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Political intervention was essential to the resumption of the rescue / recovery

As I discuss in the first part of this chapter, the involvement of the Premier's Office was essential to the resumption of the rescue / recovery efforts at the Algo Mall.* In order to understand the context in which the premier and his staff reacted to the events, it is important to understand what information they had obtained before the evening of June 25. The inadequate flow of information from the people on the ground to senior officials is relevant to this discussion. Therefore, at the risk of repeating myself, I return to the time of the collapse and I review some key events from the perspective of Premier Dalton McGuinty and his staff.

Two witnesses with direct knowledge of the involvement of the Premier's Office gave evidence: Mr. McGuinty, former premier of Ontario, and John O'Leary, former manager of legislative issues in the Premier's Office. Mr. McGuinty became the premier of Ontario in 2003 and held that position until 2013. During that decade, he attended other emergencies, including a flood in Peterborough, the tornado in Goderich and Leamington, forest fires in Northern Ontario, and the explosion of a propane facility in Toronto.¹ When he gave evidence in October 2013, he was a fellow at the Weatherhead Center for International Affairs at Harvard University.²

Mr. O'Leary holds a bachelor of arts degree in history from Queen's University. After graduating, he worked as a staffer for Cabinet ministers Gerard Kennedy and Kathleen Wynne. Mr. O'Leary joined Premier McGuinty's office in December 2007 as his special assistant for issues management and legislative affairs. At the time of the collapse, Mr. O'Leary was the manager of legislative issues.³ Throughout the response to the collapse, Mr. O'Leary took handwritten notes in a notebook,⁴ which are found at Exhibit 9139.† A typed version can also be found at Exhibit 9140.‡

I accept the evidence of Mr. McGuinty and Mr. O'Leary without reservations. I also heard from Michael Mantha, the MPP for the riding of Algoma-Manitoulin, which includes the City of Elliot Lake. Mr. Mantha was first elected in October 2011.⁵ I accept his evidence as well.

Key players within the Premier's Office and the Cabinet Office

Approximately 70 people worked in the Premier's Office in June 2012. This office consists exclusively of political staff, as distinct from public servants who work, for example, in the Cabinet Office. The employment of the political staff is at the pleasure and the term of office of the politician they serve.⁶

At that time, David Livingston was Mr. McGuinty's chief of staff, the most senior position in the office. Laura Miller, a deputy chief of staff, was responsible for communications and issues management.⁷ Mr. O'Leary reported to her. As manager of legislative issues, he not only coordinated the management of contentious issues through the Premier's Office but liaised and worked with the various ministries as well. His job started at 5:00 a.m. every day with a review of the news media for stories that might affect Ontario, the Government of Ontario, and its operations. Every weekday morning he chaired a conference call with the individuals responsible for issues management in each of the relevant ministers' offices. The purpose of the call was to brief himself and the Premier's Office on contentious issues of concern to the government and its ministries and to ensure that all other ministries were equally informed.⁸

.....

* See glossary for definitions of rescue / recovery operations.

† The redactions in the document concern information that is not germane to the purposes of this Inquiry and relate to other issues that Mr. O'Leary dealt with as part of his duties. O'Leary testimony, September 17, 2013, p. 25873.

‡ In the typed version, the asterisks followed by the indication "next page" refer to the page breaks in the original handwritten notes. The solid line drawn below certain portions of written text indicates that the exchange is complete and that the next set of notes refers to another exchange. O'Leary testimony, September 17, 2013, pp. 25874–5.

In the aftermath of the Mall collapse and the response, Mr. O’Leary was responsible for gathering information at the political level about the Elliot Lake response and sharing that information with various ministers’ offices. He was appointed early on by Mr. McGuinty as the point person on the Elliot Lake file.⁹

Tracy Sobers was Premier McGuinty’s executive assistant. She was the gatekeeper, responsible for his calls and his appointments as well as his outings and any activities he was involved in. Mr. McGuinty agreed that she would often be the funnel through whom information would flow to him. Beckie Codd-Downey was junior to Ms. Sobers. She worked closely with Ms. Sobers and sometimes replaced her in travels with the premier.¹⁰

Wendy McCann was responsible for communications. She monitored the media and helped draft press releases issued by the Premier’s Office. Press secretaries reported to her, and she in turn reported to Ms. Miller.¹¹

The Cabinet Office is the Premier’s “ministry.” It works with the Premier’s Office to ensure that a government-wide agenda and a holistic approach to the implementation of government policy are in place. The senior official in the Cabinet Office is the secretary of the Cabinet: Peter Wallace held that position in 2012.¹² Debbie Conrad was an assistant deputy minister responsible for communications in the Cabinet Office.¹³

June 23 – The Premier’s Office is informed unofficially of possible fatalities and trapped persons in the collapse

5:36 p.m. – The premier is advised of the collapse: He is eager to obtain more information

Mr. O’Leary first learned of the Mall collapse through an email he received on June 23, at 4:23 p.m., from Greg Flood, an employee at the Ministry of Community Safety and Correctional Services (MCSCS), and which he reviewed shortly before 5:00 p.m.¹⁴ Mr. Flood’s email had been sent to a group of government officials to whom the MCSCS disseminated emergency information. Mr. O’Leary responded to Mr. Flood, asking him if he had any further developments to report.¹⁵ He also began to notify other individuals within the government who he believed should be aware of the situation. He sent the email to Ms. Conrad, asking her to check with Emergency Management Ontario (EMO);¹⁶ to the chief of staff (Fahim Kaderdina) and his own counterpart (Bill Killorn) at the Ministry of Labour (MOL);¹⁷ and to several individuals at the Premier’s Office, including Ms. Sobers, Ms. McCann, and Mr. Livingston.¹⁸ Mr. O’Leary explained that he forwarded the email to his colleagues at the MOL because, while he understood that this ministry would not be the lead agency in the emergency response, he believed it would play a role in supporting any rescue that was organized. He also understood that the MOL, given its role in workplace safety, was responsible for overseeing matters such as the *Building Code* or performing inspections.¹⁹

Mr. O’Leary’s role was to ask questions about the response, gather information, and ensure that information was being shared among the ministers’ offices. He did not provide direction to those making decisions about the response.²⁰ He learned from Thomas Chanzy, chief of staff to MCSCS minister Madeleine Meilleur, that the local MPP was Mr. Mantha, who was from Elliot Lake.²¹

At 5:05 p.m., Mr. O’Leary sent another email to his colleagues at the Premier’s Office, advising them of information he had obtained from an email from Mr. Flood at 5:01 p.m.:

Further update from CSCS. MOL and Cabinet Office are also confirming details and assistance.

Media is reporting incident at 2:19 p.m. Opp can’t confirm anyone missing or injured. 2 cars apparently fell through the collapsed hole, which is approx. 30 ft x 50 ft. Media also reporting at least 2 ppl missing.

Urban Search and Rescue team (10 members) and Urban Critical Response team (10 members) has [sic] been deployed.

ETA on teams is approx. 8–9 hours.

Community has declared an emergency declaration.

OFM has a [sic] inspector on-site providing support.²²

He also informed his colleagues at 5:08 p.m. that the local MPP was Mr. Mantha.²³

At 5:11 p.m., Mr. O'Leary was informed by Mr. Chanzy that one person was thought to be trapped in the structure and that support from HUSAR/TF3 (Heavy Urban Search and Rescue Task Force 3 operated by the City of Toronto) had been requested.²⁴

Mr. O'Leary subsequently learned that Ms. Codd-Downey was with the premier at an Ontario Liberal Party Provincial Council in Sudbury at the time of the collapse.²⁵ At 5:35 p.m., Mr. O'Leary forwarded to Ms. Codd-Downey the chain of emails he had sent his colleagues at the Premier's Office so she could inform the premier immediately.²⁶ At 5:36 p.m., Ms. Codd-Downey advised Mr. O'Leary that the premier had been alerted to the incident.²⁷ Mr. McGuinty testified that although he was informed by Ms. Codd-Downey that there had been a collapse of the Mall in Elliot Lake, the information was sketchy about what had happened and whether there were injuries or deaths.²⁸

The premier was very concerned and eager to acquire more information. He knew that in these types of emergencies it was important for him to get reliable information at the outset. He also knew that one of the roles he could play was to speak to the mayor: he hesitated to phone on that Saturday, partly because he did not have any reliable information with which to have a productive conversation, and partly because he did not wish to distract the mayor from the response on the ground. The purpose of his call would really be to offer support, and not to ask him for information. He decided he would speak to the mayor the following day.²⁹

At 5:34 p.m., Mr. Kaderdina sent Mr. O'Leary an email, advising: "First responders call in MOL when necessary. Right now, no MOL presence on site. Will let you know if that changes." That was the extent of the information the Premier's Office had at the time about the MOL's involvement.³⁰

6:08 p.m. – First official EMO notification: Someone is trapped in the collapse, and UCRT is being mobilized

At 6:08 p.m., the duty operations officer at the Provincial Emergency Operations Centre (PEOC) sent out an email to the people on the EMO Listserv, including Mr. O'Leary.³¹ At that point, Mr. O'Leary was not aware who was on the email list other than that it was internal to the government and was meant to inform those who needed either to be involved in or to be aware of the emergency situation. The email incorporated an emergency information notification that had been issued at 5:00 p.m.³² The notification represented the best information that EMO had about the situation at the time.³³ It stated:

Description of Threat / Event:

At 2012-06-23 1509 the PEOC was advised of a structural collapse that had occurred at approximately 2012-06-23 1415 involving the roof of a three storey shopping mall ('Eastwood Mall') located at 151 Ontario Street in Elliot Lake. At least one person is trapped in the debris. Although other people have been injured, current reports indicate these individuals are mobile and their treatment is within the capacity of local medical services.

Source of Reporting:

- Elliot Lake Fire
- OFM
- OPP

Current Actions:

- Local Police, Fire and EMS have responded to the scene.
- The community has declared an emergency and formally requested HUSAR assistance. This request has received Provincial approval.
- OFM EPSD is currently liaising directly with Toronto Fire Service regarding deployment of HUSAR resources in support of this event. Toronto HUSAR deployment plan currently in process. Specific details and ETA to follow.
- OPP UCERT is deploying 10 members and 2 medics from Bolton to Elliot Lake (ETA approximately 2012-06-24 0000)
- OFM is deploying 3 members to the scene (first ETA approximately 2012-06-23 1730).

Initial Analysis / Assessment

- All stakeholders are actively engaged in providing an appropriate level of response as quickly as possible.
- The PEOC continues to closely monitor the situation should there be additional requests for Provincial support.³⁴

At 6:14 p.m., Mr. O’Leary forwarded this email to his colleagues at the Premier’s Office, including Ms. Codd-Downey. He stated: “Update from EMO. Confirmation someone has been trapped in the collapse, opp’s [sic] heavy urban search and rescue team is being mobilized and will be deployed.”³⁵ Mr. McGuinty testified that it was very likely that the information would have been passed to him by Ms. Codd-Downey: She received information so she could relay it to him. The premier was aware that the City of Elliot Lake had declared a state of emergency. He did not, however, know the roles in emergencies played by either HUSAR/TF3 or UCRT, the Urban Search and Rescue and Chemical, Biological, Radiological, Nuclear, and Explosive Response Team operated by the Ontario Provincial Police (OPP). He knew Ontario had in-house expertise for these kinds of rescue operations, but he was not familiar with the names of the teams or their abbreviations.

This information alerted Mr. McGuinty to the fact that the process in place to respond to an emergency was taking its course. There were protocols and procedures to be followed, and he thought the situation was unfolding as it should. The community had wisely declared an emergency, and it could now avail itself of the expertise, resources, and supports offered by the province from various ministries as well as from emergency rescue bodies such as UCRT and HUSAR/TF3.³⁶

6:41 p.m. – Premier’s Office is informed there may be fatalities

At 6:41 p.m. and 6:48 p.m., Peter Cleary, from the Office of the Minister of Health and Long-Term Care, sent two emails to Mr. O’Leary, Seirge LeBlanc (press secretary and the person responsible for issues management in the Office of the Minister of Community Safety and Correctional Services),³⁷ and others in which he advised:

6:41 p.m.

FYI, roof has collapsed at a mall about 150km from Sudbury.

O responded but was released later without transporting any patients.

CBC reports that they don’t have info on injuries or missing people.

The roof that caved is where customers and staff park, cars have fallen through a hole.

State of emergency has been declared.³⁸

6:48 p.m.

Latest – sounds like the [sic] are wounded and the hospital said they’re ok to manage so far.

Possibly 2 deceased at this point.³⁹

Mr. O’Leary confirmed that “O” stood for Ornge, the air ambulance service. Mr. Cleary was sharing the information he had obtained with the Premier’s Office.⁴⁰ For the first time, Mr. O’Leary heard there might be fatalities.⁴¹ Indeed, Mr. LeBlanc responded to Mr. Cleary at 7:00 p.m., noting that the emergency information notification issued at 5:00 p.m. did not state anything about deaths, and only that one person was trapped under debris. Mr. Cleary replied at 7:14 p.m.:

O[rnge] provided me that intel based on real time communications, so although it isn’t anything official (a qualified possibly), its [sic] worth sharing what’s going through the back channel air waves (which has been a source of leaks in the past weeks). Your info is way more official!⁴²

Mr. O’Leary testified that he agreed with Mr. Cleary that it is important to share information, but that the source and the nature of the information should be identified. Mr. O’Leary also noted that it is important to distinguish between what is confirmed and what is suspected, so the two are not confused and result in misinformation. Mr. O’Leary understood that the minister of health’s office was not officially confirming any fatalities.⁴³

7:40 p.m. – Mr. O’Leary learns of two possible trapped persons and seeks information from the Ministry of Labour about the Mall

At 7:32 p.m., Mr. Killorn sent the following email to Mr. O’Leary:

Hey John,

Here is the most recent update we got from staff:

*MOL has a Structural Engineer on the way; however, it will take approximately 7 hours to arrive at the scene.

*We have not confirmed whether any workers are missing at this time.

*The preliminary information we have received at this time indicates the following:

*9 unaccounted for

*2 people trapped

*14 people taken to hospital

I will send you updates as I receive them.⁴⁴

Mr. O’Leary did not know specifically why the MOL sent a structural engineer on site, but given his understanding that the ministry provided assistance in these kinds of situations, he thought it likely that, through EMO, an engineer had been deployed to assist in some way with the response.⁴⁵

In his reply to Mr. Killorn, Mr. O’Leary asked him to check whether there had been any recent reports or inspections of the Mall or its roof, or any orders against the Mall.⁴⁶ Mr. O’Leary explained that he was interested in this information because the MOL may have played a role in inspections or in pursuing complaints. He wanted the MOL to better understand the history of its involvement with the Mall, in case that information became important in the future.⁴⁷

Mr. O’Leary informs his colleagues in the Premier’s Office of the possibility of two trapped persons in the collapse

At 7:41 p.m., Mr. O’Leary sent an email to his colleagues at the Premier’s Office, sharing the information he had received from the MOL. He cautioned that officials had not confirmed any of the numbers, but that this message was an indication that “this could be quite serious.”⁴⁸

Ms. Codd-Downey was also provided with this latest information.⁴⁹ At 8:03 p.m., she sent an email to certain members of the Premier's Office, including Ms. Miller, in which she informed them that the premier had instructed that someone should provide him with an update the next morning, including information about the provincial response.⁵⁰ Ms. Codd-Downey added that the premier had suggested he should contact the Elliot Lake mayor at some point.⁵¹ Mr. McGuinty testified that he wanted his staff to get the mayor on the phone for him.⁵²

Mr. O'Leary was designated as the person to provide that update to the premier.⁵³ As a result, Mr. O'Leary sent an email to Ms. Conrad at 8:17 p.m., advising her that he would need an update first thing in the morning of any overnight actions and any other developments. Ms. Conrad confirmed she would do so and that neither the OPP nor the local community emergency management coordinator was willing to confirm the numbers of injured and missing. Mr. O'Leary later clarified to Ms. Conrad that he also wanted to obtain a full picture of the provincial response and support, and that he needed the information by 6:00 or 6:30 a.m.⁵⁴

At 8:06 p.m., Ms. Codd-Downey also advised Mr. O'Leary that the premier was "confused" as to what a "mall" meant. Mr. McGuinty testified that no one in his office was familiar with the Algo Mall. The question was an attempt to get a better sense of the situation they were dealing with.⁵⁵ At this point, Mr. McGuinty saw his role as trying to ensure that the protocols for responding to these kinds of emergencies were being followed. Beyond that, from a political perspective, he saw his role as reaching out to the community and making sure that he understood what was happening to its people. He wanted to respond in a human way and to put a human face to the crisis. In essence, he wished to convey to the people of Elliot Lake that the province was there for them and would find ways to support them. He continued to feel that things were unfolding as they should.⁵⁶

By the end of the day on June 23, Mr. O'Leary knew that there were possibly some fatalities (but he had no confirmation), that a team from the UCRT was on its way to the scene, and that the HUSAR/TF3 team was also making its way to the site.⁵⁷

For the purpose of putting together his report for the premier, Mr. O'Leary relied primarily on the Cabinet Office to supply a comprehensive picture of the supports throughout the government.⁵⁸

June 24 – The premier speaks to Mr. Mantha and Mayor Hamilton, and he learns officially of one possible fatality

10:17 a.m. – The premier is updated on the collapse: Although there is no new information, he is reassured that things are unfolding as they should

On June 24, at 7:56 a.m., consistent with the information he had obtained the previous night,⁵⁹ Mr. O'Leary sent an email to his colleagues at the Premier's Office, including Ms. Codd-Downey, in which he provided the following update:

Overview:

- the roof of Elliot Lake's 3 story shopping mall collapsed
- officials have been unable to confirm number of ppl trapped in the debris, if anyone has been killed, or the number of injured and state of injuries
- opp, emergency mgmt officials and local authorities are meeting today at 8 to update on status and next steps today
- media reported: at least 4 ppl were rushed to hospital, and earlier reports indicated 1-2 ppl were trapped in debris.

Assistance:

- OPP's heavy urban search and rescue team arrived overnight. They are on the scene now and assisting local police, fire, ems. 13 members.
- Toronto Police Heavy Urban Search and Rescue team arrived at 430am and will be assisting as well. It includes 37 officers.
- the Ontario Fire Marshall has sent 3 officials to the scene
- the city is setting up a public info centre, and provincial authorities are ready to assist
- ministry of labour investigators have not yet begun their work, are standing by until emergency operations and any rescues conclude. There has been some speculation that the roof had been leaking and repairs had recently concluded, but we won't know the cause until mol can investigate
- the local lhin and hospitals were coordinating their care yesterday. Ornge was notified but its services weren't needed.⁶⁰

Mr. O'Leary testified that he believed the MOL would be drawn upon as needed to provide assistance to the emergency responders. He did not consider whether the ministry had the ability to control or stop the way in which the rescue operation was being carried out.

At approximately 10:17 a.m., Mr. O'Leary briefed the premier on the situation. The content of that briefing was consistent with the email he had sent to his colleagues earlier that morning. The information the premier received was essentially no different from what he had been given the day before, except that there were some new specifics about numbers. Mr. McGuinty testified that the information he obtained constituted yet more reassurance that things were unfolding as they should and that personnel, expertise, and resources were being focused on Elliot Lake.⁶¹

At the same time, the Premier's Office was responding internally to items Premier McGuinty had raised. One item was to get information about Mayor Richard Hamilton from two northern MPPs in order to prepare the premier for his phone call to Elliot Lake's mayor.⁶²

At 10:16 a.m., Ms. Conrad sent an email to Mr. O'Leary providing him with the following update:

- Elliot Lake CCG [Community Control Group] meeting has concluded.
- *No identification or confirmation of numbers of potential victims at this point.*
- HUSAR / UCERT currently shoring debris pile to ensure safe entry. Work is being carried out using engineers and MOL oversight.
- Press conference took place at 0900 hours
- Request for refrigeration truck received through coroner's office. Dr. McCallum contacting Regional Coroner (Rick Mann) to discuss details of how and where any potential autopsies would be undertaken. Toronto likely although Sudbury should have capacity.
- Regional Coroner will take care of coordination with OPP and is linked into the PEOC
- Had to reiterate we have NO confirmed numbers.⁶³ [Emphasis added.]

Mr. O'Leary testified that he understood that the Community Control Group (CCG) included senior emergency response officials such as the fire chief or the chief of police, the mayor, and other members of council who would be involved in leading and coordinating the community-wide response to the situation.⁶⁴

11:33 a.m. – The premier speaks to the mayor, advising of provincial support

Mr. O’Leary testified that it took several hours to connect the premier with the mayor.⁶⁵ Finally, at 11:31 a.m., Ms. Conrad sent an email to Mr. O’Leary and Ms. Miller advising them that, at 11:35 a.m., the premier could call Bruce Ewald’s mobile phone. Mr. Ewald, Elliot Lake’s chief building official, planned to locate Mayor Hamilton and be by his side at that time.⁶⁶

Mr. McGuinty testified that the purpose of his call was to let Mayor Hamilton know that he had Mr. McGuinty’s support and the support of the provincial government.

Mr. McGuinty testified that the purpose of his call was to let Mayor Hamilton know that he had Mr. McGuinty’s support and the support of the provincial government. Premier McGuinty also wanted to hear about the challenges Mayor Hamilton was facing and to comfort and reassure him that the provincial government was “in his corner.” He told the mayor that he should not hesitate to contact the provincial government if there was something in particular he needed. He asked him how things were going on the ground and how people were managing. He wanted to initiate a dialogue and a relationship – he did not know Mr. Hamilton before this phone call. The mayor did not say he needed anything at that point. He was very concerned about members of the community who might have been trapped

under the rubble. Premier McGuinty had no hard information and very limited knowledge at that time about the human cost.⁶⁷

12:28 p.m. – The premier issues a statement: The province and the premier “are on the file”

At 12:28 p.m., a statement released by the premier stated:

I want to thank our emergency crews in Elliot Lake as well as those that have come from southern Ontario to help with the rescue effort for their good work around the clock.

I spoke to Mayor Rick Hamilton this morning. As we anxiously wait to learn more about anyone thought to be missing in Elliot Lake, our thoughts and prayers are with their families, and also with those who have been injured and indeed with the entire community.

During a crisis like this, I am reminded of the strength and resilience of Northern Ontarians, and how by pulling together with our friends, families and neighbours, we can get through these difficult times.⁶⁸

Mr. McGuinty testified that, generally, statements were released by his office whenever it was determined that there was a need to convey information to the public. In this case, his office knew that Ontarians would be concerned about one of their own communities and the crisis that was unfolding there. Usually, Premier McGuinty would review and approve the content of statements released to the public in his name. He would occasionally amend them, but in most cases, the need for, and preparation of, the statement was driven by his staff. They would know when a statement was required, so that by the time the premier thought about issuing a statement, a member of his staff had already started to work on one.⁶⁹

In his testimony, Mr. McGuinty explained that this statement was issued to tell Ontarians that the province and the premier were “on the file,” and to provide reassurance and comfort. The statement referred to the fact that he had spoken to the mayor, so that Ontarians and the people of Elliot Lake would know they were in close communication.⁷⁰

The staff in the Premier’s Office considered issuing a second statement from the premier at 4:00 p.m. However, when they did not receive an update from officials about any deaths or persons confirmed to be missing, they decided there were no new developments to react to in a release.⁷¹ Indeed, the situation report (SITREP) that had been issued that day by the Provincial Emergency Operations Centre (PEOC), based on information current at noon, did not reveal any new information.⁷²

3:25 p.m. – Minister Meilleur speaks to Michael Mantha: All resources from the Ministry of Community Safety will be made available

At 3:25 p.m., Minister Meilleur contacted Mr. Mantha, who had been calling every ministry he thought could be of benefit to the community. Mr. Mantha understood that Ms. Meilleur was the minister responsible for municipal housing and that her ministry would be directly involved with the event. He testified that, during his conversation with Ms. Meilleur, she assured him that all the necessary resources from her ministry were going to be made available and that he could expect regular updates from her. She also informed him that her office staff (more particularly Mr. Chanzy) would be on hand for anything he required. Mr. Mantha was getting the ball rolling for the support he needed from the province.⁷³

6:04 p.m. – Mr. O’Leary reiterates his request to the Ministry of Labour regarding information about the Mall

At 6:04 p.m., Mr. O’Leary once again pressed the MOL staff for information on the history of inspections and violations at the Mall. He was advised by Mr. Killorn that they were in the process of getting this information and that the MOL’s role on the scene was only advisory at this stage. Mr. O’Leary responded:

Thx. Understand your role on site is secondary, and I’m getting what I need from emergency officials. Let’s get the history as soon as possible tmrw morning, and you should also pls check to confirm no letters, etc, have come in to your ministry complaining abt the workplace or safety.⁷⁴

It is apparent that Mr. O’Leary was understandably concerned about the possibility that employees had complained about the state of the Mall before its collapse. He wanted to obtain as much information as possible about any such complaints in order to be able to respond to inquiries.

6:32 p.m. – Elliot Lake press release constitutes the first official notification to the Premier’s Office of a possible fatality

At 6:32 p.m., Mr. O’Leary forwarded to his colleagues in the Premier’s Office, including Ms. Codd-Downey, the press release that had been issued by the City of Elliot Lake at 4:40 p.m., informing the public for the first time that there might be a victim. The press release stated: “Evidence has been uncovered that leads us to suspect that there may be a casualty. The area is still unstable and dangerous. It is estimated by emergency crews that there will be 10–12 hours of further stabilization . . . required in the area before the rescue crew is able to go in.”⁷⁵ This statement was the first official notification the Premier’s Office received that there might potentially be a fatality. It had not previously been advised of this information.⁷⁶ Mr. McGuinty testified that Ms. Codd-Downey would very likely have conveyed this information to him: He too had not received any official indication before then that there might be a casualty.⁷⁷ He explained that there had been musings and speculations in the media, but this press release appeared to be more concrete information. Although it was official information, it did not confirm any deaths.⁷⁸

At 6:36 p.m., Mr. O’Leary sent an email to Mr. LeBlanc in which he gave his reaction to the City of Elliot Lake press release:

Seirge, is this really the most current info? Its [sic] coming to us an hour after the press release says a presser will be held, and media are already reporting, including running audio and TV, of what was discussed. So is this the most up to date info, what happened at the presser, when is the next update expected to us (and I would like one tmrw first thing, by 630–7am at the latest), and when is the next media update going to happen?⁷⁹

At 7:22 p.m., Mr. LeBlanc responded:

I understand you are in contact with Debbie from Cab as well who is very familiar MCSCS.

I'm clearly not holding any information back.

I've pushed my ministry folk this weekend as well to ensure we have the most updated info.

Always working to get you the best information as fast as possible, I really don't see there to be any other option – you need to know when I know.⁸⁰

It became apparent early on that local information on the status of the collapse and the response was flowing first to the media, via informal channels. Before official statements were issued by the local response team, this information was, unfortunately, being reported by the media.

Evening – The premier speaks to Mr. Mantha and provides him with assurances and a point person for future inquiries

During the early evening of June 24, Premier McGuinty spoke with Mr. Mantha, who had some specific concerns about the consequences of the collapse, rather than the rescue effort itself. He wanted to be able to speak to someone in a position of authority on the political side in order to cut through the red tape and come up with solutions to a few practical challenges. Included among them was the need to ensure that government services which had been delivered out of the Mall would continue to be provided.⁸¹

Subsequently, at 7:19 p.m., Ms. Miller sent an email to several individuals, including Mr. O'Leary and Ms. Codd-Downey, in which she stated:

Jason / John –

P spoke with Mantha. Two follow-up items:

(1) Mantha is very interested in relocating some government service offices (federal and provincial) which are no longer accessible because of the damage. P believes he will call upon our govt to get involved in this with funding. He says he already has alternate space picked out – some previously abandoned space located nearby.

