

ONTARIO
COMMISSION OF INQUIRY

THE ELLIOT LAKE COMMISSION OF INQUIRY

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

October 17, 2012

R. Douglas Elliott, Roy Elliott O'Connor LLP
Jeff Broadbent, Feifel Broadbent Gualazzi LLP
Roland Aubé, LLB

Part I: Executive Summary

1. The Elliot Lake Mall Action Committee (“ELMAC”) seeks full party status and funding at the Elliot Lake Commission of Inquiry (the “**Inquiry**” or “**Commission**”) so that it may participate effectively in the Inquiry. ELMAC requests that it be granted leave to make oral submissions in support of its application to the Commission on October 26, 2012.
2. ELMAC is a broad based community group representing people who:
 - a. were injured by the collapse of the Algo Centre Mall (“Mall”);
 - b. owned or operated stores or businesses at the Mall; and,
 - c. were employed at or by the Mall.
3. The Mall’s collapse has had a profound effect on ELMAC’s membership and the people of Elliot Lake. As citizens of Elliot Lake, workers, and tenants of the Mall, ELMAC’s membership have a close and direct interest in the events that lead to the Mall’s collapse as well as the rescue and recovery effort. While some of ELMAC’s members were injured in the collapse, all of its members were exposed to the unreasonable risk of injury or death, the nature of which is not generally associated with something as ordinary as working at or visiting a shopping mall. As set out below, ELMAC is concerned that numerous warning signs were missed that could have prevented the Mall’s collapse and that the warnings of its membership went unheard by the people with the ability or responsibility to prevent the collapse.
4. ELMAC submits that the Commission will benefit from its participation in the Inquiry as follows:
 - a. ELMAC will be able to organize and present witnesses who owned businesses in the Mall, worked as employees in the Mall, and were injured in the collapse of the Mall;

- b. ELMAC will be able to put the community's collective concern over, (i) the response to complaints made prior to the collapse of the Mall, and (ii) the response to the collapse, before the Commission through one voice;
 - c. ELMAC's participation in the Inquiry will streamline a large amount of the information that it believes is essential to the Commission's mandate; and
 - d. ELMAC's participation in the Inquiry will account for a deeper understanding of the warning signs that were apparent prior to the collapse of the Mall and the impact of the response to the collapse of the Mall on the community of Elliot Lake.
5. As set out below, ELMAC submits that it satisfies the criteria for both standing and funding.

Part II: Introduction

6. The Honourable Mr. Justice Paul Bélanger has been appointed as the Commissioner of the Elliot Lake Commission of Inquiry. Pursuant to the terms of its mandate, the Commission shall:
- a. Inquire into and report on events surrounding:
 - i. the collapse of the Algo Centre Mall in Elliot Lake, Ontario (the "**Mall**");
 - ii. the deaths of Lucie Aylwin and Doloris Perizzolo;
 - iii. the injuries to other individuals in attendance at the Mall; and
 - iv. the emergency management and response by responsible bodies and individuals subsequent to the collapse;
 - b. Review relevant legislation, regulations and by-laws and relevant policies, processes and procedures of provincial and municipal governments and other parties with respect to:

- i. the structural integrity and safety of the Mall; and
- ii. the emergency management and response to the collapse of the Mall.

7. Formed in response to the collapse of the Mall, ELMAC is an Elliot Lake based community group with over 65 members. Its membership consists of citizens of Elliot Lake who were negatively impacted by the events which will form the subject matter of the Commission's investigation and want to ensure that policies are put in place to prevent similar events in the future.

8. ELMAC's primary interest is in examining: (i) the warning signs that were apparent prior to the collapse of the Mall; (ii) the reaction to those warning signs by people with the authority and responsibility for it; (iii) the relevant policies and procedures that could be put in place to prevent similar events in the future; and (iv) the impact of the response to the collapse of the Mall on the community of Elliot Lake.

9. Based on the personal experience of its members, ELMAC believes that there were numerous warning signs that the structural integrity of the Mall was in jeopardy and that those warning signs should have, but did not, cause appropriate measures to be taken to ensure the safety of Mall employees, guests and customers. These warning signs include, among other things:

- a. constant leaks coming from the ceiling of the Mall;
- b. repeated instances of pieces of cement and ceiling tile falling from the ceiling of the Mall;
- c. the smell of mildew coming from certain areas of the Mall; and
- d. obvious patch-work visible in cracks on the parking deck.

