

SECTION VI

General Conclusions
and Recommendations

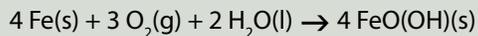
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• *The deterioration of the infrastructure of the Mall*
• *parking deck did not happen overnight. It was the result*
• *of a poorly conceived and poorly engineered surface,*
• *decades of neglect, lack of competent and thorough*
• *inspection, inadequate official oversight, and owners*
• *who put profit-seeking above all else. All those who were*
• *in a position of responsibility or authority over the Mall*
• *contributed in varying degrees to its demise.*
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General Conclusions

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Steel rusts

Iron + water + oxygen → rust



Basic science teaches that, given sufficient time, a combination of oxygen, water, and any iron mass will eventually convert to rust and disintegrate. If salt is present, the iron tends to rust more quickly. This process has been known and understood (at least in general terms) for millennia. Yet in Elliot Lake it seems to have escaped the attention of all those who should have cared. The few isolated voices of those who did protest were ignored or, worse, silenced.

In my months in Elliot Lake, I often heard it said that the collapse of the Algo Mall roof was the result of a “perfect storm.” The imagery and vocabulary of the disaster that befell the city of Elliot Lake and the families of Doloris Perizzolo and Lucie Aylwin are the antithesis of perfection. I would prefer to speak in terms of the inevitability of tragedy when neglect, apathy, and self-interest trump the values we expect of professionals, civic leaders, and corporate citizens. The evidence summarized in the preceding chapters provides ample targets: a poor initial concept, mediocre design, untested technology, faulty implementation, improper maintenance, timid and unheeded advice, apathetic oversight, outright greed, professional ineptitude, and carelessness.

The evidence is incontrovertible that the collapse of the section of the roof of the Algo Mall was caused by the severe rusting of the connection between one column and one beam. As a result, the connection failed suddenly and catastrophically. The more difficult question is why it was allowed to deteriorate to this extent.

As I express my views on this question, three important considerations come to mind:

1. Hindsight is merciless and unforgiving. What now appears clear and logical is not, in the tumult and fog of daily existence, easy to discern. With hindsight, a multitude of possibilities coalesce into definite certainties.
2. Elliot Lake’s relatively short existence as a city has not been a typical one. As the outline of its history in Chapter 2 shows, it experienced frenetic growth in its boom years, followed by a disastrous crash when the mines closed down. Municipal institutions striving to adapt to these often bewildering and rapidly developing realities faced huge challenges.
3. The story being told in this Report spans five decades. Of necessity, the Commission has had to rely on fragmentary evidence, particularly during the early years of the Mall’s existence. Human memory fades, documents get lost or destroyed, and potential witnesses pass away. James Keywan and John Kadlec, the Mall’s original architect and engineer, respectively, were both well advanced in age when they testified. Other significant witnesses from these years such as Nicholas Hirt, the vice-president of Algoma Central Properties, and Robert Gruhl, Elliot Lake’s chief building official, have died. Municipal and corporate records can no longer be found. In those circumstances, care must be taken not to build hard conclusions from fragments or wisps.

What follows is my best attempt at formulating a factual background for the recommendations that follow in the next chapter. I have attempted to avoid conjecture and guesswork. When hard facts are difficult to nail down with precision, a congruence of circumstances may well have led me to general conclusions after the cumulative weight of the detail makes coincidence appear highly unlikely. In the event that I have misunderstood some minor aspect of the circumstantial evidence, I apologize, but I take comfort in the knowledge that there will still be a solid base for each one of the recommendations.

The Algo Mall's design was ill-conceived

The basic concept was faulty

Climatic conditions in Elliot Lake are difficult and variable. They range between the extremes: high heat in summer and brutal cold in winter, accompanied by all forms of precipitation, depending on the season – rain, snow, ice, and slush. As a result, the 334-space rooftop parking lot at the Algo Mall was regularly exposed to sand and road salt, as well as heavy vehicles with scraping metal blades. Road salt coating the underside of vehicles would inevitably be carried onto the parking surface from elsewhere. The thermal extremes of weather affected the materials that made up the roof by causing significant cyclical expansion and contraction – the freeze–thaw cycle.

It may legitimately be said that the Algo Mall was doomed to early failure while it was still in the planning stages under its first owner, Algocen Realty Holdings Ltd. The decision to locate the majority of the Mall's parking spaces on its roof, above occupied commercial space, was a fatal one. Mr. Keywan testified that, as architect, he was uncomfortable with the concept. He considered five alternative possibilities: putting parking underneath the structure, locating it in a separate structure, acquiring additional land for surface parking, placing a light steel roof over the parking deck, or at the very least installing “stub” columns that could allow for the post-construction installation of a roof if it became apparent that one was necessary. All these options were rejected by the owner, primarily because of cost. It does not appear that the architect was vocal in his expressions of concern because he felt the experience of the owner's vice-president, Mr. Hirt, was considerable. Mr. Keywan had “complete faith” in Mr. Hirt and never expressed his own concerns in writing. The original engineer, Mr. Kadlec, thought the architectural design was unusual, but his reservations did not involve structural adequacy. He was more uneasy about the problems caused by traffic circulation and snow removal.

The very concept of rooftop parking was unusual, but it did not present insuperable problems beyond contemporary engineering know-how to ensure impermeability. It could be done, but it could not be done easily or cheaply.

The roles of the architect, the engineer, and the owner were confused and unorthodox

Mr. Keywan testified that his mandate was limited: to provide architectural drawings only. Although this practice was not recommended at the time of construction, it was not prohibited. As things were arranged, Algocen acted as its own general contractor. The architect was not responsible for the waterproofing system. The engineer, whose contract was with the architect, was not responsible for either the building envelope or the waterproofing system. His work appeared to have met professional performance standards of the period.

No one was specifically designated as the prime consultant (a term that is not defined in legislation), though there were indications that, despite his denial, Mr. Keywan performed some of the functions normally encompassed by that expression. No independent professional reviewed the adequacy of the waterproofing system, yet both Mr. Keywan and Mr. Kadlec signed and sealed the certificate of substantial completion. Mr. Keywan had never once gone to the site, nor had anyone on his behalf. Mr. Kadlec appeared to have been content to sign the certificate, as something akin to a general review carried out by a separate firm of consulting engineers. Both men relied heavily on Mr. Hirt, a civil engineer, who had assumed the role of general contractor. Both must have known that considerable reliance would be placed on the certificate.

The building, excluding the waterproofing system, met the then-current requirements of the *Building Code*

The steel structure of the Mall building was constructed according to the architectural and engineering plans and specifications. While the beams as specified and installed were of slightly deficient capacity, this problem had no bearing on the collapse. The original welds connecting the beams to the columns met, and even exceeded, the *Building Code* requirements. Some assembly deficiencies were noted during construction (e.g., missing bolts, the structure out of plumb), but they were remedied and played no role in the collapse. Installation of the waterproofing system, and its need for bonding between the slab and the concrete topping, required that insulation be placed underneath the slab. That positioning may well have exacerbated the consequences of the freeze–thaw cycle. In addition, it would create confusion for professionals in their subsequent analyses of the parking deck.

