

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 79

August 01, 2013



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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is DAY 79 in the Inquiry proceedings held
before the Honourable Justice P.R. Bélanger, Commissioner,
taken at the White Mountain Academy of the Arts, 99 Spine
Road, Elliot Lake, Ontario, on Thursday, the 1st day of
August, 2013, commencing at 9:00 a.m. ---

REPORTED BY: Lisa Barrett
CSR, CRR, RPR

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18
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20
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22
23
24
25

I N D E X

PAGES

ELAINE QUINTE: ON PRIOR OATH

CROSS-EXAMINATION BY MS. SMITH 19512 - 19517

CROSS-EXAMINATION BY MR. CASSAN 19517 - 19536

RE-EXAMINATION BY MR. BROADBENT 19536 - 19537

RE-EXAMINATION BY MS. RODRIGUEZ 19537 - 19540

WILLIAM ELLIOTT: SWORN

EXAMINATION-IN-CHIEF BY MR. WALLACE 19540 - 19583

EXAMINATION-IN-CHIEF BY MR. AUBÉ 19583 - 19586

CROSS-EXAMINATION BY MR. TITLE 19586 - 19591

CROSS-EXAMINATION BY MR. SHIME 19591 - 19595

CROSS-EXAMINATION BY MR. MacRAE 19595 - 19598

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS

NUMBER/DESCRIPTION	PAGE
6231 Ministry of Labour inspection form	19539

1 --- Upon commencing at 9:01 A.M.

2 THE COMMISSIONER: Good morning,
3 ma'am.

4 THE WITNESS: Good morning.

5 ELAINE QUINTE: ON PRIOR OATH:

6 THE COMMISSIONER: Ms. Smith, you are
7 up.

8 MS. SMITH: Good morning,
9 Mr. Commissioner.

10 CROSS-EXAMINATION BY MS. SMITH:

11 Q. Good morning, Ms. Quinte.

12 A. Good morning.

13 Q. I had introduced myself earlier
14 this morning, but for the record, my name is Kristin
15 Smith and I represent the Province of Ontario. I'm
16 going to ask you a few questions today about the
17 Ministry of Labour.

18 A. Okay.

19 Q. You said yesterday that no-one
20 from the Ministry of Labour ever came to inspect
21 your restaurant; correct?

22 A. Correct.

23 MS. SMITH: So I'm going ask Ms. Kuka
24 to bring up a document. It is MOL_E -- last four
25 digits, 7845. If we could just -- thank you very

1 much.

2 BY MS. SMITH:

3 Q. This is an MOL field visit
4 report and if you see at the top on the left it
5 indicates your restaurant, Hungry Jacks; is that
6 correct?

7 A. Yes.

8 Q. And you see the visit date just
9 to the right of that is December 11th, 2008.

10 A. Yes.

11 Q. And if we could just go down
12 slightly, it says under the line -- that's at the
13 top, it says "Contacted" and there are three names
14 there: a Mr. Stan Friar, cook -- was he a cook at
15 your restaurant?

16 A. Yes, he was.

17 Q. And Ms. Rosie Parker, customer
18 service.

19 A. Yes.

20 Q. Okay. And then the third name
21 is Ms. Amanda Oake in customer service; she was also
22 an employee of yours?

23 A. Yes.

24 Q. Do you recall this visit?

25 A. No, I do not.

1 Q. It seems from the document that
2 you weren't contacted on the visit but you'd verify
3 that your three employees there, they were part of
4 that visit?

5 A. Yes, they are my employees.

6 THE COMMISSIONER: Could I just
7 interrupt you for a moment.

8 (Technical break)

9 BY MS. SMITH:

10 Q. And if we could just scroll down
11 the page to the bottom half. It indicates that
12 there were orders issued. The first order is that
13 the workers are to select a health and safety
14 representative; do you see that?

15 A. Yes, I do.

16 Q. And do you recall that
17 happening?

18 A. No, but we sort of elected Stan
19 to oversee most of the stuff like that.

20 Q. The Health and Safety Act?

21 A. Yes, yes.

22 Q. Okay. And then the second order
23 is:

24 "The employer shall obtain
25 an unexpired material safety

1 data sheet for all hazardous
2 materials present in the
3 workplace."

4 Do you recall anything about that?

5 A. We did. We had them posted on
6 our walls.

7 Q. Okay. And if we could just go
8 to the second page, Ms. Kuka, at the top.

9 And then you will see there in the
10 middle of the page, the third order:

11 "The employer is to provide
12 WHMIS training for all workers
13 using and handling hazardous
14 products."

15 Do you recall anything about that?

16 A. No, I don't.

17 Q. Okay. And then if we could just
18 go to the third page, what the third page is is the
19 handwritten order that the inspector created when he
20 was at the workplace and then after he left the
21 workplace he inputted that into the typed version we
22 just looked at.

23 If we could zoom in at the bottom of
24 the page where the signatures are, f you can see on
25 the left, what that looks like, "Name of Recipient",

1 looks like Stan Friar; is that what that looks like
2 to you?

3 A. It does look like that to me,
4 yes.

5 Q. And the one on the far right,
6 "Worker Representative" signature looks to me like
7 Rosie Parker?

8 A. Correct.

9 Q. And you were also asked
10 yesterday if you ever contacted the City or MOL and
11 I got your answer that you had never contacted the
12 City to come in and look at your restaurant, but you
13 never answered the question whether you contacted
14 MOL. Can you answer that for us?

15 A. I did not contact the Ministry
16 of Labour, no.

17 Q. So I take it that since you
18 weren't present when this visit took place in
19 December of 2008 that you never met any inspectors
20 at any time from the Ministry of Labour?

21 A. No, ma'am.

22 Q. And you wouldn't have known what
23 any of the inspectors looked like?

24 A. No.

25 MS. SMITH: Okay. Those are my

1 questions, your Honour.

2 THE COMMISSIONER: Thank you.

3 MS. SMITH: Thank you, ma'am.

4 THE WITNESS: Thank you.

5 THE COMMISSIONER: Mr. Cassan.

6 MR. CASSAN: Thank you,

7 Mr. Commissioner.

8 CROSS-EXAMINATION BY MR. CASSAN:

9 Q. Good morning, Ms. Quinte, my
10 name is Paul Cassan, we met this morning. I have
11 some questions for you with respect to the City.

12 A. Okay.

13 Q. How long have you been in
14 business?

15 A. All together I started in --
16 I believe, '92 in Kakabecca Falls, and in
17 Elliot Lake since 2001.

18 Q. And has Hungry Jacks been open
19 since 2001?

20 A. Hungry Jacks, I believe opened
21 in 2005 or 2006.

22 Q. And how many people do you
23 employ there?

24 A. We probably had at maximum,
25 including myself, between six and seven employees

1 possibly.

2 Q. Okay. I'm going to take you to
3 a document that I've provided to my friends, and to
4 Ms. Kuka, it's a series of fire safety inspection
5 reports and I provided you with a copy of that; do
6 you have it with you?

7 A. Yes.

8 MR. CASSAN: Ms. Kuka, I wonder if we
9 can make this collection of documents an exhibit.

10 MS. KUKA: Exhibit No. 6230.

11 BY MR. CASSAN:

12 Q. Ms. Quinte, yesterday you said
13 that you told Darren Connors about the piece of
14 concrete that fell into the ceiling tile?

15 A. Right.

16 Q. And I want to take you through
17 the series of fire safety inspection reports just to
18 ensure that it was Darren Connors that you told, and
19 I'm trying to figure out what date it was.

20 So the first document you'll see is
21 dated February 23rd, 2011. And if you look down at
22 the bottom of the page -- if you could just scroll
23 down a bit, Ms. Kuka -- you will see the inspector
24 was Captain John Thomas, do you remember this --

25 A. Yes, I do.

1 Q. -- inspection?

2 A. Correct.

3 Q. And I believe your evidence was
4 that the concrete had not fallen by this time. Does
5 this help you navigate in time to when the concrete
6 did fall? In other words, did it fall after this or
7 before this?

8 A. It fell after this.

9 Q. So this is not the fire fighter
10 that you would have told about the concrete; right?

11 A. No.

12 MR. CASSAN: So if we could flip over
13 the page please, Ms. Kuka -- March 21st, 2011 is the
14 follow-up. Again if we can scroll down.

15 BY MR. CASSAN:

16 Q. This is by John Thomas and
17 again, I think this was done before the concrete
18 fell; is that correct?

19 A. Yes.

20 Q. Okay. So we know for sure it's
21 after March 21st. You think it's May of 2011? Can
22 you help with us a date?

23 A. I'm sorry, I don't know the date
24 but I do know that it was in May --

25 Q. Okay.

1 A. -- of 2011.

2 Q. So, October 18th is the next
3 page. And I understand this was an eventful day for
4 you. So October 18th, 2011, this fire safety
5 inspection report shows that there was actually
6 a fire call at the restaurant; do you recall that?

7 A. I do.

8 Q. And were you at the restaurant
9 at the time?

10 A. I was not, no.

11 Q. Did you end up going to the
12 restaurant as a result of the Fire Department being
13 there?

14 A. Actually I believe I was out of
15 town, so when I got home I got the call on the phone
16 that there was a possible odour of gas --

17 Q. Uh-hmm.

18 A. -- coming from the restaurant,
19 and I believe that maintenance let them in or they
20 went over the counter, I think because the door was
21 locked and they dealt with it, and it happened. It
22 was nothing like -- everything was okay.

23 Q. So, if we scroll down in this
24 page, Ms. Kuka, we see this is the first time that
25 Darren Connors is there and this is October 18th of

1 2011. Now, I take it you would not have had the
2 opportunity to speak to Captain Connors at that
3 time?

4 A. I spoke to him at this time.

5 Q. Is this the time that you told
6 him about the concrete?

7 A. I do -- yes, I do believe it is,
8 and the reason why I sort of recollect is Superior
9 Safety was there at the same time. Again, they come
10 in just to do an inspection on my overhead, the hood
11 of the --

12 Q. Yes?

13 A. -- deep fryer and the ovens and
14 things like that and we were all there. It was sort
15 of -- they came at the same time. And that is when
16 I talked to Mr. Connors so I do know that -- and
17 that was the same time that Superior Safety was
18 there, so it all happened at the same day.

19 Q. So maybe I misunderstood your
20 evidence but I thought you said you weren't in town
21 this day.

22 A. October 18th, yes, I was.

23 Q. Oh, okay, I misunderstood then.
24 So you were at the store on October 18th?

25 A. Yes, I was. Yes.

1 Q. Okay. And so tell me then about
2 the conversation that you had with Captain Connors.
3 Actually let's -- we'll come back to that. The next
4 page is the standard incident report that just
5 details the fire call.

6 A. And I was not there at this
7 possibility of a gas leak. I believe it happened on
8 a Sunday, and we're closed on Sundays.

9 Q. Okay. I see what you're saying.
10 So this next page is actually helpful because it
11 shows that the date of the incident is October 16th,
12 2011. Do you see that in the box called --

13 A. I do.

14 Q. -- "Date of Incident"?

15 A. Yes.

16 Q. So that's the day that the
17 actual gas leak happened and the Fire Department
18 responded in an emergency fashion.

19 A. Correct.

20 Q. And the previous page,
21 October 18th, is a bit of a follow-up where Captain
22 Connors comes to meet you?

23 A. Correct.

24 Q. That makes more sense now.

25 A. Yes.

1 Q. Thank you. I understand that
2 there were some deficiencies that were brought to
3 your attention, and that resulted in the
4 reinspection -- which is on the last page of the
5 document, Ms. Kuka.

6 That's dated December 30th, 2011 and
7 you've got a copy of that in front of you, right,
8 Ms. Quinte?

9 A. Yes, I do.

10 Q. And so, again, this is Darren
11 Connors re-attending with you on December 30th.

12 A. Correct.

13 Q. And so out of those instances
14 you say that you spoke to Mr. Connors on
15 October 18th, 2011 about the concrete?

16 A. Yes.

17 Q. Now, do you remember what
18 Mr. Connors or sorry, Captain Connors told you when
19 you told him about the concrete?

20 A. I don't. I do remember talking
21 to him just again, in normal conversation like
22 I would with anybody. I even believe that I did the
23 same with Mr. Connors as I did with Rick Fournier,
24 just walked around the mall, kind of showed some of
25 the other incidences with the leaks and the holes in

1 the ceilings and things like that. So, we talked at
2 great length but ...

3 Q. So, Captain Connors was there in
4 his uniform; right?

5 A. Yes.

6 Q. And it was an official visit --

7 A. Yes.

8 Q. -- as a result of the emergency?

9 A. Yes.

10 Q. And I'm going to suggest to you
11 that he told you, when you told him about the
12 concrete, that you should call the mall manager;
13 does that sound like something that he would have
14 done?

15 A. Yes, I've already called the
16 mall manager.

17 Q. All right.

18 A. She was already informed.

19 Q. And he said to you that you
20 should call the owner to talk to -- Mr. Nazarian
21 about the concrete; right?

22 A. I don't recall that. I'm sorry,
23 I don't remember him saying that.

24 Q. Okay. And I'll suggest to you
25 that he told you you should call the Building

1 Department at the City.

2 A. He may have said that. I --

3 Q. And also he said to you that you
4 should call the Ministry of Labour because you're
5 a workplace; do you remember him saying that?

6 A. I do not.

7 Q. And I understand as well that
8 you showed him the pieces of concrete and he even
9 said to you that he would take one of the pieces of
10 concrete to the Building Department to make the
11 complaint for you; do you remember that?

12 A. No, he didn't say that.

13 Q. He didn't say that?

14 A. He didn't.

15 Q. And that you wanted to retain
16 the concrete; you told us that yesterday, right?

17 A. Yeah.

18 Q. So, did you go over to the
19 Building Department at all with the concrete?

20 A. I did not, no.

21 Q. And when you're talking to
22 Captain Connors, it looks like that's five months
23 after the concrete fell; right?

24 A. Yes.

25 Q. Now, I want to take you back to

1 the day in May when you saw the concrete that fell.
2 You didn't close down the restaurant that day.

3 A. I did not.

4 Q. And you -- you worked that day;
5 you were in the restaurant afterwards?

6 A. Yes, sir.

7 Q. And your employees were in the
8 restaurant afterward?

9 A. Yes, sir.

10 Q. And I suppose patrons would have
11 been in the restaurant afterwards. You wouldn't
12 have shut it down or done anything like that; right?

13 A. It was a -- I don't have
14 customers in there. It's a walk-by.

15 Q. Oh, okay. So where this
16 happened the only people that were exposed to it
17 were yourself and your employees?

18 A. Correct.

19 Q. And did you ever call the
20 Ministry of Labour as a result of this?

21 A. No, I did not.

22 Q. Okay, I wonder if I can now take
23 you to Exhibit No. 2359. And Ms. Quinte, these are
24 the photographs of the piece of concrete.

25 Ms. Kuka, I'm looking for the third

1 photograph. That's the one.

2 Now, we talked a little bit about
3 this yesterday, but do you remember who it is that's
4 holding this piece of concrete?

5 A. I do.

6 Q. Who is it?

7 A. Kristine.

8 Q. Kristine ...?

9 A. Stoddard.

10 Q. And is she an employee of yours?

11 A. Yes.

12 Q. Now, how tall would Kristine
13 Stoddard be; do you know?

14 A. I don't. Maybe 5, 4 -- 5, 5.

15 Q. So she's not a very tall woman?

16 A. No.

17 Q. Not a very big woman. I'm
18 looking at her hand.

19 A. Yes.

20 Q. And you see that she's holding
21 the piece of concrete in her hand in what I would
22 call an open grip.

23 A. Yes.

24 Q. And you see, as well, that she's
25 holding the piece of concrete out, not quite at

1 arm's length, but her arm is fairly well extended;
2 right?

3 A. Yes.

4 Q. And so does that help you with
5 an idea of how much this piece of concrete weighs?
6 I'm suggesting to you that it doesn't look like it's
7 all that heavy if a small woman can hold it at not
8 quite arm's length with an open grip. Would you
9 think it might be less than 10 pounds?

10 A. No.

11 Q. Now --

12 THE COMMISSIONER: Her evidence
13 yesterday was 20.

14 MR. CASSAN: I know, Mr. Commissioner
15 and I'm just taking her through, of course, the
16 mechanics of this photograph.

17 BY MR. CASSAN:

18 Q. Now, with respect to the piece
19 of concrete, I understood that this piece of
20 concrete protruded partly from the ceiling tile; is
21 that correct?

22 A. Yes.

23 Q. How far did it protrude down
24 through the ceiling tile?

25 A. I think this large one was about

1 12 inches.

2 Q. Okay, so it stuck out --

3 A. Yes.

4 Q. -- about that far?

5 A. Yes.

6 Q. Now, the ceiling tiles, have you
7 had the ceiling tiles break or collapse simply
8 because of water on them?

9 A. There was one ceiling tile that
10 was close to my freezer, my stand-up freezer that
11 got quite wet. And I do -- I believe that was the
12 only one.

13 Q. And so you'll agree with me that
14 they're not terribly strong.

15 A. They're not that, that strong.

16 Q. And I can remember as kids
17 taking pencils at school -- I hope my teacher is not
18 watching -- and firing them up into the ceiling tile
19 and they'd actually stick right in; right? So it
20 doesn't take much to penetrate the ceiling tile.
21 They are certainly not structural aspects of the
22 building; right?

23 A. I suppose so.

24 Q. I want to talk to you a little
25 bit about Mr. Collett. You told us yesterday that

1 you told Mr. Collett about the concrete.

2 A. I did tell Mr. Collett about the
3 concrete. I had a conversation with him and, like
4 I said yesterday too, probably my husband had more
5 than I did.

6 Q. Okay. And that's what I was
7 going to ask you about because in Mr. Collett's
8 testimony he said that it was your husband who told
9 him about the concrete.

10 A. And that is probably correct,
11 yes.

12 Q. Okay. Now, we understand that
13 after speaking to you about the concrete at some
14 point, Mr. Collett went and spoke to Mr. Ewald about
15 it.

