Is it the responsibility of the
12 building owner?

13 When does the onus shift over onto
14 another party?

15 Those are all the considerations that
16 we are going to be looking at too.

17 **MR. DOODY:** Ms. Borooah, you had your
18 hand up?

19 **MS. BOROOAH:** Well, in answer to your
20 last question, ---

21 **MR. DOODY:** Which was?

22 **MS. BOROOAH:** Which was do you think
23 this is a bit different than a public registry?

24 I would like to answer that question
25 that I think it is different than a public registry and

1 that I think this really goes to professional
2 obligations, keeping in mind that these are self-
3 regulating bodies and they do have mechanisms within
4 them to make this sort of thing happen.

5 I am not an expert and all of these
6 standards I notice in reading the Professional
7 Engineer's submission for tomorrow's discussion, there
8 is discussion about the circumstances, when they would
9 make documents available or is there is an obligation
10 to disclose, that it would not be as big a departure as
11 some of the other ideas that we have been discussing to
12 place the onus on professionals to share all and any
13 reports, because I think that goes to one of the
14 fundamental issues the Inquiry investigated, that the
15 long history of reports was not available when
16 required, without adding a big additional regulatory
17 mechanism to make it work.

18 So I think it's a very good question
19 to ask the professionals, if there is some reason not
20 to do this.

21 And maybe it goes to the disciplinary
22 systems and so on that they think they would be
23 exposed.

24 But from a public policy point of
25 view, I think that this would be a relatively easy

1 mechanism to implement if it is not already partially
2 in place.

3 **MR. DOODY:** Mr. Shaw?

4 **MR. SHAW:** I would agree with Ms.
5 Borooah's statements in regards to the requirement for
6 engineers and professionals to disclose the
7 information.

8 And it has been brought up a couple of
9 times and I guess the Commission is looking for maybe
10 some clarity in regards to imminent risk.

11 There are two orders under the
12 *Building Code Act*.

13 One is for an emergency order, which
14 identifies a clear, imminent risk.

15 The other one is an unsafe order.

16 Under the unsafe order -- and I won't
17 quote it verbatim -- but where it does not meet the
18 intended use or creates a possible health issue or risk
19 to life and safety.

20 **MR. DOODY:**

21 -- (Reading)

22 "A condition that could be
23 hazardous to the health or safety
24 of persons in the normal use of
25 the building, or structurally

1 *inadequate or faulty for the*
2 *purpose for which it is used.'*

3 **MR. SHAW:** So I was pretty close.

4 **MR. DOODY:** You were very good.

5 **MR. SHAW:** But it identifies "could
6 be"

7 My question is as building officials
8 we do not want to be inundated by loads of information.

9 What we need to do is we need to have
10 the information provided to us that could be a safety
11 issue.

12 I guess as the OBOA we are looking for
13 that information from other professions in our
14 bailiwick, we rely on professional engineers to provide
15 that information to us with their professional
16 opinions.

17 We do the same with the architects.

18 If there is a requirement to provide
19 where they perceive a safety issue, I think it is
20 within our mandate as building officials to review
21 those documents and make that determination.

22 **MR. DOODY:** Mr. Huxley?

23 **MR. HUXLEY:** Certainly AMO's
24 submission is that municipalities should have access in
25 a timely manner reliable information relating to a

1 building.

2 Reliable information would appear to
3 be based on a foundation of full disclosure.

4 I think we get into problems where an
5 owner is picking and choosing what information is
6 related to a subsequent professional, because that will
7 impact what information a municipality will get at the
8 end of the day.

9 So in principle the sharing of
10 information between engineers or architects, I submit,
11 is a reasonable one.

12 So at the end of the day the full
13 picture and the history of a structure or building can
14 be advanced through an analysis that is cumulative.

15 **MR. DOODY:** Do I understand what you
16 are saying is that you would support a broader
17 obligation to pass on information to a subsequent
18 engineer?

19 In other words, more information ought
20 to be passed on to subsequent engineers than ought to
21 ultimately be required to be given to the City or
22 posted on a registry.

23 **MR. HUXLEY:** Yes. And at the end of
24 the day I think that would assist any officials,
25 inspectors that would be looking at a particular matter

1 when called upon.

2 **MR. DOODY:** Right.

3 Does anybody see a problem with that?

4 In other words, not be so limiting in
5 terms of what engineer "A" has to pass on to engineer
6 "B" because the more information the better, at that
7 stage, without suggesting that what has to be made
8 public or posted or whatever should be the same
9 information.

10 Am I making myself clear or am I
11 getting puzzled looks?

12 **MR. FROEBELIUS:** I am a little fuzzy
13 on that actually.

14 **MR. DOODY:** As I understood it, what
15 Mr. Huxley was saying was it makes sense to require a
16 very broad amount of information to be passed on from
17 engineer "A" to engineer "B", and so it should not
18 necessarily be limited to only structural safety
19 issues, because both are professionals who are dealing
20 with giving an opinion to the owner.

21 So the more information the better.

22 That may not be the same information
23 that is required to be disclosed or given to put on a
24 registry or whatever.

25 But at that stage it is just a sharing

1 of information, why limit it to only structural safety
2 issues?

3 What is the harm?

4 **MR. FROBELIUS:** Typically that
5 engineer would only be -- it would be a structural
6 engineer that would be engaged with another structural
7 engineer.

8 So it would likely just be structural
9 issues that they are talking about.

10 **MR. DOODY:** Maybe.

11 **MR. FROBELIUS:** It's not like a
12 broad ---

13 **MR. DOODY:** I mean in a practical
14 sense. Do you redact the stuff from the engineer "A"'s
15 report before engineer "B" sees it, or do you just give
16 the report over?

17 I would have thought the latter, just
18 give the report over.

19 What's the harm?

20 Mr. Stein, do you have any views on
21 this?

22 **MR. STEIN:** We didn't comment on that
23 particular question in our submission.

24 I don't have anything more to add than
25 what the other members of the panel have said.

1 **MR. DOODY:** Ms. Borooah...?

2 **MS. BOROOAH:** I just wanted to
3 emphasize one word here, which I wasn't hearing and
4 what everybody is saying, and that is "requesting."

5 So we are not placing a positive onus
6 on a professional to hand over everything to an unknown
7 future engineer or architect.

8 You are saying "upon request."

9 So if the new professional wants to
10 obtain information, there should be an obligation to
11 provide it.

12 **MR. DOODY:** Yes. And I think the
13 word "request" was in there because how would engineer
14 "A" even know that engineer "B" had been retained?

15 But that's the suggestion, either way.

16 **MS. BOROOAH:** Except through the
17 owner.

18 **MR. DOODY:** Except through the owner,
19 right.

20 And all these things, there is always
21 going to be some potential for less than complete
22 coverage, which is why you have to have belts and
23 suspenders in some cases.

24 Mr. Commissioner, lunch is now ready.

25 We have got two more substantive

1 questions and then the top 5 list.

2 I anticipate that they won't occupy
3 the entire afternoon, but if we could take lunch now
4 and come back.

5 **THE COMMISSIONER:** 1 o'clock?

6 **MR. DOODY:** 1 o'clock, sure.

7 **THE COMMISSIONER:** And then we can
8 hold out the hope of an early termination and quicker
9 return back home.

10 **MR. DOODY:** And get those earlier
11 flights back to wherever it is you came from.

12 **THE COMMISSIONER:** Sure. 1 o'clock
13 folks.

14 **--- LUNCHEON RECESS AT 11:50 A.M.**

15 **--- UPON RESUMING AT 1:00 P.M.**

16 **MR. DOODY:** Good afternoon.

17 The next question on the list of
18 questions is: *"Should municipal governments be required
19 to document all oral and written complaints, even if
20 the person wishes to remain anonymous? Should
21 municipal governments be required to keep a public
22 registry of all property standards bylaw violations
23 that deal with the safety and soundness of a building
24 structure, including any follow up action taken by the
25 municipality and remedial action taken by the owner or*

1 *municipality?"*

2 Who would like to weight in first?

3 Mr. Huxley, would you like to say
4 something?

5 **MR. HUXLEY:** Yes, thank you Mr.
6 Doody.

7 With respect to this issue of
8 complaints, I think it may be a question of if it's not
9 broke it does not need to be fixed.

10 The procedures for municipalities as
11 to how they deal with by-law enforcement and how they
12 deal with complaints will necessarily vary from
13 municipality to municipality based on operational needs
14 and resources.

15 With respect to anonymous complaints
16 or even those that are not, the complaint coming to the
17 attention of the municipality is typically what
18 triggers a consideration for enforcement or inspection.

19 At the end of the day the complaint
20 largely becomes irrelevant or the complainant becomes
21 irrelevant because the municipality lacked upon that
22 complaint appropriately, according to its procedures,
23 and if it is property-related, whether it be building
24 code or zoning or whatever it may be, it is the concern
25 or the observations of the inspector or the officer

1 that is relevant.

2 There is a concern that AMO had put in
3 its submission that if there is going to be a registry
4 of these complaints, or treating anonymous complaints
5 differently, that may have an impact on existing
6 enforcement procedures.

7 Certainly municipalities encourage
8 residents to come forward if there are concerns.

9 If there is a concern that
10 complainants are going to be identified either through
11 a court process or through an access to information
12 process; that may reduce the number of complainants
13 coming forward.