And (2) he mentioned he would like somebody's phone number so he can contact them directly ... he already has some "liaison's" phone number but he is unsatisfied with this. P said he should stay in contact with Madeleine Meilleur and that P would look into the phone number issue for him. Can we give him a number closer to our government? Is it Madeleine's office he should be connecting with?⁸²

Ms. Miller later emailed Mr. O'Leary and clarified that she did not want to provide Mr. Mantha with multiple points of contact. Rather, she wanted one person to be identified who would be responsive to his concerns.⁸³

Mr. Mantha was ultimately told that he should deal with Mr. Chanzy, the chief of staff to Minister Meilleur. Her Ministry of Community Safety was not responsible for addressing the issues of the continuation of government services referred to by Mr. Mantha, but Premier McGuinty saw this solution as a cross-ministry approach to these types of challenges. Normally, someone as senior as the minister's chief of staff would not be appointed to look after such issues, but the premier thought it ought to happen in this case. In his view, Mr. Mantha was being very thoughtful in the approach he was bringing, and it was important that he be able to get a quick response to his concerns.⁸⁴

Mr. Mantha testified that he spoke to the premier about securing the funding to move government services that had been in the Mall to an available building, the White Mountain Academy, at 99 Spine Road. Because the collapse had occurred at the end of the month, people were expecting services and assistance, including social

services cheques, by the beginning of the following week. The services in the Mall had included Algoma District Social Services, as well as employment and health care services.⁸⁵

Mr. Mantha testified that he wanted to speak directly to Ms. Meilleur because he hoped to get things moving quickly. Eventually, he did get direct calls from Ms. Meilleur and established a good rapport with Mr. Chanzy. At this point, he was pleased with the results of his requests.⁸⁶

7:45 p.m. – Telephone call between Mr. Hefkey and Mr. O’Leary: Live victims can survive several days if they have water

On June 24, at 7:45 p.m., a teleconference took place between members of the Cabinet Office, the Premier’s Office, and Dan Hefkey, the commissioner for community safety, in order for Mr. Hefkey to provide the most up-to-date information about the situation.⁸⁷

The teleconference had been organized at Mr. O’Leary’s behest. He testified that he had told Mr. LeBlanc and Ms. Conrad that various pieces of information were being supplied from different sources, and he was interested in having the most up-to-date and current information. Ms. Conrad had suggested a teleconference with Mr. Hefkey.⁸⁸

The following notes appear in Mr. O’Leary’s notebook about this teleconference:

Call w/ Dan Hefkey

- Updates – times of events – Continuity of Operations
- Press releases – who to contact for Meilleur
- Members of OPP Urban Rescue Team + 37 Toronto HUSAR team on the ground
 - Step 1 = make scene safe, plan to move debris
 - Make it safe for workers or anyone alive in the rubble
 - Rotating shifts to go 24/7
 - Dogs work for an hour then rest
 - 12/24hrs – will continue to do so
 - Rescue operation
- Lead on ground = Elliot Lake emergency folks, we are there to support it
 - Great relations w/ them
 - Don’t want to compromise what folks are doing
- Do not release figures: must be confirmed, local government to determine
 - 1 death
 - Likely there are others
 - Was tapping, know where it was
 - Estimate 3 people trapped
 - Once HUSAS [*sic*] has confirmed all fine, will turn into recovery
 - Coroner ready when needed
 - Reluctant to share numbers – ratchets up speculation and anxiety
 - A segment of the structure
 - Don’t know if close together
 - Can last several days, esp. w/access to water – 3–5 days ...⁸⁹

Ms. Conrad, Mr. LeBlanc, Mr. Chanzy, Mr. O'Leary, and Mr. Hefkey participated in the teleconference. Mr. Hefkey explained that UCRT's and HUSAR/TF3's first task at the scene was to move debris to make the area safe for workers. He also noted that the teams would be operating on rotating 12-hour shifts over a 24-hour period and that the canine units would be working for an hour, followed by a rest. The response was characterized by Mr. Hefkey as a rescue operation, which Mr. O'Leary understood meant that the objective was to rescue anyone who might be alive within the debris of the Mall.⁹⁰

Mr. Hefkey further explained that the Elliot Lake emergency responders were in charge and leading the effort. Any provincial assets that were deployed, such as UCRT, would be supporting the local authorities. He said that the relations between the Elliot Lake emergency response team and the provincial assets were great and that it was important not to compromise anything the local authorities were doing. He explained that it was for the local government to determine what, when, and how information would be released about victims or injuries, but he did not say why. He also informed the participants on the call that there was one confirmed death and that there were likely others.⁹¹ He explained that the responders had heard tapping, and they knew where it was coming from. They estimated that three people were trapped in the debris. Mr. Hefkey advised that once HUSAR/TF3 determined that all the victims who were alive had been rescued, the operation would turn into a recovery. He further indicated that the Coroner's Office was on stand by and ready if needed. He reaffirmed the reluctance of the responders and the authorities in Elliot Lake to share numbers because it would increase speculation and provoke anxiety.⁹²

The three notations by Mr. O'Leary starting at "A segment of the structure" reflect answers to questions that were put to Mr. Hefkey by Mr. O'Leary and others on the call:

- When asked what exactly collapsed, Mr. Hefkey indicated that a segment of the structure had collapsed.
- When asked whether it was known where the victims were located, he said that they did not know whether the victims were close together or not.
- When asked if there were live victims in the debris and how long they could survive, Mr. Hefkey indicated that they could survive several days, particularly if they had access to water. His estimate was three to five days. Mr. Hefkey did not give any source for that information.⁹³

Mr. Hefkey testified that he did not specifically recall the conversation. He agreed that Mr. O'Leary's notes generally reflected what he would have told him. He clarified the following points:

- He would have received the information with respect to the rotating shifts from the fire marshal or the Provincial Emergency Operations Centre. At that point, Mr. Hefkey had not spoken to any of the members of the HUSAR/TF3 or UCRT teams.
- He understood that the rescue team was looking for somebody who was alive.
- The Elliot Lake emergency responders were the lead on the ground. He may or may not have advised Mr. O'Leary that Chief Paul Officer, the Elliot Lake fire chief, was the incident commander, that the rescue team had its Community Control Group up and running, and that the province's role was to support the rescue team, not just with HUSAR/TF3 and UCRT but also with other assets (such as having Robert Thorpe, a fire protection adviser from the Office of the Fire Marshal, working with Chief Officer). In Mr. Hefkey's view, the Elliot Lake emergency team was in charge.
- With respect to Mr. O'Leary's note about the survival time of victims, Mr. Hefkey testified that he informed Mr. O'Leary that, "based on what we knew about humans," a healthy human being can last between three and five days without water. If there was a water source, the person trapped could live for a longer period of time.⁹⁴

Later that evening, at 8:35 p.m., Mr. LeBlanc sent an email to Mr. O’Leary in which he confirmed that information gathering was critical. Mr. O’Leary replied:

No worries, you guys are on top of stuff. But getting into a situation where media is saying one thing, and our updates say another, that’s something we need to clear up. Lots of media and lots of rescuers leads to lots of news, but lots of confusion over the actual state of affairs. Glad we got that cleared up ...⁹⁵

Mr. O’Leary testified he was concerned that the information being reported through government channels as well as through other sources such as the media continued to be unconfirmed and unaligned.⁹⁶ The next morning, June 25, Mr. O’Leary emailed Ms. Conrad, thanking her for setting up the conference call, and writing:

Didn’t respond last night, I hit save not send! But that was very valuable I think: it’s frustrating when media says one thing and our own folks say another, just raises question is it bad info to the media, or is it our folks not telling us. Really helpful to hear the facts. Thanks a lot for setting it up and on such short notice.⁹⁷

“But getting into a situation where media is saying one thing, and our updates say another, that’s something we need to clear up. Lots of media and lots of rescuers leads to lots of news, but lots of confusion over the actual state of affairs.”

– John O’Leary

Mr. O’Leary testified that he was concerned that many pieces of information were being provided by various sources and that it had been helpful to have Mr. Hefkey provide a full and complete picture with the level of detail that he did. He expected that whatever information there was about the situation (whether confirmed or suspected) would be shared with him and the Premier’s Office.⁹⁸

Mr. McGuinty testified that he would have expected Mr. O’Leary to share information that arose out of the conference call with him. That information included the fact that there was one confirmed death and that the rescuers had heard sounds of tapping, which would indicate that someone was still alive. Mr. McGuinty was not sure whether he learned these points on the evening of June 24 or the following day, but he would be surprised if he did not receive the information quickly. Any such information came to him with the proviso that it could not be shared. If it was standard protocol that it was the municipality’s responsibility to make the information public, he would have respected it.⁹⁹

At 8:32 p.m. on June 24, the Provincial Emergency Operations Centre circulated another situation report. It contained the official government information as of 8:00 p.m. and was not up to date. The new information read:

- The area is still unstable and dangerous. As of 2012-06-24, the estimation by on-site emergency crews is that there will be approximately 10–12 hours of further stabilization effort required before a rescue crew will be able to go in.
- Examination of the scene continues to indicate that this is still a rescue. Evidence has been uncovered that suggests there may be a casualty...
- An information centre for the public has been established at W.H. Collins Hall.¹⁰⁰

In fact, as I set out earlier, the beam overhanging the rubble pile was cut and removed in an operation that took approximately a half hour and started at about 7:50 p.m., according to the notes and testimony of the URCT’s Sgt. Jamie Gillespie.¹⁰¹ After the beam was removed, four riggers were lowered onto the pile and, at 11:10 p.m., began removing the fallen car and the concrete slabs.¹⁰²

June 25 – From the news of a live person, to the stopping of the rescue, to the intervention of the premier, to the resumption of the rescue / recovery

Mr. Chanzy becomes Mr. Mantha's contact person

On June 25, at 8:46 a.m., Mr. O'Leary sent an email to Mr. LeBlanc and Mr. Chanzy in which he said that it made more sense for Mr. Mantha to have only one contact person, one who was senior enough to understand and handle Mr. Mantha's needs appropriately. Mr. O'Leary thought that the Ministry of Community Safety would be in the best position to know what could be confirmed (or not) to Mr. Mantha and to put him in touch with emergency officials.¹⁰³ Mr. Chanzy agreed to take on this role.¹⁰⁴

The staff in the Premier's Office were still under the impression that all government services continued to be available in Elliot Lake after the collapse.¹⁰⁵ Mr. Chanzy, however, reported to Mr. O'Leary that Mr. Mantha had told him that some provincial government offices were located in the Mall, and that he was concerned about the continuing delivery of their services. Mr. Chanzy also advised that Mr. Mantha inquired about special funding to compensate businesses that were located in the Mall and to assist with relocation.¹⁰⁶ Mr. Mantha testified that the Algoma District Social Services, Service Canada, and health care services were located in the Mall.¹⁰⁷

Mr. O'Leary passed Mr. Mantha's concerns on to the Cabinet Office. He asked that all ministries be canvassed to confirm whether they or their partners had been affected by the collapse.¹⁰⁸

Mr. Mantha understands that he cannot assist with rescue but tries to help with the economic impact of the collapse

On the morning of June 25, Mr. Mantha met with business leaders in Elliot Lake to determine the overall impact of the collapse (aside from the governmental ministries and services) and what could be done to remedy the situation as quickly as possible. He testified that some 200 to 300 people were going to be affected directly or indirectly with loss of income, loss of employment, the stress of having lost a job, as well as the stress of dealing with the entire tragedy. Mr. Mantha wanted to get a sense of the economic impact of the collapse on the community. City councillors as well as the Chamber of Commerce were involved in the meeting. Mr. Mantha realized there was nothing he could do at the time with the rescue efforts, though he could look into other issues. He offered himself and his staff as resources to provide any assistance, including facilitating responses from the Government of Ontario.¹⁰⁹

On the morning of June 25, Mr. Mantha met with business leaders in Elliot Lake to find out the overall impact of the collapse (aside from the governmental ministries and services) and what could be done to remedy the situation as quickly as possible.

Mr. Mantha's reaction to communication issues: He would need to get information from the street

Mr. Mantha was never invited to attend the Community Control Group (CCG) meetings. He explained that, initially, the meetings included a group of councillors together with the individuals involved in the rescue. As a result, too many people were attending who did not have a formal role in the rescue. The group then decided that only individuals listed in the emergency plan should attend the meetings on a regular basis. The councillors who were excluded as well as Mr. Mantha would be invited by the mayor or the chief administrative officer for a briefing after the meetings.¹¹⁰

In his testimony, Mr. Mantha said that, initially, information was being relayed to the public by regular briefings at the civic centre. Mr. Mantha and the councillors would also share the information with the public as soon as it was given to them (“We would bring it out as quickly as we could on the street”): in his view, the more information that was known, the better. It seemed as though the rescue efforts were progressing very slowly, and a level of frustration was starting to mount in the community.¹¹¹

Mr. Mantha clarified that although he was never told that the purpose of the CCG briefing meetings was to provide him and city councillors with information to be passed on to the public, he assumed that was so because the information provided to them was the same as was given at the press conferences. Sometimes, however, by the time they got the information in the briefing, it had already been released to the public. In some instances, they had to go out to the streets to get the information. There were never any discussions during the briefings about the way information would be provided to the public.¹¹²

12:18 p.m. – The Premier’s Office learns that there has been one death and that one person is thought to be alive in the rubble

At 12:18 p.m., Mr. O’Leary sent an email to his colleagues at the Premier’s Office, including Ms. Codd-Downey, entitled “Elliot Lake: News Conference Summary – confirmed 1 person trapped, alive as of 4am.” There he summarized what he had learned from watching the noon press conference:¹¹³

... Still a rescue operation, police confirm at least 1 person is alive and trapped.

Toronto Police HUSAR

Working through the night

Removed damaged ibeam that collapsed, turned over to MOL for investigation

Made use of large cranes to help remove large concrete debris on scene

Around 4 am this morning, OPP used a piece of equipment to determine signs of life previously spotted

Diligently working to reach that person

Setback: structure is still shifting and unstable

Escalator inside is shifting, had to pull crews back to reassess entry point

Have not stopped working, are working on other entry points to keep moving towards the person

Will not be able to use cranes, the area is now a no-go situation

Using equipment to assess situation, but is unsafe, and we have to be very careful

Moving forward with rescue, but cant [*sic*] give a time frame ...

Any fatalities?

One fatality confirmed. No identification, a sighting of an arm or leg, have not gone near victim, focus is on rescue.¹¹⁴

Mr. O’Leary testified that, to his knowledge, this press conference was the first public confirmation that there had been a fatality.¹¹⁵ Mr. O’Leary also received summaries of the press conference from others, including Mr. LeBlanc,¹¹⁶ Greg Flood (a MCSCS staff person),¹¹⁷ and Robert Di Giovanni (an issues management team member in the Cabinet’s Office).¹¹⁸ What was happening in Elliot Lake continued to be of great interest to those in the Premier’s Office.¹¹⁹

Mr. McGuinty testified that while he was informed about the developments, he was not made aware of all the specifics in Mr. O'Leary's summary, such as the fact that the beam had been removed. He stated that the press conference was the first public confirmation that there had been a death and that, as of 4:00 a.m. that morning, somebody was alive and trapped in the rubble pile. He learned these facts from his staff – and knowing this information changed things for him from both a practical and an emotional perspective. On a practical level, his office staff needed to put out a press release to express their sympathies to the families, to recommit themselves to the community, and to encourage the rescue workers. On the emotional level, he became more invested in the crisis. Once he was told that somebody could still be alive, he wanted to help.¹²⁰

As Mr. McGuinty explained, this event quickly became all-consuming for his staff. A very compelling story was unfolding, one person had died, and a lot of tasks needed to be done. He and his staff were committed to do whatever they could to help.¹²¹

1:05 p.m. – The Premier's Office issues a second press release: The premier expresses his sympathies to victim's family

At 1:05 p.m., the Premier's Office released another statement:

Today Premier Dalton McGuinty released the following statement, after confirmation that one person has died in the collapse of a mall roof in Elliot Lake:

"Today, I want join [sic] with people across Ontario to express our deepest sympathy to the family who have lost a loved one in this terrible tragedy.

To those people of Elliot Lake: thank you for pulling together in these difficult days and for taking care of friends and neighbours.

And to the first responders from in and around Elliot Lake: thank you for your tireless efforts since Saturday. And on behalf of all Ontarians, I also want to thank those emergency services workers who came from across our province to assist in the rescue and recovery efforts.

When one community in Ontario hurts, it touches us all, and we will continue to stand together to see our fellow Ontarians through this tragedy."¹²²

Mr. McGuinty testified that he had likely been made aware of the confirmed death before it was made public in Elliot Lake. It appears that the premier's staff had been working on a second draft of the press release at 12:37 p.m.¹²³

11:34 a.m. and 2:40 p.m. – Mr. O'Leary receives information from the Ministry of Labour and the Cabinet Office

At 11:34 a.m., in response to his request of the previous day for the history of the inspections at the Mall, Mr. O'Leary was provided with a list of interactions going back to 2009 which the MOL had had with the Mall.¹²⁴ Mr. O'Leary questioned the exhaustiveness of the list he was given.¹²⁵

At 2:40 p.m., following his queries of earlier that day resulting from Mr. Mantha's information, Mr. O'Leary received an email from the Cabinet Office. It outlined the information it had received from various ministries on the provincial services that had been affected by the collapse.¹²⁶

2:50 p.m. – The Premier's Office is advised that the rescue has been called off

At approximately 2:50 p.m., Mr. O'Leary received a call from Ms. Conrad. She told him that a decision had been made to call off the rescue operations and to move into a recovery phase. She said that the remainder of the building would then be demolished.¹²⁷

During his conversation with Ms. Conrad, Mr. O'Leary took the following notes:

From Hefkey:

- Closing down the site, load around escalator
- No first responders
- Too dangerous to work
- Trying to contact Mayor now¹²⁸

Ms. Conrad explained to Mr. O'Leary that the load on the escalator and its condition made it too dangerous for the first responders to continue working.¹²⁹ Mr. O'Leary testified that he was disappointed with the development and knew it was a very difficult decision. On receiving this information, he immediately requested a briefing with Mr. Hefkey.¹³⁰

At 2:53 p.m., Mr. O'Leary sent an email to Mr. Livingston, Ms. Miller, and Ms. McCann, entitled "URGENT: Elliot Lake," in which he wrote:

Bad news from emergency officials. The structure and debris is too unstable for work to continue. Emergency responders are about to be pulled back, and work will halt on the site. The mission will turn from rescue to recovery: that means attempts to retrieve anyone trapped in the debris, including at least one person confirmed to be alive as of this morning, is stopping. Emergency officials are trying to track down the Mayor now. I've asked our officials to brief me via conference call as soon as they are able. Once crews pull back and work stops, it'll become evident to the public at the scene that the rescue operation has been abandoned. They are going to have to communicate this, but I'm not clear yet how they plan to do so, will get that picture on the conference call.

I will circulate the info when I have it. Likely to happen very shortly.¹³¹

3:20 p.m. – First conference call between Mr. Hefkey and Mr. O'Leary: The rescue had been stopped despite three to five victims still in the rubble

At approximately 3:20 p.m.,¹³² Mr. O'Leary took part in a conference call with Mr. Hefkey, Ms. Conrad, and communications officials within the MCSCS.¹³³ Referring to his notes, Mr. O'Leary testified that Mr. Hefkey explained that there was, among the rescue workers, an emotional sense of failure and disappointment that they had let the people down. He said there had been so much hope earlier in the day from signs such as the tapping. He advised that the mayor, the Fire Department, and HUSAR/TF3 would now be in the best position to communicate the news, but he was unclear as to when it would take place. Mr. O'Leary testified that he asked what the next steps would be, now that the rescue was no longer continuing. Mr. Hefkey explained that, at this point, the steps would involve ensuring the safety of those on the rubble pile. Heavy equipment would be used at the site, and the work in question would be less focused on preserving the integrity of the victims' bodies within the debris. An outside observer would still see people working on the pile, and there would not be a perceptible change in status. Mr. Hefkey did not indicate where the heavy equipment would come from.¹³⁴

Mr. Hefkey told Mr. O'Leary that it was believed there were between three and five victims still in the rubble. Mr. O'Leary did not remember whether he asked about the likelihood of anyone in the rubble still being alive and whether Mr. Hefkey mentioned anything in that regard. Mr. Hefkey indicated that local bereavement counsellors would be available for the emergency workers and for members of the public. The next step, after the bodies were identified and notification given to next of kin, would be for the Office of the Fire Marshal to investigate.¹³⁵

At 3:27 p.m., while still on the conference call with Mr. Hefkey, Mr. O'Leary sent an email to Ms. Miller and Ms. McCann: "We need to huddle on Elliot Lake ASAP please. This is urgent and is [going] to require a statement

I believe from the Premier.” Ms. Miller asked whether they could meet now.¹³⁶ When Mr. O’Leary finished speaking with Mr. Hefkey, he joined Ms. Miller and Ms. McCann.¹³⁷ He told them what he had learned from Mr. Hefkey. They all reacted professionally but were disappointed at these difficult decisions. They had a number of additional questions.¹³⁸ They also discussed whether the premier should be making a statement following the 5:00 p.m. local press conference, when they understood an announcement would be made that the rescue efforts were not going to proceed.¹³⁹ They decided to prepare a statement from the premier to react to the situation, although they had not been authorized to issue such a statement.¹⁴⁰

4:40 p.m. – Second conference call between Mr. Hefkey and Mr. O’Leary: Emotions are high; MOL had told the rescue team that the situation is too unstable for a rescue

Mr. O’Leary spoke to Mr. Hefkey again at 4:40 p.m. Before doing so, he told Mr. Livingston that the rescue had turned into a recovery. He also discussed with him the potential response from the premier.¹⁴¹ He emailed Ms. Miller and Ms. McCann about that discussion, writing: “Only comment he [Mr. Livingston] made was, is it right for the P to issue a stmt today or should it be the Minister? I still think its the P on this, if you guys feel otherwise, he says he’ll back up our call.” Ms. McCann advised that, because there had been fatalities, the premier should issue the statement.¹⁴²

Ms. Conrad joined Mr. O’Leary on the 4:40 p.m. call with Mr. Hefkey, who told them that emotions were running high. He said that the MOL engineer had explained to Staff Insp. William Neadles, the HUSAR/TF3 commander, that the situation was too unstable for a rescue operation to continue. A recommendation had then been made. At that point, Staff Insp. Neadles decided to suspend / discontinue the operation. The first responders and the rescuers were unable to confirm if anyone was deceased in the debris, but they would not be able to continue the rescue without killing that person. They were advised that, in terms of next steps, the scene would be turned over to the control of the Elliot Lake fire chief. They were also told that the HUSAR/TF3 leader was the incident commander: he was in charge of and responsible for the rescue operations and the rescue itself.¹⁴³

In his notes of the teleconference, Mr. O’Leary wrote:

Yes they will – have a united front

They want to prolong it, want to attempt a rescue¹⁴⁴

Mr. O’Leary explained that he asked Mr. Hefkey whether the decision that would be announced would be a united one by all the individuals involved in the rescue. Mr. Hefkey informed him that HUSAR/TF3 would be leaving the community and returning to Toronto, but that the UCRT team wanted to prolong its stay and attempt a rescue. The news regarding the rescue being called off would indeed be made with a united front.¹⁴⁵

5:00 p.m. – The premier’s staff learns more from the local press conference

Mr. O’Leary watched the 5:00 p.m. press conference and sent a summary of it to his colleagues in the Premier’s Office at 5:29 p.m.¹⁴⁶ He relayed to them the information that Staff Insp. Neadles had provided at the press conference: they had tried several avenues of rescue, but all of them had been unsuccessful. The MOL and HUSAR/TF3 engineers had inspected the building and determined it could collapse at any moment. He had made the decision not to put the workers back on the pile, and the facility was now turned over to the authorities. The MOL would issue an order for the owner to hire an engineer to demolish the building, though there were still people in the Mall in an unknown condition. Ms. McCann replied to his email: “What I heard was that the guy who was alive at noon might still be alive but they’re going to tear down the building anyway.”¹⁴⁷

By 5:06 p.m., the Cabinet Office had prepared a draft press release on behalf of the premier. It stated:

Like all Ontarians, I was saddened to learn that efforts in Elliot Lake have moved from rescue to recovery.

This news comes as a terrible blow to the people of Elliot Lake, and especially to those who have yet to learn of friends and family still missing. Our thoughts and prayers go out to them and we will continue to stand by as we await final word on the victims.

Our hearts are also with the dozens of emergency workers from Elliot Lake and beyond who rushed to the scene this weekend. They put their own lives at risk to save people they never knew. Along the way, they reminded us of the sacrifices our first responders make every day.

Ontario is a large province that feels much smaller at a time like this, and I know all Ontarians will come together to support the people of Elliot Lake as they recover from this tragedy.¹⁴⁸

Between 5:30 p.m. and 6:31 p.m., a series of emails were exchanged at the Premier's Office and the Cabinet Office about a possible statement by the premier following the press conference. At 6:30 p.m., the decision was made that the draft statement would not be issued. Mr. O'Leary could not explain why this decision was made. He did not believe that the premier ever saw this draft.¹⁴⁹

5:51 p.m. – Mr. O'Leary urges the MOL to outline its role and the actions it would take in the recovery

At 5:51 p.m., Ms. McCann sent an email to Mr. O'Leary and other colleagues at the Premier's Office referring to a CBC story. She stated: "This is from CBC ... pegging the destroying of the building on the MOL."¹⁵⁰ Mr. O'Leary understood from Staff Insp. Neadles's comments, during the press conference, that the site would be turned over to the fire chief and that the MOL would subsequently issue orders resulting in the demolition of the Mall.¹⁵¹

At 5:51 p.m., Mr. O'Leary sent an email to Mr. Kaderdina, Mr. Killorn, and Mr. Chanzy urging Mr. Kaderdina to have his deputy minister's office in the Ministry of Labour speak with its equivalent in the Ministry of Community Safety and Correctional Services to coordinate the next steps. Mr. O'Leary concluded by saying: "This is very urgent pls."¹⁵² He expressed this urgency because he anticipated that the news regarding the MOL issuing various orders as the recovery phase began would lead to subsequent media inquiries about the ministry's involvement. He wanted these two offices to work together so that everyone could understand precisely the role and the steps that the MOL would be undertaking.¹⁵³

Mr. Chanzy replied that he would need to know the next steps before contacting Mr. Mantha. Mr. Kaderdina responded that no orders had been issued yet by the MOL, and he was not sure where the CBC was getting its information.¹⁵⁴

At 6:34 p.m., Mr. O'Leary replied:

So this is what we need MOL to clarify asap in terms of what next steps are going to be. No order has been issued, yet. Will you be issuing an order? Is that the process now? What is the process? Have you taken over the scene, has your investigation begun etc. How are we going to be sharing info w the public abt what role, a stmt in the morning?

The emergency responders told the media that the decision to suspend the rescue, even with the chance that someone was alive buried in the rubble, was made based on mol advice, and that next steps involve mol taking over an investigation, issuing an order to the owner to hire a firm and submit a plan to mol for approval to clean up the site, including removing debris and demolishing any part of the building that may need to be demolished.

Fahim, can we jump on a quick call w you to discuss further asap?¹⁵⁵

Mr. O'Leary testified that, in his understanding, the MOL was providing assistance to emergency responders on an as-needed basis during the rescue phase of the operation, whereas it would now be taking a more active role in terms of various orders that would be issued.¹⁵⁶ He was trying to determine what steps were being taken by the MOL. He spoke with Mr. Kaderdina and reiterated to him the information he needed. Mr. Kaderdina repeated that officials in the ministry had informed him that no orders had been issued.¹⁵⁷

6:00 p.m. – The premier becomes aware that the rescue has stopped: He is shocked and finds it unacceptable

Mr. McGuinty testified that because he had been on an extended phone call, he first became aware around 6:00 p.m. that the rescue had been called off. Ms. Sobers gave him the news, saying it was unsafe for the rescue workers to continue the search. Nothing had been conveyed to him in terms of other options being considered. She told him that the decision was “absolute. It was over.” Mr. McGuinty testified that he was shocked. In his view, the decision was “unacceptable.” He recognized he was not an expert in these matters but asked himself whether there were other ways to get to an individual who is trapped inside a structure. He immediately began to think, “Well, if we can't get at them from the inside, is there a way to begin to dismantle the building from the outside?” Given that a living human being could very well be under the rubble, “to do nothing would be for death to ensue.” He testified: “So to me, we had to try to do something.”¹⁵⁸

The premier then spoke to Ms. Miller. “What the heck is happening here?” he said – or words to that effect. “How can this be possible? Why have they stopped the search? I think we are going to need to find a way to do something about this, or find a way to do something.” He asked for a conference call with his staff, and then with the people on the ground in Elliot Lake, so that he could get a better understanding from them and canvass alternative plans.¹⁵⁹

Mr. McGuinty confirmed that the draft press release reacting to the news of the rescue's cancellation was never shown to him. Nevertheless, he characterized the draft as a rational, responsible approach to the information that had been received. His staff had just received terrible news that came from experts. According to Mr. McGuinty, they could not question it; the rescue attempt was over. This statement represented the staff's thinking at the time – and it was a standard response to news of that sort. It did not, however, represent his own thinking. Nobody ever discussed with him a statement along these lines. Mr. McGuinty's attention was first drawn to this document when he received it in preparation for his testimony.¹⁶⁰

The premier: “If there is still a chance they are alive, we owe it to them to try”

The premier's staff questions whether anything else can be done

At 6:36 p.m., the Provincial Emergency Operations Centre circulated a situation report that contained information current as of 4:00 p.m. The new information read:

- One person is confirmed to have died in the collapse. This person has not yet been identified.
- As of 1500hrs, 2012-06-25 operators with the HUSAR team have determined that the mall structure is too unstable for responders to safely continue with rescue operations. As a result, rescue operations will immediately transition to recovery and demolition operations.
- The PEOC has deployed an EMO Field Officer to Elliot Lake to provide advice, assistance and liaison to the community.
- The Ontario Commissioner of (sic) Community Safety, Dan Hefkey, is expected to visit Elliot Lake tomorrow, 2012-06-26.¹⁶¹

Mr. O'Leary confirmed that he received this report and that it was the official notification within the Ontario government of the decision to transition to recovery and demolition.¹⁶²

At 6:47 p.m., Mr. O'Leary sent an email to Ms. Conrad, asking her to identify the commander on the scene at that point. He had been asked who was in charge now that the response had become a recovery rather than a rescue.¹⁶³ She replied that she would check, but that she believed it was the fire chief.¹⁶⁴

At 6:57 p.m., Bradley Hammond, the associate press secretary at the Premier's Office, sent an email to several people, including Mr. O'Leary, in which he wrote:

CBC just phoned asking for comment – wants to know if the Premier thinks rescue is being called off too soon. She specifically referenced 9/11 and people being pulled from that well after the incident.

On Twitter I've had people reach out and ask if a mining rescue team could be deployed – that they're experts and could find people.

Any word on when we'll have a statement? I worry we're going to wear a decision made by experts.¹⁶⁵

At 7:08 p.m., Ms. McCann replied, writing that no statement would be issued from the premier that night. However, the MOL was working on a statement that would outline the steps resulting from the decision and the next steps.¹⁶⁶

At 7:11 p.m., Ms. Miller replied to Ms. McCann, Mr. O'Leary, and Mr. Livingston only and stated: "I am wondering about him saying tonight that he is asking HUSAR to stay on site and for more experts to get on site and determine if there is another way."

At 7:21 p.m., Mr. O'Leary suggested a call among the premier, Mr. Hefkey, and Staff Insp. Neadles to discuss possible options.¹⁶⁷ He testified that because provincial assets had been deployed to Elliot Lake and Staff Insp. Neadles was the person who had decided to move to a recovery, he thought it would be appropriate for the premier to speak to both of them and hear the facts first hand. When Mr. O'Leary was asked why, when a decision had already been made, his colleagues were suggesting that the premier ask HUSAR/TF3 to stay and to get more experts involved, he explained that, like the people of Elliot Lake, members of the Premier's Office reacted to the decision by asking whether anything else could be done.¹⁶⁸

The following email exchange ensued in the Premier's Office:

[At 7:23 p.m., Ms. McCann wrote]: It would be good to have p [Premier] look engaged and even better for him to be giving faint hope, at least until the bad news sinks in.

[At 7:24 p.m., Ms. Miller wrote]: I didn't want to give false hope. But I also didn't want to give up hope.

