

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 1

March 04, 2013



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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is Day 1 in the Inquiry proceedings held
before the Honourable Justice P.R. Bélanger
Commissioner, at the White Mountain Academy of the
Arts, 99 Spine Road, Elliot Lake, Ontario, on the
4th day of March, 2013 commencing at 10:00 a.m.

REPORTED BY: Helen Martineau
Certified Shorthand Reporter

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5 Nigel Marshman, Esq.,
6 Duncan Ault, Esq.,
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8 Nadia Authier, Ms.,
9 Natalia Rodriguez, Ms.,
10 Ivana Nenadic, Ms., Commission Counsel
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14	Paul Cassan, Esq.,	City of Elliot Lake
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16	Douglas Kearns, Esq.,	Retirement Living and
17		NorDev
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19	James Maloney, Esq.,	Rod Caughill
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21	Ernest Thorne, Esq.,	International
22		Association of Fire
23		Fighters
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1 --- Upon commencing at 10:00 a.m. on
2 Monday, March 4th, 2013.

3 THE COMMISSIONER: Ladies and gentlemen,
4 good morning. Welcome to this opening session of
5 the public hearings of the Elliot Lake Commission
6 of Inquiry.

7 As you know, my name is Paul Bélanger
8 and I am a retired judge of the Ontario Court of
9 Justice.

10 On the 19th of June 2012, I was
11 appointed by the Government of the Province of
12 Ontario to be the Commissioner of this Inquiry.
13 And we've been mandated to look into the causes of
14 the collapse of the Algo Centre Mall, and the
15 emergency management and response that followed,
16 to examine legislation, regulations and practices
17 in effect at the time of the collapse, as well as
18 to make recommendations to the government with a
19 view to ensuring that this sort of tragedy does
20 not occur again.

21 The terms of reference of the Inquiry
22 can be found on the Inquiry's website at
23 www.elliotlakeinquiry.ca, as is other important
24 information about our work.

25 Every Commission of Inquiry has to

1 invent itself from scratch. Administrative and
2 legal staff must be found. Facilities need to be
3 rented and fully equipped from staplers to large
4 photocopiers and from pencils to computers.
5 The Commission's work is made doubly difficult
6 because of the relative remoteness of Elliot Lake
7 where the closest commercial airport is two hours
8 away, either in Sudbury or Sault Ste. Marie. And
9 driving distance from large centers such as Ottawa
10 and/or Toronto are seven to eight hours away in
11 the best of weather conditions.

12 On a number of occasions in the past few
13 months, teams of lawyers dispatched to interview
14 witnesses have had to return, their mission
15 unaccomplished because of inclement winter
16 weather.

17 In addition, the Commission has had to
18 navigate carefully in order not to interfere with
19 ongoing police investigations, as well as
20 investigations by the Ministry of Labour, the
21 Professional Engineers Association and the
22 Coroner's Office, et cetera.

23 In some respects, we can work
24 cooperatively and in parallel with these
25 organizations, but this must be done carefully

1 considering the differing and often divergent
2 legislative and policy mandates of each.

3 We have set up offices in Ottawa while
4 overseeing, at the same time, the construction of
5 this impressive hearing facility in the White
6 Mountain building here in Elliot Lake, with
7 offices for and space for staff, for counsel, for
8 interpreters and press, et cetera, servers for our
9 computer equipment and all of the electronic
10 equipment that you see set up in this hearing
11 room.

12 We've implemented a document retrieval
13 and coding system, as well as a document sorting
14 and evaluating system, all electronic, to ensure
15 that all documents that are relevant to the
16 Commission's mandate are made available to all
17 participants, and eventually to the public when
18 the most important and relevant ones are made
19 exhibits.

20 We've set up a website, as I have told
21 you, to inform all participants and the public of
22 the work of the Commission. We've signed a
23 contract for stenographic recording and monitoring
24 so that transcripts of the proceeding are
25 available to the participants and to the public

1 who wish to follow the proceedings of the
2 Commission.

3 And we're striving to ensure that rough
4 transcripts of the day's proceedings are available
5 on the website soon after the end of the sitting
6 day.

7 We continue to experience some
8 difficulty with bandwidth for receiving and
9 transmitting electronic information to and from
10 this facility, but I'm hopeful that the situation
11 will be regularized this week when the promised
12 optical cable is finally hooked up.

13 The video quality of the live broadcasting of
14 proceedings to our website may be somewhat
15 diminished initially, but we have been assured
16 we'll see a marked improvement before week's end.
17 In addition, Eastlink Cable will be providing
18 coverage, but with a delay.

19 And of course an entire logistical
20 apparatus had to be developed so that Commission
21 staff and counsel can be accommodated and
22 transported while they live here in Elliot Lake
23 and do their work.

