

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 33

April 25, 2013



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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is Day 33 in the Inquiry proceedings held before the Honourable Justice P.R. Belangér, Commissioner, at the White Mountain Academy of the Arts, 99 Spine Road, Elliot Lake, Ontario, on the 25th day of April, 2013, commencing at 9:00 a.m.

REPORTED BY: Helen Martineau
Certified Shorthand Reporter

1 A P P E A R A N C E S :

2

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4 NATALIA RODRIGUEZ, Esq, Commission Counsel

5

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7 JUDITH PARKER, Ms., Government of Ontario

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9 PAUL CASSAN, Esq.,

10 STEVEN SHOEMAKER, Esq., City of Elliot Lake

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Greg Saunders

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Bob Wood

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1 --- Upon commencing at 9:00 a.m.

2 THE COMMISSIONER: Good morning
3 everybody, Mr. Doody.

4 MR. DOODY: Thank you, Mr. Commissioner.

5 EXAMINATION-IN-CHIEF BY MR. DOODY:

6 (CONTINUED)

7 Q. Good morning, Mr. Speck.

8 A. Good morning, Mr. Doody. Pleasure
9 to see you again.

10 Q. Likewise.

11 A. You sound like you don't believe me.

12 Q. I do, I do. If I could have Exhibit
13 No. 11-85 and tab 86 of volume 6, Mr. Speck. And,
14 sir, yesterday we were -- I was asking you
15 questions about the events at the end of April and
16 early May 2005 relating to leaks in the library.
17 And these e-mails continue that theme.

18 MR. DOODY: Oh, my goodness. I'm very
19 sorry, Mr. Commissioner.

20 THE COMMISSIONER: Well, normally I have
21 counsel park their telephones in there.

22 MR. DOODY: The important business not
23 concluded if that happened. But if it happens
24 again --

25 THE COMMISSIONER: Well, considering the

1 Commission paid for it, perhaps we'll make an
2 exception.

3 BY MR. DOODY:

4 Q. If I could have you look at the
5 e-mail at the bottom of the page, Mr. Speck. This
6 is an e-mail from Ms. Menzies to Ms. Fazekas and
7 she writes. "Hi Barb," and this is on May the
8 3rd, 2005, at 2:49 p.m. And Ms. Menzies, the
9 chair of the Library Board, writes:

10 "Hi Barb, just wondered if Cathy McTaggart
11 gave you any information about the council
12 meeting last night. I would be interested
13 to know if the council has decided to take
14 any action.

15 "I read the report on the physical plant,
16 and was happy to know that Bob Stirling
17 was able to get the sample so quickly."

18 And Ms. Fazekas responded at 3:38 p.m.

19 on that day saying:

20 "The only thing that emerged from the
21 meeting was an e-mail from Troy that I had
22 yet to report on specific deficiencies
23 about the current situation. Cathy has
24 not contacted me today. I replied
25 concerning the action taken.

1 "Troy did come into the library at noon to
2 survey the situation. There is now a big
3 hole between Pat's desk through to the
4 washroom. Bob Stirling has taken a sample
5 of this moldy drywall to be sent away for
6 testing. Bob has advised the mall
7 maintenance staff of his actions and
8 alerted them to repair the drywall. He
9 also spoke to Mr. Kennealy earlier this
10 morning to advise him as to the reason why
11 he had been asked to come to the Library.
12 Troy wants me to package up all the
13 reports received from the Ministry and the
14 lab plus the invoices and send them to the
15 landlord."

16 Now, sir, my first question is about the
17 reference to the Council meeting. We spoke of
18 this yesterday and I advised you that we received
19 the records from the City and there was no Council
20 meeting on the 2nd of May and there was also a
21 reference in the earlier e-mails about that
22 yesterday to a caucus meeting. Can you give us
23 any explanation for what Ms. Fazekas and
24 apparently Ms. McTaggart could be talking about?

25 A. No.

1 Q. You have no recollection of a
2 meeting with Council to discuss the issues
3 relating to -- sorry, at which was discussed the
4 issues relating to the library?

5 A. No, I don't.

6 Q. Do you recall going in to the
7 library that day to see what was going on?

8 A. Vaguely. I wouldn't have when I was
9 asked eight months ago, but reading this I have
10 some vague recollection.

11 Q. If I could ask you to turn to tab
12 88, sir, Exhibit No. 11-87. In the bottom e-mail
13 May 3rd at 10:08 a.m., Ms. Fazekas is -- sorry,
14 the bottom one, May 2nd at 10:05 to Ms. Fazekas,
15 and I take it this is the e-mail to which she was
16 referring to the e-mail we just looked at and you
17 said to her.

18 "Further to all of the concerns raised a
19 week ago, I have still not seen anything
20 outlining the deficiencies. Have you had
21 any meetings or discussions with the
22 landlord? Do you have any scheduled?
23 Please contact me in this regard on
24 Tuesday."

25 And Ms. Fazekas responds the next

1 morning at 10:08 a.m. and writes.

2 "Bob Stirling from Chemnorth was here this
3 morning taking rug and ceiling tile
4 samples for testing. He did remove about
5 2 feet of drywall from an office area and
6 the bathroom where leaks were seen last
7 week. He will be providing a report of
8 his findings which I will then forward to
9 the Health and Safety Committee and
10 yourself. I will do the same with
11 information I receive from the Ministry of
12 Labour representative who is expected
13 today or tomorrow.

14 "The landlord is aware that Mr. Stirling
15 is doing this work and was told to do
16 "whatever it takes". Mr. Stirling is
17 talking to the maintenance staff as well."
18 And you then respond at 11:13 a.m. and

19 said:

20 "I understand forwarding the information
21 to the Health & Safety Committee, but I
22 trust you are not expecting them to
23 address the situation. Once you find out
24 from Mr. Stirling what needs to be done, I
25 suggest you sit down with the Landlord and

1 get their assurances that any remedial
2 work will be completed. If you need any
3 assistance from me with that this week,
4 let me know."

5 Sir, can you tell me why you said or
6 wrote to Ms. Fazekas that you -- you trusted she
7 was not expecting the Health and Safety Committee
8 to address the situation? Is that Health and
9 Safety Committee not formed for the purpose of
10 addressing unsafe work environment issues?

11 A. I think you're misunderstanding the
12 reading of it. The emphasis in that sentence
13 should be them. I recall my concern was that it
14 seemed to me Barb didn't quite seem know what to
15 do still. And so in the earlier e-mail when she
16 said she'd sent it to the Health and Safety
17 Committee, I wanted to be sure she didn't think it
18 was the Health and Safety Committee's obligation
19 to ensure that the remediation got -- like talk to
20 the contractors and get that stuff done.

21 That it was something that she had to
22 do.

23 Q. We agree that it was the Health and
24 Safety Committee's role to receive complaints
25 about unsafe work environments?

1 A. Absolutely. And I wasn't in any way
2 in this e-mail suggesting that they not.

3 Q. And it was their role to address the
4 situation in terms of recommending fixes?

5 A. Recommendations, that's right.

6 Q. And so what you are -- what your
7 evidence is is that what you meant or what you
8 intended to communicate was that they would not be
9 able to do the remediation?

10 A. That I wanted to make clear that she
11 wasn't just sending the stuff to them expecting
12 them to be contacting contractors and follow up
13 with the landlord and get the remediation done.

14 Q. And by remediation, do you mean
15 cleaning up the mess in library or stopping the
16 leaks.

17 A. Cleaning up the mess and the damage
18 in the library.

19 Q. Okay. If I could ask you to turn to
20 tab 89, Exhibit No. 11-88. This is a form from
21 the Ontario Ministry of Labour and it records a
22 meeting with Barbara Fazekas and Mr. Reagan on the
23 3rd of May accompanied by a gentleman by the name
24 of Tony Fontana, a hygienist from the Ministry of
25 Labour, to indicate that some air monitoring was

1 done and this was the result of the complaint to
2 the Ministry of Labour, correct?

3 A. That's correct.

4 Q. And if I could ask you to turn to
5 the next -- sorry to tab 91, this is Exhibit No.
6 11-88.

7 THE COMMISSIONER: That was the last
8 one.

9 MR. DOODY: Exhibit No. 11-89. Thank
10 you, Mr. Commissioner.

11 BY MR. DOODY:

12 Q. This is a memorandum to Mr. Leddy --
13 sorry, Ms. Leddy, the Personnel Manager at the
14 City and the -- she was the City staff person
15 responsible for health and safety, correct?

16 A. Yes, she was. She was our Manager
17 of Human Resources.

18 Q. And this is a memo to her from Ms.
19 Fazekas on May the 4th and Ms. Fazekas writes:

20 "There are two thrusts to recent
21 developments at the Library regarding the
22 condition of the physical plant:

23 "1) The Library Board is planning for the
24 expiration of the lease in 2009. The
25 letter from Ms. Menzies to the CAO was

1 written after discussion at the April
2 Board meeting. This meeting was attended
3 by Mr. Gagnon who was then to take our
4 concerns to Mr. Speck for direction."

5 That would be the letter that Ms.
6 Menzies wrote to you that was dated, I believe,
7 April 28, correct?

8 A. Yes.

9 Q. "2) Before Ms. Menzies' letter
10 Could be delivered to Mr. Speck, Ms. Morin
11 addressed her concerns regarding her
12 health in the present situation at the
13 library to myself, the Board and City
14 Council.

15 3) Since both Mr. Gagnon and Ms.
16 Morin asked me to have the air quality in
17 the Library checked, I called Mr. Reagan
18 from the Ministry of Labour to see if this
19 could be done as he was the one who
20 arranged it several years ago. He replied
21 that he could no longer do this due to a
22 shortage of manpower. He referred me to
23 the Industrial Accident Prevention
24 Association. When I checked their
25 website, this type of testing appeared not

1 to be included in their mandate. As its
2 nearest office is in Sudbury, I tried
3 other resources.

4 4) The Algoma District Board of
5 Education had used Bob Stirling of
6 Chemnorth to do some testing of mould in
7 carpets in one of their schools. I
8 contacted Bob who agreed to do a
9 preliminary assessment of the situation.
10 He came to the Library for about half an
11 hour on Thursday, April 28, taking
12 readings of moisture levels in the walls
13 with the most recent leaks from the
14 ceiling. He identified the areas with a
15 reading of over 15 with red dots. The
16 three conditions necessary for the growth
17 of mould are temperature of over 65
18 degrees, a moisture level of over 15 and
19 the presence of cellulose (saw dust,
20 paper, etc.) The main area was the wall
21 between the tech office and the bathroom.
22 He agreed to return the following week for
23 further testing in the ceiling.

24 On April 28th, Mr. Reagan called back
25 to say that he had a hygienist with the

1 Ministry available to do some testing on
2 the following Tuesday or Wednesday.

3 On Tuesday, May 3rd, Mr. Stirling
4 returned. He discovered mould in the area
5 identified last week with the high
6 moisture content. He had the affected
7 areas of drywall removed from the
8 premises, the area cleaned with a hepavac.

9 He has sent 4 samples (a rug sample,
10 a piece of ceiling tile and two pieces of
11 the drywall) to a lab in Sudbury for
12 testing. This morning he informed me that
13 the testing will be take from 2-4 days and
14 cost \$100 per sample. Mr. Stirling also
15 notified the maintenance crew from the
16 mall as to his actions, advising them that
17 he had removed the affected drywall and
18 that it should be replaced.

19 Mr. Tony Fontana, Hygiene Consultant
20 from the Health and Safety Program of the
21 Ministry of Labour, came to the Library
22 with Mr. Reagan on May 3rd. He did some
23 air quality testing with the carbon
24 dioxide reader. He said that it is
25 difficult to test for mould spores as a

1 reading should be really be done with a
2 comparison to outside air. Outside and
3 inside readings should be the same. Only
4 a high concentration of any element should
5 be a concern. I am not sure how long it
6 will take to receive his report.

7 Mr. Speck visited the premises on May
8 3rd, to view the affected area. He
9 suggested that I contact Mr. Jonathan
10 Bouma from the Algoma Health Unit for his
11 input as to the safety of the Library's
12 air quality. He also directed me to put
13 all the reports and invoices together in a
14 package to send to the landlord.

15 I am still gathering the history of
16 communications with the mall regarding the
17 requests for ceiling tile replacements and
18 the air quality testing; however I wanted
19 to get this to you before tomorrow's
20 meeting."

21 And she notes that she is unable to
22 attend the Health and Safety meeting on Thursday,
23 May the 5th.

24 MR. CASSAN: I wonder if I might
25 interrupt. I just received some information as we

1 were sitting here. I need to speak to Mr. Doody.
2 I'm wondering if we could have five minutes.

3 THE COMMISSIONER: Let's take five
4 minutes.

5 MR. CASSAN: Thank you, Mr.
6 Commissioner.

7 --- Break taken 9:15 a.m.

8 --- Upon resuming at 10:04 a.m.

9 MR. CASSAN: Thank you, Mr.
10 Commissioner, for the break. Certainly it's not
11 my practice to interrupt my friend, but some
12 relevant information had just come forward dealing
13 with the testimony of this witness and I thought
14 it was my professional obligation to advise my
15 friend and I thank you for the break.

16 THE COMMISSIONER: Mr. Doody.

17 MR. DOODY: Thank you, Mr. Commissioner.

18 BY MR. DOODY:

19 Q. Mr. Speck, I understand that you
20 have in front of you a package of documents?

21 A. I do.

22 Q. And if I could just hand one up to
23 the Commissioner. Now, sir, Mr. Cassan told me in
24 the break we just took that he had just been
25 provided with these documents which had been found

1 on, I believe, the computer of Ms. -- or at least
2 the memory from the computer of Ms. Vincent, Ms.
3 Danielle Vincent who -- and she -- and do you know
4 who Ms. Vincent is?

5 A. Yes, she was the assistant to both
6 myself and the Mayor during my time.

7 Q. Right. And she was in fact the
8 assistant to the Mayor and you while you were CAO
9 and she worked for the City for over 30 years, I
10 understand?

11 A. Something like that, yeah.

12 Q. And, sir, these documents which you
13 have before you are -- appear to be agendas for
14 what is called Council caucus meetings. And there
15 are 28 agendas. And they -- they're in
16 chronological order before you and the earliest
17 agenda is January 6th, 2004, and the latest is May
18 with the date blank, 2006. And there are agendas,
19 for it, appears almost every month in that time
20 frame with occasionally two meetings in one month.
21 And there are a series of items for discussion set
22 out in the agenda. And the -- the time of the
23 meetings is set to be 4:00 p.m on each agenda.
24 And the location of the meetings is said to be the
25 committee room.

1 And your name is at the bottom of each
2 document as Chief Administrative Officer. Do you
3 see that, sir?

4 A. Yes, I do.

5 Q. And do you recall me asking you
6 questions about caucus meetings?

7 A. I do.

8 Q. And do you recall me asking you
9 these questions and you giving me these answers
10 yesterday.

11 QUESTION: Have you heard the term caucus
12 meetings?

13 ANSWER: Yes.

14 QUESTION: What does that mean, a caucus
15 meeting?

16 ANSWER: That is an in-camera session.

17 QUESTION: Authorized under a resolution
18 of the provisions of the Municipal Act?

19 ANSWER: That's my understanding, yeah.
20 Do you recall that evidence, sir.

21 A. Yes, I do.

22 Q. And do you recall being -- giving
23 this evidence, okay, in the second last paragraph,
24 referring to an e-mail Ms. Fazekas wrote which I
25 put to you yesterday.

1 "QUESTION: In the second last paragraph
2 Ms. Fazekas writes. Sorry about all this
3 bad news. However I want you to know how
4 things are developing. On May 2nd the
5 Mayor and Council have scheduled a caucus
6 meeting in the committee room when we
7 wanted to meet. So I suggested that we
8 might appear as a delegation to that
9 meeting. I asked you earlier about what a
10 caucus meeting was and I think you told me
11 that it was an in-camera meeting.

12 ANSWER: That's right.

13 QUESTION: Would an in-camera meeting be
14 scheduled in advance?

15 ANSWER: Yeah.

16 QUESTION: I can tell you that I've -- the
17 City has provided to us agendas for all
18 the meetings throughout this period of
19 time. And there was not a meeting of
20 Council on May the 2nd. There was a
21 meeting the Monday prior, this was April
22 25th."

23 And I think there might be an error in
24 the transcript. It says:

25 "The Monday subsequent was -- is May 9.

1 Would caucus meetings occur on days other
2 than when Council was meeting?

3 ANSWER: I think from time-to-time, they
4 would have. We'd have to put notice out.
5 But if an issue had come up, which is
6 quite often the case with matters that go
7 in-camera, personnel or legal issues, so I
8 don't think it would be unheard of."

9 And with reservations given that that is
10 a rough, uncertified transcript, do you recall
11 being asked those questions and giving those
12 answers?

13 A. Yes, I do, sir.

14 Q. And, sir, can you explain to us what
15 these documents are? They appear to be agendas
16 for regular meetings of Council occurring on days
17 when caucus -- sorry, when Council was not
18 scheduled. And I can tell you before you answer,
19 I can tell you we have -- we have provided to us,
20 and they have been entered as exhibits, all of the
21 Council agendas from February 14th, 2000, through
22 to April of 2013. And I haven't checked every
23 single one of these caucus meetings, but the ones
24 I have checked appear to be on dates when Council
25 was not meeting. So given that, sir, can you tell

1 us what these documents are?

2 A. These were -- and you have to
3 remember, I've worked in three other
4 municipalities since Elliot Lake. And in at least
5 two of those, in-camera meetings that are properly
6 under the Municipal Act are sometimes called
7 caucus meetings. I had forgotten about these, but
8 I do recall them, seeing them now. This was
9 something -- a practice that I understand began
10 during the time of Mr. Bauthus. It was a request
11 that the Mayor had made that he felt there wasn't
12 enough opportunity to get updates on what was
13 happening on issues in the community, and so he
14 wanted us to meet monthly to have those
15 discussions.

16 Q. And were these meetings -- monthly
17 meetings, were they with public notice given of
18 them?

19 A. No, they were not.

20 Q. Were they in-camera?

21 A. They were in-camera. There seemed
22 to be some general awareness that they happened.
23 And you mentioned that Ms. Fazekas was aware that
24 -- that one was happening, but it certainly wasn't
25 something that was advertised.

1 Q. And the subjects discussed were not
2 subjects for which a proper resolution could be
3 made and determined to go in-camera pursuant to
4 the Municipal Act?

5 A. As I look at these, the majority
6 seemed not to be, yeah.

7 Q. So am I right that what these
8 documents show is a regular practice of monthly
9 secret meetings, without notice, where subjects,
10 which the Council were required by law to discuss
11 only in public, were in fact discussed secretly
12 behind closed doors?

13 A. That's correct.

14 Q. Were you aware, sir, when you were
15 Chief Administrative Officer that this practice
16 was illegal?

17 A. I don't recall.

18 Q. Mr. Speck, you were a member of
19 Council from 1994 to 1999, correct?

20 A. Yes.

21 Q. You then worked as the assistant,
22 the Executive Assistant to the Deputy -- the
23 Executive Assistant to the Chief Administrative
24 Officer for a period of about a year and a half.
25 You were then the Deputy Chief Administrative

1 Officer for a period of about a year or so. And
2 then you were the Chief Administrative Officer for
3 a period of six years, right?

4 A. That's right. And through that
5 entire period these meetings happening.

6 Q. From 1994 through to the time you
7 left?

8 A. Pretty much. I think they may have
9 started during my first term.

10 Q. And during your time on Council and
11 working for the City, was it not the case that
12 from time-to-time a motion would be passed --
13 would be made and passed in a regularly scheduled
14 meeting of Council for which notice was given to
15 go in-camera to discuss a particular item for
16 which there was legal authority to go in-camera?

17 A. Yes.

18 Q. You saw that happen, right?

19 A. Yes, I did.

20 Q. And, sir, I put it to you that you
21 knew that the Municipal Act provided for those
22 specific items set out in the statute to be
23 decided in-camera and only those specific items.
24 You knew that, did you not, sir?

25 A. Probably did.

1 Q. So am I correct then, sir, that
2 throughout this period of some 12 years, you were
3 aware that Council was meeting secretly and
4 discussing these issues contrary to the provisions
5 of the statute?

6 A. Yes.

7 Q. And can you -- given that evidence,
8 sir, can you explain to us the evidence you gave
9 yesterday which I just put to you?

10 A. Which evidence?

11 Q. The questions and answers I just
12 read to you.

13 A. As I said before, you have to keep
14 in mind I have worked for three different
15 municipalities since I left Elliot Lake and I
16 believe at least two of them do sometimes call
17 their in-camera meetings caucus meetings.

18 Q. But you'd -- so you'd simply
19 forgotten about these monthly meetings --

20 A. Yes.

21 Q. -- over a period of 15 years which
22 were secret?

23 A. Yup.

24 Q. And what was the purpose of
25 discussing things in secret, sir?

1 A. I didn't -- I don't recall the
2 purpose of it being secrecy. I recall the purpose
3 of it being sharing information. What's -- giving
4 updates on projects that are being worked on.
5 Allowing members of Council to understand and ask
6 questions about where certain things were. The
7 fact is that they were not open to the public, but
8 the purpose -- there wasn't a purpose for them to
9 be behind closed doors.