[At 7:26 p.m., Ms. McCann wrote]: We had to be absolutely sure there was nothing more we could do.¹⁶⁹

7:30 p.m. – Conference call between the premier and his staff: The premier wants explanations from Staff Insp. Neadles and Mr. Hefkey

At 7:30 p.m., the premier, Mr. O'Leary, Ms. McCann, Mr. Livingston, and Ms. Sobers took part in a conference call.¹⁷⁰ Mr. O'Leary's notes of the meeting indicate:

- Rick, Oraziotti – connect with them on next steps
- MOL does not have control of the scene
- Trying to get scene turned over
- If now, when invest happens, can be issued w/ complying

MOL – “best in the country”

- Who cleaned up 9/11
- What happens next?
- Do we owe it to ppl in the community to take another look @ it?
- Demonstration of respect
- No reason to doubt expects [*sic*], but need to bring in our side expertise¹⁷¹

Mr. O’Leary testified that the meeting opened with him providing a high-level overview of what they had learned to date and what the next steps were believed to be.¹⁷² Someone asked a question as to whether MPPs Rick Bartolucci and David Oraziotti would be contacted. Mr. O’Leary could not remember who made the first three points.¹⁷³

Both Mr. O’Leary and Mr. McGuinty testified that the other notes referred to questions raised by the premier. During the call, he said:

Have we got the best people in the country in there now? Who was involved in the cleanup in 9/11? Did we send in our people down there? Are they up in Elliot Lake today? Do we owe it to the people in the community to take another look at this, i.e., the decision to halt the search? I believe that it would be a demonstration of respect. There is no reason to doubt the experts, but I’m raising the question, do we need to bring outside expertise?¹⁷⁴

Mr. McGuinty testified that he was looking for a way to continue the search which did not compromise the safety of the rescue workers. After hearing from his senior staff, he now wanted to hear from the people who were on the ground in Elliot Lake to better understand what was happening, the challenges they were confronting, why they called off the search, and to begin to canvass options. He wanted to see if there was not something else they could do. Ultimately, he wanted to put his proposal on the table that, if they could not get the people from the inside, perhaps they could try to get them from the outside.¹⁷⁵

Mr. McGuinty was advised by his staff about the public reaction to the news that the rescue was off: people were upset, angry, and hurt. It was a bad scene. Mr. McGuinty testified that his own staff were frustrated, very disappointed, and felt that they “were going to leave a community and an individual high and dry.”¹⁷⁶

The meeting concluded with the premier asking for a teleconference that evening with the emergency responders, including Mr. Hefkey and Staff Insp. Neadles.¹⁷⁷ Subsequently, at 8:04 p.m., Mr. O’Leary emailed Ms. Conrad and Mr. Hefkey to arrange for the call between the premier, Mr. Hefkey, and Staff Insp. Neadles:

I’d like to change the call at 830 pls, cancel what we have now and repurpose for a briefing for the Premier. Premier would like to get on a call w you Dan and with the HUSAR incident commander to receive a briefing on today’s developments and next steps. Would like to go fwd at 830 ...¹⁷⁸

8:05 p.m. – Mr. Hefkey speaks to Staff Insp. Neadles and asks him to consider other resources

At approximately 8:05 p.m., Mr. Hefkey spoke to Staff Insp. Neadles. Mr. Hefkey made notes of the call:

Spoke with Bill Neadles. There is a true hatred for the owner of the Mall due to the historically poor conditions of the mall structure.

There are fire code issues.

Bill had just spoken with MPP Mantha about how they can speed up the operation.

The town is willing to work at doing what they can to assist

The mayor will do what it will take to bring the situation to closure.

There is currently no hotel in town for them and the crowd is turning ugly.

The CCG have been looking at alternative plans for what looks to be a recovery.

Bill explained that there is a slab concrete that is being propped up by the escalator that is buckling under all the pressure. This is all under tremendous weight / pressure and is what is causing the I beam to bend.

I asked that he consider other resources that he may wish to get for him in support of the mission.

I asked that he be available for a call with the premier at around 2100hrs this evening.¹⁷⁹

Mr. Hefkey testified that, during this conversation, Staff Insp. Neadles was sharing with him what he was feeling and what he was hearing from the community. Staff Insp. Neadles advised Mr. Hefkey that there was “a true hatred for the owner of the Mall due to the historically poor conditions of the mall structure.”¹⁸⁰ Staff Insp. Neadles testified that he had the opportunity to look at some of the tweets that had been posted on social media and concluded that the public was not happy with either the Mall owner or the rescue.¹⁸¹ The public thought that the rescuers had quit, had packed up, and were going home, and the comments clearly showed displeasure at the decision.¹⁸² Although he claimed that he and his team would be going back to find other possible options, Staff Insp. Neadles admitted that it was fair for a reasonable person listening to his comments during the press conference to conclude that the rescue team had quit. He insisted, however, that if members of the public had listened to the overall comments made by the entire group at the press conference, they would not have reached that conclusion.¹⁸³

Staff Insp. Neadles also reported to Mr. Hefkey a conversation he had had with Mr. Mantha in the parking lot of the church across the street from city hall.¹⁸⁴ While speaking to Mr. Mantha, Staff Insp. Neadles could not see the people in the vicinity, but he could hear them being loud and boisterous.¹⁸⁵ When he finally saw them, he described them as being very upset. He even told Mr. Mantha to advise the HUSAR/TF3 members not to go into the street because he was afraid they would provoke a confrontation.¹⁸⁶ Staff Insp. Neadles and Mr. Mantha spoke about the decision to stop.¹⁸⁷ Mr. Mantha asked Staff Insp. Neadles about the HUSAR/TF3 program and its funding. Mr. Mantha told Staff Insp. Neadles that he would get a phone call but did not say from whom.¹⁸⁸

Staff Insp. Neadles reported to Mr. Hefkey that the mayor and his senior staff were willing to do whatever they could to help.¹⁸⁹ He also told him, as Robert deBortoli, Elliot Lake’s chief administrative officer, had said at the press conference, that the Community Control Group was considering how to remove the deceased persons.¹⁹⁰

Mr. Hefkey then advised Staff Insp. Neadles to consider other resources, such as mining type resources. In his testimony, he explained that this suggestion was given in the context of supporting the recovery of the deceased.¹⁹¹ Staff Insp. Neadles confirmed that he did not mention Priestly Demolition to Mr. Hefkey at that point because he had not then spoken to Sgt. Phil Glavin, a Toronto Police sergeant with HUSAR/TF3, about this option.¹⁹²

Finally, Mr. Hefkey asked Staff Insp. Neadles to be available for a call with the premier. Ms. Conrad had advised him that the premier wanted to speak to both of them.¹⁹³

8:00 p.m. – Sgt. Glavin contacts Priestly Demolition for the first time

As I set out earlier, Sgt. Glavin unsuccessfully tried to contact Ryan Priestly, the president of Priestly Demolition Inc., after speaking with Staff Insp. Neadles. He then contacted his brother (who works for Mr. Priestly), told him he was trying to reach his boss, and spoke to him about the possibility of using the crane with the long-reach arm from Priestly for the rescue. At about 8:00 p.m., Sgt. Glavin spoke directly with Mr. Priestly.¹⁹⁴

Sgt. Glavin testified that he advised Mr. Priestly of what they were doing in Elliot Lake and that the rescue had been stopped. He told him that they could not reach into the building because of the distance and, in addition, that the escalator was a concern. He informed him that he was looking for the long-reach arm crane to enable them to extend the arm over the site and go down through a hole to deal with the escalator and make it safe. They would then proceed to rescue the victim. He told him that although he did not have authority to spend any money, he was phoning him to see if he would entertain the possibility and whether it was feasible. Sgt. Glavin sent Mr. Priestly one or more photographs.* He described the elevation and where the long-reach crane would be able to sit. He told him of the challenges (how high up, how far over and how far down they would have to reach) at the front of the Mall. Sgt. Glavin also considered having the OPP pick up Mr. Priestly from Aurora in its helicopter so he could see the scene, but Mr. Priestly eventually advised him that he understood the situation and that the proposed visit would not be necessary.¹⁹⁵

Mr. Priestly testified that Sgt. Glavin told him of the urgency of the situation, which he understood because it was all over the news. He understood that victims were still missing in the rubble, and that the emergency was still a rescue mission. He stated: "You know, I think everybody is anticipating and hoping there's still light at the end of the tunnel, right? There are still people alive in there."¹⁹⁶

Sgt. Glavin had several conversations with Mr. Priestly in which he provided him with information regarding the characteristics of the building and the measurements Mr. Priestly had requested (such as the approximate height of the building, the structural steel framing, the size of precast slabs, etc.). Within an hour of first being contacted, and after these numerous conversations, Mr. Priestly advised Sgt. Glavin that his machine could probably do what they needed it for. He indicated to Sgt. Glavin that they would have to come and get the machine.¹⁹⁷

When he was making these calls to Mr. Priestly, Sgt. Glavin was in the command tent area on the upper-level parking. He believed that Staff Insp. Neadles may have been present for part of the time he was there, near the end of the discussions with Mr. Priestly. I describe further below that the approval for the use of the Priestly equipment was received at approximately 1:46 a.m. on June 26.¹⁹⁸

The premier: "We have to try and save this person"

8:30 p.m. – The premier tells Staff Insp. Neadles to consider a Plan B

At approximately 8:30 p.m., a conference call took place among the premier, Staff Insp. Neadles, Mr. Hefkey, Mr. Livingston, Ms. Miller, Mr. Wallace (secretary of the Cabinet), Ian Davidson (deputy minister, MCSCS), Mr. O'Leary, Ms. Conrad, Steen Hume (executive assistant to the secretary of the Cabinet), Ted Wieclawek (fire marshal), and Allison Stuart (chief of EMO).¹⁹⁹ Mr. O'Leary testified that it was unusual for him to be on a call with the premier, his chief of staff, and the secretary to the Cabinet.²⁰⁰ As Mr. McGuinty observed, they "had a lot of clout on the phone."²⁰¹ The premier, as the most senior person, ran the call.²⁰² Mr. O'Leary and Mr. Hefkey took notes of the meeting.²⁰³

Staff Insp. Neadles testified that the premier expressed concern that everything should be done for the families and the City of Elliot Lake.²⁰⁴ The premier said that, until proven impossible, nothing should stand in the way of the responders to further the rescue operation. The discussion covered what had transpired and what could be done going forward.²⁰⁵

.....

* Sergeant Glavin was unable to recover these pictures, which were located on a Blackberry that stopped working.

The premier asked Mr. Hefkey and Staff Insp. Neadles to explain the decision to call off the search.²⁰⁶ They provided information that was consistent with what had been made public at the earlier press conference. Mr. O'Leary noted, from their explanation, the words "only viable alternative"; he was already familiar with the rest of the information they gave. While Mr. O'Leary could not recall who spoke those particular words, Staff Insp. Neadles testified that they reflected accurately the decision made earlier in the day to stop the search.²⁰⁷

The premier then asked whether someone was alive within the rubble.²⁰⁸ Staff Insp. Neadles said there was a remote chance that was true. He explained that the OPP had used a piece of equipment that could penetrate concrete to determine if someone below was breathing.²⁰⁹ He did not comment on the reliability of that machine. He explained that the device had detected a faint heartbeat and that tapping had also been heard during a call out by a rescuer at a different time.²¹⁰ He reported that search dogs were then sent into the debris and, although the hits had been distinctive the day before, they were less so that day. Staff Insp. Neadles testified that he meant there had been a hit by the dogs indicating that somebody was alive in the rubble, but that the scent was not as strong as in previous hits.²¹¹ According to Mr. McGuinty and Mr. O'Leary, Staff Insp. Neadles explained that the rescuers did not have any solid information beyond that timeframe as to whether the victim was alive.²¹²

Staff Insp. Neadles also indicated during the conference call that he had received medical advice that, once the three large pieces of concrete covering the victim were removed, she could die immediately from sudden shock.²¹³ Mr. O'Leary did not recall whether Staff Insp. Neadles indicated the likelihood of that happening.²¹⁴ Staff Insp. Neadles testified that it was Dr. Michael Feldman who gave him this information.²¹⁵ In contrast, as I discuss elsewhere in this Report, Dr. Feldman's evidence, which I have no reason to question, was that crush injury, or crush syndrome, was treatable and that paramedics were aware of such treatment.²¹⁶ Dr. Feldman also testified, contrary to what Staff Insp. Neadles told the premier, that although there are life-threatening complications to removing a heavy weight from a patient who had been crushed, the medical team was anticipating and preparing to treat such injuries.²¹⁷

Mr. McGuinty testified that he was never presented with any conclusive evidence that the trapped person was no longer alive. He therefore proceeded on the assumption that somebody in there was still alive.²¹⁸

The premier then asked whether there was any way they could go into the building.²¹⁹ Staff Insp. Neadles replied they could not.²²⁰ He indicated that he had sought the advice of the MOL and HUSAR/TF3 engineers, Roger Jeffreys and James Cranford, respectively. He went on to explain to the premier that, when the roof collapsed, a large beam had been displaced and it was close to where the two identified victims were located. A large piece of concrete had fallen at this time, pressure had been applied down and out, stresses were more than 100 percent over the limit, and he was advised that the Mall could collapse at any moment. Staff Insp. Neadles testified that Capt. Tony Comella, a team coordinator on HUSAR/TF3 from Toronto Fire Department, was the person who had advised him that the building could collapse, and that Mr. Cranford and Mr. Jeffreys had agreed.²²¹ Staff Insp. Neadles went on to explain to the premier that, if the Mall did collapse, it would take down everything two and three floors below. He did not want to put any of the rescuers in that situation.²²²

Mr. McGuinty testified that his reaction to this answer was as follows:

I didn't say it, but would have thought we can't accept that. There has got to be a way. So the way I was thinking all along was if that is my daughter in that building or my mother or my fiancée, I want no stone left unturned. We will do everything we possibly can to connect with that individual.

So that ... was informing my thinking and inspiring my efforts, that notion. So I didn't say that right then and there. I think I did say it in other opportunities, but that is what I felt. We have to find a way.²²³

The premier then asked whether anyone else would be better to do the job.²²⁴ Mr. Hefkey's notes record the following answer by Staff Insp. Neadles: "There are no other options and no other team would be capable of coming in and pull[ing] the victims from the rubble pile."²²⁵

Mr. McGuinty testified that he said they should be painfully honest with each other: If they did not have the best people on the ground conducting the rescue operation, they needed to get them. He was assured they did have the right people there – and they were doing everything they could.²²⁶ According to Mr. O'Leary, Staff Insp. Neadles answered that people in the community believed that mine rescuers might be able to get the victims out, though he indicated that a mine is different from a building. He explained that a building cannot be simply torn down because that effort in itself could cause another collapse. Moreover, no one was better at rescue from a collapsed building than HUSAR/TF3.²²⁷

Staff Insp. Neadles first testified that what he meant by this comment was that no other search and rescue team, or any other team, miner or otherwise, could or should be allowed back in that building, based on its structural integrity at the time.²²⁸ Later, however, he said that when he spoke of "no other team," he meant not only the non-trained search and rescue teams but fully trained teams. He believed that no other search and rescue team in the country was trained in the same way as HUSAR/TF3 or had access to more equipment. He admitted, however, as I indicate below, that he did not know what actual equipment and capabilities Ontario Mine Rescue had available.²²⁹

The premier then asked whether they could actively dismantle the building and, if so, whether the worst result would be that the building would come down.²³⁰ According to Mr. McGuinty, the suggestion was well received and welcomed.²³¹ Mr. McGuinty and Mr. O'Leary testified that Staff Insp. Neadles answered as follows:

- they could dismantle it, if they had a proper demolition team;
- they had done so in the past to recover bodies;
- the process was "easy"; however, if victims were alive and something fell on them, they would die; and
- the mayor wanted to explore options in this regard and expressed hope that HUSAR/TF3 would be willing to stay on site.²³²

The premier testified that he could not remember whether the name Priestly was mentioned during the conversation.²³³ Mr. O'Leary testified that the name Priestly was not mentioned: the only reference was to heavy equipment. His notes make no mention of Priestly.²³⁴ As I discuss below, Mr. O'Leary testified that he first learned of Priestly Demolition later that evening in an email he received from Ms. Conrad.²³⁵

In contrast, Mr. Hefkey's notes, confirmed during his testimony, recorded the following points:

Bill mentioned Priestly Construction as an option given the experience he had with them during the Bloor Street collapse. HUSAR does not [sic] the kind of equipment needed to mount neither such an operation nor the expertise to operate the machinery.²³⁶

When asked what he told the premier with respect to the possibility of dismantling the building, Staff Insp. Neadles stated that he raised the name of Priestly and testified as follows:

Well, I didn't give a lot of actual detail because I only had had the preliminary discussions with Sgt. Glavin where he outlined in a very general way what he believed that the Priestly team could do for us as far as advancing with and dealing with that escalator.

I didn't even get into a lot of detail. What I did mention I believe was that ... we were working on a plan, but I didn't get into ... any of the specifics of it. And then what the Premier said was, I believe, you know, and I recall was good, go forward with your plan and when you have got it ready to go, reach out to Mr. Hefkey for approval.²³⁷

In fact, the team was a long way from such a plan.

In his testimony, Staff Insp. Neadles agreed that the Bloor Street operation (a natural gas explosion in an apartment building), referred in Mr. Hefkey's notes, was not a rescue but rather a recovery.²³⁸ He testified that the previous experience he had with Priestly was limited to a recovery situation, but he claimed that he had then had the opportunity to observe the Priestly operation and the way they dismantled the building with precision.²³⁹

Mr. Livingston asked whether there was anything that the federal government or the Canadian military could contribute.²⁴⁰ Mr. McGuinty testified that he sensed that Staff Insp. Neadles was trying his best. He said:

... if there is anything we can do, even if there is a low chance ... Then we have got to do it to try to save this person. As it stands now, the options will definitely result in death ... you are telling me there is a chance this individual is still alive and there is [a] chance that we could get at them by dismantling the building. We owe it to them, and we owe it to the community to try. I understand it is very risky, so you need to communicate that up front. You need to convey it to the community, "This is [a] tricky, delicate, risky procedure that we want to pursue. The place is like a house of cards. We pull down the wrong card, the whole darn thing may collapse. But it is the only choice that we have and we are not going to do nothing." So I thought it was really important to convey that to the community ...²⁴¹

... I have now been told that there is some expertise; there is some heavy equipment that could be useful in these circumstances. I'm now saying that would be helpful. I think we owe this to the community with a life at stake. We owe it to them ...

... Whatever you need we'll help you get that.²⁴²

**"This is [a] tricky, delicate, risky procedure that we want to pursue. The place is like a house of cards. We pull down the wrong card, the whole darn thing may collapse. But it is the only choice that we have and we are not going to do nothing."
– Premier McGuinty**

Staff Insp. Neadles agreed that the premier was essentially saying to him that if the status quo was allowed to persist, no one would survive. He agreed that if they did nothing, there would be no rescue.²⁴³

When asked to explain further about the risk the premier was referring to, Staff Insp. Neadles testified:

A. Well, as I think you have probably heard, if we just went in there and did the demolition as it was called, that would be risky that pieces would then further impact where the victims were lying.

The plan from what we were working towards was to do it as precisely and as accurately as possible, and that is why we chose Priestly. With the piece of equipment that he had, with the expertise that we know they have, with the person we knew was operating the crane, I had a good sense of feeling that Mr. Priestly could come in and, as we laid out the plan to its final stages of what we did put together, he would be the best person with the best piece of equipment to enact as safe a demolition to that front corner as we possibly could without wrecking the rest of the building.

Q. I think you are little ahead of us here, because at this phone call –

A. I hadn't done that yet.

Q. – you are a long way from a plan; correct?

A. Yeah, well, not a long way, but we are not there.

Q. Right. So am I safe in saying that the risk that is being talked about here is in the course of trying to take the building apart, it could result in their death?

A. There is that risk. That is the risk.

Q. Right, so it was being weighed against if you do nothing, they are going to die for sure, and there is a risk involved in taking the building down but it is better than the other option?

A. Yes, sir.

Q. That is really what it boiled down to?

A. The risk versus the reward, yes.²⁴⁴

Staff Insp. Neadles also agreed that the premier made it clear to him, and he agreed it was important, that, once the plan was formulated, he needed to communicate to the public that the whole effort was a very risky operation.²⁴⁵

At this point in the conference call, Staff Insp. Neadles advised the premier that the families were willing to sign “a waiver that they would be prepared to do whatever it takes to restart the rescue, to rescue their loved ones.”²⁴⁶

Mr. Davidson asked whether the rescue teams had the necessary expertise. Staff Insp. Neadles replied that they did not, but that, with an operator and other material, the HUSAR/TF3 team would be able to proceed.²⁴⁷ Mr. Davidson asked if Staff Insp. Neadles could get a list of what he needed, and the province would try to provide him with those resources. Staff Insp. Neadles stated that he would do what he could, to which the premier replied that it would be helpful if he provided the province with a list. The premier reiterated that “we owe it to the community, with a life at stake, we owe it to them[,] and Bill, we will let you do that.” Mr. Hefkey replied that they would provide anything they had to assist.²⁴⁸

The premier continued: “[T]ime is the enemy . . . whatever needs to go, whatever we need to get, you know, we will go and get them.” He asked Staff Insp. Neadles, Mr. Hefkey, and Mr. Davidson to confirm that it was not possible to permit volunteers to assist.²⁴⁹ Staff Insp. Neadles testified that this comment was a reference to the discussions about the possibility of having miners or other organizations enter the building. He was absolutely against that eventuality because these people did not have the expertise and the training that he believed were needed for a structural collapse. Staff Insp. Neadles admitted, however, that at this time he was not even aware of the organization Ontario Mine Rescue or the exact capabilities of mine rescuers. Staff Insp. Neadles claimed that in a discussion he had had about mining with Cmdr. Michael McCallion, the HUSAR/TF3 site commander from Toronto Emergency Medical Services, he was advised that a mine rescue required a different set of skills and expertise from a structural collapse rescue. They came to the conclusion that miners would not have the training and ability to assist with the rescue.²⁵⁰ Staff Insp. Neadles did not contact Ontario Mine Rescue to investigate its capability and did not instruct anyone to do so.²⁵¹ When asked why he had not pursued this option, he explained:

[A]gain, from what I knew, I did not have the understanding that they would have the safety training that would permit them to enter a structural collapse.

Secondly, for me, sir, it was pretty much a red herring, because not that I ... didn't want them. I would take anyone who was accredited to assist us. But [at] that point in time, that was something that ... would have to come through some other folks to be approved anyway. So I didn't have the time at that moment to say ... I needed to go talk to Chief Officer about mining; I didn't quite have the opportunity to do that.²⁵²

Staff Insp. Neadles agreed that, at this time, although he was busy, little was happening on the site, and he could have tasked another member of his team.²⁵³ Mr. Davidson then brought this portion of the conversation to a close by telling everyone they needed to get off the phone and begin developing a plan.²⁵⁴

Mr. McGuinty testified that he felt the call had been a success. He thought the rescue team was going to explore a new option, and that they had put together the makings of a Plan B that would bring in heavy equipment.²⁵⁵ Mr. O'Leary's understanding of next steps was the same: the senior emergency officials, along with the on-scene responders, would be working together to restart the rescue operation.²⁵⁶

In his testimony, Mr. McGuinty confirmed that he did not order the rescuers back to work. He recognized that he did not have that authority; it was an operational issue with which the premier does not usually involve himself. He believed, however, that he had the authority, and the responsibility, to convey to the team on the ground that it had to explore all the alternatives. Ultimately, the team members were going to have to use their own

judgment on how to effect the rescue, but the premier alerted them to the fact that they had to keep looking for other ways.²⁵⁷

Mr. McGuinty described his role in getting the rescue back up and running as “essential.” I agree with this characterization. He had no reason to believe at the time that the rescue effort would have continued without his intervention. Mr. McGuinty did not see his intervention here as being operational in nature. Rather, he used the authority of his office to compel a conversation that might not otherwise have taken place. By the end of the call, he had a better understanding of the logistical challenges and the risks associated with working within the collapsed building, but he thought that the rescue teams had not given enough thought to a Plan B. Mr. McGuinty wanted them to understand that he would do whatever it took, and use whatever authority he had, to help pull together a plan. He told them that whatever they needed, they would get.²⁵⁸

In addition, Mr. McGuinty testified that the public reaction to the calling off of the rescue was not what drove him to take action, although it certainly played a role. He stated:

... I was very sympathetic to the feelings being expressed by the people of Elliot Lake, but I ... reacted as I felt I should be reacting, as Premier and somebody who is trying to inject some humanity into a very difficult circumstance[,] and to make sure that we were doing whatever we could to help out a community.²⁵⁹

Staff Insp. Neadles testified that he did not view the efforts of the premier as interference.²⁶⁰ Rather, he characterized these actions as a person in authority wishing, willing, and wanting to do whatever he could to help move the situation forward. He testified that he did not feel any pressure from the premier. On the contrary, he felt relieved. He felt he was in a position to move forward with the plan they were going to put together. He was confident that the plan would get approved and that the operation would get “back into full swing.” Staff Insp. Neadles explained that he would need both Chief Officer and Mr. Hefkey to approve the plan – for the use of the equipment and for its financial implications.²⁶¹

When asked whether he thought Chief Officer should have been invited to take part in the conference call with the premier, Staff Insp. Neadles testified that it would have been a good idea to have the incident commander participate in the conversation. Ultimately, as part of the Incident Management System, he would be called upon to approve the plan.²⁶² Nevertheless, when he was asked whether Chief Officer did approve the plan, he testified that he updated him only verbally.²⁶³ As I discuss below, Chief Officer did not sign the plan document.

Mr. Hefkey also admitted that he should have spoken with Chief Officer and had him participate in the call. He claimed that things were moving quickly: he was told that the premier wanted to speak to Staff Insp. Neadles and asked to make it happen – which he did.²⁶⁴

Following the call with the premier, Mr. Hefkey, Mr. Davidson, and Staff Insp. Neadles took part in a conversation to discuss the next step – the development of a plan of action following the reassessment of the situation. Mr. Davison and Mr. Hefkey informed Staff Insp. Neadles that he should not hesitate to contact them for anything he needed.²⁶⁵

Conclusion on call with the premier

I am not convinced that Staff Insp. Neadles and the HUSAR/TF3 team had an alternative plan in place or that one was actually being developed at the time of the conference call with the premier. By then, Staff Insp. Neadles had had only a very short conversation with Sgt. Glavin about the possibility of using Priestly’s equipment. Priestly had yet to be contacted. It was not clear that its equipment was available, let alone capable of assisting the response team on the ground.

I find that Premier McGuinty's actions and those of his staff were appropriate, responsible, humanly genuine, and warranted in the circumstances. They properly concluded that the response team must consider all possible alternative options and resume the rescue, even if the chances of success were slim. Their intervention led to a renewed sense of urgency and determination. The premier's leadership had re-energized and encouraged the emergency response teams. It also provided much needed reassurance to the public and to the families that they had the whole-hearted support of senior officials in the provincial government. In short, it gave renewed hope.

The premier speaks to Mr. Mantha, the mayor, and the prime minister to advise them that Plan B is in motion

The premier's news appeases the community

After his conversation with Staff Insp. Needles, Premier McGuinty spoke to Mr. Mantha, who described the climate of frustration in the community and the urgency of restarting the rescue efforts. Mr. Mantha felt it was important to explain to the premier the history between the community and the Mall: he would then have a better understanding of why feelings ran so high. The premier told him that he had had follow-up discussions with the rescue team and that he had suggested to them that if there was a 1 or a 10 percent chance of somebody being alive in the Mall, he wanted to make sure that all efforts were made to get to that person. He also told Mr. Mantha that they were going to bring in heavy equipment and put in place a Plan B – something new that was fraught with risks. As Mr. Mantha testified, this news gave him “an overwhelming sense . . . of happiness.” Mr. McGuinty thought Mr. Mantha was eager to speak to the community and inject some hopefulness into an atmosphere that was otherwise characterized by despair.²⁶⁶

Mr. Mantha ran as quickly as he could to city hall to let people know that the rescue efforts were back on track. He wanted to bring some of the frustration level down.

Mr. Mantha ran as quickly as he could to city hall to let people know that the rescue efforts were back on track. He wanted to bring some of the frustration level down. Although Mr. Mantha did not have the details of the steps being taken by the responders, for him “the important thing . . . was that the rescue efforts were starting up again, and that is what the community needed to hear.” Mr. Mantha's announcement appeased the group of people that had gathered following the news of the rescue being stopped. He did not speak directly to the victims' families, but he shared the news with relatives of the victims who were present. The mood in the community improved.²⁶⁷

That evening, Mr. Mantha made himself available, walking on the street, listening and talking to people. He found they were extremely happy that the rescue efforts were back on and moving ahead. He gave this message to everyone: “[B]e patient. These are the professionals. They know what they are doing. Equipment is coming . . . It is going to take some time, but it is moving ahead.”²⁶⁸

The premier informs the mayor of Plan B and asks the prime minister to make the army available if necessary

Mr. McGuinty next spoke with the mayor. He told him about the phone call with Staff Insp. Needles and described the basics of what had unfolded and what he expected would happen. Mayor Hamilton seemed relieved. Mr. McGuinty got the sense he was very concerned about his community and how people were reacting to the news of the rescue operation being shut down.²⁶⁹

Later that evening, at approximately 10:00 p.m., Mr. McGuinty called the prime minister to bring him up to date on what was happening in Elliot Lake. He also asked him to make the Canadian Armed Forces available at the earliest opportunity should personnel, equipment, or expertise be needed. The prime minister was very supportive.²⁷⁰

8:30 p.m. – Community Control Group meeting: “We are back on”

The Community Control Group (CCG) met at 8:30 p.m., while the conference call between Premier McGuinty and the rescuers was in progress. The purpose of the meeting, which was not originally planned, was to try to “expedite authority to demolish to recover bodies.”²⁷¹ As I describe elsewhere, the earlier meeting at the police station between members of the MOL, the OPP, the City of Elliot Lake, and the Office of the Fire Marshal had concluded that it appeared that no one had the authority to require that the building be entered or demolished in order to remove the victims.²⁷² Mayor Hamilton testified that stop-work orders had been alluded to, and the group was determined to find a way to get into the building as quickly as possible.²⁷³ Consideration was being given to any potential authority that the City might have to get into the building expeditiously, but also as carefully as possible, given the presence of victims. The group realized that it did not have the necessary equipment, and Staff Insp. Needles had made it clear that HUSAR/TF3 did not have the “wherewithal or the equipment to continue.” Mayor Hamilton testified that they were also trying to contact the owner’s lawyer, Antoine-René Fabris, to see whether Eastwood would object to the rescuers entering the building without legal authority.²⁷⁴

Chief Officer testified that although it was difficult to attempt a rescue with heavy equipment, they were still hoping it could be done. He said that the evidence from about 12 to 14 hours earlier indicated that a live person was trapped in the rubble. He stated: “I mean, your head would say no, but your heart would say keep going until you get to the floor.” He also explained that they were trying to “expedite” the authorization or the legal authority to demolish the site because

we still thought that if we could move forward fast enough, that you never know and you might have a chance of saving that person. I mean, we didn’t know that they were not deceased, so we moved it forward on that basis. We got to move it forward anyway, one way or the other ... and that was the direction we tried to do it.²⁷⁵

Chief Officer also confirmed that the private ownership of the Mall posed a unique problem, which was discussed at the meeting.²⁷⁶ The notes of the meeting recorded the following statement: “EMO asked to contact their Commissioner about legislative options to take control of taking down the bld for recovery. If not a provincial emerg then no action.” Chief Officer explained that he was advised by the Office of the Fire Marshal that, as the incident commander, because he had never declared the operation a recovery, he still had control over the scene.²⁷⁷ Chief Officer agreed that Staff Insp. Needles had declared the operation a recovery, but it was his own declaration on a change of status, yet to be made, which governed.²⁷⁸

During the meeting, Mr. Thorpe, an adviser from the Office of the Fire Marshal, suggested that if the escalator came down, the search area would be considered safe for rescue efforts. He asked whether there was a controlled way to take it down.²⁷⁹

The notes of the meeting also record someone asking whether the community had accepted that there were two deceased individuals.²⁸⁰ Chief Officer testified that he did not know what the response had been to that question.²⁸¹

It was also noted during the meeting: “If we start picking at bld. the beams will more than likely come down. Send equipment in, not people. If weight was dropped on escalator – we could then shore / remove debris w bobcat. Attempting would be our last effort – exhausted all possibilities – approach family?”²⁸² Chief Officer confirmed that lowering the escalator would be the final possible rescue attempt: once they started to knock it down, they did not know what would happen.²⁸³

When asked whether there was discussion about lifting the escalator with a crane, Chief Officer explained that one problem was the weight, with the two sets of escalators pancaked on top of each other.²⁸⁴ He also explained that the other issue was the reach, because the further a crane has to reach, the less it can lift.²⁸⁵ When asked whether the slabs that had fallen on the escalator pair could be lifted, Chief Officer explained they could not, because someone would first have to get on top of the slabs to secure them.²⁸⁶ The danger resided in the possibility that either the front of the building, and consequently the penthouse on top of the stairs, or the sides of the building would be pulled down if the escalators were to give in.²⁸⁷ Chief Officer testified that this discussion did not take place at the CCG meeting but likely among the engineers.²⁸⁸

Chief Officer testified that several individuals came forward with suggestions. One suggestion was that they take big blue dumpsters, flip them upside down, and slide them underneath the front of the building as some kind of shoring.²⁸⁹

Staff Insp. Neadles arrived at the meeting at approximately 9:00 p.m.²⁹⁰ He told them: "We are back on." The notes of the group meeting indicated:

Bill Neadle [*sic*] arrived

Dan Hefkey, Premier Dalton McGuinty

Plan to go in

Will send whatever we need.²⁹¹

Staff Insp. Neadles provided the attendees with a brief description of the telephone conversation he had had with the premier. He announced that they had obtained the authorization to bring in heavy equipment and to try to move the operation forward.²⁹² He explained that the "transformer," a specialized piece of equipment with a very long-reaching arm and a grappling hand, was coming to Elliot Lake and would be able to extend its arm over the roof of the Mall and secure the escalator.²⁹³

The notes of the meeting then record the following statement: "It still is a rescue. We should say it is a recovery."²⁹⁴ Staff Insp. Neadles testified that he did not believe these words were his. In his mind at the time the operation was now a recovery; in his heart it was not.²⁹⁵

The notes of the meeting then go on to record the following comments:

Efforts to continue – resume

Operation is back on

Follow protocol

Get media another

Press conference @

Civic centre

Announce = successful in obtaining

Permission for recovery

Stress – last ditch effort.