16 A. Okay.

17 Q. And Mr. Ewald indicated that he
18 told Mr. Collett that Mr. Collett had to come back
19 and tell you that you needed to come in to the
20 Building Department to make the complaint. Did
21 Mr. Collett ever tell you that?

22 A. I can say that he never told me
23 that. I mean, I don't want to speculate what
24 Mr. Ewald told Mr. Collett --

25 Q. Oh, no and that's not -- I'm

1 sorry, if I wasn't clear with that question, I'm
2 trying to understand what Mr. Collett told you. So
3 I'm trying to understand if Mr. Collett ever told
4 you that you needed to go to the Building Department
5 and make the complaint yourself?

6 A. No, he did not.

7 Q. Now, I want to talk to you
8 a little bit about Mayor Hamilton because yesterday
9 you said that you spoke to Mayor Hamilton about the
10 concrete. Now, it's clear that you talked to
11 Mr. Collett about it.

12 A. Yes.

13 Q. And that you talked to Captain
14 Connors about it. But I'm going to ask if you're
15 sure that you talked to Mayor Hamilton about it.

16 A. Yes, I am.

17 Q. And I'm going to take you
18 through a couple of things just to explore that.

19 So, I wonder if we could pull up
20 Exhibit No. 5846, and particularly -- well, the
21 first page and then we're going to go to page 9.

22 Mrs. Quinte, I understand that this
23 is an article written by an author from MacLean
24 named Michael Friscolanti?

25 A. Okay.

1 Q. And I understand that he
2 interviewed you about the mall?

3 A. Yes.

4 Q. And you remember that interview?

5 A. I do.

6 Q. So you are featured on page 9 of
7 this document and I wonder if we could go and have
8 a look at.

9 So you will see there is a discussion
10 about Hungry Jacks was the other restaurant in the
11 food court. It used to be a Tim Horton's. Elaine
12 Quinte who owned the eatery and her husband Jack
13 came to work that morning. And you said to
14 Mr. Friscolanti:

15 "I think people knew there was
16 really a good chance something
17 would happen one day ... but
18 I don't think anybody thought it
19 would happen on June 23, 2012."

20 We then go down to talk about the
21 concrete we've been talking about:

22 "A year earlier, Quinte
23 arrived at work to find two
24 slices of concrete lying on the
25 floor."

1 That's not quite right, right --

2 A. That's not quite right.

3 Q. -- they were stuck in the roof:

4 "Thankfully, the pieces had
5 plummeted from the ceiling
6 overnight, when nobody was
7 there. Both fragments looked
8 like icicles, one as long as
9 a baseball bat."

10 Again, that might be a bit long,
11 right?

12 A. Yes.

13 Q. So the next paragraph is the one
14 that I want to draw your attention to:

15 "Upset, and rightfully so, the
16 Quintes showed the damage to the
17 mall management. They did
18 nothing. Jack and Elaine also
19 voiced their concerns to Al
20 Collett, Elliot Lake's deputy
21 mayor, who alerted Bruce Ewald,
22 the city's chief building
23 official. 'What do you want me
24 to do, Al?' Ewald asked. 'Close
25 down the mall?'"

1 Now this doesn't say that you alerted
2 Mayor Hamilton. I am just wondering why you
3 wouldn't have told Mr. Friscolanti that you told the
4 Mayor.

5 THE COMMISSIONER: Well, the fact
6 that it is not there, doesn't mean -- you are
7 asserting that she did not tell.

8 MR. CASSAN: Fair enough. Fair
9 enough.

10 BY MR. CASSAN:

11 Q. Did you tell Mr. Friscolanti
12 that you told the Mayor?

13 A. No, I did not and there were
14 other people that I obviously never mentioned in
15 this MacLeans news book, that -- I mean, I also
16 spoke to many, many other people, that were never
17 mentioned so ...

18 Q. And was there a reason that you
19 wouldn't have said anything about the Mayor?

20 A. No, there is no reason why
21 I wouldn't have. Like I said, it's probably just
22 for the fact that Al was probably a little bit more
23 involved at that time. So there is no reason why --
24 why I wouldn't have mentioned him or anybody else.

25 Q. Okay. Now, the other thing, we

1 know that Mayor Hamilton uses a BlackBerry and we've
2 seen several e-mails from Mayor Hamilton and there
3 is no e-mail that I could find that says anything
4 about this concrete. Do you know why that wouldn't
5 have happened?

6 A. I do not.

7 Q. And I'm not sure if you were
8 here for Mayor Hamilton's testimony but he swore
9 under oath that you did not tell him about the
10 concrete. Is it possible you are mistaken about
11 that?

12 A. I am not mistaken.

13 Q. Okay. I want to take you to one
14 more area and this is with respect to municipal
15 taxes.

16 A. Okay.

17 MR. CASSAN: And I'm through with
18 this exhibit, Ms. Kuka.

19 BY MR. CASSAN:

20 Q. In the course of your lease,
21 were you obliged to pay a pro rata share of the
22 municipal taxes for the mall?

23 A. Yes, we paid the taxes.

24 Q. And did you actually pay that
25 amount?

1 A. Yes, I did.

2 Q. Now, we've heard -- and I'm not
3 sure if you've been following -- that Mr. Nazarian
4 applied for and obtained a tax rebate through
5 an assessment appeal process; do you know what that
6 is?

7 A. Yes, I do.

8 Q. And he received a little bit
9 more than a quarter million dollars. Now, did you
10 get any of that rebate back because you had
11 effectively overpaid your taxes?

12 A. No, sir.

13 MR. CASSAN: Thank you very much,
14 Ms. Quinte, those are my questions.

15 THE WITNESS: Thank you.

16 THE COMMISSIONER: Any further
17 cross-examination? Have I forgotten anybody?

18 Re-examination, Mr. Broadbent?

19 RE-EXAMINATION BY MR. BROADBENT:

20 Q. Elaine, just very briefly, my
21 friend from the Province asked you about some
22 routine inspections that the Ministry of Labour had
23 conducted.

24 When you told us that there had been
25 no Ministry of Labour inspections, were you speaking

1 about the routine inspections or were you speaking
2 about, you know, in respect of the concrete that had
3 fallen and the beam that you had spoken of?

4 A. Well, number one, I was not
5 aware of this document at all, until this morning.
6 And I have never had the Ministry of Labour at any
7 other time come to the business --

8 Q. Okay.

9 A. -- and do any other inspection.

10 MR. BROADBENT: All right. Thank
11 you.

12 THE COMMISSIONER: Further
13 re-examination, Ms. Rodriguez?

14 MS. RODRIGUEZ: Just very briefly.

15 RE-EXAMINATION BY MS. RODRIGUEZ:

16 Q. My friend took you to the MOL
17 visit of December 11, 2008; do you recall that?

18 A. Yes.

19 Q. Would there have been leaks at
20 the time, December of 2008, in your store?

21 A. I don't believe that there would
22 have been, no.

23 Q. And you also mentioned to
24 Ms. Smith that you had -- or the restaurant had
25 designated Mr. Friar to oversee health and safety;

1 is that correct?

2 A. Correct.

3 Q. And at the time that the
4 concrete fell in May of 2011 was Mr. Friar still in
5 that role?

6 A. No, he was no longer with me.

7 Q. And did you have somebody else
8 then that was designated to oversee health and
9 safety at that time?

10 A. We did not.

11 MS. RODRIGUEZ: Thank you. Those are
12 my questions.

13 THE COMMISSIONER: Thank you very
14 much, Ms. Quinte. That's all. You are free to go.

15 THE WITNESS: Thank you.

16 MS. SMITH: Excuse me, your Honour,
17 if I may, I just neglected to ask that that MOL
18 document be made an exhibit. If that could be done.

19 THE COMMISSIONER: That's okay,
20 ma'am, you can go.

21 MS. KUKA: Exhibit No. 6231.

22 MS. SMITH: Thank you very much.

23 THE COMMISSIONER: Thank you. So be
24 it.

25 MR. BROADBENT: I would ask for your

1 indulgence to be excused, sir, I won't be back
2 before you for about two weeks.

3 EXHIBIT NO. 6231: Ministry
4 of Labour inspection form

5 THE COMMISSIONER: Thank you. I look
6 forward to seeing you then.

7 MS. RODRIGUEZ: It looks like we are
8 still waiting for our next witness, so if we can
9 take a brief recess.

10 THE COMMISSIONER: Next witness is
11 Mr. Elliott?

12 MS. RODRIGUEZ: That's correct.

13 THE COMMISSIONER: Thank you. Let's
14 take a few minutes.

15 --- RECESS AT 9:28 A.M.

16 --- RESUMED AT 9:39 A.M.

17 THE COMMISSIONER: Mr. Wallace.

18 MR. WALLACE: Good morning,
19 Commissioner. The next witness, Commissioner, is
20 Mr. William Elliott and he is present and we are
21 ready to go.

22 THE COMMISSIONER: Yes, good morning,
23 Mr. Elliott.

24 THE WITNESS: Good morning.

25 WILLIAM ELLIOTT: SWORN

1 THE COMMISSIONER: And Mr. Aubé, you
2 are appearing or is it Mr. Elliott?

3 MR. AUBÉ: He disqualified himself.

4 THE COMMISSIONER: Because of
5 conflict.

6 MR. AUBÉ: Because his senior brother
7 is there.

8 THE COMMISSIONER: All right.
9 Mr. Aubé, you will be appearing and questioning
10 in-chief then, thank you.

11 MR. AUBÉ: That's correct,
12 Mr. Commissioner.

13 THE COMMISSIONER: Go ahead,
14 Mr. Wallace.

15 MR. WALLACE: Thank you,
16 Commissioner.

17 EXAMINATION-IN-CHIEF BY MR. WALLACE:

18 Q. Mr. Elliott, I understand that
19 you are the general manager of the ELNOS
20 Corporation.

21 A. Yes.

22 Q. And could you educate us,
23 please. First of all, what does ELNOS stand for?

24 A. It's Elliott Lake and North
25 Shore Corporation for business development.

1 Q. And what exactly does ELNOS do?

2 A. ELNOS does commercial finance.
3 We do loans. We do equity investments. We also
4 provide business supports. We can provide grants to
5 businesses. And in addition to that, we do --

6 THE COMMISSIONER: Could I ask you,
7 Mr. Elliott. I am sorry to interrupt you. Whatever
8 you say has to be translated and has to be typed
9 contemporaneously. So if you just slow down a bit
10 it will make their job easier.

11 THE WITNESS: I'm apologize,
12 Mr. Commissioner, I was told I should be brief
13 because everybody wants to go home.

14 THE COMMISSIONER: You don't have to
15 be that brief. We've got all afternoon.

16 THE WITNESS: So we also do community
17 supports which would be participation in different
18 projects within the community. You've heard about
19 the Community Improvement Project. We participate
20 in that. Business retention and expansion, we've
21 made a financial contribution to that program, as
22 well as providing staff assistance. And basically
23 anything that is good for the several communities
24 that we serve.

25 BY MR. WALLACE:

1 Q. And which communities are that?

2 A. We have five constituent
3 communities: Elliot Lake, Blind River, Spanish,
4 Township of the North Shore and Serpent River First
5 Nation.

6 Q. Now, how long have you been
7 working with ELNOS?

8 A. Just over 16 years.

9 Q. And the corporation came into
10 existence, my first question is: When did it come
11 into existence and why did it come into existence?

12 A. It came into existence in 1992,
13 when the uranium supply contracts were canceled by
14 Ontario Hydro, there was an approximately
15 \$250 million compensation fund that was put in place
16 by the Province and a small portion of that was
17 designated to the establishment of an economic
18 development corporation which would help diversify
19 the economy, sustain the economy, generally do
20 things to the betterment of Elliot Lake and the
21 surrounding communities, and from that seed money,
22 the ELNOS corporation was formed.

23 Q. And what -- what sort of
24 community activities does ELNOS involve itself in?

25 A. There's a wide range. We do

1 some traditional community sponsorships. We sponsor
2 the local hockey team. We have made investments in
3 the golf courses in Blind River and Elliot Lake, as,
4 you know, prepaid corporate memberships in order to
5 provide them with working capital. We've done the
6 same with the local ski hill, the local curling
7 club, the local tennis club.

8 And at the same time, we will look --
9 for an example, we've had the town of Blind River,
10 through the Blind River Development Corporation came
11 to us to do a feasibility study on an RV park, so we
12 financially contributed to that, to that feasibility
13 study.

14 So, we're fairly -- we're fairly
15 flexible when it comes to initiatives that we
16 consider will help maintain our economy or
17 potentially grow and diversify the local economy.

18 Q. What -- what type of project
19 would you -- would you loan money for and what type
20 of project would you take an equity position in?

21 A. We're -- for a commercial loan
22 we're very similar to a Schedule A bank. Someone
23 would come to us and say "I have a project. I want
24 to expand my business, diversify my business.
25 I want to buy equipment. I need working capital."

1 They would come with a business plan. The business
2 plan would show all of those traditional items you
3 would normally find, the history of the business,
4 the history of the owners, what the project was, how
5 they intended to finance the project, and what the
6 financial impacts would be on the business, and then
7 we would do a credit assessment on the --

8 THE COMMISSIONER: Are you a lender
9 of last resort in that respect?

10 THE WITNESS: Not last resort,
11 Mr. Commissioner, but we're a -- we tend to be more
12 high-risk than -- certainly more high-risk than
13 an RDC would be.

14 THE COMMISSIONER: Than a bank would
15 be.

16 BY MR. WALLACE:

17 Q. And the projects themselves, the
18 money would have to be for use within the community;
19 is that not correct?

20 A. That's correct. Under our
21 articles of incorporation we're geographically
22 restricted to deal in those five communities or with
23 companies that have a significant presence in one of
24 the five communities.

25 Q. And what type of a project would

1 you take an equity position in?

2 A. We have -- we don't do as many
3 equity investments as we do commercial loans. As
4 an example, we have an equity investment in a large
5 hydroelectric project, where there is a very long
6 time horizon, the returns are over a very long
7 period of time. There's a need for a lot of capital
8 upfront, with no reasonable -- there is no cash-flow
9 associated with that to do any debt service, so
10 anything with that really long time horizon that
11 needs a lot of money upfront that we see the
12 viability in the very long term, that would be the
13 type of thing that we would look at equity.

14 Q. And in the current state of
15 affairs, what is the source of ELNOS's income now?

16 A. We have three sources. We have
17 the return on our investments, which is very
18 profitable or lucrative right now because of the
19 interest rates. We have --

20 Q. This is your loan portfolio?

21 A. That's right -- well, we have
22 our loan portfolio, so we have cash in the bank, on
23 which we receive interest. We have a loan portfolio
24 on which we receive principal and interest payments
25 and we also own the building where our office is

1 located at 31 Nova Scotia Walk and it provides
2 cash-flow because the building is full of tenants.

3 Q. And so the ELNOS corporation is
4 a commercial landlord?

5 A. Yes.

6 Q. Okay. And is it -- is -- does
7 it own real estate outside of the building that
8 you're currently resided in?

9 A. Not at present but we have in
10 the past.

11 Q. Now, I understand that in May of
12 2008, you met with Mr. Nazarian; is that correct?

13 A. Yes.

14 Q. And before we actually talk
15 about that -- that particular meeting, had you met
16 Mr. Nazarian prior to that?

17 A. Not to the best of my knowledge.

18 Q. Okay. Did you know that he was
19 the owner of the Algo Mall?

20 A. Yes.

21 Q. Okay. What -- what did you know
22 of him prior to meeting with Mr. Nazarian on 30th of
23 May?

24 A. I knew that he owned the mall.
25 I knew that he had -- or had indicated to people

1 that he had several other real estate holdings in
2 the Province, and through my -- through clients who
3 were tenants in the mall, I knew that he had
4 a representation as being a difficult landlord to
5 deal with.

6 Q. In what sense?

7 A. I was told by my clients that it
8 was difficult to get action taken on complaints. It
9 was difficult to negotiate terms of leases. There
10 seemed to be an issue when it came -- especially
11 when it came to spending money, that it was hard to
12 get even the smallest thing done if it involved them
13 spending money.

14 Q. And you -- you had -- you were
15 born and raised in Elliot Lake; correct?

16 A. Yes.

17 Q. And what was your knowledge of
18 the condition of the mall, we'll say, at the --
19 roughly contemporaneous with the time that you met
20 Mr. Nazarian in May of 2008?

21 A. The mall had had -- had
22 a history of leaking. It wasn't any secret, but it
23 seemed to have been moderated in the previous years,
24 but certainly after Mr. Nazarian took ownership, it
25 seemed to deteriorate almost exponentially. It got

1 worse a lot quicker than I'd ever seen it in the
2 past.

3 Q. We'll deal with the actual
4 meeting in just a couple of moments, but at the end
5 of the day, Mr. Nazarian came looking for money from
6 ELNOS; is that not correct?

7 A. Yes.

8 Q. What -- was the Algo Mall -- was
9 this something that your corporation would consider
10 lending money to?

11 A. It would have -- it would have
12 been on the fringes. Our preference is for projects
13 that expand the work force, you know, create jobs,
14 create diversification, but because we do have
15 sustainability as one of our mandates, we would have
16 considered it, if it would have come to us that we
17 need this in order to sustain the mall, to sustain
18 the jobs that the mall, you know, reflected in the
19 community.

20 Q. And because of the importance
21 the mall had within the economic viability of the
22 community?

23 A. Yes.

24 Q. Now, if we could actually look
25 at the meeting itself -- and Ms. Kuka that's Exhibit

1 No. 723 -- and Mr. Elliott, if you choose to, you
2 can open volume 4 at tab 37 or you can just follow
3 along on the screen. It's really your call.

4 A. Screen is fine now.

5 Q. Okay.

6 A. I have the large print version.

7 Q. Okay. So this -- first of all,
8 there's some handwritten notes here. Whose notes
9 are these?

10 A. Those are my notes.

11 Q. And when were the notes made?

12 A. They would have been made on the
13 date in the upper right corner, May 30th of '08.

14 Q. And what I'm really alluding to
15 here, were those notes made contemporaneously, like
16 did you have a note pad with you in the meeting?