10 Q. But is not the purpose of a Council
11 meeting to do exactly what you've just described,
12 to have updates on what's happening in the City;
13 to have presentations and reports by staff to
14 Council so that Council and the public can
15 understand what's going on; and to have committees
16 of Council report to Council so there can be a
17 public debate on these issues? Is that not what
18 Council meetings are for?

19 A. That that's what Council meetings
20 are for. However, there are times when projects
21 are ongoing. They're not ready to come to Council
22 for a decision. Ideally you want things that are
23 ready for a decision or direction by Council to be
24 things that come to a Council meeting.

25 Q. So that --

1 A. And sometimes you may have staff
2 giving a Councillor or two updates on a one-off
3 basis. I think the Mayor wanted to have Council
4 to have the opportunity to have everybody in the
5 room, get the updates at the same time.

6 Q. So do I take from your evidence that
7 it was thought advantageous that by the time a
8 matter got to Council it was ready to be decided?

9 A. No, I wouldn't say that. I would
10 just say that there was awareness of the status of
11 matters.

12 Q. Did anybody raise the fact that
13 these meeting were illegal in your recollection
14 over 15 years?

15 A. I don't recall. I don't remember
16 anybody.

17 Q. Is it your evidence that you can
18 recall absolutely no discussion about the legality
19 or illegality of these monthly secret meetings?

20 A. I don't remember any discussion like
21 that, no.

22 Q. And certainly one feature of a
23 secret -- a regular secret meeting was to provide
24 for an opportunity to discuss matters which would
25 not be made public?

1 A. That would be a feature, yes.

2 Q. And am I correct in assuming that
3 Councillors would take advantage of that
4 opportunity to talk about things that they would
5 rather not have the public know about?

6 A. I'd say that's fair.

7 Q. Sir, yesterday I took you to exhibit
8 --

9 MR. DOODY: Just before we go on, can I
10 have this document marked as an exhibit?

11 MS. KUKA: 2351.

12 EXHIBIT NO. 2351: Series of 28 agendas
13 for Council caucus meetings from January
14 6, 2004 to May of 2006.

15 MR. DOODY: So that is 2351 and for the
16 record, that is a series of 28 agendas for Council
17 caucus meetings from January 6, 2004 through May
18 2006.

19 THE COMMISSIONER: Is it your
20 understanding, Mr. Cassan, that all such documents
21 are now before the Commission or that there may be
22 more?

23 MR. CASSAN: Mr. Commissioner, I haven't
24 had an opportunity to make any inquiries or speak
25 to my client about that. This was found on the

1 CAO's assistant's computer and I will make
2 inquiries and certainly advise Mr. Doody of the
3 answer.

4 THE COMMISSIONER: Thank you.

5 BY MR. DOODY:

6 Q. Sir, yesterday I took you to Exhibit
7 No. 2392, which -- if I could have that up.
8 Volume 5, tab 40. Sir, do you recall me asking
9 you questions about this yesterday?

10 A. Just hang on a sec, please.

11 Q. This is an e-mail to you --

12 A. Yes, I do.

13 Q. -- from Ms. McTaggart, dated April
14 14th, 2004?

15 A. Yeah.

16 Q. And I read to you, sir, this
17 description -- I'm sorry, these words that Ms.
18 McTaggart had written to you.

19 "As I mentioned to you, Councillor
20 Denley's presentation was extremely brief
21 (he found out that Heather was on the
22 Board and worked for Retirement Living)
23 and he clammed up. (I was absolutely
24 amazed). Prior to that he had been so
25 extremely verbal concerning the fact that

1 he wanted the Library to re-locate and the
2 landlord of the mall should repair the
3 roof & the library should not have to put
4 up with the leaks, etc., etc., (he had
5 been to the Civic Centre to check out the
6 space available) and then his presentation
7 came & Heather was sitting directly across
8 from him & Don was at a loss for words."

9 Do you recall me reading that to you
10 yesterday?

11 A. Yes, I do.

12 Q. And do you recall me asking you
13 whether that was seen by you to be a complaint by
14 Ms. McTaggart about the leaks and a suggestion
15 that they needed to be dealt with?

16 A. I remember you asking me that, yes.

17 Q. And your evidence was that that was
18 not what it was at all, correct?

19 A. That's not the way I read it, yeah.

20 Q. Sir, if I could ask you to turn in
21 Exhibit No. 2351?

22 A. Can I just finish on that one,
23 though? I don't -- I mean, it's pretty clear as I
24 read this that, you know, he wanted the library to
25 relocate and the landlord of the mall should

1 repair the roof and the library should not have to
2 put up with the leaks. So she's saying he's the
3 one mentioning the leaks. And, you know, there's
4 no dispute here that there were leaks. This is
5 Don Denley politicking as Don Denley used to do.

6 Q. Well, I suggest --

7 A. If Don Denley was that was concerned
8 about leaks, and Kathy McTaggart for that matter,
9 there was absolutely nothing preventing either of
10 them or any member of Council from bringing a
11 notice of motion at Council that Council to do
12 something about it or direct staff on it. And
13 that never ever happened.

14 Q. Can I ask you to turn to Exhibit No.
15 2351 to the caucus agenda from May 3, 2004, two
16 weeks after this e-mail, sir?

17 A. May which?

18 Q. Three. May 3rd, 2004. Item 9 says
19 Library Board referral from Councillor McTaggart?

20 A. Yeah.

21 Q. In the e-mail at 3292 Ms. McTaggart
22 writes:

23 "I will leave this issue with you and hope
24 that you will be able to provide me with
25 some feedback and whether or not this is

1 going to go any further (to Caucus. I am
2 absolutely willing to speak about this at
3 Caucus. This is not a personal issue. It
4 is a Council issue which I believe needs
5 to be addressed.)"

6 And then two weeks later, the agenda for
7 the caucus meeting says that there will be an item
8 about the Library Board, a referral from
9 Councillor McTaggart. I suggest to you, sir, that
10 that is an indication that Ms. McTaggart did
11 exactly what she said she was willing to do in the
12 e-mail to you.

13 A. Are you suggesting that she
14 suggested referring something to caucus regarding
15 leaks?

16 Q. That's what she said. I'm --

17 A. That's not what she said, sir. If
18 you'd read this she says:

19 "This is not a personal issue. It is a
20 Council issue which I believe needs to be
21 addressed.) I personally feel it is
22 extremely important for City Council to
23 maintain as positive an image as possible
24 in the Public Eye and Council needs to
25 protect this image to all of the

1 sub-committees, that is why I do not like
2 the idea or suggestion that the City
3 Council has any negative vibes towards any
4 of the committees, including the Library
5 Board. That just simply is not true. And
6 if any misconception has been created by
7 Councillor Denley's presentation, it must
8 be corrected. Simple as that!"

9 I read that as that's what she wanted to
10 talk about. The relationship with Council had
11 been between Councillors and the presentation that
12 Councillor Denley had done at the Library Board
13 and the way it was done and the light it put
14 Council in.

15 Q. Well, sir, we can both read these
16 documents and read them the way we want to right
17 now. But neither that -- neither your reading of
18 them nor mine is useful as evidence. So let me
19 ask you, given that in this e-mail Ms. McTaggart
20 wrote what she wrote, including about the leaks
21 and that two weeks later there was an item on the
22 secrete meeting of Council referring to the
23 Library Board, what is your recollection about
24 what was discussed? Did she talk about the leaks?

25 A. I don't remember the meeting at all.

1 Q. Do you remember any of meetings,
2 sir?

3 A. It was 14 to 7 years ago. I've
4 worked in three different municipalities, lived in
5 four different municipalities, learned three new
6 different Council members' names, three different
7 sets of staff's names, three different sets of
8 community issues. I've been married, I've had a
9 child. I've had family health issues that have to
10 be dealt with. Life has gone by and I remember
11 very little of specifics of meetings that happened
12 between 7 and 19 years ago, absolutely. And I
13 don't think that's unreasonable at all.

14 Q. I'm asking you, sir, if you remember
15 anything that was discussed in any of these
16 meetings?

17 A. I think you got a little aggressive
18 and asked me if I remember anything about any
19 meetings.

20 Q. I did ask you that and you gave me
21 your answer. Now I'm asking you if you remember
22 anything that was discussed at any meetings?

23 A. Any meetings?

24 Q. Any of these secret meetings of
25 Council.

1 A. Not specifically.

2 Q. Do you recall the issue of the
3 library and leaks being discussed at these secret
4 meetings of Council?

5 A. I do not remember.

6 Q. Sir, you told me moment ago that if
7 Ms. McTaggart was concerned about the leaks at the
8 library, she could bring a motion before Council
9 and ask Council to issue a direction to staff,
10 right?

11 A. Yeah.

12 Q. And she did not do that?

13 A. No.

14 Q. You were equally able to refer the
15 matter of the leaks to the Chief Building Official
16 to do an inspection, right?

17 A. I could if I felt there was a reason
18 to do it.

19 Q. Well, the Property Standards By-Law
20 says that if there's a complaint, it's a
21 complaint-driven policy, so that if there's
22 complaint, the building official was supposed to
23 investigate, was he not?

24 A. I do not believe that I appreciated
25 at that time that a leaky roof was a violation of

1 the Property Standards By-Law.

2 Q. Well, sir, you were on Council when
3 the Property Standards By-Law was passed. Are you
4 telling me you did not understand that's what it
5 said?

6 A. I did not understand those
7 specifics, no.

8 Q. The Chief Building Official reported
9 to you when you were the Deputy Chief
10 Administrative Officer and then when you were the
11 Chief Administrative Officer for a number of
12 years. Did you in the -- in the context of
13 supervising him, did you not familiarize yourself
14 with the contents of the Property Standards
15 By-Law?

16 A. Not to that level of detail.
17 Municipalities have dozens of by-laws and I don't
18 -- I do not think it was my duty or an expectation
19 that I know the intimate details of what
20 represented a violation of each and every by-law.

21 Q. Is it an intimate detail that the
22 by-law said it should not leak?

23 A. I think it is.

24 Q. Okay.

25 A. Because there are municipalities

1 whose Property Standards By-Laws don't say that.

2 Q. If we go, sir, to the caucus
3 meeting, the secret Council meeting of May 2nd
4 2005, which is in Exhibit No. 2351, can you go
5 there? Do you have that?

6 A. Yeah.

7 Q. These e-mails talked about a caucus
8 meeting on May 2nd, correct?

9 A. I seem to recall that, yeah.

10 Q. And there was a caucus meeting on
11 May 2nd, correct?

12 A. It looks like it.

13 Q. How long in advance of these secret
14 meetings was the agenda prepared?

15 A. I think it was probably something
16 that would have been prepared over the course of
17 the month as an issue came up that we felt that
18 either I or a member of Council felt should be
19 updated on that we'd add it to the agenda.

20 Q. When was the agenda distributed to
21 members of Council? How far in advance?

22 A. I don't remember now. I mean,
23 norming Council meetings would have been
24 distributed on a Thursday or Friday for a Monday
25 meeting, so.

1 Q. In these secret meetings of Council
2 that took place over the period of time that you
3 were a Councillor and an employee at the City,
4 first of all, I understand the CAO sat in on all
5 the secret meetings, right?

6 A. Yes.

7 Q. And during these meetings, do you
8 recall any discussion about the attitude which the
9 City should use when dealing with the mall? In
10 other words, was there is discussion that the mall
11 should be treated any differently from any other
12 business in Elliot Lake given its importance to
13 the community?

14 A. I don't remember a discussion like
15 that, no.

16 Q. Are you telling me there was no such
17 discussion?

18 A. I'm telling you I don't remember a
19 discussion like that.

20 Q. Sir, before the break --

21 MR. DOODY: And, sorry, just for the
22 record I should tell the participants and for the
23 sake of the record that the exhibit numbers of the
24 regular meetings of Council, which have been
25 provided to us and entered as exhibits, they run

1 from Exhibit No. 2366 to Exhibit No. --

2 MS. KUKA: 2360 to 2981.

3 MR. DOODY: Thank you, Ms. Kuka.

4 BY MR. DOODY:

5 Q. Just before the break, sir, I had
6 asked you to turn up tab 91, Exhibit No. 11-89 and
7 I had read that to you, sir. And that was a
8 memorandum from Ms. Fazekas to Ms. Leddy about, as
9 she put it, the condition of the physical plant at
10 the library dated May the 4th, 2005. Do you
11 recall that?

12 A. Not specifically, but I probably
13 would have received a copy of it.

14 Q. And, sir, if I could just recap as
15 at this stage, the first week of May of 2005, when
16 you were Chief Administrative Officer you had
17 received an official letter of complaint from the
18 Library Board to you as Chief Administrative
19 Officer about several years of leaks causing
20 significant damage to the books and raising health
21 concerns, right?

22 A. Yes.

23 Q. You knew that a health and safety
24 complaint by an employee had been made arising out
25 of the leaks, correct?

1 A. Yes.

2 Q. You knew that the Mayor and members
3 of Council had received written communications
4 complaining about the state of the leaks at the
5 library, right?

6 A. Yes.

7 Q. You knew that complaints to the
8 Ministry of Labour had been made about health and
9 safety concerns arising out of the leaks, right?

10 A. Yes, I suggested they be made.

11 Q. And you knew there were reports of
12 mold?

13 A. Yes.

14 Q. And you knew that the landlord was
15 aware of the leaks issue and had been aware for a
16 number of years?

17 A. Yes.

18 Q. And Ms. Fazekas was approaching you
19 because she wanted your help in resolving the
20 leaks problem, right?

21 A. I viewed it more as the immediate
22 issue at the time. Well, both actually. I mean,
23 the immediate issue was getting the library
24 cleaned up and dried and drywall done and make
25 sure there was no mold left there so staff and

1 patrons weren't going to be harmed in any way.
2 And then to follow up with the meeting with the
3 landlord which did happen on June 15th to talk to
4 them about what might be happening in terms of
5 fixing -- a more permanent fix of the leaks on the
6 roof.

7 Q. Sir, these secret caucus meetings,
8 were minutes kept?

9 A. I don't remember.

10 Q. You were in charge of the City,
11 right?

12 A. Yes, I was.

13 Q. And so it was your directions as to
14 what -- how things were organized and what records
15 were kept, correct?

16 A. Hmm hmm.

17 Q. What direction did you give about
18 keeping a record of what was discussed and what
19 was decided at these secret meetings while you
20 were CAO?

21 A. I don't recall and I don't know that
22 necessarily things would have been decided. I
23 think these were items for update and discussion.

24 Q. Were things decided from
25 time-to-time?

1 A. I don't remember.

2 Q. You have no recollection whether any
3 decision was ever made at these secret meetings?

4 A. No.

5 Q. What direction did you give about
6 records?

7 A. I don't recall giving any direction.

8 Q. Was there a clerical or a
9 secretarial staff person in attendance at these
10 secret meetings?

11 A. I don't believe so.

12 Q. So, sir, can we agree, and you
13 testified to this yesterday, that Ms. Fazekas was
14 looking to you for help about this problem?

15 A. Yes.

16 Q. And the problem included years of a
17 leaks.

18 A. Yeah.

19 Q. What options did you consider as to
20 how to deal with it?

21 A. Well, you've seen the options that
22 we did use to deal with it at the time, that
23 specific instance. The past history had been that
24 the landlord had really not been willing to do
25 anything, including replace -- the replacement

1 cost of the ceiling tiles. In this instance, we
2 got the Ministry of Labour involved, we got the
3 Algoma Health Unit involved. What I wanted to do
4 was get some objective outside third parties
5 involved so that -- because I felt that if
6 something was coming from the Ministry of Labour
7 saying there's a problem here, then that's going
8 to go a lot further to getting the landlord on
9 side than just writing a letter of complaint. So
10 we tried to get independent, third parties
11 involved to do that. And that's what one of the
12 reasons that I believe that I didn't appreciate
13 that the leaky roof was a violation of the
14 Property Standards By-Law because there I was
15 trying to get government agencies in here to give
16 us the ammo to get the landlord to clean -- fix up
17 the roof. And what better, in hindsight, way to
18 do that than through the Property Standards
19 By-Law.

20 Q. Sir, yesterday we looked at a memo
21 you wrote in which you yourself said we have the
22 authority under the statutes and the Property
23 Standards By-Law to require repairs and, if
24 necessary, do them ourselves. Do you recall that
25 evidence yesterday?

1 A. I do recall that evidence and I
2 recall that it was subsequent to the April-May
3 incidents and it was in context of a different
4 type of situation where we were dealing with what
5 to do about properties that were 50 percent or
6 more vacant or in arrears of taxes, I believe.
7 And that did not apply to the mall, so like I
8 said, I didn't make connection.

9 Q. Well, the 50 percent thing wasn't
10 even in the picture at the time, right?

11 A. Well, it had been discussed, the
12 report was September of '05.

13 Q. So you had discussed the concept of
14 pro-active enforcement of the Property Standards
15 By-Law as at April-May 2005, is that right?

16 A. No. I'm saying September -- around
17 September '05.

18 Q. Well, then that was -- you gave that
19 evidence in response to my suggestion to you that
20 in April-May, the 50 percent pro-active policy
21 change was not even in the picture and you
22 responded and said yes, it was.

23 A. Oh, I misunderstood your question.
24 I didn't understand that you were asking me if the
25 pro-active policy was in place in April '05.

1 Q. It wasn't in place, but you
2 discussed it.

3 A. I don't recall exactly when we
4 discussed it. I mean, I know I've seen the report
5 that said September '05. I've seen the e-mail
6 that I sent to Mr. Allard and Mr. Officer in
7 September '05 asking for information to help
8 support that report.

9 Q. You -- did you have any talks with
10 the Mayor about what to do about the leaks at the
11 library?

12 A. I probably would have.

13 Q. What was the -- who said what, to
14 the best of your recollection?

15 A. I may have asked him if there's
16 anything more that he thought we could or should
17 do.

18 Q. Did you do that? Do you recall
19 doing that?

20 A. Not specifically, no.

21 Q. Do you recall him speaking to you
22 about the issue at all?

23 A. Not specifically.

24 Q. Generally?

25 A. I mean, he must have. You've seen

1 in the minutes of those caucus or the agendas of
2 those caucus meetings that there's a Library Board
3 matter.

4 Q. And it's likely that in those
5 Library Board matters in the secret meetings, the
6 issue of the leaks was discussed, was it not?

7 A. May have been.

8 Q. Sir, you told us a minute ago that
9 you wanted to refer it to a third -- an
10 independent third party like the Ministry of
11 Labour. And would I be correct in concluding that
12 you wanted to do that because they were a
13 regulator?

14 A. Yes, it would be an independent,
15 outside regulator. It wasn't just the Library
16 Board complaining about the leaks.

17 Q. And as a regulator, they could make
18 an order?

19 A. I don't recall whether I did it
20 specifically because they could make an order. I
21 recall that we asked them to come in and do some
22 testing. I know I believe that testing done by
23 them would be something that the landlord would
24 sit up and take notice of. But there may have
25 been an order.

1 Q. Sir, if I could ask you to turn up
2 tab 94. It's Exhibit No. 11-15.

3 A. Which volume?

4 Q. Volume 6.

5 A. And, I'm sorry, tab?

6 Q. Ninety-four. And this is the letter
7 you wrote to Ms. Menzies on May 6th in response to
8 her letter of April 28th, which, as you say, you
9 had received on May 2nd, correct?

10 A. Yes.

11 Q. And you write here:

12 "I appreciate and share the concerns set
13 out in your letter. Through my
14 conversations with Mrs. Fazekas, I
15 understand that she has brought in
16 ChemNorth to do some clean-up and to
17 facilitate testing of the library for
18 noxious substances such as mould. I have
19 asked to be provided with the results of
20 those tests, along with an itemized list
21 of all deficiencies Mrs. Fazekas and the
22 Board perceive there are in the space, so
23 that we may ameliorate them, as well as
24 addressing them with the landlord. The
25 City's Health and Safety Committee has

1 appointed one of its representatives, Mr.
2 Dennis Lachance, to meet with staff and do
3 an investigation on behalf of the
4 Committee and the workers. We are
5 prepared to follow any recommendations the
6 committee deems reasonable."

7 That's what you had done in response to
8 her -- Ms. Fazekas' complaints and that's what you
9 had just given me evidence about, right?

10 A. Yeah.

11 Q. And then you go on to talk about
12 potential for a different location for the
13 library. And you list seven options, the seventh
14 of which was to continue in the mall?

15 A. Hmm hmm.

16 Q. And do I take it from that, sir,
17 that you were contemplating the library moving in
18 order to get away from the leaks?

19 A. Probably.

20 Q. You go on to say that -- you suggest
21 scheduling a meeting between the Library Board,
22 their Council rep, who was Ms. McTaggart, right?

23 A. Yes.

24 Q. The Mayor and you to discuss some of
25 those, as you put it, notions. And you copied the

1 Mayor on that and Councillor McTaggart and Ms.
2 Leddy, the Health and Safety -- the personnel
3 head, right?

4 A. Yes.

5 Q. And, sir, if I could ask you to turn
6 to tab 96. And this is a report -- oh, sorry,
7 it's Exhibit No. 11-31. And this is a report from
8 Mr. Tony Fontana, who is the hygiene consultant at
9 the Ministry of Labour. who had been called in to
10 test for mold, right?