The corrosion of the steel structure of the Mall was caused by a defective roof design

Algocen made the decision to use a deck waterproofing system proposed by the Harry S. Peterson Company (HSP). The Mall's design called for a roof deck capacity of 120 pounds per square foot (psf). In the difficult climatic conditions of Northern Ontario, this deck had to accommodate both vehicular traffic and snow load positioned on top of the occupied commercial spaces below. HSP recommended the installation of a system that was an untried variant of one used successfully elsewhere. Despite the company's reputation in the industry, it had never before (except in some stand-alone parking structures) proposed a hollow core slab deck over a steel structure, with the deck covered by a bonded concrete topping with strip membrane over the slab joints. A "Double Tee" concrete support for a poured concrete deck would have been far preferable, but the cost of transportation of that type of large support member was high. Because Elliot Lake was at least 160 kilometres from a concrete batching plant, precast slabs were more economical than a poured-in-place concrete deck. This variant of the "Peterson system" was never used again.

The pre-stressed 30 or 31 feet by x 8 feet hollow core slabs themselves were robust, conventional, and time tested. In and of themselves they were reliable and *Code* compliant. With a properly bonded topping, they could meet load capacity requirements. Indeed, the Coreslab engineer who testified was of the opinion that they could meet those requirements even without topping – a view not held by many of the engineers who inspected the deck over the years. I need not, however, decide that issue.

There were other difficulties as well: the design of the three expansion joints was poor for a deck conceived to accommodate traffic in all weather conditions. Drainage and sloping were problematic. Even more important, HSP's experience with cracking in the concrete topping, anticipated and controlled in the double-T system, did not extend to hollow core slabs. Because of large size differences between Double Tees and hollow core slabs, the use of the Peterson system with slabs meant that there were many more joints, as well as more potential for movement and many more opportunities for sealant and grout failure.

An independent roofing consultant warned Algocen about the potential for failure and recommended installation of a full membrane between the slabs and the concrete topping, along with "over-engineering" (strengthening) the deck to allow for the addition of more wearing surface in the future if problems developed. These precautionary measures would have added significantly to the original construction costs and were never implemented.

Construction delays caused much of the concrete, grouting, and sealing work, as well as installation of the expansion joints, to occur very late in the fall or winter of 1979. This timing into the cold season may have compromised the performance of those materials.

The particularities of the system used at the Algo Mall are discussed in great detail earlier in the Report, and I don't need to repeat them here. Theoretically and conceptually, at least, the roofing system, by being designed both to shed and to drain water, met the *Building Code* requirements. However, one glaring and simple reality stands out: the system was a dismal failure from the moment it was installed. The parking deck leaked from the outset and throughout the entire life of the Mall. HSP's post-construction efforts to remedy the situation were futile. Water penetrated the concrete topping through cracks, intended and unintended. Some bonding between the topping and the slabs failed, allowing water to migrate laterally across the slab surfaces and along steel beams. Sealants failed, sealing methods were questionable, expansion joints allowed water penetration, and drainage was deficient. Heavy traffic and snow-removal equipment, along with the methods used to remove the snow, may have exacerbated the problems. For 33 years water laden with chlorides percolated down to the steel beams and their connections.

Bad choices made by the original owners, motivated by cost-cutting considerations, led largely to this chronic and dangerous situation.

After construction: The role of the engineering and architectural professions during the existence of the Algo Mall

General

The Mall never lacked from professional architectural and engineering oversight. During the 33 years of its existence it was visited, examined, evaluated, and reported on by engineers and architects on some 30 occasions. Appendix G summarizes these reviews and examinations. I suspect that few structures in Northern Ontario have been so frequently scrutinized. Yet the important and central recommendations relating to the parking deck's structural integrity and impermeability that flowed from that scrutiny were never implemented. Half-hearted and ineffective methods of leakage control were employed without success from the deck's beginning to its tragic end.

The engineering and architectural professions, to varying degrees, may bear some responsibility for the Mall's eventual demise. In fairness, many inspections and the reports that followed them were constrained by the narrowness of their mandate. Some were sophisticated and relatively thorough. Others, however, and those of the engineer Robert Wood in particular, were cursory and seriously deficient in terms of quality and content.

In my view, a number of important and relevant general observations are warranted:

- No serious and comprehensive survey, inspection, and analysis of the steel substructure of the Algo Mall's parking deck was ever commissioned and undertaken. Although occasionally recommendations were made that such inspections should be undertaken, they never happened
- In all the reports on the Mall's parking deck, there was never any attempt to foresee or predict the consequences if the recommendations made by the professionals were not adopted. There was never any explicit warning about the consequences to the steel substructure if corrective measures were not implemented. None of the professionals appeared to have anticipated the severity of the corrosion caused by years of leakage of water-entrained chlorides on the steel below. Little specific attention was directed to connections between beams and columns.

- Despite the obvious reality that the “patch-and-seal” method of waterproofing was ineffective, some professionals recommended its continuation.
- Some professionals were reluctant to review previous reports, out of a misplaced concern about importing the biases of previous inspections.
- One report in particular (Mr. Wood’s 2012 report to Eastwood) was amended to accommodate the owner’s desire to subdue objective criticism and to make the report more palatable. The changes were made without the supervising engineer’s knowledge and consent.
- Many inspections were strictly visual, and superficially so, with no attempt at qualitative testing or even minimal removal or displacement of obstructing material.
- The language of one report was phrased in such a way that an unsatisfactory remedial procedure was described as an “option” – suggesting that it might be viable when in fact it was not.
- Another report was not explicit in making clear that the recommended remedial procedure required professional supervision and implementation by experienced and qualified contractors. Even then, primarily for financial reasons, a variant of the ineffective patch-and-seal method of waterproofing was recommended, though the alternative but costlier option was clearly superior.
- Inspections were occasionally conducted without interviewing affected occupants of the Mall and determining the history of leakage. A “snapshot” approach was used often when optimal climatic conditions prevailed, without consideration of the deck’s behaviour over periods when conditions were less favourable.
- Engineers were confused about the carrying capacity of the deck, but they made only half-hearted efforts to discover it rather than careful consultation with other professionals or the literature or on-site examinations and analysis. This lack of solid evidence led to indecision and dithering on the part of owners and provided some of them with excuses for inaction.
- Some engineers were not careful in describing precisely the limits of their experience, expertise, and qualifications. In the case of one engineer, these factors may have led to a misapprehension about the need to bond the deck slabs to a concrete topping in order to achieve the desired level of load capacity. They may also have resulted in some engineers not being able to answer questions about the degree of degradation of the steel structure due to leakage and the remaining useful life of the building.
- Some opinions about the structural condition of the Mall were expressed without the involvement of a structural engineer.

Mr. Wood’s reports require specific mention

Mr. Wood was first hired on April 8, 2009, to provide, on behalf of Service Canada, an as-built drawing and structural condition report of the tenant space previously occupied by Retirement Living (it was under the Hotel, not the parking deck). At that time he was told of leaks under the deck area but did not look at them. He was given the 1998 Halsall report.

I feel it necessary to set out, in summary fashion, the evidence that was heard about the manner in which Mr. Wood performed his duties. His reports, in my view, stand out in sharp contrast to those following other professional inspections. Those reports may have had flaws, in some respects and to greater or lesser degrees, but the quality of Mr. Wood’s product and his conduct were markedly inferior, to a point where they warrant repetition and emphasis. His work provided unfounded assurances and gave the Mall owner a documented excuse to continue doing nothing. His review was similar to that of a mechanic inspecting a car with a cracked engine block who pronounces the vehicle sound because of its good paint job.

