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In 2011 pieces of concrete fell from the hollow core slabs

May 2011: The owner of Hungry Jack's restaurant discovers pieces of concrete protruding from the ceiling tile

Hungry Jack's Restaurant became a tenant of the Algo Mall in 2006. Owned and operated by Elaine and Jack Quinte, it was located in the food court, facing the lottery kiosk on the upper level of the Mall.¹

Like many of the other tenants located on the upper level, Hungry Jack's experienced leaks. The leaks occurred mostly in the final years, starting approximately at the end of 2010 and continuing into 2012. Initially, it experienced water leaks only a couple of times a year, but the frequency increased in 2011 and 2012.²

In May 2011, an incident occurred in Hungry Jack's that, if properly responded to by the Mall owner and the City of Elliot Lake, could have led to the closure of the Mall. At the very least, the Mall owner could have been forced to properly investigate the incident. Unfortunately, as with all the other warning signs, this incident was all but ignored by City officials and the Mall owner for fear that an investigation might lead to the closure of the Mall.

Mrs. Quinte recounted for the Commission the events that occurred in Hungry Jack's at the end of May 2011. Although she could not be sure of the exact date, she was reasonably confident that the incident had occurred in May 2011, a little over a year before the collapse. Mrs. Quinte was forthright and produced photographs to corroborate her account of the event. I have no reason to reject her evidence.

On the day in question, Mrs. Quinte arrived at Hungry Jack's at approximately 7:00 a.m. and noticed debris on the floor that she described as pieces of crushed concrete. When she looked up at the ceiling above the debris, she noticed something protruding from the ceiling tile. She described it as "a spearhead that had come through the tile." It was ultimately determined that two pieces of concrete had broken from the hollow core slabs above, one piece smaller than the other. Those pieces were protruding through the ceiling tiles.³

Mrs. Quinte immediately attempted to contact the Mall manager, Rhonda Bear, but was not able to reach her. She then called the front desk of the Hotel and requested maintenance staff. Paul Hachey and Joe Hammond, two of the Mall maintenance workers, went to the restaurant. The pieces of concrete had not fallen through the ceiling tiles but were merely protruding through them. Mr. Hachey retrieved pieces of concrete from the ceiling. Mrs. Quinte recalled that the pieces were "extremely heavy" and had a rough and dry texture. The first piece was approximately 24 to 30 inches long; the second piece was shorter, approximately 12 inches long. Mrs. Quinte estimated that the larger piece of concrete weighed 20 pounds. The two pieces were taken to Mrs. Quinte's office inside Hungry Jack's, where they remained until the day of the collapse. Mrs. Quinte testified that she held on to the pieces of concrete because it was "just proof and evidence that something had fallen through." Mr. Hammond and Mrs. Quinte took photographs of the concrete pieces.⁴

The photographs taken by Mr. Hammond and Mrs. Quinte depicted

- the wire mesh holding the insulation in place, through which the concrete had fallen;
- the larger of the two pieces of concrete that had fallen through the ceiling tiles; and
- the smaller of the two pieces of concrete that had fallen through the ceiling tiles (see figure 1.12.1).



Figure 1.12.1 Pieces of hollow core slabs fall through wire mesh into ceiling tiles at Hungry Jack's

Source Exhibit 2359

Ms. Bear arrived at the restaurant while the concrete was being removed from the ceiling. She advised Mrs. Quinte that she would notify Bob Nazarian and that they would have an engineer investigate the situation and provide a report. An engineer never went to the restaurant to conduct an investigation.⁵ Ms. Bear could not recall having advised Mrs. Quinte that an engineer would be called to investigate, but confirmed that she could have made such a statement at the time.⁶ Ms. Bear never documented the incident.

Mrs. Quinte did not make a complaint to the Ministry of Labour following the discovery of the fallen concrete. Ed Hudson confirmed that he was never notified that a piece of concrete had fallen through the ceiling tile at Hungry Jack's. Although he was at the Mall on June 1, 2011, in his capacity as a Ministry of Labour inspector, the incident was not brought to his attention.⁷

Mrs. Quinte testified that she followed up approximately two to two-and-a-half weeks after the incident and was advised by Ms. Bear that the Mall had taken no steps.⁸

The Mall owners are notified of the fallen concrete and do nothing in response

Although Ms. Bear had been working at the Mall for only a short time when she received the call from Mrs. Quinte,⁹ this event was one of many that had occurred since the start of her employment. Ms. Bear considered the incident in Hungry Jack's to have been a one-time occurrence and not symptomatic of a more serious problem. She forwarded the information to Bob Nazarian.¹⁰

Ms. Bear confirmed that the material shown to her by Mrs. Quinte appeared to be concrete, but that she did not touch it or pick it up.¹¹ She testified that, although the concrete had fallen from above Hungry Jack's, she did not believe it was an indication that more of the concrete throughout the building would be falling. She agreed that, without an investigation, she would not have any information about the state of the hollow core slabs throughout the building. She confirmed that the area from which the concrete had fallen had a lot of leaks; however, she never made the connection between the fallen concrete and the leaks in the area.¹²

Bob Nazarian confirmed that Ms. Bear telephoned to alert him to the incident. He indicated that, in response to the information provided to him, he called engineer Robert Wood to advise him of what had occurred and requested that he go to the Mall to have a look and prepare a structural report. Mr. Nazarian also indicated that he received photographs from Ms. Bear; however, the photographs were in black and white and he was unable to make out any details.¹³

Bob Nazarian alleged in his testimony that Ms. Bear advised him she had seen the material; it appeared to be fireproofing that had fallen off, it was not of concern, and she would advise him if anything new arose. Mr. Nazarian testified that he instructed Ms. Bear to call Mr. Wood if anything else occurred.¹⁴ He and Levon Nazarian both testified that Ms. Bear had described the material as "mushy."¹⁵

Ms. Bear's recollection of the details of the event in general was in keeping with the evidence given by Mrs. Quinte and other witnesses and was also significantly different from the evidence given by Bob Nazarian and Levon Nazarian. I have no reason to reject her evidence. She testified that she advised Bob Nazarian that a piece of concrete had fallen from the hollow core slabs above Hungry Jack's. Ms. Bear did not recall reporting the incident to Levon Nazarian. She specifically denied advising Bob Nazarian that the fallen material was fireproofing. Ms. Bear testified that the incident occurred early in her employment, and at that time she would not have known what fireproofing looked like. She denied describing the material as "mushy." She added that she never received instructions from Levon Nazarian regarding this incident and, in particular, did not receive instructions to contact Mr. Wood.¹⁶

Ms. Bear indicated that she did not recall receiving instructions from Bob Nazarian to contact an engineer. She testified that, if she had received those instructions, she would have followed them.¹⁷ Ms. Bear indicated she never thought to notify anyone at the City of Elliot Lake about the fallen concrete.¹⁸

Mr. Wood also contradicted the evidence given by Bob Nazarian and indicated that he was never advised that concrete had fallen in the Mall. Mr. Wood indicated that, if he had received notice, he would have been horrified. On reviewing the photographs taken by Mrs. Quinte and Mr. Hammond, he confirmed that he likely would have closed the Mall. Mr. Wood further elaborated on this statement and indicated that he was of the view that falling concrete was a serious structural concern which would have warranted closing the Mall.¹⁹

No evidence was presented to corroborate Bob Nazarian's recollection. In addition, he acknowledged that no report was ever prepared by Mr. Wood regarding the concrete and that no reference to the fallen concrete appeared in the report that was ultimately prepared by Mr. Wood in May 2012.²⁰

Levon Nazarian testified that it was June 2011 when he first learned that something had fallen through the ceiling of Hungry Jack's, and that this information had come from Ms. Bear. He gave a similar account to the one given by his father; namely, that Ms. Bear had assured him that the fallen material was fireproofing. Levon Nazarian testified that he had also asked Ms. Bear to advise Mr. Wood prepare a report on this issue, and on any other issues of concern in the Mall.²¹

Levon Nazarian initially testified that a structural report was being obtained in the summer of 2011 to fulfill the conditions to obtain financing from the Business Development Bank of Canada (BDC).²² He ultimately agreed that, as of June–July 2011, no one from Eastwood Mall, including himself, had had any discussions with a structural engineer about completing such a report.²³

Levon Nazarian confirmed that he received photographs of the fallen material, but he could not recall which of the photographs in Exhibit 2359 he had received. Levon Nazarian was given the opportunity to review the photographs during his testimony but was not prepared to agree that they showed concrete. He indicated that he preferred to go by what he said Ms. Bear had told him at the time, which was that the material was not concrete.²⁴ He was insistent that he preferred to rely on the information supplied to him at the time by Ms. Bear – despite the fact that she denied in her testimony having advised him that it was fireproofing, and despite the fact that she had no expertise in these matters.

There was no evidence presented to support the contention that Ms. Bear had been instructed to contact Mr. Wood, and certainly no evidence to indicate that Mr. Wood had been asked to prepare a structural report at any point in 2011. I reject Levon Nazarian's evidence that Ms. Bear had been instructed to contact Mr. Wood to investigate this issue. It is wholly unreliable, in my opinion. Mr. Nazarian also testified that he reminded Ms. Bear in early 2012 to tell Mr. Wood about the concrete incident in Hungry Jack's, when Mr. Wood was hired to prepare a structural report.²⁵ Once again, I do not accept this evidence.

This incident and the Nazarians' inaction serve to illustrate further their callous attitude toward Mall safety and their unwillingness to proactively ensure that the growing list of problems occurring on their watch was effectively remedied.

I am confident that, if Ms. Bear had been instructed to contact Mr. Wood about this incident, she would have done so. Ms. Bear had nothing to lose by contacting an engineer to have him come out to look at the fallen concrete. Bob and Levon Nazarian, in contrast, had much to lose by having an engineer go to the Mall to investigate. At the time this incident occurred, they were in negotiations with the BDC to obtain financing for the Mall. This incident, if fully investigated by an engineer, would have likely jeopardized the financing and potentially closed the Mall.

Although there was no evidence of active concealment of this incident, I accept the evidence of Ms. Bear that she never received instruction to retain an engineer to investigate the matter. No steps were taken by the Nazarians to investigate what caused the concrete to fall. Even if I were to accept that Levon Nazarian and Bob Nazarian had instructed Ms. Bear to contact Mr. Wood, they never followed up and took no steps to ensure that an engineer had been called. This incident and the Nazarians' inaction serve to illustrate further their callous attitude toward Mall safety and their unwillingness to proactively ensure that the growing list of problems occurring on their watch was effectively remedied.

The City of Elliot Lake is notified that concrete had fallen into the Mall from the hollow core slab

In the weeks and months that followed the discovery of the concrete that had fallen into Hungry Jack's, Mrs. Quinte informed three officials within the City of Elliot Lake about the incident: Councillor Al Collett, Mayor Richard Hamilton, and Darren Connors of the Fire Department.²⁶

The only individual who took any steps or made any attempt to bring this matter to the attention of the Elliot Lake Building Department was Councillor Collett. Mrs. Quinte testified that, although both Mayor Hamilton and Mr. Connors expressed concern about the fallen concrete, neither one of them provided her with any advice or direction on what to do about the situation.²⁷ Although Councillor Collett's evidence differs slightly from that of Mrs. Quinte, as to who notified him of the incident, he acknowledged being told about the fallen concrete.

