

**IN THE MATTER OF** the *Public Inquiries Act, 2009*, S.O. 2009,  
c. 33, Sched. 6

**AND IN THE MATTER OF** The Elliot Lake Commission of  
Inquiry, established by Order in Council 1097/2012 dated July 19,  
2012

**AND IN THE MATTER OF** ELMAC

---

**MOTION RECORD OF ELMAC**

---

**R. DOUGLAS ELLIOTT PC**  
Toronto-Dominion Centre  
66 Wellington Street West  
Suite 4500, P.O. Box 150  
Toronto, Ontario  
M5K 1H1

**R. Douglas Elliott (LSUC No.  
23685L)**  
Tel: 416-972-9001  
Fax: 416-972-9940

**ROY O'CONNOR LLP**  
200 Front Street West, Suite 2300  
Toronto, Ontario M5V 3K2

**Peter L. Roy (LSUC No. 161320)**  
Tel (416) 362-1989  
Fax (416) 362-6204

**FEIFEL BROADBENT  
GUALAZZI**  
629 Queen Street East,  
Sault Ste. Marie, ON P6A 2A6

**Jeffrey D. Broadbent (LSUC No.  
35155Q)**  
Tel: (705)-945-8901  
Fax: (705)-945-9139

**AUBÉ LAW OFFICE**  
25 Columbia Walk,  
Elliot Lake, ON P5A 1Y6

**Roland H. Aubé (LSUC No.  
20412G)**  
Tel: 705-848-6993  
Fax: 705-848-6821

Lawyers for the Elliot Lake Mall  
Action Committee

## Index

<b>Tab Number</b>	<b>Document</b>	<b>Page Number</b>
1	Notice of Motion dated June 28, 2013	1
2	Affidavit of R. Douglas Elliott sworn June 28, 2013	6

**IN THE MATTER OF** the *Public Inquiries Act, 2009*, S.O. 2009,  
c. 33, Sched. 6

**AND IN THE MATTER OF** The Elliot Lake Commission of  
Inquiry, established by Order in Council 1097/2012 dated July 19,  
2012

**AND IN THE MATTER OF** ELMAC

### **NOTICE OF MOTION**

The moving party, ELMAC, will make a motion to the Commissioner of the Elliot Lake Commission of Inquiry in writing (in accordance with the request of the Commissioner).

**THE MOTION IS FOR** an order pursuant to Rule 31 of the Rules of Procedure for leave to call Grant Ferguson as a witness, and if required, for leave to lead the evidence of Mr. Ferguson pursuant to Rule 38 of the Rules of Procedure.

#### **THE GROUNDS FOR THE MOTION ARE:**

1. This Inquiry is concerned with investigating, inter alia, the cause of the collapse of the Algo Centre Mall.
2. The Elliot Lake Mall Action Committee (ELMAC) is a group of citizens who were directly impacted by the collapse of the mall, including one of the daughters of the late Mrs. Perizzolo, persons injured physically or psychologically in the collapse, workers who lost their jobs as a result of the collapse and tenants in the mall who suffered financial losses as a result of the collapse.
3. ELMAC is a participant in the Inquiry and, as such, is entitled to bring a motion under Rule 31
4. Grant Ferguson has direct evidence that is relevant to the Commissioner's mandate. The Algo Centre Mall began to be built around 1978 and began to open in 1980.

5. In connection with the building, opening and operation of The City of Elliot Lake was responsible for issuing a building permit, inspecting the mall as it was built, issuing an occupancy permit and with ensuring compliance with the City's Property Standards By-Law.
6. When the Mall was built, there were four persons in the City building department: Bob Gruhl, Chief Building Official, Grant Ferguson, Senior Building Inspector, Frank Hollick, Junior Building Inspector and a plumbing inspector. Although the plumbing inspector is available to give evidence, his evidence is not as pertinent to the issues before the Inquiry as the evidence of the other building officials.
7. Grant Ferguson is the only surviving City of Elliot Lake building inspector from that time. Bob Gruhl died in 1980. Frank Hollick died later, but long before this Inquiry began its work. Grant Ferguson is the only living person who is available to give direct evidence as to the policies and activities of the City Building Department when the Mall was being built. He also worked closely with Bob Gruhl and Frank Hollick.
8. Mr. Ferguson's proposed evidence is relevant to the Commissioner's mandate.
9. No other building inspector is alive and able to offer testimony about the time in question.
10. The earliest evidence regarding the City of Elliot lake Building Department that is before the Commission at present begins with the employment of Mr. Pigeau. Mr. Pigeau's evidence was as follows:
  - (a) Mr. Pigeau was a building inspector in North Bay prior to Joining the City of Elliot Lake in August of 1980. Thus, Mr. Pigeau became Chief Building Official after the Mall was completed and began to be occupied. He testified that he was not involved in any of the inspections of the Mall during the construction phase.