The October 28, 2009, report

On September 28, 2009, Mr. Wood was provided with the City's September 25, 2009, Order to Remedy and retained by Antoine-René Fabris, the owner's lawyer, to inspect the Mall – "specifically the items located under deficiency." Despite the breadth of the City's order to have the entire Mall area inspected, Mr. Wood interpreted his mandate to be restricted to only those areas specifically mentioned in it. He sought no clarification and failed to take any steps to resolve the potential ambiguity between the order and Mr. Fabris's letter. He was predisposed not to see any form of rust or corrosion. For essentially no articulable reasons that I could discern, he testified that he did not think that leaking had been ongoing for an extended period. He did not think it had been leaking for more than three or four years – yet in his report he uses the phrases "efforts over the years . . . to waterproof the mall" and "many leaks have occurred over the years." He made no effort to review the files and reports in his own firm's files. Had he done so, he would have discovered the 2005 reference to leaks in the Library going back 16 years. His initial structural review was an examination of the original structural and architectural plans, with no verification of the "as-built" condition.

[Mr Wood] was predisposed not to see any form of rust or corrosion.

Mr. Wood conducted his inspection alone, armed with just a tape measure, flashlight, and notepad. He produced only summary notes – nothing detailed. He limited his inspection to areas pointed out to him by Mall staff and was prepared to rely exclusively on professionally prepared drawings that were 30 years old. His inspection was strictly visual. He asked no one how long the Mall had been leaking. He said that, because he was not made aware of previous orders by the City, he assumed the leaking was a recent problem. He was unconcerned by the rust he saw when he went up above the ceiling tiles. He paid little heed to concerns expressed to him by Mall employee Dimitri Yakimov about vibrations in the area of the deck that eventually collapsed. He made little or no inspection of connections because he thought the leakage was occurring in the mid-span of the beams and because most of them were covered by waterproofing. His report contained these phrases: "[W]e are of the opinion that the rusting has not created any structural loss of beam capacity," "minor surface rusting," "no loss of section of steel beams," and "no visual structural concerns . . . with the structural steel."

In his inspection, Mr. Wood did not take any measurements of the flange of the beam that eventually collapsed. In his words, the corrosion observed "was not the type he would expect with loss of section." And he made no mention in his report of the areas he had not inspected because they were covered by fireproofing.

On November 16, 2011, Mr. Wood's licence was suspended by the Professional Engineers of Ontario. After his suspension, his firm required that all reports prepared by him be reviewed and signed by a properly qualified professional engineer. His clients, past or present, were not officially notified of this fact.

The May 3, 2012, report

In the spring of 2012, despite the fact that he had been directed by members of his firm not to take on new clients, Mr. Wood accepted Eastwood's retainer to prepare a building condition survey – he described it as a follow-up inspection of areas he had inspected in 2009 – as a financing prerequisite by Business Development Canada. He carried out his inspection between 9:00 a.m. and 2:30 p.m. on April 12, 2012. His notes from that visit relating to structure refer to the addition of water-capture systems (troughs, bladders, and hoses), rusting of steel on exterior walkways, no visual distress, and no loss of section observed on steel noted to be rusted. He took no measurements to make this last observation, nor did he uncover any areas or inspect any connections. He did not recommend a more comprehensive inspection. His report did not imbue his recommendations with any sense of urgency.

Mr. Wood failed to advise his supervising engineer (Gregory Saunders) of the long-standing history of leaks at the Mall, of his previous 2009 report, or of the City's 2009 Order to Comply.

Much more egregious are Mr. Wood's changes to the report at the request of the Mall owner Bob Nazarian after Mr. Saunders had signed and sealed it. They were clearly intended to make the photographic evidence less graphic and the descriptors less alarming. Mr. Saunders was never informed of the changes.

After construction: The role of the owners

The evidence is unequivocal that all three owners of the Mall had the means to fix the roof's problems – and in the proper way. None did. The motive behind their inaction was clearly financial. Rather than seriously come to grips with the leakage of the parking deck, they resorted to patchwork and cosmetic solutions. They sold or attempted to sell their problem.

Algocen, 1979–99

As previously mentioned, Algocen's choice of design for the Mall was dictated in large measure by cost. Faced with the consequences of that poor design, it sought professional advice.

Algocen may have been advised as early as 1981 that a full membrane covering the entire parking deck surface was required to stop the leaks. The evidence is unclear whether a report prepared for the owners of the Woolco store was actually passed on to Algocen, but it would make little sense for the store to have commissioned the report and not provided it to the Mall owner. Subsequently, Algocen was advised on three further occasions that installation of a full membrane was recommended. One report suggested that remediation using the patch-and-seal method could be viable, so long as the work was specified by engineers and performed by qualified contractors working under the supervision of engineers. None of these recommendations was ever adopted. Algocen attempted remediation by having its own employees use past defective methods that had always proved ineffective. Recommendations to inspect the substructure, and the steel connections in particular, went unheeded. At the end of the HSP warranty period, Algocen took no steps to insist on an effective solution from that contractor. Rather than attempt to stop water penetration, its focus shifted to controlling ingress. Despite professional advice that the deck could at least support a "thin" membrane system, and without seeking any form of expert confirmation to clarify the situation, it persisted in a belief that the deck was at its maximum capacity. I heard no evidence suggesting there were public or municipal pressures to get the deck fixed properly.

Algocen was concerned as early as 1990 about the structure of the building, particularly whether the structure had been degraded by the salt-laden water on the concrete and steel. It told engineers it retained in 1990 that "we have definite concerns regarding structural damage." In 1992 senior executives acknowledged that, "at the end of the day," the company would have to test and re-evaluate the load capabilities of the structure because of age and the degradation caused by the water leaks. Regardless, Algocen took no steps to do so, even though it had been told in 1994 that corrosion would accelerate "exponentially" if the leakage was not treated. Ultimately, the "end of the day" for Algocen came not when it had to decide what to do with the structure but when it sold the Mall. It did so without carrying out any such test.

The recommended fixes were certainly not inexpensive, but, as the evidence has shown, Algocen was a large, successful commercial enterprise with ample resources. However, the focus of its commercial activities had changed, and it preferred vocations other than ownership and management of retail establishments in Northern Ontario. Its decision to sell the Mall formed part of that reorientation.

When the time came to sell the Mall to Elliot Lake Retirement Living, Algocen played its cards very close to its corporate vest. Information relating to the history of leakage and its potential negative effects on the Mall's structure was not divulged. However, I am not suggesting there was impropriety in this stance. The Mall was sold on an "as-is" basis.

Elliot Lake Retirement Living, 1999–2005

There can be no doubt that the creation of the Non-Profit Retirement Residences of Elliot Lake (Retirement Living) and the pursuit of its objectives were intimately entwined with the objectives of the City of Elliot Lake. That alignment, as Mayor George Farkouh put it, was "to serve the best interests of Elliot Lake."¹ Few would disagree that Retirement Living was remarkably successful in achieving that goal – one it continues to pursue actively to this day. In that context, the justification for its acquisition of the Algo Mall was right and proper. The Mall was not only central to the economic and social survival of the City but coincident with Retirement Living's defining need to attract people to buy into its vision of reinventing the City as a retirement community.

Despite that commonality of interest, however, Retirement Living is an entirely separate entity, independent of the City's direction. It is a not-for-profit private corporation. The original letters patent of incorporation provide that all 12 members of the corporation are its 12 directors. The original members came from a cross-section of municipal interests: City appointees (2), Retirement Living program participants (3), community members at large (2), mining interests (2), Algoma East Community Service Board (1), the Chamber of Commerce (1), and the local hospital (1).