14 So I think that the procedures are
15 there in place.

16 Again, I do not know if there is one
17 answer that fits all municipalities and certainly I
18 think it seems to be working in municipalities on how
19 they deal with their particular needs.

20 **MR. DOODY:** I think the genesis of
21 this question related in part to the evidence we heard,
22 that in Elliot Lake the policy adopted by resolution of
23 the City Council was that enforcement of the Property
24 Standards By-Law was complaint driven, but there had to
25 be a complaint.

1 And that there was differing evidence
2 from the witnesses from the City as to what that meant.

3 Some of the witnesses, including a
4 prior Chief Building Official, testified that it had to
5 be a written complaint almost in the proper form with
6 the right boxes ticked off and filed in the right
7 place, and without that they not only would not, but
8 could not investigate whether or not the Property
9 Standards By-Law was breached.

10 Others said an oral complaint was
11 okay, others said the written -- it had to be a
12 complaint that was actually directed to the building
13 officials or Property Standards Officer's department.

14 There was absolutely no consistency
15 among the employees who worked for the City in this
16 area, as to what it meant.

17 And there was also let's say on the
18 part of some witnesses, scepticism as to whether or not
19 the City was in fact investigating complaints.

20 And so I think that that was part of
21 the genesis of this.

22 In other words, again, responsible
23 building officials like responsible building owners you
24 don't really need to regulate about.

25 But is there a need to allow the

1 public to know what complaints have been made in order
2 to ensure that the City officials are doing what they
3 ought to do.

4 And I think also part of it was that
5 much if not all of this information is going to be
6 available through MFIPPA in any event.

7 It's just it is harder to find, you
8 have got to ask the right question and get provided
9 with the information, so why not make a registry?

10 I think those were sort of the
11 concerns that gave rise to this question.

12 **MR. HUXLEY:** Certainly one of the
13 tools -- and again, it is resource dependant and that
14 will vary -- but certainly one answer or solution may
15 be, and a number of municipalities are adopting this as
16 a matter of service excellence so that if a complaint
17 is made by a member of the public, that member of the
18 public is advised generally of what the outcome of that
19 is.

20 It has been received, it has been
21 documented in some way and if a municipality has the
22 resources to be able to respond to that constituent or
23 resident to say your complaint is being forwarded to
24 this avenue.

25 So that is what a number of

1 municipalities are looking at in developing resources
2 to track complaints in that regard and get back to the
3 complainant specifically.

4 Not necessarily the general public at
5 large, although there are statistics that are made
6 available.

7 And I also want to take this
8 opportunity to indicate yes, while generally speaking
9 by-law enforcement is complaint-driven and that is
10 largely due to resources, some municipalities may
11 target active enforcement.

12 And a recent example I give would be
13 the City of Ottawa has targeted an active enforcement
14 on vacant buildings, which have presented a number of
15 property standards concerns.

16 And that information is being relayed
17 through reports to Council as to the number of active
18 enforcement that has been undertaken.

19 So again, that is based on a specific
20 municipalities identified need and is based on that
21 particular municipalities resources.

22 **THE COMMISSIONER:** What is your
23 concern with anonymity?

24 I understand why people would want to
25 remain anonymous.

1 The police do it every day and
2 register these complaints on an anonymous basis, and
3 that's not a problem for them.

4 **MR. HUXLEY:** Again, in creating a
5 registry of complaints again is simply another issue of
6 resources for a municipality.

7 I think there are other tools that
8 could be looked at, and that is simply responding to
9 the complainant to show that that response it being
10 made.

11 And I think there is some value to see
12 that, okay there may be a particular issue in a
13 particular neighbourhood. If that is being seen to be
14 addressed; that may serve more of a helpful purpose
15 than a registry of complainants.

16 So it is allocating your resources, I
17 think, that would be a municipality's perspective.

18 Do you put the resources in responding
19 to the complaint and enforcing it, or is it in the
20 other component and the costs of maintaining the ---

21 **MR. DOODY:** I am not sure I
22 understand the resources point.

23 Surely if somebody makes a complaint
24 to the City, the City has to record that somehow.

25 **MR. HUXLEY:** Again, it varies from

1 municipality.

2 It depends how a complaint is
3 received.

4 A complaint can come in a variety of
5 formats to a municipality ---

6 **MR. DOODY:** How can a municipality
7 decide what to do with a complaint if they do not even
8 write it down?

9 Honestly, I don't understand that.

10 You go to a police officer and you say
11 somebody has done such and such.

12 At a minimum the officer, he or she
13 will write it in his or her book.

14 But in a municipality where you have a
15 property standard by-law, before somebody can decide
16 what to do about it, don't they have to record the
17 complaint somewhere?

18 And then how is it a resource issue to
19 put those complaints in a central database?

20 **MR. HUXLEY:** Well, again, depending
21 on how the avenue of how a complaint comes to the
22 attention of a by-law officer, maintain a tracking of
23 how that complaint came to the officer in many respects
24 is irrelevant for that officer.

25 If that officer is able to view the

1 property and carry out an inspection, that's where the
2 trigger started.

3 **MR. DOODY:** But the officer has to
4 write it down somewhere.

5 He does not keep it in his head.

6 There has to be a record of the
7 complaint somewhere.

8 **MR. HUXLEY:** That may be simply
9 limited.

10 There is a complaint relating to a
11 particular address, and that is maybe the extent of
12 what is recorded.

13 **MR. DOODY:** I have got to say, I am
14 shocked, really.

15 Because how could you say there is a
16 complaint about such and such without saying the
17 complaint is that it is leaning dangerously and it may
18 be about to fall down, or whatever it is.

19 Surely any sound organization would
20 require that, wouldn't it?

21 **MR. HUXLEY:** Well again, it varies.

22 The information could be more
23 specific, but simply coming from a member of the public
24 that does not know, but simply is concerned that there
25 might be a property standards deficiency or other type

1 of by-law deficiency at a property is asking someone
2 from the municipality to attend, resources permitting,
3 that may occur and the municipality will look at the
4 property and decide if there are any violations.

5 **THE COMMISSIONER:** It seems to me
6 that having a simple register, handwritten, saying you
7 know, showing date, time, the complainant, either
8 identified or not, the nature of the complaint and the
9 action taken.

10 I cannot see that as being a huge cost
11 issue.

12 **MR. HUXLEY:** And practically
13 speaking, many municipalities have a system, it's a 311
14 system which seems to be a portal into the municipality
15 and a number of these complaints are registered that
16 way. And there are service request numbers given and
17 they are tracked in that fashion.

18 But again, to have a mandated
19 mechanism for how complaints are dealt with, many
20 municipalities will have a 311 system, but complaints
21 can still be brought to the attention of a municipal
22 official and redirected internally and acted upon.

23 **MR. DOODY:** The genesis of this is
24 members of the public are going into, in this case, a
25 shopping mall.

1 If the members of the public wanted to
2 know if there had been any complaints about the
3 shopping mall, they could get that information under
4 MFIPPA, couldn't they?

5 **MR. HUXLEY:** Correct, yes.

6 **MR. DOODY:** So what a central
7 registry would do is just make it more readily
8 available, wouldn't it?

9 **MR. HUXLEY:** Again, I think the
10 access to information process that has been alluded to
11 earlier is a relatively efficient process that all
12 municipalities are governed by.

13 It is a system that is relatively
14 inexpensive for a member of the public to access.

15 **MR. DOODY:** You have to have a
16 written request which has to be submitted in the right
17 way.

18 Is there a fee?

19 **MR. HUXLEY:** There is typically a
20 \$5.00 ---

21 **MR. DOODY:** So they have to pay \$5.00
22 and they have to submit it in writing.

23 This information is readily available.

24 You can have a system easily set up
25 where you type in the record of the complaint for

1 municipal purposes and it gets posted on the database.

2 **MR. HUXLEY:** And again, what is that
3 database going to represent?

4 Is it going to be specific to identify
5 a particular property and/or a particular person?

6 And then we get into the other side of
7 access to information. We get into the protection of
8 privacy.

9 Those are issues that municipalities
10 balance all the time.

11 Yes, we want to provide information to
12 the public, but there is the balancing factor of are we
13 simply now entrenching upon someone else's right ---

14 **MR. DOODY:** There is no privacy
15 concerns under MFIPPA for a complaint in a particular
16 building.

17 Is that not correct?

18 Privacy issues arise out of personal
19 information as defined in the Statute.

20 And that does not include complaints
21 about a building, does it?

22 A building that the public has access
23 to?

24 **MR. HUXLEY:** Generally, I would agree
25 with that, but there may be some issues that had to be

1 looked at further.

2 There may be particulars that may
3 identify a particular individual.

4 In your example about a shopping
5 complex, no, it is probably a corporate entity and it
6 is a public building.

7 Those variables may not come into
8 play.

9 But again, a number of by-law issues
10 deal with residential properties.

11 Those would be factors that a
12 municipality would have to take into consideration as
13 well.

14 **MR. DOODY:** Ms. Borooah?

15 **MS. BOROOAH:** Once again I hesitate,
16 however.

17 I think the discussion is a difficult
18 one if the question is why not register this
19 information, because it seems to assume some level of
20 consistency in adoption and enforcement that would lead
21 to a mandatory system of registration.