24 And much of the credit for doing that
25 work in an efficient and cost-effective way goes

1 to Ms. Suzanne Labbé, our executive director, who
2 is in the back of the room. And you may have an
3 opportunity to meet her later on as these
4 proceedings develop.

5 We're providing simultaneous translation
6 of all of the proceedings to ensure that everyone
7 can follow the Commission's business in both
8 official languages.

9 There is additional seating in the
10 overflow room located on the ground floor so that
11 persons not able to find a seat in this hearing
12 room, or who are unable to get to the second floor
13 of the building, can follow proceedings on a large
14 screen TV.

15 And as well, the Commission has set up a
16 launch media room to make it easier for
17 journalists to cover the proceedings.

18 I've just described the highlights and the
19 minutiae behind those highlights are really mind
20 boggling.

21 Some of you will have met Commission
22 counsel, most of who are here today. Bruce
23 Carr-Harris, Peter Doody and Mark Wallace are
24 senior Commission counsel seated to my right in
25 the front row. Nadia Authier, Nadia Effendi,

1 Natalia Rodriguez and Duncan Ault are associate
2 counsel. Ivana Nenadic is our articling student.
3 And Nigel Marshman, another lawyer remains in
4 Ottawa at our offices there, along with Steven
5 Bindman who, among other tasks, will co-ordinate
6 the writing of our eventual report. Their
7 biographical notes are on the website.

8 And in addition to Suzanne Labbé, our
9 executive director is Peter Rehak. I don't know
10 where Peter is. If he is not here, he's with the
11 press. He is our media relations' specialist. He
12 has occupied that role with distinction in many of
13 Ontario's recent Commissions of Inquiry to ensure
14 that the public, through the press and our
15 website, is kept fully informed of our work and
16 our progress.

17 Responses to requests for information
18 will be handled by Peter, as well as by senior
19 Commission counsel and Nadia Effendi in French.
20 I'd also like to introduce you to two other people
21 that you will be seeing a lot of, our clerk
22 registrar Marc-André Bernard, and Kassandra Kuka
23 our document technician, who will ensure the
24 timely and efficient retrieval of all important
25 documents, technology permitting.

1 Commission counsel have been extremely
2 busy and diligent in the past few months
3 inventorying, classifying and determining the
4 importance and relevance of mountains of documents
5 that we've received as a result of the summonses
6 issued since last September.

7 They and their investigator have
8 interviewed hundreds of potential witnesses,
9 prepared overview statements, witness willsay
10 statements and assembled the document briefs that
11 witnesses will receive prior to making and giving
12 their testimony.

13 And I only touch briefly on the depth
14 and breadth of their work. It continues apace by
15 some of them as others participate actively in the
16 hearings.

17 It bears repeating that this Commission
18 does not exist to lay the foundation for criminal
19 charges or civil liability. This is not a trial.
20 I do not have the intention, nor do I have the
21 authority, to make any legal determination. The
22 strict rules of evidence that govern in a court of
23 law do not apply. The Commission makes its own
24 rules in consultation with the participants.
25 And as I have said, we are here to determine why

1 this tragedy happened, how the emergency response
2 and management was carried out, and how things
3 might be improved to prevent repetition.

4 Perhaps the most important aspect of our
5 mandate is to ensure that we proceed
6 independently, openly, fairly, and transparently
7 because after all this is the public's Inquiry.
8 To help us in that process, quite a number of
9 individuals and organizations have been granted
10 standing. Many of them are here today represented
11 by counsel.

12 And in addition, I have recommended
13 funding for some of them and so far the government
14 has accepted all of our funding recommendations.
15 Now, there will be two distinct phases to the
16 evidentiary part of the Inquiry. First we shall
17 attempt to determine the causes of the collapse
18 and study the legislation, the regulations, the
19 policies and the practices that have been in
20 effect until that sad event.

21 That requires of course that we go back
22 in time to the late '70s and chart the evolution
23 and standards over the four decades of the Algo
24 Mall's existence.

25 The second phase of the Inquiry will

1 look at the facts and the policies underlying the
2 search, rescue and recovery effort that followed
3 the collapse.

4 And finally, once the evidentiary
5 process has concluded, we anticipate seeking the
6 assistance of experts, national/international,
7 using round tables as the Inquiry model, to obtain
8 the most current information and advice pertaining
9 to subjects that will have arisen through the
10 public hearing process.

11 As we go forward in this endeavour, I'm
12 very conscious of the necessity of the process
13 being cost-effective. It must also be highly
14 efficient if we are to remain within the time
15 allocated to us by our Order in Council.

16 These two requirements are challenging
17 considering the narrow timelines and distances
18 involved, and the complexities of the problems
19 that we are asked to resolve.

20 We welcome input from the participants
21 at any time regarding our process and any
22 constructive suggestions on how to make it more
23 streamlined and more efficient.