17 A. Yes. I would have been making
18 notes as the discussion was ongoing.

19 Q. Fair enough. Can you identify
20 the persons who were present at the meeting?

21 A. It was Bob Nazarian,
22 Brian England, who was the mall manager, identified
23 to me at that time as the current mall manager.

24 Q. Did you know him?

25 A. I'd seen him but I had no

1 previous knowledge of him in the community.

2 Q. Okay.

3 A. Myself, and Steve van Duin who
4 was the Chairman of the ELNOS Board at the time.

5 Q. Can you spell his name?

6 A. S-T-E-V-E, VAN D-U-I-N.

7 Q. Okay. And was this a scheduled
8 meeting or did Mr. Nazarian and England show up at
9 ELNOS?

10 A. It was booked.

11 THE COMMISSIONER: I don't think,
12 Mr. Elliott, if you don't mind my interrupting for
13 a second, Mr. Wallace, you've told us what your --
14 you are the general manager at ELNOS?

15 THE WITNESS: Yes.

16 THE COMMISSIONER: And you are
17 working under a board of directors?

18 THE WITNESS: Yes.

19 THE COMMISSIONER: And just tell us
20 something briefly about the composition of that
21 Board.

22 THE WITNESS: It is a volunteer board
23 of directors. Each of the five constituent
24 communities has the opportunity to nominate
25 a director, and then we have sectorial

1 representation, someone from education, someone from
2 labour, and then a couple of business
3 representatives, so outside of the five nominated by
4 the communities, the rest are, you know, apply and
5 we have a nominating committee who would review
6 those but they are all community volunteers, nobody
7 is paid.

8 THE COMMISSIONER: Is there a formal
9 relationship with Elliot Lake Retirement Living?

10 THE WITNESS: No.

11 THE COMMISSIONER: Is there
12 an informal one?

13 THE WITNESS: No, we don't -- I don't
14 think we have anybody on our Board now who sits on
15 their Board or sat on their Board. It could happen
16 but it would be --

17 THE COMMISSIONER: Coincidence?

18 THE WITNESS: Yes, it would be
19 coincidental.

20 THE COMMISSIONER: Thank you. Go
21 ahead Mr. Wallace.

22 MR. WALLACE: Yes, Mr. Commissioner,
23 there is a one-page document that Mr. Elliott has
24 provided. Mine is -- it's not part of Relativity.
25 Mine is marked up but I propose to file one at the

1 end of the day.

2 THE COMMISSIONER: Thank you.

3 BY MR. WALLACE:

4 Q. Now, we were dealing with the
5 meeting of 30th of May. So could you just start to
6 tell us about the actual content of the meeting?
7 What was the purpose of the meeting?

8 A. I was led to believe before the
9 meeting that Mr. Nazarian was in town to solicit
10 support from various agencies and organizations
11 within the community for renovations at the mall,
12 and we were on the list of the different people that
13 he wanted to see.

14 Q. Okay. And when he came in, how
15 did he introduce the subject?

16 A. Straight out. He -- I always
17 start our meetings off with a little bit of
18 background, you know, why are we meeting today, and
19 he started right off as you can see from the notes,
20 you know, indicating that he was the owner of the
21 mall, and that there was issues -- almost right
22 away, came out that, you know, the concept that the
23 roof was a significant issue that needed to be dealt
24 with.

25 Q. Thank you. And he went on to

1 tell you that he had been paying in the order of
2 about \$500,000 a year in property taxes.

3 A. Yes.

4 Q. And something in the order of
5 \$300,000 a year in hydro, and how was that relevant
6 to the conversation?

7 A. I interpreted that as being him
8 supporting his position that the community should
9 get behind him, the community should be doing all
10 possible to support the mall because they were
11 a significant economic entity in the community.

12 Q. And he then went on to talk
13 about having a restrictive mortgage. I presume he
14 meant the mortgage on the mall?

15 A. That's correct.

16 Q. And then it says "No second
17 mortgage and high penalties"; is that correct?

18 A. Yes.

19 Q. Okay. Now, the next notation
20 here is "estimated cost 980K". What was that?

21 A. That was the number given to me
22 by Mr. Nazarian to solve the roof leakage problem
23 that he had. He had thrown that out as he had
24 quotes and it was going to be \$980,000 to fix the
25 roof.

1 Q. And did he say where these
2 quotes came from?

3 A. No.

4 Q. And then there's -- you have
5 a notation there "Over 100K spent to try and fix."
6 Was that -- that was a statement that he made?

7 A. That's correct.

8 Q. Okay. And can you elaborate on
9 that or is that pretty well it?

10 A. Yeah, he basically said that
11 they had been spending money that since they had
12 been trying to deal with the roof issue that he had
13 spent over \$100,000 and obviously it wasn't working
14 and that led to the "Now, I'm going to have to spend
15 ten times that amount to actually fix it."

16 Q. And there was a discussion as to
17 the consequences of not fixing the roof.

18 A. That's correct.

19 Q. And how did he paint that?

20 A. In essence, what he said was
21 Zellers had -- I think I named a few of them
22 there -- Zellers had been threatening to move out,
23 the library was -- everybody -- it was well known
24 that the library was looking for a new place,
25 Northern Reflections -- that there were a number of

1 tenants who had indicated to him that if the roof
2 leaking wasn't fixed, that they were going to move
3 out and that would have a negative economic impact
4 on the operations of the mall.

5 Q. And then he gave you some
6 background information of his own background, as far
7 as the business is concerned?

8 A. Yes.

9 Q. And what did he tell you?

10 A. That he had a construction
11 background, that he had gotten into building. He
12 had owned several malls, built some malls, built
13 some residential units, including one on Yonge
14 Street that -- basically that he was a developer.

15 Q. And is this a one-sided -- is it
16 almost a monologue or are you and your colleague
17 asking questions as this is going along?

18 A. I don't recall Mr. Van Duin
19 doing anything but observing but I would have
20 been -- I would have been probing, I would have been
21 asking questions to try and get a clearer sense of
22 exactly what the full picture was.

23 Q. And he -- in the course of the
24 conversation -- he disclosed to you that he's going
25 to be meeting with Rick H and Fred B, who I assume

1 are Mr. Hamilton and Bauthus?

2 A. That's correct.

3 Q. And did he indicate to you the
4 purpose of that meeting?

5 A. In furtherance of his, you know,
6 of his quest for support he said he was going to
7 meet with them to talk about trying to get financial
8 support from the City, trying to get some potential
9 tax relief from the City, you know, philosophically
10 the idea that the City should get behind him.

11 Q. And what did he tell you about
12 his own -- his own financial circumstances that got
13 him there in your office?

14 A. When we talked about the
15 potential to do the financing for the project, he
16 indicated that it was very difficult for him to get
17 a mortgage, commercial mortgage in Elliot Lake, that
18 he'd gone into a very restrictive mortgage with the
19 RBC or through the RBC to a syndicate, that he
20 couldn't get a second mortgage on the property
21 because of that, so it was going to be very hard for
22 him to raise the capital, although he did indicate
23 that he had some, some resources that he could reach
24 into.

25 Q. And did he give you any

1 indication of the size of the resources that he had
2 access to?

3 A. During the discussion he
4 indicated around \$200,000.

5 Q. And did he indicate to you what
6 the source of that was?

7 A. No.

8 Q. And what was he prepared to
9 offer as security? I mean, he couldn't expect you
10 to reach into your pocket and loan him a significant
11 sum of money without providing some security. What
12 was he proposing?

13 A. We talked about his other
14 properties. We talked about
15 cross-collateralization.

16 Q. What does that mean?

17 A. So that would be using one
18 property to secure another property because he
19 couldn't offer up the mall itself as security to
20 a loan, in a traditional mortgage sense, we talked
21 about the ability of you know, maybe the property on
22 Yonge Street or one of his other malls that he would
23 give us security on that building toward the loan on
24 the Algo Mall.

25 Q. And then there's a notation

1 underneath that paragraph here "RBC mortgage." And
2 can you just explain that. Do you see underneath
3 the paragraph dealing with cross-collateralization?

4 A. Oh, the -- I don't see the
5 reference to the RBC down there.

6 Q. Just underneath that. The next
7 bullet point.

8 A. Oh, okay, I'm sorry. I was
9 looking at the sub-notes. And again, it came up,
10 the fact that the RBC mortgage had very significant
11 penalties, and he indicated that not only were they
12 significant but for some reason, they were
13 increasing over time so the longer he had -- the
14 longer he was paying on the mortgage, the higher the
15 penalties would be if he attempted to pay it out.
16 And that came about, as related to a discussion
17 "Well, what about if you just refinanced the
18 mortgage? Took that mortgage right out which would
19 then make the building, the Algo Mall building,
20 available as security."

21 Q. Okay. And then there is -- if
22 you could just scroll up a little bit please,
23 Ms. Kuka, thank you -- then there's the statement --
24 the note that you took:

25 "Contractors and engineers are

1 here and working."

2 And you've underlined the word
3 "here." Can you explain or elaborate what the exact
4 statement was. These notes don't purport to be
5 verbatim; correct?

6 A. No.

7 Q. Can you elaborate on what the
8 statement was made and why the underlining on the
9 word "here"?

10 A. This was related to
11 Mr. Nazarian's assertion that this project was
12 already started, that it was ongoing, that he wasn't
13 waiting to do this, things were started and he
14 mentioned, "Oh, yeah, the contractors and the
15 engineers are here and they're working." And
16 I underlined "here" because, you know, anecdotally
17 I hadn't seen any evidence of anybody doing any
18 work, so it kind of surprised me when he said --
19 I've been involved in commercial construction
20 projects before and when people have mobilized, you
21 see lots of trucks and equipment and materials being
22 delivered, so it kind of surprised me that something
23 had already started.

24 Q. And I understand that your
25 office is physically right across the street from

1 the mall?

2 A. Yes.

3 Q. And how frequently would you see
4 the mall?

5 A. Eight hours a day.

6 Q. Okay. And -- it's good to be
7 the general manager.

8 A. My desk faces the window so
9 I can still work and see the mall.

10 Q. You hadn't seen any signs of any
11 work being done?

12 A. Nothing more than what I was
13 used to, over many years, in terms of just regular
14 activity.

15 Q. When that statement was made,
16 did you -- did you challenge it or -- first of all,
17 did you challenge the statement? Because it didn't
18 jive with what you saw with your own eyes; correct?

19 A. No, I didn't challenge --
20 I never really had any reason to. I mean, there
21 could have been 15 engineers meeting in the
22 downstairs meeting room at the -- at that exact
23 moment so ...

24 Q. And did he identify who the
25 contractors were?

1 A. I don't believe so, no.

2 Q. Did he identify anything about
3 them, in the sense that -- he may not have said it's
4 X company but did he identify anything about the
5 companies?

6 A. He did indicate that the
7 companies had experience in this type of work.
8 I recollect that he mentioned that they had done two
9 other very similar jobs where there were parking
10 lots over a development that were leaking and that
11 they had successfully dealt with those issues and
12 that's why he, you know, had selected them to do the
13 work in Elliot Lake.

14 Q. And what about the engineers?
15 Any identification of who they might be?

16 A. No.

17 Q. What was -- just your own,
18 internally, what was your reaction to this
19 statement, the fact that contractors and engineers
20 are here and working?

21 A. Just -- I had seen no evidence
22 of that so I was surprised.

23 Q. Then there is -- the next bullet
24 point is reference to an organization with the
25 initials "CFDC." First of all, what does that stand

1 for and who are they?

2 A. That stand for the Community
3 Futures Development Corporation. They are
4 a federally funded organization with a mandate very
5 similar to ELNOS, in terms of doing economic
6 development. They also do commercial lending. They
7 have a much larger geographic area -- they serve
8 a much larger area than ELNOS does.

9 Q. Is Elliot Lake part of their
10 area?

11 A. Yes.

12 Q. Okay.

13 A. And I raised that because we do
14 a lot of financing together with the CFDC. That's
15 typically something that I would raise, you know,
16 "Have you spoken to the CFDC?" And Mr. Nazarian
17 indicated that someone else had mentioned them as
18 being a possible source of finance but that he had
19 not yet talked to them.

20 Q. And then what -- there appears
21 to be a proposal underneath the -- that line. Can
22 you explain that, please?

23 A. I had indicated to Mr. Nazarian,
24 when he first said it's going to cost a million
25 dollars, that ELNOS wouldn't do a million dollars in

1 finance. When we talked about options I had
2 indicated we could do 200 -- we could do up to
3 250,000 and the CFDC could do up to 250,000.

4 I believe Mr. Nazarian interpreted
5 that as being we could do 250,000 between the two of
6 us, so he came back and said, "Okay, can I get that
7 125,000 from you and the 125,000 from the CFDC?"

8 Q. And when he asked you that
9 question, what did you tell him?

10 A. I told him it was possible but
11 that, you know, that still wasn't enough, you know,
12 that wasn't enough money to do the job. That was
13 only going to be a partial solution for his
14 financing.

15 Q. Okay. Did you -- and we'll get
16 to that point in just a second, but did you, in this
17 conversation, explain to him if you -- if you are
18 serious about this, this is what you have to
19 provide; you just can't walk in the door and ask us
20 for money and expect us to give it to you?

21 A. Yes, we explained that both
22 ELNOS and the CFDC would expect some fairly
23 extensive documentation, you know, a traditional
24 business plan, past financial statements, forecasted
25 financial statements to see the impact of the work

1 which speaks to the idea of debt servicing and in
2 this particular case I know there was an interest
3 that we have some type of assurance that the work
4 that was going to be done was actually going to
5 solve the problem.

6 Q. And was this explained to
7 Mr. Nazarian?

8 A. Yes.

9 Q. Okay. Do you recall where in
10 the conversation this part would have taken place,
11 telling him what it is you are going to have to
12 provide us if you are serious about this?

13 A. It was right at the end. It was
14 kind of as a "next steps".

15 Q. And what was his proposal, in
16 terms of moving the project forward?

17 A. He indicated that he could come
18 up with \$200,000. When I said -- and then my
19 response was, "Well, 250 and 200, when I went to
20 school, came to 450 which isn't a million." And he
21 indicated that 450 was enough to have the
22 contractors mobilize, get on site, and start working
23 and then once they started working they wouldn't
24 leave, and that at some point in the future he would
25 figure out how he was going to pay for them.

1 Q. What was your reaction to that?

2 A. I think that's where I stopped
3 taking notes because in my mind, the meeting was
4 over because that's a structure that would never,
5 ever be accepted by ELNOS.

6 Q. Why not?

7 A. The discussion I had with my
8 chairman directly after that meeting, I said,
9 "I believe we've just been asked to participate in
10 perpetrating a fraud on a contractor." And my
11 chairman agreed. If you secure a service for which
12 you have no ability to pay for, as far as I know,
13 that's committing a fraud and there is no way that
14 I would jeopardize ELNOS or myself, by doing that.

15 Q. Did you -- did either you or
16 your Chair raise that or confront Mr. Nazarian with
17 that?

18 A. No.

19 Q. I see that that is, indeed, the
20 end of your note taking that day. How much longer
21 did the meeting last?

22 A. It would have been within
23 minutes of that last note.

24 Q. And I haven't asked you, how
25 long was the total meeting?

1 A. I have it in my day timer as
2 starting at 10:00. I know that -- I think he was
3 going to meet the City at 11:30. My expectation is
4 it was probably around an hour, maybe a little less
5 than an hour, but I'm just -- that's a guess.

6 Q. And you didn't -- did you see
7 Mr. Nazarian at any point in time later that day?

8 A. No.

9 Q. When is the next time that there
10 was any discussions either with Mr. Nazarian or
11 someone on his behalf about this financial proposal?

12 A. In July of that year, I had
13 a meeting with Demitri Yakimov and Jody Greenwood.

14 Q. First of all, do you know when
15 in July that was?

16 A. I have the date in my day timer.
17 I think it was July 14th but I believe that that's
18 in the record somewhere.

19 Q. And -- in?

20 THE COMMISSIONER: I'm sorry, the
21 other individual was?

22 THE WITNESS: Jody Greenwood.

23 THE COMMISSIONER: And who was he,
24 sir, as far as you know?

25 THE WITNESS: She --

1 THE COMMISSIONER: She, rather.

2 THE WITNESS: -- was there in two
3 roles. One, I knew from my previous knowledge of
4 Mr. Yakimov that Jody Greenwood was his wife and she
5 was introduced to me at that time as the new mall
6 manager.

7 THE COMMISSIONER: Thank you.

8 BY MR. WALLACE:

9 Q. Sorry, she was the new mall
10 manager?

11 A. Yes.

12 Q. Do you know how long she lasted
13 as the new mall manager?

14 A. I don't believe very long.

15 Q. This meeting you indicated was
16 around -- you believe it was on 15th of July. We've
17 heard a lot of evidence concerning the efforts of
18 a company, Peak Restoration, that came on the scene
19 in late June and then ultimately -- at least the
20 president was ultimately discharged on 17th of July.

21 Were you aware of the fact that there
22 was roofing contractors in place that would have
23 been actually on a job on 15th of July?

24 A. Not that I can recall.

25 Q. Okay. So, what did Mr. Yakimov

1 say to you when he -- the purpose of his meeting
2 with you?

3 A. He indicated to me that Jody was
4 now the mall manager, and that Mr. Nazarian, based
5 on Mr. Yakimov's construction history, had hired him
6 to both oversee the ongoing repairs to the mall and
7 to work with the community members to try and garner
8 support and secure financing -- because I knew
9 Mr. Yakimov from other business dealings, he
10 indicated to me that, you know, kind of Mr. Nazarian
11 realized that he hadn't made a really good
12 impression, certainly on ELNOS, in and around the
13 community, and that he was -- he was there now as
14 his surrogate to try and smooth things over.

15 Q. And what did -- what if anything
16 did he offer in this conversation, this meeting?

17 A. It was more exploratory. He was
18 asking, you know, what had gone on with ELNOS, where
19 were things at, what would he have to do in order to
20 secure funding from ELNOS? It really was
21 an information gathering session from his
22 standpoint.