22 So as we have described earlier, the
23 property standards enforcement, in particular, is a
24 discretionary scheme.

25 What level of service you provide to

1 respond to complaints is not articulated anywhere.

2 So by contrast, say, during
3 construction there is a requirement around responding
4 to a request for inspection and you are supposed to
5 respond within two days and would be well-advised to
6 keep a record of that inspection, right?

7 So you could expect some consistency
8 in what the records would be associated with that
9 practice across municipalities because the practice is
10 the same, consistent. It is legislated.

11 But property standards are not.

12 And I think the Caselaw, which I am
13 not terribly familiar with, nor a lawyer, but the
14 Caselaw suggests municipalities have discretion about
15 how they enforce their by-laws.

16 So if you start from that premise,
17 prescribing how they disclose the records, would really
18 be at the end of process, as opposed to at the
19 beginning.

20 It kind of assumes some consistency of
21 what that process might be at the outset.

22 And I think many of us previously have
23 said this practice or this discipline does not lend
24 itself to that level of consistency, certainly today.

25 So our submission suggests that where

1 there is a record of the activity, it is a public
2 document anyway and can be disclosed.

3 And as I have said, yes, applicable to
4 freedom of information legislation, but many
5 municipalities would disclose some or all of that
6 information routinely, and maybe electronically.

7 But to suggest that you can tell
8 municipalities how to do that when what you are doing
9 is saying they may by their own option adopt a property
10 standards by-law that may cover all kinds of different
11 things, and they say but whatever you do, when you get
12 a complaint about it you have to do it the same way,
13 does not fit the scheme.

14 I think that it is not so much how do
15 you get access to the record once you have a complaint,
16 it is how does that fit into the overall property
17 standards system?

18 **MR. DOODY:** I think that is one of
19 the genesis of the question.

20 Because we had evidence in Elliot Lake
21 that complaints were made, which may or may not have
22 made their way to the Property Standards Official, and
23 if they did they were not dealt with at all or
24 adequately.

25 I am not saying that is the

1 conclusion, but there is some evidence that could
2 justify that finding and the answer is it is
3 discretionary.

4 First of all, it is complaint-driven,
5 and secondly it is discretionary.

6 So this question is being mooted as a
7 way of allowing the public to keep tabs, so to speak,
8 on the property standards office because of the concern
9 that the way in which the property standards official
10 is exercising his or her discretion, which could have a
11 direct impact on the safety of the public, is something
12 that is of public interest.

13 In other words, it is something the
14 public may have a right to know because it could affect
15 their safety.

16 Some would say that the evidence we
17 heard in Elliot Lake was that the attitude or the way
18 in which the discretion was being exercised was subject
19 to some criticism.

20 And if that was exposed to easier
21 public view by a public register like this, it might
22 have had a modifying effect on the discretion.

23 Some may say you don't want to modify
24 the discretion, but others would say that it's not a
25 bad idea because it might make people safer.

1 **MS. BOROOAH:** I guess I just say to
2 that that you know our responses yesterday suggested
3 that that would be a big leap to go from where we are
4 today to some kind of mandated system which would have
5 service levels that are implied by this particular
6 suggestion.

7 That a complaint has to be registered
8 and has to be documented and has to be disclosed would
9 be the performance rules suggest.

10 None of which is in law today, so just
11 the disclosure of the record is, at the end of the day,
12 so I guess what we had said yesterday, I won't say
13 everybody, but a number of us had said is that that is
14 going too far, in our view, and that the way to secure
15 public safety around this type of building element is
16 through the idea of a periodic review.

17 And those would be municipal documents
18 where there is a problem identified, and that would be
19 disclosable and that is where we would stop in terms of
20 prescribing this because it is very difficult to add
21 this on to the kind of system property standards would
22 be today.

23 **MR. DOODY:** And some might say that
24 right now there is a complete absence of protection,
25 enforceable protection, because of the combination of

1 the discretionary nature of the property standards by-
2 law and the unreviewability of the discretion of the
3 property standards officer if there is such
4 legislation.

5 There is no protection now at the
6 public level.

7 There is some private contractual
8 protection through the due diligence process, but in
9 terms of government, there is no mandatory protection
10 at all.

11 And so even the periodic inspection
12 and posting of the reports would not impose any
13 obligation on the municipality and there are certainly
14 people who have expressed the view to us that this is
15 a) surprising, and b) worrying to them.

16 Mr. Shaw?

17 **MR. SHAW:** The OBOA takes the belief
18 that in regards to documenting all received complaints,
19 it is reasonable to expect a municipality to document
20 the complaints.

21 We do, however, caution in regards to
22 allowing flexibility for enforcement within the
23 municipalities and we proposed rather than mandating
24 specifics, perhaps the idea of requiring municipalities
25 to adopt an enforcement policy or procedure, which then

1 would have to be publicly available to both citizens
2 and employees.

3 In regards to my own expertise, having
4 done both building and by-law enforcement, I would like
5 to also bring forward the fact that under the *Building*
6 *Code Act* if an unsafe condition exists, I think there
7 is an obligation, whether anonymous or written, exists
8 with the chief building official to investigate.

9 Just through our due diligence and our
10 regulated authority, when we get into other by-law
11 complaints, I have to agree with my associates here
12 that when you are going by-law enforcement there is
13 various reasons for people to lodge complaints and in
14 regards to certain legislative requirements in regards
15 to show grounds upon entering on a property.

16 Sometimes anonymous complaints will be
17 taken as not substantial enough to enter onto property.

18 There is harassment issues in regards
19 to if it's an anonymous complaint.

20 Quite often municipal employees and
21 municipalities will get charged or claims of
22 harassment.

23 So there are reasons why these
24 policies do make sense in the actual application in the
25 real world.

1 However, I truly believe that if a
2 municipality was required to develop a policy, that
3 very few councils would pass a by-law stating that in a
4 case of life and safety they would not deal with a
5 complaint, anonymous or any other type.

6 **MR. DOODY:** Your suggestion is that
7 municipalities be required to develop a policy to deal
8 with complaints?

9 **MR. SHAW:** I think that if
10 municipalities were given the ability to deal with
11 complaints through a policy adopted by council and
12 approved by council, it would essentially do the same
13 thing in regards to proving clarity in how complaints
14 will be dealt with.

15 In regards to responding a checking
16 up, I can tell that as a matter of fact that if an
17 individual does not feel that their complaint is being
18 dealt with there is a number of ways, we talk about
19 freedom of information, quite often a call to the
20 mayor's office or another councillor suggesting that
21 staff is not doing their job will get just as much
22 attention as a freedom of information.

23 The unfortunate part is that in these
24 circumstances where the individual chose to deal with
25 the Elliot Lake situation in a property standards form

1 speaks to our requirements in notifying when we hit
2 structural issues the necessity to pull in the building
3 official who would deal with it under an unsafe and I
4 believe the individual should have a regulatory
5 requirement to investigate what they perceive or what
6 has been received as an unsafe order.

7 **MR. DOODY:** In Elliot Lake the
8 complaints were not that the building is unsafe or that
9 there is a structural problem.

10 The complaints were it's leaking,
11 constantly, for 35 years it was leaking and there were
12 a number of complaints.

13 The by-law said buildings are supposed
14 to be watertight.

15 The municipal official was both the
16 building official and the property standards official.

17 And so it would have required that he
18 use his knowledge and training to say well if there is
19 35 years of leaks, there is a potential structural
20 issue.

21 But the citizen, I would have thought,
22 is not to be expected to understand that, they just
23 have a complaint that the building leaks and it has
24 always leaked.

25 **MR. SHAW:** I would agree that

1 initially it probably started out as a property
2 standards issue in regards to a leaky roof.

3 At some point in time we have to rely
4 on the ability of individuals to conduct their jobs in
5 a professional manner using expertise, knowledge and
6 training.

7 Whether that is lacking in Elliot Lake
8 or not is not for me to decide.

9 But I believe that an individual who
10 did their due diligence in regards to following up may
11 have found it to be a structural issue at some point in
12 time, prior to the collapse.

13 **MR. DOODY:** Mr. Braithwaite, do you
14 have any comments from your experience?

15 **MR. BRAITHWAITE:** Not directly. I
16 can't say that I have got specific experience in that
17 area.

18 So I will just pass.

19 **MR. DOODY:** Mr. Froebelius, from the
20 viewpoint of a building owner or manager, do you think
21 that there is an issue with respect to complaints about
22 a particular building being maintained on a central
23 database?

24 **MR. FROEBELIUS:** First of all, I
25 would just like to comment on the fact that I think

1 there is actually two parts to the genesis of why this
2 question is here.

3 And that is that you know, someone
4 called the municipality and the fact that the
5 municipality did not take action, you know I don't
6 think that can be helped by the fact that you would
7 have some kind of public database.

8 I mean, as Alan just said, you know at
9 some point you have to rely on the people that are in
10 those positions to do what they are trained to do and
11 in the role that they are taking on.

12 So you know, for example, and I know
13 this is extreme, but should there be a public record of
14 all 911 calls, so that the public can monitor whether
15 or not they think the response is appropriate? I don't
16 think so.