10. A central part of the Commission's mandate is to review relevant legislation, regulations, by-laws, policies, processes and procedures of provincial and municipal governments and other

parties with respect to the structural integrity of the Mall. It is ELMAC's objective to assist the Commission to consider whether better policies and procedures can be put in place to prevent similar events in the future.

11. Another aspect of the Commission's mandate is to review legislation, regulations, by-laws, policies, processes and procedures of provincial and municipal governments and other parties with respect to the response to the collapse of the Mall. It is ELMAC's objective to assist the Commission to consider whether better policies and procedures can be put in place to minimize the negative impact that the collapse has had on the Elliot Lake community. The following is a list of topics which ELMAC believes it can assist the Commission to examine and which are essential to the Commission's mandate:

- a. What steps were or should have been put in place to disseminate information to the Elliot Lake community with respect to the collapse of the Mall and the clean-up of the collapse?
- b. What efforts were or should have been made to recover valuables from the Mall to return to their owners?
- c. What efforts were or should have been made to support local businesses that were put out of business as a result of the Mall collapse?
- d. What efforts were or should have been made to support individuals who were injured either physically or psychologically by the Mall collapse?
- e. Which authorities are responsible for the effective clean-up of the remainder of the Mall?
- f. Are such authorities effective at handling complaints by the Elliot Lake community with respect to the collapse of the Mall or the clean-up in a transparent and expedient manner?

Part III – Motion for Party Status

A. Background of the Moving Party

12. ELMAC is a community group comprised of members from the Elliot Lake area, lead by a Steering Committee of:

- a. Jean Pomerleau – a resident of Elliot Lake since 1957 and the funeral director of Alternative Funeral Services that was located in the Mall;
- b. Claude Morisset – a resident of Elliot Lake since 1979 who was in the Mall with his wife during the collapse; and
- c. Colinda Montpellier – a resident of Elliot Lake since 1980 and the owner/manager of the Curves franchise that was located in the Mall.

The steering committee's contact information and biographies are attached at Appendix 1.

13. At present, ELMAC has approximately 58 members from the Elliot Lake community.

The membership list is attached at Appendix 2.

14. ELMAC submits that the experiences of its membership will provide the Commission with an understanding of the tangible effects of the Mall collapse on the Elliot Lake Community. Attached as Appendix 3, ELMAC has provided five case studies to provide the Commission with some examples of the experiences of ELMAC's members.

15. ELMAC seeks to have full party standing for the Elliot Lake Inquiry. It seeks to have access to all documents provided to the Commission, to be represented by counsel, to make submissions on matter which come up during the course of the testimony which are relevant to its mandate, to cross-examine on testimony presented when appropriate, to present its own evidence (if that proves necessary), and to put forward proposals on policies, processes and procedures to prevent this type of problem from occurring again.

16. ELMAC's objectives are to:
- a. participate in the Inquiry to understand how the tragedy happened and how similar tragedies can be prevented in future;
 - b. support and advance the renewal of the community and its commerce at large;
 - c. provide information to the community in relation to that support and advancement;
 - d. advocate for its members and the community at large relating to such support and advancement;
 - e. co-ordinate activities of the association with those of similar organization, societies and individuals; and
 - f. such other complimentary purposes.

C. The Legal Test for Standing

17. The statutory test for standing is found in s. 15 of the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6, and provides that before making a determination with respect to a party's participation in the inquiry, the Commission shall consider:

- a. whether a person has a substantial and direct interest in the subject matter of the public inquiry;
 - b. whether a person is likely to be notified of a possible finding of misconduct under section 17;
 - c. whether a person's participation would further the conduct of the public inquiry; and
 - d. whether a person's participation would contribute to the openness and fairness of the public inquiry.
18. The Commissioner may determine the manner and scope of the participation of the persons granted standing, as well as their rights and responsibilities.¹

¹ The *Public Inquiries Act*, *supra*, s. 15(1).