Premier = full support²⁹⁶

Staff Insp. Neadles advised the group that this effort was certainly the last one. He also warned that, despite these efforts, in all likelihood (90 percent chance) the escalator could still fall.²⁹⁷

Ms. Bray, who took the notes, testified that the phrase “efforts to continue – resume operation is back on” referred to the fact that the operation had been called off as far as the CCG was concerned, but that it was now moving ahead.²⁹⁸

When asked whether he thought it was probable, in light of the new plan, that somebody would be recovered alive from the scene, Mayor Hamilton testified:

Well, what I can say is my head said not likely; my heart said let’s give it a shot, because whenever there is a chance, you have got to take it, but I don’t think anybody was under any misconceptions that this was a long shot.²⁹⁹

At 9:20 p.m., after the completion of the CCG meeting,* Ms. Bray, Mr. Ewald, Chief Officer, and Mr. Jeffreys met with Mr. Fabris to discuss obtaining the owner’s permission to expedite the process of getting into the building. There had been an indication that it might take a week for the owner to get an engineer on site. Mr. Fabris advised them that they had full authority to proceed in any way they needed, and he signed the following authorization:

June 25/12

9:20 pm

I Antoine-Rene Fabris solicitor for Eastwood Mall Inc. have full authority from the owner Robert Nazarian to allow emergency services to perform whatever work demolition necessary to continue the rescue or recovery process

[signature of Mr. Fabris]

Antoine-Rene Fabris

[signature of Ms. Bray]

Natalie Bray³⁰⁰

8:30 p.m. – Mr. Cranford is told not to return to Elliot Lake

Mr. Cranford and Dr. Feldman had left Elliot Lake after the briefing from Staff Insp. Neadles and were listening to the media reports on the car radio. Mr. Cranford testified that he heard quite a few reports, including some saying that people felt things had been wrapped up too soon, that more needed to be done, and that a new plan was being considered to continue the work. He said he also thought he heard in the news report that a telephone call had taken place with the premier.³⁰¹ As a result, Mr. Cranford contacted Capt. Comella at 8:30 p.m. to see whether he was needed in Elliot Lake. He advised Capt. Comella that they could come back because they were not far away. Capt. Comella told him that he was not required and should continue the drive home.³⁰²

Staff Insp. Neadles was not aware that Mr. Cranford had been released. Nor was he told that Mr. Cranford had volunteered to return to Elliot Lake or asked about the possibility of having him return. He testified that he would have found a role for Mr. Cranford had he stayed. His departure left the HUSAR/TF3 team without a dedicated engineer.³⁰³

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* There was some suggestion by Mr. Jeffreys during his testimony that the meeting with Mr. Fabris took place before the CCG meeting (Jeffreys testimony, October 3, 2013, pp. 28173–4 and 28194). However, the note signed by Mr. Fabris clearly indicates the time of 9:20 p.m., leading me to believe that the meeting with Mr. Fabris took place after the meeting.

9:00 p.m. – HUSAR/TF3 keeps busy

Capt. Comella testified that while they were waiting for Staff Insp. Needles to return, the responders were “doing as much as they could to stay engaged waiting for . . . that go-ahead.”³⁰⁴ At 8:45 p.m., Capt. Comella asked Chris Rowland, a member of the HUSAR/TF3 team, to put laced-post shores underneath the walkway on the Zellers side of the building. According to Mr. Rowland’s notes, the shoring operation began at 9:00 p.m.³⁰⁵ Capt. Comella testified that they set these posts up because they had no way of knowing how much the vibration was going to affect the building. Yet, at this time, no authorization had been given for the use of the Priestly crane.

Capt. Comella could not recall if he met with Staff Insp. Needles between 2:20 p.m. and 8:45 p.m., but he did not think so. He believes he probably slept during that period. He does not recall meeting with Cmdr. McCallion during that time either. Capt. Comella testified that he was never told the operation was not a rescue, so he was working on the assumption that it still was, although he agreed the workers could not go into the hot zone. He testified that the next thing he can recall being told, on June 26 at 2:30 a.m., was that they had received the approval to bring in the heavy equipment.³⁰⁶ Given that Capt. Comella was the operations chief in charge of conducting the rescue, I am surprised that he would not have been made aware of this important development. This omission is further evidence of the lack of communication among members of the HUSAR/TF3 team.

At approximately 9:30 p.m., Capt. Comella noted the following conversation he had with Capt. Martin McRae, a HUSAR/TF3 training captain with the Toronto Fire Department: “Discussed with Marty what is needed in anticipation of heavy equipment. Clear top of parking area / access road cleared / lighting in place.” Capt. Comella testified that he had several conversations about cleaning up, moving equipment, and getting ready for the next steps of the operation. He explained that the footprint for the heavy equipment was very large. Consequently, they needed to clear the parking area south of Foodland to be able to bring the equipment up as closely as possible. They also cleared the access road (driveway leading up to the roof parking of the Mall) because they were not sure exactly how Priestly was going to get that enormous piece of equipment close to the building. They were trying to anticipate what was going to happen. They also set up lighting, using portable lights, where they knew they could light up the building and the work area.³⁰⁷

9:00 p.m. – Mr. Cranford is advised to return, and then not to return, to Elliot Lake

At approximately 9:00 p.m., Mr. Cranford received a telephone call from Cmdr. McCallion advising him that there was a new course of action and that they needed him to return to Elliot Lake. At that point, Dr. Feldman and Mr. Cranford were near Parry Sound. Dr. Feldman was unable to drive Mr. Cranford back to Elliot Lake. Arrangements were therefore made with Cmdr. McCallion to have Mr. Cranford dropped at the OPP detachment in Parry Sound and for the OPP to drive him to Elliot Lake.³⁰⁸

At 9:30 p.m., Mr. Cranford and Dr. Feldman arrived at the Parry Sound OPP detachment. Mr. Cranford contacted the site in Elliot Lake and spoke to Capt. Comella or Cmdr. McCallion. Despite advising that he was willing to go back, he was again told he was not needed – they had everything under control, and he should simply go home. The Parry Sound OPP officer also confirmed this information through his own channel.³⁰⁹ Mr. Cranford left with Dr. Feldman and arrived home in Toronto at 2:00 a.m.

Staff Insp. Needles testified that he was not aware of these communications with Mr. Cranford until sometime after 9:30 p.m.³¹⁰

I find the release of Mr. Cranford from his duties at this early stage rather odd. I would have thought that a team still intent on proceeding with a rescue operation would require the assistance of an engineer to provide them with advice, particularly when it had been determined that the building was shifting. In my view, this

decision was consistent with the rescue team abandoning hope of a rescue and moving to the recovery phase. In addition, the fact that Staff Insp. Needles was not consulted is further evidence of the lack of communication among members of the HUSAR/TF3 team.

9:00 p.m. – Staff Insp. Needles advises Mr. Sanders that the rescue is back on

At approximately 9:00 p.m., Brian Sanders saw Staff Insp. Needles and spoke to him briefly. After ascertaining that he was the regional engineer, Western Region, from the MOL, Staff Insp. Needles instructed him to follow him into the command tent. Staff Insp. Needles advised him: "It's back on. Premier's order." Following his conversation with Staff Insp. Needles, Mr. Sanders sent an email to Mr. Jeffreys, who was attending the 8:30 p.m. CCG meeting, in which he stated: "Premier's order. Call me immediately." Mr. Jeffreys did not call Mr. Sanders back in response.³¹¹

Mr. Sanders testified that he was never advised that the rescue should be shut down. He was also not aware if it was ever the intention of anyone from the MOL to shut down the rescue operations. He never issued such an order.³¹²

10:01 p.m. – Ms. Chambers warns team against possible confusion over who holds the position of incident commander

At 9:17 p.m., Mr. Thorpe advised Carol-Lynn Chambers, manager of emergency planning and strategic development in the Office of the Fire Marshal, Ministry of Community Safety and Correctional Services, that the premier had spoken to the mayor and that "he has stated to go ahead and do what has to be done!" This message was the first indication Ms. Chambers had that things were moving forward. She testified that she had spoken to Staff Insp. Needles earlier that evening, but he had simply informed her then that he would be speaking to Mr. Hefkey later in the evening about another plan.³¹³ Ms. Chamber responded to Mr. Thorpe, requesting a briefing and asking whether HUSAR/TF3 was resuming.³¹⁴

At 9:45 p.m., she also sent an email to Staff Insp. Needles, asking him to keep her informed because she now seemed to be receiving conflicting information from Mr. Thorpe.³¹⁵ She wanted to speak to Staff Insp. Needles to find out what was happening at that time. She did speak to him, and he provided her with information that she included in her 9:56 p.m. update, discussed below.³¹⁶

At 9:50 p.m., Mr. Thorpe responded to Ms. Chambers, advising her:

Correct? ... The plan is that the MOL has no issue if the escalator is dropped. Therefore, the plan, as I know it, is to use strictly mechanical means with no human entry into the structure and force the escalator to drop.

The MOL engineer will then inspect, and when and if deemed safe, will permit the work to continue.

It is important to know that this operation is a continuation as a rescue ... It has not been transferred as a recovery to this point in time.³¹⁷

Ms. Chambers responded with the following message to Mr. Thorpe and Brent Ellen, a program specialist in the Office of the Fire Marshal: "Suggesting FC [Fire Chief] keep control, order IAPs [incident action plans] from HUSAR/UCRT, get a well-articulated strategy out of both and inform EOC [Emergency Operations Centre] so that they can preplan the communications plan and statements. This is still the fire chief's scene."³¹⁸

Ms. Chambers testified that she wanted clarity above all. By making these comments, she wanted to make it clear that the fire chief was still, as far as she knew, the incident commander. She further explained that an incident action plan provided clarity to all parties involved with the response. There had been numerous communications from different channels. She was, therefore, simply suggesting that the single point of contact, the single incident commander, be clarified as being the fire chief. The scene was still his, and he needed to be involved.

She also wanted coordination and alignment so that the messaging was consistent with the operations. In her view, it was very important that everyone be on the same page with respect to the next steps in the mission. It was also important that the incident action plan clearly outline for the incident commander and others what the plan would be going forward.³¹⁹ Ms. Chambers testified that the plan did not have to be typed; it should, however, be written in some way so that it was clear to all the parties involved. She confirmed that she had not seen, and was not aware of, any incident action plan before this point.³²⁰

At 9:56 p.m., based on the conversation she had with Staff Insp. Needles and the information given to her by Mr. Thorpe, Ms. Chambers provided a further update to the fire marshal and to senior officials within his office:

Further to my update below,

MOL has been provided direction to consider an alternate course of action. Specifically the re-examination of an alternative method of securing or removing the specific hazards that prompted MOL engineers to issue the STOP WORK order declaration. Once an approved plan has been designed the implementation of that plan can begin and HUSAR assets will commence their efforts.

OFM is continuing logistic support for responders and local liaison.

UCRT has been requested to provide POU support as there is significant concern at the local level that there may be civic disobedience in the immediate area.

Further update/detail to follow once the work plan has been approved. t [sic] is important to know that this segment of the operation is being deemed RESCUE.³²¹

At 10:11 p.m., Ms. Chambers informed the EMO duty officer that a new plan was being developed. Tom Kontra, who worked for the Office of the Fire Marshal, responded: "Did this get pushed up from us or someone else? The last U saw was their planned withdrawal, so this is a major (good) change." Ms. Chambers responded:

Long story, involving implications of MOL's order limiting any further activity or recovery ops.

Communication and jurisdictional issues locally in the mix as well.

Suffice to say this was a good outcome in the short-term and may help quell some of the public outcry and perhaps still some hope for one trapped person. Engineers came back to the table and HUSAR is engaged.

Ms. Chambers explained that she had read a media report that the MOL was closing the building. She understood at the time that, when the operation moved to a recovery, the ministry would be making an order to close the building. She explained that there seemed to be a disconnect between what was being reported in the press and what was actually happening. Until that time, she thought she had streamlined communications, but now there were gaps where she was not aware of what was happening. As for the jurisdictional issues, she was referring to what would happen in the event of a recovery: Would the fire chief retain jurisdiction? Would it become a MOL issue?³²²

10:20 p.m. – The premier releases a statement: He has instructed the rescue team to determine if there is another way to reach the victims

At 10:20 p.m., the Premier's Office released the following statement:

Ontarians have been hoping and praying that rescuers could reach any survivors in the rubble of the collapsed Algo Mall in Elliot Lake.

Today, we learned that the remaining structure has de-stabilized further. Authorities on the scene believe it has become extremely difficult to predict whether it may collapse and that further rescue efforts could endanger the lives of the rescuers.

I have spoken to Emergency Management Ontario and the Heavy Urban Search and Rescue Team and have instructed them to determine if there is any other way possible to reach any victims without endangering our rescuers, including the use of equipment to dismantle the building from the exterior.

I believe we owe it to the families waiting for word of their loved ones to leave no stone unturned. We owe that to the people of Elliot Lake too. Ontarians expect nothing less.³²³ [Emphasis added.]

Mr. McGuinty testified that the use of the word “instructed” was deliberate. He wished to convey in the strongest possible way, without crossing the line into operations, that he wanted the people on the ground to use their own judgment and make a determination as to whether there might be something else they could do to get to the victim or victims. The dismantling of the building from the exterior was a reference to Plan B, which had been discussed during his call with Staff Insp. Needles. Mr. McGuinty testified that he was also, through this statement, encouraging the responders to bring out a plan C, D, E, or F if they had one, but to keep trying.³²⁴

At 11:05 p.m., Ms. Conrad emailed Mr. O’Leary and others:

I just got off the phone with mcscs officials. Here’s what’s going on:

- OPP will send a media person up first thing tomorrow morning
- MCSCS will also send someone to provide media support and coordination
- EMO is working with the MOL engineer to develop a plan to continue the search based on first responder safety and one that causes the least destruction
- Priestly Demolition has been contacted and may be on route from Sudbury because they have larger equipment and they have worked with HUSAR in the past on rescue ops
- Dan is calling the feds to ensure they are ready to deploy if we need assistance
- Vale Inco – has offered equipment and any other resources as needed but will not send equipment in if civil engineers say it is unsafe. They are also trying to track down a mining engineer
- OPP incident commander on site for security issues
- Dan will be going up at 5 tomorrow morning

I will be on another call at 8 am with the same group.³²⁵

Mr. O’Leary testified that he had not heard of Priestly Demolition before he received this email, although reference to heavy equipment had been made during the conference call with the premier.³²⁶ He explained that, following this conference call, a number of the provincial agencies worked quickly and closely to develop this plan.³²⁷ It is also apparent that, after this conference call, the various provincial agencies made a more concerted approach to work together.

End of the day – The MOL issues an order to the owner to obtain an engineering report and to forbid access to the Mall to workers (excluding the rescuers)

Later the evening of June 25, following the resumption of the rescue,³²⁸ Don Jones, an inspector with the Ministry of Labour, prepared a field visit report and issued the following three orders to Eastwood Mall Inc.:

- a requirement that an assessment of the structural integrity of the Mall be conducted by an engineer;
- a requirement that safeguards be put in place to prevent workers from accessing the building; this requirement excluded specifically “activities associated with rescue / recovery operations or to structural evaluations by a Professional Engineer”; and
- a requirement that the workplace be cleared from workers and isolated by barricades / fencing to prevent access by a worker until the danger has been removed; this requirement excluded specifically “activities associated with rescue / recovery operations or to structural evaluations by a Professional Engineer.”³²⁹

These orders were the only ones issued by the MOL between June 23 and June 25.

Mr. Jones testified that he sought the assistance of Mr. Jeffreys for the reference to engineering work. He then sent it for review to Legal Services in Toronto. He was advised by Legal Services around midnight that it had no changes or suggestions.³³⁰

When asked why the orders were issued at that time, Mr. Jones testified that, as part of his role, he had to deal with the owner of the premises and was required to provide the owner with some guidance of what the ministry expected. When he first arrived on the scene, the rescue was in full force, and he did not know who owned the Mall. By June 25, he knew who the owner was and knew that the Mall manager was available to receive the order.³³¹ Mr. Jones testified that the stoppage of the rescue (which he learned about at the 3 p.m. CCG meeting) was not his motivation for issuing the orders at that time. He explained that the orders would have been written whether the rescue had continued or not.³³²

The field visit report and orders were served on Rhonda Bear, the Mall manager, on June 26.³³³

11:56 p.m. – Plan B is being developed

Following the conference call with the premier, Capt. Comella, Sgt. Glavin, and Mr. Jeffreys worked with Staff Insp. Neadles until midnight on the details of Plan B.³³⁴ Sgt. Glavin confirmed that, at some point in the evening, he spoke to Capt. Comella about the Priestly equipment. He believed that Staff Insp. Neadles was also present. Given that Capt. Comella was unaware of the existence of such equipment, Sgt. Glavin described how the machine worked and how they could manipulate its articulated arm. Capt. Comella began asking how they should prepare the site, how big the equipment was, and how much of a footprint it would require. Capt. Comella devised a plan for raising the entire area outside the front doors of the Mall. By raising it with blast rock, it would increase the equipment's reach and give it more room in which to work.³³⁵

At 11:56 p.m., Staff Insp. Neadles called Mr. Hefkey to explain they had the outline of a plan that involved Priestly, a company they had used in the Bloor Street collapse.³³⁶ According to Staff Insp. Neadles, the plan at the time, which he shared in its entirety with Mr. Hefkey, was as follows:

- A. Give or take a couple of final tweaks, but the intention was to have them [Priestly] bring up the – [Komatsu] 850 I believe is a very large crane that has an extended boom [that] ... can reach up to 125 feet, and then it has an articulating arm that can bend down with also a knuckle that can turn at the bottom. The intention of the first part was that if this arm could reach up and extend down, put itself on the floor, and it had the ability to just take the entire escalator with the slabs and just move it backwards and make it a controlled fall and move it out of the way, away from the pile, away from all the victims in another direction. I believe they were going to – and I don't know the directions, but they were going to move it away from the victims.

If that would not work, the other plan was as we went to after, because that was not capable, the knuckle was – or the arm was – it just didn't fit in the hole in the roof properly or it didn't quite make it. The next part, plan to that was to precisely take out the corner of the Mall, and we saw that and they did that with very distinct precision, and then they would move in and ... remove the escalator.³³⁷

Referring to a photograph in Exhibit 7924, Staff Insp. Neadles further explained that the plan was to have the arm go over the top of the penthouse and then extend down inside the building to the floor, or down to an area close to the floor (fig. 2.6.1). There it would forcefully, and in a controlled manner, push the escalator down and back, away from the location where the victims were located. By then, the dangerously fallen beam had been removed. In devising this plan, Staff Insp. Neadles testified that he had not personally contacted Mr. Priestly.³³⁸

Mr. Hefkey recorded in his notes that the team still needed to work on confirmation, though it was leaning toward this solution. He himself concurred with the plan. He testified that Staff Insp. Neadles advised him that the responders thought Priestly could add some value to the operation, and that Staff Insp. Neadles was now attempting to confirm its availability.³³⁹

During his testimony, Mr. Hefkey clarified that his approval was not required and that Staff Insp. Neadles could have ordered the crane on his own; he had the authority, despite the significant cost involved. Mr. Hefkey admitted that this authority should have been made clear to Staff Insp. Neadles: it certainly constituted a lesson learned

for the future. As he testified, “The matter of finances should not be the impediment or the hurdle that would either delay or stop any kind of an operation.”³⁴⁰ That being said, financial considerations do not appear to have influenced Staff Insp. Neadles’s decision with respect to the Priestly crane: he testified that he did not discuss the cost of the new plan with Mr. Hefkey or Mr. Priestly when it was approved.³⁴¹ This point was corroborated by the evidence of Sgt. Glavin and Mr. Priestly, who both testified that the issue of costs was not discussed during their conversation leading to the deployment of the Priestly equipment at 1:46 a.m. on June 26. Sgt. Glavin further testified that no one asked him to inquire about the cost of using the Priestly equipment – and he did not.³⁴²



Figure 2.6.1 Concrete slabs and cement blocks laying on top of the slabs

Source Exhibit 7924

June 26–27 – The resumption of the rescue: more akin to a “recovery”

What ensued on June 26 was a renewed sense of urgency and determination to rescue the victims, despite the slim chances that they were still alive. Although there is no doubt that the responders were still hopeful to a degree, their actions in some respects were more consistent with those of a recovery operation.

1:36 a.m. – Call between Staff Insp. Neadles and Mr. Hefkey: “authorization” to proceed with Priestly

At 1:10 a.m., Ms. Chambers contacted Staff Insp. Neadles at his request. He explained that there had been a meeting with senior government officials to decide next steps and that he had been directed to develop an alternative operational plan that Mr. Hefkey would then review and approve.³⁴³ Ms. Chambers agreed that it was unusual for the commissioner for community safety to have to approve an operational plan or an incident action plan.³⁴⁴

At 1:36 a.m., Mr. Hefkey spoke to Staff Insp. Neadles. Mr. Hefkey made notes of the call:

Returned call from Bill Neadles. They have a plan that they have worked on through the evening.

He wants it to be safe for all concerned and we agreed that it should be least destructive. Yes he has had input from the HUSAR embedded engineer as well as the MOL engineer. There are no engineers who wish to take this on.

Priestly Construction is available and ready to deploy. There are pieces that will come from their Toronto / Aurora site and some from Sudbury. 3 pieces total. Bill is being told that they will leave a.s.a.p. but should roll into town by 1400hrs.

Bill has a TPS unit escorting the crane up the Hwy from Aurora

I explained to Bill that he had our support and authorization to actualize.

Also shared that we have a piece of kit from penguin [*sic*] [Penguin Solutions, a mining equipment company in Sudbury] that might be of use and he will have his folks receive the Penguin team and see how it may be used.³⁴⁵

Staff Insp. Neadles testified that he did not want the plan to inflict any injury on the victim should she still be alive.³⁴⁶

Despite Mr. Hefkey's note, Staff Insp. Neadles had not received input from the "HUSAR embedded engineer," Mr. Cranford, who, as I describe above, had already received clearance to leave Elliot Lake. Mr. Hefkey, however, testified that Staff Insp. Neadles had referred to the HUSAR/TF3 embedded engineer.³⁴⁷ Mr. Cranford testified that he was not asked for his opinion or input after he left Elliot Lake, and that he was not aware of the plan discussed in these communications.³⁴⁸

Staff Insp. Neadles testified that he did not know anything about the reference in Mr. Hefkey's notes to the phrase "no engineers ... wish to take this on." He explained: "I'm thinking that would be a tough call for an engineer, and I am not sure if we are referring to a new one, one of ours or even Mr. Cranford or Mr. Jeffreys. I'm not sure if that was part of a conversation we were ... talking about [–] an engineer may not want to sign off on this." He agreed, however, that Mr. Jeffreys was actively participating in the process, and that Mr. Cranford was prepared to come back to assist.³⁴⁹ Mr. Hefkey testified that he could not remember what Staff Insp. Neadles meant by this remark other than that they were talking about a structural collapse situation and that engineers were not going to want to "put themselves out there," given the situation and how risky it was.³⁵⁰

Mr. Hefkey testified that he was not surprised at the length of time it would take Priestly Demolition to deploy to Elliot Lake.³⁵¹ Furthermore, he was not surprised that it took approximately four hours from the conference call with the premier at 9:30 p.m. for a decision to be reached to engage Priestly. In Mr. Hefkey's understanding, given that the Mall's façade was still intact, it took time to confirm that the company actually had the equipment that was required, and that it was available. Mr. Hefkey assumed that a number of conversations back and forth with Priestly went on throughout that evening, to determine what it had and how it intended to proceed.³⁵²

Staff Insp. Neadles also confirmed that Mr. Hefkey gave him the approval to proceed with the Priestly team.³⁵³ Although Mr. Hefkey clarified that Staff Insp. Neadles did not need his authorization, he testified that he used the word "authorization" because Staff Insp. Neadles was supposed to keep him informed about whatever plan was being implemented. Mr. Hefkey agreed, however, that there was a difference between keeping someone informed and seeking his authorization. He also agreed that it was reasonable to conclude that Staff Insp. Neadles thought he needed Mr. Hefkey's authorization, and that Mr. Hefkey was providing him with it. He stated, however, that his authorization was not really necessary.³⁵⁴

Although approval of Plan B by Mr. Hefkey may not have been required, it is clear from the evidence that Staff Insp. Needles thought it was. One can speculate that this idea could have resulted from the negative reaction Staff Insp. Needles faced after the decision to stop the rescue, and that he was now looking for Plan B to be sanctioned by higher officials.

Plan B: Priestly Demolition is engaged

1:46 a.m. – Confirmation to Priestly of deployment

At 1:46 a.m., after receiving instructions from Staff Insp. Needles,³⁵⁵ Sgt. Glavin called Mr. Priestly to confirm that Priestly Demolition was being deployed.³⁵⁶ The timing is confirmed in an email from Mr. Priestly to his team.³⁵⁷

Unlike the evidence of Mr. Priestly and Sgt. Glavin, Capt. Comella testified, relying on his notes, that the decision to go ahead with Priestly came at approximately 2:30 a.m. Indeed, Capt. Comella testified that he recalled he was eating with Staff Insp. Needles at the time the approval came.³⁵⁸ In this regard, I am inclined to agree with the evidence of Mr. Priestly and Sgt. Glavin because of the contemporaneity and precision of the recording of the information.

Given his understanding that this effort was still a rescue operation, and the fact that he was first contacted at approximately 8:00 p.m., Mr. Priestly testified that he believed the response team could have been more expeditious in deciding to deploy his heavy equipment.³⁵⁹ Even Capt. Comella, who claimed that he knew the decision would take some time because it would have to go to a higher authority, thought it took much longer than he had anticipated.³⁶⁰

2:45 a.m. – Mr. Priestly advises of requirements for equipment

At 2:45 a.m., Mr. Priestly emailed Sgt. Glavin describing the equipment to be used for the operation. He stated:

As requested he [*sic*] equipment requested for the project is as follows:

1. Komatsu PC 850 with 150 of reach. The machine has a shear attachment.

This machine is 3 loads. The base machine needs an escort which we can escort or use a police escort we should double check the route to make sure we can move it thru construction routes etc.

