

*ONTARIO*  
COMMISSION OF INQUIRY

**THE ELLIOT LAKE COMMISSION OF INQUIRY**

**ELLIOT LAKE MALL ACTION COMMITTEE  
MOTION FOR STANDING AND FUNDING**

**Affidavit of Jean Pomerleau**

I, Jean Pomerleau, of the City of Elliot Lake, in the Province of Ontario, MAKE OATH AND SAY:

1. Along with Ms. Colinda Montpellier and Mr. Claude Morisset, I am one of the three members of the steering committee of the Elliot Lake Mall Action Committee (“**ELMAC**”). As such, I have direct knowledge of the matters to which I depose in this affidavit. Where the information in this affidavit is not based on my direct knowledge, but rather upon information and belief from other sources, I have stated the source of the information and I believe it to be true.
2. I swear this affidavit in support of ELMAC’s motion for standing and funding at the Elliot Lake Commission of Inquiry (the “**Inquiry**”).
3. ELMAC was formed in response to the collapse of the collapse of the Algo Centre Mall in Elliot Lake (the “**Mall**”).
4. ELMAC is a volunteer not-for-profit association and as such does not have financial resources necessary to participate in the Inquiry without funding. As of the date of this affidavit, ELMAC is an unincorporated association. ELMAC has no assets or source of revenue and does not charge a fee to its members to join. In any event, no membership fee could cover the legal costs set out below.

5. ELMAC's membership does not have the financial resources to retain counsel with the necessary experience to make a meaningful contribution to this Inquiry.
6. I am advised by Ms. Alexandra Carr of Roy Elliott O'Connor ("REO"), the firm that ELMAC proposes to retain, that his firm's rates are \$200.00 per hour for a junior lawyer called to the bar in 2009 and \$725.00 per hour for a senior counsel called to the bar in 1984. I am further advised that these rates are not out of line for firms of REO's expertise and experience.
7. My counsel has advised me further that the estimated cost for representing ELMAC at Inquiry at their usual rates (as opposed to the government rates that would be paid to REO if funding is granted) would likely exceed \$250,000. I understand that this rough estimate includes the cost of:
  - a. attending the Inquiry hearings in Elliot Lake which are likely to last between two to four months;
  - b. reviewing relevant documents of ELMAC's group members, determining privilege issues and producing documents to the Commission on behalf of ELMAC;
  - c. reviewing Overview Reports prepared by the Commission;
  - d. calling, preparing and examining witnesses;
  - e. preparing statements of anticipated evidence for each witness proposed by ELMAC and the list of documents associated with that evidence;
  - f. representing any ELMAC members while they testify;
8. ELMAC's membership is largely composed of retired individuals living on a fixed income, business owners that have seen their occupation and sole means of income destroyed in the Mall's collapse and former mall workers who face an uncertain financial future.

9. By way of example, my own business Alternative Funeral Services has been seriously disrupted by the Mall's Collapse. My financial and funeral records are still in the mall and although I have made numerous requests, I have not been allowed to retrieve them. As a result, I am now unable to properly file my reports to the Funeral Board nor will I be able to file my income tax returns, which are due shortly. As of the date of this affidavit I certainly do not have the financial resources to retain counsel to act for ELMAC in the context of this Inquiry.
10. In its motion material for standing and funding, ELMAC included five case studies of its members to provide the Commission with some examples of the experiences of ELMAC's members. I have read those case studies and note that four out of five of the ELMAC members who provided their stories therein indicated that they were unemployed and/or concerned about their financial future. A copy of the foregoing case studies are attached collectively to this affidavit as exhibit "A".
11. I believe that if ELMAC is denied funding, its membership will effectively be unable to make a meaningful contribution to the Inquiry.

SWORN BEFORE ME at the City of  
Elliot Lake, on October 22, 2012.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
JEAN POMERLEAU

**Loretta Ortensia Paul, a Commissioner, etc.,  
District of Algoma, for Roland Henri Aubé,  
Barrister and Solicitor.  
Expires February 23, 2015.**

THE ELLIOT LAKE COMMISSION OF INQUIRY

**ONTARIO**

COMMISSION OF INQUIRY

**AFFIDAVIT OF JEAN POMERLEAU  
(SWORN OCTOBER 22, 2012)**

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This is Exhibit "A" mentioned and  
referred to in the affidavit of  
John Pomerleau  
Sworn before me this 22<sup>nd</sup> day  
of October A.D. 2012  
a Commissioner, etc.



Loretta Ortensia Paul, a Commissioner, etc.,  
District of Algoma, for Roland Henri Aubé,  
Barrister and Solicitor.  
Expires February 23, 2015.

### Appendix 3

## **ELMAC Case Study # 1: Lorraine Contant**

### **Background**

Lorraine (Laurie) Contant was the manager of the "Northern Reflections" branch store in the Algo Centre Mall in Elliot Lake, Ontario (corporate name: Northern Reflections Ltd.). She began working at Northern Reflections in July 2009.

### **Warning Signs**

Within a few months of working at Northern Reflections Ms. Contant noticed that there was constant leaking in the Mall.