19. In the *Cornwall* inquiry, Commissioner Glaude outlined the guiding principles which have been used to guide other commissioners on their respective decisions on standing and funding:

- a. The inquiry must be fair, full and complete. All relevant evidence must be considered.
- b. A balance must be struck between a thorough inquiry and completing the inquiry as expeditiously as possible.
- c. The forming of coalitions is appropriate only in those circumstances or situations where applicants have a similar interest or perspective, where there is no apparent conflict of interest, and where the relevant interest or perspective will be fully and fairly represented by granting standing to the parties as a group.
- d. The inquiry must be transparent and open.
- e. Commission counsel have the primary responsibility for representing the public interest.²

20. In the *Walkerton* inquiry, Commissioner O'Connor developed a general approach to the grant of standing based on the values of thoroughness, expedition, openness to the public, and fairness. He granted standing to anyone who satisfied the "substantial and direct" interest test in s. 5(1) of the *Public Inquiries Act*. As a result, he granted standing to a number of citizen groups who had a significant interest in the impact of the contamination and who had a significant interest in the circumstances and various causes that may have contributed to the contamination.³

21. Among the 21 groups to which Commissioner O'Connor granted standing were two citizens groups. Both "Concerned Walkerton Citizens" (CWC) and the "Walkerton Community Foundation" (WCF) were formed in response to the contamination.⁴ The CWC, who represented a large number of residents, demonstrated a "serious, genuine and continuing concern" about the

² See *Report of the Cornwall Public Inquiry*, Appendix K(1), *Ruling on Standing and Funding*, November 17, 2005 at 3-4.

³ See *Report of the Walkerton Inquiry: The Events of May 2000 and Related issues*, Part One, Appendix E(ii) at 69.

⁴ *Ibid.* at 70.

issues raised in Part I of the inquiry and was granted standing.⁵ The WCF, which was comprised of a coalition of service clubs and other traditional community groups, was also granted standing as it presented a different perspective than the CWC on the events that had occurred and in particular on the possible causes of contamination.⁶

22. In the *Cornwall* inquiry, a group of individuals titled the “Victims Group” were granted standing and funding on the basis that the traumatic and life-altering experiences that they faced when children constituted the subject matter of the inquiry and, therefore, like ELMAC, they had a direct and substantial interest in the inquiry and the recommendations flowing from it.⁷

23. There are obvious parallels between *Walkerton, Cornwall* and this Commission. All residents of Walkerton were seriously affected by the contamination and could be said to have a significant interest in the subject matter of Part I of the Inquiry. Similarly, all citizens of Elliot Lake can be said to have been affected by the collapse of the Elliot Lake Mall, the only mall in Elliot Lake, and the consequential closure of over 40 businesses. While Walkerton suffered a local health emergency, Elliot Lake suffered a local safety and commercial emergency. For that reason, it is submitted that Commissioner O’Connor’s decision to grant full standing to two community groups has substantial persuasive value towards the adoption of a similar approach here.

Part IV – Motion for Funding

A. Criteria for Funding

24. The Revised Rules of Standing and Funding, in reference to paragraph 11 of the Terms of Reference, provide that the Commission may make recommendations to the Attorney General

⁵ *Ibid.*

⁶ *Ibid.*

⁷ See *Report of the Cornwall Inquiry*, Appendix K(1), *Ruling on Standing and Funding*, November 17, 2005 at 17-18.

regarding the funding to participants in the inquiry, to the extent of that participant's interests where, in the Commissioner's view, the participants would not otherwise be able to participate without such funding.

25. The Revised Rules of Standing and Funding provide that motions for funding must include the following information:

- a. The person's contact information;
- b. The name(s) of the lawyer(s), if any, representing the person, together with the lawyer(s)' contact information;
- c. Evidence that demonstrates that a person does not have adequate financial resources that enables it to represent its interest;
- d. How it intends to make use of the funds and how it will account for the funds; and
- e. Whether the person wishes to make oral submissions in support of the motion for funding.

26. The Revised Rules of Standing and Funding also provide that the Commission will consider whether the applicant has attempted to form a group with others of similar interests.

B. ELMAC

27. ELMAC is lead by the Steering Committee. The contact information of the persons that form the Steering Committee can be found at Appendix 1.

C. ELMAC'S LEGAL REPRESENTATIVES

28. ELMAC proposes to retain a total of two counsel (one senior and one junior counsel) to be drawn from the law firm of Roy Elliott O'Connor LLP, with the periodic assistance of Feifel Broadbent Gualazzi LLP, and Roland Aubé, LLB.

29. Due to the length and complexities expected from the Inquiry, ELMAC expects that the position of senior counsel on this file may, be shared periodically, among Douglas Elliott, Jeff

Broadbent, and/or Roland Aubé. Junior counsel will be an associate lawyer from Roy Elliott O'Connor LLP.