A few weeks after the discovery of the concrete, Mrs. Quinte spoke to Councillor Collett and advised him that pieces of concrete had fallen through the ceiling tiles in her restaurant.²⁸ Although she did not specifically ask Councillor Collett to provide the information to City Council or the Building Department, she believed that, by informing him of the incident, she was effectively making a complaint to the City. Councillor Collett did not advise Mrs. Quinte that she was required to submit a written complaint to the Building Department to trigger an inspection.²⁹

Councillor Collett recalled that Jack Quinte, Mrs. Quinte's husband and the co-owner of the restaurant, told him that concrete had fallen in Hungry Jack's. He confirmed that he was also shown a piece of the concrete that had fallen through the ceiling tile. Following his discussion with Mr. Quinte, Councillor Collett immediately went to the Building Department and informed Bruce Ewald, the chief building official, of the incident.³⁰ Councillor Collett testified that, when Mr. Ewald was asked what steps he was going to take, he (Mr. Ewald) responded that "it would look very bad for the City to shut the Mall down"; to which Councillor Collett testified he responded: "[W]hat are we waiting for, somebody to die?"³¹

**"[W]hat are we waiting for,
somebody to die?"
– Councillor Collett**

Councillor Collett testified that he did not instruct Mr. Quinte to speak directly to Mr. Ewald because Mr. Quinte had made the complaint to him, and it was his duty, as a representative of the City, to bring the complaint to Mr. Ewald. Councillor Collett denied that Mr. Ewald advised him that Mr. Quinte himself was required to make a complaint to Mr. Ewald under the Property Standards By-law, or that it was improper for Councillor Collett to have made the complaint directly to Mr. Ewald.³² The incident was mentioned to other City councillors by Councillor Collett; however, he was unable to identify with whom he had shared this information.³³

Councillor Collett expected that Mr. Ewald would fulfill his obligations and address the complaint, and that it would not be necessary for him to follow up to ensure that something was being done.³⁴

Mayor Hamilton denied he was told of the concrete incident by Mrs. Quinte and testified that he learned of the fallen concrete in Hungry Jack's only after the collapse. He indicated that he learned of the incident from some of the City councillors and it was only two to three weeks after the collapse that he discussed the matter with Mr. Ewald. Mayor Hamilton denied that Councillor Collett had advised him and Council before the collapse. Mayor Hamilton denied seeing the piece of concrete before the collapse.³⁵ Mr. Connors was not called to testify on this issue.

The chief building official is aware that concrete had fallen from the hollow core slab in the Mall, but does not investigate

Mr. Ewald confirmed that he did speak to Councillor Collett about a piece of concrete falling into a restaurant. At the time, Mr. Ewald did not know who Mr. Quinte was or the identity of the restaurant in question. Mr. Ewald testified that, when he was informed of the situation, he indicated to Councillor Collett that he should have the restaurant owner contact him directly.³⁶ Mr. Ewald explained that it was his practice to direct councillors to ask complainants to contact him directly to ensure that he obtained the correct information. He agreed that the conversation with Councillor Collett constituted a complaint but, in Mr. Ewald's opinion, the councillor did not have enough information about the incident. Mr. Ewald agreed that, when it comes to matters of public safety, he has the authority to act in the absence of a complaint, and, in hindsight, the information received from Councillor Collett should have triggered action on his part.³⁷

Mr. Ewald testified that, despite his acknowledgement that the fallen concrete could be an indication of a potential structural problem, he did not investigate the incident because the conversation with Councillor Collett had taken place when he was on his way out of the office and he did not ask for the location of the restaurant.³⁸

At the time of the discussion with Councillor Collett, Mr. Ewald did not string together the following facts:

- A piece of concrete had fallen in the Mall.
- Nine months before the concrete fell in Hungry Jack's, the Mall owner told City Council that the roof had to be fixed and the rooftop parking eliminated.
- An order and a notice requiring structural engineering assessments had previously been issued by the City.
- Mr. Ewald testified that, if he had put all these events together, it would have been enough to trigger an inspection at the Mall.³⁹

Mr. Ewald confirmed that he did say to Councillor Collett: "[W]hat do you want me to do, Al, close down the mall." He explained that it would have been economically detrimental to the City if the Mall were closed down, but that he would have closed it had he known there was a structural problem.⁴⁰ Despite Mr. Ewald's acknowledgement that the concrete falling could be a sign of a potential structural issue, he never took any steps to investigate the concrete that had fallen in Hungry Jack's.

**"[W]hat do you want me to do, Al, close down the mall."
– Bruce Ewald**

Despite his expressed concern over the situation, Councillor Collett took no steps to ensure that it was adequately addressed. He did nothing beyond bringing the concern to Mr. Ewald's attention. Once that was done, he all but forgot about it. Councillor Collett clearly believed, and the photographs showed, that a piece of concrete had broken off the hollow core slabs and fallen. This incident should have set off significant alarm bells for the City of Elliot Lake and, in particular, the Building Department. It did not. Clearly, Mr. Ewald was less concerned with the safety of the public at the Mall and more concerned with the political and economic fallout of taking steps that might lead to a Mall shutdown if an investigation revealed a serious structural problem. It was only in hindsight, after the Mall had collapsed, that Mr. Ewald realized the information received from Councillor Collett should have triggered action on his part.

The response from the City was consistent with what had been done in previous years. Nothing.

The condition of the Mall deteriorates in 2011 and 2012

Numerous tenants complain about the leaks and state of disrepair

A document prepared on April 27, 2011, by one tenant, the Algoma District Services Administration Board, described numerous leaks in its Mall offices, causing water damage and staining of ceiling tiles.⁴¹ Dollarama management, in November 2011, described a roof that leaked whenever it rained or snow melted, coupled with stained ceiling tiles and light fixtures that had fallen down because the wires holding them up had rusted through.⁴² The manager of the Bargain Shop, who began employment in June 2011, said that the leaks in his store needed to be diverted using a bladder. The co-owner of Kreations & Things described the need for a similar mechanism in his store, which Mall maintenance staff installed to deal with a major roof leak.⁴³ The North Channel Literacy Council moved into the Mall in March 2012 and soon experienced a major leak in the director's office. This tenant began to explore moving out of the Mall as soon as possible, despite having just moved in.⁴⁴ The Commission received evidence of numerous other complaints and observations of this nature.⁴⁵

Numerous tenants or patrons of the Mall described Zellers and the lottery kiosk area – where the collapse occurred – as areas of particular concern for leaks.⁴⁶ Mrs. Quinte told the Commission about a beam in the food court area that was exposed by cracked drywall, and an “extreme amount of leaking” around the lottery kiosk area.⁴⁷ Councillor Collett, also a master electrician who occasionally did work at the Mall, confirmed in his evidence that the kiosk was a major area of leakage. He was at the Mall only a month before the collapse, working in the upper kiosk area. He opened up the ceiling tile right above the kiosk area and saw an electrical junction box filled with water that had shorted out as a result. He drained the water and repaired the short circuit. He said he could see the water dripping off the beams.⁴⁸

In addition, the Commission received evidence of serious disorder and disrepair at the Mall in its final years. Some of the complaints related to air conditioning and heating issues, problems with electricity and broken light fixtures, cracks in the ceiling and drywall, and broken-down or malfunctioning escalators and elevators.⁴⁹

Mortgage inspection in October 2011 described the deterioration

On September 14, 2011, the Canada Mortgage Inspection Service, on behalf of the Royal Bank, the administrator of Eastwood's mortgage, inspected the Mall. The inspection report had some positive findings, but generally it provided an unflattering picture of the property for the lender. Following is a sampling of the comments made:⁵⁰

- “The mall roof leakage issue is still the most pressing issue and seems to be improving, but not resolved.”
- “The hotel roof is new and is in excellent condition.”
- “Roof leaks continue to cause interior issues with ceiling and drywall / plaster problems.”
- “The main mall corridor has poor appeal due to the numerous vacancies and dated appearance ...”
- “A new mall / hotel manager has been hired and has been on the job for a few months. This is the latest employee in a long list of managers. The new manager, Ms. Rhonda Bear is a big improvement over prior managers ... Notwithstanding Ms. Bear, the management is still controlled by owner Mr. Nazarian who has shown over the years to be inadequate for the management duties.”
- “Shoppers Drug Mart has recently vacated the mall for their own nearby building. Scotiabank is constructing a new building nearby and will vacate the mall when the new building is available.”

Scotiabank leaves the Mall in 2011 because of the leaks

The situation at the Scotiabank went from bad to worse during 2011. As mentioned, the bank had left the Mall before the end of the year despite Eastwood's attempts to keep it there. On February 18, 2011, a report entitled "Proposed Branch Relocation, Elliot Lake, ON," prepared by Scotiabank's Real Estate Department, cited a deteriorating building and continuous leaks as reasons for relocation:

Ontario Region, with the support of Real Estate ... recommends relocating our Elliot Lake branch due to a deteriorating mall building that experiences ongoing rooftop water leaks which have adversely impacted our branch and several other retailers. We have incurred repeated damage to our leasehold improvements, frequent temporary closures which are disruptive to customers and operations, and periodic mould damage which is an environmental health risk for staff and customers.⁵¹

Councillor Collett went to the Scotiabank branch on October 20, 2011, because he was called there by the Fire Department in response to a burning smell. He insisted on being paid in cash before starting to work. Once paid in advance, he discovered that a bucket full of water, up above the lighting, had spilled onto the electrical disconnect and transformer and caused shorting and sparks. He was forced to disconnect the main power, and, as a master electrician, his duty was to phone the Electrical Safety Authority to carry out an inspection. He phoned the authority and understood that it warned the Mall that, as soon as Scotiabank vacated the premises, the situation had to be remedied permanently.⁵²

The Library, which continued to experience leaks in 2011 and 2012, begins to actively explore moving to a new location

On March 14, 2012, Pat McGurk, the chief librarian, sent a letter to Lesley Sprague, the City clerk, asking that a resolution be brought before City Council to allow the Library board to continue to explore the development of a stand-alone library. The Library wanted to vacate the Mall because of the leaks.⁵³ Council adopted a resolution supporting these efforts, with all but Mayor Hamilton supporting it. Councillor Collett said the support for the motion related to the fact that the Mall continued to leak.⁵⁴

Zellers was fed up and issued a notice of default

By November 2011, Zellers' management was fed up with the leaks, which still had not been fixed after years of promises to do so.⁵⁵ Zellers wrote to Eastwood on November 28, 2011, with formal notice of default on certain leasing obligations, including the fact that the roof had not been properly repaired and continued to leak. Rica Taylor, the real estate property manager with Zellers' parent company, Hudson's Bay Company, described the cumulative situation:

Since May 2007, Zellers Inc. has on numerous occasions advised the Landlord of recurring roof leaks in the Premises, by way of telephone and email, and has repeatedly asked the Landlord to effect whatever repairs may be necessary to stop water from leaking into the Premises. As you are well aware, the roof work that the Landlord has undertaken to rectify this situation to date has proven inadequate, and we continue to experience recurring leaks at numerous locations throughout the store.⁵⁶

Roof repairs were sporadic and followed the same unsuccessful pattern

Eastwood had no new plans for roof repair other than the usual patching and sealing of cracks. At some point in 2012, it purchased a new type of sealant from the United States, at a cost of \$14,500.⁵⁷ Otherwise, Eastwood spent very little on parking deck repair, perhaps no more than \$30,000 in the year preceding the collapse, most of which was charged back to the tenants as common area expenses.⁵⁸

Ms. Bear told the Commission that, during 2011 and 2012, right up to the time of the collapse, the usual patching procedures were used. Mall maintenance staff, not independent professionals, continued to do the work, with the added likelihood that high turnover and understaffing affected the quality and scope compared to previous years.⁵⁹