17 I don't think that would help what
18 fundamentally happened at that level of government.

19 Unfortunately it seems like it is such
20 a small department and it was one person doing two
21 roles, et cetera, that probably could have led to that.

22 But our response to the question
23 really was focussed on this anonymous aspect.

24 So for example, as Stuart was saying
25 in the 311 system now in the City of Toronto, if I call

1 and I was to register a complaint, I would get a ticket
2 number.

3 Once that ticket number is issued, I
4 could call back and say 'hey what was happening or what
5 happened?'

6 Typically they would call you back and
7 say 'this is what was done and this is what happened',
8 which is a great system.

9 I don't think that there is a need to
10 then take it a step further and publish all of those
11 complaints or requests in a public forum so that people
12 can kind of double check what is happening.

13 The risk with that as a building
14 owner, I would say, is that you could get a disgruntled
15 anonymous person who feels that they are going to cause
16 a problem for a particular owner or organization or
17 company and try and use that as a way to do that.

18 That is a sad comment on taking
19 advantage of a system like that, but I think that would
20 be the concern.

21 **MR. DOODY:** I think it's in Toronto,
22 you will correct me if I am wrong.

23 I know it is in New York City.

24 Restaurants are required to post on
25 the door the green --

1 What is it?

2 Green, red or yellow on the last
3 inspection.

4 That obviously is intended to create
5 an incentive on the restaurant owner to keep his place
6 clean.

7 **MR. FROEBELIUS:** Sure.

8 **MR. DOODY:** Would a public registry
9 of complaints not serve a similar sort of purpose?

10 **MR. FROEBELIUS:** I think it's such a
11 broader realm of complaints that could be included
12 there. It gets difficult.

13 If it was something specifically to do
14 with safety, public safety, then sure.

15 But it could be such a broad brush of
16 complaints. That's where I think it gets very
17 difficult to manage.

18 **MR. DOODY:** But it is all publicly
19 available anyway.

20 Just right now they have to work at it
21 to get it.

22 **MR. FROEBELIUS:** Sure.

23 But why do I want it if the whole
24 process of having access to that information is set up
25 with checks and balances to make sure there is a way to

1 get to that information, and if it is just published
2 online for someone to access, that's a little different
3 too, I think.

4 **MR. DOODY:** Ms. Wharton-Szatan, from
5 the viewpoint of the MOL inspector, would it be of
6 assistance for him or her to have easy access to a
7 registry of complaints about the workplace, the
8 building in which the work was carried out?

9 **MS. WHARTON-SZATAN:** Well, currently
10 the Ministry has a call centre that takes complaints
11 from the public and workers in the workplace.

12 We take oral and written complaints
13 and document and we keep all those records.

14 Our inspectors act upon those
15 complaints once received.

16 So they have a system in place
17 already.

18 **MR. DOODY:** And is there a register
19 of complaints so that members of the public can find
20 out what complaints have been made about a particular
21 work site?

22 **MS. WHARTON-SZATAN:** If a member of
23 the public wanted information about a particular
24 workplace or address, they could put that request in
25 through our MFIPPA and our field information office and

1 get information back about what action or activity has
2 gone on in that workplace by our inspectorate.

3 **MR. DOODY:** And would there be
4 problems in rather than requiring the citizen to do
5 that, to have the information readily available in a
6 central database?

7 I assume the MOL has these records,
8 that they are maintained.

9 **MS. WHARTON-SZATAN:** Yes, the records
10 are maintained, I think you know if there is an
11 investigation or ongoing prosecution that information
12 would not be readily available.

13 And if it is a non-compliance issue
14 that as well could be field visit that would not be
15 available.

16 So there would have to be some
17 consideration as to whether that type of a process
18 would impact our role; that is to enforce the
19 *Occupational Safety Act* and its regulations.

20 So I think when we look at it from the
21 worker perspective and the Ministry's mandate to set,
22 communicate and enforce its Act and Regulations, I
23 think our current process serves that.

24 **MR. DOODY:** Looking at it from the
25 other end of the lens though, would the inspector be

1 assisted if he or she could easily find out if there
2 had been complaints made to the municipality because
3 people could complain about unsafe building to the
4 municipality or to MOL.

5 In fact, that happened in this case.

6 There were complaints to both the
7 municipality and to MOL.

8 **MS. WHARTON-SZATAN:** Yes, of course
9 our inspector would be assisted in that, but I am sure
10 our inspector could also contact the chief building
11 official and ask about the workplace and get
12 information that way as well, I believe.

13 I don't know if you want to speak to
14 that, Alan.

15 **MR. DOODY:** Mr. Huxley, you look like
16 you are anxious to say something.

17 **MR. HUXLEY:** Thank you, Mr. Doody.

18 I think the issue is, you have
19 mentioned various examples and I think depending on the
20 municipality there may be utility to a certain type of
21 system that you were talking about, and it may be
22 resource dependant.

23 The example you gave about the leaking
24 roof, we learned yesterday that there are almost 100
25 municipalities that do not have property standards by-

1 laws in Ontario.

2 I think the general theme from
3 yesterday's discussion was that municipal property
4 standards by-laws are not the appropriate venue or
5 avenue to further the concerns of mandatory periodic
6 inspections.

7 That appears to be something that
8 would be more appropriately falling under section 34(2)
9 of the *Building Code Act*.

10 Recognizing that, the question about
11 discretion and how property standards by-laws or by-
12 laws generally are enforced, it may take a different
13 focus then.

14 If we are looking at the risk
15 assessment strategy that is being discussed in the last
16 two days and targeting specific buildings and having a
17 mandatory regime, it may put property standards in a
18 different light and it may allow municipalities to
19 continue to decide whether they want to have a property
20 standards by-law and decide to what extent they wish to
21 regulate property standards; and also how they wish to
22 enforce it.

23 I think that is the submission that
24 would allow that flexibility for the broad range of
25 municipalities.

1 **MR. DOODY:** I think that the concern
2 that gave rise to this question was, first of all,
3 almost all municipalities that do have property
4 standards by-laws have a requirement that the buildings
5 be structurally sound and watertight.

6 Those are fairly common things to
7 find.

8 And so I didn't understand, and
9 perhaps others did, yesterday's discussion to be that
10 the municipalities wanted to abandon the field of
11 ensuring that buildings in their municipality were
12 structurally sound and watertight.

13 If they have chosen to enact a by-law
14 then in fact there may be political pressure on the
15 ones who happened to do so as a result of this
16 Commission.

17 Who knows?

18 But this question, I read it and I
19 didn't write it, but I read it, to say well if the
20 municipalities have chosen to put structural soundness
21 in as one of the requirements, ought there to be a way
22 for citizens to see whether or not there had been
23 complaints about that in order to, as I said, to
24 provide some measure of oversight on the municipal
25 officials on the part of the public?

1 **MR. HUXLEY:** If I may, with respect to
2 your comment about municipalities role in this area.

3 AMO's approach was there is going to
4 be mandatory periodic inspections; that would be a
5 minimum standard that could perhaps come from the
6 *Building Code Act*.

7 That does not preclude municipalities
8 having existing by-laws or even more stringent by-laws
9 and we see that in a number of regulations where the
10 province has a minimum standard and municipalities may
11 have a more stringent by-law, for example, on smoking
12 in public places, for example.

13 So I don't think the two are at odds,
14 but at the end of the day the municipality,
15 notwithstanding the minimum provincial standard, there
16 still could be discretion whether to enact a by-law
17 altogether and what that may look like.

18 It may be more comprehensive than what
19 is contemplated.

20 **MR. DOODY:** I understand that.

21 But again, this question was designed
22 to say 'well, once the municipality has made that
23 choice, should it be easy for the public to see whether
24 or not they are actually doing their job?'

25 **MR. HUXLEY:** I think around the table

1 there would be consensus that transparency and action
2 is taken, and I think municipalities find their own
3 unique way and how that is relayed back from a large
4 municipality like Toronto maybe it is a tracking
5 system.

6 From a smaller municipality it may
7 simply be a more personal approach where it is followed
8 up more directly, and I think that flexibility still
9 has to be allowed for.

10 **MR. DOODY:** I think it's Ms. Borooah
11 and then Mr. Froebelius.

12 **MS. BOROOAH:** Thank you.

13 Just on the point about the
14 intersection with current property standards and
15 possible new requirements around mandatory inspections.

16 I would agree, I don't think we
17 suggested that property standards would be abandoned as
18 a result.

19 One thing you have to keep in mind
20 though is that property standards can be enforced
21 different ways. They are not necessarily only
22 complaint-driven, although that tends to be the
23 practice.

24 You could adopt -- municipalities do,
25 Toronto does -- adopt a proactive inspection process

1 for certain types of things.

2 Some of those are more likely,
3 perhaps, to be affected by the idea of a mandatory
4 periodic review that might supersede what a
5 municipality would otherwise do, at their discretion.

6 I doubt very much it would cause an
7 entire abandonment of even those provisions of the
8 property standards which intersect and a bit of a belts
9 and suspenders process would still be valuable probably
10 in leading to a positive outcome.

11 **MR. DOODY:** Mr. Froebelius?

12 **MR. FROEBELIUS:** I have more of a
13 question, actually.