23 Q. And what information did you
24 give to Mr. Yakimov in terms of what he would --
25 what he had to do?

1 A. Very similar to what I had given
2 Mr. Nazarian, though I did caution him that because
3 of the meeting that we had had with Mr. Nazarian,
4 that the hurdle was much higher now, that -- because
5 he had kind of poisoned the ground a little bit with
6 his -- with the structure that he had proposed in
7 the May meeting, that if we were going to look
8 at it, it would have to be a very superior business
9 plan proposal, with all the funding in place, and
10 I know that I intimated to him that it was probably
11 a lost cause to come to ELNOS.

12 Q. And did you -- did you have any
13 further dealings with Mr. Yakimov between the
14 15th of July --

15 THE COMMISSIONER: 14th, actually.

16 BY MR. WALLACE:

17 Q. Sorry, 14th of July and the
18 10th of September?

19 A. No.

20 Q. Okay. I understand -- and if we
21 could go to Exhibit No. 725, please. If you could
22 go to the first page of that exhibit.

23 MS. KUKA: This is the first page.

24 MR. WALLACE: Okay. How about if you
25 could bring up OPP_E2087.

1 MS. KUKA: It is Exhibit No. 226.

2 MR. WALLACE: Thank you. Okay. If
3 you could go to the second page, please. Okay.

4 BY MR. WALLACE:

5 Q. This is, Mr. Elliott, an e-mail
6 that you received on 9th of September from
7 an Alexandre Sennett.

8 A. Yes.

9 Q. And do you recall receiving the
10 e-mail?

11 A. Yes.

12 Q. Did -- and it -- the text reads
13 as follows:

14 "Good day. Please find the
15 requested document attached to
16 this e-mail on behalf of
17 Bob Nazarian."

18 And then if you go to the next page,
19 Ms. Kuka, there is a -- the cover page of a document
20 containing a number of details of a contract that
21 we'll get into in a few moments, but do you recall
22 receiving this package?

23 A. Yes.

24 Q. First question is: Did you know
25 the sender?

1 A. No.

2 Q. Mr. Sennett?

3 A. No.

4 Q. Okay. Had you ever met
5 Mr. Sennett prior to this?

6 A. No.

7 Q. Had you ever heard of
8 Mr. Sennett prior to this?

9 A. I don't believe so, no.

10 Q. Had you ever heard of The Empire
11 Roofing and Restoration Inc. prior to this?

12 A. No.

13 Q. When you -- when you got this,
14 what did you make of it? I mean, when you saw it,
15 did you have any idea what it was?

16 A. In the subject line it did say
17 "Contract for roof repair." When I opened it, the
18 document, the first thing that struck me, and I know
19 it sounds almost juvenile, but the name didn't make
20 any sense. The Empire Roofing and Restoration Inc.
21 I thought it's missing -- it's missing a word. It
22 should be The Empire Roofing and Restoration Company
23 Inc. or in the alternative just Empire Roofing and
24 Restoration Inc., and that struck me right away as
25 being an odd construction of the name of the

1 company.

2 Q. Did you peruse the document?

3 A. I went through it quickly.

4 I was surprised. It wasn't what I expected. We've
5 issued lots of commercial construction contracts
6 because we are a commercial landlord, so I was
7 expecting to see a document in the standard format
8 which this was not.

9 Q. And what format were you
10 referring to?

11 A. There is a -- there is a CCDC
12 commercial construction -- they're big, thick
13 documents that contain diagrams, very detailed
14 descriptions of the work to be done and the
15 materials to be used and they're signed and they're
16 actually quite onerous but obviously very effective
17 because they are used throughout the industry.

18 MR. WALLACE: And if you could turn
19 to the next page, Ms. Kuka this page is titled
20 "Invoice."

21 BY MR. WALLACE:

22 Q. What did you -- what did you
23 understand the document to actually be? It's titled
24 "Contract" on the cover page. What did you
25 understand this collection of pages were?

1 A. I was -- I was under the
2 assumption because it was called a contract, that it
3 was their version of a precontract, that it was some
4 type of an agreement and it did say "Invoice" but
5 there is no amounts payable, so I thought well,
6 they've used this as a format to give a quote
7 really, not a contract. It was just how they were
8 going to provide them with a quote to do the work.

9 Q. Did you have any opinion as to
10 the content, that is the work being done and the
11 price being quoted?

12 A. I noticed the overall price was
13 quite a bit higher than what Mr. Nazarian had
14 mentioned to me in the May meeting. Some of the
15 items I wasn't familiar with, you know, the
16 construction techniques so I couldn't look at, but
17 some of the other ones, roof drains, things like
18 that, that I've had some experience with, I thought
19 the quotes seemed abnormally high.

20 Q. So, for example -- if we can go
21 into the page ending -005, Ms. Kuka, please -- is
22 this the sort of thing you're talking about?

23 A. Yes.

24 Q. Where the scope of work is
25 described as "New drain installation" and the actual

1 work being proposed is:

2 "Supply and install new 4 inch
3 drains as recommended by
4 management, supply and install
5 new drain cage at each new
6 location and new drains to be
7 connected to the existing
8 drainage system as required."
9 And it will -- it says.

10 "This work will require night
11 access ..."

12 And the quote of this particular part
13 of the services is \$488,655. And your reaction to
14 seeing this was what?

15 A. This was one where I thought
16 a half million dollars to do the drain work was not
17 something that I would normally have expected to
18 see. So, without some underlying rationale for it,
19 this is one that I would have absolutely questioned.

20 Q. And did you do anything as
21 a consequence of receiving this package from
22 Mr. Sennett?

23 A. No, it was received as
24 a standalone with only the very brief e-mail cover,
25 so I looked at it and I just put it in my file

1 under -- for the Algo Mall.

2 Q. And I understand that on 10th of
3 September -- and if you can go, Ms. Kuka, to the
4 page ending -011 -- so on the very next day you
5 received correspondence from Mr. Fabris.

6 A. Yes.

7 Q. Okay. And the subject line is:
8 "Eastwood Mall Loan Status."

9 Had you had any conversations
10 preceding this letter with Mr. Fabris on this
11 particular subject?

12 A. No.

13 Q. So, I would like to take your
14 attention to the third paragraph -- sorry, second
15 paragraph:

16 "I spoke with Demitri on this
17 matter and he indicated that you
18 were waiting for some sort of
19 confirmation from
20 Eastwood Mall Inc., that they
21 were in a position to finance
22 \$200, 000 of the work."

23 Is that an accurate reflection of how
24 things were left with Mr. Yakimov?

25 A. No.

1 Q. The next paragraph:
2 "I can advise you that
3 currently work is undergoing,
4 Eastwood Mall has undertaken the
5 role of general contractor, and
6 over \$200,000 of work has been
7 performed on the roof including,
8 the purchase and changing of
9 expansion joints and re-caulking
10 of all the seals."

11 What was your reaction to the
12 statement that over \$200,000 worth of work has been
13 performed on the roof?

14 A. I thought the number was
15 especially convenient because that number had come
16 out in the previous meetings and I'm assuming that's
17 why that particular number was used.

18 The second part was, other than
19 seeing, you know, work -- ongoing work that I'd seen
20 for many years going on at the mall, I didn't see
21 any particular reason to think that there had been
22 \$200,000 worth done.

23 Q. The bottom line here is: Did you
24 feel that that statement was a credible one?

25 A. Not particularly.

1 Q. And then, again, you've got:

2 "I have enclosed a copy of the
3 roof repair contract with Empire
4 Roofing for the Mall."

5 And if you look at the next page,
6 please, Ms. Kuka, -012, this appears to be the same
7 document that you received the day before from
8 Mr. Sennett.

9 A. Yes.

10 Q. And did you compare -- did you
11 look at this one?

12 A. I would have gone through it
13 briefly. As soon as it became apparent it was the
14 same document, then I just would have put the two
15 together.

16 Q. Okay. Now, that same -- if we
17 can go to page -021, this is correspondence dated
18 10th of September, '08 -- just go right to the
19 bottom, please, Ms. Kuka -- and that's from yourself
20 to Mr. Fabris?

21 A. Yes.

22 Q. Okay. Can you just summarize
23 that for us? What was the purpose of that?

24 A. It was a direct response to his
25 letter of inquiry that I had received.

1 Q. And what was the bottom line in
2 terms of ELNOS's position here?

3 A. That it was unchanged from the
4 previous two meetings. I just reiterated to him
5 that nothing was happening because we hadn't
6 received the information that we had requested, both
7 on 30th of May and on 14th of July.

8 Q. And you've -- in the third
9 paragraph of your letter you've included the type of
10 documentation you were expecting to receive in order
11 to give this any serious consideration at all.

12 A. Yes.

13 Q. And the -- I guess the
14 penultimate sentence of the correspondence is the
15 last sentence in the second-last paragraph:

16 "This is clearly not enough
17 information for ELNOS to
18 commence a loan application, so
19 the short answer to your
20 question is that there is no
21 loan application with ELNOS at
22 present."

23 A. That's correct.

24 Q. That actually summates your
25 position?

1 A. Yes.

2 Q. I understand that there was
3 a phone call between you and Mr. Fabris after you
4 had sent this letter; is that correct?

5 A. Yes.

6 Q. So, the chronology is, on the
7 10th you get the letter from Mr. Fabris. The same
8 day you respond to the letter with no communication
9 between you, and then after you sent him the letter
10 by fax that same day, you have a telephone
11 conversation.

12 A. Yes.

13 Q. And why don't you tell us about
14 that. What was the conversation there?

15 A. Mr. Fabris was following up on
16 my response letter. The general tenor of the
17 conversation was: Well, really what's going on?
18 What's happening? Where are we at?

19 I've known Mr. Fabris since high
20 school, we've worked on a number of projects
21 together. We have shared clients, so we have
22 a fairly cordial relationship. So, in order to save
23 him time and effort and myself time and effort, in
24 essence, what I did was say, "Look, this isn't going
25 to go anywhere. Right from the first meeting where

1 your client asked us to participate in perpetrating
2 a fraud on the contractors, this wasn't going to go
3 anywhere, you know, I think you're wasting your time
4 if you continue to pursue ELNOS as an option for
5 finance."

6 Q. And when you've made that frank
7 statement, what was his response to that?

8 A. My recollection is, "Well,
9 that's you know, maybe a strong statement or that's
10 not what -- I don't believe that's what he was
11 doing." There would have been some type of --
12 certainly a response to it. He didn't hang up on
13 me. We didn't get into a screaming match, we
14 just -- he disagreed with how I characterized the
15 meeting and that was really it. We left it at that
16 and we hung up and that was it.

17 Q. Was there any further action
18 taken by Mr. Nazarian or anybody on his behalf to
19 move this loan process forward?

20 A. I don't believe there was
21 anything other than there was, later on, a meeting
22 with Mr. Yakimov, where this -- where this came up,
23 but it wasn't anything formal. It wasn't a request.
24 It wasn't to supply information or anything like
25 that.

1 Q. Did you ever receive any of the
2 required documentation in order to give this serious
3 consideration?

4 A. No.

5 MR. WALLACE: Ms. Kuka, if we could
6 go to the very, very first page of the exhibit.

7 BY MR. WALLACE:

8 Q. This is a phone message to you
9 that Mr. Nazarian had called. The date is 10th of
10 September. Did -- it's requesting you to return the
11 call. Did you return that call?

12 A. No.

13 Q. Okay. And how come?

14 A. The letter from Mr. Fabris
15 intervened in the process, and once I received that
16 letter, I made some assumptions as to why
17 Mr. Nazarian was calling and I, you know, my comfort
18 level was to deal with Mr. Fabris in a written
19 format rather than Mr. Nazarian over the telephone.

20 Q. Now, I don't think I asked you
21 this: When did you actually speak Mr. Fabris? Was
22 it on the 10th itself?

23 A. It would have been on the
24 10th or the next day. It was very soon after he
25 received the letter. The correspondence back and

1 forth happened very quickly.

2 Q. Did you -- after 10th of
3 September, did you have any dealings with
4 Mr. Nazarian?

5 A. I'm a resource to the Economic
6 Development Advisory Committee and the Economic
7 Development Committee of the City of Elliot Lake and
8 I was at a meeting where Mr. Nazarian attended. He
9 was in town to meet with the CAO, Robert deBortoli,
10 to talk about purchasing land around the mall for
11 a project that he had ongoing.

12 Mr. DeBortoli indicated to
13 Mr. Nazarian that the proper channels would be to go
14 to the Economic Development Advisory Committee which
15 would then make a recommendation to the Economic
16 Development Standing Committee which would then make
17 a recommendation to Council, so I was present at
18 that meeting. Mr. Nazarian said, "Well, if they're
19 meeting right now can I get on the agenda?"

20 Mr. DeBortoli brought Mr. Nazarian to
21 the meeting room, made his request, and with the
22 acquiescence of the Chair, he was added to the
23 agenda.

24 Q. Did -- other than this
25 particular meeting did you have anything further to

1 do with Mr. Nazarian?

2 A. No.

3 MR. WALLACE: Okay, Mr. Elliott,
4 those are my questions and Mr. Aubé may have some
5 questions and --

6 THE COMMISSIONER: Any further
7 questions in-chief, Mr. Aubé?

8 MR. AUBÉ: Just a couple of things,
9 Mr. Commissioner.

10 EXAMINATION-IN-CHIEF BY MR. AUBÉ:

11 Q. Mr. Elliott --

12 MR. AUBÉ: Mr. Commissioner, just for
13 the record, Mr. Elliott and I have known each other
14 for most of those 16 years that he has been at ELNOS
15 and I have been from time to time solicitor for
16 ELNOS.

17 BY MR. AUBÉ:

18 Q. I just want to go back to your
19 experience as a general manager. I take it that,
20 although you are not a lender of last resort, that
21 the role of ELNOS is all that more important because
22 of the economic situation of Elliot Lake?

23 A. Yes.

24 Q. And that the banks are not
25 generally very kind to commercial enterprises, or

1 very generous, maybe is a better word -- banks are
2 never supposed to be kind -- but generous to
3 business people who look for loans?

4 A. Yes.

5 Q. So, I take it you've developed
6 a lot of expertise in reviewing applications before
7 you submit them to your Board?

8 A. Yes.

9 Q. And you, I take it, that you are
10 not going to bring anything to your Board that you
11 are not reasonably confident meets the smell test?

12 A. The way our process works that
13 differentiates us from the CFDC is any loan
14 application that goes to the CFDC goes to the Board
15 to be adjudicated, whereas with ELNOS, unless I am
16 supporting of it, it does not go to the Board. So
17 I'm the gatekeeper in that sense of the process.

18 Q. Uh-hmm. So, have you seen --
19 have you had many situations where you've said,
20 "This is not going to go any further"?

21 A. Yes.

22 Q. On applications?

23 A. Yes.

24 Q. So, the -- your approach with
25 Mr. Nazarian's application was pretty well what

1 you'd follow for anybody else?

2 A. Yes.

3 Q. You'd make basic inquiries and
4 you'd ask for financial statements and financial
5 information?

6 A. Yes.

7 Q. And if none was forthcoming, it
8 would stop there?

9 A. Yes.

10 Q. All right. And I am -- and in
11 our discussions before your questioning today you
12 mentioned the smell test. I like that expression
13 because it denotes a level of experience with
14 dealing with this sort of thing. And how many
15 applications do you see a year?

16 A. It's probably -- we would
17 probably see 25 to 35 applications a year. It could
18 be more, it could be less, depending on the --
19 what's going on in the community.

20 Q. How many make it to the Board?

21 A. Maybe a third of those.

22 Q. Now, in answering Mr. Wallace's
23 questions you mentioned that there was -- there
24 were -- you indicated there were no other
25 communications from Nazarian or his people, but was

1 there -- or were there other communications with
2 anybody about the mall, specifically Mr. Yakimov?

3 A. I did have an additional meeting
4 with Mr. Yakimov. It would have been late 2008 or
5 early 2009. He came in to see me. He was no longer
6 working for the mall. He indicated to me that he
7 and his wife had split up, that she was now seeing
8 the maintenance manager at the mall, and -- the tone
9 of the discussion was his life was not going very
10 well, everything was falling apart, and he just
11 wanted to advise me that, you know, that
12 Mr. Nazarian was not a nice guy, that he had no
13 confidence in him or in his dealings. He didn't
14 have any confidence in his plans and certainly that
15 I should be very wary if I were to consider getting
16 into business with him.

17 MR. AUBÉ: All right, Mr. Elliott,
18 those were the only questions I had. Thank you.

19 THE COMMISSIONER: Cross-examination?
20 Mr. Title.

21 CROSS-EXAMINATION BY MR. TITLE:

22 Q. Good morning, Mr. Elliott.
23 I appear for Eastwood Mall Inc. and Mr. Nazarian.
24 I have very few questions for you and it is
25 a pleasure to meet you.

1 Firstly, sir, at your offices at
2 ELNOS, do you have available materials and
3 informational manuals regarding the process to
4 follow with regard to a loan application?

5 A. Yes, we do.

6 Q. And is a loan application
7 commenced in the same way as it would -- as you
8 mentioned, similar to a tier 1 bank where a party
9 would complete a credit history, net worth
10 statement, identify themselves and sign it and
11 attest to the information provided?

12 A. That's not the first step. The
13 first step is almost without exclusion, an initial
14 meeting where I would meet with the proponent and we
15 would discuss generally what the idea is, what their
16 background is, why they think it's a good idea, what
17 type of structure they were looking at. Because of
18 the nature of the organization, we get a lot of
19 people who -- it pops into their head that they'd
20 like to be in business, so to save them the time and
21 effort, I like to have that first almost orientation
22 meeting with them before we get to what you're
23 talking about.

24 Q. All right, sir. So it would be
25 the completion of a loan application that would

1 formally commence the process?

2 A. That's correct.

3 Q. So, your meeting with
4 Mr. Nazarian and Mr. England was preliminary and in
5 the nature of an orientation meeting?

6 A. That's correct.

7 Q. Now, sir, did Mr. England follow
8 up in any way with regard to determining the
9 process, determining the materials that were
10 necessary to advance the loan application?