30. Douglas Elliott is an experienced civil litigation practitioner and Law Society medalist with almost 20 years of experience in Charter, health and class actions litigation. Jeff Broadbent is an experienced personal injury lawyer and teaches upper year law courses as an adjunct professor at Algoma University. Roland Aubé has practiced law as a general practitioner in the Elliot Lake community since 1980. *Curricula vitae* and contact information for Mr. Elliott, Mr. Broadbent and Mr. Aubé are at Appendix 4.

D. ELMAC is Precluded from Participating in Inquiry Without Funding

31. ELMAC is a volunteer not-for-profit association and as such does not have financial resources necessary to participate in the Inquiry without funding. ELMAC's membership does not have the financial resources to retain counsel with the necessary experience to make a meaningful contribution to this Inquiry. 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. If ELMAC is denied funding its membership will effectively be unable to make a meaningful contribution to the Inquiry.

E. Purpose and Disbursement of Funds

(i) Disbursements

32. ELMAC will require reimbursement for disbursements for routine administrative needs, such as photocopying, meeting costs, printing, etc, and also for the travel and accommodation costs of its counsel during the hearing, pursuant to the Guidelines for Reimbursement of Legal Fees and Disbursements released on October 4, 2012. With respect to the accommodation

expenses given the limited hotel space available in Elliot Lake, ELMAC requests funding for a rental apartment at a cost not to exceed two hotel rooms at government rates.

(ii) Administrator of Funds and Description of Financial Controls

33. All funding monies will be placed in the client trust account of Roy Elliott O'Connor LLP. Roy Elliott O'Connor LLP is equipped with all necessary financial controls and accountability mechanisms for client trust accounts pursuant to the rules of the Law Society of Upper Canada. Roy Elliott O'Connor LLP will provide periodic accounts to ELMAC which will be approved by the Steering Committee prior to requests for reimbursement from the Province.

Instructions to pay disbursements will be directed from the Steering Committee.

34. The contact information for the administrator of the funds is as follows:

Brenda Shiach
Roy Elliott O'Connor LLP
200 Front Street West, Suite 2300
Toronto, ON
M5V 3K2
Tel: (416) 350-2491/ Fax: (416) 362-6204

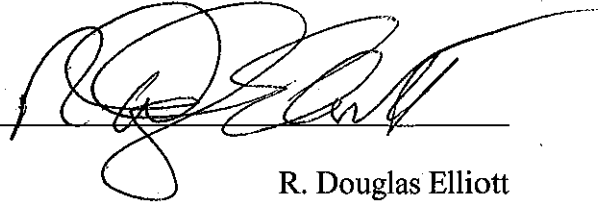
F. Oral Submissions

35. ELMAC requests that its counsel, and specifically Mr. Douglas Elliott, be permitted to make oral submissions in support of its Motion for Standing and Funding.

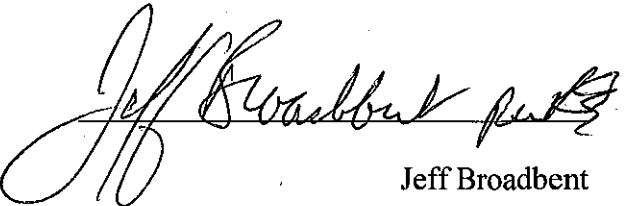
Part V: Conclusion

36. ELMAC respectfully seeks full standing at the Inquiry and asks that the Commissioner recommend funding as set out in Part III above.

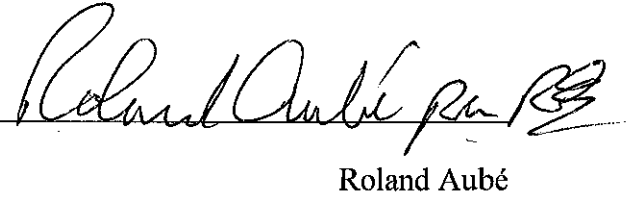
All of which is respectfully submitted.