14 In the Province of Ontario I wonder,
15 especially in cases where there is very small
16 municipalities like, say Elliot Lake, is there a
17 mechanism to complain about a municipality and how a
18 municipality is functioning, i.e. if I have called the
19 property standards officer at the town of Elliot Lake
20 on three occasions about an issue and nothing happens
21 or I am told hey, you have to fill out this form until
22 you fill out the form et cetera, is there an over-
23 arching municipal affairs body in Ontario that you can
24 call and say 'hey I've got this issue.'

25 I just wonder, even if in a case there

1 was a public registry online, you know, if there is
2 **five** complaints about water leaking at this mall and it
3 is published online, is that going to still draw
4 correction of that issue?

5 No.

6 **MR. DOODY:** Municipalities being
7 political bodies, democratically elected, it might give
8 rise, particularly in a small town, to some action.

9 But with respect to your question, we
10 might ask Ms. Lewis.

11 I am not aware of any formal process
12 whereby a citizen who feels that a municipality is not
13 acting appropriately can get the Province to step in,
14 but is there an informal process?

15 **MS. LEWIS:** That is not my area of
16 expertise, but I would have to say no from what I
17 understand there is no avenue.

18 Governments are elected by their
19 constituents and as such their recourse if they do not
20 feel that their municipal employees are doing what they
21 should is to go to their town council.

22 As far as oversight and town council,
23 that is the responsibility of a local government.

24 **MR. DOODY:** Anybody else want to say
25 anything on this topic?

1 Mr. Stein?

2 Mr. Braithwaite?

3 **MR. STEIN:** Just at a high level,
4 from being in the property insurance industry being
5 heavily regulated we think that complaints is tracking,
6 monitoring, documenting we think is an effective way of
7 zeroing in regulatory resources.

8 And we believe that the resources
9 should be zeroed in on the more high-risk areas and
10 that complaints appears to be -- I can't speak on
11 behalf of municipalities, but in general tracking and
12 documenting it, is an effective way of identifying
13 those high risk areas.

14 **MR. DOODY:** Thank you.

15 Mr. Braithwaite?

16 **MR. BRAITHWAITE:** A somewhat related
17 comment, there is some humour to this story in terms of
18 tracking and recording.

19 In my role in the last four and a half
20 years as CEO of Build Toronto, lots of meetings with
21 various Council members of the 44 members of Council,
22 and in particular in situations where there was a piece
23 of land that was in their ward, and we got into
24 interesting discussions on numerous occasions over the
25 years in certain councillors being concerned about what

1 happened or did not happen in their ward on that
2 particular property.

3 We found in terms of going back and
4 dealing with those concerns or complaints, we will call
5 it, we had a lot of difficulty reconciling when did the
6 meeting happen or not happen et cetera.

7 And we started about a year ago
8 actually recording every call, intervention or phone
9 call or whatever from a given councillor or the other
10 way around, Build Toronto actually meeting with the
11 administration staff and the councillor.

12 We found generally the communication
13 was much more open, much more honest and much more
14 factual after we documented what actually went on.

15 So when we look at here in terms of do
16 we document complaints?

17 It isn't as difficult as it seems
18 initially, once you get into the habit and the
19 discipline of actually recording it, it does not have
20 to be elaborate, and it can be most helpful.

21 **MR. DOODY:** Thank you.

22 Anybody else on this topic?

23 Yes?

24 You hesitated again, but then ---

25 **MS. BOROOAH:** Just for clarity.

1 I think there are very sophisticated
2 systems for tracking and monitoring complaints in a
3 number of municipalities, and probably commensurate
4 with the level of sophistication of the system itself
5 and the regulatory emphasis placed on it.

6 So for example, in Toronto there is a
7 database that retained complaints which are opened as
8 folders, on individual properties under property
9 standards that I can access through the same system
10 when I am looking at a building permit application or
11 when I get a call from any entity, councillor or
12 otherwise, to see if there is a related complaint.

13 So it is not that such systems do not
14 exist. They do.

15 But they should not be considered
16 lightly in the sense that they do reflect a fairly high
17 level of sophistication associated with that activity
18 to have an effective tracking system, especially one
19 that you could disclose, which is a whole other level
20 of sophistication.

21 And I think it is correct what my
22 colleague from AMO said, that there are matters on
23 those documents that are personal information that have
24 to be redacted in order for the information to be
25 disclosed.

1 And I believe there are situations,
2 and often complaints are part of litigation, they get
3 redacted for those purposes too.

4 So I think what we heard from AMO ---

5 **MR. DOODY:** Redacted for the purpose
6 of litigation?

7 **MS. BOROOAH:** If there is legal
8 advice or issues related to litigation on the folders,
9 which there often is, especially if it is a complaint,
10 because it eventually leads to a legal process, or
11 prosecution or something like that, that information
12 cannot just be automatically posted.

13 It has to be analysed for that
14 purpose.

15 So it is a thing that can technically
16 be done, but it relies on the level of sophistication
17 of the information to begin with, which exists in
18 varying degrees across the Province, I would venture.

19 **MR. DOODY:** I read this to be a
20 question about basic information, not that
21 sophisticated.

22 So you would say 'is the complaint
23 about 123 Main Street that such and such. Action
24 taken. Resolved. Enforcement order issued.' Whatever
25 it may be.

1 I did not read this as being open up
2 the entire file, because that is accessible through
3 MFIPPA, subject to the exemptions like personal
4 information and solicitor-client privilege and
5 litigation privilege and things of that nature.

6 But this, as I read the question, was
7 for much more basic information.

8 **MS. BOROOAH:** If I just might say
9 that it requires some kind of windowing process or re-
10 adjusting the system so only the information required
11 is revealed and the rest is protected, because that is
12 not the way the records are created today.

13 And I don't want you to think these
14 things are done just with the snap of your fingers,
15 because they are not.

16 It takes a fair amount of work to post
17 information from files.

18 **MR. DOODY:** Right.

19 Question number 8, and this requires
20 some explanation.

21 The question is: "The Occupational
22 Health and Safety Act currently provides for certain
23 obligations on employers to provide notice to the
24 Ministry of Labour where a person is critically injured
25 or killed at a workplace or a person is disabled from

1 *performing his or her work or requires medical*
2 *attention because of an accident, explosion or fire at*
3 *a workplace."*

4 Other than that though, those are the
5 extent of the notice of obligations.

6 "Should they be expanded to include
7 situation of imminent danger, accident or injury. In
8 addition, should an employer be required to report to
9 the Ministry of Labour any health and safety
10 recommendation made by a joint committee or a health
11 and safety representative which is not followed and may
12 lead to critical injury?"

13 The last question arose as a result of
14 evidence we heard that there were a number of
15 complaints made by employees in the library which was
16 in the mall, the Elliot Lake's public library was in
17 the mall and over a number of years there had been
18 complaints of health, significant health issues arising
19 from the mould created by the incessant leaks.

20 And on more than one occasion, the
21 Joint Health and Safety Committee, which is mandated by
22 the Statute, made a recommendation that the leaks be
23 fixed.

24 That's a recommendation to the
25 employer, which was either the public library board or

1 the City, depending on the way you look at it, they
2 were at least paid by the City and on the City payrolls
3 and the Joint Health and Safety Committee was composed
4 of employer reps from the City and the board, and the
5 library board, and employee reps from both the City and
6 the library.

7 So the recommendations were made that
8 the leaks be fixed.

9 The City had it in its power to issue
10 an order requiring that the leaks be fixed. Didn't do
11 it.

12 And this happened on a number of
13 occasions.

14 The MOL was never notified.

15 So the MOL did not know what could
16 have been significant health issues for which the JHSC
17 had made a recommendation and nothing had been done
18 about it.

19 So if the MOL had known, the MOL could
20 have investigated and made an order of its own that
21 then would have had to be enforced.

22 And so the question is: is this a gap
23 in the law that needs to be filled?

24 Obviously one answer is the employee
25 is perfectly capable of taking it up the ladder himself

1 or herself and saying to the MOL this is what happened
2 and nothing was done.

3 But there may well have been concerns
4 about ramifications on their own job situation as a
5 result of doing that.

6 So ought that to be done?

7 I am not sure whether I should start
8 with the MOL? But I will.

9 Ms. Wharton-Szatan, what are your
10 views?

11 **MS. WHARTON-SZATAN:** The Ministry's
12 current position is that we do not believe that there
13 needs to be any expanded notification requirement under
14 those provisions of the Act that you have spoken about.

15 Under part V of the *Occupational*
16 *Health and Safety Act* there are two mechanisms
17 currently in place that workplace parties can enact to
18 address dangerous or eminent situations where they
19 believe their health and safety is at risk.

20 Under section 43 of the Act, a worker
21 can enact the right to refuse if they believe that
22 himself, herself or another worker may be at risk.

23 And there are conditions set out under
24 43 under which that trigger applies.

25 Once the worker believes that, he

1 should notify his supervisor; that is actually detailed
2 in the Statute.

3 The supervisor would work with the
4 health and safety representative, the certified health
5 and safety representative.

6 That certified person would have had
7 some training, that's why they are certified, and would
8 attempt to resolve the situation that the worker has
9 brought to their attention.

10 If they are not able to resolve it,
11 then of course they can contact the Ministry of Labour
12 who would then investigate and attempt to resolve the
13 circumstance.