March 2012: One more agreement to sell that does not proceed

On March 9, 2012, a numbered company (2266980 Ontario Corp.) entered into a signed agreement of purchase and sale with Eastwood for \$7 million, set to close on June 30, 2012, subject to the due diligence inquiries. Levon Nazarian testified that this offer, which if completed would have been scheduled to close one week after the Mall collapse, was abandoned by the purchaser within the due diligence period because it was concerned about the effects of the Bank of Nova Scotia's departure on rents and the Mall's image.⁶⁰

April 2012: Mr. Ewald is reminded again of the roof problem and again does nothing

In April 2012, Mr. Ewald was told by the Fire Department that a new material was being used to seal the control joints on the parking deck. Mr. Ewald was concerned that the product created extra weight.⁶¹ On April 30, 2012, he wrote to Ms. Bear, copying Fire Chief Paul Officer, saying that Eastwood needed a permit for this type of repair:

Hi Rhonda, the Ontario Building Code Act requires a permit for any material alteration to a structure or part of a structure. This is a material that is not currently part of the structure and probably is adding additional weight to the roof system. As I understand it this material will be utilized on the required control joints on the roof and a review by an engineer would be required to determine if the added weight poses any issues and what effects this product will have on the control joints.⁶²

Mr. Ewald explained that, at the time, he did not understand that Eastwood was actually applying only a new type of caulking. He thought it was a product that had some weight to it.⁶³ That same day, Mr. Wood and Mr. Saunders sent a letter to Ms. Bear, copying Mr. Ewald, about the product being applied to the roof, saying that the repairs were necessary to protect the structure below and that the application raised no structural concerns:

[O]ngoing parking deck waterproofing repairs are a requirement to protect the structure below. We have no structural concerns over the additional loading of caulking or waterproofing. We would be more concerned about ongoing maintenance not being completed this spring.

...

We trust that the above alleviates any concerns of the City of Elliot Lake. This caulking is a temporary fix until a permanent solution is provided to waterproof this structure.⁶⁴

Mr. Ewald said this letter satisfied his concerns about weight. He agreed that the engineers were saying in this letter that the caulking repairs Eastwood was making were only a temporary solution. He did not take from the letter that the engineers had structural concerns about the building if not waterproofed, but instead that the engineers felt it important that waterproofing repairs get done at that time of the year.⁶⁵ He agreed, though, that the engineers were saying in this letter that the caulking was not good enough as a long-term solution. He further agreed that in August 2011 Eastwood had said it wanted to find a long-term solution and that in 2009 he had ordered the leaks to be fixed, but the company had yet to do so. He reiterated that he needed a complaint before he could again order Eastwood to fix the leaks:

Again, the by-law is complaint-driven.

Once we close a file, the file is closed. If someone complains after that, we get it started back up, it starts all over again.⁶⁶

June 2012: BDC refinancing is put in place, but it would not have provided enough money for roof to be fixed

Negotiations with the BDC continued into 2012. In March 2012, the BDC proposed some amendments, including a holdback of the \$55,000 for the purchase of the City land, until an executed agreement of purchase and sale was in place.⁶⁷ The new loan, if it had gone through, would have been amortized over 30 years, instead of 10, which would have created significantly more cash flow for Eastwood because monthly mortgage payments would have been significantly less (approximately \$20,000 less per month, according to Levon Nazarian).⁶⁸ The amended loan offer also included a provision that stated:

Provide written quotes and/or invoices to support programmed realty improvement of \$445,000 for the realty pledged as security. The budgeted cost should include all necessary roof repairs and resealing of roof membrane to ensure it is waterproof going forward.⁶⁹

Levon Nazarian testified that this condition was later changed to a requirement that Eastwood simply show realty improvements to the Mall of that amount, which he said it did by providing proof of the \$250,000 spent on a new HVAC system; the \$100,000 spent on the Hotel roof; and money spent on painting, remedying *Fire Code* deficiencies, and possibly other repairs. He said the BDC removed the requirement that Eastwood show how it was going to fix the parking deck roof. Levon Nazarian did not have any documents to this effect and never provided any to the Commission despite having been asked to do so. He insisted, though, that the BDC was satisfied on this point at some time before the collapse.⁷⁰

Bob Nazarian testified that the financing was approved and the money to pay off the Royal Bank mortgage was in the possession of the lawyer representing the BDC. He told the Commission that he signed the necessary documents on the Friday before the collapse and the money would have been advanced on Monday, June 25, 2012, but for the collapse.⁷¹ The Royal Bank issued a discharge statement indicating that it would discharge the Computershare mortgage on payment of \$2,631,868, a figure that indicated the bank was not demanding any prepayment penalty and took account of the maintenance reserve fund of \$352,570 into which Eastwood had been required to pay.⁷²

According to Bob Nazarian, if the company had received this money, it would have been in a position to proceed with the parking lot and waterproofing projects.⁷³

The BDC loan offer required that Eastwood provide proof within six months of the loan being made, by way of a certificate from an engineering firm, that the roof had been waterproofed.⁷⁴ Yet before the collapse, and with the approval of the loan so apparently imminent, Eastwood had no contracts in place to do the waterproofing and construction work, nor had it consulted with anybody.⁷⁵

Levon Nazarian insisted the intent was to continue with Philip Sarvinis's revitalization plans to end parking on most of the roof, install a traditional flat roof that could not be parked on, and build a new parking lot on the land to be purchased from the City. (Mr. Sarvinis was the engineer who Eastwood had contacted in 2010.) He agreed that Mr. Sarvinis estimated the cost to be at least \$1.5 million. Even if Eastwood had tried to do the work less expensively, as it no doubt would have, Levon Nazarian agreed it would still have cost something close to that figure.⁷⁶

The BDC loan was \$3.3 million, of which \$2,631,868 would have been used to pay off the Computershare mortgage, leaving only \$668,132. Mr. Sarvinis had actually estimated that the cost of putting a conventional roof on most of the roof deck, putting a thin membrane around the Hotel, and building a new parking lot would have been between \$1.7 million and \$2.1 million.⁷⁷ The City was demanding \$55,000 for the land needed for the new lot.

Both Bob and Levon Nazarian agreed that the cash remaining after the BDC loan paid off the Computershare mortgage was only enough money to start the work, but not complete it. Levon Nazarian told the Commission that Eastwood planned on doing the work in stages, but "we hadn't planned that far ahead, sir."⁷⁸ He could not even say what the plan was and how the company would accommodate tenant parking needs in the interim: "We had to get this loan from the BDC, get everybody together, negotiate it, see how we could make it work for everybody, and go from there."⁷⁹

Commission counsel suggested to Levon Nazarian that the real plan was to sell, but he insisted this suggestion was not correct and pointed to the amount they spent on consulting costs and the meetings with the City. He called the suggestion "insulting."⁸⁰

I could not disagree more. What is insulting is his categorization of the suggestion. Although Eastwood may have intended to spend some of this money on the roof, Bob Nazarian's track record speaks for itself. Eastwood was at least \$1 million short of the money necessary to do the job correctly. It had no plan and no contracts in place, despite loan approval being apparently imminent. The City land had not yet been purchased. Bob Nazarian had a history of making false statements and baseless promises. For all these reasons, I place no stock in the assertions made by both Bob and Levon Nazarian that they were on the verge of fixing the problem. I can conclude only that Bob Nazarian's plan was to do what he had done since he had bought the Mall – the absolute minimum necessary – while he tried to sell it.

Even if Eastwood had proceeded with Mr. Sarvinis's plan, parking would have remained in the area where the Mall eventually collapsed. Nothing Eastwood claimed to be planning could have prevented the collapse.

I place no stock in the assertions made by both Bob and Levon Nazarian that they were on the verge of fixing the problem. I can conclude only that Bob Nazarian's plan was to do what he had done since he had bought the Mall – the absolute minimum necessary – while he tried to sell it.

Ministry of Labour – involvement with the Mall in 2012 and before

The Ministry of Labour visited the Mall at least 25 times between 2007 and May 2012

After Ralph Regan retired from the Ministry of Labour in 2005,⁸¹ Elliot Lake did not have a dedicated industrial inspector until the latter part of 2007.* The new industrial inspector's name was Ed Hudson. He started with the Ministry of Labour in 1984 and retired shortly after the collapse, in October 2012, having worked his whole ministry career as an industrial inspector.⁸² Mr. Hudson's area of responsibility stretched from the District of Sudbury across to part of the City of Sault Ste. Marie, with Elliot Lake only a small part of his territory. He was responsible for "hundreds and hundreds of workplaces."⁸³

Despite the fact that Mr. Regan had seen evidence of leaks at the Library in 1995 and again in 2005, there was essentially no transfer of this or similar information between Mr. Regan and Mr. Hudson. Nor did Mr. Hudson look up past complaints related to Elliot Lake or the Mall. He was satisfied by the fact that there were no outstanding orders in the Elliot Lake area.⁸⁴ Mr. Regan testified that he may have met Mr. Hudson for coffee at some point, but they did not discuss the situation at the Mall.⁸⁵

From 2007 to 2012, Mr. Hudson visited the Algo Centre on 25 different days for more than 30 inspections or follow-ups.⁸⁶ With the exception of one visit in January 2012, all Mr. Hudson's visits related to matters not having to do with the leaky parking deck. Following is a list of the businesses visited:

- Foodland on December 4, 2007, and April 15, 2008, in relation to a leaky water pipe⁸⁷
- Peachy's on February 4, 2009⁸⁸
- Elliot Lake Retirement Living on March 24, 2009⁸⁹
- Hungry Jack's on April 2, 2009, to follow up on orders from a December 2008 visit⁹⁰
- Foodland on April 17, 2009, with follow-up on June 2, 2009⁹¹
- Stella's Place and Allie Katz on June 3, 2009, with follow-up on August 13, 2009⁹²
- Shoppers Drug Mart on July 7, 2009, as follow-up to a November 2008 order⁹³
- JJ's Pub and Grill on September 17, 2009, with follow-up on October 8, 2009⁹⁴
- Eastwood Mall Inc. on October 9, 2009, with respect to workers on the roof without proper training on fall arrest and use of a scissor lift⁹⁵
- Job Connect on November 26, 2009, in relation to an investigation at a different location⁹⁶
- Chris' Bar and Grill on December 4, 2009, with follow-up on January 13, 2010⁹⁷
- Pet Valu on March 18, 2010⁹⁸
- Interior Solutions on March 18, 2010⁹⁹
- Foodland and Eastwood Mall Inc. on November 17, 2010, and Eastwood Mall Inc. on January 7, 2011, in relation to pipe repairs and repair safety practices¹⁰⁰

.....

* Hudson testimony, July 8, 2013, pp. 14763–4. Inspectors from elsewhere may well have conducted inspections in Elliot Lake during this time frame. The record is unclear in this respect.