R. Douglas Elliott



Jeff Broadbent



Roland Aubé

Appendix 1

Biographies of the members of the Steering Committee of ELMAC

Jean Pomerleau

Present Occupation: Owner/manager of Alternative Funeral Services (1999-present)

Resident of Elliot Lake since 1957

Education and Experience:

- **Funeral Director's Course from Cambrian College (1993-1995)**
- **Rigour and Equipment Operator for Rio Algom Mines (1976-1989)**
- **Rigour and Equipment Operator for Denison Mines (1974-1976)**

Contact Information:

**20 Cedar Place
Elliot Lake, ON P5A 2H2
705-461-7971**

Claude Morisset

Present Occupation: Retired in 1988

Resident of Elliot Lake since 1979

Education and Experience:

- **Mine Surface Construction and Administration for Rio Algom (1979-1988)**
- **Independent Contractor performing (1971-1979)**
- **Mine Surface Construction and Industrial Construction for Cecchetto and Sons and Inco (1960-1971)**
- **Post-secondary education in Business Management from Sault College and the University of Ottawa**

Contact Information:

**230 Westhill Rd.,
Elliot Lake, ON P5A 1A7
705-461-3354**

Colinda Montpellier

Present Occupation: Owner/Manager of the Elliot Lake Curves Franchise (July 2006 – June 2012)

Resident of Elliot Lake since 1980

Education and Experience

- **Manager of the Elliot Lake Curves Franchise (December 2003 – July 2006)**
- **Resource Teacher (for children with special needs) and co-manager at the Uranium Capital Nursery School (1989-2003)**
- **Diploma in Early Childhood Development from Cambrian College-Sudbury (1987-1989)**

Contact Information:

**58 Lawrence Avenue
Elliot Lake, ON P5A 3R1
705-848-9893**

Appendix 2

List of Elliot Lake Mall Action Committee Members

Column1	Mr Mrs Ms	First Name	Last Name
1	Mr	Barry	Allan
2	Ms	Elizabeth	Anderson
3	Mr	Yves (Joseph)	Audet
4	Ms	Shirley	Baskett
5	Mr	Aurele	Beaupre
6	Ms	Irene	Bourdages
7	Ms	Jean	Bourdages
8	Mr	Stanislaw	Ceglarz
9	Ms	Lorraine (Laurie)	Contant
10	Mr	Marc	Coulliard
11	Ms	Catherine	Deguire
12	Ms	Fay	Desilets
13	Ms	Gloria	Dinner
14	Ms	Natalie	Dufour
15	Ms	Diane	Ellerby-Jabre
16	Ms	Anna	Hamernick
17	Ms	Maureen	Harding
18	Ms	Cynthia	Hart
19	Mr	Jean-Marc	Hayward
20	Ms	Elisabeth	Holmes
21	Mr	David	Jenkins
22	Ms	Faith	Jenkins
23	Mr	Hervin	Jenkins
24	Ms	Lisa	Joalin
25	Ms	Georgelyne	Johnphillip
26	Mr	Brent	Johnson
27	Ms	Shirley-Ann	Johnson
28	Mr	Gerald	Joseph
29	Mr	John	Kearsley
30	Ms	Jennifer	Lalonde
31	Ms.	Patricia	Latour
32	Mr	Theodore	Legault
33	Mr	Joseph	MacEwan
34	Ms	Mary	MacEwan
35	Mr	John	Marceau
36	Ms	Colinda	Montpellier
37	Mr	Claude	Morisett
38	Ms	Therese	Morisett
39	Ms	Eleanor	Orchard
40	Mr	Walter	Orchard
41	Mr	Jean	Pomerleau
42	Ms	Elaine	Quinte
43	Mr	Jack	Quinte
44	Ms	Roberta	Rayburn
45	Ms	Barb	Regan

46	Ms	Heather	Richer
47	Mr	Michael	Robinson
48	Ms	Pauline	Roy
49	Mr	Ronald	Roy
50	Mr	Dale	Schell
51	Ms	Barbara	Swarek
52	Mr	August	Thomsen
53	Ms	Hanna	Thomsen
54	Mr	Agostino	Tocco
55	Mr	Robert	Von Zuben
56	Mr	Allen	Wildgoose
57	Ms	Kim	Williamson
58	Mr	Ron	Woolhead

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 Mall'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. Montpelier has been unable to retrieve any of her records.

Appendix 4

R. DOUGLAS ELLIOTT, L.S.M., B.A., LL.B.
200 Front Street West, P.O. Box 45, 23rd Floor,
Toronto, Ontario M5V 3K2
Telephone: (416) 362-1989
Fax: (416) 362-6204
rde@reolaw.ca

Mr. Elliott is a founding partner in the Toronto law firm Roy Elliott O'Connor LLP. He has been recognized by his peers as one of the "Best Class Action Lawyers in Canada" by *The Best Lawyers in Canada*, and as a repeatedly recommended expert in public law by *Lexpert*.