11 A. Yes, I believe so.

12 Q. And if you turn to the second page,
13 you can see that Mr. Fontana writes starting in
14 the seventh line:

15 "The semi-quantitative analysis (direct
16 microscopic examination) showed no
17 evidence of mould growth on the insulation
18 or ceiling tile samples. The carpet
19 sample showed sparse growth of Ulocladium
20 species and a few spores of Aspergillus
21 species and Penicillium species, while the
22 drywall paper sample showed abundant
23 growth of both Aspergillus and Penicillium
24 species."

25 In other words, there was a lot of mold

1 on the drywall, right?

2 A. Sounds like it. In that sample
3 anyhow.

4 Q. And Mr. Fontana writes under
5 recommendations item number two -- item number one
6 is replace the damaged drywall. And item number
7 two he writes:

8 "The most effective way to manage mould is
9 to prevent the conditions that promote its
10 growth in the first place. Sources of
11 water infiltration should ideally be
12 identified and eliminated. When water
13 infiltration does occur, it should be
14 removed in a timely manner."

15 Sir, did you -- did you see this report?

16 A. I don't remember it specifically,
17 but I imagine I would have seen it.

18 Q. And were you told that what the
19 hygiene consultant recommended was stop the leaks?

20 A. I would have read it myself.

21 Q. Right. If you turn to tab 100,
22 Exhibit No. 11-93. This is starting at the
23 bottom. It's an e-mail from Mr. Gagnon, Ms. Leddy
24 you, and Mr. Kukoraitis on May 11th, about the
25 mold issue. And Mr. Gagnon writes:

1 "Just a footnote to my memo in the earlier
2 e-mail. Dennis Lachance called me
3 yesterday and asked if I would attend
4 library with him. We reviewed the
5 situation together, and reviewed the
6 results from the mould test by Chemnorth.
7 Minor mould detected in the carpet
8 ("sparse" was the term used), "abundant"
9 mould in the drywall samples taken.
10 "Jonathan Bouma confirmed. . ."

11 Sorry, do you know who Jonathan Bouma
12 was?

13 A. He's with the Algoma Health Unit.

14 Q. Thank you.

15 ". . .confirmed anecdotally just by
16 stepping in the library that the air was
17 "bad" but they don't do the test
18 themselves and will be out of town for a
19 week and a half and he didn't recommend
20 getting it tested for some reason given
21 the cost (\$100 per sample or something to
22 that effect) I told Barb to just get the
23 air and dust tested for mould anyway, then
24 we'll know one or way or the other the
25 extent of the risk to staff and the

1 public."

2 And you responded the same day by
3 writing: "Thanks Dan. Once we get the results,
4 please be sure to let me know. We need to have a
5 sit-down with Richard. . ." Richard being Mr.
6 Kennealy?

7 A. Yes.

8 Q. ". . .about this as soon as we have
9 all the facts. (I'll attend by phone if
10 necessary.)" Were you out of town, sir?

11 A. I was.

12 Q. Do you recall for how long?

13 A. For a period -- this was the first
14 year I started my master's program at Western and
15 each of the first two years, there was a two-week
16 period in the middle of May, the second or third
17 week of May, something like that. So I would have
18 been away for 14 or so days.

19 Q. "Can anyone tell me: Is it now
20 Deemed safe for staff/public to be in
21 there? What's the Ministry of Labour's
22 position on this? I'm concerned about 3
23 things: First and foremost, the health
24 and safety of our staff and patrons;
25 Second, whether there is any exposure to

1 the municipality in having the library
2 remain open while the issues are being
3 dealt with; and 3) Getting a long-term
4 solution vis a vis the problems we've been
5 having with that space."

6 And that accurately reflects your
7 position and your feelings and concern at that
8 time?

9 A. Yes.

10 Q. And if I can have you turn, sir, to
11 tab 104, Exhibit No. 11-95. These are minutes of
12 the Joint Health and Safety Committee, dated May
13 12, 2005. And if I could -- this is about the
14 library complaint. And if you go down to the
15 bottom line in paragraph number two, the committee
16 report says:

17 "Based on the information we have to date,
18 the Committee has made the following
19 recommendations: [And recommendation
20 number one is] Ensure the landlord has the
21 problem of roof leakage fixed to eliminate
22 the hazardous conditions that occur when
23 it rains."

24 Sir, did you see this after it came out
25 is?

1 A. I probably would have.

2 Q. And so you'll recall the e-mail I
3 took you to earlier in your evidence when you had
4 written to Ms. Fazekas and said I hope you're not
5 expecting the Joint Health and Safety Committee to
6 deal with this, and you told us what you meant by
7 that. You now have -- you now had, sir, the
8 recommendations of the Joint Health and Safety
9 Committee. What, if any, steps did you consider
10 taking in order to put in place their first
11 recommendation, have the problem of roof leakage
12 fixed?

13 A. We convened a meeting between the
14 Mayor, myself, Mr. Kennealy, and Mrs. Fazekas and
15 members of the Board on June 15th to discuss the
16 situation and to express our concerns to the
17 landlord and to discuss whether there were some
18 things that he could do to eliminate the leaks.

19 Q. Okay. Did you consider doing
20 anything other than meeting with the landlord?

21 A. I don't recall thinking of --
22 considering anything else.

23 Q. If I could take you -- and we'll get
24 to that meeting shortly, sir, but if I could take
25 you to tab 107, Exhibit No. 2293.

1 And this is an e-mail string, and if you
2 go to the bottom of the first page, there is an
3 e-mail from Mr. Gagnon to you on May 16th. And it
4 says, re -- the re line is library mould issue.
5 And Mr. Gagnon writes:

6 "I'm still waiting for results. I met
7 with Andrea, she has a list of
8 recommendations from the JHS Committee
9 [the Joint Health and Safety Committee]
10 similar to the to-do lists we had before
11 the inspection. Although until we have
12 the results there is not much we can do."

13 And you responded the same day with an
14 e-mail that says:

15 "Why can't we implement the
16 recommendations of the Joint Health and
17 Safety Committee immediately? I read them
18 and they seem rational. Please let me
19 know."

20 That's what you wrote, sir?

21 A. Yeah.

22 Q. And, sir, we just looked at those
23 recommendations and the first one was fix the
24 leaks. Does this e-mail refresh your memory at
25 all as to what you were thinking about to fix the

1 leaks?

2 A. Well, I told you. We met with the
3 landlord to discuss what they would do. And I
4 recall seeing somewhere in these documents
5 subsequent minutes of Joint Health and Safety
6 Committee where it indicated they had that same
7 list of recommendations. And under that first
8 one, it had indicated as of June 22nd that the
9 landlord had resealed the roof already. As a
10 result of that meeting.

11 Q. I wasn't asking you to comment on
12 future documents and we'll get to them. My
13 question to you was, does this refresh your memory
14 about what other -- what steps you were taking to
15 see that the leaks were fixed and you've said
16 nothing other than -- you thought of nothing other
17 than meeting with the landlord, right?

18 A. Well, Mr. Doody, I'm under oath
19 here, so I'm trying to give a correct answer and a
20 full answer for the Commission. And if you're
21 asking me what did I consider doing and what did I
22 do, the full answer is yes, we met with the
23 landlord, we got his commitment to do something
24 and it looks as if, as of June 22nd, he had done
25 something.

1 Q. Well, let's go to the next e-mail in
2 this string. Mr. -- top of the page. Mr. Gagnon
3 responds to you saying:

4 "Yah, maybe my wording wasn't right. We
5 are moving on most of the items as we
6 speak. [He says] I haven't had time to
7 review the terms of the lease in detail
8 and I would have preferred to have the air
9 quality results in before we talk to RK
10 [that would be Mr. Kennealy] about the
11 roof and ceiling tiles."

12 And then he says, skipping ahead, he
13 says in the last paragraph: "So, shall I try for
14 a chit chat with RK later this week or wait till
15 you get back?"

16 And ultimately you decided to wait,
17 right?

18 A. Yes.

19 Q. And if I could have you turn, sir,
20 to tab 109, Exhibit No. 3311.

21 A. I'm sorry, three --

22 Q. Three-three -- I'm sorry, it's tab
23 109 in the book you have and it's Exhibit 3311.
24 And this starts with an e-mail from Ms. Fazekas to
25 Mr. Gagnon, Ms. Leddy, and Ms. Morin. The subject

1 line is wet library premises and Ms. Fazekas
2 writes: "The roof was leaking again. . ." This
3 is May 16th, a Monday. She writes:

4 "The roof was leaking again on Saturday
5 morning. I came in to check the bathroom
6 which was still dry; however, the area
7 over the fiction shelves was dripping with
8 a substantial area of the rug getting wet.

9 "I had covered the shelves on Friday
10 before I left. On Saturday, I did block
11 off the dripping area from patron and
12 staff access. Water is still coming down
13 this morning if you would like to record
14 this by taking pictures as Ms. Leddy has
15 suggested."

16 And then at the top e-mail, Ms. Leddy
17 forwards that to you and to Mr. Kukoraitis on May
18 18th. That would be the Wednesday, to keep you
19 informed. So you knew that it was still leaking
20 on the 15th of May, right?

21 A. Looks like it.

22 Q. Sir, if you could turn to tab 114,
23 Exhibit No. 11-100. This is your letter of June
24 1st, 2005, from -- sorry, to Mr. Kennealy, right?

25 A. Yeah.

1 Q. And you write in the first
2 paragraph:

3 "As you know, the Elliot Lake library has
4 been experiencing ongoing problems with
5 severe leaks from the roof since it
6 relocated to the Algo Mall in the early
7 1990s. Until recently, the problem with
8 the leaks was thought to be largely the
9 damage to the books, the inability to use
10 certain areas of library while the water
11 was dried out and the staff time involved
12 in the clean-up. While those
13 inconveniences and difficulties continue
14 and must be addressed, a larger issue has
15 arisen that required our immediate
16 attention as an employer and manager of
17 the public facility."

18 And, sir, when you wrote those words,
19 you -- they accurately reflected your beliefs and
20 thoughts at the time?

21 A. In terms of what I felt needed to be
22 done at the library, yes.

23 Q. Well, you wrote to him that: "The
24 library has been experiencing ongoing problems
25 with severe leaks from the roof since it relocated

1 the Algo Mall in the early 1990s." You believed
2 that to be true when you wrote it, did you not?

3 A. That's what I had been told by Ms.
4 Fazekas and so I was repeating what she had told
5 me.

6 Q. Did you believe it to be true?

7 A. I didn't think she would lie to me.

8 Q. So you believed it to be true?

9 A. Yeah.

10 Q. You then set out your concerns about
11 health and safety and the mould. And then in the
12 last paragraph on the second page you wrote:

13 "Richard, all these problems are clearly
14 caused by the roof leaks and unless
15 something can be done will only continue
16 in the future. We would like to meet to
17 discuss the problem and review the
18 feasibility of resolving the roof leaks as
19 soon as possible. Our main interests
20 include: 1) Ensuring the library
21 environment is safe for occupation and use
22 by staff and members of the public; 2)
23 Eliminating damage to municipal property;
24 and 3) Avoiding restrictions on and
25 interruptions to library services."

1 And, sir, that was what you believed at
2 the time?

3 A. Yes.

4 Q. If I can have you turn, sir, to tab
5 118, Exhibit No. 1522. Actually, let me back up
6 before we go there. If you could take a look at
7 Exhibit No. 2351, the caucus -- the agendas of the
8 secret caucus meetings and turn up the agenda for
9 June 6th, 2005, five days after you wrote this
10 letter. Sir, do you see that item number six is
11 the status of library issue?

12 A. Yeah.

13 Q. And would it be fair to conclude,
14 from your evidence so far, that at that meeting of
15 June the 6th, 2005, which was held in secret,
16 members of Council discussed with you the issue of
17 the leaks at the library and how to deal with
18 them?

19 A. I think that would be a fair
20 assumption.

21 Q. And was there any discussion at that
22 meeting about the propriety of having the building
23 -- sorry, the Property Standards Officer inspect
24 the mall to see if it was in compliance?

25 A. I don't remember.

1 Q. Was Mayor Farkouh at that meeting?

2 A. I don't remember. I'm assuming he
3 would be. He usually was.

4 Q. Did you discuss this issue of leaks
5 in May and June 2005 with Mayor Farkouh at the
6 time?

7 A. We must have. I know he was copied
8 on three or four e-mails.

9 Q. Do you recall what advice, if any,
10 he gave you?

11 A. I don't recall getting any direction
12 at all.

13 Q. Do you recall what advice, if any,
14 you gave him?

15 A. I don't.

16 Q. Do you recall anything about the
17 discussions?

18 A. Not specifically. But there would
19 have been discussions about this is a continuing
20 problem, we have to find a way to do something.

21 Q. If I can have you turn up Exhibit
22 No. 1522, tab 118, Mr. Speck. This is Mr. --
23 sorry, Mayor Farkouh's letter to Bob Nazarian
24 dated June 10, 2005. And Mayor Farkouh wrote:

25 "Mr. Kennealy from NorDev group has made

1 me aware that you are interested in
2 acquiring the Algo Centre. At this time I
3 can confirm that the City of Elliot Lake
4 has not had any discussions with
5 developers of significant retail
6 properties nor are we aware of any new
7 retail developments occurring within the
8 City, with the exception of the relocation
9 of the No Frills store. I believe your
10 decision to purchase the Algo Centre is a
11 good investment as Elliot Lake has years
12 of growth and prosperity ahead of it. I
13 look forward to meeting you at the
14 conclusion of your purchase."

15 Sir, did you know in June of 2005 that
16 Mr. Nazarian and Retirement Living had signed a
17 agreement of purchase and sale in respect of the
18 mall?

19 A. I don't believe I did. My
20 recollection is that I found out about it just
21 shortly before the sale went public.

22 Q. Did you know that Retirement Living
23 was looking to sell the mall?

24 A. I knew that some time ago and I
25 don't recall how far before this time they had

1 indicated that they wanted to start looking for
2 purchasers.

3 Q. And how did they indicate that? How
4 did you learn of it?

5 A. I think the Mayor probably told me.

6 Q. Okay. So you knew they were -- they
7 were at least in the market?

8 A. Yeah. And that -- that may have
9 been a discussion a year, a year and a half, two
10 years before this.

11 Q. Well, sir, the evidence from Mr.
12 Kennealy and the documents we've had from
13 Retirement Living show that the discussion, at
14 least with the Board, about selling the mall did
15 not occur that early, that it was some time in, my
16 recollection is, early 2005.

17 A. Okay.

18 Q. But you can't -- that doesn't help
19 you?

20 A. No.

21 Q. Okay. If I could have you turn up
22 tab 119, sir. This is a letter from Ms. Menzies
23 -- sorry, it's Exhibit No. 11-101. And this is a
24 letter from -- it's an undated letter from Ms.
25 Menzies, but the second page has a received stamp

1 on it from your office of June 10th, 2005. And
2 Ms. Menzies wrote to you thanking you for your
3 letter of May 6th. She said that it was read --
4 that letter was read to the Library Board on May
5 12th and then she wrote:

6 "The Board's decision at that time was to
7 make a presentation to Council at the June
8 13, 2005 meeting. The general feeling was
9 that since the Board is appointed by
10 Council it should communicate with
11 Council."

12 And then she goes on in the last
13 paragraph on that page to write:

14 "A meeting with the Board, the Mayor, our
15 Council representative and yourself would
16 be appreciated. Since the Board does not
17 meet during the summer, a September
18 meeting could be arranged."

19 Do you recall getting this sir?

20 A. I don't recall getting it, no.

21 Q. Okay.

22 A. I notice they are not in a big rush
23 to meet with us.

24 Q. But you were aware that Ms. Fazekas
25 was still very concerned about this, right?

1 A. It was an ongoing concern, yes.

2 Q. And I wonder if I could have you
3 turn to, just bear with me, tab 124, which is
4 Exhibit No. 11-18. Sir, these are -- this is a
5 report as it says. Turn to the next page please.
6 This is a report, as it says, on a meeting with
7 the landlord, the Mayor, the Library Board and the
8 CAO on June 15th, 2005. And this is the meeting
9 you spoke of earlier this morning, right?

10 A. Yes.

11 Q. And you recall this meeting?

12 A. Not before I saw the documentation,
13 no.

14 Q. You had no recollection of the
15 meeting?

16 A. No.

17 Q. Okay. Having read the
18 documentation, do you recall the meeting?

19 A. Specific -- I couldn't tell you
20 where it occurred.

21 Q. The memo of Ms. Fazekas says that at
22 the meeting were Mr. Kennealy, you, Mr. Speck,
23 Mayor Farkouh, Ms. Menzies, the chair of the
24 Library Board, Ms. Croxson, the vice chair, two
25 other members of the Library Board, Mr. Southern,

1 Ms. Tapp, and Ms. Fazekas. And in the third
2 paragraph after noting that Mr. Kennealy chaired
3 the meetings -- the meeting, Ms. Fazekas wrote
4 this.

5 "He outlined the structural challenges
6 faced by the flat roof of the mall and the
7 attempts at ameliorating the problem over
8 the past 5 years."

9 That would be the length of time they
10 owned the mall, right?

11 A. Yeah.

12 Q. "The structure of the parking roof
13 is two layers of cement slabs
14 approximately 4 to 5 feet apart.

15 Solutions proffered by the experts include
16 the insertion of a rubber membrane between
17 the two layers, involving the removal of
18 the top cement layer or the construction
19 of a structure over the roof that would
20 necessitate increased structural support.
21 This latter option would cost
22 approximately \$1.5 million."

23 Sir, had you ever been party to or heard
24 of an option to fix the roof, before this meeting,
25 that would cost about \$1.5 million?

1 A. I don't recall unless there had been
2 something in that one Retirement Living board
3 package that I had seen. Something in the summary
4 or --

5 Q. Well, there was certainly a
6 reference to it in the Nicholls Yallowega Bélanger
7 report which -- which Mr. Kennealy testified you
8 were given at the finance committee meeting in
9 late May, early June of 1999. But you testified
10 yesterday you had not seen that report?

11 A. And I am still testifying that. I'm
12 saying if there was in the executive summary, if
13 there was reference to it, I would have seen it.
14 But not having that in front of me right now, I
15 don't know.

16 Q. Okay. Do you recall whether anybody
17 asked Mr. Kennealy why he was not proposing to
18 spend the 1.5 million?

19 A. I don't remember.

20 Q. Sir, if I could ask you to turn to
21 tab 123, which is Exhibit No. 11-103, I think.
22 These are your notes, sir, I understand?

23 A. Yes, they are.

24 Q. Of that meeting on June the 15th?

25 A. Yes.

1 Q. And reading them from the top they
2 say: "Library Board RK, the Board is the
3 customer, the legal entity, proper way to
4 communicate is in writing." Do you recall Mr.
5 Kennealy saying that?

6 A. I don't recall that, but my notes
7 certainly reflect that.

8 Q. And then it says: "RK's solution,
9 surface material solution." And then there's a
10 word that I can't read. Can you read that?

11 A. "Under roof troughs as well".

12 Q. "Under roof troughs as well" thank
13 you. And then it says: "Library possible
14 solution move to where the Bingo now is." And
15 then it says: "July-August RK will get engineer
16 in to determine if his solutions are doable
17 (eavestrough)". That's what it says, right?

18 A. Yes.

19 Q. And then it says: "Will do repairs,
20 some work, will not," and the word not is
21 underlined, "will not do large outlays of cash."
22 Do you recall Mr. Kennealy saying they would not
23 do large outlays of cash to fix the problem?

24 A. I don't recall, but it's clear in my
25 notes that that's what I would have heard.

1 Q. Okay. Sir, the suggestion of
2 putting an eavestrough under the steel to catch
3 the leaks, did you consider that that would have
4 nothing to do with preventing the water running
5 over the steel?

6 A. I don't recall whether I did or not.

7 Q. Did you ever consider, sir, at any
8 time in dealing with this solution -- or, sorry,
9 with this problem, that when water continually
10 goes through a steel structure, there's the
11 potential for it to rust and deteriorate?

12 A. I don't believe I ever was concerned
13 that the leaks presented a threat to the
14 structural integrity of the building, as many
15 other people didn't. As to why, I rack my brains
16 on that. I do look again, though, to that meeting
17 of the Retirement Living Board and although I
18 don't remember being there, I obviously was, and
19 the executive summary said, structurally sound,
20 things like the rooftop parking will need ongoing
21 maintenance. So if that was tucked in the back of
22 my mind, that may have been my impression of the
23 mall moving forward that the roof structurally was
24 fine, that the roof was going to need some ongoing
25 maintenance.

1 Q. Thank you. Did you ever -- did you
2 ever consider the simpler issue which is that
3 water on steel makes it rust?

4 A. Again, having seen that and knowing
5 that the building was 20 years old and being told
6 that the structure was fine, I may not have had
7 concerns about that.

8 Q. Okay. Sir, I may have asked you
9 this question. If I have, I apologize. Did you
10 ever feel in your dealings with the issue of
11 leaks, did you ever feel that you should not do
12 anything which might potentially cause the mall to
13 close?

14 A. I'm sorry, can you repeat that
15 again?

16 Q. Did you ever feel that you should
17 not, in dealing with this problem of leaks, that
18 you should not do anything which might potentially
19 cause the mall to close?