In or around 2009, Ms. Contant noticed that all the ceiling tiles in the store were black or brown and reported her concern to her District Sales Manager.

In 2010, Ms. Contant was working alone and heard something that sounded like a waterfall. She investigated and found water gushing from the ceiling between the Scotiabank and Zellers units.

In or around late 2010 or early 2011, all of the damaged tiles at Northern Reflections were removed and repaired. Ms. Contant observed that, when the tiles were removed, she could see that there were a number of yellow "bladder" balloons in the ceiling, with hoses attached, that were intended to collect leaking water. The "bladder" balloons and hoses ran along the walls, were in the washroom, and protruded into the fitting room. Even after the tiles were replaced, issues with water damage continued. Most of the tiles replaced in the backroom, along with 3 or 4 ceiling tiles in the main room, had to be removed because they kept disintegrating due to constant water damage.

In the spring of 2011, one of her employees had just finished her shift and was leaving when a large roof tile fell, just outside of Northern Reflections, missing the employee by mere inches.

For approximately a month prior to the collapse, there was assorted debris falling from the ceiling, particularly in the washroom. At first the debris was relatively small and composed of insulation and cement but, closer as time went on, the debris was mainly cement, approximately the size of a closed fist.

Approximately a week before the collapse, Ms. Contant found the carpet of the store soaked and 2 inches of water in the back room. She informed Mall management of the

problem and, after waiting for over an hour someone came to see her. She was told just to mop it up. She refused to, saying that that was the Mail's responsibility.

### **The Collapse**

Ms. Contant was working the day of the collapse. There were approximately eleven customers one employee, Diane, and Ms. Contant in Northern Reflections at the time of the collapse.

She heard rumbling and feared that the roof had collapsed. Diane's elderly mother was in the food court at the time. Diane tried to run to the food court twice, each time being blocked by debris and unable to see due to the dust. Ms. Contant and Diane ensured that all the customers left the store safely.

### **The Aftermath**

Months after the collapse, Ms. Contant still has nightmares and wakes up crying. She has seen two counsellors and intends on seeing one regularly after that counsellor returns from vacation.

As of September 29, 2012, she was permanently laid off by Northern Reflections. Ms. Contant is concerned about her job prospects as there are limited opportunities now in Elliot Lake for someone with her employment background.

## **ELMAC Case Study # 2: Yves Audet**

### **Background**

Yves Audet was born and raised in Elliot Lake and has lived there for most of his life. He used to run his own computer repair business in Elliot Lake but recently had to shut that business down due to health issues. His present income comes from the Ontario Disability Support Program (ODSP). He attended the Algo Centre Mall at least weekly, sometimes daily.

### **Warning Signs**

Mr. Audet noticed leaking in the Mall from as early as two weeks after the Mall's grand opening in 1981. Particularly in recent years, there were large buckets collecting leaking water throughout the Mall. The Mall was particularly leaky after it rained. He also observed that a lot of roof tiles would fall from the ceiling, particularly in the food court in front of the lottery booth. There were also large watermarks on the ceiling above the food court and there were watermarks and large cracks in the drywall in that area. Further, Mr. Audet recalls being in the Mall on at least two occasions when someone was struck by a falling ceiling tile.

### **The Collapse**

At the time of the collapse Mr. Audet was in the food court of the Algo Mall, less than two feet away from where the roof caved in, with his mother, his mother's boyfriend and his aunt. He heard a loud rumble, saw ceiling tiles beginning to fall and started to yell out to warn people that the roof was collapsing. Before he could finish his sentence he was hit with water and debris. Mr. Audet was flung approximately 15 feet across the food court landing in the opposite direction.

Mr. Audet immediately sought out his family. He was especially concerned about his mother, who was 75 and had a pacemaker, and his mother's boyfriend, who had an oxygen tank. Mr. Audet and his family, with the assistance of restaurant owner in the food court, made it out of the Mall.

### **Aftermath**

Since the collapse, Mr. Audet has found it difficult to leave his house and only ventures out when it is absolutely necessary. He feels some guilt and wonders why he lived when others did not as he was inches away from where the roof collapsed.



He panics when he hears loud noises and shakes when he has to enter a building that has two or more stories. In addition to this, he constantly has visions of the Mall caving in and has constant headaches.

Finally, Mr. Audet has found it difficult to move on because he lives directly across from the Mall and is therefore constantly reminded of the collapse. In addition to this, the generators at the Mall are on all night.

## **ELMAC Case Study # 3: Ron Woolhead**

### **Background**

Ron Woolhead has been in the retail business for the majority of his career. Prior to moving to Elliot Lake in March 2011, he worked as a sales associate at a Zellers store in Ottawa. Mr. Woolhead recently turned 60 years of age and requested a transfer to the Zellers store in the Algo Centre Mall in Elliot Lake, which he believed would be a nice place to retire.

### **Warning Signs**

Mr. Woolhead recalls that on his first day of work, he noticed tarps in place in the Zellers store to catch water leaking from the ceiling. Water leaked through the Zellers ceiling nearly every time it rained.