- (b) Mr. Pigeau testified that for commercial properties under construction, the City would do intermittent inspections but that “basically the sole responsibility had to be borne by the design architect.” In the case of commercial buildings, the City would require the building to be designed in accordance with the Building Code, but once the architect and engineer certified that the building had been built in conformity with the design and occupancy permit would follow.
  - (c) Mr. Pigeau was unable to give direct evidence as to the building of the Mall or the policies or activities of the City of Elliot Lake Building Department prior to his employment.
  - (d) Mr. Pigeau gave evidence that during his tenure the Building Department did not have a proactive inspection program regarding the Property Standards By-law, By-law 39-15. Rather, there was a city policy to have complaint-driven process with respect to enforcement, with written complaints preferred. An exception might be made and a proactive process initiated in cases of obvious danger or hazard, according to Mr. Pigeau.
- 11. Mr. Ferguson’s evidence will contradict the evidence of Mr. Pigeau in certain respects. Commission Counsel has had an opportunity to interview Mr. Ferguson and been provided with a proposed Will Say Statement, but have declined to call Mr. Ferguson as a witness. ELMAC views Mr. Ferguson’s evidence as essential.
  - 12. ELMAC has been advised that counsel for the Ontario Building Officials Association supports its position regarding Mr. Ferguson.
  - 13. Rule 31 and Rule 38 of the Rules of Procedure.

**THE FOLLOWING DOCUMENTARY EVIDENCE** is submitted in support of the motion:

The affidavit of R. Douglas Elliott sworn June 28, 2013.

DATED: June 28, 2013

**R. DOUGLAS ELLIOTT PC**

Barristers & Solicitors  
Toronto-Dominion Centre  
66 Wellington Street West  
Suite 4500, P.O. Box 150  
Toronto, Ontario  
M5K 1H1

R. Douglas Elliott (LSUC 23685L)  
Tel: 416-972-9001  
Fax: 416-972-9940  
Email: [delliott@heydary.com](mailto:delliott@heydary.com)

Lawyers for ELMAC

**TO: ELLIOT LAKE COMMISSION OF INQUIRY**

White Mountain Building  
99 Spine Road  
Elliot Lake, ON P5A 3S9

The Honourable Paul R. Belanger, Commissioner  
Tel: 705-848-1910  
[info@elliottlakeinquiry.ca](mailto:info@elliottlakeinquiry.ca)

AND TO: Peter Doody  
Commission Counsel  
Elliot Lake Commission Inquiry  
White Mountain Building  
99 Spine Road  
Elliot Lake, ON P5A 3S9

Tel: 613-749-3204  
[pdoody@elliottlakeinquiry.ca](mailto:pdoody@elliottlakeinquiry.ca)

**IN THE MATTER OF** the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6

**AND IN THE MATTER OF** The Elliot Lake Commission of Inquiry, established by Order in Council 1097/2012 dated July 19, 2012

**AND IN THE MATTER OF**  
ELMAC

**NOTICE OF MOTION**

**R. DOUGLAS ELLIOTT PC**

Barristers & Solicitors  
Toronto-Dominion Centre  
66 Wellington Street West  
Suite 4500, P.O. Box 150  
Toronto, Ontario  
M5K 1H1

R. Douglas Elliott (LSUC 23685L)  
Tel: 416-972-9001  
Fax: 416-972-9940  
Email: [delliott@heydary.com](mailto:delliott@heydary.com)