- Algoma Health Unit on January 7, 2011, and February 9, 2011¹⁰¹
- Algo Hotel on June 1, 2011, and August 26, 2011, for routine inspection and follow-up¹⁰²
- Eastwood Mall Inc. on January 11, 2012, in relation to complaints of a leaky roof, faulty escalator, and mould (discussed below)¹⁰³
- Elliot's Not Here on February 8, 2012, April 11, 2012, and May 24, 2012¹⁰⁴
- Alpine Flowers and Gifts on May 24, 2012¹⁰⁵

In addition to having visited this wide selection of sites within the Mall, Mr. Hudson recalled staying at the Algo Hotel on two occasions and occasionally eating at the food court during his visits. He entered Zellers as a customer, but never went to the Library or Scotiabank in any capacity.¹⁰⁶

Mr. Hudson was in the Mall on December 4, 2007, for an investigation at Foodland. This was a particularly bad day for leaks at Zellers. Photos of the store that day (figure 1.12.2) show large numbers of missing ceiling tiles and prominent yellow bladders suspended from the ceiling to catch roof leaks.¹⁰⁷ Mr. Hudson could not recall seeing missing ceiling tiles at any of the times he went into Zellers, and he did not go into the store on this particular day.¹⁰⁸

If Mr. Hudson had inspected Zellers in December 2007 or January 2008 and asked for the minutes of the Health and Safety Committee, he would have seen references to ceiling leaks and wet, slippery surfaces and indications that the problem was ongoing. He agreed that these references in the minutes would have indicated health and safety issues at the store.¹⁰⁹ Indeed, when shown the minutes' continuing references to an ongoing leaky roof, through 2008 and 2009, he said that, if he had seen these reports or the photos, it would have led him to ask more questions. He would probably also have spoken to the owner and possibly engaged a Ministry of Labour engineer.¹¹⁰

Mr. Hudson did not, however, review the Zellers minutes or observe the leaks in December 2007 or on any other day. Indeed, he told the Commission that, on all 25 occasions that he went to the Mall, he did not see any leaks or indications of parking deck leakage, such as tarps, hoses, and buckets.¹¹¹ I am skeptical of this assertion from Mr. Hudson, given the evidence I have heard elsewhere of the widespread signs of leakage throughout the Mall. However, I am not able to conclude that Mr. Hudson was misleading the Commission on this point.



Figure 1.12.2 Conditions in Zellers the day a Ministry of Labour inspector visited the Mall in December 2007

Source Exhibits 12-149, 12-150

The Ministry of Labour received an anonymous complaint about the roof leaks in December 2011

On December 15, 2011, the Ministry of Labour received an anonymous complaint about the health and safety of the workers at the Mall due to “mold, roof leaking and unsafe escalator.” The matter was assigned to Mr. Hudson.¹¹² Mr. Hudson inspected the Mall on January 11, 2012.¹¹³ This was his first and only visit to the Mall to deal specifically with the leaking roof.

During his very brief inspection, Mr. Hudson went into the food court area and actually purchased a lottery ticket at the kiosk under the eventual collapse area. His evidence was that he inspected the food court area visually and did not notice any leaking, puddles, buckets, tarps, or hoses. He did not, however, enter any of the businesses to check for leaks, nor did he ask questions of employees. He chose, instead, to go back upstairs to meet directly with the Mall manager, Ms. Bear, in her office.¹¹⁴

Mr. Hudson and Ms. Bear briefly discussed cleaning of mould (a topic they had covered in a previous meeting). The conversation then turned to the leaks. Ms. Bear told Mr. Hudson that the roof did in fact leak.¹¹⁵ However, Mr. Hudson did not ask Ms. Bear how long the problem had existed or where it was occurring. Instead, he was satisfied that the Mall had a maintenance and prevention program and was on top of the issue.¹¹⁶ He did not ask to meet with any health and safety representatives or to view any minutes of their committee meetings.¹¹⁷

In his official report on the visit, Mr. Hudson described the outdoor parking and noted that Eastwood Mall had plans to deal permanently with the leaks in the spring or summer of 2012:

Top floor of most of the mall is outdoor parking to accommodate the needs of the mall & its tenants. Leaks have occurred in the past despite a snow removal program which involves and includes rubber blades

Status:

... On going maintenance program is in place to patch leaks and attempt to identify source location.

... Eastwood Mall are evaluating their options and will be dealing with this problem on a permanent basis spring / summer 2012.¹¹⁸

Despite learning that the roof was leaking, Mr. Hudson did not issue an order of any kind, such as one requiring that the leak be fixed. The following excerpt from his evidence is indicative of his view that a leaky roof was not necessarily a contravention, especially when he was learning of leaks at the Mall for the first time and seeing action on the part of the owners:

Q. Now, why was it that you did not issue an order in this case?

A. Because a roof or something that is leaking is not necessarily a contravention to workers. Again, this was the first time that I had become aware on this day of this roof leaking, period. So my actions or the actions of Ms. Bear and what she was doing with her maintenance program and her continued maintenance program, patching, and what she was going to do was more than satisfactory.¹¹⁹

During the January 2012 inspection, Mr. Hudson's investigation of the complaint about the unsafe escalator was cursory, at best. Essentially, he appears to have noticed that the escalator was running (although he could not say so with certainty) and therefore concluded that it was safe:

Q. Okay, so you satisfied yourself as to the adequacy of your inspection by virtue of the fact that you don't recall it not working?

A. That is right. I thought ... they were working, that was fine. This whole complaint was anonymous. It was very vague, and it was very first-time only.¹²⁰

It is worth repeating that the complaint was that the escalator was unsafe, not that it wasn't working. Mr. Hudson clearly did nothing to investigate this aspect of the complaint. Indeed, the Commission learned that, on May 30, 2012, the Technical Standards and Safety Authority actually ordered one of the escalators at the Mall out of service for safety reasons.¹²¹

Mr. Hudson told the Commission that it had been his intention to follow up on Eastwood Mall's progress in July 2012.¹²² He returned to the Mall on other visits before the collapse, including for inspections in April and May 2012, but he did not inquire about whether anything had been done to fix the leakage or whether the leaks persisted. On those occasions, he again said that he did not see evidence of leaks.¹²³

Sophie Dennis, the assistant deputy minister (Operations Division) of the Ministry of Labour, was asked to comment on Mr. Hudson's January 2012 visit. She agreed that, in such a case, it would have been good practice for the inspector to get more information by speaking to patrons or workers about the leaks. Similarly, it would have been reasonable to ask questions about the escalators, although it would have been beyond Mr. Hudson's skill-set to actually inspect them.¹²⁴

In contrast, Roger Jeffreys, the provincial engineer for the province, felt Mr. Hudson's visit was adequate, stating that leaks are a frequent occurrence at buildings and are usually fixed. In this case, Mr. Hudson was not aware that the leaking had been going on for 30 years and did not ask more about the leaks because he did not have an idea of the severity of the problem.¹²⁵

I am of the opinion that Mr. Hudson's investigation of this anonymous complaint was perfunctory, incurious, and inadequate. At a minimum, Mr. Hudson should have spent more time looking at other parts of the Mall and asking questions of employees and health and safety representatives at the Mall, rather than going straight to the owner after only a cursory review.

I am of the opinion that Mr. Hudson's investigation of this anonymous complaint was perfunctory, incurious, and inadequate.

The Ministry of Labour received another complaint about leaks at the Mall – two-and-a-half weeks before the collapse

On June 4, 2012, Robert Comeau, an employee at Zellers in the Mall, sent a complaint about the leaks in the store to the Ministry of Labour's general email address:

I work at the Zellers store in Elliot Lake ON 151 Ontario Ave and we have water leaks in the roof so bad that the lights in some areas kicked off. Buckets are all over the floors and shelves to catch water as well as all through the mall. I believe the air quality is poor as I'm in the store for half an hour when I start to get head aches light headed. When I'm outside i feel better within half hour. I would love to have someone come in and inspect and take air samples as this is an ongoing problem that the mall owner is aware of but seems to do nothing about. For 3 years he says he will fix it but it is getting worse. Could someone help us as I feel my health and my fellow workers health is on the line. Thank you."¹²⁶

On June 5, 2012, Mr. Comeau received the following reply from the Ministry of Labour:

Testing for air quality is the responsibility of the employer or the building owner.

If you have a safety concern that your employer (or the building owner) is unwilling to resolve, then you can call our Health and Safety Contact Centre at 1-877-202-0008 and complain.¹²⁷

Ms. Dennis agreed this was a specific complaint and that the complainant was requesting an inspection. The complaint, she said, should not have been turned back to Mr. Comeau, but should instead have been sent along directly to the Health and Safety Contact Centre mentioned in the reply email.¹²⁸ Mr. Comeau actually asked for a follow-up to his email after the collapse at the Algo Mall. On June 24, 2012, he wrote the following email:

Could you reply to my first email about the water leaks and air quality as now the roof came down and would like to see my first email.¹²⁹

The response, which came from the same individual within the Ministry of Labour, was again that Mr. Comeau should contact the Health and Safety Contact Centre himself:

If you want a safety inspector to investigate a complaint, you need to call the Health and Safety Contact Centre ... and ask to speak to an inspector.¹³⁰

Ms. Dennis explained during her testimony that, as a result of this series of emails, the Ministry has changed its process so that complaints of this nature are sent directly to the Contact Centre.¹³¹ Once received by the Contact Centre, the complaint becomes an event and is dispatched into the field; at this point, the receiving office makes an assessment of the urgency of the matter.¹³²

The response from the Ministry of Labour employee was obviously inadequate. He twice re-directed Mr. Comeau to the Contact Centre instead of simply putting the complaint through directly. Time and experience will test the sincerity of the Ministry's commitment, expressed by Ms. Dennis, to see that this situation does not happen again.

The Algo Mall is inspected one last time before the collapse; the signs of distress are missed once again

Robert Wood is suspended by the Professional Engineers of Ontario but continues to work

On November 16, 2011, Robert Wood's licence was suspended by the Professional Engineers of Ontario (PEO). The suspension was the result of a disciplinary matter involving errors made by Mr. Wood on the design and calculations for a bridge project.¹³³ Following his suspension, Mr. Wood continued to work as an engineer with his company, M.R. Wright. Because he was an unlicensed engineer, all reports prepared by him containing professional engineering advice were to be reviewed and signed by a professional engineer, duly licensed in Ontario.¹³⁴ No notice was sent to Mr. Wood's clients advising them of his suspension.¹³⁵ Mr. Wood did, however, testify that he had advised most of his major clients that he had retired from the practice (he never advised them of his suspension) and was no longer a professional engineer.¹³⁶

During his testimony, Mr. Wood was reluctant to admit to mistakes he may have made. In my view, there were times when, despite the obvious being put before him, he deflected or offered up less than plausible explanations.

In relation to the errors that led to his suspension, despite his plea of guilty on the majority of the allegations against him, Mr. Wood continued to maintain during the Commission hearings that he was right and the PEO was in error for having accused him of mistakes. Mr. Wood relied on the years he spent as a practising professional engineer as the main reason why he was right and the PEO was wrong. He believed the regulator should have simply taken him at his word when he said he was right. He specifically testified that he still felt he was right on the bridge project and that the PEO was wrong in disciplining him. Gregory Saunders, Mr. Wood's former partner,

acknowledged during his testimony before the Commission that mistakes had been made by him and Mr. Wood on the bridge project.¹³⁷ I make reference to this troubling attitude, as I believe it to have a significant impact on Mr. Wood's credibility.

Following his suspension, and at the insistence of Mr. Saunders and other professional engineers in the M.R. Wright office, Mr. Wood was not to take on any new clients. Mr. Wood confirmed that he could not sign or send out any reports or drawings if they had not been reviewed and signed by one of the professional engineers in his office. Mr. Wood was required to be supervised by the appropriate engineer within the firm for all his work. The supervising engineer varied from one project to the next, depending on the subject and expertise involved. Mr. Saunders was not always the supervising engineer for the work performed by Mr. Wood. Mr. Wood continued to work in this manner until M.R. Wright was dissolved after the collapse of the Mall.¹³⁸

Despite these requirements, and unbeknownst to Mr. Saunders, Mr. Wood took on a new retainer for Eastwood Mall in 2012 to conduct a building condition survey of the Mall and to draft a report.