It is interesting to note that, over the years, by supplementary letters patent in 1993 and 2010, the composition has been changed at the corporation's behest. Among other changes, Retirement Living's Board of Directors itself now appoints five members who were previously elected by tenants or the residents of Elliot Lake. In other words, positions previously filled by broad-based suffrage have now become board prerogatives. The general public has no access to board meetings or Retirement Living corporate documents.

The City has always designated elected officials as its appointees – in my view, an odd choice for the City to make. It appears to me to put the directors / councillors in a position of potential conflict in those instances where the best interests of the corporation differ from the best interests of the municipality. Such a conflict certainly would have been the case when Retirement Living owned the Mall – for example, when there was a clear contravention of the City's by-laws by virtue of the perpetual leaking of the parking deck.

Although the City's appointees to the board were referred to by Richard Kennealy (general manager of Retirement Living), Mr. Farkouh, and many other people as the City's "representatives," their fiduciary obligations were to Retirement Living. In their role as board members, they were constrained from acting contrary to the best interests of Retirement Living. Nevertheless, the City appointees, in their role as councillors, also owed a duty to the City itself which, while not strictly the same as a fiduciary duty, is analogous.

It would have been open to these representatives or to the City to declare a conflict when the interests of the City and of Retirement Living clashed – such as when the issue of roof remediation, outlined in the Nicholls Yallowega Bélanger and the Halsall reports, came to the attention of board members immediately before Retirement Living purchased the Mall. Such a declaration would be standard protocol for a "representative" director.²

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In addition to the conflict of duties and loyalties, the situation was exacerbated by the fact that, once they were appointed to the board, all the directors of Retirement Living were bound by very restrictive corporate confidentiality agreements.

All of Retirement Living's assets came from public funds in one form or another. In my opinion, its corporate structure and insistence on confidentiality operated to disenfranchise the citizens of Elliot Lake. While the narrow purpose for confidentiality has been described by counsel for the City as a desire to allay the fears of local businesses that their private information would be made public, the broader consequence, whether specifically intended or not, was to deprive the City of knowledge directly relevant to its duty to protect the public interest.

There certainly appear to have been sound and justifiable reasons for creating a separate entity to manage the City's inventory of housing. Without doubt, Retirement Living has been well administered, just as it has also been successful financially and in achieving its objectives. The reality, however, is that it has become a parallel quasi-civic administration, managing public assets and pursuing municipal goals without any opportunity for public scrutiny.

Retirement Living and the roof

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The evidence before me – without any contradiction – is that Retirement Living never intended to adopt one of the recommendations that would have led to a permanent solution to the roof's leakage problem. Documents confirm that meaningful repair measures were put off to the distant future.

confirm that meaningful repair measures were put off to the distant future. Retirement Living clearly had the financial ability to undertake such measures. During its ownership of the Mall, it consistently met or surpassed the goals of its business plan. Its interpretation of the second Halsall report was undeniably flawed. How could it possibly overlook the specific reference to expert application and professional supervision of the repairs to the parking deck, yet conclude that a mere repetition of the previously ineffective remedial measures would work? The reality is illustrated by the notes of what Mr. Kennealy told the Library board in June 2005, after its members had complained again of the ongoing leaks: "[W]ill do: repair – some work – will not do large outlays of cash."

Various witnesses have testified that the decision to sell the Mall was unrelated to the leaks. Rather, I was told that Retirement Living wanted to free up financial and human resources to concentrate on other objectives more closely related to its core role and to return the Mall to a private-sector owner rather than be in competition with the private sector.

Retirement Living knew that the Mall parking deck had been leaking for a long time. It did not pass that information on to the new owner, Eastwood Mall Inc. Indeed, it had no obligation to do so, as Eastwood was buying the Mall "as is" in exchange for price concessions. If Eastwood's principal Bob Nazarian chose, as his due diligence, to rely solely on the fact that the bank financing the purchase had carried out an inspection (without any knowledge on his part of the limited nature of that inspection), that was his business – and to his eventual chagrin. The situation was different in respect of the City, however. The City never received the Nicholls Yallowega Bélanger or the 1998 Halsall reports it had financed. It did not receive the 1999 Halsall report until 2007. Confidentiality agreements between Algocen and Retirement Living prevented release of information to the Retirement Living board about the particulars of these consultant reports. In any event,

confidentiality agreements between Retirement Living and its board members (including two City councillors) would have prevented transmission to the City. The City's chief building official at the time of the Mall's acquisition by Retirement Living testified that, if he had been made aware of the contents of the reports relating to permeability and structural integrity, he would have pursued the matter.

It is this culture of secrecy that may, at least in part, explain the City's inaction and that ultimately imperilled the lives, health, and welfare of the citizens of Elliot Lake.

Eastwood Mall Inc., Bob Nazarian, 2005 to collapse

Eastwood was Bob Nazarian's alter ego. Whatever may be said about Eastwood's shortcomings as the owner of the Mall can also be said about Bob Nazarian, Eastwood's controlling mind. Eastwood was the third and last owner of the Mall – its last chance for structural salvation before meeting an otherwise inevitable fate. Bob Nazarian utterly failed in his role as the Algo Mall's overseer and, in the process, put in jeopardy the lives and safety of his employees, tenants, and customers.

During Eastwood's ownership, Bob Nazarian actively misled the City, its citizens, his tenants, employees, lending institutions, potential buyers, contractors, and engineers. His business dealings lacked scruple and integrity. I know these are strong words. There are no other, more charitable terms, unfortunately, to describe his behaviour.

To cite some examples: Bob Nazarian had others – his son, his lawyer, and his employees – do the writing for him so he could later deny authorship and say they had gone beyond his instructions and authorization. He failed to take active steps to rectify the Mall's problems, which, by 2005, had become acute and pressing. He heeded little, if any, of the professional advice he received. That failure led directly to the collapse.

Bob Nazarian realized, early on, that the Mall had become, to use his own words, a "black hole."³ He may not have been provided with the entire dismal picture of the Mall's problems when he purchased it. Had he been a properly vigilant purchaser, however, he would have been better informed. He had the financial means to fix the problems, but he preferred instead to spend them elsewhere despite his awareness of the potential for structural damage. The great majority of his decisions were motivated by a concern for his own financial interests, at the expense of those of others. He often attempted to rid himself of the Mall by selling it, but was defeated by his unbridled desire to squeeze an extra dollar out of a transaction.

It is regrettable that Bob Nazarian was able to lull a timorous, timid, and credulous civic administration into a false sense of confidence about his intentions. He successfully exploited the City's inertia and gullibility.

During Eastwood's ownership, Bob Nazarian actively misled the City, its citizens, his tenants, employees, lending institutions, potential buyers, contractors, and engineers. His business dealings lacked scruple and integrity.

After Construction: Role of the City of Elliot Lake

I am struck, as I examine an aerial photograph of the Mall and its environs, by the proximity of the Mall to the city hall – a few hundred feet at most. And yet, as I listened to the evidence of many of the members of Elliot Lake’s civic administration and heard their purported lack of knowledge of the Mall’s leakage problems, the Mall might as well have been located in Sudbury – or on the moon! The Mall was clearly the City’s most important commercial structure – from a number of perspectives, ranging from fiscal to social. But to hear it told, official knowledge of some of its leakage woes ranged from non-existent to only a vague appreciation at best. Despite many of these civic witnesses’ somewhat feeble attempts to plead ignorance, I am convinced that the leaking of the parking deck was widely known and understood.