20 A. I don't believe so.

21 Q. If I can have you turn to tab 126.
22 This is -- sorry, Exhibit No. 11-104. These are
23 the minutes of a meeting of the Joint Health and
24 Safety Committee dated June 22nd. And item number
25 two is Review of Complaint Report and

1 recommendation form for the Library. And under
2 the item Recommendation, they noted their earlier
3 recommendation which was, "Ensure the landlord has
4 the problem of roof leakage fixed to eliminate the
5 hazardous conditions that occur when it rains."
6 And under Action Taken it says: "The roof was
7 resealed by the landlord. COMPLETE." Did you get
8 this at the time, sir?

9 A. I don't recall specifically, but
10 it's likely.

11 Q. Sir, this is -- but you probably
12 would have, is that fair?

13 A. I think so.

14 Q. And this is a week after the meeting
15 that we just looked at the notes about. And at
16 the meeting, Mr. Kennealy said the options were to
17 get engineers in in August to look at putting --
18 July or August to look at putting eavestroughs
19 underneath the roof and he did not suggest that
20 they were in the process of resealing the roof.
21 So when you got this note, sir, did you, do you
22 recall did you ask yourself, well, how on earth
23 did that happen in a week? The problem that had
24 been around for 15 years has now been fixed?

25 A. Well, in fairness, I looked back at

1 my handwritten notes and the first of one of the
2 solutions he proposed looks like surface material
3 solutions. So, you know, that might not have made
4 me question it. And certainly just because he
5 said that he was getting engineers in later to
6 look at solutions, that doesn't prohibit him from
7 thinking that maybe we should do something in the
8 interim.

9 Q. No, of course not. But what I'm
10 asking you, sir, is this is a week after you had
11 the meeting.

12 A. Yup.

13 Q. Where Mr. Kennealy says, according
14 to your notes, he doesn't want to spend big bucks
15 to fix it. And according to Ms. Fazekas' notes,
16 the proposed solution, the expensive one, is a
17 million and a half dollars and it's been a problem
18 for many, many years. Did you not say to
19 yourself, wow, that's fabulous. How did they do
20 it?

21 A. I don't recall thinking that, no.

22 Q. Okay. Can I have you turn to tab
23 144, Exhibit No. 2026. This is -- these are the
24 minutes of the Joint Health and Safety Committee
25 meeting, the next meeting on August 11th, 2005.

1 And item number two is:

2 "Update from D. Lachance and Barbara
3 Fazekas on investigation concerning the
4 Co-operative Health and Safety Record No.
5 326 dated April 30, 2005 from the Library
6 and subsequent recommendations from the
7 Joint Health and Safety Committee and
8 response to recommendations from the Joint
9 Health and Safety Committee that were
10 incomplete at June's meeting.

11 "There have been new leaks and buckets
12 were put out and ceiling tiles removed."

13 Sir, did you get these minutes?

14 A. Probably.

15 Q. And, sir, did this cause you to
16 revisit your earlier conclusion that it had been
17 fixed?

18 A. Well, obviously it hadn't been
19 fixed. And the minutes indicate that the CEO of
20 the library is going to meet with the new landlord
21 to discuss it.

22 Q. If I could have you turn to tab 163,
23 Exhibit No. 11-6. This is a document entitled
24 Procedure for dealing with leaks in the Library,
25 revised December 15th, 2005. And it is a list of

1 16 steps which start out with: "Every morning,
2 the Librarian will check the premises for leaks
3 according to the checklist found in the binder."
4 And then a series of steps which have to be taken,
5 including arranging the drip buckets, draping the
6 sheets of plastic from the ceiling, posting signs,
7 bring a truck over to store material until it can
8 be reshelved where it's leaking, et cetera.

9 Were you aware, sir, that such a
10 detailed procedure was being followed in the
11 library certainly as of December '05?

12 A. I was aware that this had been
13 prepared in response to one of the recommendations
14 by the Joint Health and Safety Committee, yes.

15 Q. And, sir, during this period of time
16 in '05, during and after the incident that began
17 at the end of April, what steps did you take to
18 follow up and monitor whether the leaks were being
19 fixed?

20 A. From when to when, sorry?

21 Q. From the time April -- late April
22 '05 when the e-mails started being circulated
23 about the leaks.

24 A. Hmm hmm.

25 Q. To end of that year. What steps did

1 you take to see whether or not the leaks were
2 being fixed?

3 A. I think for the most part I left it
4 in the hands of the CEO of the library and the
5 Joint Health and Safety Committee to monitor.

6 Q. So you did nothing?

7 A. I left it in the hands of the CEO of
8 the library and the joint Health and Safety
9 Committee to monitor.

10 Q. Did you ask them for updates?

11 A. Probably from time-to-time. I don't
12 recall specifically.

13 Q. Sir, if I could ask you to turn to
14 volume 7, tab 16, Exhibit No. 1699.

15 A. I'm sorry, which tab?

16 Q. Tab 16, volume 7. Sir, this is a
17 series of e-mails. And if we can start with the
18 second page, an e-mail at the bottom from Kathy
19 McTaggart to Daniel Vincent with copies to --
20 that's members of Council, right?

21 A. Hmm hmm.

22 Q. And Ms. Sprague and you?

23 A. Yes.

24 Q. And this is sent June 8th, 2006, and
25 Ms. McTaggart writes:

1 "Danielle, around 9:00 p.m. this evening I
2 placed on your desk photocopies of the
3 Meeting Notes of the Algo Centre Mall
4 Merchants Association Meeting which took
5 place on May 17th, '06. One set of copies
6 is for Mayor Farkouh and the other set is
7 for Troy Speck."

8 And, sir, if I could have you turn to
9 tab 12 in this volume, which is Exhibit No. 11-11,
10 you can see the meeting note she refers to. No,
11 sorry, is it? Try 11-111. Yes, that is what it
12 is. Thank you.

13 So these are the meeting notes that are
14 referred to in that e-mail we just looked at. And
15 if could you go to page three, under the heading
16 Maintenance, in the fourth paragraph, it notes:

17 "Sue Morin (library: the smell of mold in
18 the library is so strong that her
19 customers are leaving. They have had to
20 cover their books with plastic to keep the
21 leaks from damaging their books."

22 Sir, I assume given that you got this
23 e-mail and that there were a copy of these notes
24 were taken, were left for you that you read them?

25 A. Yes.

1 Q. And if we go back to tab 15, Exhibit
2 No. 1699, the page prior to this, please. Thank
3 you. And the e-mail --

4 A. I'm sorry, which tab?

5 Q. It's tab 16. Back to the e-mail
6 string and on the second page. There's an e-mail
7 from Mr. Reinhardt to Ms. McTaggart on June 9th on
8 this issue. And Mr. Reinhardt writes:

9 "Cathy, I would encourage you not to
10 embroil coouncil [sic] in mall problems in
11 any way. Either as an individual
12 councillor or as a member of the library
13 committee."

14 And then if you go to the first e-mail
15 -- sorry, starting on the prior page, Ms.
16 McTaggart responds to Mr. Reinhardt, and she
17 copies, it looks like, the entire Council, Ms.
18 Sprague, Mr. Kukoraitis, Mr. Gagnon, and you,
19 right?

20 A. Yeah.

21 Q. And this was on June 10th. And she
22 writes:

23 "I did not intend to give the impression
24 that I would "embroil" council in mall
25 problems in any way. I merely tried to

1 provide Council with a "heads up" and
2 point out that, it is my personal
3 impression that in the very near future,
4 this Issue is going to be brought to the
5 attention of the Municipal Government,
6 (Council) by either disgruntled Mall
7 Merchants or disgruntled citizens,
8 (taxpayers), or both, and I do not believe
9 that it is something that Council will be
10 able to ignore, shrug off or avoid. I
11 think that Council is going to be asked to
12 go to bat (step up to the plate) as it
13 were, for these people, which includes our
14 own Library.
15 They are all taxpayers and they want value
16 for their money. The Hall Closet already
17 moved out of the Mall. Zellers is not
18 happy, Miscellaneous, Hungry Jack's &
19 Oliver's Grill (all owned by Jack and
20 Elaine Quinte) are not happy, Alpine
21 Flowers & Lighthouse Cards (both owned by
22 Luc Morissette & his wife) is not happy,
23 Marlin Travel is not happy, and Dorlean's
24 is not happy. What do you suggest? Just
25 tell everybody, if they do not like the

1 way they are being treated by Eastwood
2 Mall Inc., then move out. Pretty soon, we
3 will see an empty Mall, which used to be a
4 concern to City Council when NorDev owned
5 the property."

6 Stop there. Was it a concern with the
7 -- was a potentially empty mall a concern to City
8 Council when NorDev owned it?

9 A. Well, it was the whole reason NorDev
10 bought it in the first place.

11 Q. So you recall no discussions on
12 Council or within the City staff or with
13 Councillors to the effect that when NorDev owned
14 it, you ought to be concerned that it did not
15 become an empty mall?

16 A. No.

17 Q. "Now that Eastwood Mall Inc.," she
18 goes on:

19 "Now that Eastwood Mall Inc. owns the
20 property, has the attitude of Council
21 towards the condition of the mall suddenly
22 changed?"

23 And then she goes on in the next
24 paragraph and writes:

25 "I felt that as the Council appointed

1 representative on the Library Board, it
2 was my duty to report to Council the
3 latest information that I had about the
4 Landlord of the Library. My only
5 involvement at the present time is as a
6 Member of the disgruntled Library Board,
7 which does not have to come to Council at
8 all about this issue. The Library is a
9 tenant of the Algo Centre Mall, and the
10 Library Board is not at all happy with the
11 state of the Mall. The Library Board is
12 perfectly capable of dealing with Mr.
13 Nazarian and his efforts to cut corners to
14 save a buck, however, this practice is not
15 sitting too well with the Library or other
16 Tenants of the Mall."

17 Do you recall this e-mail, sir?

18 A. Not specifically, no.

19 Q. Can you tell me -- can you assist
20 the Commission in any way, sir, in advising why it
21 would be thought by Mr. Reinhardt to be
22 inappropriate for members of Council to hear
23 concerns about the conditions, including the
24 leaks, at the mall?

25 A. I don't think it's fair to ask me to

1 speak for Mr. Reinhardt.

2 Q. Well, it's just that you had similar
3 concerns about a year or two earlier when you told
4 Ms. McTaggart -- sorry, Ms. Fazekas that she
5 shouldn't be bringing these things to the Council.

6 A. No, I didn't, and that is not true
7 at all, Mr. Doody. What I said is that we should
8 be dealing with the matter. I wasn't suggesting
9 that these were matters that shouldn't be brought
10 to Council.

11 Q. I could ask you to turn to the next
12 tab, sir, it's Exhibit No. 11-113, tab 17 in your
13 book.

14 THE COMMISSIONER: Would this be a good
15 time, Mr. Doody, to take a short recess?

16 MR. DOODY: Certainly, Mr. Commissioner.

17 THE COMMISSIONER: Fifteen minutes.
18 Let's say till a quarter to 12.

19 MR. DOODY: Thank you.

20 --- Break taken at 11:35 a.m.

21 --- Upon resuming.

22 BY MR. DOODY:

23 Q. Sir, just before I move on in the
24 exhibits, a couple of questions about the caucus
25 meetings. I understood your evidence earlier

1 today to be that these meetings occurred on
2 approximately a monthly basis throughout the
3 entire time you were either a Councillor or
4 employed by the City, that is from December 1994,
5 to -- when did you leave?

6 A. 2006, July.

7 Q. July 2006, is that right?

8 A. Yeah. I don't know that it started
9 when I first started as Council, but sometime
10 during my first term, I think.

11 Q. Okay. And do you recall whose idea
12 it was?

13 A. I believe it was the Mayor's.

14 Q. And who was responsible for putting
15 items on the agenda?

16 A. Anybody could put items on the
17 agenda. I tracked items that I felt Council might
18 need or want an update on. But if a member of
19 Council had something that they wanted to add on
20 there as well.

21 Q. And if a member of Council wanted
22 something added, to whom would they speak?

23 A. Probably me.

24 Q. Okay. Was the Clerk present at
25 these meetings?

1 A. Not that I remember, no.

2 Q. Was the Clerk involved in preparing
3 the agenda?

4 A. No.

5 Q. Was the Clerk aware of these
6 meetings?

7 A. I believe so.

8 Q. You agree with me that the Municipal
9 Act requires that the Clerk be present at every
10 meeting of Council?

11 A. I believe so.

12 Q. And was there any discussion about
13 the fact that her absence was in contravention of
14 the statute?

15 A. I don't recall.

16 BY THE COMMISSIONER: I'm sorry, I
17 didn't hear that.

18 BY THE WITNESS: Sorry, I don't recall.

19 BY MR. DOODY:

20 Q. If I could turn -- have you turn to
21 Exhibit No. 11-113, which is an e-mail -- sorry,
22 tab 17, sir. Which is an e-mail -- volume 7, yes.
23 And if we start at the bottom, it's an e-mail from
24 Suzanne Morin to Ms. McTaggart on June 12th, 2006.
25 The subject line is roof at the library. And Ms.

1 Morin writes:

2 "Just wanted to keep you posted on the
3 roof situation at the library. You
4 mentioned at the Board meeting that you
5 would be talking to the Mayor and Council
6 regarding the Merchants and Tenants
7 meeting minutes and my letter to them as
8 well. I thought you can add the
9 following: Wanted to let you know that we
10 had quite mess here on Friday, June 9th
11 morning with the rain on Thursday evening.
12 I arrived at work to find collapsed wet
13 tiles, water dripping from the new light
14 ballast which I had just had replaced the
15 day before by a paid electrician, and
16 water dripping from most of the prominent
17 leaky areas. I immediately picked up the
18 phone to call the Mall office. I asked
19 Corrine, the executive assistant to send
20 the mall manager to have a look at this
21 situation before the maintenance crew
22 cleans it up. Dan Bouffard (mall manager)
23 along with Al from maintenance arrived at
24 approximately 9:25 a.m. and inspected the
25 situation. Mr. Bouffard agreed with me

1 that this situation has to be addressed
2 immediately. He did say that they had a
3 company lined up to fix the problem but
4 the day before the work was to start the
5 contractor backed out saying it was out of
6 their expertise.
7 "Anyhow, he did say he would address the
8 problem right away and find someone to
9 temporarily fix the problem this weekend
10 or early this morning. Again, this will
11 only be a temporary fix until they find a
12 contractor who is willing to take this job
13 on. I arrived this morning and noticed
14 that they are drilling on the roof, it
15 will be a noisy day, but we will put up
16 with it. A few weeks ago one of our
17 patrons told me that his son works for a
18 company out of Ottawa that does did this
19 kind of work. I asked Mr. Russell to tell
20 the mall manager, which he did. The mall
21 manager did mention to me that he would be
22 in touch with Mr. Russell's son regarding
23 the roof problem."
24 So that e-mail was sent by Ms. Morin to
25 Ms. McTaggart and then --

1 THE COMMISSIONER: What's the year?

2 MR. DOODY: June the 12th, 2006.

3 BY MR. DOODY:

4 Q. And then there is an e-mail above it
5 forwarding this e-mail to Scott Reinhardt with
6 copies to the Mayor, Mr. Hamilton, Mr. Denley, Ms.
7 Baarda, Mr. Souliere and you, that's Council and
8 the CAO, right?

9 A. Hmm hmm.

10 Q. On the 12th of June 2006. And Ms.
11 McTaggart writes:

12 "In response to your e-mail reply of this
13 morning, Sue Morin sent the e-mail below
14 to me this morning before you sent yours
15 and I'm passing it on to Council, as
16 requested by Sue.

17 "Your question was "are you sure that the
18 merchants association minutes should have
19 been circulated?" My response is, that at
20 the meeting of the Library Board between
21 5:00 p.m. and 6:15 p.m., June 8th, the
22 whole Library Board was in agreement with
23 me passing on the "Notes" that were taken
24 at the Mall Merchants Meeting. It is
25 their feeling that Council should know

1 about this situation, and that perhaps
2 this will help get something done about
3 it.

4 "If you recall [last Tuesday --]last
5 Thursday evening, June 8th, we had quite a
6 storm and here is the resulting e-mail
7 regarding the damage to the library.
8 Scot, I guess all you have to do is walk
9 across the hall and take a look at the
10 damage. Perhaps you have already done
11 this today.

12 "I am curious to know if there was damage
13 to other Tenants ceilings, such as
14 Zellers, and I will find this out from
15 Sue.

16 "With regards to the cleanliness I've been
17 told personally by a maintenance staff
18 worker that the mall maintenance staff was
19 cut back soon after Eastwood Mall Inc.
20 bought the mall, and that the maintenance
21 staff remaining had their hourly wage
22 reduced, while at the same time they are
23 working longer hours. They are not happy
24 campers. This happened around the same
25 time that Marcel Leblanc was relieved of

1 his duties.

2 "I will not be writing any more e-mails to
3 you about this situation unless there is
4 something you should be notified about
5 because it could become a full time job."

6 Did you read this e-mail, sir?

7 A. If it was sent to me, I'm sure I
8 did.

9 Q. And as a result of this e-mail, you
10 and members of Council learned that the leaks with
11 which you had least personally had dealt one year
12 earlier were continuing and there was continuing
13 to be significant problems, right?

14 A. Sounds like it.

15 Q. Did you do anything in an attempt to
16 deal with those problems?

17 A. Not that I recall, although I did
18 note that on the first e-mail, it sounded like the
19 manager for the mall was taking action for a
20 temporary fix and to move towards something more
21 permanent.

22 Q. But, sir, you'd been -- you'd been
23 hearing that for years, had you not?

24 A. This is a new mall owner, though.
25 You have to give him an opportunity, no?

1 Q. Why?

2 A. Because you're not going to go to a
3 court with a brand new mall owner who is showing
4 efforts to do things and have a court side in your
5 favour. They'll have a due diligence defence if
6 they're trying things to fix the problem.

7 Q. What does a due diligence defence
8 have to do with an order under the Property
9 Standards By-Law requiring the mall to be
10 repaired? It has nothing to do with it does it,
11 sir?

12 A. You're the lawyer. I don't know.

13 Q. You were the one who talked about a
14 due diligence defence, sir, and you're a lawyer,
15 right?

16 A. My understanding is --

17 Q. Is that not right?

18 A. Yes, I am.

19 Q. And a due diligence has to do with a
20 defence to a charge, a regulatory charge under a
21 provincial statute, right? That's what a due
22 diligence defence is about, right?

23 A. My understanding was that it was
24 also available for the matter like this.

25 Q. Are you telling me --

1 A. If I'm wrong, that's fine.

2 Q. Okay. So your evidence, sir, is
3 that at the time you considered making --

4 A. No.

5 Q. Just let me finish the question. Is
6 your evidence that at the time you considered
7 making an order under the Property Standards
8 By-Law and concluded you should not do so because
9 there was a potential due diligence defence, is
10 that your evidence?

11 A. No. No, that's not my evidence.

12 Q. Did you consider making an order
13 under the Property Standards By-Law?

14 A. No.

15 Q. So your evidence about the due
16 diligence defence has nothing to do with what you
17 were thinking of doing at this time, right?

18 A. I'm just saying from the evidence,
19 the new owner was trying to do things to fix it.

20 Q. And you knew it wasn't working, sir.
21 And you knew the previous owner had been trying to
22 do things to fix it, right? You knew that, right?
23 That's what he told you anyway.

24 A. Well, I think it worked sometimes
25 and then failed again, and then worked for a

1 while, and failed again.

2 Q. And you knew that?

3 A. Yes.

4 Q. And you wrote him a year prior to
5 this and said this had been an ongoing and endemic
6 problem since the library moved into the mall,
7 right?

8 A. Yeah.

9 Q. And you believed that to be true?

10 A. Yeah.

11 Q. If you turn to Exhibit No. 3349, tab
12 21 of this volume, sir. Sir, this is from
13 Council's Resolution Database showing that the
14 updated Level of Service and By-law Enforcement
15 Practices Policy be accepted as recommended by the
16 Official Plan & By-laws Committee in their
17 Resolution of July 12th, 2006, in accordance with
18 reports CK 2006-23 from the director of Clerks,
19 right?

20 A. Yup.

21 Q. The report referred to is on the
22 next page, sir. And that was a report prepared by
23 Ms. Sprague and approved by you, right?

24 A. Yup.

25 Q. And if you look to page two of that

1 report under the heading Analysis, item number
2 six, Ms. Sprague wrote, and you approved this:

3 "The most extensive change to this policy
4 is a result of Council's recent approval
5 to hire an additional Property Standards
6 and By-law Enforcement Officer in order to
7 proceed with the initiative to establish a
8 program for the systematic review of
9 commercial and multi-residential
10 properties within the municipality for
11 compliance with Building Code, Fire Code
12 and the Property Standards by-Law No.
13 03-29. Formerly, this by-law was strictly
14 complaint driven. The enforcement process
15 leads to a hearing before the Property
16 Standards Committee, and generally
17 infractions have been resolved without the
18 need for a hearing."

19 And you were -- that was approved by
20 you, sir?

21 A. The report was, yeah.

22 Q. On June 27th, 2006?

23 A. That's what it looks like.

24 Q. So if -- am I correct that if the
25 mall had been 50 percent vacant, it would have

1 been the subject of one of these pro-active
2 enforcement inspections put in place by Council on
3 this date?