Lawyers for ELMAC



**IN THE MATTER OF** the *Public Inquiries Act, 2009*, S.O. 2009,  
c. 33, Sched. 6

**AND IN THE MATTER OF** The Elliot Lake Commission of  
Inquiry, established by Order in Council 1097/2012 dated July 19,  
2012

**AND IN THE MATTER OF** ELMAC

---

**AFFIDAVIT OF  
R. DOUGLAS ELLIOTT**

---

**R. DOUGLAS ELLIOTT PC**  
Toronto-Dominion Centre  
66 Wellington Street West  
Suite 4500, P.O. Box 150  
Toronto, Ontario  
M5K 1H1

**R. Douglas Elliott (LSUC No.  
23685L)**  
Tel: 416-972-9001  
Fax: 416-972-9940

**ROY O'CONNOR LLP**  
200 Front Street West, Suite 2300  
Toronto, Ontario M5V 3K2

**Peter L. Roy (LSUC No. 161320)**  
Tel (416) 362-1989  
Fax (416) 362-6204

**FEIFEL BROADBENT  
GUALAZZI**  
629 Queen Street East,  
Sault Ste. Marie, ON P6A 2A6

**Jeffrey D. Broadbent (LSUC No.  
35155Q)**

Tel: (705)-945-8901  
Fax: (705)-945-9139

**AUBÉ LAW OFFICE**  
25 Columbia Walk,  
Elliot Lake, ON P5A 1Y6

**Roland H. Aubé (LSUC No.  
20412G)**  
Tel: 705-848-6993  
Fax: 705-848-6821

Lawyers for the Elliot Lake Mall  
Action Committee

## **AFFIDAVIT**

I, R. Douglas Elliott, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer with the counsel team representing the Elliot Lake Mall Action Committee (ELMAC). ELMAC is a Participant with full standing. ELAMC's members are citizens of Elliot Lake who were directly impacted by the Mall collapse.

2. ELMAC has been an active participant in Phase 1 of the Inquiry.

3. One of the areas of interest of ELMAC has been the role of the City of Elliot Lake Building Department in regulating and inspecting the Mall.

4. ELMAC was aware that City of Elliot Lake enforced the Ontario Building Code and its own by-laws. As such, the builders of the Mall would require a building permit or permits for constructing the Mall from the City, the City should have inspected the Mall while it was under construction and eventually issued occupancy permits. Finally, once open, the City was responsible for ensuring compliance with the Property Standards By-law with respect to maintenance of the Mall.

5. The evidence thus far has made it clear that the Mall roof leaked from the beginning, and that the building roof never complied with the legal requirement that it be watertight.

6. The Commission counsel commenced the evidence from the Building Department chronologically with the evidence of Mr. Roger Pigeau. However, Mr. Pigeau only commenced working for the City of Elliot Lake in August, 1980, after the Mall was constructed.

7. Through our investigation as counsel, we have learned that there were 4 persons who had worked in the City building department during the time that the application for a building permit was made, and up to the time Mr. Pigeau arrived. Two of those persons, Chief Building Official Bob Gruhl and Junior Building Inspector Frank Hollick, are dead. A third, André Marseille, was a plumbing inspector who is still alive but whose knowledge of the matters in issue would be very limited.

8. The fourth official was Grant Ferguson. Mr. Ferguson is my brother-in-law.

9. Mr. Ferguson is alive and willing to testify. After leaving Elliot Lake, Mr. Ferguson has worked for many years in the engineering department of the City of Guelph.

10. Mr. Ferguson has direct evidence to offer that is helpful to this Inquiry. His proposed evidence contradicts the evidence of Mr. Pigeau's in certain important elements, and he actually conducted at least one inspection of the Mall while it was under construction. I attach as Exhibit A the draft will say of Mr. Ferguson. Due to time constraints, Mr. Ferguson has approved it but has not yet signed it.

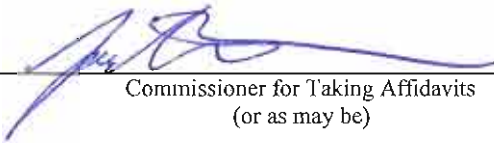
11. Commission counsel has interviewed Mr. Ferguson and has since advised that they do not intend to call him as a witness.