24 Now, at this time I ask all counsel to
25 introduce themselves and I invite opening comments

1 or statements. Once we have heard from counsel,
2 we'll break for the remainder of the day to allow
3 for further familiarization with the equipment
4 which you have before you, and to permit
5 interaction between counsel to iron out potential
6 difficulties, discuss schedules, et cetera.

7 We'll begin hearing evidence tomorrow
8 commencing at 9:30 in the morning. And after this
9 week, I anticipate that we'll sit four days per
10 week, from Monday to Thursday next week and then
11 from Tuesday to Friday the week following, and so
12 on in like fashion. So that this can allow for a
13 four-day weekend every two weeks so that all have
14 an opportunity to attend to other business.

15 We'll have a 20-minute health break at a
16 convenient time both in the morning and afternoon
17 sessions. Lunch break will be between 1:45 and
18 2:00 p.m. Sessions will begin, as I have said, at
19 9:30 and should end at 4:30 in the afternoon, but
20 these times of course will be flexible.

21 My hope is that this process will
22 proceed smoothly and cooperatively with the
23 ultimate object always in view.

24 For those of you who continue to
25 experience sadness and pain as a result of the

1 events of 23 June last, and who want to retire to
2 a zone of silence and meditation, a quiet room has
3 been set up on the third floor in room 311 and I
4 invite you to make use of it.

5 So we're ready to begin. And after I
6 have made my comments in French, I will call first
7 upon Commission Counsel Mr. Peter Doody, but
8 before that I will deliver my comments in French.
9 [Opening address repeated in French]

10 So we are ready to begin and I call on
11 Commission Counsel, Mr. Peter Doody.

12 MR. DOODY: Thank you, Mr. Commissioner.
13 Mr. Commissioner, the role of your counsel is to
14 assist you with your obligation to find the facts
15 that led to the tragedy that occurred on the
16 23rd of June of last year and the response to that
17 tragedy.

18 Unlike the normal situation for us, your
19 counsel, when we are in court, our duty is not to
20 advance or defend the interest of any particular
21 party. Our brief is to determine the truth,
22 whatever that may be.

23 Our task commenced last year with the
24 issuance of summons compelling persons to produce
25 documents relevant to the mandate of this Inquiry.

1 It continued with interviews which have taken
2 place over the last several weeks and will
3 continue to take place in the weeks to come.
4 And today our role, and the Inquiry, moves to a
5 new phase, the conduct of the public Inquiry.
6 The factual findings you are required to make,
7 Mr. Commissioner, will be based only on the
8 evidence led before you at the public Inquiry.
9 That process will start now with the filing of
10 documentary evidence and some factual summaries.
11 And with your leave, Mr. Commissioner, I propose
12 to do that now.

13 I point out that s(8) of the Public
14 Inquiries Act of 2009 allows,

15 "A commission may collect and receive
16 information that it considered relevant
17 and appropriate, whether or not the
18 information would be admissible in a court
19 and in whatever form the information
20 takes..."

21 In subparagraph 9(1)(f) of the statute
22 provides that,

23 "...a commission shall, [mandatory
24 language] as much as practicable and
25 appropriate, refer to and rely on...[among

1 other things]...any other document or
2 information, if referral to and reliance
3 on the document or information would
4 promote the efficient and expeditious
5 conduct of the public Inquiry."

6 Your counsel are of the view,
7 Mr. Commissioner, which I know you share, that
8 this Inquiry must be conducted in an efficient and
9 expeditious manner.

10 As a result, the evidentiary portion of
11 the Inquiry will begin with the filing and marking
12 as exhibits of both what we have called overview
13 reports and documents compiled by the Commission.
14 The overview reports are summaries of information
15 obtained by the Commission. They were prepared by
16 Commission counsel and distributed to the parties
17 with requests for comments. The comments were
18 received and considered. Some of the suggested
19 changes were accepted, others were not.

20 I wish to emphasize, Mr. Commissioner,
21 that these overview reports are not facts which
22 have been found by you, nor do they, to use
23 lawyerly language, create rebuttable presumptions
24 of fact. They are simply part of the evidence.
25 And they are information which can be referred to

1 and could be relied upon in determining the facts
2 to promote the efficient and expeditious conduct
3 of this Inquiry.

4 The parties are free to suggest evidence
5 or cross-examine with the purpose of establishing
6 facts contrary to those set out in an overview.
7 They are, in our submission, simply part of the
8 evidence. Not necessarily stronger or weaker than
9 any other evidence you will hear. The weight of
10 that evidence will be for you to decide,
11 Mr. Commissioner.

12 The overview reports will be filed with,
13 in most cases, documents appended to them which
14 will also become exhibits.