11 A. No.

12 Q. Did Mr. Nazarian telephone you
13 for further information as to how to proceed, what
14 materials he would require, what you needed in terms
15 of a business plan?

16 A. No.

17 Q. Did a Mr. Sennett ever contact
18 you or your office to determine the nature of the
19 material required, the contents of the proposed
20 business plan, and other materials that you would
21 need?

22 A. No.

23 Q. Did you ever have any telephone
24 or personal communication with Mr. Sennett?

25 A. No.

1 Q. Did you know who he was when he
2 sent you The Empire Roofing material?

3 A. No.

4 Q. Did Mr. Fabris indicate in his
5 conversations with you who Mr. Sennett was or
6 anything about him?

7 A. Not that I recall and I -- if
8 you look at my letter, I put Mr. Sennett's name in
9 quotations to help indicate that I had no idea who
10 this person was.

11 Q. Now, as I understand it from the
12 first meeting, unless Mr. Nazarian had a plan to
13 successfully finance a \$1 million project, then his
14 application to ELNOS was really dead on arrival?

15 A. That's correct.

16 Q. You weren't going to entertain
17 a plan that was only 45 per cent conceived.

18 A. That's correct.

19 Q. So really it wasn't even
20 appropriate for Mr. Nazarian or anyone on his behalf
21 to proceed with a loan application because the
22 initial meeting was so unsuccessful that it had no
23 hope of succeeding?

24 A. That's probably a fair
25 characterization, you know, it was an information

1 gathering session for Mr. Nazarian. That's how
2 I interpreted it, so certainly he was aware of what
3 he needed and he indicated to me he needed the
4 million dollars, so I would assume if he didn't have
5 a plan to come up with the million, you know, he
6 understood where we would possibly fit in, yeah, it
7 was -- to go ahead with an application, yeah, it
8 would have been fruitless.

9 Q. He needed a source of at least
10 another \$500,000 to even begin to have a serious
11 discussion with your office --

12 A. That's correct.

13 Q. -- wouldn't that be correct? So
14 in the circumstances, this was really a misconceived
15 meeting about an application never made?

16 A. I suppose you could characterize
17 it like that.

18 Q. And the submission of The Empire
19 Roofing material was completely ineffectual and did
20 nothing to advance the application?

21 A. That's correct.

22 Q. So, in other words, there was no
23 basis to even commence the completion of
24 a conventional loan application or to obtain the
25 credit history and statement of asset, net worth,

1 et cetera and to have Mr. Nazarian sign it?

2 A. That's correct. We had one
3 piece of the many pieces that we needed.

4 Q. So no application was ever
5 commenced, no offer of financing was ever made. The
6 application actually didn't proceed at all?

7 A. That's correct.

8 Q. And no reliance was placed on
9 The Empire Roofing material at all because the loan
10 application was never commenced?

11 A. That's correct.

12 MR. TITLE: Thank you, sir. Those
13 are my questions.

14 THE COMMISSIONER: Thank you.
15 Mr. Shime.

16 CROSS-EXAMINATION BY MR. SHIME:

17 Q. Good morning, Mr. Elliott.

18 A. Good morning.

19 Q. My name is Jonathan Shime and
20 I act as counsel for Mr. Sennett and I just have
21 a few questions for you as well.

22 I want to explore with you briefly
23 how it was that Mr. Nazarian first arrived at your
24 door step. It's my understanding that
25 Mr. Nazarian -- and if you know, great, and if you

1 don't know, please don't speculate -- first obtained
2 the name of ELNOS in discussions with the City, and
3 the City -- or a representative of the City
4 mentioned that ELNOS was an option for obtaining
5 money and that's how he arrived at your door step;
6 is that correct?

7 A. That sounds very reasonable.

8 Q. All right. And was that
9 conveyed to you by Mr. Nazarian when he first met
10 with you?

11 A. I can't recall but, again, that
12 would be very reasonable.

13 Q. Okay. That accords with your
14 understanding?

15 A. Yes.

16 Q. Okay. Jumping ahead to the
17 meeting on May 30th, although Mr. England was
18 present, I'm going to suggest he said very little
19 during the meeting.

20 A. That's correct.

21 Q. It was clear that this ship was
22 being captained by Mr. Nazarian?

23 A. That's correct.

24 Q. On July 14th, when Mr. Yakimov
25 attended, it was clear that he was on marching

1 orders from Mr. Nazarian to be in touch with you?

2 A. Yes, that's correct.

3 Q. Again, it was clear that it was
4 Mr. Nazarian who was the captain of the ship when it
5 came to seeking, perhaps, some funding from ELNOS;
6 is that right?

7 A. Yes, that's correct.

8 Q. Thirdly, we see that there was
9 a phone message on September 10th from Mr. Nazarian
10 trying to reach out to you; correct?

11 A. Yes.

12 Q. And fourthly, we see that
13 Mr. Fabris was also reaching out to you on
14 September 10th trying to communicate with you on
15 behalf of Mr. Nazarian; correct?

16 A. That's correct.

17 Q. And lastly, Mr. Sennett's e-mail
18 of September 9th, first of all, you see that it was
19 copied to Mr. Nazarian as well?

20 A. It was actually copied to me.

21 Q. And Mr. Nazarian was on it as
22 well?

23 A. Yes.

24 Q. And the materials were sent --
25 I don't know if you remember -- but the quote was on

1 behalf of Mr. Nazarian?

2 A. That's correct.

3 Q. So I'm going to suggest to you
4 at every stage of these proceedings, in terms of who
5 was driving the communication between the Algo Mall
6 and ELNOS, it was clearly Mr. Nazarian?

7 A. That was my interpretation, yes.

8 Q. All right. And I just have one
9 last question and it is somewhat serious, so
10 I remind you of your oath: Is there any doubt, sir,
11 that you are the smartest and best looking of the
12 Elliott brothers?

13 A. None whatsoever.

14 MR. ELLIOTT: I object.

15 MR. SHIME: Thank you, sir. Those
16 are my questions.

17 THE COMMISSIONER: I'll have you read
18 our Commission's rules on contempt. Thank you.

19 Moving across the room.

20 MR. MacRAE: I wonder if I might,
21 Mr. Commissioner.

22 THE COMMISSIONER: Mr. MacRae.

23 MR. MacRAE: If I might, I'd like to
24 indicate first off, Mr. Commissioner, that
25 Mr. Elliott and I have been friends for many years

1 and I was certainly a very close friend --

2 THE COMMISSIONER: I hope nothing you
3 say ends that friendship.

4 MR. MacRAE: Well, I'm working at
5 that, Mr. Commissioner. And also just for
6 Mr. Nazarian's counsel's benefit, I was certainly
7 a best friend of his father as well too, but with
8 that disclosure, if there is no objection, I do have
9 a couple of questions.

10 THE COMMISSIONER: Sure.

11 CROSS-EXAMINATION BY MR. MacRAE:

12 Q. Mr. Elliott, you said that
13 Mr. Nazarian came in for the first meeting; was that
14 the first time you had any discussions with
15 Mr. Nazarian?

16 A. That's correct.

17 Q. And had you had an opportunity
18 to meet him even casually before that?

19 A. I may have met him somewhere
20 through a Chamber event or some other social event
21 but it didn't register with me that I had.

22 Q. So your recollection would be,
23 it was the first time you met with him?

24 A. That's correct.

25 Q. And he very candidly -- am

1 I correct that he very candidly told you about the
2 problems that he was having at the mall with respect
3 to the leaking roof?

4 A. Yes, he was very explicit.

5 Q. And in addition to that, he also
6 told you that it -- that it had to be fixed, that he
7 had spent money, but now he had to spend lots of
8 money to fix it; is that correct?

9 A. That's correct.

10 Q. And he made very clear to you,
11 that the repairs had to be completed as quickly as
12 possible because of the problems that he was having
13 with his clients, his tenants; is that correct?

14 A. That's correct.

15 Q. And I gather during the course
16 of the discussion, would you agree with me that
17 Mr. Nazarian was very candid and upfront about the
18 ongoing problems at the mall with respect to
19 leakage?

20 A. That's correct.

21 MR. MacRAE: All right. Thank you
22 very much. Those are my questions.

23 THE COMMISSIONER: Thank you.

24 Does the City have any questions?

25 MR. CASSAN: No thank you, sir.

1 THE COMMISSIONER: No. And so
2 that -- I'm sorry, any questions Mr. Myles?

3 MR. MYLES: No, thank you.

4 THE COMMISSIONER: And does the
5 Province have any questions? I see you just coming
6 in --

7 MS. SMITH: No, your Honour.

8 THE COMMISSIONER: -- Ms. Smith.
9 Then we will go to re-examination, if any.

10 RE-EXAMINATION BY Mr. AUBÉ:

11 Q. One question, Mr. Elliott.

12 If Mr. Nazarian had showed up --
13 I didn't do that?

14 MR. ELLIOTT: Too close to the
15 microphone.

16 BY MR. AUBÉ:

17 Q. If Mr. Nazarian had shown up and
18 demonstrated to you and to ELNOS that he had
19 \$500,000, provided you with a business plan, would
20 you have opened a file and seriously considered his
21 application?

22 A. You'll have to give me some time
23 context. Are you talking about if he'd shown up
24 on May 30th?

25 Q. After the initial discussion

1 which went south, where you weren't comfortable?

2 A. I would say "No". I think it's
3 important when I mention that Mr. Van Duin was at
4 the meeting, he was the Chairman of the Board at the
5 time. That was basically unheard of.

6 The only reason he was there when he
7 heard about the meeting is, as stated to me, was
8 "I want to be there to back stop you so that, you
9 know, after the meeting, when it's, "he said he
10 said" that you have someone to support your
11 position, so Mr. Van Duin would not normally have
12 been there but given that he was there, that he
13 heard the conversation, that we had the discussion
14 after, and that he was still Chairman of the Board,
15 it would have been -- it would have been
16 unbelievable if they would have considered it.

17 Q. The short version is the well
18 was already poisoned, then?

19 A. That's correct.

20 MR. AUBÉ: All right. Thank you,
21 Mr. Commissioner. Thank you.

22 THE COMMISSIONER: Mr. Wallace?

23 MR. WALLACE: I have no further
24 questions, thank you Commissioner.

25 THE COMMISSIONER: Thank you,

1 Mr. Elliott for your time this morning.

2 I can assure you that in my report
3 that I'll be making no comparisons between you and
4 Douglas Elliott in terms of physical appearance so
5 you can rest assured about that.

6 THE WITNESS: I'd be confident in
7 your decision either way.

8 THE COMMISSIONER: All right. I take
9 it that's the material we have to work with today?

10 MR. WALLACE: That's it. That's
11 correct, Commissioner. We'll be back on Tuesday
12 morning. At that time we will have the evidence of
13 Rhonda Bear and Ashley Sherrard.

14 THE COMMISSIONER: Sherrard. Yes.

15 MR. WALLACE: And that would bring us
16 to the close of Phase One and we -- the intention is
17 to commence with Phase Two on Wednesday at 9:00.

18 THE COMMISSIONER: Thank you. Any
19 comments from any of the participants before we rise
20 until Tuesday morning?

21 MR. CASSAN: Just one,
22 Mr. Commissioner, I'll be absent next week and have
23 the Shoemakers covering for me.

24 THE COMMISSIONER: All right. Thank
25 you very much.

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Then, Mr. Registrar, we'll start
again at 9 o'clock on Tuesday of next week.

--- Whereupon at 10:51 a.m. the Inquiry proceedings
adjourned to 9:00 a.m. on Tuesday, August 6, 2013 ---

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REPORTER'S CERTIFICATE

I, LISA M. BARRETT, RPR, CRR, 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
correct transcript of my shorthand notes so taken.

Dated this 6th day of August, 2013.

Lisa Barrett

NEESON & ASSOCIATES
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\$	22,24 19582:2 19593:9,14	2012 19532:19	7	act 19591:20
\$1 19589:13	11 19537:17	2013 19600:5		action 19547:8 19580:17
\$100,000 19554:13	11:30 19566:3	21st 19519:13,21	723 19549:1	activities 19542:24
\$200 19575:22	11th 19513:9	226 19570:1	725 19569:21	activity 19560:14
\$200,000 19557:4 19564:18 19576:6,12,22	12 19529:1	23 19532:19	7845 19512:25	actual 19522:17 19548:3 19552:6 19573:25
\$250 19542:15	125,000 19563:7	2359 19526:23	9	added 19582:22
\$300,000 19553:5	14th 19566:17 19569:15,17 19578:7 19592:24	23rd 19518:21	9 19531:21 19532:6 19600:2	addition 19596:5
\$488,655 19574:13	15 19560:21	25 19585:17	92 19517:16	additional 19586:3
\$500,000 19553:2 19590:10 19597:19	15th 19567:16,23 19569:14	250 19564:19	980K 19553:20	adjourned 19600:5
\$980,000 19553:24	16 19542:8 19583:14	250,000 19563:3,5	9:00 19599:17 19600:5	adjudicated 19584:15
-	16th 19522:11	3	9:01 19512:1	advance 19588:10 19590:20
-005 19573:21	17th 19567:20	30th 19523:6,11 19546:22 19549:13 19552:5 19578:7 19592:17 19597:24	9:28 19539:15	advise 19576:2 19586:11
-011 19575:4	18th 19520:2,4, 25 19521:22,24 19522:21 19523:15	31 19546:1	9:39 19539:16	Advisory 19582:6,14
-012 19577:6	1992 19542:12	35 19585:17	A	affairs 19545:15
-021 19577:17	2	37 19549:2	a.m. 19512:1 19539:15,16 19600:4,5	afternoon 19541:15
0	20 19528:13	4	ability 19557:21 19565:12	afterward 19526:8
000 19575:22	200 19563:2 19564:19	4 19527:14 19574:2	abnormally 19573:19	agencies 19552:10
08 19549:13 19577:18	2001 19517:17, 19	45 19589:17	absent 19599:22	agenda 19582:19,23
1	2005 19517:21	450 19564:20,21	absolutely 19574:19	agree 19529:13 19596:16
1 19587:8	2006 19517:21	5	access 19557:2 19574:11	agreed 19565:11
10 19528:9	2008 19513:9 19516:19 19537:17,20 19546:12 19547:20 19586:4	5 19527:14	accepted 19565:5	agreement 19573:4
100K 19554:5	2009 19586:5	5846 19531:20	accords 19592:13	ahead 19540:13 19551:21 19590:7 19592:16
10:00 19566:2	2011 19518:21 19519:13,21 19520:1,4 19521:1 19522:12 19523:6,15 19538:4	6	accurate 19575:23	AI?' 19533:24
10:51 19600:4		6 19600:5	acquiescence 19582:22	
10th 19569:18 19575:2 19577:18 19579:7 19581:9,		6230 19518:10		
		6231 19538:21 19539:3		

alerted 19533:21 19534:1	applied 19536:4	attempted 19558:15	Bauthus 19556:1	break 19514:8 19529:7
Alexandre 19570:7	apply 19551:4	attended 19582:8 19592:25	beam 19537:3	Brian 19549:22
Algo 19546:19 19548:8 19557:24 19558:19 19575:1 19594:5	approach 19584:24	attention 19523:3 19575:14	Bear 19599:13	briefly 19536:20 19537:14 19550:20 19577:13 19591:22
alluding 19549:14	approximately 19542:14	attest 19587:11	begin 19590:10	bring 19512:24 19569:25 19584:10 19599:15
alternative 19571:23	area 19535:14 19562:7,8,10	Aubé 19540:1,3, 6,9,11 19583:4,7, 8,10,12, 19586:17 19597:10,16 19598:20	behalf 19566:11 19570:16 19580:18 19589:20 19593:15 19594:1	Broadbent 19536:18,19 19537:10 19538:25
Amanda 19513:21	arm 19528:1	August 19600:5	betterment 19542:20	brother 19540:6
amount 19535:25 19554:15	arm's 19528:1,8	author 19531:23	big 19527:17 19572:12	brothers 19594:12
amounts 19573:5	arrival 19589:14	aware 19537:5 19567:21 19590:2	bit 19518:23 19522:21 19527:2 19529:25 19531:8 19533:10 19534:22 19536:8 19541:9 19552:17 19558:22 19569:5 19573:13	brought 19523:2 19582:20
anecdotally 19559:16	arrived 19591:23 19592:5	back 19522:3 19525:25 19530:18 19536:10 19539:1 19563:6 19581:25 19583:18 19598:8 19599:11	Blackberry 19535:1	Bruce 19533:21
answering 19585:22	article 19531:23	background 19552:18 19555:6,11 19587:16	Blind 19543:3,9, 10	building 19524:25 19525:10,19 19529:22 19530:20 19531:4 19533:22 19545:25 19546:2,7 19555:11 19557:23 19558:19
apologize 19541:11	articles 19544:21	bank 19543:22 19544:14 19545:22 19587:8	board 19550:4, 17,21,22 19551:14,15 19584:7,10,14,16 19585:20 19598:4,14	built 19555:12
apparent 19577:13	Ashley 19599:13	banks 19583:24 19584:1	Bob 19549:21 19570:17	bullet 19558:7 19561:23
appeal 19536:5	aspects 19529:21	baseball 19533:9	book 19534:15	business 19517:14 19537:7 19540:25 19541:4,20 19543:24 19544:1,3,6 19551:2 19555:7 19563:24 19568:9 19569:8 19584:3 19586:16 19587:20 19588:15,20 19597:19
appearance 19599:4	asserting 19534:7	based 19568:4	booked 19550:10	
appearing 19540:2,9	assertion 19559:11	basic 19585:3	born 19547:15	
appears 19562:20 19577:6	assessment 19536:5 19544:7	basically 19541:22 19554:10 19555:14 19598:5	bottom 19514:11 19515:23 19518:22 19576:23 19577:19 19578:1	
application 19578:18,21 19584:14,25 19587:4,6,25 19588:10 19589:14,21 19590:7,15,20,24 19591:4,6,10 19597:21	asset 19590:25	basis 19590:23	box 19522:12	
applications 19584:6,22 19585:15,17	assistance 19541:22	bat 19533:9		
	assume 19555:25 19590:4			
	assuming 19576:16			
	assumption 19573:2			
	assumptions 19581:16			
	assurance 19564:3			
	assure 19599:2			
	assured 19599:5			
	attached 19570:15			