2. Link Belt 460 with second member shear.

3. Komatsu PC 490 with grapple.

Machine 2 + 3 are in sudbury [*sic*] and can be there in a couple hours notice. The big machine is in our yard and will be about 6 hours travel time as it is heavy and takes a while.³⁶¹

Mr. Priestly testified that the Komatsu 850, also referred to as the high-reach machine, is custom built for demolition. It can reach 150 feet vertically when its arm is extended straight up. It had the most height of any demolition machine in Ontario and had been used in the World Trade Center disaster. In addition, a variety of attachments could be connected at the end of its arm, such as a rotating grapple, a rotating shear, and a concrete crushing jaw. Mr. Priestly explained that, ordinarily, this machine was used to tear down high structures. He said that he did not believe he had used it in any of the recovery operations he had been involved in, given its very cumbersome transportation requirements (figure 2.6.2).³⁶²



Figure 2.6.2 The Komatsu 850

Source Exhibit 7950



Figure 2.6.3 The Link Belt 460

Source Exhibit 9899

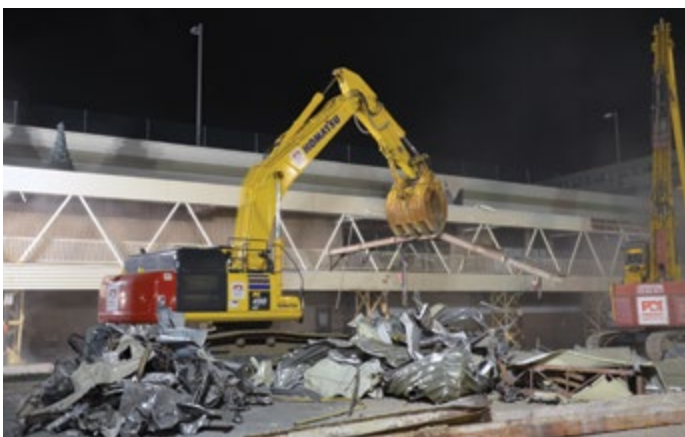


Figure 2.6.4 The Komatsu PC 490

Source Exhibit 9900

Mr. Priestly testified that the Link Belt 460 has a shear attachment and was predominantly used to process thick steel (it is able to cut a one-inch plate) and to tear down steel buildings. It was also used to take down concrete bridges, because it was able to cut rebar. Although it did not have the reach of the Komatsu 850, the machine was able to extend over 30 feet (fig. 2.6.3).³⁶³

The Komatsu PC 490, Mr. Priestly explained, is a standard excavator with a grapple. The machine could grapple all sorts of material, but it is also very precise in that it can grab a tennis ball and throw it (fig. 2.6.4).³⁶⁴

Mr. Priestly testified that he was asked whether Millennium's cranes would be of assistance. He said no, because he believed he could use his own machines. The Priestly team would also bring its service truck, which contained rigging equipment (such as chain links, wire rope slings, and a chain spreader).³⁶⁵

In his testimony, Mr. Priestly stated that Sgt. Glavin had asked him what the response team could do to set the scene up for the arrival of the Priestly equipment. He advised him that they could build a gravel pad outside the building. Mr. Priestly explained to him that the high-reach machine could not work on a slope or on ground that was not level.³⁶⁶ He informed Sgt. Glavin that the machine was not only heavy but wide, and that access for it would have to be arranged to the site. In response to this suggestion, a gravel pad and other areas adjacent to the Mall were filled in to ensure that the machine could get by without damaging the curbs on the road.³⁶⁷ Mr. Priestly also asked for a police escort – because of the size of the machine and a possible hazard for other vehicles, and also because he did not have time to obtain the requisite trip permit from the Ministry of Transport. A police escort was provided:³⁶⁸ Sgt. Glavin spoke to Staff Insp. Needles and suggested that the four Toronto Police sergeants provide the escort, “instead of involving anybody else in making this thing not work or maybe someone not understanding the sense of urgency.”³⁶⁹

Sgt. Glavin did not know whether the Priestly high-reach machine had been used in rescue situations before, though he knew it had been used in recoveries. In his opinion, because heavy equipment causes vibrations, it was always best in a rescue situation to use people first, rather than machines on the ground of a collapse zone. It was best to be as gentle as possible, to do the shoring, and to bring in heavy equipment only if necessary. That was why he referred to the Priestly equipment as Plan B, as opposed to a first option.³⁷⁰

2:00 a.m. – UCRT is released from public order duty

At approximately 2:00 a.m., the UCRT team was released from public order duty and advised by Sgt. Gillespie to leave the premises: by then, the tense situation with the community had de-escalated and seemed under control. People were leaving and appeared to be feeling better about the rescue operation. The UCRT members were told to stand down, exit the Mall, and return to their hotel in Massey, approximately 65 kilometres away.³⁷¹ Cst. Dan Bailey, a canine handler with the OPP, testified that, at that point, they had no idea what would happen in terms of the rescue operation. Sgt. Gillespie said he would advise them as soon as he had an update on next steps. Everyone was told to get some sleep and wait for further instructions.³⁷²

6:00 a.m. – Priestly mobilizes team

At some point after 1:46 a.m. and before 6:00 a.m., the Priestly team started to get its machines ready for transport. The high-reach machine, which was assembled in Priestly's yard, had to be disassembled. Three tractor-trailers were required to transport it. The two other machines, in Sudbury, required two trailers.

The four HUSAR/TF3 police sergeants (Jim Lawson, Avelino Carvalho, Dave Zammitt, and Phil Glavin³⁷³) drove to Aurora to escort the high-reach machine. They waited for the Priestly team to dismantle it before accompanying it back to Elliot Lake. During transportation, local OPP officers assisted the Toronto Police sergeants with the escort from Parry Sound to Sudbury and from Sudbury to Elliot Lake.³⁷⁴

The Priestly team from Sudbury drove up with the two machines and arrived on site at approximately 11:00 a.m. Mr. Priestly drove up in his own truck and arrived at approximately 4:00 p.m.³⁷⁵

1:00 a.m. – 7:00 a.m.: Shoring continues

During the night, Chris Rowland and his HUSAR/TF3 team continued their work in shoring underneath the walkway at the Mall. At 7:00 a.m., Capt. Chuck Guy's team took over.³⁷⁶

Staff Insp. Neadles agreed that the Priestly equipment was not expected to arrive until sometime in the early afternoon and that additional time would be required to assemble the cranes and actually start working. He conceded, however, that there could have been cause for concern if members of the public saw that nothing was happening on the site or that the workers were standing around doing nothing.³⁷⁷

Referring to the wooden laced-posts that had been constructed underneath the walkway, Staff Insp. Neadles admitted that part of the reason they were built was to give the public the opportunity to see the team at work. He explained that there was no way to televise or publicize what the rescue team was doing inside the building. He conceded, however, that at that time, no one was going into the building.³⁷⁸ He explained that, at the suggestion of Capt. Comella and Mr. Jeffreys, the shores were constructed to help with the vibrations that might emanate from the Priestly equipment and to prevent any further damage to the building.³⁷⁹ Staff Insp. Neadles was unable to comment on whether the laced-posts had been installed correctly – an issue that I describe below.³⁸⁰

In his testimony, Cmdr. McCallion gave a different explanation for the shoring: its sole purpose, he said, was to protect the veranda, or balcony, from vibrations. He did not agree that building the shores had any public relations motivation. He understood how this perception – that the shoring was done to show the team at work to the community – might have developed, but it was simply not true.³⁸¹

Mr. Priestly testified that, because some of the beams were badly rusted, the wood shoring served as a safety factor for the people working there.³⁸²

Capt. Comella testified that although the shores were erected to

assists us in ... understanding what that whole structure was going to do and the vibration of the heavy equipment ... it certainly didn't hurt that they were doing what they could, and ... visible, I guess, to the public ... that wouldn't have hurt how the public was perceiving what was going on, but they did have a function.³⁸³

Ultimately, the reason behind the construction of the shores at that time is of little consequence. If there was a protective purpose to their erection, all the better. It is more likely, however, that the purpose of the exercise was to reassure the public that work was progressing and that recovery efforts were continuing.

7:11 a.m. and 7:53 a.m. – Staff Insp. Neadles sends an update to the Office of the Fire Marshal: Plan B has been approved by Mr. Hefkey

At 7:11 a.m., Staff Insp. Neadles sent an email update to members of the HUSAR/TF3 team and to the Office of the Fire Marshal:

This is a day to remember and it is all good.

As you know that [*sic*] as of approx 3pm the Rescue Operation being conducted by the HUSAR Team were suspended due to unsafe conditions within the building.

the [*sic*] damage to the guiding caused serious structural damage to the building Lin [*sic*] the open areas near the centre of the mall.

The known victims one believed to be deceased and one who showed signs [*sic*] of life were trapped under debris approx 20-30 ft from the escalator.

The rescue was hampered by a 25 ft I beam which was twisted and hanging over the area of the Victims. The I beam was 25 ft long weighing in excess of 2500 lbs. It had to be and was removed.

There was a very large slab of concrete which fell on and remained on the escalator. This proved to be the game changer. The forces of stress put on the I beams that support the escalators began to deteriorate the integrity of the escalator and it started to push the escalator down and also separate it from the building. The stress on the structure was in excess of 100% over capacity and the lower I beam started to bow.

The integrity of the structure was now at risk of further collapse and on advice from our Team and Ministry of Labour I removed the team for safety reasons.

This as could be expected charged the community's emotions. I attended with their mayor and designated.³⁸⁴

At 7:53 a.m., Staff Insp. Neadles continued his email:

I believe this message was cut short.

OPP Detachment Commander to advise the family and this was not well received news.

A press conference followed which started out very ugly but at the end they appreciated the efforts of the team.

At approx 7:30 pm I was contacted by Dan Hefkey and invited to join him on a call. I was given direction by the Premier to continue to plan to continue efforts to rescue the victim as we owe them and their family every opportunity. I explained our Team's capabilities and limitations of a "Rescue" in this situation and was to compile a plan and any equipment required.

I worked with the Ministry of Labour Engineers and our people to design a plan utilizing heavy equipment to reduce the secondary structural collapse risk inside and the peel back and grapple the exterior working the 35 ft to the victims.

I had this plan and granted permission by Dan Hefkey to operationalize our plan.

Arrangements made to have this heavy equipment (3 tractor trailers) escorted from Toronto and Sudbury.

Anticipated ETA is by 2–4 pm. Work will commence to prep the site this morning by utilizing an excavator to cut a new entry to the plaza as the machine is to [sic] big to enter.

Thanks to all for the support and your respective staff also appreciate it.³⁸⁵

Staff Insp. Needles testified that he wrote that he was "given direction by the Premier to continue . . . efforts to rescue the victim" because it was something the premier wanted them to do. He explained that "direction" may not have been the most accurate word he could have used, but it was intended to convey that the premier was encouraging the operation going forward.³⁸⁶

The "limitations," he said, referred to HUSAR/TF3's inability to access the victims and its lack of heavy equipment.³⁸⁷

At some point during the day, the City authorizes Priestly to be on the scene

On June 26, Mr. deBortoli sent a letter of authorization to Mr. Priestly:

This letter is to confirm that Priestly Demolition is authorized to be on the property know [sic] as 151 Ontario Avenue to facilitate in the ongoing operations to extract victims from the collapsed portion of the Algo Centre Mall.

It is recognized that Priestly Demolition will not be responsible for the relocation of any material relocated from its present location on the site.³⁸⁸

Mr. Priestly testified that he requested this authorization from the City to ensure he had the official go-ahead to work on the Mall.³⁸⁹

Mr. Hefkey is sent to Elliot Lake to assist with communications

On June 26, Mr. Hefkey was dispatched to Elliot Lake. Mr. McGuinty testified that the crisis warranted Mr. Hefkey's presence on the ground. Among many things, he could help with communications and be the person who gave regular updates to the media about the rescue operation, from both a municipal and a provincial perspective.³⁹⁰

8:15 a.m. – Mr. Hefkey visits Penguin Solutions and informs Staff Insp. Needles about its equipment

En route to Elliot Lake, Mr. Hefkey stopped at 8:15 a.m. at Penguin Solutions, a mining equipment company in Sudbury, to observe a piece of equipment that had been suggested for use by the responders – a remotely operated vehicle that looked like a big Tonka truck and was equipped with sound detection, audio, cameras, and other equipment. It was made to operate in a mining environment. Penguin agreed to deploy the piece of equipment. Mr. Hefkey also met Rick Bartolucci, the minister of northern development and mines, at Penguin Solutions and then drove with him to Elliot Lake.³⁹¹

As he was driving to Elliot Lake, at 9:48 a.m., Mr. Hefkey had a conversation with Staff Insp. Neadles in which he informed him of the Penguin Solutions equipment offer. He advised him to take the opportunity to use it, although he recognized that, as the lead for the operations, the decision was for Staff Insp. Neadles to make.³⁹²

10:21 a.m. – Mr. Hefkey arrives in Elliot Lake and goes immediately to meet the mayor

At 10:21 a.m., when they arrived in Elliot Lake, Mr. Hefkey and Mr. Bartolucci met with Mayor Hamilton and Mr. deBortoli, the chief administrative officer. They expressed their condolences to both of these civic leaders and to the community. They told them they appreciated the tremendous pressures they were under and offered their support. Mr. Hefkey said he knew they were constantly in and out of meetings and, in order not to interrupt their work, he assured them that he and Mr. Bartolucci would be contacting the provincial resources, including HUSAR/TF3. He also told them that they would connect with the families.³⁹³

Mr. Hefkey explained that his role in Elliot Lake was to be the provincial spokesperson. He also met with family members of the victims who were being assisted by the OPP's provincial liaison team. He anticipated the raw emotions that the fiancé, the parents, and the children of the victims would express. When they complained about their frustration in not "hearing anything," he assured them that he would keep them informed of developments. They wanted to know that there was indeed a plan. Mr. Hefkey committed that, as events proceeded, he would tell the families what stage they were at in the plan. He also committed to sharing information and developments with them before the news was communicated publicly. Mr. Hefkey testified that, at that stage, the community knew there was one fatality, but it was not known whether there was another potential survivor or a second deceased person.³⁹⁴

Over the following two or three days, Mr. Hefkey testified that his role as the provincial spokesperson evolved. He had a conversation about future communications with Mayor Hamilton, Mr. Bartolucci, Insp. Percy Jollymore (the OPP detachment commander for the East Algoma Region), and Patrice Cloutier (a member of Mr. Hefkey's Communications Branch). He told them that he was offering his support to the community, recognizing that social media had a strong presence during an emergency event. He offered to share his resources to help them manage the flow of emergency information and its communication. During the meeting, Mayor Hamilton and Mr. deBortoli agreed that Mr. Hefkey could communicate with the media on matters of provincial interest. Mr. Hefkey wanted to respect the rules of engagement they had established with the Community Control Group. For that reason, he did not communicate any information about the victims – a responsibility that fell within the purview of the municipality.³⁹⁵

8:10 a.m. – Mr. Selvers becomes aware of the engagement of Priestly Demolition

At 8:10 a.m., after speaking with Chief Officer, Dave Selvers, the president of Millennium Crane, learned that Priestly Demolition would be used on the site. He was familiar with the company, a prominent industry player that he had worked for on various occasions in steel mills. According to Mr. Selvers, it was a demolition and dismantling company.³⁹⁶ In his testimony, he described his reaction to this news as being "like the air was let out of me."³⁹⁷ If the rescuers were walking away from a rescue, he thought, they must have determined that no one was alive.³⁹⁸ He explained that he understood the difference between a rescue and a recovery operation and that he was stunned when he learned that Priestly was coming. Priestly was involved in demolition activities, unlike Millennium Crane, which he felt is more surgical in its operations.³⁹⁹

Mr. Selvers recorded the following notes on this issue:

Further to this it must be understood that the proper method of approach initially implemented by the O.P.P. and Millennium Crane Rental was the only way to extricate "LIFE" ... the excavators with shears are only needed when all hope of life is lost. There is more agitation of structure with demolition as opposed to the precise and delicate motion of a crane. Given the fact that all hope of life had disappeared (according to the agency that put a halt to the rescue) it was only logical that a demolition of the structure commence to recover the deceased.⁴⁰⁰

He testified that Millennium Crane was there with the intention of removing survivors, and once the excavators were ordered in, its work was over.⁴⁰¹ Mr. Selvers testified that the agency he referred to as having put a halt to the rescue was the MOL.⁴⁰²

9:00 a.m. – the Collins Hall is reopened

On June 26, at 9:00 a.m., the Collins Hall was opened again. However, Robin Kerr, the executive director of Victim Services for Algoma, felt that the time had come to change the services they offered and to transition from immediate crisis support services (offered by Victim Services) to longer-term services (offered by East Algoma Counselling Centre, East Algoma Mental Health, and Algoma Family Services). The hall therefore became more of an information centre where individuals could speak to counsellors and set up appointments.⁴⁰³ It was open all day.

Insp. Jollymore informed Ms. Kerr that victim liaison officers from the OPP would be working with the victims' families and would not be going to the Collins Hall. She was therefore advised that she could open the Hall to the general public.⁴⁰⁴ Ms. Kerr testified that Mrs. Perizzolo's daughter, her son-in-law Mr. Latulippe, and the parents and fiancé of Lucie Aylwin were well looked after by the victim liaison officers. She expressed the view, with which I agree, that these officers should have been brought in to assist the victims' families days earlier.⁴⁰⁵

Mr. Latulippe testified that, between 11:00 a.m. and 1 p.m. on June 26, the Community Services unit from the OPP tended to their needs and provided them with a place to stay at the offices of Edward Jones Investment, located close to the Mall but away from the media.⁴⁰⁶ They also provided the families with information on how the operation would continue and ensured that two or three officers were with them at all times.⁴⁰⁷

Return of UCRT to the scene: on standby

9:00 a.m.–10:00 a.m. – UCRT team is advised that half the team will go home because the operation is now a recovery

At approximately 9:00 a.m. or 10:00 a.m. on June 26, the UCRT team was briefed by Sgt. Gillespie in Massey. He advised them that the operation was now a recovery and that they would be keeping only six UCRT members to assist in that phase. Cst. Ryan Cox, a canine handler with the OPP, testified that he specifically recalled Sgt. Gillespie using the words "recovery operation." Sgt. Gillespie did not inform them why they had come to the conclusion that no live victims were left inside the collapse. Sgt. Gillespie advised Constables Cox and Bailey that they would be returning to do a cadaver search with their dogs. In his testimony, Cst. Bailey explained the sentiment felt by the UCRT members:

All of the [UCRT] guys wanted to stay. I mean, there wasn't one guy that wanted to leave but we were basically told that the numbers weren't required ... that they wouldn't be able to utilize all those people so that some guys would have to go home. I mean, it was at the point where guys were willing to draw straws because they didn't want to go home.⁴⁰⁸

Constables Patrick Waddick, Paul Webber, Steve Hulsman, Patrick Châtelain, Bailey, and Cox, along with one paramedic, remained on site.*

UCRT observes wrongly positioned shoring

Cst. Hulsman testified that the UCRT team was told that some heavy equipment was en route to Elliot Lake. On his arrival at the scene, he noted the numerous laced-post boxes that had been built by the HUSAR/TF3 team. The shores appeared properly constructed, but not properly positioned, because the weight was not directly over the vertical members. He explained:

Specifically when you look at the placement of the shore, you can see that the pieces running north to south, we refer to these 4X4 pieces as “headers,” so there are two headers on either side of the laced-shore box, there is one on the west side that runs north to south and there is one on the east side that runs north to south. Those headers you can see have been butted up against the I-beam that holds the concrete floors above.

... according to our field operation guide, it doesn’t follow the shoring principle, based on the fact that that one member – meaning the I-beam [–] has been placed in the middle of these headers. The structural strength of the laced-shore box happens when the weight is transferred from these header pieces and they come down the vertical 4X4 posts that you can see situated on each of the four corners. If this was to break, instead of being as a total system, 32,000 pounds strong, you are now reducing that to just the sheer breaking strength of the two header pieces, and forgive me, I don’t know the exact sheer breaking strength of a 4X4. I know it’s going to be within the area of 500 pounds to 1,000 pounds.

...

If we were to shore up this I-beam, a better piece of shoring would have been either a 2-post, 3-post or 4-post vertical shores. And what I’m referring to is instead of having the headers that I referred to earlier, running perpendicular to the beam, the headers on the post, 3-post, 4-post vertical shores would run ... parallel.⁴⁰⁹

Cst. Hulsman testified that they were assigned to stand at a point of duty, observe the building from a safe distance, and report any movement.⁴¹⁰

Cmdr. McCallion testified that he asked Sgt. Gillespie to assist in the construction of the shores. Sgt. Gillespie questioned why they were building the shores and was told they were to protect the veranda, or the balcony.⁴¹¹

10:50 a.m. – Sgt. Gillespie is advised by Staff Insp. Neadles

At approximately, 10:50 a.m., Sgt. Gillespie received a brief call from Staff Insp. Neadles requesting that UCRT have sufficient resources, canine and otherwise, to remove the victims from the rubble pile. Sgt. Gillespie received a similar request from Mr. Ellen, from the Fire Marshal’s office. He was told there would be a six-person team for each extraction (regardless of how many extractions would be required), and the team would comprise two UCRT members, two HUSAR/TF3 members, and two Elliot Lake firefighters. Staff Insp. Neadles informed Sgt. Gillespie that they were required to be at the site by 2:00 p.m. These calls were not the first time Sgt. Gillespie had heard about the change of plans. At some point the night before, while they were on public order duty, it became apparent that discussions had taken place at high levels and that a plan was being prepared to demolish the front part of the building with the help of the Priestly machines. He gleaned this information during his work on the line and from the crowd. He was not advised by anybody in the chain of command.⁴¹²

.....

* Exhibit 6378, p. 031; this information was also confirmed by Sgt. Gillespie in an email he sent to Staff Sgt. Jacklin at 1:14 p.m. (Exhibit 9190, p. 005).

The operation was portrayed in the phone calls to Sgt. Gillespie as a rescue, but he was specifically asked to have both set of dogs (live and cadaver) attend, which rendered the situation somewhat confusing. Although Sgt. Gillespie's notes make reference to a recovery after the building demolition was complete, his use of this language was probably based on his previous experience, and not necessarily on what he was told at the time. His recollection was that he was told it was still a rescue, and that they were going to continue on that path.⁴¹³

Sgt. Gillespie believed that the request for two Elliot Lake firefighters as part of the recovery team was due to the fact that they had all been working together as a group and, moreover, it was their community. The firefighters had not, however, been working on the pile, attempting to access the victims, and were not trained in structural collapse. Sgt. Gillespie testified that he thought the arrangements appeared more like an honour guard for recovery than a team for rescue.⁴¹⁴

As far as Sgt. Gillespie was aware, there was no plan other than using the Priestly forces to reach the victims. He could not see any plan that would be viable other than demolishing the building. He testified that if the building could not be stabilized through shoring, demolition was the only way to avoid the danger of collapse.⁴¹⁵

The UCRT team, particularly Constables Bailey and Cox as the canine handlers, remained on standby from 10:00 a.m. until 9:00 p.m.⁴¹⁶

The operation was portrayed in the phone calls to Sgt. Gillespie as a rescue, but he was specifically asked to have both set of dogs (live and cadaver) attend, which rendered the situation somewhat confusing.

Morning, June 26 – The Premier's Office is informed of the Priestly plan

9:14 a.m.–9:28 a.m. – Mr. O'Leary gathers information on latest steps and is advised that the military is on standby

Early on the morning of Tuesday, June 26, Mr. O'Leary gathered information with which to brief officials.⁴¹⁷ At 9:14 a.m., Ms. Miller sent an email to Mr. O'Leary, Mr. Hammond, and Ms. McCann with the subject line "PMSH authorizes Canadian forces – can you confirm?" She wrote:

Please note that Harper's Dcomm tweeted:

...

@pmharper spoke w Premier McGuinty last night – we've outlined fed and CAF capabilities and are waiting to hear as to what would be useful.⁴¹⁸

Mr. O'Leary responded at 9:28 a.m.:

Confirmed. Our emergency officials have been in touch with the Canadian military. They have outlined what they could have that could be useful, whatever logistical or operational support may be deemed necessary. They are standing by now. Emergency officials at the scene will determine what if any military assets can be useful. We are engaged with the military to support the operation, and can confirm they have pledged full support.⁴¹⁹

Mr. O'Leary testified that, ultimately, the emergency responders and those leading the rescue operations determined that they would not need assistance from the Canadian military.⁴²⁰

10:00 a.m. – The Premier’s Office is informed of Plan B

Later that morning, Mr. O’Leary took part in a telephone conversation with Deputy Minister Davidson (MCSCS), Ms. Conrad, and Carole Ritchie, who worked in Mr. Davidson’s office. The purpose of the call was to enable Mr. Davidson to provide further information on the developments and the operation under way.⁴²¹ Mr. O’Leary recorded the following note from the conversation:

ID – 3 large pieces of equip – b/w 12=2pm

- Will take 2 hrs to get set up
- Mining engineer not responded, but wanted to consult, get him there, ensure we can demonstrate to the mining community
- Greg Baden, world robotics leader, has equipment mine rescue & search – can use I needed
- Deployed by noon today
- OFM working on plans, determine once materials get there
- Dan on scene, less than 2 hrs
- Military – anything needed
- See what is avail
- Don’t have equipment we need
- Operation: pull away the walls, looking at scenarios based on equipment
- Will lift out escalator, remove the materials

Deconstruct scene

Vale stand ready to fully assist

- Expert here
- Full

OPP: sending up stress ppl, inc. XXX

- ERT – crowd control
- Energy team

Bill Neadles’ operational commander

- OPP has Command Centre, used to communicate and co-ord on scene decon
- Being called a “rescue operation”⁴²²

Mr. O’Leary testified that Mr. Davidson informed them that three large pieces of equipment were being deployed and were due to arrive in Elliot Lake between noon and 2:00 p.m. that day.⁴²³ It would take two hours for the equipment to be set up. A mining engineer had not responded to the scene in Elliot Lake but was available for consultation and to attend at the site, if needed. Mr. Davidson also spoke of Greg Baden, a world robotics leader, who had equipment that was used in mining search and rescue. The province would be able to use it if needed. He also indicated that the fire marshal was working on plans and would determine the next steps on the deployment of these assets. He stated that Mr. Hefkey had been on the scene for less than two hours. He also explained that the military had offered to supply anything that was needed, but it was unlikely it had the specific equipment that would be needed.⁴²⁴

During the call, Mr. Davidson provided a clearer understanding of the precise nature of the forthcoming operation. He described it as pulling away the walls. Ultimately, the escalator would be lifted out, the other materials and debris removed, and the scene deconstructed.⁴²⁵ Vale, a mining company, was on standby and ready to assist. The OPP was deploying stress counselors, and had also sent an emergency response team (ERT) to perform crowd control.⁴²⁶

Mr. Davidson confirmed that Staff Insp. Needles would be the operational commander of this operation and that the OPP had set up a command centre that would be used to communicate and coordinate on-the-scene decision making. Mr. Davidson also stated that the operation would be described as a rescue.⁴²⁷ Mr. O'Leary testified that he thought Mr. Davidson was describing to him the activities that were currently taking place, which were appropriately called a rescue operation. He understood this term to mean that they were attempting to rescue anyone who might still be alive in the debris. Finally, Mr. Davidson advised Mr. O'Leary that the offices that were involved in coordinating provincial assets included the OPP, the Office of the Fire Marshal, and Emergency Management Ontario.⁴²⁸

Following his conversation with Mr. Davidson, Mr. O'Leary briefed the premier.⁴²⁹

11:51 a.m. – Mr. O'Leary believes that Mr. Hefkey should participate in the Community Control Group meetings

At 11:51 a.m., Mr. O'Leary sent an email to Ms. Miller and Ms. McCann summarizing what he understood the situation to be at the time:

Brief update from officials.

Priestly is sending one large crane with 150ft reach from Toronto, a base for the crane from Aurora, a "shear" to cut through steel and a grappler, both from Sudbury. All are in transit, arriving by approx. 12 noon, and into service by 2pm.

Vale: has 2 engineers in Sudbury, their best and brightest, a mining and civil engineer. They are liaising with the HQ in Elliot Lake. I've told Cabinet Office that if there is any benefit to them being in EL in person, to get them in a car.

Manitoba has a HUSAR team similar to Toronto's, and they are standing by to attend to the scene. I have asked who needs to make the decision to activate them.

One robot from Sudbury is en route to EL, last update was it would be on scene by 12 noon.

Military: I have asked for Ian Davidson's advice on requesting someone from the military attend the scene. The emergency leaders there may not require military assistance, but in the even [*sic*] they do, I believe it could be beneficial to having the armed forces in the community already to coordinate on the ground. If there is even a slim benefit to the rescue to having someone from the armed forces at the HQ, I have asked that be pursued.

Intel on scene says the Mayor is extremely pleased by the efforts.

One thing to note: Dan Hefkey has been excluded from the community's control group, the team working with Bill Needles to lead the operation. He is being briefed and kept in the loop, but is not present when the control group meets. I have requested Ian Davidson consider what can be done about that, if there is a benefit to having him in the group (my sense is, there IS). It may be something that the Premier and Mayor need to speak about but will get advice from Davidson.

Obviously a priority is the operational activity and the rescue itself, but I am concerned there has been no communication from the emergency team to the community today, and it is now midday. I have asked Davidson to advise on this, to see what he can do to help speed up a communications plan on the scene. Lack of communication in a crisis can make a bad situation worse, and we need them to turn their minds to how the public and people of EL are being kept informed. I have no confirmation on when a press conference will be taking place.⁴³⁰

Mr. O'Leary testified that he believed it would be a benefit for Mr. Hefkey, as the commissioner for community safety, to be participating in the CCG meetings. As one of the most senior officials in the province with respect to emergency management and operations, he might have expertise or knowledge that would prove to be useful.⁴³¹

12:25 p.m. – The premier speaks to the mayor, who is desperate for communications support

At approximately 12:25 p.m., the premier arranged a phone call with the mayor. In the course of the conversation, Mayor Hamilton told him that he was desperate for communications support on the ground. Mr. McGuinty testified that the mayor seemed to be struggling to manage the huge number of media requests along with his other responsibilities.⁴³² He therefore asked the mayor if it would be appropriate for him to contact the families directly: He “was concerned about what was happening in the community, given the roller coaster ride they had just been through” as they were told the rescue was off, and then informed it was on again. His first concern, he said, was for the family members. The mayor agreed that the premier should contact the families.⁴³³

Premier McGuinty therefore spoke to the Aylwin and the Perizzolo families. He expressed his support, offered encouragement, and advised them that the rescuers had found another way to restart the rescue operation. He told them that Ontarians were thinking of them and held them in their thoughts and prayers.⁴³⁴

Afternoon – Mr. O’Leary travels to Elliot Lake to provide communications support and become the premier’s eyes and ears on the ground

As a result of the mayor’s request for assistance on communications, the premier sent Mr. O’Leary to Elliot Lake to provide communications support. In addition, he wanted him there to ensure that he had a better sense of exactly what was happening and how things were unfolding on the ground.⁴³⁵

Mr. O’Leary explained that he saw his role in Elliot Lake in three different ways: to assist with communications; to be the eyes and ears of the premier and the Premier’s Office – to transmit information to them in real time and ensure that the information was flowing clearly; and to assist those leading the operation with obtaining provincial assets and to escalate requests, if necessary.

Mr. O’Leary was happy to go on the scene to assist, given the serious nature of the incident and the premier’s involvement.⁴³⁶ He explained that he saw his role in Elliot Lake in three different ways: to assist with communications; to be the eyes and ears of the premier and the Premier’s Office – to transmit information to them in real time and ensure that the information was flowing clearly; and to assist those leading the operation with obtaining provincial assets and to escalate requests, if necessary.⁴³⁷

Later that day, Mr. O’Leary travelled to Elliot Lake with Jonathan Leigh from the Cabinet Office. They arrived on the evening of June 26 and returned to Toronto in the late afternoon of June 28. Mr. O’Leary believed he had done what he was supposed to do in Elliot Lake.⁴³⁸

11:00 a.m. – Community Control Group meeting: The City is informed of Plan B

Staff Insp. Neadles outlines how the operation will unfold

At 11:00 a.m., the CCG met again. Staff Insp. Neadles and Cmdr. McCallion were present.⁴³⁹ Staff Insp. Neadles advised the attendees, as per the notes of the meeting:

- Plan worked out w MOL is in motion.
- Worked with engineers – approved by Dan Hefky [*sic*]
- Estimate: quarter of a million
- Priestly Demolition contacted for demo equipment. HUGE.
- Take an arm over roof use claw to take escalators and push it (fault it) in a controlled way away from victims.