14 And the inspector could enlist the
15 support of our specialized professional staff to help
16 bring resolution.

17 So that supports the internal
18 responsibility.

19 The first part promotes self-reliance
20 within the workplace because they know their workplace
21 better.

22 The second mechanism is the work
23 stoppage, which is under clauses 44 to 46 of the Act
24 where there can be a unilateral work stoppage a
25 certified member, or by both certified members where

1 they believe that a process can put himself, herself or
2 another worker in imminent risk and they can shut it
3 down and do their internal investigation.

4 So once again it is the internal
5 workplace parties that do the first part of the
6 investigation. We call that stage 1.

7 And if they can't reach resolution
8 then the Ministry of Labour would be engaged and the
9 inspector, if needed the support staff of engineering
10 or a hygienist or ergonomist attempt to bring
11 resolution to the situation.

12 So those two mechanisms are already
13 entrenched in legislation.

14 We have guidance material on our
15 website, we have guidance documents for the Joint
16 Health and Safety Committee, so they are aware of what
17 their rights and responsibilities are. There are safe
18 work health and safety associations available to
19 provide additional training for people if they are not
20 familiar with those sorts of mechanisms available to
21 them in the legislation.

22 With regards to the Joint Health and
23 Safety Committee, they have a right to put forth a
24 recommendation to the employer.

25 And within 21 days if they do not get

1 a reply, they can forward that concern to the Ministry
2 of Labour for further investigation.

3 So there is a mechanism for that as
4 well already entrenched in the legislation.

5 **MR. DOODY:** But the problem is, and I
6 understand the genesis of this question, to do either
7 of those things on the part of the employee, to either
8 make a formal complaint to the MOL or say 'no, I am
9 going to stop work', requires a significant amount of
10 internal fortitude.

11 You have to be a strong person to do
12 that because there is a potential for this to be viewed
13 with less than enthusiasm by the employer.

14 And the Joint Health and Safety
15 Committee exists in order to make recommendations to
16 the employer.

17 The employer is then, as the
18 legislation presently exists, there is no compulsion to
19 comply with those recommendations, the employer can
20 simply say 'no, I'm not going to comply'.

21 Then the JHSC itself, or an employee,
22 can elevate it to the MOL.

23 But what is the harm in requiring the
24 employer to affectively justify a refusal to follow the
25 recommendation of the Joint Health and Safety Committee

1 where the employer is legitimately of the view that the
2 recommendation ought not to be followed.

3 In other words, why do we leave the
4 enforcement right out of the hands of the MOL, if you
5 do not have an employee who has the internal fortitude
6 to take it upstairs himself or herself?

7 What is the public policy reason that
8 justifies that?

9 **MS. WHARTON-SZATAN:** It is part of
10 the internal responsibility system, the foundations of
11 the *Occupational Health and Safety Act*, where the
12 workplace parties are more knowledgeable about their
13 workplace, and they each have a role in which they play
14 ensuring that the workplace is safe.

15 So it's important to afford the
16 workplace parties an opportunity to address their
17 concern and there are protections in the legislation,
18 such as the prohibition for reprisal, section 50, which
19 if a worker does feel threatened for bringing a health
20 and safety concern to their employers attention, they
21 can file a complaint with the OLRB or they can work
22 with the -- if they have a union they can file a
23 grievance.

24 So that mechanism is in place to
25 protect the workers if they feel threatened.

1 But I think the foundation, the
2 principles of the legislation being the internal
3 responsibility system, is supported by using that
4 mechanism.

5 And it has worked historically.

6 **MR. DOODY:** Does anybody else have a
7 view on this?

8 Mr. Shaw?

9 **MR. SHAW:** The OBOA would like to
10 just make some clarification once again, in the
11 situation of what is deemed unsafe in regards to a
12 structure, we feel that responsibility falls to the
13 CBO.

14 Currently I know that the Ministry of
15 Labour and chief building officials work hand in hand
16 in regards to enforcement and we just would encourage
17 the continued participation in regards to ensuring
18 places are safe, but would like to make the distinction
19 that if a building is perceived as potentially unsafe
20 that there should be a communication from the MOL back
21 to the chief building official.

22 **MR. DOODY:** Would it be appropriate for
23 the MOL to issue an order to an employer who owns a
24 building to make it structurally safe?

25 **MR. SHAW:** I would agree in a similar

1 manner that a property standards officer can issue an
2 order and follow up on their end on the property
3 standards side, as well the MOL could follow up to make
4 sure that there is a safe work place in addition
5 relying on the building official to deal with the
6 unsafe structure.

7 So I think ---

8 **MR. DOODY:** But the MOL has
9 engineers, including structural engineers, on staff.

10 We heard evidence from them and about
11 them.

12 There is a provincial engineer, who in
13 fact is a structural engineer.

14 There is a number of regional
15 engineers across the Province who a number of whom are
16 structural engineers.

17 There are other kinds of engineers.

18 And it is in their bailiwick and in
19 their mandate to act as inspectors and enforcement
20 officers under the *Occupational or Health and Safety*
21 *Act*. That's what they do.

22 So they have the expertise.

23 Are you saying it is inappropriate for
24 the MOL to make an order under their own legislation?

25 **MR. SHAW:** I believe the MOL can make

1 the order and use their expertise in determining
2 whether it's unsafe under their Act.

3 What I am stating is that the
4 professional engineer that is employed either by MOL or
5 by the owner of the building could then involve the
6 building department in addition to their own actions.

7 **MR. DOODY:** Ms. Wharton-Szatan?

8 **MS. WHARTON-SZATAN:** Yes, that is
9 exactly what I would say.

10 That the Minister of Labour inspector
11 would reach out to the chief building official to
12 address structural issues if a building -- or a
13 workplace, in general.

14 **MR. DOODY:** Does anybody want to
15 comment on either of these questions about whether the
16 notice of obligation should be expanded to include
17 situations of eminent danger, accident or injury or
18 whether there ought to be an obligation on the employer
19 to tell the MOL that it had decided to disregard a
20 recommendation by the Joint Health and Safety
21 Commission?

22 -- (No response)

23 **MR. DOODY:** That takes us through the
24 questions, except for your top two or three.

25 And our plan at this stage is to just

1 break for a couple of minutes.

2 I believe Mr. Cassan, counsel for the
3 City of Elliot Lake, has some questions that he would
4 like to ask over the conference call phone.

5 So we will just take a couple of
6 minutes while that gets set up.

7 --- A SHORT PAUSE

8 **MR. DOODY:** We have on the phone Mr.
9 Paul Cassan, counsel for the City of Elliot Lake, who
10 has some questions that he would like to put to you.

11 Go ahead, Paul.

12 You notice I said "go ahead" and not
13 "go away" like yesterday?

14 **MR. CASSAN:** But we know what you
15 really feel.

16 **MR. DOODY:** Not at all.

17 **MR. CASSAN:** The first thing I would
18 like to say on behalf of my client, the City of Elliot
19 Lake, is that we strongly support the recommendation
20 for the periodic inspection and reporting with respect
21 to commercial and industrial buildings.

22 We do not think that it is appropriate
23 to rely on the concept of imminent danger or the
24 trigger for either inspection or report, because I
25 think that is the state of the law as it is now, and

1 that clearly did not work in this case.

2 So my questions are based on the
3 theory that you are going to make a recommendation, Mr.
4 Commissioner for some periodic reporting and
5 inspections.

6 So my first question is: if all of the
7 engineering reports that are required to be obtained
8 and disclosed --

9 Let me rephrase that.

10 If reports are required to be obtained
11 and disclosed for all commercial and potentially
12 industrial buildings, does that not actually level the
13 real estate playing field and at the same time promote
14 safety, fairness and good maintenance?

15 **MR. DOODY:** Have you got an
16 individual to whom you would like to direct that
17 question?

18 I have an idea who might be the first
19 person to respond.

20 But do you want me to direct it, Mr.
21 Cassan?

22 **MR. CASSAN:** If you would, Mr. Doody.

23 **MR. DOODY:** Mr. Froebelius?

24 **MR. FROEBELIUS:** So the question is
25 would it level the playing field by having a public

1 disclosure requirement for the reports.

2 Is that accurate?

3 **MR. CASSAN:** It is twofold, both a
4 public disclosure requirement and also simply the fact
5 that the reports are mandated.

6 So every building owner has to have
7 these reports.

8 **MR. FROEBELIUS:** I guess it would,
9 but I think it would also accomplish the same thing by
10 making it that the report has to be done, but it does
11 not necessarily have to be disclosed to the public,
12 i.e. we have referenced the *Fire Code* a number of times
13 over the last couple of days, so again, as a building
14 owner I have to do my annual fire inspection and that
15 certificate has to be available to the City or the fire
16 inspector.

17 And if I don't comply, the penalties
18 are fairly severe, so pretty severe to the point where
19 they can shut the building down et cetera.

20 I guess I am having a hard time making
21 the leap from public disclosure versus it just is a
22 requirement that has to be done.

23 I think building owners would
24 certainly embrace the annual inspection if it was still
25 something that would be kept in their domain.

1 And I still think that would level the
2 playing field, if you will, so that all owners would
3 comply.

4 **MR. DOODY:** Does anybody else want to
5 comment on that question?