businesses 19541:5	19599:21	City 19516:10,12 19517:11 19525:1 19556:8,9,10 19566:3 19582:7 19592:2,3 19596:24	commenced 19587:7 19591:5, 10	communicatio n 19579:8 19588:24 19594:5
buy 19543:25	casually 19595:18	clear 19531:1,10 19592:21,25 19593:3 19596:10	commencing 19512:1	communicatio ns 19585:25 19586:1
<hr/> C <hr/>				
cage 19574:5	caution 19569:2	clearer 19555:21	comments 19599:19	communities 19541:23 19542:1,3,21 19544:22, 19550:24 19551:4
call 19520:6,15 19522:5 19524:12,20,25 19525:4 19526:19 19527:22 19579:3 19581:11	CCDC 19572:11	client 19580:1	commercial 19541:2 19543:21 19545:3 19546:4 19556:17 19559:19 19562:6 19572:5,6,12 19583:25	community 19541:16,18,19 19542:24 19543:1 19544:18 19548:19,22 19550:1 19551:6 19552:11 19553:8,9,11 19562:2 19568:7, 13 19585:19
called 19522:12 19524:15 19573:2 19581:9	ceiling 19518:14 19528:20,24 19529:6,7,9,18,20 19533:5	clients 19547:2, 7 19579:21 19596:13	Commission's 19594:18	companies 19544:23 19561:5,7
calling 19581:17	ceilings 19524:1	close 19526:2 19529:10 19533:24 19595:1 19597:14 19599:16	Commissioner 19512:2,6,9 19514:6 19517:2, 5,7 19528:12,14 19534:5 19536:16 19537:12 19538:13,19,23 19539:5,10,13,17, 19,22 19540:1,4, 8,12,13,16 19541:6,12,14 19544:8,11,14 19550:11,16,19 19551:8,11,17,20, 22 19552:2 19566:20,23 19567:1,7 19569:15 19583:6,9,12 19586:19 19591:14 19594:17,21,22, 24 19595:2,5,10 19596:23 19597:1,4,8 19598:21,22,24, 25 19599:8,11,14, 18,22,24	company 19561:4 19567:18 19571:22 19572:1
canceled 19542:13	cent 19589:17	closed 19522:8	Commission's 19594:18	compare 19577:10
candid 19596:17	cetera 19591:1	club 19543:7	Commissioner 19512:2,6,9 19514:6 19517:2, 5,7 19528:12,14 19534:5 19536:16 19537:12 19538:13,19,23 19539:5,10,13,17, 19,22 19540:1,4, 8,12,13,16 19541:6,12,14 19544:8,11,14 19550:11,16,19 19551:8,11,17,20, 22 19552:2 19566:20,23 19567:1,7 19569:15 19583:6,9,12 19586:19 19591:14 19594:17,21,22, 24 19595:2,5,10 19596:23 19597:1,4,8 19598:21,22,24, 25 19599:8,11,14, 18,22,24	comparisons 19599:3
candidly 19595:25 19596:1	CFDC 19561:25 19562:14,16 19563:3,7,22 19584:13,14	Coincidence 19551:17	Commission's 19594:18	compensation 19542:15
CAO 19582:9	Chair 19565:16 19582:22	coincidental 19551:19	Commissioner 19512:2,6,9 19514:6 19517:2, 5,7 19528:12,14 19534:5 19536:16 19537:12 19538:13,19,23 19539:5,10,13,17, 19,22 19540:1,4, 8,12,13,16 19541:6,12,14 19544:8,11,14 19550:11,16,19 19551:8,11,17,20, 22 19552:2 19566:20,23 19567:1,7 19569:15 19583:6,9,12 19586:19 19591:14 19594:17,21,22, 24 19595:2,5,10 19596:23 19597:1,4,8 19598:21,22,24, 25 19599:8,11,14, 18,22,24	complaint 19525:11 19530:20 19531:5
capital 19543:5, 25 19545:7 19556:22	challenge 19560:16,17,19	collapse 19529:7	Commission's 19594:18	complaints 19547:8
captain 19518:24 19522:2,21 19523:18 19524:3 19525:22 19531:13 19593:4	Chamber 19595:20	colleague 19555:16	Commissioner 19512:2,6,9 19514:6 19517:2, 5,7 19528:12,14 19534:5 19536:16 19537:12 19538:13,19,23 19539:5,10,13,17, 19,22 19540:1,4, 8,12,13,16 19541:6,12,14 19544:8,11,14 19550:11,16,19 19551:8,11,17,20, 22 19552:2 19566:20,23 19567:1,7 19569:15 19583:6,9,12 19586:19 19591:14 19594:17,21,22, 24 19595:2,5,10 19596:23 19597:1,4,8 19598:21,22,24, 25 19599:8,11,14, 18,22,24	complete 19587:9
captained 19592:22	chance 19532:16	collection 19518:9 19572:25	Commission's 19594:18	completed 19596:11
case 19564:2	changing 19576:8	Collett 19529:25 19530:1,2,14,18, 21,24 19531:2,3, 11 19533:20	Commissioner 19512:2,6,9 19514:6 19517:2, 5,7 19528:12,14 19534:5 19536:16 19537:12 19538:13,19,23 19539:5,10,13,17, 19,22 19540:1,4, 8,12,13,16 19541:6,12,14 19544:8,11,14 19550:11,16,19 19551:8,11,17,20, 22 19552:2 19566:20,23 19567:1,7 19569:15 19583:6,9,12 19586:19 19591:14 19594:17,21,22, 24 19595:2,5,10 19596:23 19597:1,4,8 19598:21,22,24, 25 19599:8,11,14, 18,22,24	completely 19590:19
cash 19545:22	channels 19582:13	Collett's 19530:7	Commission's 19594:18	completion 19587:25 19590:23
cash-flow 19545:8 19546:2	characterizatio n 19589:25	comfort 19581:17	Commissioner 19512:2,6,9 19514:6 19517:2, 5,7 19528:12,14 19534:5 19536:16 19537:12 19538:13,19,23 19539:5,10,13,17, 19,22 19540:1,4, 8,12,13,16 19541:6,12,14 19544:8,11,14 19550:11,16,19 19551:8,11,17,20, 22 19552:2 19566:20,23 19567:1,7 19569:15 19583:6,9,12 19586:19 19591:14 19594:17,21,22, 24 19595:2,5,10 19596:23 19597:1,4,8 19598:21,22,24, 25 19599:8,11,14, 18,22,24	
Cassan 19517:5,6,8,10 19518:8,11 19519:12,15 19528:14,17 19534:8,10 19535:17,19 19536:13 19596:25	characterize 19590:16	comfortable 19598:1	Commission's 19594:18	
	characterized 19580:14	commence 19578:18 19588:1 19590:23 19599:17	Commissioner 19512:2,6,9 19514:6 19517:2, 5,7 19528:12,14 19534:5 19536:16 19537:12 19538:13,19,23 19539:5,10,13,17, 19,22 19540:1,4, 8,12,13,16 19541:6,12,14 19544:8,11,14 19550:11,16,19 19551:8,11,17,20, 22 19552:2 19566:20,23 19567:1,7 19569:15 19583:6,9,12 19586:19 19591:14 19594:17,21,22, 24 19595:2,5,10 19596:23 19597:1,4,8 19598:21,22,24, 25 19599:8,11,14, 18,22,24	
	chief 19533:22		Committee 19551:5 19582:6, 7,14,16	
	choose 19549:1		committing 19565:13	
	chronology 19579:6		communicate 19593:14	
	circumstances 19556:12 19590:14			

composition 19550:20	consequence 19574:21	contractors 19558:25 19559:14 19560:25 19561:19 19567:22 19580:2	19523:12 19526:18 19528:21 19530:10 19538:1,2 19539:12 19540:11 19544:19,20 19546:12 19547:15 19548:6 19553:15,17 19554:7,18 19556:2 19559:5 19560:18 19578:23 19579:4 19588:2,6 19589:15,18 19590:12,13,21 19591:2,7,11 19592:6,20,23 19593:2,7,10,15, 16 19594:2 19595:16,24 19596:1,8,9,13, 14,20 19598:19 19599:11	covering 19599:23 create 19548:13, 14 created 19515:19 credible 19576:24 credit 19544:7 19587:9 19590:25 cross- collateralizatio n 19557:15 19558:3 cross- examination 19512:10 19517:8 19536:17 19586:19,21 19591:16 19595:11 curling 19543:6 current 19545:14 19549:23 customer 19513:17,21 customers 19526:14
conceived 19589:17	consequences 19554:17	contracts 19542:13 19572:5		
concept 19552:22	consideration 19578:11 19581:3	contributed 19543:12		
concerned 19555:7	considered 19548:16 19597:20 19598:16	contribution 19541:21		
concerns 19533:19	constituent 19542:2 19550:23	convenient 19576:15		
concrete 19518:14 19519:4,5,10,17 19521:6 19523:15,19 19524:12,21 19525:8,10,16,19, 23 19526:1,24 19527:4,21,25 19528:5,19,20 19530:1,3,9,13 19531:10 19532:21,24 19535:4,10 19537:2 19538:4	construction 19555:10 19559:19 19568:5 19571:25 19572:5,12 19573:16	conventional 19590:24		
condition 19547:18	contact 19516:15 19588:17	conversation 19522:2 19523:21 19530:3 19553:6 19555:24 19563:17 19564:10 19568:16 19579:11,14,17 19598:13		
conducted 19536:23	contacted 19513:13 19514:2 19516:10,11,13	conversations 19575:9 19589:5		
confidence 19586:13,14	contemporane ous 19547:19	conveyed 19592:9		
confident 19584:11 19599:6	contemporane ously 19541:9 19549:15	cook 19513:14		
confirmation 19575:19	contempt 19594:18	copied 19593:19,20		
conflict 19540:5	content 19552:6 19573:10	copy 19518:5 19523:7 19577:2		
confront 19565:16	contents 19588:19	cordial 19579:22		
connected 19574:7	context 19597:23	corner 19549:13		
Connors 19518:13,18 19520:25 19521:2,16 19522:2,22 19523:11,14,18, 23 19524:3 19525:22 19531:14	continue 19580:4	corporate 19543:4		
	contract 19570:20 19571:17 19572:24 19573:2,7 19577:3	corporation 19540:20,25 19542:9,18,22 19543:10 19546:3 19548:9 19562:3		
	contractor 19565:10 19576:5	correct 19512:21,22 19513:6 19516:8 19519:2,18 19522:19,23		
			corresponden ce 19575:5 19577:17 19578:14 19581:25 cost 19553:20 19562:24 Council 19582:17 counsel 19591:20 counsel's 19595:6 counter 19520:20 couple 19531:18 19548:4 19551:2 19583:8 19595:9 courses 19543:3 court 19532:11 cover 19570:19 19574:24	
				<hr/> D <hr/>
				D-u-i-n 19550:6 damage 19533:16 Darren 19518:13,18 19520:25 19523:10 data 19515:1 date 19513:8 19518:19 19519:22,23 19522:11,14 19549:13 19566:16 19581:9

dated 19518:21 19523:6 19577:17	Department 19520:12 19522:17 19525:1,10,19 19530:20 19531:4	directors 19550:17,23	door 19520:20 19563:19 19591:24 19592:5	education 19551:1
day 19520:3 19521:18,21 19522:16 19526:1,2,4 19532:17 19548:5 19552:1 19560:5 19565:20 19566:1,7,16 19570:14 19575:4 19577:7 19579:8, 10 19581:24	depending 19585:18	disagreed 19580:14	doubt 19594:10	effective 19572:16
dead 19589:14	deputy 19533:20	discharged 19567:20	Douglas 19599:4	effectively 19536:11
deal 19544:22 19547:5 19548:3 19554:12 19581:18	descriptions 19572:14	disclosed 19555:24	downstairs 19560:22	effort 19579:23 19587:21
dealing 19552:4 19558:3 19585:14	designated 19537:25 19538:8 19542:17	disclosure 19595:8	drain 19573:25 19574:5,16	efforts 19567:17
dealings 19568:9 19569:13 19582:3 19586:13	desk 19560:8	discuss 19587:15	drainage 19574:8	elaborate 19554:8 19559:3, 7
dealt 19520:21 19552:23 19561:11	detailed 19572:13	discussion 19532:9 19549:18 19554:16 19557:3 19558:16 19565:7 19586:9 19590:11 19596:16 19597:25 19598:13	drains 19573:17 19574:3,6	Elaine 19512:5 19532:11 19533:18 19536:20
debortoli 19582:9,12,20	details 19522:5 19570:20	discussions 19566:10 19585:11 19592:2 19595:14	draw 19533:14	elected 19514:18
debt 19545:9 19564:1	deteriorate 19547:25	disqualified 19540:3	driving 19594:5	Elliot 19517:17 19533:20 19542:3,20 19543:3 19547:15 19551:9 19556:17 19561:13 19562:9 19582:7 19583:22
December 19513:9 19516:19 19523:6,11 19537:17,20	determine 19588:18	diversification 19548:14	Duin 19550:3 19555:18 19598:3,11	E
decision 19599:7	determining 19588:8,9	diversify 19542:18 19543:17,24	e-mail 19535:3 19570:5,10,16 19574:24 19593:17	Elliott 19539:11, 20,23,25 19540:2, 18,24 19541:7 19549:1 19550:12 19551:23 19570:5 19583:3,11,13 19586:17,22 19591:17 19594:12,14,25 19595:12 19597:11,14 19599:1,4
deep 19521:13	developed 19584:5	document 19512:24 19514:1 19518:3,20 19523:5 19532:7 19537:5 19538:18 19551:23 19570:15,19 19571:18 19572:2,7,23 19577:7,14	e-mails 19535:2	ELNOS 19540:19,23 19541:1,2 19542:7,22,24 19546:3 19548:6 19550:4,9,14 19562:5,8,25 19563:22 19565:5,14 19568:12,18,20 19569:11 19578:17,21 19580:4 19583:14,16,21
deficiencies 19523:2	developer 19555:14	documentation 19563:23 19578:10 19581:2	earlier 19512:13 19532:22	
delivered 19559:22	development 19540:25 19542:18 19561:10 19562:3, 19582:6, 7,14,16	documents 19518:9 19572:13	early 19586:5	
Demitri 19566:13 19575:16	diagrams 19572:13	dollars 19536:9 19562:25 19574:16 19590:4	easier 19541:10	
demonstrated 19597:18	differentiates 19584:13		Eastwood 19575:8,20 19576:4 19586:23	
denotes 19585:13	difficult 19547:4,8,9 19556:16		eatery 19532:12	
	digits 19512:25		economic 19542:17 19548:21 19553:11 19555:3 19582:5,6,14,15 19583:22	
	direct 19577:24		economy 19542:19 19543:16,17	
	directly 19565:8		educate 19540:22	
	director 19550:25			

19584:15 19587:2 19589:14 19592:2,4 19593:5 19594:6 19597:18 ELNOS'S 19545:15 19578:2 emergency 19522:18 19524:8 Empire 19571:10,20,22, 23 19577:3 19589:2 19590:18 19591:9 employ 19517:23 employee 19513:22 19527:10 employees 19514:3,5 19517:25 19526:7,17 employer 19514:24 19515:11 enclosed 19577:2 end 19520:11 19548:4 19552:1 19564:13 19565:20 ending 19573:21 19575:4 ends 19595:3 engineers 19558:25 19559:15 19560:21 19561:14,19 England 19549:22 19550:8 19588:4,7 19592:17 ensure 19518:18 enterprises 19583:25	entertain 19589:16 entity 19553:11 equipment 19543:25 19559:21 equity 19541:3 19543:20 19545:1,3,4,13 essence 19554:20 19579:24 establishment 19542:17 estate 19546:7 19547:1 estimated 19553:20 event 19595:20 eventful 19520:3 evidence 19519:3 19521:20 19528:12 19559:17 19561:21 19567:17 19599:12 Ewald 19530:14, 17,24 19533:21, 24 exact 19559:3 19560:22 EXAMINATION -IN-CHIEF 19540:17 19583:10 exclusion 19587:13 Excuse 19538:16 excused 19539:1 exhibit 19518:9, 10 19526:23 19531:20 19538:18,21	19539:3 19548:25 19569:21,22 19570:1 19581:6 existence 19542:10,11,12 existing 19574:7 expand 19543:24 19548:13 expansion 19541:20 19576:9 expect 19557:9 19563:20,22 expectation 19566:3 expected 19572:4 19574:17 expecting 19572:7 19578:10 experience 19561:7 19573:18 19583:19 19585:13 expertise 19584:6 explain 19558:2 19559:3 19562:22 19563:17 explained 19563:21 19564:6 explicit 19596:4 exploratory 19568:17 explore 19531:18 19591:22 exponentially 19547:25 exposed 19526:16 expression 19585:12 extended 19528:1	extensive 19563:23 eyes 19560:18 <hr/> F <hr/> Fabris 19575:5, 10 19577:20 19579:3,7,15,19 19581:14,18,21 19589:4 19593:13 faces 19560:8 fact 19534:5,22 19558:10 19561:19 19567:21 fair 19534:8 19549:19 19589:24 fairly 19528:1 19543:14 19579:22 fall 19519:6 fallen 19519:4 19537:3 falling 19586:10 Falls 19517:16 familiar 19573:15 fashion 19522:18 father 19595:7 fax 19579:10 feasibility 19543:11,12 featured 19532:6 February 19518:21 federally 19562:4 feel 19576:24 fell 19518:14 19519:8,18 19525:23 19526:1	19538:4 field 19513:3 fighter 19519:9 figure 19518:19 19564:25 file 19574:25 19597:20 finance 19541:2 19544:5 19562:18 19563:1 19575:21 19580:5 19589:13 financial 19541:21 19544:6 19556:7,12 19563:24,25 19566:11 19585:4 financially 19543:12 financing 19556:15 19563:14 19568:8 19591:5 find 19532:23 19544:3 19570:14 fine 19549:4 fire 19518:4,17 19519:9 19520:4, 6,12 19522:5,17 firing 19529:18 Firstly 19587:1 fit 19590:6 fix 19553:24 19554:5,15 19596:8 fixed 19555:2 19596:6 fixing 19554:17 flexible 19543:15 flip 19519:12 floor 19532:25 follow 19549:2 19585:1 19587:4 19588:7
---	---	---	--	---