- Under order of MOL–site visit.
- This morn authorized–escalator is still moving / shifting.
- Wait for results of push.
- Secondary controlled collaps. [sic]
- Move machine out bring in grapples, eliminate piece by piece making victims accessible.
- Will them seek guidance of MOL engineer to enter bld. Will bring in a K9 search team.
Search & cadaver dogs.
- Contact coroner for authorization to remove the bodies⁴⁴⁰

Staff Insp. Neadles testified that the site preparation was being done by a local contractor, and that the team on the ground was working on the shoring and the removal of the pneumatic shores in the north end.⁴⁴¹

Referring to the note “worked with engineers,” Staff Insp. Neadles did not know who the other engineer was, aside from Mr. Jeffreys. He stated that he did not refer to anyone other than Mr. Jeffreys.⁴⁴² He testified that the estimated price came from Sgt. Glavin. The final tally was about \$300,000. He did not sign off on the amount.⁴⁴³

Staff Insp. Neadles initially testified he not did believe they were under any MOL order. He testified that he may have said it but he did not know what it referred to. He later modified his evidence, claiming that he was under the belief that the MOL had issued an order that required Capt. Comella to get permission from the ministry before going inside to check the device for more movement of the building.⁴⁴⁴

Staff Insp. Neadles then explained to the group that the workers would push the slabs and the escalator away from where they believed the victims to be, with primary consideration being given to where the live victim was thought to be located. He warned them that this attempt might result in a collapse. Subsequently, they would move the bigger Priestly machine out of the way and bring the smaller one with grapples inside to remove the debris piece by piece. In that way they hoped to be able to access the victims.⁴⁴⁵

As I explain below, the initial plan had to be modified to allow for the removal of the front of the Mall because the Priestly high-reach crane was not able to get into the building from above. The rest of the operation proceeded in a methodical fashion from the south end of the building, moving north to reach first Mrs. Perizzolo and then Ms. Aylwin.⁴⁴⁶

Staff Insp. Neadles testified that he expected that a reassessment of the area and the building would be conducted by the MOL engineer and that his advice would be sought about allowing the team to re-enter the building. The comment in his notes did not relate to any action to be taken by the MOL as an authority.⁴⁴⁷

With respect to his comment, “Contact coroner for authorization to remove the bodies,” Staff Insp. Neadles confirmed that this statement was consistent with what he believed was a definite recovery for one individual and a probable recovery for the other.⁴⁴⁸

Mr. Jeffreys claims he was not yet consulted

Mr. Jeffreys, who was not at the meeting, testified that, contrary to the indication in the notes, he did not recall discussing a plan other than speaking to Capt. Comella about having to go through the front of the building. Mr. Jeffreys testified that, at this point, he did not even know what equipment was coming or its capability. He was therefore not part of any plan.⁴⁴⁹ However, he confirmed that he did assist later with a rescue / recovery procedure plan, as I describe below.⁴⁵⁰

In addition, Mr. Jeffreys testified that he did not know what was meant by the notes “Under order of MOL – site visit this morn authorized – escalator is still moving / shifting.” He again confirmed that the order issued on June 26 to prevent access to the Mall specifically exempted rescue and recovery workers.⁴⁵¹

Chief Officer understands the risk of Plan B

Chief Officer testified that the equipment was supposed to be tall enough and have a long enough reach to push the escalator down and keep it away from the pile.⁴⁵² This operation was to be done without inside access. He also explained that the risks with this procedure were that, once demolition of the building began, it would be very hard to predict how the structure would come down. They would lose control over the debris, which might fall onto the victims.⁴⁵³

During the day of June 26 – Frustration increases again among the community

Mr. Mantha observed that, by Tuesday morning, people in town were getting frustrated again because it took some time for the large Priestly crane to arrive. Then they started seeing some road modifications in order to accommodate the crane. Once the crane was on site, it needed to be assembled, which required more time. The community wanted to see an end to the operation. By the time the demolition actually started, a large group of people was on the street, watching it happen. Mr. Mantha believed the crane operations started that evening and that most of them were completed on June 27.⁴⁵⁴

Between 11:00 a.m. and the arrival of the Priestly equipment – firefighters assist with logistics

Chief Officer testified that he and his men took care of the logistics between the time Plan B was shared by Staff Insp. Neadles at the 11:00 a.m. CCG meeting and the actual recoveries of the victims, which took place on June 27. They brought in material to build the platform for the equipment, raised hydro lines, and redirected the road that entered the south end of the Mall so that the turn would not be too steep for the large trucks carrying the cranes.⁴⁵⁵ They also had to move the command tent and other equipment out of the way.⁴⁵⁶

12:35 p.m. – Staff Insp. Neadles provides the Office of the Fire Marshal with an update: The equipment is en route and a press conference is planned for 1:00 p.m.

At 12:35 p.m., Staff Insp. Neadles sent his second email update of the day to members of the HUSAR/TF3 team as well as the Office of the Fire Marshal:

As of noon ... A control group meeting took place at 1100 hours. At this time I outlined the Operational plan that was approved by Dan Hefkey last night.

All heavy equipment is enroute and will be escorted by either TPS/OPP or both.

The work has commenced on the excavation of the site to allow easy access for all the Tractor Trailers of Heavy equipment on the site.

There will be a Press Conference at 1300 hours to lay out the plan moving forward.

The Teams are continuing shoring the side of the mall to add stability of the structure upon the controlled secondary collapse of the escalator.

Thanks to all for the support to the team members from our home Agencies to their respective members.⁴⁵⁷

I note again that while Mr. Hefkey might have been under the impression that his approval was not needed for the recovery plan, it is clear that in Staff Insp. Neadles's mind, approval had been granted. Staff Insp. Neadles believed that he had the support of senior provincial officials.

1:00 p.m. – Press conference: Staff Insp. Neadles advises the public of Plan B

At the 1:00 p.m. press conference, Staff Insp. Neadles stated the following:

[A]s was indicated when we were stood down from yesterday, when we were not allowed to enter the building ... we had no [sic] given up our efforts to come up with a plan to move forward. As I tried to indicate yesterday, *our authority did end when the building was deemed unsafe by the ministry and other structural engineers*, but when the commitment by the mayor was given to you, that was also something I ... wasn't able to give to you, but I was on the same page with the mayor. And then with the enhanced authority given to me by Mr. Hefkey through the province of Ontario to then set the next plan in motion, I think you are going to see some very serious machinery roll into town in the next couple of hours to assist us, to further advance our operation to move into that building as safely as we can. How we plan to do that I am going to try and show you as simply as I can because I will tell you it had to be shown to me simply because I'm not ... a heavy equipment expert. We've enlisted ... the services of Priestly, who are a major construction firm in the greater Toronto area to bring a brand new, multi-million dollar piece of equipment ...⁴⁵⁸ [Emphasis added.]

Staff Insp. Neadles testified that he believed his authority ended when he pulled the team out of the building. He explained that he was using the expression "authority" as meaning that he did not have the authority to go forward because he did not have the capability. He also admitted that, when he pulled his team from the pile, he did not have any idea what to do or have any plan in place. He confirmed that there was no document (legal or otherwise) describing his authority and that his mandate was to attempt to rescue people from the collapsed buildings as best as he could.⁴⁵⁹

Regarding his comment "enhanced authority," Staff Insp. Neadles testified that he did not have the financial authority to approve Priestly but was assured by Mr. Hefkey that the company would be retained.⁴⁶⁰

Staff Insp. Neadles went on to describe the plan to the attendees of the press conference:

Our intention from there is, because of the proximity of the victims to that escalator, and I'll ... speak to that in a minute as well, we will do a controlled dismantling of that escalator. We will push it with this machine backwards which should cause it ... to fall. And then, but it will be a controlled maneuver and will fall away from the victims on the floor. Once that settles and then we see how things do move on that maneuver, we'll take a step back to have the engineers re-assess and then we will start to ... move in from the front of the building to start sheering off ... the south-east corner there. We will start to shear the front doors, the entire way will be cleared by ... this heavy equipment very gingerly, as these guys are professionals. They know exactly how to do what they do as quickly as it can be done. Once that avenue is ... cut through the building the victims are approximately 35, 40 feet from that door, we'll then continue to clean a pathway with these pieces of equipment that, again, based on a very clear pathway and approval from the Ministry of Labour's structural engineer and others who are assisting him in advice, if that is deemed safe for our people to enter, we will then approach and deal with both victims that are in there ... [W]hen we get there, we will deal with them accordingly. I think that ... the main action plan, as I would call it, [is] to start. I will advise that when Mr. Priestly, who owns the company, it's a four generation, family-owned business and one of the Priestly sons are coming with this machine to operate it, when Mr. Priestly arrives, we have dealt with this company in the past. We find them to be one of the ... best ones there. We will send him along with one member of my team, who is an engineer and the structural engineer of the Ministry of Labour to do a final assessment.⁴⁶¹

Staff Insp. Neadles testified that the operation consisted of a controlled and precise removal of the debris, as opposed to going directly to the area where they believed the victims were located.⁴⁶² When asked why he did not go directly to the victims, Staff Insp. Neadles stated that they had been provided with an estimate of six to eight hours to complete the operation.⁴⁶³ He believed he had a conversation with Capt. Comella about the possibility of getting to the victims more quickly, but it was the tactical decision of Capt. Comella and Mr. Jeffreys on the ground to proceed the way they did. However, according to Staff Insp. Neadles, as soon as the mechanical portion of the operation had been completed and the reassessment made to ensure it was safe, the rescuers were sent on the pile.⁴⁶⁴

Staff Insp. Neadles testified that the “one member of my team” referred to in his statement at the press conference – that he “will ... send him ... along with one member of my team, who is an engineer and the structural engineer of the Ministry of Labour” – was Capt. Comella, even though he was not an engineer. He explained that he was probably referring to them as an engineering group, although he acknowledged that what he said was specific.⁴⁶⁵

In a later address to the public at the press conference, Staff Insp. Neadles stated: “One further task that we will perform is once the *engineer has allowed* us to enter the building, if and when that happens, I will order a canine search” [emphasis added].⁴⁶⁶ Staff Insp. Neadles confirmed that the engineer he was referring to was Mr. Jeffreys, who was giving them advice. He explained that he used the word “allowed” not in the sense that Mr. Jeffreys had the power to prevent them from entering the building, but in the sense of him providing advice, as a certified engineer, on whether it was prudent for them to enter.⁴⁶⁷

During the press conference, Staff Insp. Neadles was also asked whether HUSAR/TF3 had ever saved anyone from a real building collapse and whether he personally had experience in actually rescuing someone from a collapsed building, other than in training and in competitions.⁴⁶⁸ He responded to the second part of the question by referring to the Bloor Street explosion in 2003. When asked about the first part of the question, he testified that HUSAR/TF3 had never actually saved anybody from a building collapse – whether like this one or otherwise.⁴⁶⁹ However, he also testified that this collapse was the only deployment in which he was involved where there was the possibility of survivors when his team arrived.⁴⁷⁰

I find Staff Insp. Neadles’s comments during the press conference somewhat disingenuous. By suggesting that they had never given up, he was clearly attempting to revisit the comments he had made the day before when he announced he was putting an end to the rescue. As I describe previously, it is clear in my view that the rescue had stopped. Further, it appears to me that the characterization of this next step of the response as a “rescue” was not accurate. It became apparent from the responders’ subsequent actions that it had become a recovery.

3:00 p.m. – Mr. Selvers is released

At 1:00 p.m., Mr. Selvers was told to “pack-up” by Staff Insp. Neadles. Mr. Selvers explained to him that because he had been hired by the OPP to assist with the collapse, he was under its care and direction and could be released only by that agency.⁴⁷¹

Mr. Selvers told Sgt. Gillespie that he had been rudely ordered by HUSAR/TF3 to leave the site. Sgt. Gillespie thought that Millennium Crane’s services had been invaluable. However, because Priestly was on its way, he understood that Millennium’s services might no longer be required. He wanted to confirm this point. He therefore spoke to Mr. Ellen, who happened to be near that location. Mr. Ellen confirmed that the Millennium crane was no longer required.⁴⁷²

Sgt. Gillespie then encountered Cmdr. McCallion, who “barked an order” at him to get rid of the crane operator because he had told him to leave two hours earlier. He said he wanted Mr. Selvers “out *now*.” Sgt. Gillespie went

over and spoke to Mr. Selvers. Again Mr. Selvers said, given that he had been hired by the OPP, he would not leave unless the OPP advised him he was no longer required. He also wanted to confirm for certain that they no longer needed his services because of the time it takes to rebuild a crane once it has been taken apart. Sgt. Gillespie confirmed that the crane would no longer be used in the rescue effort.⁴⁷³

At 3:00 p.m.,* Cst. Waddick advised Mr. Selvers to pack up. At that point, Mr. Selvers knew that his mission was over.⁴⁷⁴ Before he left the site, Sgt. Gillespie signed his job book and work tickets.⁴⁷⁵

3:05 p.m. – Staff Insp. Neadles advises Mr. Hefkey that he thinks they are in a recovery situation; Mr. Hefkey later holds a media scrum to outline the next steps

At 3:05 p.m., Mr. Hefkey met with Staff Insp. Neadles, who laid out the plan on how they were going to use the heavy equipment when it arrived. In his notes, Mr. Hefkey recorded the following comment from Staff Insp. Neadles: “He does think we are in a recovery situation but will still hold out and hope and will proceed as a rescue.”⁴⁷⁶ Staff Insp. Neadles testified that he was hopeful that the operation would be a rescue, but, realistically, he was looking at it as a recovery.⁴⁷⁷

At 4:30 p.m., Mr. Hefkey held a media scrum. He explained the estimated time of arrival of the Priestly equipment and how it would be used. He also provided some answers with respect to this new plan and the intervention of the premier.⁴⁷⁸

Plan B is executed: Priestly demolishes part of the Mall

4:00 p.m. – Mr. Priestly meets with HUSAR/TF3 and the Ministry of Labour and conducts a reconnaissance of the site

At 4:00 p.m., Mr. Priestly arrived on the scene and met with Sgt. Glavin, who introduced him to Staff Insp. Neadles and his crew, including Capt. Comella. Mr. Priestly testified that Mr. Jeffreys was also present and was helpful in giving the background of what had transpired and the issues moving forward. He explained to Mr. Priestly the structural issues with the building and why it had collapsed.⁴⁷⁹ Mr. Priestly testified that on his arrival on the site, he sensed the urgency of the situation. His team did not stop working until the next morning.⁴⁸⁰

Mr. Priestly did a reconnaissance of the site along with Mr. Jeffreys. He believed that the MOL had shut down access to the site completely to protect the safety of the workers, but he was not sure. Mr. Priestly explained that during his walk through the site, he observed that the beam supporting the loads of the escalator and the core slabs was “very” bent. In his opinion, it was only a matter of time before it failed.⁴⁸¹ He was told where the possible victims were thought to be: one by the pay phones, and the other victim’s location marked with a pylon.[†] He believed that no one knew whether any victim was alive or dead, though “there was a glimmer of hope.”⁴⁸² Mr. Priestly focused on his job – to take down the building in order to gain access.⁴⁸³ He was operating under the assumption that the victims were still alive. Mr. Priestly testified that Capt. Comella wanted to make sure that nothing fell on the victims during the operation.⁴⁸⁴

.....

* There is some discrepancy with respect to the time that Mr. Selvers was advised to leave. Sgt. Gillespie in his notes indicates that it was at 6:30 pm (Exhibit 6378, p. 032), while Mr. Selvers indicates that it was at 3:00 p.m. Although I do not believe anything turns on the time, I am inclined to agree with the timing of Mr. Selvers, given that Mr. Priestly testified that Millennium Crane had left the site by the time he and his team arrived. Mr. Priestly arrived on the site at 4:00 p.m. Priestly testimony, October 2, 2013, p. 27863.

† Capt. Comella confirmed this description during his testimony. Comella testimony, September 5, 2013, pp. 24363–4.

Shortly after 4:00 pm – Mr. Priestly and others draft a “rescue / recovery” plan

Following the reconnaissance of the site, Mr. Priestly thought it would be best to spend some time planning and determining the direction of the operation while waiting for the equipment to arrive and be assembled.⁴⁸⁵ He met with Mr. Sanders, Don Jewitt (a MOL manager from Thunder Bay), Capt. Comella, and Mr. Jeffreys. They discussed safety and engineering concerns.⁴⁸⁶

Mr. Jeffreys testified that Capt. Comella asked him to give some advice on putting the plan together, from an engineering perspective.⁴⁸⁷ Mr. Priestly testified that Mr. Jeffreys provided engineering advice during the formulation of the plan, including stoppage if necessary. They wanted to proceed safely and did not want anyone else to get hurt.⁴⁸⁸

Capt. Comella testified that they felt it was important to try to articulate a plan. They were worried about the rest of the building collapsing when the operation began. They wanted Priestly to reach around the top of the escalator resting on the beam (with core slabs resting on top of it) and pull the escalator back toward the south so that it stayed off the pile. It was hoped that it would fall away from the pile and be removed.⁴⁸⁹

Mr. Jeffreys understood that Mr. Priestly wanted something documented before proceeding.⁴⁹⁰ Mr. Priestly explained that under the Ontario *Building Code*, a written demolition plan, stamped by an engineer, was required for the demolition of a building over 6,000 square feet or three storeys in height.⁴⁹¹ Mr. Jeffreys believed that it was an excellent idea to write down what the plan was, what was going to be done, what safety measures were going to be taken, and who would stand where.⁴⁹²

A plan, entitled “Rescue / Recovery Procedure Plan,” was eventually drafted and signed by Mr. Priestly, Mr. Jeffreys, and Staff Insp. Neadles.* Mr. Priestly could not remember whether he had a role in giving the plan this title. He testified that he would have proceeded in the same manner whether it had been considered a rescue or a recovery.⁴⁹³

Mr. Jeffreys, however, in his notes referred to the fact that he was asked to assist with a plan to make the “recovery” safe. He testified that he referred to it as a recovery because, at the 3 p.m. meeting the previous day, he had thought that the operation had moved from a rescue to a recovery. He did not recall any discussion that the mission was back to a rescue despite the fact that the HUSAR/TF3 team was moving forward.⁴⁹⁴

According to Mr. Jeffreys, his signature on the document was not an indication that he approved the plan. He signed the document because it was the plan the group put together and represented what had been agreed to.⁴⁹⁵ He felt the difference between agreeing to something and approving something was that approval was akin to an official stamp.⁴⁹⁶ Nonetheless, Mr. Jeffreys testified that the team could have gone ahead without his signature. None of the parties made his signature a prerequisite to the implementation of the plan.⁴⁹⁷

Staff Insp. Neadles confirmed that this document was the first written plan of the entire operation.⁴⁹⁸

The plan consisted of seven elements:

- “Confirm all services including gas, water, electricity etc. are shut off prior to any operation taking place.”⁴⁹⁹ Mr. Priestly testified that he wanted this standard item in the plan to ensure that he did not cut a hydro or a gas line.⁵⁰⁰

• • • • •

* Priestly testimony, October 2, 2013, pp. 27849–50; Exhibit 7296; Neadles testimony, September 12, 2013, pp. 25631–2 (according to the scribe’s notes, it appears that Staff Insp. Neadles signed off on the plan at 9:05 p.m.).

- “Confirm COLD ZONE is in place . . .”⁵⁰¹ Mr. Priestly explained that he wanted to make sure that nobody would enter the zone while they were working on the building. It is also a requirement of the *Occupational Health and Safety Act* that when a building is being torn down, it be secured.⁵⁰²
- “Move the Komatsu PC850 [high-reach machine] with UP20 attachment onto new stone pad adjacent to the building and check compaction using the Komatsu PC850.”⁵⁰³ Mr. Priestly explained that the high-reaching machine was very heavy, and he therefore wanted to run the machine back and forth a few times on the pad to make sure it was well compacted before extending the boom up and over the building.⁵⁰⁴
- “Place spotter on roof in safe location with MOL and HUSAR escort.”⁵⁰⁵ Mr. Priestly testified that the spotter was a member of his team whose role was to direct Mr. Priestly in operating the Komatsu 850 – from his position in the machine, he could not see into the building.⁵⁰⁶
- “Reach Komatsu PC850 with UP20 attachment over penthouse and into collapse zone to check for position of UP20 in close proximity to concrete slab(s) resting on beam at north end of escalator with NO contact.”⁵⁰⁷ Mr. Priestly explained that he wanted to make a dry run to see if they would be able to reach the area where the slabs were sitting on the escalators.⁵⁰⁸ The dry run would involve reaching over with the arm and trying to get as close as possible to this slab.⁵⁰⁹
- “Spotter with MOL and HUSAR escort to evacuate from roof area to COLD ZONE prior to ANY contact with concrete slab(s) resting on beam at north end of escalator.”⁵¹⁰
- “ALL CLEAR radio command from Tony Comella followed by go-ahead to apply pressure with UP20 onto concrete slab(s) resting on beam at north end of escalator.”⁵¹¹ Mr. Priestly testified that the purpose of this step was to have a controlled drop of those slabs early on so they did not fall on the victims. He explained that the beam was bent in such a bad way that it looked as though, if they applied pressure on it, it would fail in a controlled manner and drop down to the floor.⁵¹² The slabs would then be on the floor and the victims would be out of harm’s way.⁵¹³ He explained that he could ensure that the beam would fall in a controlled way because the machine can be operated precisely, so it could reach over, cut the beam, and slowly lower it.⁵¹⁴

In his testimony, Mr. Priestly confirmed that the plan did not work because the machine could not reach the beam.⁵¹⁵ It was about 20 feet from the beam, and the main boom was within inches of touching the penthouse. Pointing to the photograph in figure 2.6.5, Mr. Priestly testified that the Komatsu 850 was positioned in the same place as the yellow truck in the upper right corner of the image.⁵¹⁶

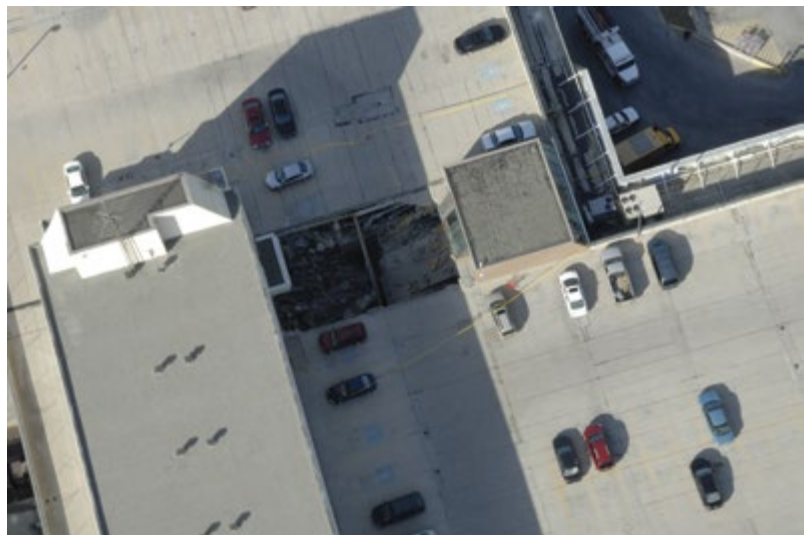


Figure 2.6.5 The position of the Komatsu when it attempted to move the beam

Source Exhibit 2114

The plan went on to state:

DECISION A) If beam failure occurred – assessment to be completed by HUSAR / MOL / PRIESTLY

Next steps are to “Nibble” building from top down and out to the angle of repose on both sides, exposing collapse zone with no overhead items over collapse zone.

DECISION B) If beam does not fail – assessment to be completed by HUSAR / MOL / PRIESTLY

Next steps are to remove penthouse and “Nibble” building from top down and out to the angle of repose on both sides exposing collapse zone with no overhead items over collapse zone.⁵¹⁷

Referring to Plan A above, Mr. Priestly testified that if the beam collapsed, meaning that it and the slabs were resting on the ground, the next step would be to take the rest of the building down so they could get in there with the heavy equipment.⁵¹⁸ He explained that if that happened, the primary risk to the rescuers would have been taken care of to a certain degree. However, it had been decided that the responders would re-evaluate the situation when they reached that point.⁵¹⁹ Mr. Priestly was asked if the beam and the slabs had collapsed why the next step would not be an attempt to access a possible live victim. The primary hazard, after all, would have been removed. He testified that that was the intention as soon as the victims could be accessed safely.⁵²⁰ When asked how nibbling at the building from the top down out to the angle of repose would contribute to accessing the victim safely, Mr. Priestly testified that the slabs and the escalators would have created a very big pile of debris on the ground (not where the victims were believed to be), which had to be removed for the victims to be reached.⁵²¹ Rescuers would have to move around that debris, or walk over it or around it, to access the victims. Although it might have been possible to access the pile from a different direction, Mr. Priestly said that this possibility had been exhausted even before he and his team arrived. The key issue was that the victims were not accessible.⁵²²

Mr. Priestly testified that his equipment could not have continued the type of rigging operation conducted by Millennium – to take slabs directly out of the pile after the escalator had been taken down – because it did not have the necessary reach.⁵²³ He explained that, after the danger presented by the escalator and the slabs had been removed by collapsing them, he believed Millennium could not have continued the slinging operation because the pile of debris was tangled and rigging would have been difficult. The slabs would have had to be cut in order to be rigged safely. They were not stacked neatly and there were pipes between them. He believed that rigging would have been more difficult than using the excavators to lift the slabs out, which is what was done in the end. Mr. Priestly could not remember whether any rescue leaders asked him if he had the capacity to resume that rigging operation.⁵²⁴

Mr. Priestly testified that he believed at the time that it would take between six and eight hours to “nibble” the building down from top to bottom and out to the angle of repose on both sides. He stated that it was a guaranteed process, given the cracked and broken state of the slabs.⁵²⁵ He believed the safest way to proceed was to take down the part that had collapsed and to make a “nice” pathway in, so the responders could get through and delicately remove the slabs in such a way that there would be no further pressure on the victims.⁵²⁶

Staff Insp. Needles admitted that this document was not only the first written plan associated with this operation but the first with a Plan B.

6:00 p.m. – The Priestly high-reach machine arrives on site: The first attempt does not work

The CCG met at 5 p.m., and Staff Insp. Needles informed the group that Mr. Priestly was on site and happy with the layout. He advised the group that it would take approximately 1.5 hours to take down the escalator and six to eight hours to “open up” the building.⁵²⁷

At 6:00 p.m., Priestly's high-reach machine arrived and work began on its assembly.⁵²⁸ Mr. Priestly testified that the assembly took approximately two hours. They then performed a dry run that did not work because they could not reach the beam inside the Mall. They moved to Plan B, as outlined in the "Rescue / Recovery Procedure Plan".⁵²⁹

DECISION B) If beam does not fail—assessment to be completed by HUSAR/MOL/PRIESTLY

Next steps are to remove penthouse and "Nibble" building from top down and out to the angle of repose on both sides exposing collapse zone with no overhead items over collapse zone.⁵³⁰

Mr. Priestly agreed that Plan A and Plan B were similar except for the fact that, in the first scenario, the beam had been caused to fail (collapse), whereas in the second it had not. The purpose of causing the beam to fail in Plan A was to ensure that nothing further fell on the victims.⁵³¹ Because the escalator and the slab were on an angle aiming down toward where the victims were located, the workers were hoping to eliminate the risk of anything sliding down on them. Plan B provided that they would take part of the building down, so it would be safe to go in and access the victims. Mr. Priestly testified that they would prevent anything from sliding down toward the victims in Plan B by performing the demolition in a very controlled manner and by not working too quickly or causing any unplanned structural failures. They intended to cut down the penthouse in a sequential manner to lighten the load as they progressed.⁵³²

Mr. Priestly testified that it would have been too dangerous to attempt to secure the slabs on the escalator by tying them back (to prevent the accidental sliding of the slab). Furthermore, no one was allowed to go inside the zone.⁵³³

6:58 p.m. – Staff Insp. Neadles sends update to the Office of the Fire Marshal: The high-reach machine has arrived

At 6:58 p.m., Staff Insp. Neadles sent an email update to members of the HUSAR/TF3 team as well as the Office of the Fire Marshal:

Press conference went well with the focus again . . . on the delay and work stoppage.

The excavation of the site has been ongoing and almost complete to receive the Articulating Arm Machine.

The Articulating Arm has just arrived and is being assembled. It will take 1–2 hours.

The 1800 Control Group meeting has started to focus on the post recovery period when the Ministry of Labour Orders take effect.

As soon as the equipment is ready to operate it will be deployed immediately.

It will take approx 2 hours to deal with the Escalator.

Team members doing well. 1 minor injury (sprained ankle) last night.

Next Control Group meeting TBD.