4 A. I expect so, yeah.

5 Q. Sir, at the time that this issue was
6 before the Committee of Council and Council, was
7 there ever any discussion that since Council was
8 talking about enforcing the Property Standards
9 By-Law, was there ever any discussion about
10 whether the Property Standards By-Law should be
11 enforced against the mall?

12 A. I don't remember such a discussion.

13 Q. And am I -- do I correctly
14 understand your evidence, sir, to be that
15 throughout the entire time you were at the City,
16 from your election in 1994 to your departure at
17 the end of July of 2006, you recall no discussion
18 or consideration about whether there should be an
19 inspection of the mall to see if it was complying
20 with the Property Standards By-law?

21 A. I don't recall one, no.

22 Q. And on July 26, 2006, you left the
23 employ of the City of Elliot Lake?

24 A. Yes, I did.

25 Q. Those are my questions, sir, my

1 friends may have some.

2 THE COMMISSIONER: Thank you.

3 MR. CASSAN: Mr. Commissioner, I
4 understood that Mr. Doody was going to make some
5 observations.

6 MR. DOODY: Oh, I'm sorry, I apologize.
7 Let me do that. I completely forgot. Mr.
8 Commissioner, I spoke with Mr. Cassan and made
9 inquiries about the documents which became Exhibit
10 No. 2351. And I should explain, as I've explained
11 before, our process for obtaining documents. We
12 issued summonses to a number of locations, a
13 number of document holders, one of which, of
14 course, was the City. We offered to assist the
15 City in locating relevant documents on their
16 electronic database. For that purpose, the -- a
17 drive or more than one drive were provided to the
18 data management firm which we have engaged for the
19 purpose of managing the data.

20 That database was searched with key
21 words in order to determine from the entire
22 collection of documents, which were stored
23 electronically by the City, in order to determine
24 ones which might potentially be relevant to the
25 Commission. So a series of key words were

1 searched for and those -- the documents produced
2 by those key words were then reviewed manually by
3 a firm -- an outside law firm, which we retained
4 for the purpose of determining which documents
5 were relevant. As a result, the -- we determined
6 that the Relativity Database, which contains all
7 the documents that made it through that culling
8 process, contains 16 of the 28 documents which are
9 entered as Exhibit No. 2351. However, the
10 database from which the City discovered these
11 documents today and Mr. Cassan provided them to
12 us, was included in the database that was provided
13 to ESI for searching. So these documents -- I
14 don't want it to be thought that the City was
15 holding back these documents in any way. They
16 were provided to us as part of a database
17 containing all of the electronic records of the
18 City and obviously because the search terms which
19 were used did not include the word caucus, they
20 weren't located. And then when they were reviewed
21 manually, their relevance did not become apparent,
22 if they did survive the electronic culling, their
23 relevance didn't become apparent because it's only
24 in the course of the evidence that it's become
25 apparent. So as I told Mr. Cassan I would, and

1 it's important that I don't want anyone to get the
2 impression that the City has done anything
3 untoward in respect of holding back these
4 documents, that's simply not so.

5 THE COMMISSIONER: And do you anticipate
6 new searches now?

7 MR. DOODY: Yes, Mr. Commissioner. I'm
8 going to have a chat with Mr. Cassan about the
9 status of that database, because after we searched
10 it, it was returned to the City, so we may want to
11 search it for the term caucus.

12 THE COMMISSIONER: All right. Mr.
13 Cassan, in relation to this witness --

14 MR. CASSAN: I think Mr. Doody's
15 comments were clear with respect to that, that
16 documents had been produced in the process.

17 THE COMMISSIONER: Thank you.
18 Cross-examination then or further
19 examination-in-chief.

20 MR. SHOEMAKER: Thank you, Mr.
21 Commissioner. Mr. Broadbent, I believe is -- I'm
22 going to adduce some new evidence, and he wasn't
23 feeling well, but I think I need to adduce the
24 evidence prior to you cross-examining, thank you.

25 EXAMINATION-IN-CHIEF BY MR. SHOEMAKER:

1 Q. Good afternoon, Mr. Speck. I'm
2 going to adduce some new documents and at that
3 point, all the documents will be before you and
4 fellow counsel will cross-examine you on the
5 entirety of all of the documents put to you.

6 A. Okay.

7 Q. Mr. Speck, the first questions I
8 want to ask deal with some photos within the
9 documentation from 2005 and they were taken on
10 March 16th of 2005.

11 MR. SHOEMAKER: And I'll -- if I could
12 bring those up, Ms. Kuka. Those are Exhibits No.
13 2031 through to 2047. It's a series of pictures.
14 Thank you.

15 BY MR. SHOEMAKER:

16 Q. Mr. Speck, I'm going to ask you to
17 look at the documents and give me your thoughts
18 and tell me if that's your recollection of the
19 mall -- of the library location within the mall in
20 and around March of 2005. And in and around the
21 time period of the April and May series of e-mails
22 that Mr. Doody's already covered with you.

23 MR. SHOEMAKER: So if you could scroll
24 through those slowly, Ms. Kuka, it would be
25 appreciated. You can go to the next one. Thank

1 you, Ms. Kuka.

2 BY MR. SHOEMAKER:

3 Q. Mr. Speck, again the question was is
4 this if at all the way in which you generally
5 recall the library to look like in the early to
6 mid-2005 time period?

7 A. If they were taken in March of '05
8 that would generally be what it looked like.

9 Q. Okay. And so that is -- that would
10 be the knowledge that you had as you were
11 progressing forward to respond to the Joint Health
12 and Safety Commission complaint?

13 A. Yes.

14 MR. SHOEMAKER: Okay. And I'd like to
15 bring you to the October of 2006 photos and this
16 is additional evidence that will become relevant,
17 is relevant to Mr. Speck, Mr. Commissioner, after
18 Mr. Specks' departure in July of 2006, there was a
19 further series of flurry of e-mails and things of
20 that nature dealing with what ended up being a
21 notice of violation issue as against the mall.
22 And that will be upcoming evidence from witnesses
23 to come as well as documentation to be put forth
24 before Mr. Speck.

25 Ms. Kuka, if you could go to Exhibit No.

1 11-257, 11-275, 11-60 and 11-78.

2 BY MR. SHOEMAKER:

3 Q. Mr. Speck, if at all is that the
4 fashion that you recall the library looking?

5 A. Now it seems like it's gotten worse.

6 Q. Okay. And what, if anything, do you
7 believe was the difference in the leak situation
8 that you confronted in April and May of 2005
9 versus the information and evidence you've seen
10 regarding the leak situation that was confronted
11 in October of 2006?

12 A. Just that it looks like it's gotten
13 worse and I've read that in the summary that I've
14 seen prepared by Tanya-Lee Williams, I believe it
15 was --

16 Q. Okay.

17 A. -- that things started to go
18 downhill from 2005 onward.

19 Q. Okay. And the -- you departed the
20 City on July 26th, 2006, I believe, is that
21 correct?

22 A. That's right, yeah.

23 Q. And there was a period of time -- an
24 interim period of time where there was an interim
25 CAO, Chief Administrative Officer. And then the

1 new CAO was going to be a future witness by the
2 name of Tom Derreck, Mr. Tom Derreck?

3 A. Yeah.

4 Q. He joined the City of Elliot Lake
5 from, what we've been told by the City's records,
6 on October 10th of 2006. You've been an Executive
7 Assistant to the CAO, a Deputy CAO, a CAO for five
8 years with the City of Elliot Lake, and a CAO
9 again in South Oxford and in Blue Mountains. And
10 so I believe you can speak sensibly as to sort of
11 the roles and responsibilities as being a CAO in a
12 community, correct?

13 A. Hmm hmm.

14 Q. Now, would you think that it would
15 be difficult for new CAOs such as Mr. Tom
16 Derreck to come and join the City on October 10th,
17 for example, and within 14 days to already be at
18 the point of issuing a notice violation? Is that
19 something that would, if at all, seem difficult to
20 do?

21 MR. DOODY: Mr. Commissioner, I'm not
22 sure that any foundation has been laid for such an
23 opinion from this witness. He wasn't there.
24 We're going to hear from Mr. Derreck. I'm not
25 sure how it even comes in. That's my objection.

1 MR. SHOEMAKER: Your Honour, I can --
2 perhaps I'll ask a few questions to get at that
3 point to satisfy Mr. Doody's complaint.

4 THE COMMISSIONER: Okay.

5 BY MR. SHOEMAKER:

6 Q. Mr. Speck, how -- how, if at all,
7 having read some -- obviously having seen the
8 documentation and examination from Mr. Doody
9 regarding the 2005 complaints, and having seen
10 some documentation regarding what's happened in
11 October of 2006, how, if at all, do believe your
12 efforts in 2005 would have -- would have either
13 been relied upon or used in October of 2006, which
14 is only two or three months after you departed the
15 City of Elliot Lake?

16 MR. DOODY: Well, again, Mr.
17 Commissioner, the question was, how was -- how was
18 it used? He wasn't there. I'm not sure how can
19 this witness assist.

20 MR. SHOEMAKER: I'm asking, you Honour,
21 for his opinion on how he believes his efforts in
22 2005 would have been relied upon in 2006.

23 THE COMMISSIONER: Well, how would he
24 know?

25 MR. SHOEMAKER: Well, Your Honour,

1 there's --

2 THE COMMISSIONER: He's gone, that's the
3 point.

4 MR. SHOEMAKER: Okay, he's gone, but --

5 BY MR. SHOEMAKER:

6 Q. Mr. Speck, who of your -- who was
7 your main team in April and May of 2005 in
8 responding to the 2005 complaints?

9 A. Mr. Gagnon certainly took a lead on
10 a lot of it because he was our liaison with the
11 library and -- and was the person who took care of
12 a lot of stuff while I was out of town.

13 Q. Okay.

14 A. And Andrea Leddy who was our HR
15 Manager.

16 Q. Okay. And would Mr. Kukoraitis have
17 had any involvement?

18 A. Yes, he would.

19 Q. Okay. And after you departed -- and
20 those individuals presumably, they would have
21 been -- they would have been, at your direction,
22 responding to these issues regarding the library
23 leak complaint?

24 A. Yeah, they would have. I mean, I
25 think if you look back at the history of it, you

1 know, although the end result may not have been
2 satisfactory by the time I left, I did more than
3 any of my predecessors with regard to helping the
4 library with its issues.

5 Q. Okay.

6 A. And certainly I think the work we
7 did and the documentation we did to establish the
8 issues, which had not been done before, may have
9 been some help in moving forward to an order.

10 Q. Okay.

11 MR. SHOEMAKER: Ms. Kuka, if you could
12 bring up Exhibit No. 13-5. Okay. Mr.
13 Commissioner, this is an e-mail from the manager
14 of the Scotiabank located in the Algo Mall
15 regarding damaged ceiling tiles and leaks from the
16 roof.

17 BY MR. SHOEMAKER:

18 Q. And, Mr. Speck, I want -- can you
19 tell me what, if anything, you know, this is
20 noting to you regarding the leaks that were
21 occurring at the Scotiabank, which is also located
22 in the mall?

23 A. Well, I've testified that I don't
24 believe that I was aware that a leaky roof was a
25 violation of the Property Standards By-Law. And I

1 take a look and I certainly wasn't the only one.
2 Nobody seems to have raised it. And when I look
3 at an organization like the Scotiabank or Zellers,
4 who I also understand had some leaking issues,
5 those are large corporations with significant
6 experience in commercial leasing and legal
7 departments of their own and it appears that never
8 once did they send a letter to the building
9 department. So I don't think it's necessarily
10 unreasonable that I wasn't aware that leaky roof
11 was a violation of the Property Standards By-Law.
12 And as I indicated earlier, there are some
13 municipalities that don't have that provision in
14 their Property Standards By-Law.

15 Q. To your understanding now, obviously
16 having looked in hindsight at these issues, what
17 is your understanding regarding the Property
18 Standards By-Law and the current municipality that
19 you're the CAO?

20 A. There's a watertightness requirement
21 in the section for the residential properties, but
22 not in the section for the nonresidential
23 properties.

24 Q. Okay.

25 MR. SHOEMAKER: Ms. Kuka, if I can have

1 Exhibit No. 3368 please, page two.

2 Sorry, Mr. Commissioner, this document,
3 Commission Counsel had asked us to produce the --
4 if you go to page two, Ms. Kuka, please.

5 Commission Counsel asked us -- this is the last
6 page of the opinion. Pages one and two were
7 requested by us and we did forward them on. I
8 thought the database had been updated.

9 MR. DOODY: I think we got them in the
10 last day or two.

11 MR. SHOEMAKER: Yeah, yeah, yeah. I
12 have the document electronically. I would have
13 e-mailed it to you, Ms. Kuka, I believe. Yes,
14 that is it. Thank you, you're fantastic. That
15 was very quick. I appreciate it.

16 BY MR. SHOEMAKER:

17 Q. Mr. Speck, this is a -- this is
18 dated October 24th, 2006. It was an opinion
19 obtained by the City from their municipal law
20 counsel and so this is after your time, but my
21 question is regarding -- within the contents of
22 that letter, which you have reviewed, what, if
23 anything, do you note, you know, relating to
24 either the property standards or issues that you
25 note in this letter?

1 A. As I recall, I don't believe there
2 was a suggestion to use the Property Standards
3 By-Law.

4 Q. And this was a request from Mr.
5 Derreck to Ms. McLean regarding the potential of
6 withholding rents, I believe, and that was
7 something that had come up after you had departed.
8 Is there anything else that you note in there that
9 you believe to be relevant to the library leakage
10 issue?

11 A. Other than the fact that I believe
12 Ms. McLean is a specialist in municipal law.

13 THE COMMISSIONER: I'm sorry, I can't
14 hear you.

15 THE WITNESS: Ms. McLean is a specialist
16 in municipal law.

17 MR. SHOEMAKER: Okay. And, Ms. Kuka, if
18 we could please go to -- this is not an exhibit as
19 a document I've sent through to participants. The
20 letter from Ms. McLean was Exhibit No. 3368. If
21 you pull it up on Relativity, it won't be the
22 current updated version that Ms. Kuka has put on
23 the screen. Will you just simple replace the --

24 MS. KUKA: This is from Relativity so
25 it's updated.

1 MR. SHOEMAKER: Oh, it's updated? Okay,
2 thank you. And, Ms. Kuka, if you could pull up
3 document CEL underscore E000119155?

4 BY MR. SHOEMAKER:

5 Q. Mr. Speck, these are minutes of a
6 regular Council meeting of the Corporation of the
7 City of Elliot Lake on May 26, 2003. And I'd like
8 to bring your attention to page two near the
9 bottom, resolution 211/03. What if anything do
10 you note from these minutes and that resolution in
11 particular?

12 A. It looks like the last resolution is
13 that the City's Property Standards By-Law be
14 reformatted to reflect changes to the yard section
15 and to facilitate enforcement as recommended by
16 the Zoning By-law Committee and their resolution.
17 So I think this speaks to the fact that when the
18 change was made in 2003, it was largely a
19 formatting change and a change to the particular
20 section of the yards. And so I would not have
21 been paying close attention to other provisions of
22 the by-law.

23 Q. And is that, if at all, one of the
24 reasons why you may not have made the linkage in
25 April and May of 2005 between the leaks in the

1 library and the --

2 MR. DOODY: Well, my friend is examining
3 in-chief.

4 MR. SHOEMAKER: Ms. Kuka, if I could
5 have Exhibit No. 3248. Thank you if you go to
6 page two, please.

7 BY MR. SHOEMAKER:

8 Q. Mr. Speck, your evidence has been
9 that you don't recall being on the Elliot Lake
10 Retirement Living Board. There's a few exhibits
11 I've got here that I can put to you. The
12 documents will show that there were four regular
13 meetings of the Elliot Lake Retirement Living
14 Board in 1999 and one Finance Committee meeting
15 that you did attend. And my question to you is,
16 why, if at all, do you lack recollection of being
17 on that Board?

18 A. Well, as I look at it, just given
19 the fact that over a span of about eight months, I
20 only attended, I think, three of those meetings 14
21 years ago, I think that speaks to why I can't
22 remember being on the Board.

23 Q. Okay. And what if any other
24 involvements did you have at that time in 1999?

25 A. I was on the Board of ELNOS, and

1 several committees of Council.

2 Q. Okay. For adducing new evidence,
3 Mr. Speck, those are all the question I have of
4 you.

5 THE COMMISSIONER: Cross-examination.
6 Do you want to go first, Mr. Broadbent? Is that
7 the indication I got.

8 MR. BROADBENT: Thank you, sir. If it's
9 all right with my colleagues and you, sir, that'd
10 be appreciated. I may have to excuse myself
11 afterwards. I'm really not feeling very well.

12 THE COMMISSIONER: Thank you.

13 CROSS-EXAMINATION BY MR. BROADBENT:

14 Q. Good afternoon, sir.

15 A. Good afternoon.

16 Q. My name is Broadbent and I represent
17 ELMAC, the citizens group with standing in this
18 matter.

19 I heard you indicate that you were a
20 barrister and a solicitor?

21 A. Yes.

22 Q. And you are still licensed as such
23 in the Province of Ontario?

24 A. I am a member of the Law Society,
25 but I pay dues as nonpracticing.

1 Q. Okay. But you sustain that
2 membership through the 15 years of your work as an
3 administrator in the City?

4 A. Yes.

5 Q. Okay. You're a member of OMAA?

6 A. OMAA?

7 Q. Ontario Municipal Administrative
8 Association?

9 A. Yes.

10 Q. All right. And, excuse me, so you
11 would know many of the members in that
12 organization, your colleagues that are chief
13 executive -- or chief administrative officers in
14 other municipalities around the province, correct?

15 A. Yeah.

16 Q. You'd agree with me that most of
17 those individuals don't have a law background.
18 They're usually public administration backgrounds.
19 Is that true?

20 A. There are some lawyers though, yeah.

21 Q. Right. There are some lawyers, but
22 most have a nonlegal background, is that fair?

23 A. Sure.

24 Q. Yeah. Now, Council is comprised of
25 individuals who are chosen at the pleasure of the

1 electorate on a periodic basis, true?

2 A. That's true.

3 Q. And these are individuals that are
4 generally representative of a cross-section of the
5 community. They come from all walks?

6 A. Sure.

7 Q. Sometimes there are lawyers on
8 Council, but not all Councillors are lawyers,
9 true?

10 A. True.

11 Q. In fact, most Councillors are
12 typically not lawyers. They're from the business
13 community or even working people, is that fair?

14 A. True, yeah.

15 Q. You would agree with me, these are
16 relatively non-sophisticated people. They're not
17 -- typically when they come new to their role as
18 Councillor, they're not well acquainted with the
19 Municipal Act?

20 A. Not Municipal Act, but I don't know
21 if I'd agree that they are unsophisticated.

22 Q. And, I'm sorry, I don't mean to
23 belittle them. Obviously they are people of
24 capability. They have garnered the respect of the
25 community to the extent that they're elected.

1 What I am suggesting to you, though, is that
2 they're not well acquainted with the law when they
3 arrive at Council?

4 A. Probably not.

5 Q. They're not well acquainted with the
6 rules that govern Council?

7 A. That's right.

8 Q. Right. In fact, that in part is the
9 service that the CAO and the City Clerk provide to
10 the Councillors. Guidance in respect of what
11 they're to do, not to do, that sort of thing?

12 A. In part, but they also get training
13 as part of their orientation and they're also were
14 provided with a paid for new Councillor training
15 sessions through the Association Municipalities of
16 Ontario.

17 Q. Right. And you provide some of that
18 training to Councillors as well?

19 A. Yeah. And the Clerk.

20 Q. Right, okay. The CAO and the Clerk
21 are relatively stable roles. I mean, for
22 instance, in your experience in Elliot Lake, you
23 were here for 15 years, correct?

24 A. Yeah. Not as CAO, but, right.

25 Q. All right. But in an administrative

1 capacity?

2 A. No. Seven years -- end of 1999 to
3 mid-'06.

4 Q. All right.

5 A. So six and a half years.

6 Q. And during the course of -- I
7 believe Mr. Doody used the term these illegal
8 meetings that were taking place. The monthly
9 caucus meetings. Did you at any time object to
10 those meetings?

11 A. I don't remember.

12 Q. Okay. So you're like the rest of
13 us, your memory is better closer to an incident
14 than it is with passage of time?

15 A. Yes.

16 Q. Okay. So we wouldn't expect your
17 memory to improve in the future on that subject,
18 would we?

19 A. Probably not unless there was
20 something that tweaked my memory.

21 Q. Right, okay. Can you tell me, sir,
22 do you remember at those caucus meetings whether
23 Retirement Living Algoma participated in any of
24 those meetings.

25 A. Retirement Living Algoma?

1 Q. Yes. Were there any representatives
2 representing Retirement Living Algoma
3 participating in those meetings?

4 A. Okay, yeah, I'm just getting
5 confused because the word Algoma, I don't think,
6 was in the Retirement Living names.

7 Q. I'm sorry. I've muddled myself.
8 I'm very sorry. I've crossed the name with
9 something else. So it's just simply Retirement
10 Living, that's the entity, correct?

11 A. Yes.

12 Q. All right. So what I'm asking you,
13 sir, is were there any individuals representing
14 Retirement Living participating in those monthly
15 caucus meetings? Perhaps not each and every
16 month, but at all?