12. My client has advised me that they consider Mr. Ferguson's direct evidence is vital, and has instructed me to bring this motion. Mr. Ferguson's evidence should not require more than one day of hearing time.

13. ELMAC has been advised that counsel for the Ontario Building Officials Association supports its position regarding the importance of Mr. Ferguson's testimony.

14. Pursuant to Rule 31, my client is prepared to have Commission counsel lead Mr. Ferguson's evidence if the Commissioner so directs. However, if Commission counsel is unwilling or unable to do so, ELMAC seeks leave to have one of its counsel team lead the evidence of Mr. Ferguson pursuant to Rule 38.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario on June  
...28..., 2013



Commissioner for Taking Affidavits  
(or as may be)



**R. DOUGLAS ELLIOTT, LSM**

**Jonathan Ayodeji Adewale Odumeru**  
Barrister & Solicitor Notary Public and  
Commissioner for Taking Affidavits  
in and for the Province of Ontario.  
My Commission is of unlimited duration.  
No legal advice given.

This is Exhibit A referred to in the affidavit of R. Douglas Elliott sworn before me, this 28<sup>th</sup> day of June 2013

**Will-Say Statement of Grant Ferguson**

  
A COMMISSIONER FOR TAKING AFFIDAVITS

It is anticipated that Grant Ferguson will give the following evidence at the Elliot Lake Inquiry.

**Background**

1. Mr. Ferguson is a native of Galt, Ontario, now a part of the amalgamation of Cambridge, Ontario. Although he was once a resident of Elliot Lake as described below, he returned to Cambridge in 1980. He is currently employed in the Engineering Department of the City of Guelph where he has been employed since 1990.
2. After completing high school, he attended Mohawk College in Hamilton where he graduated with a Diploma in Civil Technology. He then attended the University of Waterloo in the Civil Engineering Co-op program.

**My Move to Elliot Lake**

3. Mr. Ferguson's co-op program took him to Elliot Lake for the first time in 1975 to work for the City of Elliot Lake in the Engineering Department. It was in Elliot Lake that he met his future wife Karen Elliott. They were married in Elliot Lake in March 1978.
4. Elliot Lake then was a very different place from the Elliot Lake of today. The "energy crisis" had created demand for secure energy supplies such as Elliot Lake's uranium and the City was booming. Jobs were plentiful and there was a shortage of skilled workers. Young families were moving to Elliot Lake from all over Canada. There was a large influx from Northern Quebec and the City was about 40% francophone. There was an enormous amount of construction underway and the City was growing rapidly.
5. Mr. Ferguson did not return to complete his studies at Waterloo but rather took a job in Elliot Lake in the summer of 1976 with Acme Construction from Sudbury. He was hired as the site superintendent of the Villa Française des Jeunes, the new French language high school that was to be constructed to accommodate the needs of the burgeoning francophone population.
6. It was at this site that Mr. Ferguson first met Frank Hollick, the Junior Building Inspector for the Town. Mr. Hollick attended unannounced at the site for an inspection. Mr. Ferguson understood this was a proactive inspection and not in response to a written complaint about the work.
7. Mr. Ferguson was surprised that Mr. Hollick was so young. He later learned that Mr. Hollick had been in high school with Karen Elliott, and was therefore only 19 or 20 years

old. Mr. Ferguson later learned that Mr. Hollick had no formal training as a building inspector. Rather, Mr. Hollick had been hired after his high school graduation based on some basic knowledge of the trades he had gained from working for his father's small construction company.

8. Mr. Hollick's limited knowledge became apparent when he questioned Mr. Ferguson why a particular beam had no support under it. Mr. Ferguson told him it was a cantilevered beam as called for in the architectural drawings. A short conversation surrounding the beam made it obvious that Mr. Hollick had no knowledge of the concept of cantilevered beams, so Mr. Ferguson briefly explained it to him. This was the only site visit by the City's building department to this large project, something Mr. Ferguson finds surprising. A building of this complexity in Guelph or other jurisdictions would normally receive upwards of possibly 100 site inspections and /or visits prior to completion. In comparison during Mr. Ferguson's tenure with the City's building department, much less complex residential units would receive upwards of 15 to 20 site inspections and /or visits.