Robert Wood is retained to complete what would become the final inspection and report on the condition of the Mall before the collapse

Mr. Wood was hired by Eastwood Mall to do a building condition survey, which was one of the requirements imposed by the BDC in its due diligence process for the loan to Eastwood.¹³⁹ This requirement was confirmed by Levon Nazarian and Ms. Bear.¹⁴⁰

Mr. Wood was aware that the report was being prepared for refinancing purposes. He testified that he had been asked to perform the building condition survey because he was familiar with the Mall, having looked at various areas of concern in 2009. He said his mandate was to perform a follow-up inspection of the areas that had been inspected in 2009 and to do a mechanical and electrical inspection.¹⁴¹

Robert Wood inspects the structural condition of the Mall

On April 12, 2012, Mr. Wood arrived at the Algo Mall at 9:00 a.m. to carry out his inspection. He remained there until 2:30 p.m. Terry Neave, a maintenance worker, took him to the areas in the Mall that were of concern. Mr. Wood indicated that he also inspected the areas he had inspected in 2009. In 2012, Zellers remained an area of concern because it was continuing to leak. Mr. Wood did not record any real major concerns in the other areas that had previously been inspected. He did note that some ceiling tiles were missing in the food court.¹⁴²

Mr. Wood started his inspection by reviewing the electrical and mechanical systems. Although he was familiar with much of the mechanical systems from previous inspections, he had not previously looked at the electrical systems.¹⁴³ He then proceeded to look at the condition of the structure. Mr. Wood's notes of the inspection are devoted mostly to the electrical and mechanical systems.¹⁴⁴ During his inspection, he noted some of the following conditions:

- Water capture systems had been added in the ceiling space at the Algo Mall.¹⁴⁵
- The steel of the exterior walkways was rusted and had been painted.¹⁴⁶
- There was "no visual distress in any areas that could be visually inspected and shown by maintenance."¹⁴⁷
- There was no loss of section in any of the steel noted as being rusted.

No measurements were taken during the inspection to confirm this last point. Mr. Wood's conclusion was based on his visual assessment of the corrosion.¹⁴⁸

During his inspection, Mr. Wood made no attempts to uncover any areas in the Mall because he had not seen anything that would have led him to believe he needed to move to the next level, beyond a visual inspection.¹⁴⁹ Drywall and fireproofing were not removed because he was not authorized to remove these materials. In any event, Mr. Wood did not consider the removal of these materials necessary because the areas had been exposed in 2009, when the fireproofing was being replaced, and he had not seen any problems at that time.¹⁵⁰

Although Mr. Wood looked at some of the beams, he saw little of the structure. He did not inspect any connections because they were covered in fireproofing.¹⁵¹ Mr. Wood's notes for the structural inspection were approximately one-and-a-half pages long and contained very few details. Despite the observations made during his inspection, Mr. Wood had little to no concerns about the structure of the Mall.

Mr. Wood acknowledged that the addition to the water capture systems would imply that the leakage was worse in 2012 than it had been in 2009. There was no reference in his final report to the fact that the leakage appeared to have worsened. Despite this evidence of continued or increased leakage, Mr. Wood did not recommend that a more comprehensive inspection of the structure be carried out.¹⁵²

In relation to the observation that the rusted steel of the walkways had been painted, Mr. Wood testified that he believed "painted steel" was a good thing and was not concerned that the paint could be disguising the true condition of the steel. He indicated that he believed it was original paint, although he admittedly never confirmed that fact with anyone at the Mall.¹⁵³

I have a great deal of difficulty accepting this explanation. It does not ring true. Mr. Wood was never asked to explain how the paint could be original if there was evidence of rust underneath. Numerous engineers who testified before me stated that the rust would first attack the paint, and then the steel underneath. It seems obvious to me that evidence of rust on the steel with paint overtop would be indicative that it was not the original paint and that the new paint could be masking a deteriorated underlying condition. Mr. Wood appears to have chosen to ignore this logical conclusion and instead presented a less than plausible explanation during his testimony.

I do not believe that Mr. Wood conducted his inspection objectively or with a view to determining the true condition of the Mall. I believe that Mr. Wood undertook the inspection with the preconceived notion that the Mall was structurally sound. His observations and the report that followed speak of someone who started out with the conclusion that the structure was fine and looked for evidence to support that conclusion.

Clearly, the signs were there and Mr. Wood failed to properly notice them and failed to appreciate the effects of the continued leakage on the structural steel.

I find it difficult to believe that approximately two months before the collapse there were no visible signs of distress or significant deterioration of the structure. I do not believe that there were no indications to suggest that a more detailed inspection was required because I have heard and seen ample evidence to the contrary. Clearly, the signs were there and Mr. Wood failed to properly notice them and failed to appreciate the effects of the continued leakage on the structural steel.

Throughout his testimony, Mr. Wood seemed altogether indifferent and impenitent when shown evidence of significant or severe corrosion that would have been present during his inspections. I compare Mr. Wood's reaction to that of Brian MacDonald, the project manager of Construction Control; their respective reactions were at opposite ends of the spectrum. Mr. MacDonald, when confronted with evidence of the deterioration in 2005, when he had conducted his visual inspection, was very upset that he may have missed signs that could have led to a more in-depth inspection at that time, or that someone had potentially covered up the damages caused by the extensive leaking. In contrast, Mr. Wood did not appear to be upset or disturbed by the images of corrosion and the conditions that he missed during his inspection.

An Elliot Lake resident documents the condition of the structural steel members – all her observations were missed by an engineer with 40 years' experience

Although she was not called as a witness, Bonnie Laddell, a resident of Elliot Lake, had taken photographs of various areas of the Mall. She provided those photographs to the Ontario Provincial Police following the collapse. In providing the photographs to the OPP, Ms. Laddell explained that, in the latter part of 2011, she became concerned about the state of the Mall. As a result of her concerns, in February, April, and June 2012 she took photographs of the kiosk area located directly underneath the section of the rooftop parking deck that collapsed, the rooftop parking deck, and the exterior steel support members – all areas that were readily accessible and visible to the public.¹⁵⁴ These photographs were shown to Mr. Wood during his testimony, in view of their having been taken about the same time as his inspection.

Counsel for Mr. Wood objected to his client being examined on these photographs because the exact location of where they were taken had not been identified. I allowed counsel for the Commission to continue examining Mr. Wood and indicated that the missing information would go to the weight to be given to the photographs.¹⁵⁵

Although the precise locations of where the photographs were taken at the Mall were not identified, I am prepared to accept that these photographs depict a fairly accurate representation of the Mall at or about the time of Mr. Wood's final inspection. There is no doubt that the photographs were taken at the Algo Mall, and no one has disputed that fact. It is also evident that the photographs were taken before the collapse. In addition, the photographs show very similar conditions to those shown in the photographs taken by NORR in July 2012. I accept that the photographs taken by Ms. Laddell are a fair representation of the condition of the Mall at or about the time of Mr. Wood's inspection and, more importantly, that Mr. Wood failed to make note of and report on these conditions.

In reviewing the photographs, Mr. Wood agreed that

- the conditions depicted in Ms. Laddell's photographs included a hole at the base of one of the exterior columns;
- if he had seen similar conditions during his inspection, he would have likely concluded that the structural integrity of the column could be in question; and
- the photographs showed a loss of section (Mr. Wood qualified his acknowledgement by stating that it did not show any failure in the column).¹⁵⁶

Although Mr. Wood walked the upper walkway, he was not sure he had done a total walkthrough of the lower walkway and indicated that he believed some areas of the lower walkways were inaccessible to the public and to him during his inspection.¹⁵⁷ I believe he made this statement in an attempt to justify why he failed to note the conditions photographed by Ms. Laddell. These photographs appear to have been taken in areas that were easily accessible to the public. I infer that these same areas would have been accessible to Mr. Wood during his inspection; that he failed to go to these areas or to see those conditions during his inspection is further evidence of the fact that his inspection in 2012 was flawed and inadequate. Ms. Laddell was a member of the public, and it is unlikely she was able to gain access to areas that were generally inaccessible to the public in order to take her photographs. I do not accept Mr. Wood's explanation of why he missed these conditions during his inspection.

The findings and conclusions contained in the May 2012 report

Mr. Wood acknowledged that, despite the notation “Our inspection revealed evidence of rusting on structural steel members in areas where the parking deck is leaking,” the report did not identify how many members had been inspected, or where they were located with reference to the drawings. Mr. Wood confirmed that he had access to the drawings and could have identified the location of the steel members referred to in his report.¹⁵⁸

Mr. Wood stated that he had intended some urgency in his report when he noted: “A permanent repair needs to be budgeted for to suitably protect the structure.” I do not believe, however, that this statement expresses any urgency; a reader would not be aware of how quickly the repairs needed to be carried out. Mr. Wood admitted during his testimony that the statement did not convey any sense of urgency. “I omitted that unfortunately,” he said.¹⁵⁹

Mr. Wood confirmed that he provided no detail of where he inspected in order to arrive at the following conclusion found in his report: “It is our opinion that the observed rusting at this time has not detrimentally changed the load carrying capacities of the structure and no visual signs of structural distress were observed.”¹⁶⁰

The report included photographs of the exterior walkways at the Mall. The captions included with the photographs provided the following descriptions to the reader:

- “Typical oxidized steel beam underside of deck.” (photograph 12);
- “Rusting steel at base of diagonal HSS [hollow structural section] members.” (photograph 13); and
- “Rusting steel underside of deck.” (photograph 14)¹⁶¹

Mr. Wood testified that there was definitely extensive rusting on the underside of the outside canopy, which was to be expected. He saw no distress in any of the members, such as visual sagging, and most of the members were covered in paint.¹⁶² He testified that the report summarized that all beams were still structurally sound because there was no reason for him to come to a different conclusion.¹⁶³

There is no other way to describe this report than to say that it was lacking in detail, description, and accuracy. This report was a missed opportunity to identify the serious structural issues that already existed at the Mall at the time.

Robert Wood meets with Gregory Saunders to review the report

Gregory Saunders is a professional engineer and was a partner of Mr. Woods in M.R. Wright. As noted earlier, as a result of Mr. Wood’s licence suspension he was unable to sign or seal engineering reports. He was, however, able to practise as a “graduate engineer” since he did have an engineering degree. Any report that was required to be issued by a professional engineer, however, had to be reviewed and signed or sealed by a professional engineer. Mr. Saunders did that for reports written by Mr. Wood after his suspension. Mr. Saunders first became aware that Mr. Wood had performed an inspection of the Algo Mall and prepared a report when he was asked to review and sign it.¹⁶⁴

Mr. Saunders testified that he did not believe that the PEO had an established peer review process. However, it was his understanding that the following generally accepted process had been approved by the PEO:

- The reviewer is to obtain an understanding of the scope of work undertaken for the client.
- The reviewer should take into account the experience of the author.
- The reviewer should feel competent to review and sign the report.
- The reviewer should review photographs taken during the inspection to get a sense of what was going on.