17 A. I was just going to say not on a
18 regular basis, but I have some recollection of the
19 odd presentation.

20 Q. Okay. Now, as I understand the
21 relationship with the library, it appears to me
22 that there was sort of a chain of command in place
23 in that you had a library manager or a librarian.
24 For much of your dealing with the library, it was
25 Ms. Fazekas?

1 A. Yup.

2 Q. And Ms. Fazekas had, we've seen --
3 and I don't purport -- I'm not going to take you
4 to all of the documents again. But it's clear
5 that Ms. Fazekas and others had communicated with
6 you regularly about problems with the facility at
7 the mall, the library facility. Problems with
8 leaking and so on.

9 A. I wouldn't say regularly. In fact,
10 Ms. Fazekas in her own testimony indicated that
11 the 2005 April/May incidents was the first time
12 I'd been involved with leaks at the library.

13 Q. Okay. You would agree with me
14 though, sir, that it's evident that the library
15 folks wanted to move the library out of the mall?

16 A. Yes.

17 Q. Okay. You would agree with me that
18 the City, and I'm speaking of Council, did not
19 want the library moved out of the mall and blocked
20 the move by the library out of the mall?

21 A. That's what I -- I wasn't here when
22 the lease came back up for renewal, but that's
23 what I understand.

24 Q. Okay. How about the original lease?
25 Who got the library into the mall? Was it Council

1 or was it the library? Did the Library Board
2 negotiate that lease or it, as I'm suspecting --

3 A. It was before my time on Council, I
4 believe, but I've got some recollection of seeing
5 something that said that the Mayor came to a
6 meeting of the Library Board and proposed the
7 moving of the library to the mall.

8 Q. Okay. And was it the Mayor and
9 Council or somebody on behalf of Council that
10 negotiated that first lease or do you know?

11 A. I don't know.

12 Q. All right. Now, with respect to the
13 issues around the condition of the library at the
14 mall, and the repeated memos and correspondence to
15 you and to Council pleading that action be taken
16 with the landlord, among other things, I take it
17 that the chain of command then was that the
18 library folks were to come to you, or Council, and
19 then you or Council, and/or Council, would deal
20 with the landlord or otherwise try to deal with
21 the issue?

22 A. It seemed to vary. It seems
23 sometimes they went to the landlord on their own.
24 It seems that -- I've seen documentation that
25 indicates they had gone to both Roger Pigeau and

1 Fred Bauthus prior to my time.

2 As I said, from the beginning of my time
3 as CAO in 2001 till 2000 -- mid-2005, they hadn't
4 come to me a lot. But on that occasion, they
5 certainly asked for my assistance.

6 Q. But it does seem that the Library
7 Board didn't have the freedom to make the decision
8 to move out of the mall, is that fair?

9 A. Yeah, I'd say that's fair.

10 Q. Okay.

11 A. I believe the Libraries Act even
12 says that in addition to providing money to the
13 library that the Council approval is also required
14 for land purchase or leases. I may be speaking
15 through my head on that.

16 Q. The Libraries Act in fact creates an
17 independent board. What I mean by that is that
18 the Library Board is a corporation, true?

19 A. True.

20 Q. And it's independent of Council to
21 the extent that it is a separate corporation, yes?

22 A. Yes.

23 Q. Council is free to appoint board
24 members?

25 A. Yeah.

1 Q. But as far as funding goes, and
2 administration, at least administration of the
3 Library Board is the role of the Library Board,
4 right?

5 A. True.

6 Q. And the library under the Libraries
7 Act, the Board is to submit estimates of sums
8 required to operate on an annual basis, correct?

9 A. Yeah.

10 Q. And Council, under the Libraries
11 Act, is to review those sums and potentially vary
12 them, but ultimately deliver up the funds to the
13 Library Board for administration.

14 A. Yeah.

15 Q. Fair?

16 A. Fair.

17 Q. Okay. It doesn't seem that that's
18 what was happening here, though. It seems that
19 expenditures were being -- you know, they had to
20 be cleared and approved by you or --

21 A. Can you give me an example?

22 Q. It seems by virtue of the continuous
23 stream of correspondence from, for instance, Ms.
24 Fazekas and others at the library pleading with
25 you about remedial action, they were constrained.

1 They didn't have the resources, the finances
2 themselves, to correct and remedy things within.

3 A. I don't know that that's the case.
4 I mean, they -- I think they would have had
5 sufficient funds to go get their own independent
6 legal advice if they wished.

7 Q. And, finally, I'm not sure if you
8 followed the evidence of Ms. Fazekas, did you?

9 A. A little bit, yeah.

10 Q. All right. You might have seen that
11 in her evidence under examination of Mr. Elliott,
12 my associate, she indicated that at one point she
13 received an e-mail from you that read, "This is
14 not a Goddamn strawberry social". Do you remember
15 that e-mail?

16 A. I don't remember the e-mail, but by
17 the phrasing of it, I accept that it's probably
18 something I would have said and I don't think Ms.
19 Fazekas would lie. It's something I had a judge
20 say to me during a trial once about the Goddamn.

21 Q. Would you agree with me, though,
22 that it's a patronizing remark?

23 A. Absolutely. And I regret having
24 said it. I was quite glad to hear that I had
25 apologized afterwards.

1 Q. And would you also agree with me,
2 sir, that it's emblematic of how -- of the
3 relationship of -- between Council and the Library
4 Board?

5 A. I don't know if I'd go that far. I
6 mean, my job was this big. The library was this.
7 And when the library got bigger, like an issue
8 came up like the issues in April and May, I think
9 that put some stress on me personally and I
10 probably reacted in a way that was certainly
11 inappropriate and would hope I would never do
12 again. I don't know that that necessarily
13 reflects Council's view. Certainly, you know,
14 we've seen evidence that there were members of
15 Council who were quite supportive of the library.

16 Q. I want to suggest to you, though,
17 that it's obvious and you agreed with me that
18 there was that chain of command with library
19 personnel, Ms. Fazekas and the Board essentially
20 having to then come to you or Council. They were
21 limited and not free to act independently.

22 A. If -- if they wanted more money than
23 they budgeted for the year, yes, but otherwise
24 they were independent.

25 Q. Well, you didn't at any time say to

1 them, listen, you're the Library Board. You're
2 independent. You have to deal with these issues
3 yourself. Go deal with the landlord. If you
4 don't like the answers, cancel the lease. If you
5 don't like the location, move somewhere else.
6 They weren't free to do any of these things, were
7 they?

8 A. I'm -- legally I'm not really clear
9 on whether they could have done -- gotten out of a
10 lease on their own without Council's approval or
11 not. I'd have to take a look at the Act.

12 Q. Thank you, sir.

13 THE COMMISSIONER: Thank you, Mr.
14 Broadbent. And you say you probably won't be here
15 this afternoon, that's fine. We'll rise then
16 until 2:00 this afternoon.

17 --- Luncheon break taken at 12:50 p.m.

18 --- Upon resuming at 2:00 p.m.

19 THE COMMISSIONER: Who's next then? Mr.
20 Longo.

21 MR. LONGO: Mr. Commissioner, just for
22 the record, when we're going to be reading
23 transcripts in about three months from now, I just
24 wanted to note that it appears today that it's
25 more like December 25, than it's April 25.

1 CROSS-EXAMINATION BY MR. LONGO:

2 Q. And, Mr. Speck, you're aware that I
3 act for the Ontario Building Officials
4 Association?

5 A. Yes.

6 Q. You're the first elected official, I
7 think, this Commission has heard from. I just
8 want to ask a question or two about Council's
9 structure. When you were a Councillor how many --
10 who was composed of Council? What were their
11 numbers?

12 A. There was six members of Council and
13 the Mayor.

14 Q. And what was the Council structure?
15 Were Councillors elected by a ward system or an at
16 large system?

17 A. It was an at large system.

18 Q. And can you describe for the
19 Commissioner what that means?

20 A. That means that when you're --
21 everyone who's running for Council is running on
22 an equal basis. So it's not divided into ward
23 systems. Some municipalities are divided into
24 wards and there's an election in ward number one
25 for who that councillor's going to be, an election

1 in ward two for who that councillor's going to be,
2 et cetera. At large, everybody's just running for
3 a seat on Council and the top six vote getters
4 become Council.

5 Q. So the electorate get to choose all
6 of their members, not just the Mayor and the
7 Council members?

8 A. That's right.

9 Q. And can you tell me, has that been
10 the system to your knowledge since the inception
11 of Elliot Lake?

12 A. To my knowledge, yeah.

13 Q. And as a result of it being an at
14 large system, would you agree, sir, that no one
15 Councillor either represents or is responsible for
16 the area that included the mall?

17 A. I would agree, yeah.

18 Q. Thank you. Did Elliot Lake have a
19 job description for the Chief Building Official
20 when you were CAO?

21 A. I believe we did, yeah.

22 Q. All right. And did you -- did they
23 have one for a building inspector?

24 A. I believe we did, yeah. We tended
25 to have all that stuff in place.

1 Q. All right. And I was just going to
2 ask a Property Standards Officer, do you know if
3 they had a job description for that position?

4 A. I don't recall.

5 Q. I'm aware and in evidence of a few
6 days ago there was indication that perhaps Syl
7 Allard had drafted something that was a link of
8 describing what the Building Inspector's duties
9 were after 2007, I think.

10 A. Okay.

11 Q. Do I take it, sir, that you as CAO
12 did not have any hand in revising any job
13 descriptions of either the CBO, Building Inspector
14 or Property Standards Officer?

15 A. Not that I recall. Again I'm
16 thinking back to when the brag report came in and
17 I remember having discussions with Paul and/or Syl
18 about that. Whether that led to some changes in
19 job description. I don't remember.

20 Q. Okay, thank you. And, sir, in your
21 evidence yesterday, you acknowledged to Mr. Doody
22 the CBO's independence from Council as a
23 statutory officer under the Building Code Act?

24 A. That's correct.

25 Q. I'd like to ask, in your years as

1 either a Councillor or the CAO, did the Mayor,
2 elected Councillors, or senior City officials ever
3 direct the CBO how to do his job?

4 A. Not that I recall.

5 Q. And did the Mayor, elected
6 officials, or senior elected Councillors, or
7 senior officials ever interfere with the
8 performance of the CBO's duties under the
9 Building Code Act?

10 A. I don't believe so.

11 Q. Thank you. Sir, during your years
12 '94 to 2006, are you aware as to whether the mall
13 was ever vacant by more than 50 percent either as
14 a total gross floor area or total number of
15 commercial units?

16 A. I remember there being vacancies
17 certainly in the early stages of when I was on
18 Council. Whether it was 50 percent or not, I
19 don't recall.

20 Q. I'd ask a few questions about the
21 pro-active investigation and enforcement of the
22 Property Standards By-Law. Sir, would you agree
23 that during your term from '94 to 2006, the Town
24 had a detailed Property Standards By-Law?

25 A. It looks like it, yeah.

1 Q. And, sir, during that term, the Town
2 had appointed Property Standards Officers?

3 A. To my recollection.

4 Q. And, sir, you would agree that those
5 officers had all the powers that were granted to
6 them under section 15.8 of the Building Code Act
7 respecting investigations, et cetera?

8 A. Yes.

9 Q. Would you agree, sir, that the Town,
10 during 1994 to 2006, had the appropriate tools in
11 place to enforce its Property Standards By-Law at
12 the mall?

13 A. I believe so.

14 Q. Now, from your experience as an
15 elected official here in Elliot Lake and as its
16 CAO, did Elliot Lake consider that there was any
17 positive duty or obligation on it to enforce its
18 Property Standards By-Law?

19 A. I think the understanding was that
20 it wasn't incumbent on a municipality to enforce
21 its own by-laws.

22 Q. And, sir, you have, subsequent to
23 serving in Elliot Lake, have served in three other
24 municipalities as CAO?

25 A. Two as CAO, one as General Manager

1 of Corporate Services.

2 Q. And, sir, what's your understanding
3 as to the ability of a municipality to choose how
4 it wishes to enforce its by-laws?

5 A. I'm not sure I understand the
6 question.

7 Q. In each of those employment
8 situations and municipalities where you worked,
9 did municipalities have the discretion to whether
10 to enforce their by-laws or not?

11 A. Yes.

12 Q. All right. And it would appear from
13 exhibit 6-8, if I could ask Ms. Kuka to put that
14 up, that in 1995 Elliot Lake made a decision or a
15 choice as to how it was going to enforce a number
16 of by-laws, correct?

17 A. Yes.

18 Q. And I think what follows is 8 to 10
19 pages listing about a dozen or so by-laws where
20 the City indicated what -- how it was exercising
21 its discretion?

22 A. I think there are a couple of dozen,
23 yeah.

24 Q. All right. And then in 2006, did
25 Elliot Lake revisit how it would exercise its

1 discretion of enforcement? And that's found as
2 Exhibit No. 3339. You're familiar with that
3 report, sir?

4 A. I am, yup.

5 Q. And you were CAO at that time?

6 A. When's the date on it?

7 Q. 2005.

8 A. Yeah.

9 Q. Okay. And, sir, are you aware under
10 the Municipal Act, are there any provisions that
11 you're aware of that speak to the enforcement of
12 by-laws by people other than the municipality
13 itself?

14 A. Yes.

15 MR. LONGO: And, Ms. Kuka, I've provided
16 to you and to Council an extract out of the
17 Municipal Act section.

18 BY MR. LONGO:

19 Q. Do you recall the section, sir?

20 A. 440 I believe.

21 Q. I think that's it. So the current
22 Municipal Act, which this version took effect as
23 of January 2003. But I believe a previous Act
24 also permitted this. 440 says:

25 "If a by-law of a municipality or a by-law

1 of a local board of a municipality under
2 this or any other Act is contravened, in
3 addition to any other remedy and to any
4 penalty imposed by the by-law, the
5 contravention may be restrained by
6 application at the instance of a taxpayer
7 or the municipality or the local board."

8 Is that the section you're referring to?

9 A. Yes.

10 Q. And what's your understanding that
11 that section allows?

12 A. It allows any taxpayer to make an
13 application to the court as opposed to being
14 required to file a Statement of Claim and to go
15 through a longer process --

16 Q. Yes.

17 A. -- to seek an order that restrains
18 the contravention of the by-law.

19 Q. And if it was thought that the
20 Property Standards By-Law in this municipality was
21 being contravened, would you understand this
22 section to have allowed any rate payer to go to
23 court to seek its restraining that contravention?

24 A. Yes.

25 Q. And, sir, also attached or listed on

1 this handout are sections 444, I believe, to 446
2 of the Municipal Act, which indicate what
3 additional discretionary powers municipalities
4 have to deal with contraventions of Acts,
5 including putting -- doing the work themselves and
6 putting it on a tax roll.

7 MR. LONGO: Ms. Kuka, if I could ask you
8 just to scroll down, thank you, so Mr. Speck can
9 review this.

10 BY MR. LONGO:

11 Q. See 444 the municipality may make an
12 order requiring that the contravention be
13 discontinued. You could under, 445, the
14 municipality may make an order requiring the work
15 to correct the contravention. And if we could
16 turn to the next page. 446, allowing the
17 municipality may itself do the work and then
18 recover the cost by adding it to the tax roll.

19 A. Yes.

20 Q. In all of those sections, sir, do
21 you agree that those are discretionary additional
22 powers that Elliot Lake and every municipality
23 possesses?

24 A. Yes.

25 MR. LONGO: Because this is simply

1 statute law, Mr. Commissioner, I don't think you
2 need to mark that.

3 THE COMMISSIONER: Which is the court?
4 Superior Court that would be the proper forum on
5 which to bring the application for restraint?

6 MR. LONGO: Thank you. I was interested
7 if Ms. Kuka could pull up Exhibit No. 3328.

8 THE COMMISSIONER: We don't need to mark
9 statutory legislation.

10 MR. DOODY: I thought that, Mr.
11 Commissioner, I thought you had asked what court.

12 THE COMMISSIONER: Yes, I think Mr.
13 Longo had nodded. So it's not on the record, but
14 that is my understanding.

15 MR. LONGO: It's not provincial court,
16 that's for sure.

17 BY MR. LONGO:

18 Q. So turning to Exhibit No. 3328. As
19 I understand, Mr. Speck, this was the kick-off
20 e-mail, if you will, to talk about the pro-active
21 enforcement of certain properties being commercial
22 and multi-residential that were more than 50
23 percent vacant, is that correct?

24 A. It looks like a discussion at the
25 previous Zoning and By-law Committee meeting was

1 the kick off. This was an e-mail from me to Paul
2 Officer and Syl Allard asking for some details
3 about what legislative authorities the
4 municipality had.

5 Q. What I found interesting was it
6 doesn't appear that the initiation of the
7 pro-active investigation and enforcement had to do
8 with the concern about public safety, at least
9 reading this. It seemed to be more a very
10 pragmatic we're taking properties on tax sales and
11 have to put them back on the market. Can you
12 describe what that was all about?

13 A. Maybe a little bit of both. We had
14 -- obviously property values in the municipality
15 had plummeted and some people were even walking
16 away from buildings. We had some buildings taken
17 back for tax sale and we couldn't even sell on tax
18 sale. I seem to recall a couple of instances
19 where one on Ontario Avenue is ringing a bell
20 because I remember a fire chief officer using it
21 afterwards to burn down as a training for his
22 firefighters. But it was a building that we had
23 taken back for taxes and gone in and inspected and
24 found -- or taken back for taxes, couldn't sell it
25 under tax sale and then went in and inspected and

1 found that it was unusable. The cost to repair it
2 would have been more than the value of the
3 building would have been at the time.

4 And we didn't want to see things like
5 that continuing to happen. So we thought that if
6 we could or sort of nip that in the bud by doing
7 pro-active inspections and get buildings before
8 they got to that point, that we'd be saving
9 ourselves some money in terms of getting our taxes
10 back and also ensuring that properties weren't
11 going back out onto the market that may have some
12 issues.

13 Q. But it appears to have been to
14 assist you in relieving the municipality of a
15 burden that it was obviously experiencing?

16 A. Yes.

17 Q. All right. If I can ask some
18 questions about the caucus meetings in Exhibit No.
19 2351 that was filed this morning. If I understood
20 your evidence correctly that the practice of
21 convening a caucus meeting commenced under Mayor
22 Farkouh when you were a Councillor?

23 A. That's my recollection, yeah.

24 Q. And it continued when you were a
25 CAO?

1 A. It appears so, yeah.

2 Q. All right. And when you were a
3 Councillor and that commenced, do you recall
4 whether it was -- whether you were advised or you
5 learned was this a new practice or was this
6 something that had occurred previously in Elliot
7 Lake's corporate history?

8 A. I don't recall.

9 Q. And when you were a Councillor and
10 this practice commenced, do I take it it was CAO
11 Fred Bauthus that prepared the caucus agendas?

12 A. It would have been, yeah.

13 Q. All right. And as I understand your
14 evidence throughout '94 to '06, whenever these
15 caucus meetings were convened, they were for
16 Council members and the CAO only?

17 A. That's my recollection.

18 Q. But on occasion people could make
19 either deputations or attend those meetings?

20 A. I seem to recall instances where
21 that happened.

22 Q. Was attendance mandatory?

23 A. I don't believe so.

24 Q. Were they regularly well attended,
25 however, in your view?

1 A. I'm having a hard time remembering.
2 I would think so just because we were discussing
3 issues of the day and most Councillors would want
4 to know what's going on.

5 Q. Now, did Elliot Lake have a website
6 when you were a Councillor, sir?

7 A. Yes.

8 Q. Do you recall, did Elliot Lake's
9 website post a Council calendar listing Council
10 meetings?

11 A. I know at the time I was CAO we did.
12 I don't recall when I was Councillor.

13 Q. And when -- for time you can
14 remember when you were CAO, would the website have
15 listed caucus meetings on the Council calendar
16 agenda?

17 A. I don't remember.

18 Q. Sir, under the Municipal Act,
19 municipalities are required to have a procedural
20 by-law?

21 A. Yes.

22 Q. And I assume that Elliot Lake had a
23 procedural by-law from 1994 through to 2006 during
24 your time at the City?

25 A. As I recall, yes.

1 MR. LONGO: I apologize, Mr.
2 Commissioner, I was only able to find two by-laws
3 over the lunch break, but I sent them to Ms. Kuka
4 and I would ask that if she be good enough to put
5 up procedural by-law 07-36.

6 BY MR. LONGO:

7 Q. Mr. Speck, this appears to be the
8 current procedural by-law of the municipality and
9 it was on their website. And as you can see, it's
10 an office consolidation as of November of 2008.
11 If you could just scroll down to a section 1.8.
12 Notice the definition of meeting, Mr. Speck. It
13 says: "A meeting means any regular, special,
14 caucus or other meeting of the Council or local
15 board or any of them as the case may be." I've
16 reviewed this by-law and I don't see, having
17 identified a caucus meeting, any provisions in
18 this document that actually speak to how they're
19 to be held or when they're to be held. They just
20 seem to be lumped in with every other kind of
21 Council meeting.

22 A. Okay.

23 MR. LONGO: Mr. Commissioner, I'm going
24 to ask that this be marked as an exhibit because I
25 suspect that it will be referred to later on.

1 THE WITNESS: I'm wondering whether in
2 that context caucus is being used to refer to
3 in-camera.

4 BY MR. LONGO:

5 Q. I would say, sir, if you looked at
6 section 1.4, you'll see there's a separate
7 definition for closed session, which clearly
8 specifies the Municipal Act sections.