Education:

- Completed year one of a Bachelor of Arts degree at Laurentian University on a scholarship (1975-1976)
- Bachelor of Arts from the University of Western Ontario (1976-1979)
- Studied in Liège, Belgium on a Rotary Foundation Scholarship (1979-1980)
- Bachelor of Laws (1980-1982) at the University of Windsor and the University of Toronto
- Articles, Bassel, Sullivan & Leake (1983-1984)
- Called to the Bar of Ontario (1984)
- Certified as a Specialist in Civil Litigation (2003)

Selected Cases:

Mr. Elliott played a leading role in responding to Canada's tainted blood tragedy. Mr. Elliott was senior counsel to the Canadian AIDS Society¹ (CAS) at the Commission of Inquiry of the Blood System in Canada (Krever Inquiry) - 1993 to 1997. Mr. Elliott also represented victims of Canada's tainted blood scandal as president of the HIV-T Counsel Association and in numerous individual lawsuits. He was part of the counsel team in the national hepatitis C class actions, *Parsons v Canada* and *McCarthy v Canada*, which resulted in record settlements of over \$1 billion each.

Mr. Elliott has been active in HIV-related cases, frequently as counsel or the Canadian AIDS Society. The cases where he has appeared as counsel include *Canadian AIDS Society v. Ontario et al.* (testing for HIV without consent), *Canadian Blood Services v. Freeman* (gay blood donors), *A.G. (Canada) v. A.G. (Canada)* (Krever Inquiry review), *Vriend v. Alberta* (sexual orientation ordered added to Alberta human rights law), *Little Sisters Bookstore v. Canada* (customs law ordered varied due to discrimination against gay bookstore), *Latimer v. The Queen*, *Hodge v. The Queen* (CPP survivor benefits for common law couples), *Hodder v. The Queen* and *Fisk v The Queen* (CPP survivor benefits for same sex survivors). He currently acts for the Canadian HIV/AIDS Legal Network and others in a constitutional challenge seeking

¹ Canadian AIDS Society (CAS) is the national association of local AIDS organizations in Canada, comprising over 100 organizations in Canada. The Krever Inquiry investigated Canada's blood system, including the history of the tainted blood tragedy in Canada. CAS was the largest consumer group before the Krever Inquiry. Mr. Elliott was the senior counsel and participated in hearings which took place throughout Canada over a three-year period. In addition, when the Canadian Red Cross Society, Federal and Provincial governments and blood product manufacturers sought to restrict or suppress the Commissioner's report, Mr. Elliott was the senior counsel for CAS in these judicial review proceedings to and including the Supreme Court of Canada.

access to sterile injection equipment for prisoners.

Mr. Elliott represented a group of same sex survivors in a claim for survivor's pensions under the Canada Pension Plan, the first class action based on sexual orientation discrimination in the world: *Hislop v. Canada*. The resulting multi-million dollar judgment, affirmed by the Supreme Court of Canada, produced the largest financial recovery for gays and lesbians for discrimination anywhere in the world. His other public interest cases on LGBT issues include *M v. H.* (equal spousal support for same sex couples), *Trinity Western University* (right of private religious university with anti-gay code of conduct to educate public school teachers), *Hall v. Durham* (right of gay Catholic high school student to attend prom with same sex date), in *Halpern v. Canada* (same sex marriage) and in the *Reference Re: Same Sex Marriage*.

Mr. Elliott was senior counsel for Canadians for Jerusalem in the Federal Court in *Veffer v The Queen* (alleged religious discrimination in passports) and for the Canadian Arab Federation in the Supreme Court of Canada in *Charkaoui v The Queen* (immigration security certificates).

Selected Publications and Speaking Engagements:

Mr. Elliott has delivered and written various papers and articles in legal and mainstream publications.

Mr. Elliott has addressed various groups regarding access to justice, class actions, Crown liability, constitutional law, lesbian and gay rights and HIV related legal issues. His audiences have included the Law Society of Upper Canada, Advocate's Society, American Society of International Law, Canadian Bar Association, Canadian Institute, Commonwealth Lawyers Association Ontario Bar Association, Canadian Life and Health Insurance Association, Equality Forum, Ontario Human Rights Commission, International Association of Official Human Rights Organizations, International Bar Association, Pennsylvania Bar Institute, University of California (San Francisco), University of California (Los Angeles), University of Southern California, University of Toronto and the University of Windsor.