6 Mr. Braithwaite?

7 **MR. BRAITHWAITE:** I have a comment.
8 I kind of like the idea of an annual
9 inspection.

10 I think that responsible building
11 owner and management people would not be overly
12 concerned with that. I think they would support that
13 idea.

14 So I am basically agreeing with my
15 confrere here.

16 **MR. DOODY:** Anybody else?

17 --(No response)

18 **MR. DOODY:** Your second question,
19 Paul?

20 **MR. CASSAN:** On that answer I wonder
21 if I might, I just remember Mr. Aubé in his submissions
22 saying that Canadians are a trusting lot and certainly
23 I am thinking that if there is public disclosure of the
24 report, it gives the public the opportunity, whether
25 they use it or not, to value the building that they

1 are going into and figure out, as you said Mr. Doody,
2 by shedding light on the issue whether or not the
3 system is working.

4 Second question.

5 I heard some reluctance with respect
6 to reports by engineers being filed because there may
7 be things in the report that are proprietary that would
8 suggest or pause at the question: Should we design a
9 report the engineer would produce, dealing only with
10 structural integrity issues and then disclose that
11 specific purpose report to protect legitimate
12 commercial interests?

13 **MR. DOODY:** Who would like to propose
14 an answer to that question?

15 Mr. Froebelius?

16 **MR. FROEBELIUS:** So what you are
17 suggesting is that there could become a standard report
18 that deals with only the structural aspects of a
19 building.

20 I think that's a good idea.

21 In fact, I think the market would end
22 up developing such a report if in fact we got to the
23 point where there was an annual inspection required.

24 It would be probably the most
25 expedient way to do something like that, so there is an

1 agreed upon standard across the board, like there is a
2 Fire Code, fire alarm system testing report that is
3 pretty much accepted and adopted as well.

4 **MR. DOODY:** I think there is going to
5 be a discussion of that tomorrow, Paul, when the PEO
6 and others are around the table.

7 Ms. Lewis, you were going to say
8 something?

9 **MS. LEWIS:** That might be something
10 that you want to ask the engineers tomorrow.

11 **MR. DOODY:** Right. You and I are in
12 agreement as always.

13 **MS. LEWIS:** As always. And no
14 misunderstanding.

15 **MR. DOODY:** Do you have another
16 question, Paul?

17 **MR. CASSAN:** I do. And this is more
18 for the municipal folks.

19 Would the production of an engineering
20 report about buildings, commercial, industrial or both,
21 not make the CBO's job actually more easier?

22 **MR. DOODY:** Mr. Shaw?

23 **MR. SHAW:** If the CBO received the
24 reports from engineers dealing specifically with
25 deficiencies or perceived unsafe, it would trigger the

1 requirement for that CBO to act.

2 So I do believe it would be
3 clarification that the CBO would need to take action at
4 that point and make the job and decision easier.

5 **MR. DOODY:** Ms. Borooah, I think I
6 saw you leaning forward.

7 Were you wanting to say something?

8 **MS. BOROOAH:** Our submission is that
9 -- and I am a little disturbed by the adoption of the
10 annual report idea, which I think in most cases would
11 not be required to be annual, there might be some
12 building types or situations where annual may be
13 appropriate.

14 **MR. DOODY:** There was some discussion
15 of the issue of the term or the periodicity of the
16 report.

17 **MS. BOROOAH:** That's right.

18 So let's say the periodic report.

19 Our submission is that it would not
20 make the job of the CBO easier if all such reports were
21 submitted and filed.

22 We have suggested that only those
23 reports that recommend remedial action should be filed
24 because there would be an obligation for us to
25 consider, we believe, such reports, should they all be

1 submitted.

2 And then you might ask the question
3 well, what if they are not submitted and how do you
4 know they are not submitted, and what action would you
5 have to take if they were not submitted?

6 All of those questions would arise if
7 they were required to be submitted for each and every
8 building.

9 We were asked by Mr. Bélanger at the
10 beginning do we have an inventory of all buildings of
11 various types?

12 And the answer is no.

13 So even the question of whether you
14 have received all the reports you are required to
15 receive would be a difficult question to answer in many
16 jurisdictions.

17 So I would say no, that the obligation
18 as we and AMO and Large Municipalities Chief Building
19 Officials have submitted, that the obligation should be
20 on the owner to have such reports and investigations
21 undertaken. They should be accessible to the CBO where
22 the CBO requests them.

23 The CBO should be able to ask for them
24 if they are not necessarily required in the period in
25 question or even for the type of building; and that

1 they be submitted to the CBO only where remedial action
2 is required.

3 **MR. DOODY:** Mr. Huxley?

4 **MR. HUXLEY:** I would confer with that
5 and I would submit that the public would be better
6 served where the onus is on the owner, but not just the
7 owner, but the professional that the owner has retained
8 so that the professional engineer would have an
9 obligation to provide a report where there is remedial
10 action that is being required to the chief building
11 official.

12 I think that process would be much
13 more efficient and have a quicker response time to
14 allow the building officials to respond in better
15 response time.

16 **MR. DOODY:** Anybody else?

17 --(No response)

18 **MR. DOODY:** Paul, do you have another
19 question?

20 **MR. CASSAN:** No, those are my
21 questions and I agree that we should look at the issue
22 of the term, because I think buildings generally are
23 fairly slow moving, so perhaps more than a year makes
24 sense.

25 **MR. DOODY:** Thank you.

1 So moving on to the last question,
2 which is in the material, it is the top five
3 recommendations.

4 Many of the people or the bodies that
5 are here represented today were here yesterday, so some
6 of you chose to combine your top five on both days.

7 Keeping that in mind, if you could
8 share with us your top 2 or 3 without repeating what
9 you told us yesterday.

10 I wonder if we could just go around
11 the table, starting with Mr. Froebelius?

12 **MR. FROEBELIUS:** After our
13 discussions today the number one that our group would
14 have would be the further study.

15 I think it is a fairly narrow study,
16 but to investigate further the concept of the annual
17 inspection, the maintenance of the record of that
18 annual inspection and then the frequency of an
19 inspection that would involve a professional engineer.

20 So it could be a combination of the
21 owner does their own inspection annually, keeps record
22 of that inspection and then perhaps every three years
23 or five years the requirement to involve a professional
24 engineer, do the inspection, would be added.

25 But I think, you know, our industry,

1 if there was a -- coming out of this Commission if
2 there was another group formed to explore that further,
3 I think you would get great feedback from our entire
4 industry and they could come up with a great method to
5 do that.

6 I think that would be our number one.

7 And then we did not talk about this
8 one yesterday, but I think going into tomorrow, the one
9 issue that came out when we circulated the questions
10 here as well was just the fact that the engineer
11 involved with the inspections on this project, there
12 was some question as to their expertise and viability
13 and whether in fact they were up to date on their
14 licensing, et cetera.

15 If there was some broader database
16 that would be available to, much as you have argued
17 throughout the past two days, is there a better way to
18 be able to check on who you are hiring as your
19 professional and should that database be available to
20 municipalities even when they are looking at reports
21 and property standards issues.

22 **MR. DOODY:** Thank you.

23 Ms. Wharton-Szatan?

24 **MS. WHARTON-SZATAN:** Yes.

25 I think I would just like to state

1 that the Ministry of Labour would be interested in
2 exploring information agreements or ways in which it
3 could share information with chief building officials
4 or Municipalities on observations they make when they
5 go into workplaces that may be structural in nature.

6 And this could occur through our
7 *Regulatory Modernization Act*, section 9(1) which allows
8 the inspector to advise another regulatory body of
9 information that may be relevant to enforcement of
10 their regulations that they have in place.

11 So we would be interested in exploring
12 that, and just to say that we look forward to
13 participating in the Policy Roundtables.

14 **THE COMMISSIONER:** I must admit that
15 I don't know what the *Regulatory Modernization Act* is
16 about.

17 Just give me a very brief description
18 of its purpose and its girth.

19 **MS. WHARTON-SZATAN:** So that
20 legislation was put in place through our --
21 historically back through our -- there was a
22 secretariat that was introduced to look at ways in
23 allowing enforcement ministries to work together and
24 exchange information.

25 So within it there is a clause that

1 allows for a heads up provision where if they observe -
2 - just say it is the Ministry of the Environment, they
3 notice that there is a spill, then the inspector who is
4 going in there would know that that spill should be
5 reported, could pick up the phone and advise the
6 Ministry of Environment inspector.

7 So that legislation framework is there
8 and it is something we could use as a way of
9 introducing information sharing agreements that we have
10 already in place, and we have that with TSSA, ESA, so
11 we could also use that tool as a way of sharing
12 information or things that we see that would be, for
13 example, under the purview of the chief building
14 officer.

15 **THE COMMISSIONER:** Thank you very
16 much.

17 **MR. DOODY:** Mr. Braithwaite?

18 **MR. BRAITHWAITE:** Yes.

19 I am again speaking in the context of
20 malls, it may not necessarily apply to all high-rise
21 buildings, but in the one store, two store, three store
22 malls and one of the big issues in this country,
23 particularly in the northern part of the country is
24 snow roads and monitoring snow roads, and that can
25 often impact structurally what happens or does not

1 happen.