15 All of these documents have been
16 obtained by the Commission from custodians where
17 one would expect such records to be kept in the
18 ordinary course. The source of each document is
19 indicated on the face of each document in what
20 we'll -- a word which you will probably come to
21 loathe somewhat, the doc number, which is found on
22 the bottom right corner of each document.
23 And the source is disclosed by that doc number and
24 also disclosed in the data management system of
25 the Commission to which all parties have access.

1 Your Commission counsel, Mr. Commissioner, submit
2 that in the words of subparagraph (9)(1)(f) of the
3 Act refers to and reliance on the document would
4 promote the efficient and expeditious conduct of
5 this Inquiry.

6 As participants were advised last week,
7 however, Mr. Commissioner, you have determined
8 that it would be fair to the participants for them
9 to have an opportunity, after the documents which
10 are appended to the overviews have been entered as
11 exhibits, to apply to you to have any particular
12 document expunged from the record if they wish to
13 take the position that it ought not to have been
14 admitted. If any such application is made within
15 21 days from the filing of a document as an
16 exhibit, the Commission will determine -- you,
17 Mr. Commissioner, will determine an appropriate
18 procedure to determine the objection.

19 If the objection is upheld, the documents will be
20 expunged from the record and no such application
21 may be made after 21 days following the filing in
22 evidence of any such document.

23 All of the exhibits filed today, and
24 indeed filed every day of the Inquiry, will be
25 posted on the Commission's website normally the

1 same day, it may be tomorrow for these exhibits
2 given the volume of them. But generally at the
3 end of the day, each day, the exhibits which were
4 filed that day will be posted and available on the
5 website.

6 The proceedings, as you have indicated,
7 Mr. Commissioner, will be simulcast online and
8 broadcast with a delay on the community television
9 station in Elliot Lake. Transcripts of the
10 evidence will be posted each day. These are, in
11 the vernacular, "rough transcripts" which Madam
12 Reporter will be producing in real time. In other
13 words, as the words are spoken. They will appear
14 on the screen which is the large screen which is
15 behind me. And it is available for public
16 viewing, particularly for those who have hearing
17 issues.

18 Those transcripts will be posted at the
19 end of the day and then certified transcripts will
20 be available within a number of days thereafter
21 and posted on the website to replace the rough
22 transcripts.

23 The exhibits, Mr. Commissioner, will be
24 hyperlinked on the transcripts. So that if one
25 goes on the website, one opens the transcript, if

1 there's reference to an exhibit number in the
2 transcript, if you click on that number the
3 exhibit itself will appear on the screen, which
4 should simplify access to the evidence not only
5 for the lawyers, but more importantly for the
6 public following the Inquiry.

7 To proceed then, Mr. Commissioner, to
8 the filing of the overview reports. And the first
9 report -- I will simply describe them. These
10 overview reports will be, as I say, posted on the
11 website if not today, tomorrow. And the exhibit
12 number will be found beside each one as they are
13 posted on the website.

14 And so what I propose to do today,
15 Mr. Commissioner, is simply describe by category
16 the types of documents -- sorry, the documents
17 which are being entered today.

18 The first is a list of relevant
19 individuals. And this is a document which has
20 been prepared by Commission counsel, and
21 circulated to the parties, which sets out
22 year-by-year the owner of the mall, the employees
23 of the mall, or employees of the corporate owner
24 of the mall, the mayor of the city, the
25 councillors at the City of Elliot Lake, employees

1 of Elliot Lake in relevant positions. And in
2 addition, the consulting firms who have provided
3 reports during that year. And the document number
4 of each of the reports is set out.

5 For the years in which NorDev, which is
6 an Ontario corporation wholly owned by a
7 non-profit corporation, which is generally called
8 Community Retirement Living, although it's not its
9 corporate name.

10 In any event, during the years that
11 NorDev owned the mall, the members of the board of
12 NorDev and Retirement Living are set out.

13 And this will provide a resource for persons to go
14 to in order to understand the evidence,
15 documentary and oral, about what particular people
16 did at a particular time.

17 And that is to be filed,
18 Mr. Commissioner, as Exhibit No. 3. You will
19 recall Exhibits 1 and 2 were filed during the
20 application for funding on behalf of one of the
21 participants at our hearing in October. And so in
22 order to avoid the mortal sin of having two
23 documents with the same exhibit number, we are
24 starting the exhibits in the public hearing at
25 number 3.

1 EXHIBIT NO. 3: List of relevant
2 individuals

3 MR. DOODY: The second exhibit which I
4 wish to file today, Exhibit No. 4, is a list of
5 acronyms. Like all areas of activity, it seems
6 nobody wants to use the whole words. So
7 particularly in the subcategories like
8 construction. So there is a long list of acronyms
9 which are found in the documents and will be
10 referred to by the witnesses, and they are set out
11 and defined in the list of acronyms which is
12 Exhibit 4.