Next update: when important info to pass along.⁵³⁴

Staff Insp. Neadles confirmed that the "post recovery period when the Ministry of Labour Orders take effect" referred to the fact that the MOL would take control of the structure.⁵³⁵

9:00 p.m. – Demolition of the Mall takes place in a controlled manner

At 9:00 p.m., the demolition began.⁵³⁶ At the same time, a UCRT team briefing was held for the six remaining members. The team was advised that the demolition of the building would begin with the use of a specialized crane excavator to start removing the south portion of the Mall. The team in charge of the demolition was requesting the presence of various observers with radios around the perimeter as the equipment removed steel, aluminum, and various objects. As the operation was taking place, they wanted individuals to be looking for any indications of damage or structural issues to the building and to report any such concerns. The UCRT team was provided with HUSAR/TF3 radios to use for this communication. Constables Bailey and Cox were part of the team that conducted the assessment around the perimeter. They were observing from the south / east area of the parking lot.⁵³⁷



Figure 2.6.6 The Komatsu 850 removing the windows of the penthouse

Source Exhibits 9580 and 9897

The Mall is demolished

Mr. Priestly described the demolition that ensued as follows:

- The first step of Plan B was to deal with the penthouse and start “nibbling” down from the top. Figure 2.6.6 illustrates the Komatsu 850 removing the windows of the penthouse and taking down the architectural feature.⁵³⁸
- Mr. Priestly testified that he operated the Komatsu 850 and that there was no spotter during the actual operation, as there had been for the dry run.⁵³⁹
- The architectural feature of the penthouse was eventually removed and the ceiling of the penthouse became visible.⁵⁴⁰
- After taking down the penthouse, Mr. Priestly testified they took down the entire exterior walkway at the second level of the Mall. It was necessary to remove the walkway in order to extend the machine’s reach into the building. Once accomplished, they could get into the collapsed zone with the Link Belt 460 and cut the beams.⁵⁴¹

- When the walkway was removed, using the Link Belt 460 (having backed the Komatsu 850 out of the way), they took down the beam (having first removed all the precast slabs) that joined the exterior walkway and the third floor.⁵⁴² They ensured that the beam would not come crashing down by cutting it on an angle, so it would sit on the stub that was left. They then placed the shear underneath the beam, closed it, cut the beam, and lowered that section down slowly.⁵⁴³
- The second beam that was removed from the third level was the beam supporting the escalator.⁵⁴⁴ All that was left was the steel frame with the escalator, because the doors, windows, roof, and walls had all been pushed to the parking lot. The precast slabs weighed about four or five tons each, so every time they took down a piece of precast slab, it had to be moved out of the way.⁵⁴⁵ Mr. Priestly testified that the beam bore approximately half the weight of the escalator, but he was not worried that the cutting process would add extra weight and cause the beam to fall – it was a stronger beam than the one at the exterior.⁵⁴⁶ Mr. Priestly was able to cut the beam at an angle at one end and then cut the second end the other way. The escalator weighed about 10 tons, but he succeeded in lowering it gently and resting it on the floor below.⁵⁴⁷ Mr. Priestly testified that the core slab that was lying on the escalator was lowered with it.⁵⁴⁸ He then tried to remove it with the Link Belt 460. He did not have the spotters on the roof when he performed this part of the operation.⁵⁴⁹



Figure 2.6.7 The penthouse is demolished

Source Exhibit 9898

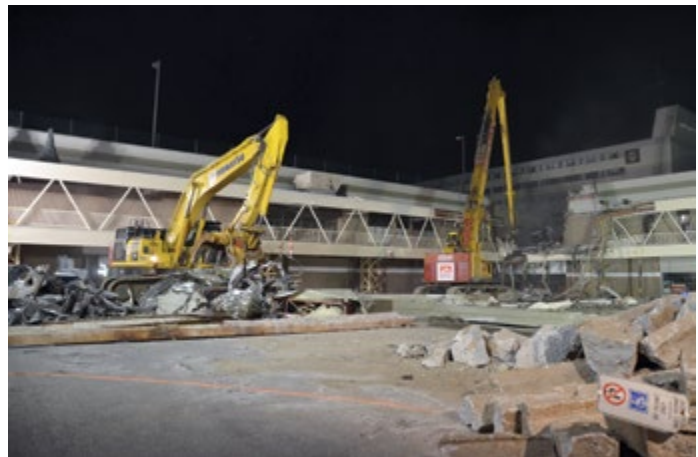


Figure 2.6.8 The Link Belt 460 removing the escalators and the overlying concrete slabs

Source Exhibit 9901

- While Mr. Priestly agreed that although the core slabs overlying the escalator appeared to be in a precarious position, he did not believe that any part of the debris lying on the slab fell onto the pile below. He explained that once the escalator was torn down and everything was out of the way, there was no evidence of new debris on the pile. He stated that not even one of the masonry blocks fell onto the pile.⁵⁵⁰ He acknowledged, however, that he did not take comparison pictures of the pile before and after the operation and that there were no spotters to confirm his description of the scene.⁵⁵¹
- The next step was to repeat the same process, moving down to the lower level.⁵⁵² He took out the second floor beams and the escalator that went from the ground floor to the second floor, and he removed the debris in that area so the responders could get to the pile where the victims were located.⁵⁵³ When he had access to the compromised beam, he cut the escalator before cutting the beam.⁵⁵⁴ At that point, the beam had little or no load on it. Mr. Priestly testified that the beam was bent “a lot.” He believes it was 18 to 24 inches lower than its intended position. He said he was surprised that the beam did not fail, given all the work that had occurred so close to it. He removed the beam with the shear of the Link Belt 460, by cutting one end first, then the other end, and finally taking it down carefully. At that point, the rescuers had clear access to the pile.⁵⁵⁵
- The next step of the operation was to rake all the material out, down to the concrete floor, with the excavator with the grapple – the Komatsu 490. To do so, he used a large steel beam in a motion similar to sweeping the floor with a broom. Figure 2.6.9 illustrates the result of the sweeping.⁵⁵⁶



Figure 2.6.9 The Mall interior after the Komatsu 490 cleared out the debris

Source Exhibit 7924

Mr. Priestly testified that once he got to this point in the operation, he took very detailed instructions from Capt. Comella, who he described as the point man in charge. He then started pulling back some debris very gently and began to lift off some of the slabs.⁵⁵⁷ Every time he pulled back or lifted some debris, the responders would check for any kind of evidence. Mr. Priestly testified that he believed they found a woman's handbag.⁵⁵⁸

Observations from responders: The demolition was conducted in a satisfactory manner

Capt. Comella was on site during the demolition. He testified that he observed some of it, but also spent a lot of time walking around. He was not sure if he saw the escalator come out. He

certainly saw debris. He saw the Priestly team working at it as well as the end result, but he did not watch the whole operation.⁵⁵⁹

Capt. Comella testified that after the demolition was over, the pylon that had been used to mark the location of a possible victim was still where it had been positioned. They were satisfied with the crane operation and thought it had been successful in pulling the debris back toward the south end of the Mall. They did not think the crane affected the pile where the victims were located.⁵⁶⁰

Mr. Jeffreys watched the Priestly operation and thought it was more effective than rigging with a crane. Slinging material was a slower process because it took time to rig the slabs so they would not slip out while they were being lifted. The Priestly machine, in contrast, was faster – it could simply reach in, pick up a slab, and move it aside. He also observed that the Priestly operation was safer because it allowed for removal of portions of the building in order to get up closer without exposing workers, whereas to sling, workers had to be in close to the demolition.⁵⁶¹

Mr. Jeffreys described the greater versatility of the Priestly machine as follows:

The Priestly equipment is far more versatile. It can crush pieces. It can pick up pieces. It can snip off huge pieces of steel, as if they were paper and very meticulously.⁵⁶²

He also described Priestly's surgical precision:

Absolute surgical precision on Mr. Priestly's part ... when he ... had brought the front of the building down, the victims were recovered. He then took a piece of steel that was about 10 feet long and used it like a spatula, to bring all the debris out. You can't do any of those things with a crane.⁵⁶³

Cst. Cox noted that this demolition was controlled.⁵⁶⁴ Based on what he observed, he determined it was a recovery at that point. He did not observe anything that would cause him concern with respect to the victims. He testified that if somebody was still alive in the rubble, he did not see anything that could potentially have caused further injury to that person. He admitted, however, that he was not observing when the Priestly team brought the escalator down and did not see how they ensured that the concrete that was resting on the escalator did not slide forward onto the pile where the signs of life had been found.⁵⁶⁵

Cst. Cox testified that he did not know who was in charge at that point, Priestly or HUSAR/TF3. He saw that the HUSAR/TF3 members were in the same holding pattern as the UCRT members. UCRT and HUSAR/TF3 were on standby until Priestly finished doing its controlled demolition. No rigging was being done at that point.⁵⁶⁶

June 27, 3:00 a.m. – Cadaver search conducted with UCRT dogs

At 2:55 a.m., Sgt. Gillespie received a call from Capt. Comella asking him to prepare the UCRT cadaver dogs for a search on the pile. He woke up Constables Cox and Bailey and advised them to prepare their dogs.⁵⁶⁷ At 3:05 a.m., he received the same request from Staff Insp. Needles.⁵⁶⁸

Cst. Bailey is concerned about the dogs' safety and about contamination of the scent by HUSAR/TF3 members

Constables Bailey and Cox followed instructions and prepared the dogs.⁵⁶⁹ Cst. Bailey then approached Sgt. Gillespie and told him that HUSAR/TF3 members were also on site with other dogs, thereby contaminating the area with human scent. In this regard, Sgt. Gillespie noted:

Bailey ... indicated to me that TF3 is now putting HUSAR dog ... and that they have put several people (TF3 members) contaminating the area with scent. He asked about is this a rescue or is this a recovery. They indicated rescue. Advised PC Bailey to document his conversation and return to his assigned task.⁵⁷⁰

Cst. Bailey informed Sgt. Gillespie that he did not feel that what they were requesting of him was safe. He had been asked to take his cadaver dog and "throw him up onto the top of the escalator," which at the time was still in the Mall. Cst. Bailey was concerned because, in training sessions, they do not throw their dogs up into the air. Moreover, because a lot of broken glass had fallen directly on top of the escalator and the stairwell, the surface was unsafe for the dog. He then asked Staff Insp. Needles whether the operation was a rescue or a recovery at

that point: the level of risk he would allow the dog to take would depend on the type of operation. He explained that in a rescue you may sometimes take some risks (such as having your dog get hurt). In a recovery, however, you can “slow down” and make some changes to ensure that the dog does not get hurt. It appears from his notes that Cst. Bailey was informed that this operation was still a rescue and that they were searching for a live victim. He nonetheless suggested dragging the escalator shaft into the parking lot to have it at ground level, and then lifting the dog up 5 feet to get to the top of the escalator.*

Sgt. Gillespie also advised Staff Insp. Neadles of Cst. Bailey’s concern with respect to contamination of the scene. He documented their conversation as follows:

Approached Bill Neadles in an off side bar conversation.

[Gillespie] “Bill I am sure you are aware of the conversation my handler just had with your members about the K9 search and the scent issue”

[Neadles] “I’m aware of some of it”

[Gillespie] “He explained to me that the area is being contaminated by human scent and your dog as well as the cadaver scent that we know the location of. They train with distraction and multiple scents but with all of this contamination they need to conduct the search without all of your guys in the area. Them being there is making things quite difficult.”

[Neadles] “ok”

Sgt. Gillespie continued as follows:

Very distressed that we are telling them how to run the search. Apparent they (CTF3) are acting as this is still a rescue operation even though this is statistically impossible and they (Needles [*sic*]) has only asked for cadaver dogs from OPP.⁵⁷¹

Sgt. Gillespie testified that he was getting mixed messages: “[I]t was a rescue but we want cadaver dogs.” He further explained that it seemed that the focus was on a recovery and it “didn’t make sense.” According to him, they were being too precise, methodical, and slow – steps they would not have taken in the context of a rescue.⁵⁷²

A search is performed on the escalator by Cst. Cox with the cadaver dog Fuse: There is no indication of any victims

As I describe above, Priestly did eventually drag the escalator out of the Mall. Cst. Cox testified that he was asked to go to the south entrance of the Mall for further instructions on the canine search to be conducted. When he arrived, a discussion ensued as to how the dogs were going to search the area. His dog Fuse was not trained to work off-leash. Because this operation was a recovery, he did not feel it was safe for his dog to search the pile, given the way the debris was spread out. Therefore, they made the decision to pull the escalator further out into the parking lot so that Fuse could search the stairs and the escalator, specifically, for any evidence of victims. Fuse searched the escalator and provided no indication.⁵⁷³

• • • • •

* Bailey testimony, August 27, 2013, pp. 22790–2; Bailey testimony, August 28, 2013, pp. 22866–7. The search being conducted was not in the actual pile in the Mall where the victims were located, but in a pile of debris that had been dragged outside the Mall.

HUSAR/TF3 members bring their dog to search the escalator; UCRT members question again whether the operation is a rescue or a recovery

When Fuse completed his search, Cst. Cox observed a live search dog belonging to the HUSAR/TF3 team standing at the south entrance of the Mall with his handler (Sgt. Scott Fowlds), Capt. Comella, and another HUSAR/TF3 member. The dog went a few feet into the pile (outside the Mall) and came back to his handler. Sgt. Fowlds testified that his dog Ranger gave no indication and showed no interest in the escalator.⁵⁷⁴ The handler was having a conversation with Capt. Comella. Constables Bailey and Cox approached Capt. Comella and asked him whether this operation was a rescue or a recovery. They were told it was still a rescue and that they were searching for a live victim. In his notes, Cst. Cox questioned why a cadaver dog was used first if the operation was still a rescue.⁵⁷⁵

Cst. Bailey told the HUSAR/TF3 members that he would not perform a search with a cadaver dog until the operation officially became a recovery. He documented his frustration about the fact that the operation seemed to be alternating between a rescue and a recovery.⁵⁷⁶ He testified: "It's kind of like we're here, we're there. It's we'll try this, we'll try that. Well . . . if this doesn't work, let's try this." He was told that it was still a rescue, and that it would switch to a recovery only if the HUSAR/TF3 dogs failed to indicate a live human in the debris.⁵⁷⁷

8:00 p.m. – Mr. Lacroix advises Sgt. Gillespie that the MOL did not shut down the rescue

At 8:00 p.m., Sgt. Gillespie had a conversation with Michael Lacroix, an inspector with the Ministry of Labour, with respect to the decision to stop the rescue. Sgt. Gillespie testified that it never really made sense to him that the MOL had stopped the work because of the overloading of the beam. He understood that the ministry was involved, given that two of the three engineers on site were from the MOL, but not that MOL made the decision to stop the work.⁵⁷⁸ He made the following note of the conversation:

Met with Michel Lacroix (mol) and Dave Howse (ofm). Asked Lacroix – 'this is bothering me that the decision to stop work: Who made that decision.'

[Lacroix] – "Don (MOL) made an order for stop work once the engineers completed calculations and stated 468% overload and assessed the building. That order does not apply to rescue operations."

[Lacroix] – "We did not stop the rescue. That decision was made at an Incident Command meeting. Not by us."

[Gillespie] "I was told by them (TF3 McCallion) that the MOL stopped any work and that no one is allowed inside"

[Lacroix] – "Not by us. It was stopped by the command committee."

[Gillespie] – "I was lied to about this. They complained to me about OUR actions during the crane ops and that we had too many people on the pile and that we endangered their rescue crews."

[Lacroix] – "We didn't have any issue with what you guys were doing. I did not know that they had any issues with that operation."⁵⁷⁹

Sgt. Gillespie felt that he had been lied to and that the information he had been provided simply "didn't make sense."⁵⁸⁰

Mr. Lacroix testified that during his conversation with Sgt. Gillespie, he was adamant that the MOL did not stop the rescue operation. He told him that the MOL had not put a stop-work order on the rescue operations. He was surprised that Sgt. Gillespie thought the MOL had shut down the rescue. He recalled at some point discussing the perception that the MOL had shut down the rescue with Mr. Jones, Mr. Jeffreys, or Mr. Sanders. He was not aware if they took any steps to correct that perception. Mr. Lacroix testified that he had “no idea” why that perception existed.⁵⁸¹

Conclusion: Responders were operating as though this operation was a recovery

A review of the conduct of the responders at the time, along with the fact that Plan B resulted in the use of a demolition company, leads me to conclude that all involved were operating, perhaps subconsciously, as though this operation was a recovery mission.

Evening – Premier McGuinty does not want to be a distraction to the operation

By Tuesday evening, the premier was aware that the rescue was moving forward with the assistance of the Priestly equipment. He also had dispatched to Elliot Lake two very senior government officials to assist with the management of the incident. When asked whether he thought he should be travelling to Elliot Lake himself at that point, Mr. McGuinty testified that he felt it was still premature for him to go to the community. He did not want to be a distraction to the work that was ongoing. He believed he was able to assist from Toronto, through his office, without impeding the operation in any way.⁵⁸²

June 27, 6:00 a.m. – Demolition is completed by Priestly

According to Mr. Priestly’s notes, the demolition was completed by 6:00 a.m. on June 27. He testified that he considered the demolition to have been completed around the time when all the escalators were removed and the ground floor had been cleaned to the point where it was safe to walk in and look above without worrying that anything would come down.⁵⁸³

Mr. Priestly testified that he cleared the sides of the building where there were overhanging pieces that appeared likely to fall. Figure 2.6.10 shows Mr. Priestly clearing out the collapsed zone.⁵⁸⁴

While he was clearing out, Mr. Priestly explained that tin studs may have fallen onto the pile, but that, generally, most of the debris stayed together with the machine as he did the work. He also explained that a couple of small pieces of concrete from the slabs on the parking level fell while he was clearing out the area, but they were in a corner where they did not think a victim was located (see fig. 2.6.11, right side).⁵⁸⁵



Figure 2.6.10 Mr. Priestly at work removing debris from the collapsed zone in the Mall

Source Exhibit 9904



Figure 2.6.11 The corner where some small pieces of concrete may have fallen during the clearing of the Mall

Source Exhibit 7924

Notes

- ¹ McGuinty testimony, October 9, 2013, pp. 28983–6.
- ² McGuinty testimony, October 9, 2013, pp. 28876–7.
- ³ O’Leary testimony, September 17, 2013, pp. 25829–31.
- ⁴ O’Leary testimony, September 17, 2013, p. 25873.
- ⁵ Mantha testimony, September 23, 2013, pp. 26730–3.
- ⁶ McGuinty testimony, October 9, 2013, pp. 28877–81.
- ⁷ McGuinty testimony, October 9, 2013, pp. 28877–81.
- ⁸ O’Leary testimony, September 17, 2012, pp. 25831–3.
- ⁹ McGuinty testimony, October 9, 2013, pp. 28877–81.
- ¹⁰ McGuinty testimony, October 9, 2013, pp. 28877–81.
- ¹¹ McGuinty testimony, October 9, 2013, pp. 28877–81.
- ¹² McGuinty testimony, October 9, 2013, pp. 28877–81.
- ¹³ O’Leary testimony, September 17, pp. 25835–7.
- ¹⁴ Exhibit 8115.
- ¹⁵ O’Leary testimony, September 17, p. 25834.
- ¹⁶ Exhibit 8116.
- ¹⁷ Exhibit 8117.
- ¹⁸ Exhibit 8119.
- ¹⁹ O’Leary testimony, September 17, 2013, pp. 25834–9.
- ²⁰ O’Leary testimony, September 17, 2013, pp. 25840–2.
- ²¹ Exhibit 8121; O’Leary testimony, September 17, 2013, pp. 25843–4.
- ²² Exhibits 8119 and 8121.
- ²³ Exhibit 8125.
- ²⁴ Exhibit 8121.
- ²⁵ O’Leary testimony, September 17, 2013, pp. 25843–7; McGuinty testimony, October 9, 2013, pp. 28881–6.
- ²⁶ Exhibit 8125; O’Leary testimony, September 17, 2013, pp. 25844–6.
- ²⁷ Exhibit 8125; O’Leary testimony, September 17, 2013, pp. 25486–7.
- ²⁸ McGuinty testimony, October 9, 2013, p. 28882.
- ²⁹ McGuinty testimony, October 9, 2013, pp. 28885–6.
- ³⁰ Exhibit 6348; O’Leary testimony, September 17, 2013, pp. 25848–9.
- ³¹ Exhibit 8128.
- ³² O’Leary testimony, September 17, 2013, pp. 25849–50.
- ³³ O’Leary testimony, September 17, 2013, pp. 25849–50 and 25852.
- ³⁴ Exhibit 8128.
- ³⁵ Exhibit 8128; O’Leary testimony, September 17, 2013, p. 25852.
- ³⁶ McGuinty testimony, October 9, 2013, pp. 28890–1.
- ³⁷ O’Leary testimony, September 17, 2013, p. 25854.
- ³⁸ Exhibit 8129.
- ³⁹ Exhibit 8130.
- ⁴⁰ O’Leary testimony, September 17, 2013, pp. 25853–4.
- ⁴¹ O’Leary testimony, September 17, 2013, pp. 25854–5.
- ⁴² Exhibit 8132.
- ⁴³ O’Leary testimony, September 17, 2013, pp. 25855–6.
- ⁴⁴ Exhibit 8126.
- ⁴⁵ O’Leary testimony, September 17, 2013, pp. 25857–8.
- ⁴⁶ Exhibit 8126.
- ⁴⁷ O’Leary testimony, September 17, 2013, pp. 25858–9.
- ⁴⁸ Exhibit 8134.
- ⁴⁹ Exhibit 8135.
- ⁵⁰ McGuinty testimony, October 9, 2013, pp. 28891–2.
- ⁵¹ Exhibit 8135.
- ⁵² McGuinty testimony, October 9, 2013, p. 28892.
- ⁵³ Exhibit 8135; see also McGuinty testimony, October 9, 2013, pp. 28893–4.
- ⁵⁴ Exhibits 8138 and 8146; O’Leary testimony, September 17, 2013, pp. 25861–2 and 25864–5.
- ⁵⁵ Exhibit 8136; McGuinty testimony, October 9, 2013, pp. 28894–5.
- ⁵⁶ McGuinty testimony, October 9, 2013, pp. 28895–7.
- ⁵⁷ O’Leary testimony, September 17, 2013, p. 25863.
- ⁵⁸ O’Leary testimony, September 17, 2013, pp. 25863–4.
- ⁵⁹ O’Leary testimony, September 17, 2013, p. 25865.
- ⁶⁰ Exhibit 8152.
- ⁶¹ McGuinty testimony, October 9, 2013, pp. 28897–900.
- ⁶² Exhibit 8162; McGuinty testimony, October 9, 2013, pp. 28900–2.
- ⁶³ Exhibit 6639.
- ⁶⁴ O’Leary testimony, September 17, 2013, pp. 25866–7.
- ⁶⁵ O’Leary testimony, September 17, 2013, p. 25868.
- ⁶⁶ Exhibit 6630.
- ⁶⁷ McGuinty testimony, October 9, 2013, pp. 28902–3.
- ⁶⁸ Exhibit 6632.
- ⁶⁹ McGuinty testimony, October 9, 2013, pp. 28903–5.
- ⁷⁰ McGuinty testimony, October 9, 2013, pp. 28905–6.
- ⁷¹ Exhibit 8205, p.038.
- ⁷² Exhibit 8196.
- ⁷³ Exhibit 8205; Mantha testimony, September 23, 2013, pp. 26740–1.
- ⁷⁴ Exhibit 8279.
- ⁷⁵ Exhibit 8205.
- ⁷⁶ O’Leary testimony, September 17, 2013, pp. 25869–70.
- ⁷⁷ McGuinty testimony, October 9, 2013, pp. 28906–7.
- ⁷⁸ McGuinty testimony, October 9, 2013, pp. 28907–8.
- ⁷⁹ Exhibit 8196.
- ⁸⁰ Exhibit 8196.
- ⁸¹ McGuinty testimony, October 9, 2013, pp. 28908–11.
- ⁸² Exhibit 8221.
- ⁸³ Exhibit 8221.
- ⁸⁴ McGuinty testimony, October 9, 2013, pp. 28908–11.
- ⁸⁵ Mantha testimony, September 23, 2013, pp. 26741–4 and 26747–9; see also Exhibit 8267.
- ⁸⁶ Mantha testimony, September 23, 2013, pp. 26745–7.
- ⁸⁷ Exhibit 8196; O’Leary testimony, September 17, 2013, p. 25870.
- ⁸⁸ O’Leary testimony, September 17, 2013, pp. 25870–1.
- ⁸⁹ Exhibit 9140, pp. 1625–6.
- ⁹⁰ O’Leary testimony, September 17, 2013, pp. 25876–8.
- ⁹¹ O’Leary testimony, September 17, 2013, pp. 25878–9.
- ⁹² O’Leary testimony, September 17, 2013, p. 25880.
- ⁹³ O’Leary testimony, September 17, 2013, pp. 25880–1.
- ⁹⁴ Hefkey testimony, October 8, 2013, pp. 28606–14.
- ⁹⁵ Exhibit 8196.
- ⁹⁶ O’Leary testimony, September 17, 2013, pp. 25871–2.
- ⁹⁷ Exhibit 8267.
- ⁹⁸ O’Leary testimony, September 17, 2013, pp. 25893–5.
- ⁹⁹ McGuinty testimony, October 9, 2013, pp. 28912–14.
- ¹⁰⁰ Exhibit 8223.
- ¹⁰¹ Exhibit 6378, p. 13; Exhibits 7828 and 7829; Gillespie testimony, September 3, 2013, p. 23626.
- ¹⁰² Exhibit 6378, p. 16; Gillespie testimony, September 3, 2014, pp. 23647–8.
- ¹⁰³ Exhibit 8260.
- ¹⁰⁴ Exhibit 8262.
- ¹⁰⁵ Exhibits 8266 and 8267.

- ¹⁰⁶ Exhibit 8266.
- ¹⁰⁷ Mantha testimony, September 23, 2013, pp. 26748–9.
- ¹⁰⁸ Exhibit 8267; O’Leary testimony, September 17, 2013, pp. 25891–3.
- ¹⁰⁹ Mantha testimony, September 23, 2013, pp. 26749–51.
- ¹¹⁰ Mantha testimony, September 23, 2013, pp. 26751–4.
- ¹¹¹ Mantha testimony, September 23, 2013, pp. 26754–5.
- ¹¹² Mantha testimony, September 23, 2013, pp. 26798–99.
- ¹¹³ Exhibit 8270; O’Leary testimony, September 17, 2013, p. 25896.
- ¹¹⁴ Exhibit 8270.
- ¹¹⁵ O’Leary testimony, September 17, 2013, p. 25897.
- ¹¹⁶ Exhibits 8271 and 8272.
- ¹¹⁷ Exhibit 6961.
- ¹¹⁸ Exhibit 6962.
- ¹¹⁹ O’Leary testimony, September 17, 2013, pp. 25898–9.
- ¹²⁰ McGuinty testimony, October 9, 2013, pp. 28914–17 and 28918–19.
- ¹²¹ McGuinty testimony, October 9, 2013, p. 28917.
- ¹²² Exhibit 9914.
- ¹²³ Exhibit 8275.
- ¹²⁴ Exhibit 8279.
- ¹²⁵ O’Leary testimony, September 17, 2013, pp. 25899–900.
- ¹²⁶ Exhibit 8281; O’Leary testimony, September 17, 2013, pp. 25900–1.
- ¹²⁷ O’Leary testimony, May 13, 2013, p. 25901.
- ¹²⁸ Exhibit 9140, p. 003; O’Leary testimony, September 17, 2013, pp. 25901–2.
- ¹²⁹ O’Leary testimony, September 17, 2013, p. 25902.
- ¹³⁰ O’Leary testimony, September 17, 2013, pp. 25903–5.
- ¹³¹ Exhibit 8282.
- ¹³² Exhibit 9140.
- ¹³³ O’Leary testimony, September 17, 2013, pp. 25905–6.
- ¹³⁴ O’Leary testimony, September 17, 2013, pp. 25906–10; Exhibit 9140.
- ¹³⁵ O’Leary testimony, September 17, 2013, pp. 25908–9.
- ¹³⁶ Exhibit 6964.
- ¹³⁷ O’Leary testimony, September 17, 2013, pp. 25910–11.
- ¹³⁸ Exhibit 9140; O’Leary testimony, September 17, 2013, pp. 25914–15.
- ¹³⁹ O’Leary testimony, September 17, 2013, p. 25921.
- ¹⁴⁰ O’Leary testimony, September 17, 2013, pp. 25921–3; Exhibit 6976.
- ¹⁴¹ Exhibit 6966; O’Leary testimony, September 17, 2013, pp. 25919–20.
- ¹⁴² Exhibit 6966; O’Leary testimony, September 17, 2013, pp. 25920–1.
- ¹⁴³ O’Leary testimony, September 17, 2013, pp. 25915–17; Exhibit 9140.
- ¹⁴⁴ Exhibit 9140, p. 004.
- ¹⁴⁵ O’Leary testimony, September 17, 2013, pp. 25918–19; Exhibit 9140.
- ¹⁴⁶ Exhibit 8297; O’Leary testimony, September 17, 2013, p. 25923.
- ¹⁴⁷ Exhibit 8297; O’Leary testimony, September 17, 2013, pp. 25923–4.
- ¹⁴⁸ Exhibits 6976 and 9648.
- ¹⁴⁹ Exhibits 6976 and 9648; O’Leary testimony, September 17, 2013, pp. 25933–8.
- ¹⁵⁰ Exhibit 8302.
- ¹⁵¹ O’Leary testimony, September 17, 2013, pp. 25924–6.
- ¹⁵² Exhibit 8303.
- ¹⁵³ O’Leary testimony, September 17, 2013, pp. 25926–7.
- ¹⁵⁴ Exhibit 8313; see also Exhibit 8312.
- ¹⁵⁵ Exhibit 8313.
- ¹⁵⁶ O’Leary testimony, September 17, 2013, pp. 25928–9.
- ¹⁵⁷ O’Leary testimony, September 17, 2013, pp. 25932–3.
- ¹⁵⁸ McGuinty testimony, October 9, 2013, pp. 28921–2.
- ¹⁵⁹ McGuinty testimony, October 9, 2013, pp. 28922–3.
- ¹⁶⁰ McGuinty testimony, October 9, 2013, pp. 28923–6.
- ¹⁶¹ Exhibit 6977.
- ¹⁶² O’Leary testimony, September 17, 2013, pp. 25938–40.
- ¹⁶³ O’Leary testimony, September 17, 2013, p. 25940.
- ¹⁶⁴ Exhibit 8318.
- ¹⁶⁵ Exhibit 8296, p. 001.
- ¹⁶⁶ Exhibit 8296, p. 001.
- ¹⁶⁷ Exhibit 8296, p. 002.
- ¹⁶⁸ O’Leary testimony, September 17, 2013, pp. 25943–4.
- ¹⁶⁹ Exhibit 8296, p. 095.
- ¹⁷⁰ O’Leary testimony, September 17, 2013, p. 25947.
- ¹⁷¹ Exhibit 9140, p. 0004.
- ¹⁷² O’Leary testimony, September 17, 2013, p. 25948.
- ¹⁷³ O’Leary testimony, September 17, 2013, pp. 25948–9.
- ¹⁷⁴ Exhibit 9140, p. 004; O’Leary testimony, September 17, 2013, p. 25950; McGuinty testimony, October 9, 2013, pp. 28927–8.
- ¹⁷⁵ McGuinty testimony, October 9, 2013, pp. 28926–9; Exhibit 9140, p. 004.
- ¹⁷⁶ McGuinty testimony, October 9, 2013, pp. 28945–6.
- ¹⁷⁷ O’Leary testimony, September 17, 2013, p. 25950.
- ¹⁷⁸ Exhibit 8324; O’Leary testimony, September 17, 2013, pp. 25951–2.
- ¹⁷⁹ Exhibit 7812, p. 006.
- ¹⁸⁰ Hefkey testimony, October 8, 2013, pp. 28626–9.
- ¹⁸¹ Neadles testimony, September 11, 2013, p. 25517.
- ¹⁸² Neadles testimony, September 11, 2013, pp. 25517–18.
- ¹⁸³ Neadles testimony, September 11, 2013, pp. 25518–19.
- ¹⁸⁴ Neadles testimony, September 11, 2013, pp. 25519 and 25522.
- ¹⁸⁵ Neadles testimony, September 11, 2013, pp. 25522–3.
- ¹⁸⁶ Neadles testimony, September 11, 2013, p. 25523.
- ¹⁸⁷ Neadles testimony, September 11, 2013, pp. 25519–20.
- ¹⁸⁸ Neadles testimony, September 11, 2013, p. 25520.
- ¹⁸⁹ Neadles testimony, September 11, 2013, p. 25521.
- ¹⁹⁰ Neadles testimony, September 11, 2013, p. 25524.
- ¹⁹¹ Hefkey testimony, October 8, 2013, pp. 28626–9.
- ¹⁹² Neadles testimony, September 11, 2013, p. 25525.
- ¹⁹³ Hefkey testimony, October 8, 2013, pp. 28626–9; Exhibit 7812, p. 006.
- ¹⁹⁴ Glavin testimony, October 1, 2013, pp. 27726–30; Exhibits 7617 and 6622.
- ¹⁹⁵ Glavin testimony, October 1, 2013, pp. 27730–2; Exhibits 7617 and 6622; Priestly testimony, October 2, 2013, pp. 27807–10 and 27813–14.
- ¹⁹⁶ Priestly testimony, October 2, 2013, pp. 27815–16.
- ¹⁹⁷ Glavin testimony, October 1, 2013, pp. 27732–3; Priestly testimony, October 2, 2013, pp. 27808–9 and 27812–14.
- ¹⁹⁸ Glavin testimony, October 1, 2013, pp. 27733–5.
- ¹⁹⁹ Exhibit 9140, pp. 004–006; Exhibit 7812, pp. 006–007; see also O’Leary testimony, September 17, 2013, pp. 25953–4; Hefkey testimony, October 8, 2013, pp. 28631–2.
- ²⁰⁰ O’Leary testimony, September 17, 2013, pp. 25953–4.
- ²⁰¹ McGuinty testimony, October 9, 2013, p. 28932.
- ²⁰² McGuinty testimony, October 9, 2013, p. 28931.