Selected Community Activities:

- Member of the Ontario Public Education Panel on AIDS - 1986-1988 (expert advisory committee on AIDS education appointed by Ontario Government)
- Member of the Canadian Bar Association – Ontario (CBAO) Committee on AIDS – 1984 – 1986 (the first lawyers group to comment on legal aspects of AIDS - 1986 Report)
- Chair of the HIV-T Counsel Association - 1992 to 1998 (committee of plaintiff's lawyers involved in HIV infected blood litigation)
- Chair of the Ontario Ministry of Health HIV & Insurance Working Group 1992 to 1996 (Expert advisory group appointed by Ontario Government to advise on HIV and insurance)
- Member of the National Task Force on AIDS and Injection Drug Use - 1995 to 1997 (Represented Canadian Bar Association as an expert on legal issues)
- Member of the Science Advisory Board to Health Canada, 1997 to 2001 (Expert advisory group on national health appointed by the Federal Minister of Health)
- Member, Equity Advisory Group, Law Society of Upper Canada, 1998 to 2001
- Founding President, International Lesbian and Gay Law Association, 1999 to 2005
- Member, Standing Committee on Equality, Canadian Bar Association, 1999 to 2001

- Member of the Board, Ontario Bar Assistance Program, 2002 to 2005
- Member of the Board of the Centre for Addiction and Mental Health Foundation 2005 to 2008
- Member of the Council of the Toronto Medical-Legal Society, 2006 to present
- Member of the Advocate's Society
- Member of the Toronto Lawyers Association
- Member of the Ontario Bar Association
- Member of the Canadian Bar Association
- Member of the Commonwealth Lawyers Association
- Member of the International Bar Association

Selected Awards and Recognitions:

- In 1995, the Advocacy Resource Centre for the Handicapped named Mr. Elliott their "Lawyer of the Year".
- In 1998, Mr. Elliott was presented with the Canadian AIDS Society's highest award, the Leadership Award. This was the first time that the Leadership Award was given to an individual, and only the second time the Award was granted.
- In 2005 he also received the SOGIC Hero Award from the Sexual Orientation and Gender Identity Committee of the Canadian Bar Association.
- In 2008, Premier McGuinty presented him with the Lifetime Achievement Award from Pride Toronto.
- In 2010, The Law Society of Upper Canada awarded him the Law Society Medal.
- In 2012, he was awarded the Queen Elizabeth II Diamond Jubilee Medal.

Other activities:

Mr. Elliott was an Alternate Chair of the Ontario Consent and Capacity Board (a mental health tribunal), a post he held for 10 years. He was also an instructor in civil litigation for several years in the Law Society of Upper Canada's Bar Admission Course.

Languages:

Mr. Elliott speaks French and English.

Curriculum Vitae

J E F F R E Y D A V I D B R O A D B E N T

**Felfel Broadbent Gualazzi
629 Queen Street East
Sault Ste. Marie, Ontario P6A 2A6**

(705) 945-8901 (Office)

(705) 946-0047 (Home)

(705) 943-0991 (Cellular)

EDUCATION

- | | |
|------------------------|---|
| 1994 to present | Regular CLE programming with several
Institutions including ATLA, OTLA, LSUC, etc. |
| 1993 | Bar Admission Program
Law Society of Upper Canada
Ottawa, Ontario |
| 1992 - 1993 | O' Hara Bastos Charlesworth
Kingston, Ontario |
| | Articles |
| 1989 - 1992 | Queen's University
Kingston, Ontario |
| | Bachelor of Laws |

1985 - 1989

York University (Glendon College)

Toronto, Ontario

Completed a Combined Honours Bachelor of Arts degree in Economics and Political Science. Graduated in Spring of 1989.

EMPLOYMENT / EXPERIENCE

April 2008 -

Adjunct Professor – Algoma University

Present

and Laurentian University

- responsible for creating and delivering various courses in the Law & Politics faculty, including but not limited to assembling all materials and instructional aids, creating the Syllabus, independently identifying critical areas of study to provide students with a strong foundation of the history and theory of same.