13 EXHIBIT NO. 4: List of acronyms.

14 MR. DOODY: Next, Exhibit 5 is a
15 glossary of terms. And these are terms generally
16 related to construction matters which are used by
17 those who are familiar with the industry, and
18 which knowledge of which will facilitate
19 understanding the reports filed by the
20 consultants. So that is filed as Exhibit 5.

21 EXHIBIT NO. 5: Glossary.

22 MR. DOODY: Exhibit 6 is an overview
23 report entitled "Designing and Building a Large
24 Construction Project." And this is an attempt to
25 serve as an educational primer, as it were, to

1 educate members of the public, and the
2 participants, as to the process that is generally
3 followed, not the process that was followed for
4 this particular building necessarily, but the
5 process that is generally followed when
6 constructing a building such as the mall from the
7 design inception, through the various approval
8 processes, the parties involved, and the steps
9 required in order to erect a large building.
10 And this document, which is Exhibit 6, will be
11 used as the basis of the evidence which my
12 colleague Mr. Carr-Harris will call tomorrow from
13 Mr. Dale Craig, who is an engineer which the
14 Commission has -- who the Commission has retained
15 as a consultant.

16 Mr. Craig will give evidence in respect
17 of the issues relating to the overview report and
18 explain some introductory matters.

19 And I should indicate, as I indicated
20 last week at the dry run, for those counsel who
21 were not here, cross-examination of Mr. Craig,
22 with your leave, Mr. Commissioner, is to be
23 limited to what evidence he gives in his
24 examination-in-chief.

25 If participants wish to cross-examine

1 him on matters outside the evidence he gives
2 in-chief and so advise us, if Commission counsel
3 determines that we don't intend to call Mr. Craig
4 later on in the Inquiry, but if a participant
5 wishes to do so, to cross-examine him with respect
6 to a matter he did not deal with in his evidence
7 in-chief, we undertake to provide him for that
8 purpose.

9 So that is marked as Exhibit NO.6. And
10 nine documents are attached to it and they will be
11 Exhibits NO. 6-1 to NO. 6-9.

12 EXHIBIT NO. 6-1 to NO. 6-9: Design and
13 Building a Large Construction Project and
14 Appendix.

15 MR. DOODY: The next overview report is
16 a history of the City of Elliot Lake. That's
17 Exhibit 7. It has three documents attached to it
18 which are exhibit NO. 7-1 to NO. 7-3.

19 EXHIBIT NO. 7-1 TO NO. 7-3: History of the
20 City of Elliot Lake.

21 MR. DOODY: The next is the ownership history of
22 Algo Centre Mall. Essentially for the lawyers
23 involved, this is a chain of title going back to
24 the commencement of the mall, including documents
25 which are filed on title, such as mortgages or as

1 they are called now charges and mechanics liens,
2 which are now called construction liens. They are
3 set out in attachments to Exhibit No. 8, and that
4 would be Exhibits NO. 8-1 TO NO. 8-28.

5 EXHIBIT NO. 8-1 TO NO. 8-28: Ownership
6 history.

7 MR. DOODY: Exhibit NO. 9 is an overview
8 report which lists the tenants at the mall in
9 alphabetical order as to the best that Commission
10 counsel, with the assistance of the parties, have
11 been able to determine, listing for each tenant
12 the start and end date of the tenancies and the
13 level and location within the mall where that
14 particular tenant was located.

15 And this has been done in order to
16 assist in understanding some of the evidence.
17 Because, Mr. Commissioner, you will sometimes hear
18 witnesses testify that such-and-such a thing
19 happened in front of store such-and-so. And this
20 may be of in placing that.

21 So that is Exhibit 9 and the documents
22 which served to establish that evidence are
23 attached at NO. 9-1 to NO. 9-127.

24 EXHIBIT NO. 9-1 TO NO. 9-127: Tenancies and
25 Appendix.

1 MR. DOODY: The next is an overview
2 report called the "State of Disrepair at the Algo
3 Centre Mall." And, Mr. Commissioner, you will
4 hear evidence about the conditions at the mall,
5 and much evidence about leaks at the mall which
6 occurred, according to some evidence you will
7 hear, to greater or lesser degrees in the entire
8 time that the mall existed.

9 This overview report is a summary and an
10 overview of what the documents, which the
11 Commission counsel have reviewed, which counsel
12 have prepared, were of the view would establish a
13 necessary factual background.

14 It has attached to it 288 documents
15 which served as the basis to it. These documents
16 are attached. So the state of disrepair overview
17 report is Exhibit 10, and the documents appended
18 to it, which served as the basis for its
19 preparation, are exhibits NO. 10-1 to NO. 10-288.

20 EXHIBIT NO. 10-1 TO NO. 10-288: State of
21 Disrepair and Appendix

22 MR. DOODY: The next overview report,
23 Exhibit 11, is with respect to the Elliot Lake
24 Public Library. Mr. Commissioner, the Public
25 Library was a tenant of the mall from 1989 until

1 the collapse.