- ²⁰³ O'Leary testimony, September 17, 2013, p. 25952; Hefkey testimony, October 8, 2013, p. 28632; Exhibit 9140, pp. 004–006; Exhibit 7812, pp. 006–007.
- ²⁰⁴ Neadles testimony, September 11, 2013, p. 25528.
- ²⁰⁵ Neadles testimony, September 12, 2013, pp. 25548–9.
- ²⁰⁶ McGuinty testimony, October 9, 2013, p. 28932; Exhibit 9140, p. 004.
- ²⁰⁷ O'Leary testimony, September 17, 2013, pp. 25954–5; Neadles testimony, September 11, 2013, pp. 25529–30; Exhibit 9140, p. 005.
- ²⁰⁸ Exhibit 9140, p. 005.
- ²⁰⁹ Neadles testimony, September 11, 2013, pp. 25530–1.
- ²¹⁰ Neadles testimony, September 11, 2013, pp. 25531–2.
- ²¹¹ McGuinty testimony, October 9, 2013, pp. 28933–4; O'Leary testimony, September 17, 2013, pp. 25955–7; Neadles testimony, September 11, 2013, pp. 25532–3; Exhibit 9140, p. 005.
- ²¹² McGuinty testimony, October 9, 2013, pp. 28933–4; O'Leary testimony, September 17, 2013, pp. 25955–7; Exhibit 9140, p. 005.
- ²¹³ Exhibit 9140, p. 005; Exhibit 7812, p. 007; Hefkey testimony, October 8, 2013, pp. 28632–3.
- ²¹⁴ O'Leary testimony, September 17, 2013, pp. 25956–7.
- ²¹⁵ Neadles testimony, September 11, 2013, pp. 25512–13 and 25533.
- ²¹⁶ Feldman testimony, September 18, 2013, pp. 26034–9.
- ²¹⁷ Feldman testimony, September 18, 2013, pp. 26041–2.
- ²¹⁸ McGuinty testimony, October 9, 2013, p. 28933.
- ²¹⁹ Exhibit 9140, p. 005.
- ²²⁰ Neadles testimony, September 11, 2013, pp. 25533–4.
- ²²¹ Neadles testimony, September 11, 2013, pp. 25533–5, September 12, 2013, p. 25559; Exhibit 7812, p. 007; see also Hefkey testimony, October 8, 2013, pp. 28633–4.
- ²²² O'Leary testimony, September 17, 2013, p. 25957.
- ²²³ McGuinty testimony, October 9, 2013, p. 28934.
- ²²⁴ Exhibit 9140, p. 005.
- ²²⁵ Exhibit 7812, p. 007; Neadles testimony, September 12, 2013, pp. 25559–60; Hefkey testimony, October 8, 2013, pp. 28634–6.
- ²²⁶ McGuinty testimony, October 9, 2013, pp. 28935–6.
- ²²⁷ O'Leary testimony, September 17, 2013, p. 25958.
- ²²⁸ Neadles testimony, September 11, 2013, pp. 25555–7.
- ²²⁹ Neadles testimony, September 12, 2013, pp. 25560–1.
- ²³⁰ Exhibit 9140, p. 005.
- ²³¹ McGuinty testimony, October 9, 2013, pp. 28936–8.
- ²³² O'Leary testimony, September 17, 2013, pp. 25958–9; McGuinty testimony, October 9, 2013, pp. 28936–7.
- ²³³ McGuinty testimony, October 9, 2013, p. 28941.
- ²³⁴ O'Leary testimony, September 17, 2013, p. 25965.
- ²³⁵ O'Leary testimony, September 17, 2013, pp. 25964–5.
- ²³⁶ Exhibit 7812, p. 007; see also Hefkey testimony, October 8, 2013, pp. 28636–7.
- ²³⁷ Neadles testimony, September 12, 2013, pp. 25549–50.
- ²³⁸ Neadles testimony, September 12, 2013, p. 25561.
- ²³⁹ Neadles testimony, September 12, 2013, pp. 25561–2.
- ²⁴⁰ Exhibit 9140, p. 005; Exhibit 7812, p. 007; Neadles testimony, September 12, 2013, p. 25563; Hefkey testimony, October 8, 2013, pp. 28637–8.
- ²⁴¹ McGuinty testimony, October 9, 2013, pp. 28938–9; see also O'Leary testimony, September 17, 2013, p. 25959.
- ²⁴² McGuinty testimony, October 9, 2013, p. 28940; Exhibit 9140, pp. 005–006; see also Hefkey testimony, October 8, 2013, pp. 28638–40.
- ²⁴³ Neadles testimony, September 12, 2013, pp. 25550–1.
- ²⁴⁴ Neadles testimony, September 12, 2013, pp. 25551–3.
- ²⁴⁵ Neadles testimony, September 12, 2013, pp. 25563–4.
- ²⁴⁶ O'Leary testimony, September 17, 2013, p. 25960; Exhibit 9140, p. 006.
- ²⁴⁷ Exhibit 9140, p. 006; Neadles testimony, September 12, 2013, pp. 25553–4.
- ²⁴⁸ Exhibit 9140, p. 006; O'Leary testimony, September 17, 2013, p. 25960; Neadles testimony, September 12, 2013, p. 25564.
- ²⁴⁹ Exhibit 9140, p. 006.
- ²⁵⁰ Neadles testimony, September 12, 2013, p. 25556.
- ²⁵¹ Neadles testimony, September 12, 2013, pp. 25556–7.
- ²⁵² Neadles testimony, September 12, 2013, p. 25557.
- ²⁵³ Neadles testimony, September 12, 2013, pp. 25557–8.
- ²⁵⁴ O'Leary testimony, September 17, 2013, p. 25961.
- ²⁵⁵ McGuinty testimony, October 9, 2013, pp. 28941–2.
- ²⁵⁶ O'Leary testimony, September 17, 2013, p. 25961.
- ²⁵⁷ McGuinty testimony, October 9, 2013, pp. 28941–2.
- ²⁵⁸ McGuinty testimony, October 9, 2013, pp. 28942–4.
- ²⁵⁹ McGuinty testimony, October 9, 2013, p. 28946.
- ²⁶⁰ Neadles testimony, September 12, 2013, p. 25566.
- ²⁶¹ Neadles testimony, September 12, 2013, pp. 25566–8.
- ²⁶² Neadles testimony, September 12, 2013, p. 25565.
- ²⁶³ Neadles testimony, September 12, 2013, p. 25566.
- ²⁶⁴ Hefkey testimony, October 8, 2013, p. 28642.
- ²⁶⁵ Hefkey testimony, October 8, 2013, pp. 28641–2.
- ²⁶⁶ McGuinty testimony, October 9, 2013, pp. 28944–5; Mantha testimony, September 23, 2013, pp. 26774–80.
- ²⁶⁷ Mantha testimony, September 23, 2013, pp. 26774–80.
- ²⁶⁸ Mantha testimony, September 23, 2013, pp. 26774–80.
- ²⁶⁹ McGuinty testimony, October 9, 2013, pp. 28946–8.
- ²⁷⁰ McGuinty testimony, October 9, 2013, p. 28948; Exhibit 8346; O'Leary testimony, September 17, 2013, pp. 25962–3.
- ²⁷¹ Exhibit 3743, pp. 040–041; Officer testimony, August 22, 2013, p. 21845; Hamilton testimony, October 7, 2013, p. 28537.
- ²⁷² Exhibit 9449, pp. 734–5; Jeffreys testimony, October 3, 2014, pp. 28171–2 and 28176.
- ²⁷³ Hamilton testimony, October 7, 2013, p. 28537.
- ²⁷⁴ Hamilton testimony, October 7, 2013, pp. 28537–9.
- ²⁷⁵ Officer testimony, August 22, 2013, pp. 21845–6.
- ²⁷⁶ Officer testimony, August 22, 2013, p. 21846; Exhibit 3743, p. 041.
- ²⁷⁷ Officer testimony, August 22, 2013, pp. 21846–9.
- ²⁷⁸ Officer testimony, August 22, 2013, p. 21847.
- ²⁷⁹ Exhibit 3743, p. 042; Officer testimony, August 22, 2013, pp. 21849–50.
- ²⁸⁰ Officer testimony, August 22, 2013, pp. 21849–50; Exhibit 3743, p. 042.
- ²⁸¹ Officer testimony, August 22, 2013, p. 21850.
- ²⁸² Officer testimony, August 22, 2013, pp. 21850–1; Exhibit 3743, p. 042.
- ²⁸³ Officer testimony, August 22, 2013, p. 21851.
- ²⁸⁴ Officer testimony, August 22, 2013, pp. 21851–2.
- ²⁸⁵ Officer testimony, August 22, 2013, pp. 21852–3.
- ²⁸⁶ Officer testimony, August 22, 2013, p. 21853.
- ²⁸⁷ Officer testimony, August 22, 2013, pp. 21854–5.
- ²⁸⁸ Officer testimony, August 22, 2013, p. 21854.
- ²⁸⁹ Officer testimony, August 22, 2013, pp. 21855–6.
- ²⁹⁰ Officer testimony, August 22, 2013, pp. 21847–8 and 21856; Neadles testimony, September 12, 2013, pp. 25571–2.
- ²⁹¹ Exhibit 3743, p. 043.
- ²⁹² Officer testimony, August 22, 2013, pp. 21847–8 and 21856–7; Neadles testimony, September 12, 2013, pp. 25572–3.

- ²⁹³ Hamilton testimony, October 7, 2013, p. 28540; deBortoli testimony, October 7, 2013, pp. 28459–60; Jeffreys testimony, October 3, 2013, pp. 28176–8; Exhibit 9449, p. 735.
- ²⁹⁴ Exhibit 3743, p. 043.
- ²⁹⁵ Needles testimony, September 12, 2013, pp. 25573–4.
- ²⁹⁶ Exhibit 3743, p. 044.
- ²⁹⁷ Hamilton testimony, October 7, 2013, p. 28542.
- ²⁹⁸ Bray testimony, October 4, 2013, pp. 28344–5.
- ²⁹⁹ Hamilton testimony, October 7, 2013, p. 28542.
- ³⁰⁰ Exhibit 9911; Bray testimony, October 4, 2013, pp. 28343–4.
- ³⁰¹ Cranford testimony, September 9, 2013, pp. 24849–50.
- ³⁰² Cranford testimony, September 9, 2013, pp. 24850–1.
- ³⁰³ Needles testimony, September 12, 2013, pp. 25544–7.
- ³⁰⁴ Comella testimony, September 5, 2013, pp. 24278–9.
- ³⁰⁵ Comella testimony, September 5, 2013, pp. 24279–81 and 24357–8; Exhibit 6393, p. 1866.
- ³⁰⁶ Comella testimony, September 5, 2013, pp. 24279–81; Exhibit 6393, p. 1866.
- ³⁰⁷ Comella testimony, September 5, 2013, pp. 24358–60; Exhibit 6393, p. 1866.
- ³⁰⁸ Exhibit 7545, p. 02; Cranford testimony, September 9, 2013, p. 24851.
- ³⁰⁹ Cranford testimony, September 9, 2013, p. 24852; Exhibit 7545.
- ³¹⁰ Needles testimony, September 12, 2013, pp. 25547–8.
- ³¹¹ Sanders testimony, October 4, 2013, p. 28331.
- ³¹² Sanders testimony, October 4, 2013, pp. 28331–2.
- ³¹³ Chambers testimony, September 18, 2013, pp. 26177–8.
- ³¹⁴ Chambers testimony, September 18, 2013, p. 26178; Exhibit 7195.
- ³¹⁵ Exhibit 7196; Chambers testimony, September 18, 2013, p. 26178.
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- ³¹⁸ Exhibit 7198.
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- ³²⁰ Chambers testimony, September 18, 2013, pp. 26183–6.
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- ³²² Chambers testimony, September 18, 2013, pp. 26186–9; Exhibit 7200.
- ³²³ Exhibit 6954.
- ³²⁴ McGuinty testimony, October 9, 2013, pp. 28948–50; see also O’Leary testimony, September 17, 2013, pp. 25963–4.
- ³²⁵ O’Leary testimony, September 17, 2013, pp. 25964–6; Exhibit 6997.
- ³²⁶ O’Leary testimony, September 17, 2013, p. 25965.
- ³²⁷ O’Leary testimony, September 17, 2013, pp. 25966–7.
- ³²⁸ Jones testimony, September 26, 2013, pp. 27432–5; see also Sanders testimony, October 4, 2013, pp. 28321–2.
- ³²⁹ Exhibit 5052; Jones testimony, September 26, 2013, pp. 27413–18.
- ³³⁰ Jones testimony, September 26, 2013, pp. 27432–5.
- ³³¹ Jones testimony, September 26, 2013, pp. 27418–19.
- ³³² Jones testimony, September 26, 2013, pp. 27420–3.
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- ³³⁴ Needles testimony, September 12, 2013, pp. 25575–6.
- ³³⁵ Glavin testimony, October 1, 2013, pp. 27735–9.
- ³³⁶ Hefkey testimony, October 8, 2013, pp. 28642–3 and 28645–7; Exhibit 7812, p. 008.
- ³³⁷ Needles testimony, September 12, 2013, pp. 25577–8.
- ³³⁸ Needles testimony, September 12, 2013, p. 25579.
- ³³⁹ Hefkey testimony, October 8, 2013, pp. 28642–3 and 28645–7; Exhibit 7812, p. 008.
- ³⁴⁰ Hefkey testimony, October 8, 2013, pp. 28642–3 and 28645–7 and Exhibit 7812, p. 008.
- ³⁴¹ Needles testimony, September 12, 2013, p. 25579.
- ³⁴² Priestly testimony, October 2, 2013, p. 27817; Glavin testimony, October 1, 2013, pp. 27739–44.
- ³⁴³ Exhibit 9232, p. 21.
- ³⁴⁴ Chambers testimony, September 18, 2013, pp. 26237–8.
- ³⁴⁵ Needles testimony, September 12, 2013, pp. 25580–3; Exhibit 7812, p. 008.
- ³⁴⁶ Needles testimony, September 12, 2013, p. 25580.
- ³⁴⁷ Hefkey testimony, October 8, 2013, pp. 28643–5; Exhibit 7812, p. 008.
- ³⁴⁸ Cranford testimony, September 9, 2013, pp. 24937–8.
- ³⁴⁹ Needles testimony, September 12, 2013, pp. 25581–2.
- ³⁵⁰ Hefkey testimony, October 8, 2013, pp. 28643–5; Exhibit 7812, p. 008.
- ³⁵¹ Hefkey testimony, October 8, 2013, pp. 28643–5; Exhibit 7812, p. 008.
- ³⁵² Hefkey testimony, October 8, 2013, pp. 28647–8; Exhibit 7812, p. 008.
- ³⁵³ Needles testimony, September 12, 2013, p. 25583.
- ³⁵⁴ Hefkey testimony, October 8, 2013, pp. 28647–50; Exhibit 7812, p. 008.
- ³⁵⁵ Glavin testimony, October 1, 2013, pp. 27739–40.
- ³⁵⁶ Priestly testimony, October 2, 2013, p. 27808; Exhibits 6622 and 9571.
- ³⁵⁷ Glavin testimony, October 1, 2013, pp. 27739–41; see also notes from Sgt. Glavin at Exhibit 7617, p. 192.
- ³⁵⁸ Comella testimony, September 5, 2013, pp. 24281–5; Exhibit 6393, p. 1866.
- ³⁵⁹ Priestly testimony, October 2, 2013, pp. 27816–17.
- ³⁶⁰ Comella testimony, September 5, 2013, pp. 24281–5; Exhibit 6393, p. 1866.
- ³⁶¹ Exhibit 9555.
- ³⁶² Priestly testimony, October 2, 2013, pp. 27824–9; Exhibit 7950.
- ³⁶³ Priestly testimony, October 2, 2013, pp. 27829–34; Exhibit 9899 (see also Exhibit 9578).
- ³⁶⁴ Priestly testimony, October 2, 2013, pp. 27834–5; Exhibit 9900.
- ³⁶⁵ Priestly testimony, October 2, 2013, pp. 27836–7.
- ³⁶⁶ Priestly testimony, October 2, 2013, pp. 27817–18.
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- ³⁶⁹ Glavin testimony, October 1, 2013, pp. 27742–3.
- ³⁷⁰ Glavin testimony, October 1, 2013, pp. 27767–8.
- ³⁷¹ Bailey testimony, August 27, 2013, pp. 22780–1; Exhibit 6374, p. 05; Gillespie testimony, September 3, 2013, pp. 23747–8; Exhibit 6378, p. 31.
- ³⁷² Bailey testimony, August 27, 2013, pp. 22781–2; Exhibit 6374, p. 05; see also Cox testimony, August 26, 2013, p. 22396; Exhibit 6377, p. 009.
- ³⁷³ Exhibit 7617, p. 192.
- ³⁷⁴ Glavin testimony, October 1, 2013, pp. 27739–44; Exhibit 5971; Exhibit 7617, pp. 192–3.
- ³⁷⁵ Priestly testimony, October 2, 2013, pp. 27822–3.
- ³⁷⁶ Guy testimony, September 24, 2013, p. 27139; see also Fowlds testimony, September 19, 2013, pp. 26369–71; Exhibit 6242, p. 183.
- ³⁷⁷ Needles testimony, September 12, 2013, p. 25592.
- ³⁷⁸ Needles testimony, September 12, 2013, pp. 25592–3; Exhibit 7949.
- ³⁷⁹ Needles testimony, September 12, 2013, pp. 25594–6.
- ³⁸⁰ Needles testimony, September 12, 2013, pp. 25596–7.

- 381 McCallion testimony, September 6, 2013, pp. 24651–3; Exhibit 7949.
- 382 Priestly testimony, October 2, 2013, pp. 27914–5; Exhibit 9897.
- 383 Comella testimony, September 5, 2013, pp. 24292–3.
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- 385 Exhibit 7477, p. 159; Neadles testimony, September 12, 2013, pp. 25587–90.
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- 389 Priestly testimony, October 2, 2013, pp. 27913–14.
- 390 McGuinty testimony, October 9, 2013, pp. 28950–1.
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- 409 Hulsman testimony, August 28, 2013, pp. 23075–7.
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- 413 Gillespie testimony, September 3, 2013, pp. 23748–57; Exhibit 6378, pp. 31–32.
- 414 Gillespie testimony, September 3, 2013, pp. 23748–57; Exhibit 6378, pp. 31–32.
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- 417 O’Leary testimony, September 17, 2013, p. 25967.
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- 433 McGuinty testimony, October 9, 2013, pp. 28952–4; Exhibit 8422.
- 434 McGuinty testimony, October 9, 2013, pp. 28952–4; Exhibit 8422.
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- 436 O’Leary testimony, September 17, 2013, pp. 25980–1.
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- 440 Officer testimony, August 22, 2013, p. 21858; Exhibit 3743, p. 046; Neadles testimony, September 12, 2013, pp. 25598–612; Exhibit 8035, p. 228.
- 441 Neadles testimony, September 12, 2013, p. 25598.
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- 471 Selters testimony, September 10, 2013, pp. 25102–3, 25123–4; Exhibit 6246, p. 010.
- 472 Gillespie testimony, September 3, 2013, pp. 23757–63; Exhibit 6378, p. 32.
- 473 Gillespie testimony, September 3, 2013, pp. 23757–63; Exhibit 6378, p. 32.
- 474 Selters testimony, September 10, 2013, pp. 25102–3; Exhibit 6246, p. 010.

- ⁴⁷⁵ Selvers testimony, September 10, 2013, p. 25126.
- ⁴⁷⁶ Neadles testimony, September 12, 2013, p. 25629; Exhibit 7812, p. 012.
- ⁴⁷⁷ Neadles testimony, September 12, 2013, p. 25629.
- ⁴⁷⁸ Exhibit 7812, p. 013.
- ⁴⁷⁹ Priestly testimony, October 2, 2013, pp. 27838–40; Exhibit 6622.
- ⁴⁸⁰ Priestly testimony, October 2, 2013, p. 27844.
- ⁴⁸¹ Priestly testimony, October 2, 2013, pp. 27841–3.
- ⁴⁸² Priestly testimony, October 2, 2013, pp. 27844–5.
- ⁴⁸³ Priestly testimony, October 2, 2013, p. 27846.
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- ⁴⁸⁵ Priestly testimony, October 2, 2013, p. 27848.
- ⁴⁸⁶ Exhibit 9449, p. 739; Jeffreys testimony, October 3, 2013, p. 28188.
- ⁴⁸⁷ Jeffreys testimony, October 3, 2013, pp. 28188–9.
- ⁴⁸⁸ Priestly testimony, October 2, 2013, pp. 27850–1.
- ⁴⁸⁹ Comella testimony, September 5, 2013, pp. 24305–9; Exhibits 7296 and 2115.
- ⁴⁹⁰ Jeffreys testimony, October 3, 2013, pp. 28188–9.
- ⁴⁹¹ Priestly testimony, October 2, 2013, p. 27849.
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- ⁴⁹⁵ Exhibit 7296; Jeffreys testimony, October 3, 2013, pp. 28188–9.
- ⁴⁹⁶ Jeffreys testimony, October 3, 2013, p. 28189.
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- ⁵⁰⁰ Priestly testimony, October 2, 2013, p. 27852.
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- ⁵⁰⁶ Priestly testimony, October 2, 2013, pp. 27854–5.
- ⁵⁰⁷ Priestly testimony, October 2, 2013, p. 27855; Exhibit 7296, p. 232.
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- ⁵⁰⁹ Priestly testimony, October 2, 2013, pp. 27855–6.
- ⁵¹⁰ Priestly testimony, October 2, 2013, p. 27856; Exhibit 7293, p. 232.
- ⁵¹¹ Priestly testimony, October 2, 2013, p. 27856; Exhibit 7296.
- ⁵¹² Priestly testimony, October 2, 2013, p. 27856.
- ⁵¹³ Priestly testimony, October 2, 2013, pp. 27856–7.
- ⁵¹⁴ Priestly testimony, October 2, 2013, p. 27857.
- ⁵¹⁵ Priestly testimony, October 2, 2013, pp. 27857–8.
- ⁵¹⁶ Priestly testimony, October 2, 2013, p. 27858.
- ⁵¹⁷ Priestly testimony, October 2, 2013, p. 27859; Exhibit 7296, p. 232.
- ⁵¹⁸ Priestly testimony, October 2, 2013, pp. 27859–60.
- ⁵¹⁹ Priestly testimony, October 2, 2013, p. 27860.
- ⁵²⁰ Priestly testimony, October 2, 2013, pp. 27861–2.
- ⁵²¹ Priestly testimony, October 2, 2013, pp. 27862–3.
- ⁵²² Priestly testimony, October 2, 2013, p. 27863.
- ⁵²³ Priestly testimony, October 2, 2013, p. 27864.
- ⁵²⁴ Priestly testimony, October 2, 2013, p. 27865.
- ⁵²⁵ Priestly testimony, October 2, 2013, p. 27866.
- ⁵²⁶ Priestly testimony, October 2, 2013, p. 27867.
- ⁵²⁷ Exhibit 8035, p. 4232.
- ⁵²⁸ Exhibit 6622, p. 004.
- ⁵²⁹ Priestly testimony, October 2, 2013, p. 27868; see also Comella testimony, September 5, 2013, pp. 24305–9, and Exhibits 7296 and 2115.
- ⁵³⁰ Priestly testimony, October 2, 2013, pp. 27868–9; Exhibit 7296, p. 232.
- ⁵³¹ Priestly testimony, October 2, 2013, p. 27869.
- ⁵³² Priestly testimony, October 2, 2013, p. 27870.
- ⁵³³ Priestly testimony, October 2, 2013, pp. 27871–2.
- ⁵³⁴ Neadles testimony, September 12, 2013, pp. 25630–1; Exhibit 7477, pp. 157–8.
- ⁵³⁵ Neadles testimony, September 12, 2013, pp. 25630–1.
- ⁵³⁶ Priestly testimony, October 2, 2013, p. 27867; Exhibit 6622.
- ⁵³⁷ Bailey testimony, August 27, 2013, pp. 22785–7; Exhibit 6374; Cox testimony, August 26, 2013, pp. 22400–8; Exhibit 6377, p. 009.
- ⁵³⁸ Priestly testimony, October 2, 2013, pp. 27874–5; Exhibits 9580 and 9897.
- ⁵³⁹ Priestly testimony, October 2, 2013, p. 27876.
- ⁵⁴⁰ Priestly testimony, October 2, 2013, p. 27877; Exhibit 9898.
- ⁵⁴¹ Priestly testimony, October 2, 2013, p. 27880.
- ⁵⁴² Priestly testimony, October 2, 2013, pp. 27881 and 27884.
- ⁵⁴³ Priestly testimony, October 2, 2013, pp. 27884–6.
- ⁵⁴⁴ Priestly testimony, October 2, 2013, p. 27886.
- ⁵⁴⁵ Priestly testimony, October 2, 2013, p. 27884.
- ⁵⁴⁶ Priestly testimony, October 2, 2013, pp. 27887–8.
- ⁵⁴⁷ Priestly testimony, October 2, 2013, pp. 27883 and 27888–9.
- ⁵⁴⁸ Priestly testimony, October 2, 2013, pp. 27889–90.
- ⁵⁴⁹ Priestly testimony, October 2, 2013, p. 27890.
- ⁵⁵⁰ Priestly testimony, October 2, 2013, p. 27891.
- ⁵⁵¹ Priestly testimony, October 2, 2013, p. 27892.
- ⁵⁵² Priestly testimony, October 2, 2013, p. 27892.
- ⁵⁵³ Priestly testimony, October 2, 2013, pp. 27892–3.
- ⁵⁵⁴ Priestly testimony, October 2, 2013, p. 27893.
- ⁵⁵⁵ Priestly testimony, October 2, 2013, p. 27894.
- ⁵⁵⁶ Priestly testimony, October 2, 2013, pp. 27895–6.
- ⁵⁵⁷ Priestly testimony, October 2, 2013, p. 27896.
- ⁵⁵⁸ Priestly testimony, October 2, 2013, pp. 27896–7.
- ⁵⁵⁹ Comella testimony, September 5, 2013, pp. 24305–9; Exhibits 7296 and 2115.
- ⁵⁶⁰ Comella testimony, September 5, 2013, pp. 24363–5.
- ⁵⁶¹ Jeffreys testimony, October 3, 2013, pp. 28211–12.
- ⁵⁶² Jeffreys testimony, October 3, 2013, p. 28213.
- ⁵⁶³ Jeffreys testimony, October 3, 2013, p. 28213.
- ⁵⁶⁴ Exhibit 6377, p. 009.
- ⁵⁶⁵ Cox testimony, August 26, 2013, pp. 22400–8; Exhibit 6377, p. 009.
- ⁵⁶⁶ Cox testimony, August 26, 2013, pp. 22400–8; Exhibit 6377, p. 009.
- ⁵⁶⁷ Gillespie testimony, September 3, 2013, pp. 23768–9; Bailey testimony, August 27, 2013, pp. 22788–9; Cox testimony, August 26, 2013, p. 22409; Exhibit 6378, p. 034; Exhibit 6374, p. 006; Exhibit 6377, p. 009.
- ⁵⁶⁸ Gillespie testimony, September 3, 2013, p. 23769; Exhibit 6378, p. 035.
- ⁵⁶⁹ Bailey testimony, August 27, 2013, pp. 22788–9; Cox testimony, August 26, 2013, p. 22409; Exhibit 6378, p. 034; Exhibit 6374, p. 006; Exhibit 6377, p. 009.
- ⁵⁷⁰ Exhibit 6378, pp. 035–036.
- ⁵⁷¹ Exhibit 6378, pp. 036–7.
- ⁵⁷² Gillespie testimony, September 3, 2013, pp. 23775–7.
- ⁵⁷³ Cox testimony, August 26, 2013, pp. 22409–11.
- ⁵⁷⁴ Fowlds testimony, September 19, 2013, pp. 26358–60.

- ⁵⁷⁵ Cox testimony, August 26, 2013, pp. 22411–14; Exhibit 6377, pp. 009–010.
- ⁵⁷⁶ Exhibit 6374, pp. 06–09.
- ⁵⁷⁷ Bailey testimony, August 27, 2013, p. 22794; Exhibit 6374, pp. 06–09.
- ⁵⁷⁸ Gillespie testimony, September 3, 2014, pp. 23764–5.
- ⁵⁷⁹ Exhibit 6378, pp. 033–034.
- ⁵⁸⁰ Gillespie testimony, September 3, 2014, p. 23767.
- ⁵⁸¹ Lacroix Testimony, October 3, 2013, pp. 28016–20.
- ⁵⁸² McGuinty testimony, October 9, 2013, pp. 28954–5.
- ⁵⁸³ Priestly testimony, October 2, 2013, pp. 27898–9; Exhibit 6622.
- ⁵⁸⁴ Priestly testimony, October 2, 2013, pp. 27900–2.
- ⁵⁸⁵ Priestly testimony, October 2, 2013, pp. 27900–2.