In or around April 2011, Mr. Woolhead witnessed part of a ceiling tile fall on a little girl in the Zellers store. Mr. Woolhead reported the incident to the Zellers Human Resources department.

Mr. Woolhead also recalls that in or around April 2011, he had to work in the dark because the water leaks had interfered with the electrical system in Zellers.

Mr. Woolhead recalls that when the snow plow was ploughing on the parking deck of the Mall, the entire building shook. He recalls specifically being advised by the safety manager of Zellers that he had called health and safety Canada to report on what he believed was an unsafe parking deck and received a written response that the parking deck was safe.

A number of Mr. Woolhead's colleagues advised him that they did not feel safe working in the store.

### **The Collapse**

Mr. Woolhead was not working on the day of the collapse.

### **Aftermath**

Mr. Woolhead turned down a full time job at the Bay in Ottawa and sold his house in Ottawa to move to Elliot Lake.

Mr. Woolhead can no longer afford his apartment without spending all of his retirement savings. He now faces an uncertain financial future.

## **ELMAC Case Study # 4: Ron & Pauline Roy**

### **Background**

Ron and Pauline Roy own a cleaning company called Pauli's Maid Service and had two contracts with tenants of the Mall (i.e. the Algoma Health Unit and Dollarama).

### **Warning Signs**

Mr. Roy recalls many warning signs that there was something wrong with the structure of the Mall. Mr. Roy recalls that one day a large section of the ceiling tile in one of the Algoma Health Unit board rooms fell down.

There were numerous leaks in the Mall and when something went wrong, it would take days to fix. For example, Mr. Roy recalls that portable lights were set up in the at the back receiving area of the Dollarama store because the lights had stopped working and no one from maintenance had come in to repair them. Mr. Roy recalls that when he waxed the floors of the Dollarama, he had to work especially quickly on the days when it rained because the leaks dripped on the areas of the floor he was waxing.

### **The collapse**

Mr. Roy was not in the Mall at the time of the collapse. Pauline Roy left the Mall twenty minutes prior to the collapse.

### **Aftermath**

Pauli's Maid Service has been unable to retrieve any of the equipment that was left in either the Algoma Health Unit or the Dollarama store. That equipment, which Mr. Roy estimates is worth \$3,500, may be destroyed.

Pauli's Maid Service has not been paid under either contract since the collapse. The contract with the Algoma Health Unit was one of Pauli's Maid Service's main sources of income. The Algoma Health Unit will be relocating to the Old Arts College in Elliot Lake and is expected to open at the end of the year. Mr. and Mrs. Roy have been advised that Pauli's Maid Service is on a temporary layoff until the unit re-opens.

Pauli's Maid Service had three full-time staff (excluding Mr. and Mrs. Roy) prior to the collapse. It is now down to two part-time staff. Mr. Roy is currently raking leaves to try to keep up with their bills but they are not able to put any money in the bank. Mr. and Mrs. Roy would have liked to retire in a few years but now, that may not be possible.

## **ELMAC Case Study # 5: Colinda Montpellier**

### **Background**

Colinda Montpellier was the owner and manager of the "Curves" health club franchise in the Algo Centre Mall in Elliot Lake Ontario (corporate name: Montpellier Fitness Enterprises Inc.) (the "Curves Franchise"), which had been at that location since January 2010.

As of the time of the Mall collapse, June 23, 2012, the Curves franchise had 102 active clients and 50 intermittent clients.

### **Warning Signs**

Since January 2010, Ms. Montpellier observed many leaks in the Mall ceiling which were caught by buckets, patches on holes in the parking deck of the Mall, and the smell of mildew in certain parts of the mall. Some of her clients would complain that they did not want to continue to exercise at Curves because of the smells and leaks they observed throughout the Mall.

In or around December 2011, Ms. Montpellier was in the Curves unit when a few ceiling tiles (along with the attached light fixtures and electrical wiring) came crashing down from the ceiling. Ms. Montpellier immediately called Joe Hammond, one of the maintenance staff to advise him what had happened. Later that day, some maintenance staff came into the unit to fix the fallen ceiling tiles and wiring. Ms. Montpellier also called Ms. Rhonda Bear, the Mall manager, on a number of occasions to advise her of the incident and inquire about why ceiling tiles were falling in the building. She did not receive a response to her repeated inquiries.

Ms. Montpellier escalated her enquires to the City of Elliot Lake City but was advised by City Staff that "there was nothing the city could do because the Mall was a private building".

### **The Collapse**

Luckily, Ms. Montpellier was not in the Mall at the time of the collapse.

### **Aftermath**

Since the collapse of the Mall, Ms. Montpellier has been unable to find a suitable location to re-open her franchise. She has recovered some but not all of the value of the contents of her franchise from her insurance company.

It should be noted that Ms. Montpellier took detailed notes with respect to each of the incidents and phone calls listed above but those records are unavailable as they were

kept in the Curves unit in the Mall. Ms. Montpellier has been unable to retrieve any of her records.