2 So that in some municipalities it is
3 very well regulated and it is very front and centre, in
4 other municipalities it is not.

5 I think that is worth noting from a
6 public risk point of view.

7 The other thing as well, the
8 structural component of a building is one of the most
9 important divisions, if you will, of construction.

10 And it seems to me that we do not use
11 peer review as part of the technique of the public
12 sector staying closer to the potential problems.

13 You had suggested earlier using that
14 technique as a follow-up in terms of some of the
15 reviews that have to be done.

16 So I would throw that as two ideas for
17 consideration.

18 **MR. DOODY:** Ms. Lewis?

19 **MS. LEWIS:** From a provincial
20 perspective, there have been a number of really good
21 ideas talked about over the past couple of days, a lot
22 of different avenues that could be pursued.

23 I think I would be looking at maybe
24 having the Commission consider, as a whole, of
25 everything that was taught how can those pieces that

1 were discussed and explored, how could they work
2 together to achieve the end goal.

3 Each component on their own has
4 different powers and authorities, but do we need to go
5 full scope on everything.

6 So if you are looking at periodic
7 inspection, how can that work with public reporting and
8 registers?

9 And if you are going to look at
10 registers, what is the best mechanism to enable those
11 things that are important not to get lost on a register
12 that includes everything?

13 I think that is probably where I would
14 like the consideration to be foremost.

15 In addition, making sure in your
16 recommendations back to government, clearly defining
17 the responsibilities of all the responsible parties.

18 So it is ---

19 **MR. DOODY:** Who does what?

20 **MS. LEWIS:** That's right.

21 Who does what?

22 Who has the best powers and
23 authorities to get where we want to go?

24 And in those type of things, like when
25 you are talking about registries, how to do it, like

1 what gets registered?

2 Is it the building title itself, like
3 the name of the building?

4 Because I know the building I live in
5 or I work in have two addresses, so how are you going
6 to define it?

7 Is it the name of the building?

8 Is it the name of the building owner?

9 If it is going to be a provincial
10 registry, that could connect across properties that are
11 owned.

12 Those types of consideration to
13 actually achieve what the intended outcome is.

14 **MR. DOODY:** Thank you.

15 Mr. Stein?

16 **MR. STEIN:** Just one recommendation
17 and I had mentioned it earlier.

18 We are just supportive of using
19 complaints more effectively as a mechanism for focusing
20 inspection and enforcement resources on high risk areas
21 or properties in this case.

22 **MR. DOODY:** Thank you.

23 Ms. Borooah?

24 **MS. BOROOAH:** Today I would choose to
25 emphasize yesterday the priorities were related to what

1 changes should be made to the regulatory system and the
2 role of the enforcement officials largely in that
3 leading towards the idea of a periodic review that
4 would be subject to review by the regulators, where the
5 situation warrants that.

6 To focus more on the other entities
7 involved and the two additional recommendations which
8 may relate more to tomorrow's discussion than today are
9 around the role of the professionals and the
10 preparation of the report and how they would be shared
11 amongst themselves, I think warrants some attention.

12 As well, I think some improvements.

13 We had a suggested improvement to the
14 process around property sales, which was mentioned as
15 one of the three key times in a property's history,
16 could be enhanced around the information sharing
17 through the practice, whether it is governed as you
18 suggested, Mr. Doody, by legislation or by practice in
19 the industry I think remains to be seen.

20 But we think especially in the context
21 of a requirement to require, if this was enacted, a
22 periodic structural review that some evidence of how
23 that was completed could be part of the disclosure,
24 along with other documents or history of the property
25 in the possession of the municipality.

1 **MR. DOODY:** Thank you.

2 Mr. Huxley?

3 **MR. HUXLEY:** Yes, thank you Mr. Doody
4 and Mr. Commissioner.

5 On behalf of AMO and Ms. Turner, the
6 Director of Policy, thank you for allowing us to
7 participate in this phase, and we will be observing the
8 next couple of days.

9 I am going to repeat the
10 recommendation that we relayed yesterday, because I
11 think this recommendation, as we have seen from today's
12 discussion, shapes the discussion that we had today,
13 and that was the recommendation for risk assessment of
14 periodic mandatory inspections.

15 And AMO's position that that should
16 fall upon the owner and/or the owner's profession.

17 That then turns into our second area
18 of discussion we had today, what I thought was a very
19 good discussion, on public registries.

20 The first was the public registry for
21 engineering reports and the second was on by-law
22 complaints.

23 Municipalities are not opposed to such
24 registries per se.

25 Municipalities are the closest level

1 of government to its residence and the pillars of
2 transparency access and accountability are what guide
3 municipal governance in Ontario.

4 More and more municipalities are
5 providing services online and making it more
6 accessible.

7 The concern that we have, hopefully
8 relayed today and hopefully will cause for some further
9 consideration, would be the need for a public registry
10 and the utility of a public registry.

11 It is not clear that there is any
12 public benefit and again, looking at resources,
13 particularly municipal resources, where they should be
14 and can be better devoted.

15 I pause to note that we have a variety
16 of municipalities in AMO's association, over 400,
17 ranging from northern to southern, urban, rural, small,
18 medium and large.

19 And Elliot Lake that we have talked
20 about a lot at this Commission, obviously, would be
21 considered a medium-sized municipality.

22 So that puts things in perspective of
23 the range of municipalities that we are dealing with.

24 So I would ask that certainly I think
25 it was a helpful discussion, but there are certain

1 considerations that we have with respect to such
2 registries and utility resources and work.

3 It is also shaped by the
4 municipality's concern for liability.

5 I understand that we have provided the
6 Commission with AMO's position paper on the case for
7 joint and several liability reform in Ontario.

8 And I hope that that may assist you,
9 Mr. Commissioner, in understanding the foundations that
10 municipalities have, not only from a resource
11 perspective, but from liability considerations where
12 municipalities may be brought into a particular realm
13 and have unintended exposures based on the existing
14 regime.

15 Thank you, very much.

16 **MR. DOODY:** May I ask you, Mr.
17 Huxley, about or AMO's concerns about central
18 registries.

19 I understand your comments apply to
20 registries of complaints made to the municipality.

21 Would they also apply to periodic
22 reports made by engineers pursuant to the regime we
23 discussed yesterday?

24 **MR. HUXLEY:** Yes, those concerns would
25 apply certainly if the registry was contemplated to be

1 maintained by a municipality.

2 **MR. DOODY:** Right.

3 But if not?

4 **MR. HUXLEY:** If not then the question
5 would be to what extent would a municipality be viewed
6 by would be plaintiffs in the courts as to 'well this
7 was available publicly, chief building official, why
8 didn't you look at it?'

9 So that is one consideration.

10 I think that the former is more of a
11 concern than the latter.

12 **MR. DOODY:** And the latter, your
13 position is you would rather not know?

14 **MR. HUXLEY:** I am not suggesting not
15 know.

16 I think the chief building official
17 needs to know those opinions and reports from a
18 professional engineer that are suggesting there is a
19 need for remedial work.

20 **MR. DOODY:** So those would be given
21 to him or her?

22 **MR. HUXLEY:** Yes.

23 But simply a vast body of reports
24 being held somewhere.

25 There is a concern as to what reliance

1 governments need to proactively review such a registry,
2 even if it is not maintained by government.

3 **MR. DOODY:** Mr. Shaw?

4 **MR. SHAW:** First of all, I would like
5 to thank Mr. Doody and Mr. Commissioner for allowing
6 the Ontario Building Officials Association to
7 participate.

8 I am going to break it down to one
9 recommendation, and I have echoed this several times
10 today.

11 We would like to see the establishment
12 that a qualified person who inspects a building and
13 notes areas of concern in regards to structural safety
14 to be required to inform the chief building official.

15 **MR. DOODY:** Thank you.

16 I believe that wraps up the day,
17 subject to Mr. Commissioner and any remarks he might
18 make.

19 **MR. COMMISSIONER:** Yes.

20 Hopefully ladies and gentlemen my
21 biases and predispositions may not have been too
22 apparent.

23 You have to understand where I come
24 from.

25 As a Judge of course every official

1 action that I take, every decision I make, every
2 interim disposition that I am engaged in is subject to
3 full and complete public scrutiny.

4 The other thing is that it is not one
5 of my responsibilities to be fiscally responsible.

6 And that arises out of the
7 independence of the Judiciary.

8 I thank you all very much for making
9 me understand your realities.

10 I thank you for your time.

11 As I have said before, thank you for
12 your expertise, your wisdom and your advice.

13 I repeat that I, as well as all of the
14 members who assist me are acutely aware of the
15 necessity of our being practical, relevant, effective
16 and realistic in whatever recommendations that we make.

17 I repeat that your presence here today
18 is a most valuable public service for which I thank you
19 very much.

20 And for those of us who are leaving, a
21 safe trip home.

22 For those who are remaining tomorrow,
23 we will look forward to seeing you again at 9 o'clock
24 tomorrow morning.

25 Thank you all very much.

November 19, 2013

192

Roundtable 2
Improved Sharing
of Reports and Info.

1

2

The Roundtable Closed at 2:32 p.m. to resume on

3

November 20, 2013 at 9:00 a.m. for Roundtable No. 3

4

5

Certified Correct:

6

7

8

M. Bolduc, C.C.R.