- The reviewer should meet with the author to go through the report and review any data and extra photographs or laboratory results.
- The reviewer should then look at the opinion formulated and, based on the reviewer's own knowledge, determine whether he or she agrees with the author's opinion.¹⁶⁵

Mr. Saunders testified that, before his review of the May 2012 report, he had never done any work at the Mall and had never been to it.¹⁶⁶

Although a number of individuals associated with M.R. Wright had gone to the Mall over the years to perform environmental assessments, Mr. Saunders did not recall these previous assessments during his review of the May 2012 report and, therefore, did not read the findings and conclusions that they contained. Mr. Saunders acknowledged that these previous reports were accessible and available for review by all employees of M.R. Wright.¹⁶⁷ He later admitted signing in November 2006 two mould investigation and assessment reports about inspections conducted at Northern Reflections and at the Library. In August 2008, Mr. Saunders signed a third mould investigation and assessment report, this one about an inspection at Zellers.¹⁶⁸

Before signing the May 2012 report, Mr. Saunders reviewed it and the photographs and had a discussion with Mr. Wood. The whole process took approximately 45 minutes.¹⁶⁹ During his review with Mr. Wood, Mr. Saunders was provided with the following information:

- The report had been prepared for financing purposes.
- Mr. Wood's mandate was to conduct a visual inspection.
- Mr. Wood was led through the Mall by a maintenance worker who identified where the worst leaks were located.
- A number of ceiling tiles were missing in Zellers.
- The yellow tarps and the upside-down umbrellas (as described by Mr. Saunders) were a temporary means of collecting water and sending it to a drain.
- In the areas where the ceiling tiles were missing, Mr. Wood had gone up on a ladder to inspect the conditions and noted insulation was hanging down and a few pipe hangers showed signs of rust.¹⁷⁰

Mr. Saunders was not provided with a copy of the notes made by Mr. Wood during the inspection.¹⁷¹

Mr. Saunders testified that the notes shown to him during the Commission hearings appeared to be a summary and were not typical of Mr. Wood's usual field notes, which were generally more detailed. Mr. Saunders was not aware of whether another set of notes had ever existed.¹⁷² He indicated that, generally, field notes would include an indication of the actual locations inspected, as opposed to general locations; field notes would contain more detail than a summary.¹⁷³ Mr. Saunders testified that if these were the only notes taken by Mr. Wood, then they would not meet Mr. Saunders's own standards and would not pass as field notes.¹⁷⁴

Mr. Wood testified that the notes shown to Mr. Saunders were a summary of the actual notes he took during the inspection. Mr. Wood testified that the original notes had probably been thrown out because he had summarized them.¹⁷⁵

I am suspicious of Mr. Wood's explanation that the original notes had been thrown out and all that was left was a summary prepared from a set of more detailed notes. In comparing the summary nature of the notes with the final report delivered to the client on May 3, 2012, I am inclined to believe that these were the only notes taken by Mr. Wood and these were his actual field notes. Mr. Wood most likely viewed this inspection as a cursory overview of the state of the building and did not think that he needed to take an in-depth look at the building because he was already familiar with the structure.

Mr. Saunders confirmed that, based on his conversation with Mr. Wood, he had no reason to believe that he was not receiving accurate responses to his questions or that his field notes would contain different information.¹⁷⁶

During their meeting, Mr. Saunders and Mr. Wood reviewed the degree of rust that had been noted. Mr. Wood told Mr. Saunders that the observed rust was surface rust and that, in his (Mr. Wood's) opinion, there was no loss of section. Mr. Saunders was not in a position to make his own determination from the photographs and relied on Mr. Wood's opinion.¹⁷⁷ Mr. Saunders and Mr. Wood reviewed the photograph of the heavily oxidized beam. Mr. Wood explained to Mr. Saunders that a lot of effervescence was caused by salt buildup from the chlorides leaking through the parking deck. Mr. Saunders was told that the beam had oxidized but that, in Mr. Wood's opinion, there was little loss of section.¹⁷⁸

Robert Wood fails to advise Gregory Saunders of the previous Order to Comply and the October 2009 structural condition report

When Mr. Wood asked Mr. Saunders to review the report, he failed to provide him with the following information:

- The Mall had a history of long-standing leaking and structural problems.
- A previous report on the structural condition of the Mall had been prepared by Mr. Wood in October 2009.
- The City of Elliot Lake had issued an Order to Comply dated September 25, 2009, which stated that “[a]n inspection has revealed damaged fire proofing materials and/or excessive rust due to long term water infiltration on structural steel beams.”¹⁷⁹

Mr. Saunders testified that if he had been told about the Order to Comply and the October 2009 structural condition report, both of which showed a history of the concern with the steel and the rooftop parking and evidence that the leakage had been going on for a while,¹⁸⁰ it likely would have changed his approach. In particular:

- If he had seen the September 25, 2009, Order to Comply, it would have raised questions about the condition of the Mall and he would have asked how long the Mall had been leaking.¹⁸¹
- A review of picture 6 included in the October 2009 report entitled “Exposed underside of right parking area”¹⁸² may have caused him concern because it showed effervescence created by saltwater. Although seeing this photograph may not have stopped him from signing the May 2012 report, it would have caused him to ask more questions of Mr. Wood.¹⁸³
- He would have suggested that further investigations be carried out and likely would not have signed the report until these investigations had been completed and he felt confident in the results.¹⁸⁴
- He likely would not have permitted anyone from M.R. Wright to be involved in a simple visual inspection of the Mall in 2012, in light of the existence and content of the October 2009 report.¹⁸⁵

Mr. Saunders testified that knowing about the October 2009 report at the time of his review of the May 2012 report would have raised red flags. He would have been concerned about the “degree of inspection” that had been carried out in 2012.¹⁸⁶

Mr. Saunders stated that, had he been provided with all the information, he would have suggested carrying out additional or more comprehensive testing. He indicated that the more comprehensive testing would have included removal of ceiling tiles in leakage areas and taking a closer look at the leaks. It would have also included checking the connections and carrying out a more comprehensive investigation of the structural elements, something beyond a simple visual inspection.¹⁸⁷

Mr. Saunders confirmed that, at the time he signed the May 2012 report, he had no reason to question Mr. Wood's ability to observe and report back the relevant information required for Mr. Saunders to complete his review. He testified that Mr. Wood was a structural engineer who often dealt with deteriorating beams and columns and had been doing that type of work for 40 years. In Mr. Saunders's opinion, Mr. Wood was one of the most respected structural engineers in Sault Ste. Marie and, possibly, Northern Ontario. He confirmed that, based on the information provided to him, there was nothing to indicate that Mr. Wood was not reporting accurately on observations he had made during an inspection, or that he did not perform a competent visual review of the Mall.¹⁸⁸

Mr. Saunders testified that he signed the report based on Mr. Wood's 40 years of experience spent looking at steel, his own experience, the information provided by Mr. Wood, and the photographs shown to him.¹⁸⁹

I accept that Mr. Saunders was not provided with a full picture of the history and condition of the Mall before signing the report. However, Mr. Saunders had at his disposal copies of the previous reports conducted at the Mall. He made no effort to look through the files in his office to determine whether any previous reports relating to the Mall had been prepared. Mr. Wood, however, should have specifically advised Mr. Saunders of the existence of the October 2009 report. Mr. Saunders relied on Mr. Wood and trusted him to provide all the information required so that he could sign the report. Nonetheless, given Mr. Wood's status as a suspended engineer and his unwillingness to acknowledge errors that had been made on the bridge project (despite his guilty plea), Mr. Saunders should have approached the review with a more critical eye and should have been less willing to accept Mr. Wood at his word.

Robert Wood changes the report at the request of Bob Nazarian

Ms. Bear acknowledged that she would have been the one to receive the May 3, 2012, report, sent by Mr. Saunders.¹⁹⁰ She then forwarded the report to Bob Nazarian.¹⁹¹

The original report signed by Mr. Saunders included the photograph in Zellers showing the leakage-collection system and the photograph of the highly oxidized bottom flange.¹⁹² It also included this sentence in the third paragraph from the bottom, which read:

All beams inspected had little loss of section and we would consider the members still structurally sound. The ongoing leakage from the parking deck is of particular concern in the areas of Zellers, and the expansion joint along the south wall of the Algo Inn, over the municipal library.¹⁹³

Following his review of the original report, Bob Nazarian was of the opinion that two of the photographs in the report showed nothing of significance and asked Ms. Bear to have them removed,¹⁹⁴ the photo with the caption "Zellers ceiling below parking deck, Leakage collection system"; and the other, with the caption "Heavily oxidized bottom flange of parking deck beams in Zellers, no significant loss of section at this time."¹⁹⁵ Ms. Bear testified that Mr. Nazarian wanted those photographs removed because they did not relate to anything, they did not add any value to the report, and they were ugly photographs. Bob Nazarian confirmed the evidence given by Ms. Bear and testified that he discussed the photographs and some of the wording with Levon Nazarian. They decided they would ask Mr. Wood if it would be possible to remove the photographs or change them. Bob Nazarian acknowledged that the changes were requested to make the report more appealing and help Eastwood get a new mortgage. He confirmed that Mr. Wood was asked to remove the photograph of a rusted beam and the one of the tarps in Zellers. He also confirmed that a subsequent request was made to Mr. Wood to remove the word "ongoing." Bob Nazarian believed the report provided to him was a draft and open to his feedback. He acknowledged that the word "Draft" did not appear anywhere on the report.¹⁹⁶

I do not accept that Mr. Bob Nazarian wanted those photographs removed simply because they were “ugly photographs.” I am more inclined to believe that Mr. Nazarian wanted the photographs removed because he knew they showed the deteriorated condition of the Mall and showed that the structure could be compromised because of the leaks and the corrosion, and likely would have jeopardized his financing.

In addition to making the request that two photographs be excised from the report, Bob Nazarian did not like the wording included in the third paragraph of the report.¹⁹⁷ Ms. Bear testified that he felt that the use of the expression “particular concern,” when combined with “little loss of section” and “structurally sound,” was contradictory. Mr. Nazarian asked that “particular concern” be removed from the report. Following his instructions, she sent an email to Mr. Wood asking that the expression be removed. Mr. Wood was also asked to remove the word “ongoing.” Ms. Bear confirmed that the words were removed from the report. She did not recall whether Mr. Wood had asked her why she wanted these words removed.¹⁹⁸

Levon Nazarian testified that he was “actually extremely satisfied” when he received the report because, despite the piece of concrete that had fallen several months before in Hungry Jack’s, the report stated that the building “was structurally sound and the load-bearing capacity had not been affected in any way.” Levon Nazarian testified that Ms. Bear brought up the subject of the changes. He asked Ms. Bear if the words “ongoing” and “particular concern” were relevant; if they weren’t, he wanted them removed. He testified that he wanted to present a better report to the bank. He did not believe that removing the word “ongoing” was misleading because the BDC already knew the leaks had been occurring for some time, which was the reason financing was being obtained. He stated that, if Mr. Wood had refused to remove the words, he would not have had a problem with the report. He agreed that removing “ongoing” deprived the reader, without prior knowledge of the leaks, of the benefit of knowing that the leaks had been occurring for some time. He further agreed that removing the words “particular concern” would deprive the reader of knowing that the engineer was particularly concerned about the leaks in Zellers and the expansion joint in the Library.¹⁹⁹

Levon Nazarian did not have any concerns with the photographs of the tarps in Zellers and the rusted beam but, on his father’s advice, determined that they were not very presentable. He acknowledged speaking to Ms. Bear about removing them, and he testified that it was Ms. Bear who discussed these matters with Mr. Wood. He also acknowledged that the rust on the beam in the photograph did not look like surface rusting – and the report spoke only of surface rusting. He testified that he asked that the photograph of the tarps be removed because he did not think the tarps were relevant to any structural issues. Levon Nazarian acknowledged that he was aware that rust, if severe enough, could cause structural problems. He also acknowledged that he asked that both photographs be removed to make the report more presentable to the bank.²⁰⁰

Mr. Wood confirmed that he was asked to make changes after the report was signed. He testified that Ms. Bear contacted him and indicated that Bob Nazarian was unhappy with the inclusion of the photograph showing the yellow tarps hanging in Zellers because those tarps did not relate to any structural issues; he wanted it removed, as well as the one of the heavily oxidized flange of the beam in Zellers. Ms. Bear also indicated to Mr. Wood that waterproofing was being carried out at the Mall and that the tarps would be removed.²⁰¹ Mr. Wood testified that, in his opinion, removing the photographs did not change the substance of the report and the tarps were something that Bob Nazarian had indicated were going to be removed.²⁰²

Mr. Wood denied being aware that the Mall had been leaking over a long period and said he relied on the representations from Eastwood that the leaks were going to be fixed.²⁰³ This statement flies in the face of the fact that he was aware the Mall was leaking since at least 2009 and that it was continuing to leak, as noted in his May 2012 inspection.²⁰⁴ He had evidence that the leaks had not been fixed in the three years since his last inspection. I am not inclined to believe that Mr. Wood was unaware that the Mall had been leaking for a long

period. I find it simply incredible that, despite his many years of experience, he failed to appreciate the effect of prolonged leaking on the structural steel.