2 And the documents which have been
3 reviewed by your counsel disclose a long history
4 of complaints of leaks at the Public Library.
5 Those documents are described in the overview with
6 citation 245, specific documents cited to specific
7 facts which are set out in the overview, a further
8 235 documents, which have been attached, which
9 serve to further illustrate the general situation
10 at the library.

11 So the Elliot Lake Public Library
12 overview report is Exhibit NO. 11. And attached to it
13 are exhibits NO. 11-1 to NO. 11-280.

14 EXHIBIT NO. 11-1 TO NO. 11-280: Elliot Lake
15 Public Library and Appendix

16 MR. DOODY: I should say that there will
17 be oral evidence called in respect of the library,
18 and indeed in respect of conditions generally at
19 the mall, over the period of time that it existed.
20 But filing this evidence in this form will
21 significantly reduce the necessity for that
22 evidence to be called orally.

23 The next overview report is entitled
24 "Leaks at Zellers". Zellers has a store at the
25 mall from 2001 until the time of the collapse.

1 The documents which have been examined by your
2 counsel disclose a history of complaints of leaks
3 at Zellers. The overview report cites 95
4 documents footnoted to specific facts set out in
5 the overview report. And there are an additional
6 62 documents appended as background.

7 So this document is filed as Exhibit NO. 12,
8 with the documents appended to it Exhibit 12-1 to
9 12-157.

10 EXHIBIT NO. 12-1 TO NO. 12-157: Leaks at
11 Zellers and Appendix.

12 MR. DOODY: Next, Mr. Commissioner,
13 overview report entitled "Leakage at the Algo
14 Centre Mall Scotiabank Branch." The Bank of Nova
15 Scotia was in the mall from 1980 when it opened
16 until 2011. The documents reviewed disclose a
17 history of complaints of leaks. The overview
18 report specifically cites to particular facts 63
19 documents, with an additional 162 documents
20 attached as appendices.

21 So this document, the overview report,
22 will be Exhibit NO. 13 and the documents appended to
23 it as Exhibits NO. 13-1 to NO. 13-225.

24 EXHIBIT NO. 13-1 TO NO. 13-225: Leakage at
25 the Algo Centre Mall Scotiabank and

1 Appendix.

2 MR. DOODY: The next overview report is
3 really more a description of the kind of documents
4 which are being filed, and these are the
5 consultant reports.

6 And, Mr. Commissioner, over the period
7 of time that the mall existed, a number of
8 consultants, engineers, architects, other
9 technical consultants were involved with the mall,
10 inspected it, provided opinions and reports to the
11 owners and others in respect of the circumstances
12 of the mall.

13 And in order to ensure that all of these
14 reports are grouped conveniently for access by the
15 participants and the public, we've come to the
16 conclusion that it would be most efficient and
17 expeditious to file them in one group. And they
18 are being filed under the title "Consultants'
19 Reports." And it's Exhibits NO. 14 to NO. 121, and NO. 1885
20 to NO. 1890.

21 EXHIBIT NO. 14 TO NO. 121 and NO. 1885 TO NO. 1890:
22 Consultant Reports.

23 MR. DOODY: The reports are, as I say,
24 in the main reports which were compiled over the
25 years, there are two reports which were compiled

1 after the collapse. And they are described in
2 accordance the way that you will see them when you
3 open them up, but they are post-collapse and they
4 are found in that group of consultants' reports.
5 The next group of documents to be filed, and this
6 is by far the largest group, is a group of
7 documents which we've entitled "Narrative
8 Documents." They are documents which, if read
9 together in chronological order, disclose a good
10 portion of the narrative which is part of
11 understanding the facts giving rise to the
12 collapse.

13 These are narrative documents with
14 respect to the narrative in phase one, not after
15 -- not of the collapse or after the collapse.
16 These are not all of the important documents which
17 will be filed before you, Mr. Commissioner. They
18 are not -- not all of them are indeed important
19 documents, but they establish, in our submission,
20 the basis of the narrative of this tragic event.
21 And it's most efficient to file them in one group.
22 So they are being filed, Mr. Commissioner, as
23 Exhibits NO. 122 to NO. 1875.

24 EXHIBIT NO. 122 TO NO. 1875: Narrative
25 Documents.

1 MR. DOODY: The next group of documents
2 to be filed this morning are entitled "Engineering
3 Drawings" or "Engineering and Architectural Plans"
4 is the title we settled on. And they are the
5 important engineering and architectural plans in
6 respect of the construction of the building. And
7 they are entered as exhibits NO. 1875 to NO. 1883.