Another aspect of the municipal bureaucracy that concerns me is the apparent collective ignorance or amnesia of its members about the particulars of its Property Standards By-law and of the powers vested in the City to enforce its provisions. That by-law required that every part of a building be maintained in a structurally sound condition and that the roof of a building be maintained in a watertight condition, so as to prevent leakage of water. That by-law and its enforcement policy were specifically discussed by council in 1995 and in 2005–6. Council dealt with it when the by-law was repealed and replaced with the same substantive requirements in 2003.

The parking deck of the Algo Mall leaked continuously for 26 years before any action was taken by the City.

The parking deck of the Algo Mall leaked continuously for 26 years before any action was taken by the City. Only in 2006 did it serve the owner a Notice of Violation – and then promptly forgot about it!

Three years later, when the Building Department recognized its failure to act, it issued an Order to Remedy, which it soon rescinded when it was provided with an engineer’s inspection report that was clearly incomplete and defective on its face and after the most cursory of inspections by the City’s chief building official.

The absence of corporate memory in Elliot Lake was clearly attributable, at least in part, to a poor archiving and retrieval system of data relating to building and maintenance issues. Information was lost when one official retired or passed away. The City lacked an effective platform for its data – one that was accessible, traceable, and updatable. It had no effective system-wide method to bring tasks forward and to monitor deadlines.

I was not particularly concerned by the City’s official adoption of a complaint-driven enforcement process. That approach appears to be consistently favoured by many Ontario municipalities and is sensible in a resource-conscious municipal environment. What struck me, however, about Elliot Lake’s interpretation of that policy was its overly bureaucratic and quibbling application. In the minds of some, the policy precluded any form of independent initiative by the responsible office holder, even in the face of blatant evidence of some form of problem. In the mind of others, it required slavish adherence to the form of the complaint. Still to others, a complaint had to be directed to a specific individual and no other. Preserving the anonymity of the complainant was not acceptable.

Elliot Lake’s city hall is far from being a large, multi-level structure. All the offices of municipal officials are contiguous one to the other. Yet one is left with the impression that the building consisted of hermetic isolated offices whose occupants either did not share information or were prevented from doing so by virtue of their isolation. One particular chief building official appeared to be so jealous of his independence that he rejected the notion that conversation or suggestions were permissible and did not constitute an affront to his civic rights.

Throughout the Mall's existence, the appearance of work being done to remedy the leaks was good enough for the City. The fact that the same ineffective work was being performed over its entire lifetime, without appreciable results, was apparently lost on those charged with enforcement. The evidence has clearly shown that municipal officials were alive to the potential for structural damage due to water and chlorides ingress.

It seems that one fact has stood out and outweighed all others: the Mall was vital to the economic and social health of the community. It was central to Retirement Living's plan to attract retirees to move to and settle in Elliot Lake. It was a significant contributor to the City's tax base. It was an important rendezvous point for its population. It favoured the financial health of its businesses and provided needed employment to its residents. All these factors were fundamental to the corporate ideology that prevailed at city hall, and they permeated many of the actions, inactions, and decisions of its officials and may well have clouded their judgment when decisive corrective action was required. Partial or complete closure of the Mall was anathema – an attitude that percolated from the mayors down to all employees. It was an attitude that was both spoken and unspoken and was certainly well understood. It coloured the City's relationship with the Mall's successive owners and even led to the toleration of the last owner's egregious behaviour.

It seems that one fact has stood out and outweighed all others: the Mall was vital to the economic and social health of the community.

This predilection animated the City in its disregard of the persistent complaints of one of its most important institutions, the long-suffering Library. Even falling concrete in the food court was overlooked. It may well have explained what some have described as a wilful blindness about the by-law enforcement process. One can understand that tenants or members of the public or even the Library board may have been unclear about that process – but not those officials for whom enforcement was central to their role.

Warnings and direct complaints, particularly during the last decade of the Mall's existence, were varied and numerous. The narrative of the evidence is replete with reference to specific instances. They invariably and sadly fell on deaf ears.

It is beyond dispute that the City's practice of holding "caucus meetings" was illegal and operated to exclude the citizens of Elliot Lake from knowledge of discussions relating to matters of substantial public interest. Thankfully, that practice has ceased. During the 12 years when these meetings did occur, what specifically was discussed cannot be discovered, because no minutes were kept. As I have pointed out, it would be speculative to assert that Mall leakage was a topic of concern at those meetings. Nevertheless, I would be surprised to learn that leakage was never discussed. Open discussion of this problem at open meetings might have engendered public interest and fostered meaningful remedial action.

The most basic flaw in the dynamic that animated the City's relationship with the Mall is that the City was never an impartial arbiter between its role as a protector of the public interest, on the one hand, and, on the other, its role as the promoter of the Mall's value to the community. The City's enforcement responsibility was tainted by its protective instincts, just as its attitude went far beyond what might be justifiably defended as a conservative approach to enforcement. The City never drew the line beyond which inaction would cease to be tolerated. More fundamentally, it was in the worst possible conflict situation, particularly during Retirement Living's ownership period: It was, concurrently, the regulator and enforcer of the City's Property Standards By-law; the tenant (vicariously through the Library); and the owner, by virtue of its representation on the board of Retirement Living.

The Ministry of Labour

The interest of the Ministry of Labour in the Mall's structural and leakage problems were in no way infused with ardour and consuming concern. During the Algocen years, the ministry had a field office in the Mall. Bearing in mind the general nature of its inspectors' responsibilities, it is, to say the least, surprising that the chronic leakage should have gone unobserved and undocumented. I have already described the attitude of one of the inspectors, Ed Hudson, as being incurious and his actions as perfunctory and inadequate. He seems not to have noticed clear evidence of flagrant leakage, and he failed to interview Mall employees and patrons about the incidence of past leakage. It may be that the nature and extent of his overall responsibilities were such that he was able to devote little "quality time" to the Mall's realities. It is also possible that, if the ministry had possessed a better corporate memory of the Mall's history of leakage, it could have given it more prominence on its list of priorities.

I heard no evidence of any form of formal or informal dialogue between municipal authorities and the Ministry of Labour involving matters of mutual concern at the Mall. Although the ministry's focus is narrower than the City's, a commonality of interest in such things as structural integrity and impermeability certainly existed.

I find it curious that, during the entire period of the Mall's existence, the leaking roof was the subject of relatively few complaints and reactive visits, particularly so when the leaking became much more prevalent. In the Mall's later years, the leaking roof and its effects were the subject of only two complaints and one visit. The first complaint was anonymous, and the ministry's response was tepid. The second complaint was met with what can only be described as an indefensible bureaucratic runaround by the ministry official who received the complaint.

There were, over the years, numerous occasions when the health and safety committees of individual businesses met to deal with leakage. Their concerns rarely made it to the attention of the Ministry of Labour.

It may very well be that the ministry's internal responsibility system acts as a disincentive to the reporting of problematic conditions. Employers may not be motivated to invite scrutiny for fear of the potential financial consequences, and employees may be apprehensive about the security of their employment.

Summary

The deterioration of the infrastructure of the Mall parking deck did not happen overnight. It was the result of a poorly conceived and poorly engineered surface, decades of neglect, lack of competent and thorough inspection, inadequate official oversight, and owners who put profit-seeking above all else. All those who were in a position of responsibility or authority over the Mall contributed in varying degrees to its demise.