In accordance with the wording changes requested by Bob and Levon Nazarian, the third paragraph of the report was amended to read:

All beams inspected had little loss of section and we would consider the members still structurally sound. The leakage through the parking deck has caused surface rusting of the structural steel in the areas of Zellers, and the expansion joint located along the south wall of the Algo Inn, over the municipal library.²⁰⁵

Mr. Wood disagreed that removing the words “ongoing” and “particular concern” misrepresented the actual condition of the Mall to anyone who would be looking at the report. He testified that the report did not misrepresent the condition of the Mall because his conclusion was that the rust that had been observed was surface rust.²⁰⁶

Mr. Wood ultimately agreed that the mortgage company was entitled to know that leakage-collection systems had been installed at the Mall, that there was a rusted beam, and that, by removing these photographs, he prevented the mortgage company from making its own determination of the condition of the Mall.²⁰⁷

The BDC received the version of the report with the words “ongoing” and “particular concern” removed. Although the report did not have the photograph of the tarps in Zellers, it still included the photograph of the rusted beam. Levon Nazarian agreed he was the one who sent the report to the bank. He did not know why the version sent to the bank still included the photograph of the rusted beam and believed it had been left in by mistake. Levon Nazarian testified that he did not tell the bank that the report had been changed.²⁰⁸

Gregory Saunders is unaware of the changes to the report and is not asked to sign an amended report

Mr. Saunders testified that none of the changes to the report were discussed with him.²⁰⁹ Mr. Wood acknowledged making the changes to the May 3, 2012, report and that Mr. Saunders was not a party to the changes or aware of them. He did not seek Mr. Saunders’s permission before changing the report.²¹⁰

Mr. Wood confirmed that, after the changes were made to the report, he took the signature page from the original report signed by Mr. Saunders and attached it to the amended report. Mr. Wood agreed that the recipient of the amended report would have no way of knowing that Mr. Saunders had not actually signed the amended report.²¹¹

Mr. Saunders testified that he would not have agreed to the changes to the wording or the removal of the photographs from the report. He explained that, although the amended report provided the same opinion, it did not give an accurate picture of the conditions seen in the Mall. Mr. Saunders confirmed that he regarded changing the document after it was signed as unprofessional behaviour. He further testified that removing text and photographs raises red flags²¹² and could mislead the ultimate recipient of the report about the actual condition of the Mall. He also testified that the amended report no longer provided an accurate depiction of what had been seen in the Mall.²¹³

I agree with Mr. Saunders’s conclusions regarding the effect of the changes to the report as well as his view that it was unprofessional for Mr. Wood to have done so without his (Mr. Saunders’s) knowledge and approval.

Notes

- ¹ Quinte testimony, July 31, 2013, pp. 19416–17.
- ² Quinte testimony, July 31, 2013, pp. 19420–1.
- ³ Quinte testimony, July 31, 2013, pp. 19432–68.
- ⁴ Quinte testimony, July 31, 2013, pp. 19432–68; Exhibit 2359.
- ⁵ Quinte testimony, July 31, 2013, pp. 19432–68.
- ⁶ Bear testimony, June 11, 2013, pp. 13995–14002.
- ⁷ Hudson testimony, July 8, 2013, pp. 14809–10; Quinte testimony, August 1, 2013, p. 19516.
- ⁸ Quinte testimony, July 31, 2013, p. 19441.
- ⁹ Bear testimony, June 11, 2013, pp. 13995–14002.
- ¹⁰ Bear testimony, June 11, 2013, pp. 13995–14002.
- ¹¹ Bear testimony, June 11, 2013, pp. 14064–5.
- ¹² Bear testimony, June 11, 2013, pp. 14100–4.
- ¹³ Bob Nazarian testimony, July 26, 2013, pp. 18513–21; Bear testimony, June 11, 2013, pp. 13995–14002.
- ¹⁴ Bob Nazarian testimony, July 26, 2013, pp. 18513–21.
- ¹⁵ Bob Nazarian testimony, July 26, 2013, pp. 18513–21; Levon Nazarian testimony, July 18, 2013, pp. 17299–306.
- ¹⁶ Bear testimony, August 6, 2013, pp. 19607–40.
- ¹⁷ Bear testimony, June 11, 2013, pp. 13995–14002.
- ¹⁸ Bear testimony, June 11, 2013, pp. 14049–60.
- ¹⁹ Wood testimony, June 7, 2013, pp. 13437–8.
- ²⁰ Bob Nazarian testimony, July 26, 2013, pp. 18513–21.
- ²¹ Levon Nazarian testimony, July 18, 2013, pp. 17299–306.
- ²² Levon Nazarian testimony, July 18, 2013, pp. 17334–42.
- ²³ Levon Nazarian testimony, July 18, 2013, pp. 17309–19.
- ²⁴ Levon Nazarian testimony, July 18, 2013, pp. 17334–42.
- ²⁵ Levon Nazarian testimony, July 18, 2013, pp. 17299–306.
- ²⁶ Quinte testimony, July 31, 2013, pp. 19460, 19495–9; August 1, 2013, pp. 19520–6.
- ²⁷ Quinte testimony, July 31, 2013; pp. 19440–68.
- ²⁸ Quinte testimony, July 31, 2013, pp. 19440–68.
- ²⁹ Quinte testimony, July 31, 2013, pp. 19495–9.
- ³⁰ Collett testimony, May 24, 2013, pp. 11345–8.
- ³¹ Collett testimony, May 23, 2013, pp. 11077–8; May 24, 2013, pp. 11345–8.
- ³² Collett testimony, May 23, 2013, pp. 11374–5.
- ³³ Collett testimony, May 24, 2013, pp. 11359–62.
- ³⁴ Collett testimony, May 24, 2013, pp. 11414–15.
- ³⁵ Hamilton testimony, July 10, 2013, pp. 15373–6.
- ³⁶ Ewald testimony, May 27, 2013, pp. 11766–8.
- ³⁷ Ewald testimony, May 27, 2013, pp. 11839–41.
- ³⁸ Ewald testimony, May 27, 2013, pp. 11769–71.
- ³⁹ Ewald testimony, May 27, 2013, pp. 11766–73.
- ⁴⁰ Ewald testimony, May 27, 2013, p. 11772.
- ⁴¹ Exhibit 10, para 12.
- ⁴² Exhibit 10, para 13.
- ⁴³ Exhibit 10, para 15.
- ⁴⁴ Exhibit 10, para 16.
- ⁴⁵ See Exhibit 10, generally.
- ⁴⁶ Exhibit 10, paras 30–5.
- ⁴⁷ Quinte testimony, July 31, 2013, pp. 19468–75.
- ⁴⁸ Collett testimony, May 23, 2013, pp. 11074–5.
- ⁴⁹ Exhibit 10 at para 36–42.
- ⁵⁰ Exhibit 1424.
- ⁵¹ Exhibit 13, para 54.
- ⁵² Collett testimony, May 23, 2013, pp. 11066–71; McCulloch testimony, June 13, 2013, pp. 14489–92.
- ⁵³ Exhibit 11-249; Hamilton testimony, July 10, 2013, pp. 15468–70.
- ⁵⁴ Exhibit 11-250; Collett testimony, May 24, 2013, pp. 11314–17; Hamilton testimony, July 10, 2013, pp. 15367–71; Exhibits 5844, 5845, 11.
- ⁵⁵ Cuthbertson testimony, May 1, 2013, pp. 7889–90.
- ⁵⁶ Exhibit 12-91; see also Exhibit 12 for a thorough description of the problems with leaks at Zellers during the Eastwood years of ownership.
- ⁵⁷ Levon Nazarian testimony, July 17, 2013, pp. 16965–6; Exhibit 5332; Fabris testimony, July 11, 2013, p. 15684; Bear testimony, June 11, 2013, pp. 13949–51; Fabris testimony, July 12, 2013, pp. 15932–3.
- ⁵⁸ Bear testimony, June 11, 2013, pp. 13988–93; Bear testimony, June 12, 2013, pp. 14093–4; Exhibits 4955, 4976.
- ⁵⁹ Bear testimony, June 11, 2013, pp. 13956–7; Exhibit 5042.
- ⁶⁰ Levon Nazarian testimony, July 17, 2013, pp. 16941–3; Exhibits 1255, 1505.
- ⁶¹ Officer testimony, April 22, 2013, pp. 6201–5.
- ⁶² Exhibit 300.
- ⁶³ Ewald testimony, May 27, 2013, p. 11755.
- ⁶⁴ Exhibit 300.
- ⁶⁵ Ewald testimony, May 27, 2013, pp. 11759–61.
- ⁶⁶ Ewald testimony, May 27, 2013, pp. 11761–4.
- ⁶⁷ Exhibit 1310.
- ⁶⁸ Exhibit 1310; Levon Nazarian testimony, July 17, 2013, pp. 16962–4.
- ⁶⁹ Exhibit 1310.
- ⁷⁰ Levon Nazarian testimony, July 17, 2013, pp. 16968–71; Levon Nazarian testimony, July 18, 2013, pp. 17411–13; Exhibit 1595.
- ⁷¹ Bob Nazarian testimony, July 29, 2013, pp. 18682–3.
- ⁷² Exhibit 1251.
- ⁷³ Bob Nazarian testimony, July 29, 2013, pp. 18682–7; Exhibit 1251.
- ⁷⁴ Exhibit 1310.
- ⁷⁵ Levon Nazarian testimony, July 17, 2013, pp. 16972–4.
- ⁷⁶ Levon Nazarian testimony, July 17, 2013, pp. 16972–4.
- ⁷⁷ Exhibits 728, 5685.
- ⁷⁸ Levon Nazarian testimony, July 17, 2013, pp. 16972–4; Bob Nazarian testimony, July 29, 2013, pp. 18684–5.
- ⁷⁹ Levon Nazarian testimony, July 17, 2013, p. 16978; Bob Nazarian testimony, July 29, 2013, p. 18865.
- ⁸⁰ Levon Nazarian testimony, July 17, 2013, pp. 16980–1.
- ⁸¹ Regan testimony, June 5, 2013, pp. 13041–2.
- ⁸² Hudson testimony, July 8, 2013, pp. 14729–30.
- ⁸³ Hudson testimony, July 8, 2013, p. 14763.
- ⁸⁴ Regan testimony, June 5, 2013, p. 13042; Hudson testimony, July 8, 2013, pp. 14762–4.
- ⁸⁵ Regan testimony, June 5, 2013, p. 13042.
- ⁸⁶ Hudson testimony, July 8, 2013, p. 14769.
- ⁸⁷ Exhibit 3880.
- ⁸⁸ Exhibit 3880.
- ⁸⁹ Exhibit 3880.
- ⁹⁰ Exhibit 3853; Quinte testimony, August 1, 2013, pp. 19513–16.
- ⁹¹ Exhibit 3853.
- ⁹² Exhibit 3853.
- ⁹³ Exhibit 3853.
- ⁹⁴ Exhibit 3853.
- ⁹⁵ Exhibit 3853.
- ⁹⁶ Exhibit 3853.
- ⁹⁷ Exhibit 3853.
- ⁹⁸ Exhibit 3853.
- ⁹⁹ Exhibit 3853.