9 MS. KUKA: 2353.

10 EXHIBIT NO. 2353: Procedural By-law 07/36

11 BY MR. LONGO:

12 Q. And, Mr. Commissioner, and Mr.
13 Speck, the only other by-law that I was able to
14 secure was by-law 05-1.

15 MR. LONGO: Which if -- sorry, Ms. Kuka,
16 if you go to the top of this page that's on the
17 screen right now, if you go to the top of this
18 page that's on the screen right now.

19 BY MR. LONGO:

20 Q. You'll see in its title it repeals
21 by-law 05-1. So I take it, sir, that this new
22 by-law, 07-36 replaced 05-1?

23 A. That's what I believe.

24 Q. And would you agree that 05-1 would
25 have been in place for your final year as a CAO?

1 A. Yeah, final or second last, Yeah.

2 Q. Thank you.

3 MR. LONGO: So if we can now turn, Ms.
4 Kuka, to 05-1.

5 THE COMMISSIONER: That requires an
6 exhibit number as well.

7 MR. LONGO: It will, sir.

8 MS. KUKA: 2354.

9 EXHIBIT NO. 2354: Procedural By-law 05-1.

10 BY MR. LONGO:

11 Q. And again, you'll see that section
12 1.4 identifies what a closed session meeting
13 session of Council is?

14 A. Yes.

15 Q. And if we go to section 1.8, we
16 notice that the definition of meeting is not as
17 elaborate as the one subsequent to your tenure.
18 And simply says a meeting means a meeting of
19 Council as the case may be.

20 Mr. Speck, I quickly reviewed this
21 by-law as well and I wasn't able to find any
22 mention of caucus meetings. And, secondly, I
23 wasn't able to find any mention of the CAO having
24 a responsibility to prepare agendas for caucus
25 meetings. We see from Exhibit No. 2351, your name

1 on each one of these agendas?

2 A. Yes.

3 Q. Were you the instigator of these
4 meetings?

5 A. No.

6 Q. Could you describe who was and how
7 these came about, these monthly meetings?

8 A. It was Mayor Farkouh. He wanted to
9 -- he felt we should have opportunities for
10 Council to get together and discuss what was going
11 on in the community and get updates on how
12 projects were progressing.

13 Q. But to be clear, they were held in
14 the absence of the public?

15 A. They were, though they weren't
16 secret. I heard the word secret a lot. And
17 certainly you can see in some the e-mails of Ms.
18 McTaggart, she's copied a number of members of her
19 board, I believe, referencing a caucus meeting and
20 I don't think if it was a secret generally that we
21 had caucus meetings. But they were not
22 advertised.

23 Q. If I could ask, I'm not sure if you
24 have a copy of that exhibit before you. Do you
25 have the package?

1 A. Yes, I do.

2 Q. If I could ask you to turn about
3 seven pages in to an agenda for a caucus meeting
4 of July 5 of '04. I see, sir, that there are
5 seven spaces or numbers for the agenda and only
6 agenda item 1 and agenda item 7 appear to be
7 filled in. What -- can you explain what -- why 2,
8 3, 4, 5 and 6 are blank on this agenda?

9 A. No, I can't.

10 Q. I notice, sir, that it -- that same
11 thing reappears on January 3 of 2005.

12 A. If I could just go back to that
13 question and I'm just looking at.

14 Q. Sure.

15 A. I see that other business is on the
16 bottom of every one.

17 Q. It is?

18 A. It may have been and there was just
19 that one item, but I don't know why they left 2 to
20 6.

21 Q. And the reason I asked to see if you
22 can recall because on July 5, other business is
23 listed as number 7.

24 A. Hmm hmm.

25 Q. If you go to January 3 of 2005,

1 you'll see that other business is listed as number
2 12 and items 2 through 11 are blank. And final
3 one that I noticed had a similar pattern was --
4 just for completeness -- is October 3 of 2005,
5 that again had other business as number 7, items 2
6 through 6 are blank. But this time on October
7 3rd, there's actually a little bullet under each
8 number. And I was just wondering if you could
9 explain why those three agendas that I've just
10 identified are in the format that they are?

11 THE COMMISSIONER: There's also the very
12 last one of 2006.

13 MR. LONGO: Oh, sorry, thank you very
14 much, Mr. Commissioner.

15 BY MR. LONGO:

16 Q. And there other business is number 6
17 with items 2 through 5, missing.

18 A. Again, as I'm reading through these
19 now, I'm starting to wonder whether Ms. Vincent,
20 who was the assistant to both myself and the
21 Mayor, was the one who actually typed these up,
22 based on instructions from myself or the Mayor or
23 members of Council as to what they would like to
24 talk about. But, no, I can't explain why those
25 spaces are in those.

1 MR. LONGO: Mr. Commissioner, those are
2 my questions, thank you.

3 THE COMMISSIONER: Thank you, Mr. Longo.
4 Mr. Kearns.

5 CROSS-EXAMINATION BY MR. KEARNS:

6 Q. Mr. Speck, how are you?

7 A. Good, Mr. Kearns. Yourself?

8 Q. Fine. I just have a couple of items
9 to talk to you about. We know that there's a
10 meeting on June 15th, 2005, at the Library Board
11 and you have notes of it and Ms. Fazekas has notes
12 of it and the Mayor so we're familiar with that
13 meeting.

14 A. Yes.

15 Q. And there's a meeting subsequently
16 about a week later that Mr. Doody referred you to
17 that had a complete beside the leakage issue with
18 the roof?

19 A. Yeah.

20 Q. Do you have a recollection of
21 whether or not at the meeting of June 15th, 2005,
22 whether or not the leaks were still persisting on
23 that date or whether they had already been
24 remedied by the landlord?

25 A. I don't know. I don't remember.

1 Q. We heard yesterday morning just
2 before you got here from Brian MacDonald who had
3 been at the Algo Mall on June 28th, 2005, a couple
4 of weeks after that. He was here to do a visual
5 inspection for RBC and to -- at the structure, for
6 the purpose of a potential purchaser. He walked
7 through and went through the library and the
8 entire hotel checking and the mall looking for any
9 signs of leakage and he couldn't find any. No
10 pails, no plastic, no missing tiles, no even
11 stained tiles. Is that your recollection of the
12 condition that the mall was in shortly after your
13 meeting with the Mayor and Ms. Fazekas?

14 A. I don't have a specific
15 recollection, but I would -- because we'd gone
16 through that process of having everything -- all
17 the work done by ChemNorth and drywall replaced
18 and stuff that it would look that way.

19 Q. You'd mentioned earlier today in
20 answer to questions by Mr. Broadbent that you
21 might appreciate having copies of the library --
22 of the Libraries Act, so I thought I'd show you a
23 couple of relevant provisions so I could get a
24 sense of what appears to be some frustration that
25 you have in a few of your e-mails.

1 MR. KEARNS: Mr. Commissioner, because
2 it is an Act of the Province, I won't mark it as
3 an exhibit in keeping with what Mr. Longo said.
4 But I would like to use the overhead, if I could,
5 just to show Mr. Speck a couple of the sections.

6 THE COMMISSIONER: That's fine.

7 BY MR. KEARNS:

8 Q. The first one I'll show you is the
9 provision number three and that is that the
10 Council and municipality by-laws establish a
11 Public Library. Was it your understanding that
12 the City of Elliot Lake had in fact by-law created
13 a Public Library?

14 A. That was my understanding.

15 Q. And under number three, 3(3) it
16 says: "A Public Library shall be under the
17 management and control of a board." Now, that
18 would indicate that the Public Library Board is
19 responsible for the management and control of the
20 Public Library as opposed to Council. Would you
21 agree that that is the proper hierarchy or paper
22 trail or that would happen?

23 A. Yes.

24 Q. One of the things that -- well, I'll
25 wait for that for a second. The next paragraph

1 that I'd like to show you is section 9. It sets
2 out that the Public Library Board shall be
3 composed of at least five members appointed by
4 municipal Council. What's your recollection of
5 the number of members on the Elliot Lake Public
6 Library Board?

7 A. Geez, that's more than 4 and less
8 than 10. That's about as good as I think I'm
9 going to get.

10 Q. Okay. I'd like to show you then
11 10(2). It says the appointing Council shall not
12 appoint more of its own members to a board than
13 the number that is in case of a Public Library
14 Board or a union board one less than a majority of
15 the board. Obviously it's not the intent that the
16 Council rule that board. How many members of
17 Council were appointed to the Library Board?

18 A. I believe just one.

19 Q. So one of a minimum of five?

20 A. Yeah.

21 Q. Okay. Now, Council appoints a
22 number of members to boards in Elliot Lake, is
23 that not true?

24 A. That's true, yeah. There's ELNOS,
25 which I mentioned earlier, obviously Retirement

1 Living, the Algoma Health Unit, the Algoma
2 District Social, Services Administration Board,
3 there are quite a number.

4 Q. Huron Lodge?

5 A. Huron Lodge.

6 Q. Okay. And the last one I'd like to
7 show you is section 15(2). And it says that:

8 "A board shall appoint a Chief Executive
9 Officer who shall have general supervision
10 over and direction of the operations of
11 the Public Library and its staff; shall
12 attend all board meetings; and shall have
13 the other powers and duties that the board
14 assigns to him or her from time-to-time."

15 Is this the position that Ms. Fazekas
16 held?

17 A. Yes, it is.

18 Q. Okay. Now, she appears to be the
19 equivalent for the Public Library Board that you
20 are for the City of Elliot Lake, is that correct?

21 A. Yes.

22 Q. And aside from the -- what you've
23 described as some assistance that you were
24 requested by Ms. Fazekas and the Board, did you as
25 a CAO have any role to play in the operation or

1 supervision of the operations at the Public
2 Library?

3 A. No, none whatsoever. I had no
4 authority to hire, promote, discipline or fire
5 anybody over at the library. So no supervisory
6 authority whatsoever.

7 Q. Why would they come to you then? If
8 they had their own CEO and the Board is in charge
9 of the CEO, if they have issues arising with their
10 landlord or anyone else, why are they coming to
11 the CAO of the City of Elliot Lake?

12 A. That's a good question. I'm not
13 sure I know.

14 Q. Do you know why it would be that
15 they would be asking to address Council? What
16 role Council would play? What they expected
17 Council to do?

18 A. Well, judging from the documents,
19 they were asking for additional funds and that's
20 something that only Council could do for them.

21 Q. When you were asking for Ms. Fazekas
22 why this was a matter to go to Council, that
23 wasn't about additional funds, was it?

24 A. I'm sorry. I'm confused.

25 Q. There's one point where one of your

1 e-mails to her indicated that surely this isn't a
2 matter that you're going to take to Council.

3 A. Oh, okay.

4 Q. That wasn't about extra funds, was
5 it?

6 A. No, no. That was just -- I felt as
7 she is CEO of the library and having asked me as
8 CAO of the City for advice, and having given her
9 some advice that -- and I thought having agreed on
10 a plan of action that she would implement that
11 plan of action and consult me if she had any other
12 questions. And I didn't understand why that
13 wasn't happening and instead e-mails were going to
14 Council.

15 Q. Now, particularly Ms. McTaggart who
16 we see here seems to view her role as the Council
17 member on the Library Board as one that requires
18 her to report back and to get action from Council
19 with respect to those ongoing issues. Is that how
20 you -- did you believe that that's how she
21 understood her role?

22 A. I believe so, yeah.

23 Q. And did you understand that to be an
24 accurate reflection of what her role was?

25 A. I think it's certainly different.

1 It's a good question because I was thinking about
2 this last night. I don't believe -- as a
3 governance matter, I don't believe the role of
4 Council representatives on other boards was ever
5 really defined or clearly set out. From past
6 experience, having seen representatives on other
7 committees and boards, people didn't tend to be
8 that active.

9 Q. So just because Huron Lodge or ADSAB
10 or Retirement Living had Council appointed members
11 on them, you didn't see those boards coming to
12 Council for assistance and direction on their
13 issues, did you?

14 A. No.

15 Q. I'm interested in the reference to
16 staff because I understand that there is an
17 unusual connection between the staff of the Public
18 Library and the staff of the Corporation. Were
19 they in fact staff members of the City of Elliot
20 Lake?

21 A. As I said, I didn't believe -- I
22 don't believe they were for the simple fact that
23 neither I nor anybody at the City had any level of
24 supervisory authority over them. As a matter of
25 convenience, so that the Library Board doesn't

1 have to set up its own HR Department, and set up
2 its own entry and its own set of Joint Health and
3 Safety people, and set up its own accounting
4 department, receivables and payables. Because of
5 those reasons, they share services and in
6 municipalities with those services provided by the
7 municipality. So they use the municipality's HR
8 Department. The municipality's Treasury
9 Department does the accounting work for them, et
10 cetera. And it differs from municipality to
11 municipality.

12 For example, while in Elliot Lake, the
13 employees of the Library Board would have the
14 services of the HR Department. As an example of
15 the municipality I'm in now, the Board does not
16 want that. They do their own HR and they have
17 their own HR policies and they in fact tell their
18 staff they are not to go to the HR of the Town.

19 MR. KEARNS: Thank you, those are my
20 questions.

21 THE COMMISSIONER: Thank you, Mr.
22 Kearns. Mr. Kloeze?

23 MR. KLOEZE: We have no questions.

24 MR. MACRAE: No questions.

25 THE COMMISSIONER: I'm sorry, I'm just

1 looking over, but do you have any questions, Mr.
2 Romano?

3 MR. ROMANO: I have no questions.

4 THE COMMISSIONER: I just can't see him,
5 that's all.

6 MR. DOODY: He said no questions.

7 MR. ROMANO: Mr. Commissioner, I can
8 assure you, you're the only one who can't see me.

9 THE COMMISSIONER: Re-examination?

10 MR. SHOEMAKER: Thank you, Mr.
11 Commissioner.

12 RE-EXAMINATION BY MR. SHOEMAKER:

13 Q. Afternoon, Mr. Speck.

14 MR. SHOEMAKER: Ms. Kuka, if you could
15 pull up Exhibit No. 333, please.

16 BY MR. SHOEMAKER:

17 Q. Mr. Speck, this is an e-mail from
18 Mr. Ken Barnes to Andrea Leddy regarding a health
19 and safety inspection at the library in 2003.
20 What, if anything, do you have to say about the
21 content of this e-mail?

22 A. I just note that the report
23 indicates that everything was found to be in order
24 and there were no concerns raised by staff.

25 Q. Okay. That's the years 2003 on

1 that?

2 A. Yes.

3 MR. SHOEMAKER: Ms. Kuka, if you could
4 turn to Exhibit No. 11-81.

5 BY MR. SHOEMAKER:

6 Q. Mr. Speck, I'm going to bring you
7 through a few e-mails and various memos with
8 references to Dan, and I believe that's Dan
9 Gagnon. And my question to you is and this is an
10 e-mail of April 21, 2005. It's been covered
11 already in the initial examination by Mr. Doody.

12 What, if anything, was the direction
13 that you had provided to Mr. Gagnon and what was
14 his involvement in the April and May 2005 leak
15 complaint through the Joint Health and Safety
16 Board?

17 A. He was essentially my liaison with
18 the library to keep me up to date on what was
19 going -- what was happening with the remediation
20 efforts largely because he was the person who I
21 had asked to sort of be the communication person
22 between the City and the library. And because I
23 knew I was going to be going away in May, I wanted
24 to have somebody who was familiar with what was
25 going on.

1 Q. Okay. And he remained at the City
2 once you departed on July 26, 2006?

3 A. Yes, he did.

4 THE COMMISSIONER: Is Mr. Gagnon on your
5 witness list?

6 MR. DOODY: We have interviewed Mr.
7 Gagnon. At the present time, we do not plan to
8 call him, but we may revisit that.

9 MR. SHOEMAKER: Thank you, Mr.
10 Commissioner. Ms. Kuka, if you could pull up
11 Exhibit No. 11-101.

12 MR. SHOEMAKER:

13 Q. Mr. Speck, you testified just
14 briefly in your initial questions from Mr. Doody,
15 this is a letter -- it's a letter of Ms. Menzies,
16 dated -- well, it was received by the City of
17 Elliot Lake on June 10th, 2005, and it's to your
18 attention. And I'm directing you --

19 A. I'm sorry, I must have a different
20 letter.

21 Q. I have Exhibit No. 11-101. Yes,
22 thank you. Mr. Speck, as I mentioned this is a
23 letter received by the City of Elliot Lake on June
24 10th, 2005, and it's Ms. Menzies writing back to
25 you, Mr. Speck. And you've made a mention in

1 direct examination from Mr. Doody that -- I'm
2 looking at the last paragraph here. And my
3 question to you is this, you know, what, if
4 anything, did you think when you received all this
5 correspondence in the April/May, 2005 time period
6 and there's a request here that the Board doesn't
7 meet during the summer. What, if anything, did
8 that sort of indicate to you?

9 THE COMMISSIONER: Who's that letter
10 from.

11 MR. SHOEMAKER: Ms. Menzies, the Chair
12 of the Library Board.

13 THE WITNESS: Well, I was surprised
14 because, as you said, there was some quite frantic
15 appeals for action and then all of a sudden
16 they're suggesting -- I'm trying to get a meeting
17 sooner rather than later, and they're suggesting
18 something three months down the road, so that
19 surprised me.

20 BY MR. SHOEMAKER:

21 Q. Okay. And -- and what, if anything,
22 resulted from -- what, if anything, ended up
23 occurring prior to September?

24 A. We had the meeting with the landlord
25 and the members of the Library Board and Ms.

1 Fazekas and myself and the Mayor on June 15th.

2 Q. And is it your understanding, if at
3 all, that had you waited until September, you
4 know, would that have delayed the meeting or
5 anything like that with the landlord?

6 A. Well, if the Library Board wasn't
7 available to meet then, yeah, there wasn't much
8 sense.

9 Q. Okay. Thank you, Mr. Speck.

10 THE COMMISSIONER: I'd appreciate -- if
11 you get a long letter like this, I don't know what
12 it's about. I'd appreciate just a general
13 summation of what you think the letter is about
14 rather than my having to read it quickly.

15 MR. SHOEMAKER: I apologize. I was
16 specifically, on that instance, looking at the
17 last paragraph. The notation that the Board did
18 not meet -- the Library Board did not meet during
19 the summer months. This letter is from June 10th.
20 So, you know, the next meeting, I guess, would
21 have been September 8th, but from the evidence it
22 seems that something was arranged prior to that.

23 If I could -- Ms. Kuka, if you could
24 pull up tab or, sorry, Exhibit No. 1699.

25

1 BY MR. SHOEMAKER:

2 Q. Mr. Speck, this is an e-mail written
3 by Ms. McTaggart to Mr. Reinhardt directly copying
4 Council, as well as yourself, Mr. Gagnon, Ms.
5 Sprague, Mr. Kukoraitis, and I believe that's the
6 only City staff copied on there. What, if
7 anything, was Ms. McTaggart trying to do here on
8 behalf of the Mall Merchant's Association.

9 A. It seems to me she was trying to
10 advocate on their behalf to get Council involved.

11 Q. And what, if anything, could these
12 mall merchants have done among themselves if they
13 had issues? The letter speaks to issues regarding
14 the cleanliness during the ownership of Mr.
15 Nazarian, security issues, it's all within the
16 letter, and then obviously just some mention of
17 the leak issues as well. What, if anything, could
18 these mall merchants have done amongst themselves
19 if they wanted to pursue any of those issues?

20 A. They could have gone to see Mr.
21 Allard themselves. They could have banded
22 together and gotten a lawyer and looked at that
23 provision that Mr. Longo referenced, section 440
24 of the Municipal Act, to get satisfaction.

25 Q. Okay. And to the issue that -- or

1 to the note that you made, they could have gone to
2 Mr. Allard, in all of the -- in all of the e-mails
3 that have been brought to your attention, prior to
4 your departure on July 26th, 2006, how many, if at
5 all, copied Mr. Allard?

6 A. I don't believe any did.

7 MR. DOODY: I'm wondering if perhaps the
8 witness -- if the foundation could be laid for
9 that question, whether the witness could be asked
10 whether he reviewed them all.

11 MR. SHOEMAKER: Well, Your Honour, well,
12 perhaps I'll rephrase it.

13 BY MR. SHOEMAKER:

14 Q. Mr. Speck, in all of the e-mails
15 presented to you this morning and yesterday by Mr.
16 Doody, which you would have seen, how many, if
17 any, copied the CBO?

18 A. I find that it's hard for me to
19 recall each e-mail. I have a compilation of my
20 own that I've put together of the e-mails that are
21 in the briefs, but put them date and time
22 chronological order from April 21st through to May
23 16th --

24 Q. Are you looking through those right
25 now, Mr. Speck?

1 A. Yeah, sorry, I'm counting. There's
2 upwards of 15 to 20 e-mails and Mr. Allard doesn't
3 appear to be copied on any of them.

4 Q. Thank you, Mr. Speck.

5 THE COMMISSIONER: In relation to the
6 previous document, that is Ms. McTaggart's e-mail,
7 are you suggesting that what Ms. McTaggart was
8 doing was an improper option amongst the others
9 that you've mentioned?