Addendum

On May 8, 2014, more than nine months after hearing its closing submissions, the Commission received an anonymous letter along with a 1988 report, in both English and French, entitled *Deterioration of parking structures* (the report).⁴ The report had not been produced to the Inquiry during its investigation. As a result, I issued Procedural Order No. 9:

IT IS HEREBY ORDERED THAT:

1. The Ontario Government shall serve on the Commission and each Participants in Part I of the Inquiry, by 5:00 p.m. Friday, May 23, 2014, submissions, and related documents, in relation to the following questions:
 - a. Confirm the authenticity of the Report.
 - b. Describe what steps, if any, were taken by the Ontario Government upon receipt of the Report, including whether it established a comprehensive repair and restoration program (see p. ii of Report). If no steps were taken (or no program established), please explain why.
 - c. Did the Ontario Government conduct any additional study following the Report? If so, describe.
 - d. Did the Ontario Government adopt any of the recommendation set out in the Report? If so, describe the measures taken and how they were implemented?
 - e. Provide any documentation in relation to items b, c and d set out above.
2. A Participant to Part I of the Inquiry wishing to make submissions with respect to the Report and/or in response to the Government's submissions shall serve such submissions by 5:00 p.m. Friday, June 6, 2014 on the Commission and the Participants Part I.
3. Service of materials relating to this Procedural Order may be made by e-mailing a copy to the Commission of Inquiry and Commission Counsel at info@elliottlakeinquiry.ca and counsel@elliottlakeinquiry.ca and to counsel for the Participants Part I at participants@elliottlakeinquiry.ca.
4. All materials relating to this Application shall be posted on the Commission's website.

Ultimately, five participants provided submissions regarding my procedural order: the Government of Ontario, which delivered submissions on May 30, supplemental submissions on June 4, and reply submissions on June 18; exp Global (Trow), the Ontario Building Officials Association, Robert Wood, and the City of Elliot Lake (City).⁵

The Advisory Committee on the Deterioration, Repair and Maintenance of Parking Garages had been formed by the former Ministry of Housing in November 1986. Included among the committee's members were leading Ontario specialists who could address the deterioration of the existing provincial stock of approximately 3,000 parking structures – chloride-induced damage estimated to be worth about \$1 billion at that time (see also the report's Executive Summary). These representatives had been recruited from the Ministries of Housing, Government Services, and Transportation and Communications, along with municipal officials and consultants from the Trow Group, Halsall Robt & Associates Ltd., and Construction Control Ltd. The purpose of the Advisory Committee report was to provide by 1992 a comprehensive repair and restoration program that was "affordable, effective and enforceable."⁶

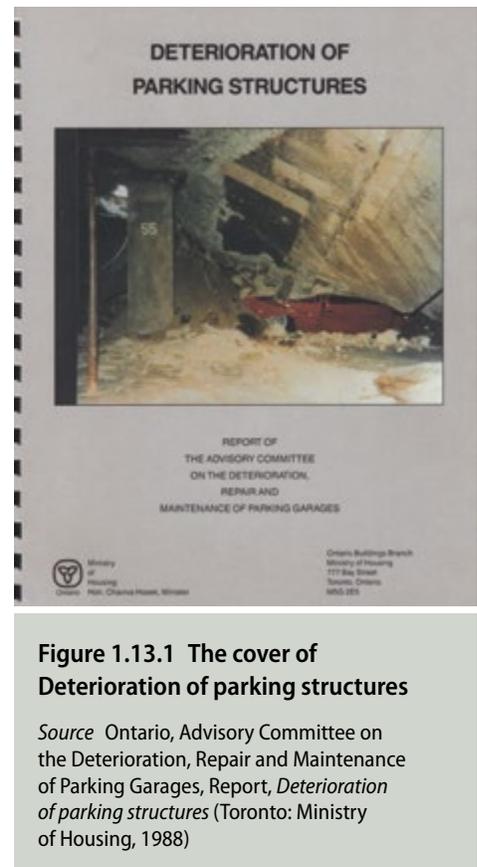


Figure 1.13.1 The cover of Deterioration of parking structures

Source: Ontario, Advisory Committee on the Deterioration, Repair and Maintenance of Parking Garages, Report, *Deterioration of parking structures* (Toronto: Ministry of Housing, 1988)

Chapter 1 of the report (“The Deterioration Problem and Inspection Techniques”) addressed the cause of the deterioration of the existing parking structures as follows:

It is now evident that the deterioration of concrete parking garages is occurring due to rapid corrosion (rusting) of reinforcing steel caused by the progressive accumulation of salt in the concrete. It is now generally accepted that the standards and practices applied until recently in the design, construction and maintenance of these structures are inadequate to ensure their satisfactory service and performance. As a direct consequence, the majority of existing parking structures are subject to rapid and progressive deterioration, which may result in localized and unexpected structural failure unless repairs are carried out.⁷

This chapter discussed the factors affecting the rate of corrosion on a particular building and the importance of inspection techniques in determining the extent of deterioration and its effect on the structure. The report pointed out that, for reasons of safety, periodic inspections were necessary to detect deficiencies and deterioration relating to load capacity and to provide timely information on the condition of the structures, so that prompt and cost-effective maintenance and repair could be carried out.⁸

Chapter 2 of the report (“Repair Methods”) identified safety as the primary consideration in repairs. It set out six repair methods, some of which had many variations, and provided decision criteria to assist in evaluating the different solutions. The report pointed out the importance of careful analysis in view of such economic considerations as cost, physical compatibility, and durability or performance.⁹ It stated that correct diagnosis and repair methods suited to the context should be provided by a consulting engineer, that only qualified contractors should be selected and employed, and that continuing education programs should be provided to owners, consultants, and contractors.¹⁰

In chapter 3 (“Maintenance and Monitoring Procedures”), both these aspects of care were identified and elaborated on for post-tensioned and pre-tensioned precast structures. The chapter included a Planned Maintenance Schedule as an example of a systematic maintenance program for these structures. The Report suggested that the problems that could develop in such structures included leaks through concrete elements, causing corrosion to steel members resulting in rust stains; leaching of cement constituents, causing white film and stalactites on slab soffits; and damaged waterproofing and traffic toppings, resulting in leakage, staining, or leaching on the concrete surface.¹¹ With respect to the inspection and monitoring of steel structures, the report stated:

In addition to inspecting concrete elements for cracks, leakage, staining, leaching and spalling, checking for signs of distress in steel members must also be made. These investigations should probe for cracks, excessive deflection, distortion or buckling of steel members, or in portions of members such as beam flanges or webs, and any damage to corrosion protection, whether paint or galvanizing. Welded, bolted and riveted connections should similarly be inspected for signs of distress.¹²

The Government of Ontario provided two submissions in response to Procedural Order No. 9. In its first submission, Ontario confirmed the authenticity of the report and its delivery to the former Ministry of Housing. The report was one of many prepared in the late 1970s through the early 1990s regarding the durability and deterioration of multi-level parking structures. According to Ontario, the problem was well known in the sector. It noted steps taken to amend regulations for design and construction of new buildings, to disseminate and publicize the report widely to building owners, engineers, municipalities, and the public, and to participate in and support further research studies and projects relating to parking structures and their repair. However, it only *considered* whether to establish requirements for the inspection and maintenance of existing structures. Apparently, an impact study involving wide consultation had also been undertaken, and a policy paper had progressed into its draft stages. It was to focus on three scenarios: the status quo, a requirement for periodic inspection, and a requirement for regular certification.¹³