follow-up 19519:14 19522:21	friends 19518:3 19594:25	19587:15	Hamilton's 19535:8	19568:5 19587:9 19590:25
food 19532:11	friendship 19595:3	generous 19584:1,2	hand 19527:18, 21	hockey 19543:2
force 19548:13	fringes 19548:12	geographic 19562:7	handling 19515:13	hold 19528:7
forecasted 19563:24	Friscolanti 19531:24 19532:14 19534:3,11	geographically 19544:21	handwritten 19515:19 19549:8	holding 19527:4,20,25
forgotten 19536:17	front 19523:7	give 19556:25 19557:23 19563:20 19568:24 19573:6 19578:11 19581:2 19597:22	hang 19580:12	holdings 19547:1
form 19539:4	fruitless 19590:8	golf 19543:3	happen 19532:17,19 19551:15	holes 19523:25
formal 19551:8 19580:23	fryer 19521:13	good 19512:2,4, 8,11,12 19517:9 19532:16 19539:18,22,24 19541:23 19560:6 19568:11 19570:14 19586:22 19587:16 19591:17,18	happened 19520:21 19521:18 19522:7,17 19526:16 19535:5 19582:1	home 19520:15 19541:13
formally 19588:1	fund 19542:15	grants 19541:4	happening 19514:17 19578:5 19579:18	Honour 19517:1 19538:16 19597:7
format 19572:7, 9 19573:6 19581:19	funded 19562:4	great 19524:2 19591:25	hard 19547:11 19556:21	hood 19521:10
formed 19542:22	funding 19568:20 19569:9 19593:5	Greenwood 19566:13,22 19567:4	hazardous 19515:1,13	hope 19529:17 19589:23 19595:2
forthcoming 19585:7	future 19564:24	grip 19527:22 19528:8	head 19587:19	horizon 19545:6,10
forward 19539:6 19564:16 19580:19	Futures 19562:3	ground 19569:5	health 19514:13, 20 19537:25 19538:8	Horton's 19532:11
Fournier 19523:23	<hr/> G <hr/>	grow 19543:17	heard 19536:2 19541:18 19567:17 19571:7,10 19598:7,13	hour 19566:4,5
fourthly 19593:12	garner 19568:7	guess 19566:5 19578:13	heavy 19528:7	hours 19560:5
fragments 19533:7	gas 19520:16 19522:7,17	guy 19586:12	helpful 19522:10	hung 19580:16
frank 19580:6	gatekeeper 19584:17	<hr/> H <hr/>	high 19553:17 19579:19	Hungry 19513:5 19517:18,20 19532:10
fraud 19565:10, 13 19580:2	gather 19596:15	half 19514:11 19574:16	high-risk 19544:12	hurdle 19569:4
Fred 19555:25	gathering 19568:21 19590:1	Hamilton 19531:8,9,15 19534:2 19535:1, 2 19556:1	higher 19558:14 19569:4 19573:13	husband 19530:4,8 19532:12
free 19538:14	gave 19555:5		hill 19543:6	hydro 19542:14 19553:5
freezer 19529:10	general 19540:19 19550:14 19560:7 19576:5 19579:16 19583:19		hired 19568:5	hydroelectric 19545:5
frequently 19560:3	generally 19542:19 19583:25		history 19544:3, 4 19547:22	<hr/> I <hr/>
Friar 19513:14 19516:1 19537:25 19538:4				icicles 19533:8
friend 19536:21 19537:16 19595:1,7				idea 19528:5 19556:10 19564:1 19587:15,16 19589:9
				identification 19561:15

identified 19549:22	indulgence 19539:1	install 19574:2,4	involved 19534:23 19547:12 19559:19	juvenile 19571:19
identify 19549:19 19560:24 19561:2,4 19587:10	industry 19572:17	installation 19573:25		<hr/> K <hr/>
impact 19555:3 19563:25	ineffectual 19590:19	instances 19523:13	issue 19547:10 19552:23 19554:12	Kakabecca 19517:16
impacts 19544:6	informal 19551:12	intended 19544:5	issued 19514:12 19572:5	kids 19529:16
importance 19548:20	information 19555:6 19568:21,23 19578:6,17 19580:24 19585:5 19587:11 19588:13 19589:25	intention 19599:16	issues 19552:21 19561:11	kind 19523:24 19559:18,22 19564:14 19568:10 19569:5 19583:25 19584:2
important 19583:21 19598:3	informational 19587:3	interest 19545:19,23,24 19564:2	items 19544:2 19573:15	knew 19532:15 19546:24,25 19567:3 19568:8
impression 19568:12	informed 19524:18	internally 19561:18	<hr/> J <hr/>	knowledge 19547:17 19550:1 19567:3
Improvement 19541:19	initial 19587:13 19589:22 19597:25	interpretation 19594:7	Jack 19532:12 19533:18	Kristin 19512:14
in-chief 19540:10 19583:7	initiatives 19543:15	interpreted 19553:7 19563:4 19590:2	Jacks 19513:5 19517:18,20 19532:10	Kristine 19527:7,8,12
inch 19574:2	inputted 19515:21	interrupt 19541:7	jeopardize 19565:14	Kuka 19512:23 19515:8 19518:4, 8,10,23 19519:13 19520:24 19523:5 19526:25 19535:18 19538:21 19548:25 19569:23 19570:1, 19572:19 19573:21 19575:3 19577:6,19 19581:5
inches 19529:1	inquiries 19585:3	interrupting 19550:12	job 19541:10 19563:12 19567:23	
incidences 19523:25	inquiry 19577:25 19600:4	intervened 19581:15	jobs 19548:13,18 19561:9	<hr/> L <hr/>
incident 19522:4,11,14	inspect 19512:20	interview 19532:4	Jody 19566:13, 22 19567:4 19568:3	
included 19578:9	inspection 19518:4,17 19519:1 19520:5 19521:10 19537:9 19539:4	interviewed 19532:2	John 19518:24 19519:16	
including 19517:25 19555:13 19576:7	inspections 19536:22,25 19537:1	intimated 19569:10	John 19518:24 19519:16	
income 19545:15	inspector 19515:19 19518:23	introduce 19552:15	John 19518:24 19519:16	
incorporation 19544:21	inspectors 19516:19,23	introduced 19512:13 19567:5	joints 19576:9	
increasing 19558:13		investment 19545:4	Jonathan 19591:19	
indicating 19552:20		investments 19541:3 19543:2 19545:3,17	July 19566:12, 15,17 19567:16, 20,23 19569:14, 17 19578:7 19592:24	labour 19512:17,20 19516:16,20 19525:4 19526:20 19536:22,25 19537:6 19539:4 19551:2
indication 19557:1		Invoice 19572:20 19573:4	Jumping 19592:16	Lake 19517:17 19540:24 19542:3,20 19543:3 19547:15
individual 19566:21		involve 19542:24	June 19567:19	

19551:9 19556:17 19561:13 19562:9 19582:7 19583:22	19585:13	M	19568:4,6 19575:1,8,20 19576:4,20 19577:4 19582:10 19586:2,6,8,23 19594:5 19596:2, 18	19535:1,2,8
Lake's 19533:20	library 19554:23,24	Maclean 19531:23	mall?' 19533:25	meant 19553:14
land 19582:10	life 19586:9	Macleans 19534:15	malls 19555:12 19557:22	mechanics 19528:16
landlord 19547:4 19572:6	list 19552:12	Macrae 19594:20,22,23 19595:4,11 19596:21	management 19533:17 19574:4	meet 19522:22 19556:7 19566:3 19582:9 19586:25 19587:14 19595:18
large 19528:25 19545:4 19549:6	Living 19551:9	made 19538:18 19541:21 19543:2 19549:11,12,15 19554:6 19559:8 19560:15 19568:11 19580:6 19581:16 19582:21 19590:15 19591:5 19596:10	manager 19524:12,16 19540:19 19549:22,23 19550:14 19560:7 19567:6,10,13 19568:4 19583:19 19586:8	meeting 19546:15,22 19548:4,25 19549:16,20 19550:8 19552:5, 6,7,9,18 19555:25 19556:4 19560:21,22 19565:3,8,21,25 19566:13 19567:15 19568:1,16 19569:3,7 19573:14 19579:25 19580:15,21 19582:8,18,19,21, 25 19586:3 19587:14,22 19588:3,5 19589:12,22 19590:15 19592:17,19 19595:13 19598:4,7,9
larger 19562:7,8	loan 19543:19,21 19545:20,22,23 19557:10,20,23 19575:8 19578:18,21 19580:19 19584:13 19587:4,6,25 19588:10 19589:21 19590:24 19591:9	maintain 19543:16	mandate 19562:4	mandates 19548:15
lasted 19567:12	loans 19584:3	maintenance 19520:19 19586:8	mandate 19562:4	manuals 19587:3
lastly 19593:17	local 19543:2,6, 7,17	make 19518:9 19525:10 19530:20 19531:5 19541:10 19558:19 19571:14,19 19582:15,16 19585:3,20	mandates 19548:15	March 19519:13, 21
late 19567:19 19586:4	located 19546:1	makes 19522:24	March 19519:13, 21	marching 19592:25
leak 19522:7,17	location 19574:6	making 19549:17 19599:3	marching 19592:25	marked 19551:25
leakage 19553:22 19596:19	locked 19520:21	mall 19523:24 19524:12,16 19532:2 19533:17 19535:22 19546:19,24 19547:3,18,21 19548:8,17,18,21 19549:22,23 19552:11,21 19553:10,14 19555:4 19557:19,24 19558:19 19560:1,4,9 19567:5,9,13	mandate 19562:4	match 19580:13
leaking 19547:22 19555:2 19561:10 19596:3	long 19517:13 19533:8,10 19542:6 19545:5, 6,10,12 19565:25 19567:12,14	maintain 19543:16	mandates 19548:15	manuals 19587:3
leaks 19523:25 19537:19	longer 19538:6 19558:13,14 19565:20 19586:5	maintain 19543:16	mandates 19548:15	March 19519:13, 21
lease 19535:20	looked 19515:22 19516:23 19533:7 19574:25	maintain 19543:16	mandates 19548:15	marching 19592:25
leases 19547:9	lost 19569:11	maintain 19543:16	mandates 19548:15	marked 19551:25
leave 19564:24	lot 19545:7,11 19548:1 19562:14 19567:17 19584:6 19587:18	maintain 19543:16	mandates 19548:15	match 19580:13
led 19552:8 19554:14	lots 19559:21 19561:10 19572:5 19596:7	maintain 19543:16	mandates 19548:15	manuals 19587:3
left 19513:4 19515:20,25 19575:24 19580:15	lucrative 19545:18	maintain 19543:16	mandates 19548:15	March 19519:13, 21
lender 19544:8 19583:20	lying 19532:24	maintain 19543:16	mandates 19548:15	marching 19592:25
lending 19548:10 19562:6		maintain 19543:16	mandates 19548:15	marked 19551:25
length 19524:2 19528:1,8		maintain 19543:16	mandates 19548:15	match 19580:13
letter 19575:10 19577:25 19578:9 19579:4,7,8,9,16 19581:14,16,25 19589:8		maintain 19543:16	mandates 19548:15	manuals 19587:3
level 19581:18		maintain 19543:16	mandates 19548:15	March 19519:13, 21

19587:8 19592:4 message 19581:8 19593:9 met 19516:19 19517:10 19546:12,15 19547:19 19571:4 19592:9 19595:19,23 Michael 19531:24 microphone 19597:15 middle 19515:10 million 19536:9 19542:15 19562:24,25 19564:20 19574:16 19589:13 19590:4,5 mind 19550:12 19565:3 Mine 19551:24, 25 Ministry 19512:17,20 19516:15,20 19525:4 19526:20 19536:22,25 19537:6 19539:3 minutes 19539:14 19565:23 misconceived 19590:14 missing 19571:21 mistaken 19535:10,12 misunderstood 19521:19,23 mobilize 19564:22 mobilized 19559:20	moderated 19547:23 MOL 19513:3 19516:10,14 19537:16 19538:17 MOL_E 19512:24 moment 19514:7 19560:23 moments 19548:4 19570:21 money 19542:21 19543:19 19544:18 19547:11,13 19548:5,10 19557:11 19563:12,20 19592:5 19596:7, 8 monologue 19555:16 months 19525:22 morning 19512:2,4,8,11, 12,14 19517:9,10 19532:13 19537:5 19539:18,22,24 19586:22 19591:17,18 19599:1,12,20 mortgage 19553:13,14, 19556:17,18, 19557:20 19558:1,10,14,18 move 19554:22 19555:2 19580:19 moving 19564:16 19594:19 municipal 19535:14,22 Myles 19597:2,3	<hr/> N <hr/> named 19531:24 19554:21 names 19513:13 Nation 19542:5 nature 19587:18 19588:5,18 navigate 19519:5 Nazarian 19524:20 19536:3 19546:12,16,22 19547:20,24 19548:5 19549:21 19550:8 19552:9 19553:22 19562:16,23 19563:4 19564:7 19565:16 19566:7,10 19568:4,10 19569:2,3 19570:17 19573:13 19580:18 19581:9,17,19 19582:4,8,13,18, 20 19583:1 19585:25 19586:12,23 19588:4, 19589:12,20 19591:1,23,25 19592:9,22 19593:1,4,9,15, 19,21 19594:1,6 19595:13,15 19596:17 19597:12,17 Nazarian's 19559:11 19584:25 19595:6 needed 19530:19 19531:4 19552:23 19588:14 19590:3,9 19591:3 negative	19555:3 neglected 19538:17 negotiate 19547:9 net 19587:9 19590:25 news 19534:15 nice 19586:12 night 19574:10 no-one 19512:19 nominate 19550:24 nominated 19551:3 nominating 19551:5 normal 19523:21 North 19540:24 19542:4 Northern 19554:25 notation 19553:19 19554:5 19557:25 note 19549:16 19558:24 19565:20,23 notes 19549:8, 10,11,15,18 19552:19 19559:4 19565:3 noticed 19573:12 Nova 19546:1 number 19537:4 19553:21 19554:25 19570:20 19576:14,15,17 19579:20	<hr/> O <hr/> Oake 19513:21 oath 19512:5 19535:9 19594:10 object 19594:14 objection 19595:8 obliged 19535:21 observing 19555:19 obtain 19590:24 obtained 19536:4 19592:1 obtaining 19592:4 October 19520:2,4,25 19521:22,24 19522:11,21 19523:15 odd 19571:25 odour 19520:16 offer 19557:9,19 19568:16 19591:5 office 19545:25 19556:13 19559:25 19588:18 19590:11 offices 19587:1 official 19524:6 19533:23 one-page 19551:23 one-sided 19555:15 onerous 19572:16 ongoing 19549:18 19559:12 19568:6 19576:19 19582:11
--	---	---	---	---