10 THE WITNESS: Is that a question for me?

11 THE COMMISSIONER: Yes.

12 THE WITNESS: No.

13 THE COMMISSIONER: It was a valid
14 option, I take it. There were others perhaps, but
15 you're not suggesting that her as an elected
16 representative or as a member of the Board ought
17 not be somehow involved in these issues?

18 THE WITNESS: Absolutely not.

19 THE COMMISSIONER: All right.

20 MR. SHOEMAKER: Ms. Kuka, can you pull
21 up Exhibit No. 3972?

22 MS. KUKA: What's the doc ID?

23 MR. SHOEMAKER: We'll have to check that
24 in a moment. I apologize.

25

1 BY MR. SHOEMAKER:

2 Q. Mr. Speck, the reference has been
3 made in Mr. Doody's evidence after the additional
4 package of documents came out to him of quote
5 unquote secret meetings and my question to you,
6 it's already been covered as well by Mr. Longo,
7 were Councillors at all told to hide the existence
8 of these meetings?

9 A. No.

10 Q. And not to seem facetious at all,
11 but were they told to destroy documents that were
12 handed to them at those meetings?

13 A. I don't believe so.

14 Q. And were the -- where were the
15 meetings held?

16 A. I believe they -- the document shows
17 the Committee Room at City Hall.

18 Q. Okay. And what time usually were
19 they held?

20 A. They mostly seem to be at 4:00 p.m.

21 Q. Okay. And do you know, if at all,
22 the doors would have been locked on the Committee
23 Room?

24 A. No, they wouldn't be.

25 Q. So from what we've heard on is the

1 -- as sort of the facts surrounding the meetings
2 and, you know, how would you characterize those
3 meetings?

4 A. I think, as I've said, they were
5 informal update sessions.

6 Q. And did you do anything to keep
7 those meetings secret?

8 A. No.

9 THE COMMISSIONER: If I'd walked in
10 there and sat down, what would have happened to
11 me?

12 THE WITNESS: Good question. Never
13 happened.

14 BY MR. SHOEMAKER:

15 Q. It never happened when the
16 Commissioner walked in?

17 A. No. I don't know.

18 THE COMMISSIONER: You don't recall of
19 one instance over all of these years where an
20 uninvited member of the public, a citizen, walked
21 in and sat down?

22 THE WITNESS: No.

23 THE COMMISSIONER: Never occurred?

24 THE WITNESS: No.

25 THE COMMISSIONER: Okay. Well, go back

1 to my question. Had that -- it's a hypothetical,
2 but had that occurred, would I have been allowed
3 to remain? What role do you think you would have
4 played in relation to my presence?

5 THE WITNESS: I think if anyone had
6 objected to you being there, I would have had to
7 advise them that you had every right to be there.

8 THE COMMISSIONER: Okay, thank you.

9 MR. SHOEMAKER: Thank you, Mr.
10 Commissioner. Ms. Kuka, if you can pull up
11 Exhibit No. 11-83. That's not it. I must have
12 the wrong number written down.

13 BY MR. SHOEMAKER:

14 Q. Mr. Speck, I don't actually need the
15 e-mail. It's been covered by Mr. Doody. There
16 was an e-mail from Ms. McTaggart referencing the
17 fact that the Library Board wanted to attend the
18 caucus meeting on May 2nd of 2005. So what if
19 anything -- or what would happen, I mean, I guess
20 delegations would be permitted at times to ask to
21 even attend those caucus meetings?

22 MR. DOODY: It's my friend's witness.
23 He can't lead, with the greatest of respect.

24 THE COMMISSIONER: I'm sorry, I didn't
25 hear the question. State your question again.

1 BY MR. SHOEMAKER:

2 Q. Mr. Speck, would, if at all, would
3 delegations be permitted to attend those caucus
4 meetings?

5 THE COMMISSIONER: That's a proper
6 question.

7 THE WITNESS: As I said before, I recall
8 from time-to-time there being other presentations.

9 BY MR. SHOEMAKER:

10 Q. Okay. And your recollection is that
11 limited, if at all, to the library or to
12 Retirement Living or to what organizations would
13 that be limited to?

14 A. I don't recall it being limited to
15 anybody.

16 Q. And we've already established that
17 you've served as a CAO after July 26 of 2006, in
18 South Oxford as well as at the Blue Mountains.
19 Are you familiar at all with the Statute Law
20 Amendment Act of 2006?

21 A. Somewhat. I believe that's the
22 legislation that tightened up the provisions
23 regarding accountability, transparency and closed
24 meetings.

25 MR. SHOEMAKER: Your Honour, if I may,

1 I'd like to put some provisions of the Bill 130
2 Municipal Statute Amendment Act 2006 on the
3 projector. Just establish -- just move it down so
4 we can just see the title of the bill.

5 Q. And specifically, Mr. Speck, I'm
6 asking in the parts I've highlighted on page two,
7 sections 102 and 103 and would like to know what
8 your understanding is regarding the purpose of
9 these amendments?

10 MR. SHOEMAKER: And the Act being
11 referenced, Mr. Commissioner, is the Municipal
12 Act.

13 THE WITNESS: And I'm sorry, your
14 question was?

15 BY MR. SHOEMAKER:

16 Q. What's your understanding regarding
17 -- you've sort of answered it already prior to me
18 asking the question, but what's your understanding
19 regarding the purpose of these amendments?

20 A. These two specific highlighted
21 amendments?

22 Q. Yes, those ones there that I've
23 directed you to.

24 A. Just appear to be clarifying
25 definitions or definition.

1 Q. And that definition would be what?
2 The definition of a meeting there at sub 2?

3 A. Yes.

4 Q. And what if anything does this
5 change -- what's your understanding regarding this
6 change?

7 A. That was a new provision that was
8 added that clarified that members of Council could
9 have closed session meetings for the purposes of
10 educating or training members of Council.

11 Q. Okay. And it was put to you in
12 cross-examination by Mr. Longo, does this
13 generally, if at all, seem consistent with any of
14 the changes made to the 07 by-law passed by the
15 City of Elliot Lake, from what you can tell?

16 A. It seemed so, yes.

17 Q. Okay.

18 MR. SHOEMAKER: If I could have the page
19 pulled down slightly, Mr. Bernard, 104.

20 BY MR. SHOEMAKER:

21 Q. What, if anything, to your
22 understanding, Mr. Speck, were the changes in the
23 104 legislation, 104 on this bill, 239.1 and .2?

24 A. That made provisions such that
25 members of the public could file complaints if

1 they felt that members of -- that Council had gone
2 in-camera in inappropriate situations. And
3 municipalities have the option of appointing an
4 investigator or having a provincial ombudsman as a
5 default investigator to investigate complaints
6 like that and make a report.

7 Q. Thank you, Mr. Speck, in my reply,
8 those are all my questions.

9 THE COMMISSIONER: Mr. Doody.

10 THE WITNESS: Sorry, may I have a break.

11 THE COMMISSIONER: Sure, let's take five
12 minutes.

13 --- Break taken at 3:05.

14 --- Upon resuming at 3:15 p.m.

15 THE WITNESS: Excuse me, Mr. Doody,
16 before, and, Commissioner, we start and I
17 apologize. I'm wondering if I might have your
18 indulgence. There's something that you put to me
19 earlier today which, in my being flustered, I
20 didn't respond with some things I would like to
21 have responded.

22 THE COMMISSIONER: Yes, go ahead, sir.

23 THE WITNESS: So it was with regard to I
24 believe the line of questioning and the suggestion
25 was that as a CAO, I was in charge and I made the

1 decisions and I directed things, and I believe
2 this was in relation to the closed meetings. And
3 while it's certainly through that as a CAO, I'm
4 the head of the staff and the day-to-day of the
5 organization and Council does rely on me for
6 advice. One of the harsh realities for chief
7 administrators is that they work for Council. And
8 when I say harsh realities, I mean that many
9 CAOs have found out the hard way that you don't
10 tell Council what to do.

11 I know there are municipal administrator
12 associations right now who are lobbying the
13 province for protections within the Municipal Act
14 for municipal CAOs. Protection -- I remember
15 seeing a recent article, and I think it was in the
16 Municipal Monitor, entitled Speaking Truth to
17 Power and it was talking about that issue.

18 And I can relate two examples related to
19 myself in 2005 with Council. One where I had a
20 member of Council who was attempting to convince
21 Council to make a decision that would have been a
22 complete violation of our procedural by-law. And
23 I spoke up against that and advised Council that
24 they shouldn't do that. And at the end of the
25 day, they listened to me, but there were some

1 members of Council who were unhappy. And then
2 shortly thereafter, another member of Council who
3 had been at a committee meeting and the same
4 matter came to Council and when he was speaking to
5 it, he misrepresented some material facts to the
6 discussion and to Council's decision. And when I
7 corrected those facts, which I believed was my job
8 to do, I was personally and publically attacked by
9 him. And subsequently received a reprimand letter
10 from Council, which referenced the two instances
11 that I've just talked with you about. And
12 essentially said you work for us. You don't tell
13 us what to do.

14 And so I just felt that that was some
15 context that was important to that discussion.

16 RE-EXAMINATION BY MR. DOODY:

17 Q. Thank you, Mr. Speck. And with
18 specific reference to this issue of the caucus
19 meetings, did you feel compelled by virtue of the
20 de facto authority you've just described to
21 continue with them?

22 A. It was something the Mayor wanted.

23 Q. And did he make that clear to you?

24 A. Yes.

25 Q. Did you protest or advise him that

1 you thought that they were not in compliance with
2 the statutes?

3 A. I wish I could tell you that I
4 remembered doing that, but I don't believe that I
5 did.

6 Q. But on the point of the statutory
7 amendments that my friend Mr. Shoemaker took you
8 to just -- just in the last set of questioning, I
9 take it, sir, that you're not suggesting that the
10 caucus meetings that you've testified about today
11 were in compliance with the statute as it existed?

12 A. No.

13 Q. Okay. Sir, Mr. Longo asked you
14 about job descriptions for the Chief Building
15 Official. And I wonder if I could have Exhibit
16 No. 3902. Just this week we received, or last
17 week we received from the City some new documents
18 that we specifically requested. And among them
19 was this document, sir, which is dated 2004 in
20 handwriting at the top and it's described as the
21 Position Description for the Chief Building
22 Official of the City of Elliot Lake. And that's
23 the way it's been described to us. And can I have
24 you confirm, obviously you can't confirm that
25 every word is accurate, but does it look

1 consistent with what you recall? If we scroll
2 through the pages, and I'm particularly interested
3 in page three under the heading Property Standards
4 Officer.

5 THE COMMISSIONER: What was the date of
6 that document?

7 MR. DOODY: 2004, Mr. Commissioner.

8 THE WITNESS: And your question was?

9 BY MR. DOODY:

10 Q. Is this -- does this -- obviously
11 you can't swear that every jot and tittle of this
12 is correct, but is this generally consistent with
13 what your understanding of what his job
14 description was.

15 A. I would say so.

16 MR. DOODY: And if I can ask you, Ms.
17 Kuka, to pull up Exhibit No. 3905. This is a
18 document that says draft number 2, and so we don't
19 know whether this was put in place, but it's
20 prepared in September of 2005 and it's the
21 position description for the Chief Building
22 Official.

23 BY MR. DOODY:

24 Q. Do you recall these descriptions
25 being amended?

1 A. I don't.

2 Q. If you turn to page two, the bottom
3 of page two, under the heading Property Standards
4 Officer, there is a couple of lines there that
5 talk about his role, including enforcing the
6 provision of the Property Standards By-Law. And
7 then at the top of the next page, another four
8 bullets about his job in respect of that by-law.
9 Is that generally consistent with your
10 recollection of what his job description would
11 have been?

12 A. I would say so.

13 Q. And just using this document as an
14 example, I'm counting, six different items and in
15 terms of law enforcement, if we go back to page
16 two --

17 A. Can I just --

18 Q. Certainly.

19 A. You asked whether it's consistent.
20 There's one area -- I just saw lottery licensing
21 officer.

22 Q. Yes.

23 A. And that's one thing that as I
24 recall --

25 Q. Just so that everyone can be looking

1 at this, it would be on the third page. Thank
2 you.

3 A. And my recollection is that when we
4 made Mrs. Sprague the Director of Clerks and
5 Building Services, there had been a half a
6 resource helping billing and helping Syl do the
7 lottery licensing and stuff and that was getting
8 to be a bit much. So when we made the switch to
9 the ORG chart, we moved this half resource down to
10 Mrs. Sprague's office doing half-time assistant
11 Clerk's work and half-time lottery licensing. So
12 effectively the lottery licensing went down to the
13 Clerk's office and relieved Syl of that function.

14 Q. Okay. And that would have been in
15 2003, if I recall?

16 A. Yeah, around there.

17 Q. We looked at that document. Thank
18 you.

19 A. Yeah.

20 Q. Mr. Kearns asked you questions about
21 the powers of the Library Board and the librarian
22 and you told him that the board has management and
23 control, that the CEO of the library, that would
24 be Ms. Fazekas during your tenure, had control of
25 the management, subject to discretion from the

1 Board, and that essentially her role was the same
2 as yours as CAO of the City. Do you recall giving
3 Mr. Kearns that evidence?

4 A. I do.

5 Q. And the one issue is that the City
6 supplies the money though, right?

7 A. Well, Council supplies the money.
8 They supply it for both the Library Board and to
9 the organization. And municipal staff put
10 together a budget and it goes to Council and
11 Council may or may not accept that budget.

12 Q. That's -- sorry, that's what I
13 meant. Council supplies the money?

14 A. Yeah, for both the library and my
15 organization.

16 Q. Right. And of course the statute
17 says the City acts through and only through
18 Council.

19 A. I'm not sure it doesn't.

20 Q. Well, I'm not going to debate it
21 with you, but I'm pretty sure there's a section in
22 the Municipal Act that says the city --

23 A. Oh, that sorry. I thought you were
24 referring --

25 Q. I'm pretty sure there is a section

1 of the Municipal Act that says the City can only
2 act through by-laws enacted by Council, correct?

3 A. Yes, you're right. I thought you
4 were referring to the Public Libraries Act.

5 Q. No. So just dealing with that
6 evidence, can we agree that Ms. Fazekas when she
7 came to you and Mr. Kearns asked you what it was
8 -- why she was going to you, can we agree that she
9 wanted the City's help to solve this problem of
10 the leaks in May of 2005?

11 A. She wanted somebody's help, yeah.

12 Q. And in terms of what the City could
13 agree to do, the City could agree to pay for a new
14 facility, a new lease somewhere else, right?

15 A. Could. Wasn't financially practical
16 at the time, I don't think.

17 THE COMMISSIONER: What about the fact
18 -- she -- the Library Board would not have had any
19 authority to acquire or dispose of real estate?

20 THE WITNESS: No. I believe -- I
21 checked this out over lunch because we talked
22 about it and any dealings related to the real
23 estate or leasing required the consent of Council.

24 MR. DOODY: And if I could have Exhibit
25 No. 11-15, which, Mr. Speck, is volume 6, tab 94.

1 BY MR. DOODY:

2 Q. This is your letter to Ms. Menzies,
3 the Chair of the Library Board, on May 6th, 2005,
4 and you -- we went through this earlier.

5 You tell her that you share her concern
6 about the leaks. And then at the bottom of the
7 first page, you list options worth investigating
8 and they are redesigning the Colins Hall, upstairs
9 in the post office building, downstairs in the
10 Civic Center. Whether there might be space in the
11 ELNOS building. Turn the page. Redesigning the
12 building that currently houses the No Frills store
13 when they move to a new location. He notes -- or
14 you note that a very preliminary investigation is
15 being done into the cost of developing a new
16 multi-purpose recreational facility, and the
17 seventh option was continuing in the mall.

18 And so those were what you had suggested
19 in the last paragraph ought to be discussed in a
20 meeting between the Board, the Council rep on the
21 Board, the Mayor, and you?

22 A. Yeah.

23 Q. Right?

24 A. Yes.

25 Q. So you said one thing that the City

1 could do to help would be to explore whether the
2 City was prepared to pay for new facilities
3 elsewhere?

4 A. I think what I was more interested
5 in at that time, because I knew the financing
6 piece would be difficult, was identifying whether
7 there was a practical space in the municipality.
8 And then if there was, we'd look at whether or not
9 there was some way, whether it's, you know,
10 through grant money or whether Council could be
11 convinced to ultimately do what needed to be done
12 to put that building in shape for a library,
13 because this was more about is there a space that
14 would be suitable for them.

15 Q. And the City would have had to be
16 involved in that, right?

17 A. Oh, yeah.

18 Q. And so in response to Mr. Kearns'
19 question of what could you do, one of the things
20 you and the Council ultimately could do would be
21 to look at different space, right?

22 A. Could be. There would be practical
23 implications in terms of, you know, breaching the
24 lease unless you waited until the end of the
25 lease.

1 Q. But that's what you were suggesting
2 you could look at in the letter?

3 A. Yes.

4 Q. And ultimately, as you said, it
5 didn't pan out?

6 A. Yeah.

7 Q. The second thing that the City could
8 do in response to her request for assistance was
9 to try and exert influence over Retirement Living
10 as the landlord to see if the leaks could be
11 fixed, right? But you didn't say that in the
12 letter, but that's one thing you could do, right?

13 A. Yes.

14 Q. And that's what you tried to do in
15 the meeting of June 15th, right?

16 A. Yes.

17 Q. And that didn't pan out?

18 A. Short term yes, but long term no.

19 Q. And the third thing which the City
20 could have done and really the only other thing
21 and I suggest to you that the City could have done
22 to help her was have the Chief Building Officer
23 inspect and decide whether to issue an order under
24 the Property Standards By-Law. That's the only
25 other thing, isn't it?

1 A. It is another thing. I hesitate to
2 say it's the only other thing, but I can't think
3 of anything else.

4 Q. And in respect of the e-mails sent
5 to you, Mr. Shoemaker asked how many of the
6 e-mails sent to you complaining about the library
7 had been copied to Mr. Allard. And you indicated
8 that you'd reviewed about 15 I think you said?

9 A. Something like that.

10 Q. And none of them had, right?

11 A. Yeah.

12 Q. And of course, if you had wanted to,
13 you could have forwarded those to Mr. Allard and
14 if you'd done so, that would have given him the
15 basis to commence an investigation under the
16 by-law, right?

17 A. Yes, it would have. And I wasn't
18 alive to the fact that there was a violation.

19 Q. And with respect to the caucus
20 meetings, sir, which according to the agendas
21 always started at 4:00, what time does the front
22 door of City Hall lock?

23 A. It was either 4:30 or 5:00.

24 Q. And the meetings took place on the
25 second floor?

1 A. No. Committee Room on the main
2 floor.

3 Q. But not in the Council chambers?

4 A. It's a room adjacent to Council
5 chambers. It's the room we used to hold the
6 committee of the whole meetings.

7 Q. Thank you, sir. Those are my
8 questions.

9 THE COMMISSIONER: Thank you, Mr. Speck,
10 that's all. I take it Commission Counsel have no
11 further witnesses to call? Mr. Broadbent.

12 MR. BROADBENT: Thank Your Honour. I
13 apologize for the intrusion. Just very briefly.
14 I know the Interpretation Act says that the law is
15 always speaking and so accordingly I would ask
16 that or suggest that it might be appropriate for
17 Your Honour, to, Mr. Commissioner, to at some
18 point take a look at section 19 of the Public
19 Libraries Act because it addresses the issue of
20 lease, and what have you, and it's somewhat
21 ambiguous and perhaps not as expressed in the room
22 today. So it doesn't speak to space. It speaks
23 to land and other things. But you'll see what I
24 mean, Your Honour. I'm not making submissions on
25 this. I'm just asking that --

1 THE COMMISSIONER: No, no, but I
2 appreciate your advice and we'll certainly have a
3 look at that if it's of value.

4 MR. DOODY: And I can tell, Mr.
5 Commissioner, I can tell the participants that the
6 issue of the role of the City in respect of
7 leasing space for the library will be explored in
8 the evidence of Mr. Bauthus yet to come. And
9 then, Mr. Commissioner, I should have done this
10 yesterday morning and --

11 THE COMMISSIONER: Thank you, Mr.
12 Broadbent, that is obviously the Commission
13 appreciates that kind of suggestion.

14 MR. DOODY: Mr. Commissioner, I said on
15 the record yesterday morning that I would mark
16 this document setting out the schedule of
17 witnesses willsays and documents as an exhibit and
18 I did not do so.

19 MS. KUKA: 2350.

20 MR. DOODY: And I'm advised it's Exhibit
21 No. 2350.

22 EXHIBIT NO. 2350: Document setting out
23 the schedule of witnesses' willsays and
24 documents.

25 THE COMMISSIONER: Thank you. So be it.

1 And so we're not sitting tomorrow. The next day
2 will be Monday the 29th of April. Mr. Allard is
3 your witness?

4 MR. DOODY: That's right, Mr.
5 Commissioner. Mr. Carr-Harris will be calling his
6 evidence.

7 THE COMMISSIONER: Thank you all very
8 much then. We'll see you at 9:00 Monday next.

9 --- Whereupon the Inquiry adjourned for
10 the day at 3:30 p.m.

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REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth;

That the testimony of the witness and
all objections made at the time of the examination
were recorded stenographically by me and were
thereafter transcribed;

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken.

Dated this 1st, day of May, 2013

Helen Martineau

PER: HELEN MARTINEAU

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