Ontario stated that the current Ministry of Municipal Affairs and Housing had not been asked to produce documents during the Inquiry but that it had now submitted them. Some of these reports describe the severity of the deterioration of parking structures as “reaching epidemic proportions” or as “now cause for serious alarm.” One in particular, a 1986 report, listed other studies, reports, and conferences that identified problems with parking structures as well as potential options for inspection and ongoing maintenance and repair.¹⁴

Ontario advised that it has been unable to find any copies of either the impact study or the policy paper, or of documents related to them. Furthermore, Ontario advised that it was challenging to find any records, given the passage of time since preparation of the report. Other than those documents it has already found, it would appear that any others have been destroyed in accordance with Ministry record retention schedules.¹⁵

Ontario reported that, following the Report of the Advisory Committee, it participated in studies conducted by Canada Mortgage and Housing Corporation and by the National Research Council Institute of Research in Construction. The final report of the Institute of Research in Construction project provided information to assist engineers and owners to formulate the repair strategy and maintenance practices of existing garages built without adequate corrosion protection. It was communicated to buildings owners, property managers, and others.¹⁶

As pointed out by Ontario in its submissions, the *Building Code Act* has not established any requirements for the maintenance or operation of existing buildings, including any standards for maintenance and repair.¹⁷ No documentation is available through the searches conducted by the Ministry of Municipal Affairs and Housing to provide background to the policy decision made at the time not to establish standards for existing parking structures.¹⁸ Ontario did not adopt a legislated comprehensive repair and rehabilitation program for existing parking structures.

Ontario made the point that any decision to consider whether to exercise the regulation-making power or to extend its scope can involve policy decisions that include discussion, on the one hand, of the difficulty in establishing standards capable of being enforced through regulation or, on the other, of the challenges with effective and efficient enforcement. Furthermore, the province argued, a wide range of challenges and opportunities were presented more recently by the participants at the Commission’s policy roundtables in November 2013. Nonetheless, there were, and are, legislative powers in Ontario to address the inspection and maintenance of existing buildings. In addition, municipalities have had the discretionary authority since 1972 through municipal property standard by-laws to establish standards for the maintenance and occupancy of existing buildings.¹⁹ Ontario also pointed to the *Building Code Act*, which, since 1975, has provided a broad authority to chief building officials and building inspectors related to their duty to protect health and safety by challenging unsafe existing buildings.²⁰

Supplemental submissions were made by Ontario following the discovery of additional documents related to the committee report. Of importance are three chapters that were omitted from the final report – the “Overview,” chapter 5: “Enforcement Procedures,” and chapter 6: “Development of a Communications Strategy.”

That part of the Overview dealing with existing structures discussed the difficulty of introducing legislation that would be “workable” for all affected parties, given the range of financing mechanisms used in the construction and maintenance of the troubled buildings. Periodic inspections of parking garage structures, the report stated, were required for reasons of safety in connection with the load carrying capacity of suspended parking floors. Inspection procedures and testing techniques used to assess the condition of the various garage components ranged from simple, straightforward procedures to sophisticated techniques that normally required the services of professional engineers.²¹ No provincial legislation existed at the time that would require the mandatory

retrofit of existing structures to ensure structural safety. Building officials could take action when a building was structurally “unsafe,” but there was no objective standard at that time to determine if the building was “unsafe.”²²

The Overview discussed a variety of issues, including

- a communication plan encompassing short-term and long-term strategies to reach all parties that have any involvement, direct or remote, with parking garages before legislation was enacted;
- a requirement for research before developing standard recommendation for repairs;
- extending a building’s useful life by a meaningful maintenance program;
- further research on technical matters, materials supply, training, economic studies, communications activity, and legislative impacts;
- development of a work plan for the period 1988–92;
- collection of documents on state-of-the-art repair methods;
- a survey, followed by development, of a cost-effective and functional maintenance program;
- analysis of legislation from other jurisdictions; and
- establishment of reserve funds.

The chapter ended with a summary of the other two chapters that were not published.

The Advisory Committee discussed what society (property owners in this case) could, through the tax system, afford to pay. It noted that many classes of property owners would be affected by any of the proposed new legislation, which, by its nature, could not be selective. The ability to pay for necessary repairs would vary among different owners, including such categories as social housing, public housing, non-profits, co-ops, condominiums, and municipal and commercial parkades. Research was required in areas such as the cost-effectiveness of repair methods, cathodic protection, membranes, and sealers.²³

The unpublished chapter 5 dealt with enforcement procedures. The issue to be dealt with by the whole committee was whether the problem was serious enough to require a provincial mandatory minimum standard, or whether it was a local problem to be dealt with as a property standards matter by the municipalities under their maintenance and occupancy standards by-laws.²⁴

The committee identified two methods of enforcement but did not recommend either one in particular:

- a scheme of mandatory retrofit under the *Building Code Act*, recognizing that amendments would have to be made to the Act and further regulations drafted under it;
- permits relating to structures – a plan that would probably require new legislation to authorize the issuing of such permits, which would have to be renewed on a periodic basis.²⁵

The committee recommended that an impact study be undertaken, with a steering committee appointed to monitor the impact of enforcement on the various interests affected as well as to analyze solutions that had been legislated elsewhere in Canada and in the United States.

The unpublished chapter 6 discussed the need for a carefully coordinated communications strategy involving all stakeholders. It identified the following groups as having a direct financial involvement in the issue: developers, building owners, shopping centre owners, parking garage operators, and condominium owners. Others who were not involved through ownership but were likely to be brought into the problem through other direct or indirect means were consulting engineers, building officials, material suppliers, and contractors.²⁶

In its reply submissions, Ontario reiterated the steps taken by the province – amendment of the *Ontario Building Code*, participation in amendments to the Canadian Standards Association guidelines for parking structures and repair of reinforced concrete in buildings, support for research, publication of the report and its technical chapters, and other measures. However, Ontario was not able to locate for the Commission either the impact study that was apparently carried out or the policy paper prepared on the Advisory Committee’s recommendations.

Ontario suggested that it was reasonable to infer that a policy decision had been made not to develop laws, policies, and procedures for existing parking structures, probably for reasons involving affordability, effectiveness, and enforceability. The province seems to have preferred to empower municipalities to establish and regulate standards for the maintenance of buildings. The submission stated that enactment of additional legislative requirements or the establishment of new policies or procedures regarding the maintenance, repair, and inspection of existing parking structures in response to the 1988 report would not have prevented the tragic collapse of the Algo Mall. Given that laws were already in place requiring maintenance and repair of the Mall, and that inspections of the Mall were carried out by professional engineers throughout its life, including the beam that ultimately failed, Ontario argued that there was no basis for concluding that the changes proposed by the Advisory Committee for consideration by the government would have prevented the failure. Any such laws would have been effective only to the extent they were implemented.²⁷ According to Ontario, municipalities are best placed to understand and respond to local matters in this area, and it is not practical for the province to have staff in each community to inspect buildings or to respond to complaints regarding building maintenance. Even with provincial legislation, the province said, there was no evidence to suggest that the collapse could have been prevented.²⁸

Ontario stated that, when the Mall was constructed, the problem of deterioration was well known, and the installation of membranes had long been an available solution. Studies, conferences, and research papers disseminated information to owners, engineers, and others, as the Advisory Committee’s report had suggested. The province took additional steps through publications, workshops, project support and funding, and the development of standards to achieve that objective. Cost-effective repair methods had been published in the technical chapters of the committee report. In sum, the province argued that it is reasonable to infer that building owners, professional engineers who conducted structural evaluations, and municipal building officials were aware of the problems associated with parking structures, and it was incumbent on them to ensure compliance with municipal requirements.²⁹