8 EXHIBIT NO. 1875 TO NO. 1883: Engineering
9 and Architectural Plans.

10 MR. DOODY: And finally, the last
11 document to be entered as an exhibit this morning,
12 Mr. Commissioner, is a document entitled "Codes
13 for Custodians" and this is Exhibit 1884. And it
14 sets out the custodians from whom documents were
15 obtained by the Commission and describes how those
16 documents are described in the doc number.

17 EXHIBIT NO. 1884: Codes of Custodians.

18 MR. DOODY: So, for example, documents
19 obtained from the City of Elliot Lake, the prefix
20 of the doc number, if it is an electronic document
21 is CEL_E. If it's a paper document it's CEL_P.
22 And there is a long list of custodians, I think
23 over a hundred, and using these codes will
24 disclose where we got the documents.

25 I should say two things about that. The

1 first is that many documents we obtained more than
2 one copy of that document from different sources.
3 We have endeavoured to file as exhibits only one
4 copy of each document.

5 Sometimes it's important that a second
6 copy of a particular document be filed because it
7 may contain handwriting, or notes, or something of
8 that nature, that will disclose some fact that
9 will not be disclosed if only one copy was filed.
10 So we have done this. We have filed or attempted
11 to file only one copy of each document in an
12 attempt to avoid confusion in the evidence and in
13 the transcripts.

14 But a necessary result of that is that
15 you cannot conclude that if a particular document
16 was obtained from, say, the City of Elliot Lake
17 that another copy of it may not have been found
18 somewhere else. And that's a feature of the
19 evidence that we are doing our best to work
20 around, but it seems unavoidable.

21 The second thing about the document
22 codes is we obtained a number of documents from
23 the Ontario Provincial Police because the police,
24 as you have indicated, Mr. Commissioner, have been
25 conducting a parallel criminal investigation,

1 something with which we are not concerned other
2 than to avoid interfering with it.

3 But we obtained many documents from the
4 Provincial Police force. And they will be --
5 their doc numbers start OPP. But that doesn't
6 mean that those documents were originally obtained
7 from the OPP, obviously the OPP got them somewhere
8 else.

9 And for the participants, if you go on
10 the relativity database, you can look at the
11 source path of the documents and they will
12 disclose where the OPP got them.

13 Finally -- I should not say finally,
14 probably not finally. Mr. Commissioner, a word
15 about the procedure for entering exhibits during
16 the testimony. I must say, what I'm going to say
17 next I say with some trepidation because it was
18 the result of a lengthy discussion amongst your
19 counsel yesterday and I hope I have it right.
20 When each witness is called, the participants will
21 be provided with a list of documents which, as the
22 Rules say, are documents associated with the
23 evidence of that witness.

24 Those documents will be provided to the
25 participants in advance of the witness' testimony.

1 They will be available as a save search on
2 relativity so that the participants will be able
3 to go on relativity and look for -- I don't know
4 what we'll call it, but look for the documents
5 associated with Mr. Smith's evidence.

6 Some of those documents will have
7 already been entered as an exhibit when the
8 witness takes the stand, others will not have been
9 so marked.

10 At the time each witness takes the
11 stand, a paper -- I hesitate to use the word, but
12 we concluded this would be the most efficient way
13 to do it -- a paper list, a hard copy list, of the
14 documents associated with the evidence will be
15 distributed.

16 Those documents will have for each --
17 sorry, that list will have for each document on
18 the list an exhibit number. For some documents on
19 the list that will be the exhibit number that was
20 given to that document previously. For the others
21 which had not up to that point had an exhibit
22 number, a new number will have been assigned prior
23 to the witness taking the box, and that will be
24 facilitated with the invaluable assistance of
25 Ms. Kuka, without whom these proceedings would

1 simply shut down.

2 And that is the process. And this way
3 we believe the process of introducing exhibits can
4 be made more efficient and expeditious and the
5 risk of the same document getting more than one
6 exhibit number is lessened.

7 So there will not be a process whereby
8 in a laborious fashion a document is described as
9 a letter from Mr. Smith to Mr. Jones, dated
10 such-and-so, we'll enter that as the next exhibit.
11 Rather the list will be distributed at the
12 beginning of the day.

13 When the transcript -- when a lawyer
14 refers to a document, refers the witness to a
15 document the lawyer may say, I'm going to ask you
16 to turn to tab X of a paper book, which will have
17 been prepared. But the lawyer will also say that
18 is Exhibit 672. And the lawyer will know that
19 that is so because he or she will have the paper
20 list in front of him or her to look at.
21 And all of the participants will be able to take
22 home the paper list after each witness, which will
23 show all of the documents which Commission counsel
24 believe are associated with that witness'
25 evidence, even if he or she doesn't speak to them,

1 and will have an exhibit number assigned to them.

2 Those documents are subject,
3 Mr. Commissioner, to the rule I have outlined
4 earlier, that the participants have 21 days to
5 object to the admission of any document in that
6 way. And if the objection is upheld, the document
7 will be expunged from the record.