### **Senior Building Inspector**

9. In the summer of 1978 Mr. Ferguson applied to an advertisement for a Senior Building Inspector position with the Town and subsequently was hired by Bob Gruhl, Chief Building Official.
10. At the time there was a great deal of work being done in Elliot Lake that was not compliant with the Code or By-laws. Contractors were under pressure to complete building projects as quickly as possible. Many would cut corners to achieve their goal of providing homes and other facilities for the rapidly expanding mining community. There was also a great deal of work being done without building or plumbing permits. Some contractors, such as a local plumber known as Stan Bloxom, were notorious for rarely applying for permits for their work.
11. It is Mr. Ferguson's opinion that Bob Gruhl's approach to his position as Chief Building Official was that he was there to support the local tradespersons and contractors and help them get their jobs done. Mr. Gruhl was not rigorous about Code enforcement, especially with the local tradesmen known to him. Mr. Ferguson personally never saw an inspection report completed by Mr. Gruhl.
12. Mr. Ferguson has read the transcript of evidence of Roger Pigeau. Mr. Pigeau arrived in Elliot Lake in August of 1980, after the mall was built and after Mr. Ferguson left Elliot Lake. They never worked together.

13. Mr. Ferguson understands the following points regarding the evidence of Mr. Pigeau, and comments on that evidence as follows:

- a) Mr. Pigeau was a building inspector in North Bay prior to Joining the City of Elliot Lake in August of 1980. Thus, Mr. Pigeau became Chief Building Official after the Mall was completed and began to be occupied. Mr. Pigeau testified that he was not involved in any of the inspections of the Mall during the construction phase. Comment: This is true. However, in contrast, Mr. Ferguson conducted at least one inspection of the Mall while it was being constructed and worked closely with Frank Hollick; Mr. Hollick was primarily responsible for inspecting the Mall.
- b) Mr. Pigeau testified that for commercial properties under construction, the City would do intermittent inspections but that “basically the sole responsibility had to be borne by the design architect.” In the case of commercial buildings, the City would require the building to be designed in accordance with the Building Code, but once the architect and engineer certified that the building had been built in conformity with the design and occupancy permit would follow. Comment: This was not true when Mr. Ferguson worked for the City. A building official cannot delegate his responsibility for ensuring compliance with the Code and by-laws to an architect and engineer, rather the building official must ensure compliance. A building official is not required to issue an occupancy certificate on the strength of a certificate from an architect or an engineer, and should decline to do so where he or she knows that the building is not in compliance with the Code or by-laws.
- c) Mr. Pigeau was unable to give direct evidence as to the building of the Mall or the policies or activities of the City of Elliot Lake Building Department prior to his employment. Comment: This is true, but in contrast, Mr. Ferguson is able to give such direct evidence.
- d) Mr. Pigeau gave evidence that during his tenure the Building Department did not have a proactive inspection program regarding the Property Standards By-law, By-law 39-15. Rather, there was a city policy in place to have a complaint-driven process with respect to enforcement, and written complaints were preferred. An exception might be made and a proactive process initiated in case of an obvious danger or hazard, according to Mr. Pigeau. Comment: This was not true when Mr. Ferguson worked at the City. The practice in the building department was one of proactive enforcement of the Code and by-laws. Mr. Ferguson did not await a written or verbal complaint before taking steps to enforce the Code and by-laws. He did not wait for situations of danger or hazard, but issued orders to stop work or correct deficiencies when he discovered violations of the Code or by-laws. Moreover, there could be no



“policy” as described by Mr. Pigeau. A City only has a “policy” when it is enacted by City Council. There was no such policy enacted by the Elliot Lake City Council until 1995, so far as Mr. Ferguson is aware.