April 1994 -

Partner / Litigation Lawyer

Present

Feifel Broadbent Gualazzi

- joined the firm of Baxter Feifel Walz Broadbent, which evolved into Feifel Broadbent Gareau Gualazzi, now as it is with the judicial appointment of Mr. Justice Gareau. Emphasis of practice has been litigation in civil, criminal and administrative matters, including but not limited to Employment Law, Personal Injury, Criminal Law, Labour Law, Workplace Safety and Insurance, etc. I consistently have a very significant volume of files necessitating three full time administrative assistants being two law clerks and legal secretary, part-time support staff, and sharing of other support staff in the office. The low percentage of matters that reach trial are, I believe, indicative of my skills as a negotiator and ability to approach a file in a balanced, thoughtful and productive manner, not to mention exemplary trial record of matters that have reached trial. I have appeared and argued successfully before the Court of Appeal of Ontario.

January 1994 -

Lawyer

April 1994

Henry M. Lang, Q.C. - Sault Ste. Marie

- began employment in December upon completion of the Bar Admission course and before entering partnership, above.

May 1992 -

Articling Student

July 1993

O'Hara, Bastos & Charlesworth

- served articles with Terence G. O'Hara, concentrating on criminal law and working on some nine murders and other high profile cases.

Other Past and Present Positions and Affiliations:

- Member of the Law Society of Upper Canada
- Member of the Canadian Bar Association
- Member of the Association of Trial Lawyers of America
- President of the Sault Ste. Marie Diabetes Association
- Director of the Provincial Board of the Canadian Diabetes Association
- Director of the Algoma District Lawyer's Association
- Director of Breton House Recovery Home
- Director of the Algoma Community Legal Clinic
- Director of the Children's Aid Society of Algoma
- Director of Sault Chapter of Ducks Unlimited (Conservation Group)

Roland Henri Aubé

- Curriculum Vitae -

LAW OFFICE

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Telephone: (Office) (705) 848-6993 Fax: (705) 848-8621
Telephone: (Home) (705) 848-6278 E-mail: rha@aubellex.ca

EDUCATION

1960 - 1965 Primary School in Timmins, Ontario
1965 Le Collège du Sacré Coeur, Sudbury, Ontario
1972 - 1973 Laurentian University, Sudbury, Ontario (Political Science)
University of Ottawa, Ottawa, Ontario
(Political Science and Business Administration)
1974 - 1977 Queen's University, Kingston, Ontario Bachelor of Laws

EMPLOYMENT HISTORY

While attending high school and university, obtained part-time and summer employment in a great variety of industries ranging from gold mines to employment as municipal bus driver, railroad hand and junior forest ranger. Also worked in the circulation and advertising departments of large newspapers in Sudbury (The Sudbury Star) and Ottawa (Le Droit). In addition, was employed underground at INCO Ltd., Sudbury, Ontario, for one year and worked for a mortgage company in Sudbury for two years. Was employed by the Department of National Defence in West Germany as Radio Station Manager for the Canadian Forces Network in 1970 - 1971. Throughout university, was intermittently self-employed as a construction contractor. Part owner and Vice-President of a small corporation operating pharmacies in Northern Ontario for fourteen years. (1975 -1990)

1980 Called to the Bar of the Province of Ontario
1980 - Present Aubé Law Office: general law practice including real estate, corporate law criminal law, family law, wills, estates and general litigation, serving the communities of Elliot Lake, Blind River and the North Shore of Lake Huron

INVOLVEMENT IN COMMUNITY AND PROFESSIONAL ORGANIZATIONS

1990 - 1996	St. Joseph's General Hospital Elliot Lake, Ontario	Member of Board of Trustees Vice-Chairman Chairman of Oaks Drug and Alcohol Rehabilitation Project Chairman of Hospital Board of Trustees	[1990 - 1994] [1992 - 1994] [1994 - 1996]
1994 - Present	Superior Court of Justice (Ontario)	Deputy Judge: Small Claims Court (Algoma)	
1994 - Present	Department of Justice - Canada	Federal Prosecutor Standing Agent for the Attorney General for Canada (Algoma East) (now Public Prosecution Service of Canada)	
1999 - 2005	Fondation Collège Boréal (Sudbury)	Director, Elliot Lake Region	
2001 - 2008	Canada Pension Plan Review Tribunal	Tribunal Chair and Legal Member (Algoma) (Terms completed)	
1999 - Present	Elliot Lake and North Shore Community Legal Clinic	Director and Treasurer	
2008 - Present	Ontario Deputy Judges Association	Director (Northeast Region)	
1980 - Present	Member of the Law Society of Upper Canada		
	Membre de l'Association des juristes d'Expression française de l'Ontario		

PERSONAL Born June 16, 1946, Timmins, Ontario
Completely fluent in both of Canada's official languages
Married to Leslie Claire Aubé