The City of Elliot Lake questioned why Ontario was unable to locate the Report and to produce it in a timely fashion, given the continuing obligation of all participants to provide relevant documents throughout the Commission process. Its position, essentially, is that enactment of provincial standards would have led to safer major infrastructure across the province, including the Algo Mall.³⁰

The Ontario Building Officials Association was not able to determine whether it had ever received the report or was aware of it at the time. It submitted that new regulations under the *Building Code Act* and enforceable province-wide legislation should mandate retrofits for structural safety.³¹

Mr. Wood submitted that the information contained in the report should have been available to the Commission before the hearings. It would, he argued, have been of assistance in relation to the examination of witnesses. Moreover, the information in the report would have revealed that corrosion in pre-tensioned and post-tensioned concrete cannot be observed visually. He recommended that mandatory periodic inspections be legislated.³²

Exp Global Inc. (Trow) made three points in its submission:

- the 1988 Advisory Committee report identified the state-of-the-art thinking at the time with respect to the inspection and repair of existing parking structures in Ontario;
 - (a) Trow's work in the 1990s met that standard, as set out in the report; and
 - (b) the Trow experts on the Advisory Committee in 1988 provided policy input to the Commission in 2013.³³

Conclusion

I am grateful to the person who provided this report anonymously to the Inquiry. It is extraordinary and mystifying that so many participants, unbeknownst to the Commission, had also been involved in the preparation of the Advisory Committee report. Despite that participation, not one of them made even the slightest mention of it, let alone produced the relevant documents. Obviously, the 1988 report represented a serious and determined effort to address the deterioration of parking structures caused by chloride damage which had "reached epidemic proportions" and was cause for "serious alarm." The relevance of the documents could not be clearer. They spoke directly about the problems experienced by the Algo Mall, although it is important to remember that the Mall was doubly cursed: it was not only a deteriorating parking structure but one, unfortunately, that was located over retail stores and other services beneath. The Advisory Committee report discussed issues that go to the very heart of the Mall's existence and tragic demise.

Ignorance of the existence of these documents resulted in missed opportunities for both the Commission and all its participants. Early knowledge of their content would certainly have affected the Commission's approach to its mandate. Clearly, the Commission's investigative resources could have been employed to discover their fate, contemporary actors could have been identified and interviewed, and other potential witnesses could have been identified. This information would have complemented the report prepared by NORR Limited after the Mall's collapse. It would certainly have assisted both the Commission counsel and the participants in their examination and cross-examination of witnesses and in the preparation of their submissions.

It is not sufficient to resort to conjecture and to infer that there must have been sound policy reasons for the failure to implement one of the options so seriously and carefully advanced by the Advisory Committee. Perhaps there were, but this Commission will never know and derive benefit from them. If those reasons did in fact exist, they should have been made known to me. If they were valid, they would have been of considerable value to me as I attempted to craft sound and effective recommendations. And so, the big question remains: Would those same policy reasons still be valid today, particularly in light of the events of June 2012?

Notes

- ¹ Farkouh testimony, May 2, 2013, pp. 7993–4.
- ² See, for example, Jane Burke-Robertson, *20 Questions Directors of Not-for-profit Organizations Should Ask about Fiduciary Duty* (Toronto: Canadian Institute of Chartered Accountants, 2009), 8.
- ³ Bob Nazarian testimony, July 25, 2013, p. 18265; July 29, 2013, p. 18827.
- ⁴ Ontario, Advisory Committee on the Deterioration, Repair and Maintenance of Parking Garages, Report, *Deterioration of parking structures* (Toronto: Ministry of Housing, 1988), attached as Appendix B to the Commission's Procedural Order No. 9 (hereafter report). This report, along with all the submissions made by participants in relation to it, was posted on our website and considered by me in preparing both the following Addendum and my recommendations in chapter 14.
- ⁵ Province of Ontario, Submissions in response to Procedural Order No. 9; Submissions of exp Global Inc. (Trow) in response to Procedural Order No. 9; Submissions of the Ontario Building Officials Association, Procedural Order No. 9 and No. 11; Submissions of Robert Wood in response to Procedural Order No. 9; Response of the City of Elliot Lake to Procedural Order No. 9 and Procedural Order No. 11.
- ⁶ Province of Ontario, Reply Submissions – Procedural Order No. 9, June 18, 2014, p. 2.
- ⁷ Report, Appendix B to Procedural Order No. 9, chap. 1, p. 3.
- ⁸ Report, Appendix B to Procedural Order No. 9, chap. 1, p. 9.
- ⁹ Report, Appendix B to Procedural Order No. 9, chap. 2, p. 30.
- ¹⁰ Report, Appendix B to Procedural Order No. 9, chap. 2, p. 34.
- ¹¹ Report, Appendix B to Procedural Order No. 9, chap. 3, pp. 45–6.
- ¹² Report, Appendix B to Procedural Order No. 9, chap. 3, p. 47.
- ¹³ Province of Ontario, Submissions in response to Procedural Order No. 9, May 30, 2014, pp. 6–7; app. G, *Building Action Newsletter* (Number 8, February 1989).
- ¹⁴ Province of Ontario, Submissions in response to Procedural Order No. 9, May 30, 2014, p. 3; app. C, pp. 57–60.
- ¹⁵ Province of Ontario, Submissions in response to Procedural Order No. 9, May 30, 2014, p. 7.
- ¹⁶ Province of Ontario, Submissions in response to Procedural Order No. 9, May 30, 2014, p. 8.
- ¹⁷ Province of Ontario, Submissions in response to Procedural Order No. 9, May 30, 2014, p. 10.
- ¹⁸ Province of Ontario, Submissions in response to Procedural Order No. 9, May 30, 2014, p. 10.
- ¹⁹ *Building Code Act, 1992*, s. 15.1.
- ²⁰ Province of Ontario, Submissions in response to Procedural Order No. 9, May 30, 2014, pp. 10–11.
- ²¹ Province of Ontario, Supplemental submissions in response to Procedural Order No. 9, app. C, p. 5.
- ²² Province of Ontario, Supplemental submissions in response to Procedural Order No. 9, June 4, 2014, app. G, p. 2.
- ²³ Province of Ontario, Supplemental submissions in response to Procedural Order No. 9, June 4, 2014, app. C, pp. 20–1.
- ²⁴ Province of Ontario, Supplemental submissions in response to Procedural Order No. 9, app. G, p. 2.
- ²⁵ Province of Ontario, Supplemental submissions in response to Procedural Order No. 9, June 4, 2014, app. C, p. 9.
- ²⁶ Province of Ontario, Supplemental submissions in response to Procedural Order No. 9, app. H, pp. 2–4.
- ²⁷ Province of Ontario, Reply submissions – Procedural Order No. 9, June 18, 2014, p. 5.
- ²⁸ Province of Ontario, Reply submissions – Procedural Order No. 9, June 18, 2014, p. 7.
- ²⁹ Province of Ontario, Reply submissions – Procedural Order No. 9, June 18, 2014, pp. 8–9.
- ³⁰ Response of the City of Elliot Lake to Procedural Order No. 9 and Procedural Order No. 11.
- ³¹ Submissions of the Ontario Building Officials Association, Procedural Order No. 9 and No. 11, p. 3, para. 9.
- ³² Submissions of Robert Wood in response to Procedural Order No. 9, para. 22.
- ³³ Submissions of exp Global Inc. (Trow) in response to Procedural Order No. 9, p.1, para. 2.