14. Mr. Ferguson conducted a very rigorous and proactive inspection approach to his duties as a building inspector. He issued numerous written and verbal stop work orders, including one written against a prominent Elliot Lake electrical contractor and another written against a masonry company in which his father-in-law held an interest. On many occasions, usually following a call by an unhappy or irate contractor, Mr. Gruhl would urge Mr. Ferguson to be less aggressive with the local contractors.
15. Bob Gruhl became seriously ill with cancer in 1979. Even though he was not actively at work full time and later not at all, he was not replaced as Chief Building Official, perhaps out of respect to him.
16. The Algo Centre Mall was one of Elliot Lake’s most prominent commercial buildings. During the initial plans examination and review of the project, Bob Gruhl assigned the inspection duties to Frank Hollick. Any inspection(s) carried out by Mr. Ferguson during the construction phase were infrequent and usually to cover for a required inspection due to an absence by Mr. Hollick.
17. Mr. Ferguson does not know, and cannot understand, why Mr. Gruhl would have assigned the Mall project to Mr. Hollick rather than assigning it to the more senior, more qualified and more experienced Mr. Ferguson. Mr. Hollick was a relatively inexperienced inspector with little or no formal training in this type of construction. Mr. Ferguson theorizes that Mr. Gruhl may have wanted an inspector who would be less aggressive in charge in order to hasten the project to completion.
18. By late 1979, Bob Gruhl’s cancer kept him in and out of the hospital and only on the rarest of occasion was he present at work. Shortly prior to Mr. Gruhl’s passing in 1980 and on Mr. Ferguson’s last visit to Mr. Gruhl in the hospital, Mr. Gruhl’s parting words to Mr. Ferguson were to “leave Stan Bloxom alone”.
19. Mr. Ferguson left the employ of Elliot Lake in spring of 1980.
20. He has seen Exhibit 2390, the report which Frank Hollick made in connection with issuing the Occupancy Permit to Woolco at the Algo Centre Mall. At this time Mr. Ferguson believes that Mr. Hollick was the only active building inspector for the Town of Elliot Lake. Assuming, as it appears from this exhibit, that Mr. Hollick had full knowledge of the leaking roof in the Woolco, a decision to issue an Occupancy Permit

would have contravened the Building Code and By-law. Mr. Hollick had no obligation to issue an Occupancy Permit to Woolco or anyone else associated with the Mall. Mr. Hollick should have refused the request for the Occupancy Permit until the architect or consultant rectified the problem, regardless of the Mall owner's perceived urgency to have the Mall occupied. With Mr. Hollick's junior position at the City, his youth, inexperience and the loss of experienced mentors within the department, Mr. Hollick would have been susceptible to pressure to issue the Occupancy Permit prematurely. Mr. Ferguson would have refused to issue the occupancy permit in the circumstances.

Grant Ferguson

**IN THE MATTER OF** the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6

**AND IN THE MATTER OF** The Elliot Lake Commission of Inquiry, established by Order in Council 1097/2012 dated July 19, 2012

**AND IN THE MATTER OF** ELMAC

**AFFIDAVIT OF  
R. DOUGLAS ELLIOTT**

**R. DOUGLAS ELLIOTT PC**

Barristers & Solicitors  
Toronto-Dominion Centre  
66 Wellington Street West  
Suite 4500, P.O. Box 150  
Toronto, Ontario  
M5K 1H1

R. Douglas Elliott (LSUC 23685L)  
Tel: 416-972-9001  
Fax: 416-972-9940  
Email: [delliott@heydary.com](mailto:delliott@heydary.com)

Lawyers for ELMAC

**IN THE MATTER OF** the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6

**AND IN THE MATTER OF** The Elliot Lake Commission of Inquiry, established by Order in Council 1097/2012 dated July 19, 2012

**AND IN THE MATTER OF**  
ELMAC

**MOTION RECORD OF ELMAC**

**R. DOUGLAS ELLIOTT PC**

Barristers & Solicitors  
Toronto-Dominion Centre  
66 Wellington Street West  
Suite 4500, P.O. Box 150  
Toronto, Ontario  
M5K 1H1

R. Douglas Elliott (LSUC 23685L)  
Tel: 416-972-9001  
Fax: 416-972-9940  
Email: [delliott@heydary.com](mailto:delliott@heydary.com)

Lawyers for ELMAC