19596:18	19537:25 19538:8 19568:6	partly 19528:20	peruse 19572:2	poisoned 19569:5 19598:18
Ontario	owned 19532:12	party 19587:8	Phase 19599:16, 17	pops 19587:19
19512:15	19546:24	past 19546:10 19548:2 19563:24	philosophical	portfolio 19545:20,22,23
19542:14	19555:12	patrons 19526:10	y 19556:9	portion 19542:16
open 19517:18	owner 19524:20	Paul 19517:10	phone 19520:15 19579:3 19581:8 19593:9	position 19543:20 19545:1 19553:8 19575:21 19578:2,25 19598:11
19527:22 19528:8	19546:19	pay 19535:21,24	photograph 19527:1 19528:16	possibility 19522:7
19549:2	19552:20	19558:15	photographs 19526:24	possibly 19518:1 19590:6
opened	owners 19544:4	19564:25	physical 19599:4	posted 19515:5
19517:20	ownership	19565:12	physically 19559:25	potential 19556:8,15
19571:17	19547:24	payable 19573:5	picture 19555:22	potentially 19543:17
19597:20	<hr/> P <hr/>	paying 19553:1 19558:14	piece 19518:13 19526:24 19527:4,21,25 19528:5,18,19 19591:3	pounds 19528:9
operations	package	payments 19545:24	pieces 19525:8, 9 19533:4 19591:3	preceding 19575:10
19555:4	19570:22	Peak 19567:18	place 19516:18 19542:15 19554:24 19564:10 19567:22 19569:9	precontract 19573:3
opinion 19573:9	19574:21	penalties 19553:17 19558:11,15	plan 19544:1,2 19563:24 19569:9 19588:15,20 19589:12,17 19590:5 19597:19	preference 19548:12
OPP_E2087	pad 19549:16	pencils 19529:17	plans 19586:14	preliminary 19588:4
19569:25	pages 19572:25	penetrate 19529:20	pleasure 19586:25	prepaid 19543:4
opportunity	paid 19535:23 19551:7	penultimate 19578:14	plummeted 19533:5	prepared 19557:8
19521:2 19550:24	paint 19554:19	people 19517:22 19526:16 19532:15 19534:14,16 19546:25 19552:12 19559:20 19584:3 19585:25 19587:19	pocket 19557:10	presence 19544:23
19595:17	paragraph	19578:15	point 19530:14 19558:7 19561:24 19563:16 19564:24 19566:7	present 19515:2 19516:18 19539:20 19546:9 19549:20 19578:22 19582:17 19592:18
option 19592:4	19533:13	performed 19576:7,13	president 19567:20	presume 19553:13
options 19563:1	19558:1,3	period 19545:7		
order 19514:12, 22 19515:10,19	19575:14,15	perpetrating 19565:10 19580:1		
19543:4 19548:17	19576:1 19578:9, 15	person 19589:10		
19553:1,4	park 19543:11	personal 19588:24		
19568:19	Parker 19513:17 19516:7	persons 19549:20		
19578:10	parking 19561:9			
19579:22 19581:2	part 19514:3 19551:24 19562:9 19564:10			
orders 19514:12 19593:1	19574:12			
organization	19576:18			
19561:24 19562:4	partial 19563:13			
19587:18	participants 19599:19			
organizations	participate 19541:19 19565:9 19580:1			
19552:10	participation 19541:17			
orientation				
19587:21 19588:5				
ovens 19521:13				
overhead				
19521:10				
overnight				
19533:6				
overpaid				
19536:11				
oversee				
19514:19				

pretty 19554:9 19584:25	projects 19541:18 19544:17 19548:12 19579:20	purchasing 19582:10	Quintes 19533:16	reads 19570:12
previous 19522:20 19547:23 19550:1 19567:3 19576:16 19578:4	proper 19582:13	purport 19559:4	quotations 19589:9	ready 19539:21
price 19573:11, 12	properties 19557:14	purpose 19552:7 19556:4 19568:1 19577:23	quote 19573:6,8 19574:12 19593:25	real 19546:7 19547:1
principal 19545:24	property 19553:2 19556:20 19557:18,21	pursue 19580:4	quoted 19573:11	realized 19568:11
print 19549:6	proponent 19587:14	put 19542:15 19574:25 19577:14 19589:8	quotes 19553:24 19554:2 19573:19	reason 19521:8 19534:18,20,23 19558:12 19560:20 19576:21 19598:6
prior 19512:5 19546:16,22 19571:5,8,11	proposal 19562:21 19564:15 19566:11 19569:9	Q	R	reasonable 19545:8 19592:7, 12
pro 19535:21	propose 19551:25	quarter 19536:9	raise 19556:22 19562:15 19565:16	rebate 19536:4, 10
probing 19555:20	proposed 19569:6 19574:1 19588:19	quest 19556:6	raised 19547:15 19562:13	recall 19513:24 19514:16 19515:4,15 19520:6 19524:22 19537:17 19555:18 19564:9 19567:24 19570:9,21 19589:7 19592:11
problem 19553:22 19564:5	proposing 19557:12	question 19516:13 19531:1 19542:10 19563:9 19570:24 19578:20 19594:9 19597:11	range 19542:25	receive 19545:23,24 19578:10 19581:1
problems 19596:2,12,18	protrude 19528:23	questioned 19574:19	rata 19535:21	received 19536:8 19570:6 19574:23 19575:5 19577:7,25 19578:6 19581:15,25
proceed 19588:13 19589:21 19591:6	protruded 19528:20	questioning 19540:9 19585:11	rates 19545:19	receiving 19570:9,22 19574:21
proceedings 19600:4	provide 19515:11 19541:4 19543:5 19563:19 19564:12 19573:8	questions 19512:16 19517:1,11 19536:14 19538:12 19555:17,21 19583:4,5,7 19585:23 19586:18,24 19591:13,21 19594:16 19595:9 19596:22,24 19597:2,5 19598:24	rationale 19574:18	recess 19539:9, 15
process 19536:5 19580:19 19581:15 19584:12,17 19587:3 19588:1, 9	provided 19518:3,5 19551:24 19587:11 19597:19	questioned 19574:19	RBC 19556:19 19558:1,5,10	Recipient 19515:25
products 19515:14	providing 19541:22 19557:11	quicker 19548:1	RDC 19544:13	recollect 19561:8
profitable 19545:18	Province 19512:15 19536:21 19542:16 19547:2 19597:5	questioning 19540:9 19585:11	re-attending 19523:11	recollection 19580:8 19595:22
program 19541:21	pull 19531:19	quicker 19548:1	re-caulking 19576:9	recommenda on 19582:15,17
project 19541:19 19543:18,20,23 19544:4,5,25 19545:5 19556:15 19559:11 19564:16 19582:11 19589:13	purchase 19576:8	quickly 19572:3 19582:1 19596:11	re-examination 19536:18,19 19537:13,15 19597:9,10	
		Quinte 19512:5, 11 19517:9 19518:12 19523:8 19526:23 19531:22 19532:12,22 19538:14	reach 19556:23 19593:10	
			reaching 19593:13	
			reaction 19561:18 19565:1 19574:13 19576:11	
			read 19594:17	

recommended 19574:3	19532:4 19593:25	respect 19517:11 19528:18 19535:14 19537:2 19544:9 19596:2, 18	returns 19545:6	S
record 19512:14 19566:18 19583:13	remind 19594:10	respond 19579:8	review 19551:5	
reference 19558:5 19561:24	renovations 19552:11	responded 19522:18	reviewing 19584:6	S-t-e-v-e 19550:6
referring 19572:10	repair 19571:17 19577:3	response 19564:19 19577:24 19579:16 19580:7,12	Rhonda 19599:13	safety 19514:13, 20,25 19518:4,17 19520:4 19521:9, 17 19537:25 19538:9
refinanced 19558:17	repairs 19568:6 19596:11	rest 19551:4 19599:5	Rick 19523:23 19555:25	sat 19551:15
reflected 19548:18	report 19513:4 19520:5 19522:4 19599:2	restaurant 19512:21 19513:5,15 19516:12 19520:6,8,12,18 19526:2,5,8,11 19532:10 19537:24	rightfully 19533:15	save 19579:22 19587:20
reflection 19575:23	reports 19518:5, 17	restoration 19567:18 19571:11,20,22, 24	rise 19599:19	scene 19567:18
Reflections 19554:25	represent 19512:15	restricted 19544:22	River 19542:3,4 19543:3,9,10	Schedule 19543:22
regard 19587:4 19588:8	representation 19547:4 19551:1	restrictive 19553:13 19556:18	Robert 19582:9	scheduled 19550:7
register 19595:21	representative 19514:14 19516:6 19592:3	result 19520:12 19524:8 19526:20	Rodriguez 19537:13,14,15 19538:11 19539:7,12	school 19529:17 19579:20
Registrar 19600:1	representative 19551:3	resulted 19523:3	role 19576:5 19583:21	scope 19573:24
regular 19560:13	request 19580:23 19582:21	RESUMED 19539:16	roles 19567:3	Scotia 19546:1
reinspection 19523:4	requested 19570:15 19578:6	retain 19525:15	roof 19533:3 19552:23 19553:22,25 19554:12,17 19555:1 19573:17 19576:7,13 19596:3	screaming 19580:13
reiterated 19578:4	requesting 19581:10	retention 19541:20	roofing 19567:22 19571:11,20,22, 23 19577:4 19589:2 19590:19 19591:9	screen 19549:3, 4
related 19558:16 19559:10	require 19574:10 19588:14	Retirement 19551:9	room 19560:22 19582:21 19594:19	scroll 19514:10 19518:22 19519:14 19520:23 19558:22
relationship 19551:9 19579:22	required 19574:8 19581:2 19588:19	return 19545:17 19581:10,11	roofs 19567:22 19571:11,20,22, 23 19577:4 19589:2 19590:19 19591:9	seals 19576:10
Relativity 19551:24	resided 19546:8		rosie 19513:17 19516:7	second-last 19578:15
relevant 19553:5	residential 19555:13		roughly 19547:19	secret 19547:22
reliance 19591:8	resort 19544:9, 10 19583:20		routine 19536:22 19537:1	sectorial 19550:25
relief 19556:9	resource 19582:5		rules 19594:18	secure 19557:18 19565:11 19568:8,20
remember 19518:24 19523:17,20 19524:23 19525:5,11 19527:3 19529:16	resources 19556:23 19557:1		RV 19543:11	security 19557:9,11,19,23 19558:20

seeking 19593:5	Shime 19591:15, 16,19 19594:15	sits 19551:14	source 19545:15 19557:6 19562:18 19590:9	standalone 19574:24
select 19514:13	ship 19592:21 19593:4	situation 19583:22	sources 19545:16	standard 19522:4 19572:7
selected 19561:12	Shoemakers 19599:23	situations 19584:19	south 19598:1	Standing 19582:16
sender 19570:25	Shore 19540:25 19542:4	size 19557:1	Spanish 19542:3	standpoint 19568:22
senior 19540:6	short 19578:19 19598:17	ski 19543:6	speak 19521:2 19581:21	start 19552:5,17 19564:22 19600:1
Sennett 19570:7 19571:2,5,8 19574:22 19577:8 19588:17,24 19589:5 19591:20	show 19544:2 19550:8	slashes 19532:24	speaking 19530:13 19536:25 19537:1	started 19517:15 19552:19 19559:12,13, 19564:23
Sennett's 19589:8 19593:17	showed 19523:24 19525:8 19533:16 19597:12	slightly 19513:12	speaks 19564:1	starting 19566:2
sense 19522:24 19547:6 19555:21 19557:20 19561:3 19571:20 19584:17	shown 19597:17,23	slow 19541:9	specifically 19586:2	state 19545:14
sentence 19578:14,15	shows 19520:5 19522:11	small 19528:7 19542:16	speculate 19530:23 19592:1	stated 19598:7
September 19569:18 19570:6 19575:3 19577:18 19581:10 19582:3 19593:9,14,18	shut 19526:12	smallest 19547:12	spell 19550:5	statement 19554:6 19558:23 19559:4,8 19560:15,17 19561:19 19576:12,24 19580:7,9 19587:10 19590:25
series 19518:4, 17	sign 19587:10 19591:1	smell 19584:11 19585:12	spend 19554:14 19596:7	statements 19563:24,25 19585:4
Serpent 19542:4	signature 19516:6	Smith 19512:6,8, 10,15,23 19513:2 19514:9 19516:25 19517:3 19537:24 19538:16,22 19597:7,8	spending 19547:11,13 19554:11	Status 19575:8
serve 19541:24 19562:7	signatures 19515:24	smooth 19568:14	spent 19554:5, 13 19596:7	step 19587:12,13 19591:24 19592:5
service 19513:18,21 19545:9 19565:11	signed 19572:15	social 19595:20	split 19586:7	steps 19564:14
services 19574:13	significant 19552:23 19553:11 19558:10,12	solicit 19552:9	spoke 19521:4 19530:14 19531:9 19575:16	Steve 19550:3
servicing 19564:1	signs 19560:10	solicitor 19583:15	spoken 19537:3 19562:16	stick 19529:19
session 19568:21 19590:1	similar 19543:22 19561:9 19562:5 19569:1 19587:8	solution 19563:13	sponsor 19543:1	Stoddard 19527:9,13
share 19535:21	simply 19529:7	solve 19553:22 19564:5	sponsorships 19543:1	stop 19598:8
shared 19579:21	sir 19526:6,9 19536:12 19539:1 19566:24 19587:1,24 19588:7 19591:12 19594:10,15 19596:25	sort 19514:18 19521:8,14 19542:23 19573:22 19575:18 19585:14	staff 19541:22	stopped 19565:2
sheet 19515:1	site 19564:22	sound 19524:13	stage 19594:4	store 19521:24 19537:20
Sherrard 19599:13,14		sounds 19571:19 19592:7	Stan 19513:14 19514:18 19516:1	Straight 19552:16
			stand 19540:23 19561:25 19562:2	
			stand-up 19529:10	

street 19555:14 19557:22 19559:25	superior 19521:8,17 19569:8	talk 19524:20 19529:24 19531:7 19532:20 19546:14 19553:12 19556:7 19582:10	terribly 19529:14	19521:3,4,5,9,15, 17 19534:23 19537:7,20 19538:3,9 19543:8 19545:6, 7,10 19547:19 19549:23 19550:4 19558:13 19566:7,9 19567:5 19579:23 19580:3 19583:15 19587:20 19595:14,23 19597:22 19598:5 19599:1,12
strong 19529:14,15 19580:9	supply 19542:13 19574:2,4 19580:24	talked 19521:16 19524:1 19527:2 19531:10,13,15 19556:14 19557:13,14,20 19562:19 19563:1	test 19584:11 19585:12	timer 19566:1,16
struck 19571:18, 24	support 19553:10 19556:6, 19568:8 19598:10	talking 19523:20 19532:21 19573:22 19597:23	testimony 19535:8	times 19554:15
structural 19529:21	supporting 19553:8 19584:16	tall 19527:12,15	text 19570:12	Title 19586:20,21 19591:12
structure 19565:4 19569:6 19587:17	supports 19541:4,17	tax 19536:4 19556:9	Thankfully 19533:4	titled 19572:19, 23
stuck 19529:2 19533:3	suppose 19526:10 19529:23 19590:16	taxes 19535:15, 22,23 19536:11 19553:2	thick 19572:12	today 19512:16 19552:18 19585:11 19599:9
study 19543:11, 13	supposed 19584:2	teacher 19529:17	thing 19534:25 19545:13 19547:12 19571:18 19573:22 19585:14	told 19518:13,18 19519:10 19521:5 19523:18,19 19524:11,25 19525:16 19529:25 19530:1,8,18,22, 24 19531:2, 19534:3,12 19536:24 19541:12 19547:7 19550:13 19563:10 19596:1,6
stuff 19514:19	surprised 19559:18, 19561:22 19572:4	team 19543:2	things 19521:14 19524:1 19531:18 19542:20 19559:13 19568:14,19 19573:17 19575:24 19583:8	thirdly 19593:8
sub-notes 19558:9	surrogate 19568:14	technical 19514:8	Thomas 19518:24 19519:16	Thomas 19518:24 19519:16
subject 19552:15 19571:16 19575:7,11	surrounding 19542:21	techniques 19573:16	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
submission 19590:18	sustain 19542:19 19548:17	telephone 19579:10 19581:19 19588:12,23	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
submit 19584:7	sustainability 19548:15	telling 19564:11	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
succeeding 19589:23	swore 19535:8	ten 19554:15	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
successfully 19561:11 19589:13	SWORN 19539:25	tenants 19546:2 19547:3 19555:1 19596:13	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
suggest 19524:10,24 19592:18 19594:3	syndicate 19556:19	tenor 19579:16	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
suggesting 19528:6	system 19574:8	term 19545:12	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
sum 19557:11		terms 19547:9 19560:13 19562:5 19564:16 19568:24 19578:2 19588:14 19599:4	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
summarize 19577:22	T	tend 19544:11	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
summates 19578:24		tennis 19543:7	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
Sunday 19522:8	tab 19549:2	tenor 19579:16	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14
Sundays 19522:8	taking 19528:15 19529:17 19565:3,20	term 19545:12	Thirdly 19593:8	thought 19521:20 19532:18 19571:21 19573:5,18 19574:15 19576:14

19557:20 19563:23 training 19515:12 translated 19541:8 trucks 19559:21 Tuesday 19599:11,20 19600:2,5 turn 19572:18 type 19543:18,19 19544:25 19545:13 19561:7 19564:3 19573:4 19578:9 19580:11 19587:17 typed 19515:21 19541:8 typically 19562:15	19525:7 19530:12 19531:2,3,22 19532:1 19540:18 19546:11 19559:24 19569:20 19572:23,25 19579:2 19589:11 understanding 19591:24 19592:14 understood 19528:19 19590:6 undertaken 19576:4 unexpired 19514:25 unheard 19598:5 uniform 19524:4 units 19555:13 unsuccessful 19589:22 upfront 19545:8, 11 19596:17 upper 19549:13 Upset 19533:15 uranium 19542:13	19516:18 19524:6 19537:17 voiced 19533:19 volume 19549:2 volunteer 19550:22 volunteers 19551:6	Wednesday 19599:17 week 19599:22 19600:2 weeks 19539:2 weights 19528:5 wet 19529:11 whatsoever 19594:13 WHMIS 19515:12 wide 19542:25 wife 19567:4 19586:7 William 19539:20,25 window 19560:8 woman 19527:15,17 19528:7 wondering 19534:2 word 19559:2,9 19571:21 19584:1 words 19519:6 19590:22 work 19532:13, 23 19548:13 19559:18 19560:9,11 19561:7,13 19563:25 19564:3 19568:7 19572:14 19573:8,10,24 19574:1,10,16 19575:22 19576:3,6,12,19 19599:9 worked 19526:4 19579:20 Worker 19516:6 workers 19514:13 19515:12 working 19542:7 19543:5,	25 19550:17 19554:13 19559:1,15 19561:20 19564:22,23 19586:6 19595:4 workplace 19515:3,20,21 19525:5 works 19584:12 worse 19548:1 worth 19576:12, 22 19587:9 19590:25 written 19531:23 19581:18
U				Y
Uh-hmm 19520:17 19584:18 ultimately 19567:19,20 unbelievable 19598:16 unchanged 19578:3 undergoing 19576:3 underlined 19559:2,16 underlining 19559:8 underlying 19574:18 underneath 19558:1,2,6 19562:21 understand 19520:3 19523:1	van 19550:3,6 19555:18 19598:3,11 verbatim 19559:5 verify 19514:2 version 19515:21 19549:6 19573:3 19598:17 viability 19545:12 19548:21 visit 19513:3,8, 24 19514:2,4	Wallace 19539:17,18 19540:14,15,17 19541:25 19544:16 19550:13 19551:21,22 19552:3 19567:8 19569:16,24 19570:2,4 19572:18,21 19581:5,7 19583:3 19598:22,23 19599:10,15 Wallace's 19585:22 walls 19515:6 wanted 19525:15 19552:13 19586:11 wary 19586:15 wasting 19580:3 watching 19529:18 water 19529:8	Yakimov 19566:13 19567:4,25 19568:9,24 19569:13 19575:24 19580:22 19586:2,4 19592:24 Yakimov's 19568:5 year 19532:22 19553:2,5 19566:12 19585:15,17 years 19542:8 19547:23 19560:13 19576:20 19583:14 19594:25 yesterday 19512:19 19516:10 19518:12 19525:16 19527:3 19528:13 19529:25 19530:4 19531:8 Yonge 19555:13 19557:22	

Z

Zellers

19554:21,22

zoom 19515:23