- ¹⁰⁰ Exhibits 3880, 3853.
- ¹⁰¹ Exhibit 3853.
- ¹⁰² Exhibit 3880.
- ¹⁰³ Exhibit 3880.
- ¹⁰⁴ Exhibit 3853.
- ¹⁰⁵ Exhibit 3853.
- ¹⁰⁶ Hudson testimony, July 8, 2013, pp. 14770–1.
- ¹⁰⁷ Exhibits 12-149, 12-150, 12-24, 12-109.
- ¹⁰⁸ Hudson testimony, July 8, 2013, p. 14777.
- ¹⁰⁹ Hudson testimony, July 8, 2013, pp. 14777–78.
- ¹¹⁰ Hudson testimony, July 8, 2013, pp. 14778–82.
- ¹¹¹ Hudson testimony, July 8, 2013, pp. 14818–19, 14775–7, 14786–7, 14884; Exhibits 3852, 12-109, 12-149, 12-150, 12-24.
- ¹¹² Exhibit 749.
- ¹¹³ Exhibit 1438.
- ¹¹⁴ Hudson testimony, July 8, 2013, pp. 14818–19; Exhibit 3880.
- ¹¹⁵ Hudson testimony, July 8, 2013, pp. 14821–2.
- ¹¹⁶ Hudson testimony, July 8, 2013, pp. 14833–4.
- ¹¹⁷ Bear testimony, June 11, 2013, pp. 14014–15; Exhibit 3880.
- ¹¹⁸ Exhibit 1438.
- ¹¹⁹ Hudson testimony, July 8, 2013, p. 14884.
- ¹²⁰ Hudson testimony, July 8, 2013, p. 14821; Exhibit 3880.
- ¹²¹ Bear testimony, June 11, 2013, pp. 14010–11.
- ¹²² Hudson testimony, July 8, 2013, p. 14834.
- ¹²³ Hudson testimony, July 8, 2013, pp. 14835–6.
- ¹²⁴ Dennis testimony, April 30, 2013, pp. 7538–9.
- ¹²⁵ Jeffreys testimony, July 31, 2013, pp. 19294–5.
- ¹²⁶ Exhibit 12-95.
- ¹²⁷ Exhibit 12-95.
- ¹²⁸ Dennis testimony, April 30, 2013, pp. 7559–60.
- ¹²⁹ Exhibit 12-95.
- ¹³⁰ Exhibit 12-95.
- ¹³¹ Dennis testimony, April 30, 2013, p. 7562.
- ¹³² Dennis testimony, May 1, 2013, pp. 7639–47.
- ¹³³ Wood testimony, June 7, 2013, pp. 13360–1, 13363; Exhibit 5241.
- ¹³⁴ Saunders testimony, June 6, 2013, pp. 13103–5; Wood testimony, June 6, 2013, p. 13244.
- ¹³⁵ Saunders testimony, June 6, 2013, pp. 13111–12.
- ¹³⁶ Wood testimony, June 7, 2013, pp. 13466–7.
- ¹³⁷ Wood testimony, June 7, 2013, pp. 13360–1; Saunders testimony, June 6, 2013, pp. 13110–11; Exhibit 5237.
- ¹³⁸ Wood testimony, June 7, 2013, pp. 13467–9; Saunders testimony, June 6, 2013, p. 13089.
- ¹³⁹ Levon Nazarian testimony, July 18, 2013, pp. 17291–8; Exhibit 5244.
- ¹⁴⁰ Levon Nazarian testimony, July 15, 2013, pp. 16302–15; Bear testimony, June 11, 2013, pp. 13958–66.
- ¹⁴¹ Wood testimony, June 7, 2013, p. 13364.
- ¹⁴² Wood testimony, June 7, 2013, pp. 13367–9; Exhibit 5007.
- ¹⁴³ Wood testimony, June 7, 2013, pp. 13369–70.
- ¹⁴⁴ Exhibit 5007, p. 011.
- ¹⁴⁵ Wood testimony, June 7, 2013, pp. 13362–72; Exhibit 5007, p. 011.
- ¹⁴⁶ Wood testimony, June 7, 2013, pp. 13374–5; Exhibit 5007, p. 012.
- ¹⁴⁷ Wood testimony, June 7, 2013, pp. 13375–6; Exhibit 5007, p. 012.
- ¹⁴⁸ Wood testimony, June 7, 2013, p. 13380; Exhibit 110.
- ¹⁴⁹ Wood testimony, June 7, 2013, p. 13381.
- ¹⁵⁰ Wood testimony, June 7, 2013, p. 13382.
- ¹⁵¹ Wood testimony, June 7, 2013, pp. 13382–3.
- ¹⁵² Wood testimony, June 7, 2013, pp. 13362–73; Exhibit 110.
- ¹⁵³ Wood testimony, June 7, 2013, pp. 13374–5.
- ¹⁵⁴ Exhibit 10-53: OPP_E000002339, pp. 18–20. 27.
- ¹⁵⁵ Wood testimony, June 7, 2013, pp. 13517–19.
- ¹⁵⁶ Wood testimony, June 7, 2013, pp. 13515–19; Exhibit 10-53: OPP_E000002339, pp. 18–20. 27.
- ¹⁵⁷ Wood testimony, June 7, 2013, p. 13531.
- ¹⁵⁸ Wood testimony, June 7, 2013, pp. 13377–8; Exhibit 110.
- ¹⁵⁹ Wood testimony, June 7, 2013, pp. 13378–9; Exhibit 110.
- ¹⁶⁰ Wood testimony, June 7, 2013, p. 13379; Exhibit 110.
- ¹⁶¹ Exhibit 110.
- ¹⁶² Wood testimony, June 7, 2013, pp. 13513–14.
- ¹⁶³ Wood testimony, June 7, 2013, pp. 13379–80.
- ¹⁶⁴ Saunders testimony, June 6, 2013, pp. 13130–1; Exhibit 111.
- ¹⁶⁵ Saunders testimony, June 6, 2013, pp. 13163–4.
- ¹⁶⁶ Saunders testimony, June 6, 2013, pp. 13079–80.
- ¹⁶⁷ Saunders testimony, June 6, 2013, pp. 13112–22.
- ¹⁶⁸ Exhibits 10-91, 325. 12-120; Saunders testimony, June 6, 2013, pp. 13117–30.
- ¹⁶⁹ Saunders testimony, June 6, 2013, pp. 13144–6, 13149.
- ¹⁷⁰ Saunders testimony, June 6, 2013, pp. 13146–7; Wood testimony, June 7, 2013, pp. 13471–2.
- ¹⁷¹ Saunders testimony, June 6, 2013, p. 13157; Exhibit 5007.
- ¹⁷² Saunders testimony, June 6, 2013, p. 13157; Exhibit 5007.
- ¹⁷³ Saunders testimony, June 6, 2013, p. 13160.
- ¹⁷⁴ Saunders testimony, June 6, 2013, p. 13161.
- ¹⁷⁵ Wood testimony, June 6, 2013, p. 13366.
- ¹⁷⁶ Saunders testimony, June 6, 2013, p. 13194.
- ¹⁷⁷ Saunders testimony, June 6, 2013, pp. 13147–8; Wood testimony, June 7, 2013, pp. 13475–6.
- ¹⁷⁸ Saunders testimony, June 6, 2013, p. 13195.
- ¹⁷⁹ Saunders testimony, June 6, 2013, pp. 13131–6; Exhibit 102, pp. 004–6.
- ¹⁸⁰ Saunders testimony, June 6, 2013, pp. 13196–8.
- ¹⁸¹ Saunders testimony, June 6, 2013, pp. 13136–7.
- ¹⁸² Exhibit 102, p. 017.
- ¹⁸³ Saunders testimony, June 6, 2013, p. 13143.
- ¹⁸⁴ Saunders testimony, June 6, 2013, p. 13197.
- ¹⁸⁵ Saunders testimony, June 6, 2013, p. 13197.
- ¹⁸⁶ Saunders testimony, June 6, 2013, pp. 13196–8.
- ¹⁸⁷ Saunders testimony, June 6, 2013, pp. 13168–9.
- ¹⁸⁸ Saunders testimony, June 6, 2013, pp. 13191–2.
- ¹⁸⁹ Saunders testimony June 6, 2013, p. 13149; Wood testimony, June 7, 2013, pp. 13480–1; Exhibits 110, 111, 796.
- ¹⁹⁰ Bear testimony, June 11, 2013, pp. 13958–66; Saunders testimony, June 6, 2013, pp. 13150–2.
- ¹⁹¹ Bear testimony, June 11, 2013, pp. 13958–66.
- ¹⁹² Saunders testimony, June 6, 2013, pp. 13150–2; Wood testimony, June 7, 2013, p. 13391; Exhibit 111.
- ¹⁹³ Saunders testimony, June 6, 2013, pp. 13172–7; Exhibit 111.
- ¹⁹⁴ Bear testimony, June 11, 2013, pp. 13958–66.
- ¹⁹⁵ Bear testimony, June 11, 2013, pp. 13958–66; Exhibit 114.
- ¹⁹⁶ Bob Nazarian testimony, July 23, 2013, pp. 17545–55; Exhibits 5250, 6174.
- ¹⁹⁷ Bear testimony, June 11, 2013, pp. 13958–66; Exhibit 114.
- ¹⁹⁸ Bear testimony, June 11, 2013, pp. 13958–66; Exhibits 114, 5333, 5334.
- ¹⁹⁹ Levon Nazarian testimony, July 15, 2013, pp. 16302–15; Exhibits 5250, 6174.
- ²⁰⁰ Levon Nazarian testimony, July 15, 2013, pp. 16316–22; Exhibit 6174.
- ²⁰¹ Wood testimony, June 7, 2013, pp. 13386–7; Exhibit 110.

- ²⁰² Wood testimony, June 7, 2013, pp. 13391–3.
- ²⁰³ Wood testimony, June 7, 2013, pp. 13442–3, 13387; Exhibit 110.
- ²⁰⁴ Exhibit 5007, p. 012.
- ²⁰⁵ Exhibit 796.
- ²⁰⁶ Wood testimony, June 7, 2013, pp. 13395–6.
- ²⁰⁷ Wood testimony, June 7, 2013, pp. 13396–7.
- ²⁰⁸ Levon Nazarian testimony, July 15, 2013, pp. 16332–36; Exhibit 6176.
- ²⁰⁹ Saunders testimony, June 6, 2013, pp. 13172–7.
- ²¹⁰ Wood testimony, June 7, 2013, p. 13483.
- ²¹¹ Wood testimony, June 7, 2013, pp. 13483–4, Exhibit 796.
- ²¹² Saunders testimony, June 6, 2013, pp. 13180–1.
- ²¹³ Saunders testimony, June 6, 2013, p. 13182.