8 The participants will be able to see the
9 entire exhibit list on the database. It will be
10 on one of these save searches. And it will be
11 able to be viewed in any way that the
12 participants' lawyers wish to view it. For
13 example, they may wish to view it chronologically,
14 which would then allow them to see that the -- all
15 of the exhibits in the order in which each exhibit
16 was created rather than the order they were
17 entered. They will be free to manipulate that
18 list any way they like.

19 The counsel can stay -- are invited to
20 stay after the formal session this morning and
21 Ms. Kuka will give a lesson on how to do the
22 searches for overviews and exhibits. And we have
23 a handout to facilitate that for those who are,
24 like me, not that good with the technology.
25 A note, as your Honour indicated with respect to

1 computers, right now we have what can only be
2 described as an inadequate internet feed. We
3 expect that to be resolved this week, as you have
4 indicated, Mr. Commissioner.

5 In the meantime, it would be greatly
6 appreciated if counsel are using the internet feed
7 in the building not use it for anything other than
8 relativity. Because using it for other
9 activities, checking e-mails, or as I have heard
10 in previous inquiries, playing solitaire, eats up
11 bandwidth. And so please use it only for
12 relativity.

13 If you want access for other reasons,
14 you are invited to purchase what are called air
15 cards I believe, which allow you to access the
16 internet by the cell phone network.

17 And finally, Mr. Commissioner, you are
18 familiar with all of the lawyers who appear before
19 you, with the exception of one when who I, with
20 your leave, introduce and that is Mr. James
21 Maloney, counsel for Mr. Rod Caughill, who has
22 been granted standing pursuant to an order you
23 made earlier today which will be posted later
24 today.

25 And subject to any questions or comments

1 you have, Mr. Commissioner, those are my remarks
2 this morning.

3 THE COMMISSIONER: Thank you, Mr. Doody.
4 The documents as mentioned are made exhibits at
5 the Commission and are marked as such and numbered
6 in the order that you have identified.

7 Now, ladies and gentlemen, I propose to
8 hear from all of you. Have counsel among
9 themselves agreed on the order in which you will
10 speak this morning? Mr. Aube?

11 MR. AUBE: Yes, your Honour, I browbeat
12 everyone into submission and they agreed to let me
13 go first.

14 THE COMMISSIONER: Go ahead, sir, if you
15 will use the lectern. Some of you have been told
16 when you speak your comments will not be amplified
17 unless you press the button on your microphone.
18 That's the best way of doing it.

19 You can make your microphone live or not
20 depending on which of you is speaking. Of course
21 the microphone where Mr. Aube is standing will
22 always be live. No more than three microphones,
23 I understand, will be live at the same time.

24 MR. AUBE: Thank you, Mr. Commissioner,
25 we welcome you again to Elliot Lake. I am a

1 solicitor in Elliot Lake and a member of one of
2 three law firms representing the Elliot Lake Mall
3 Action Committee, ELMAC and the Seniors' Action
4 Group of Elliot Lake. Our lead counsel will be
5 Mr. Douglas Elliot, who is sitting in the front
6 row of the firm of Roy, Elliot, O'Connor of
7 Toronto, with his assistant counsel Ms. Alexandra
8 Carr, who is sitting in the back row. And after I
9 get out of here, she can take my seat and do the
10 real work.

11 I have heard counsel who isn't here, who
12 will be Jeff Broadbent from Feifel, Broadbent
13 Gualazzi of Sault Ste. Marie. And he will be
14 principally involved with the second phase of the
15 Inquiry.

16 You can take -- my role will be more of
17 a facilitator and I'll be pinch-hitting for others
18 who can't be here or who are delayed. And
19 whatever jobs Mr. Elliot gives me I will attempt
20 to do them.

21 Before we get going, I can only tell you
22 that as a Luddite I am thoroughly impressed with
23 the work that your Commission staff have done
24 before.

25 THE COMMISSIONER: You are in good

1 company, lots of Luddites here.

2 MR. AUBE: And a lot of people have
3 e-mailed, and whenever we've e-mailed they have
4 been extremely helpful. And as a small-town
5 practitioner, this is just absolutely
6 overwhelming, but you've made it easy to work your
7 way through this stuff. I know the story. We've
8 lived here. But this is a lot more than we ever
9 expected.

10 Let me tell you something about our two
11 groups of people. The first group is ELMAC, and
12 it's a community group that has over 70 members,
13 including one of the daughters of Mrs. Perizzolo,
14 one of the persons killed in the disaster.
15 We have five members of our committee sitting here
16 in the second-to-last row with Ms. Carr. And we
17 have a few other members spread out over the room.
18 A couple of those people were actually in the mall
19 when the roof fell in, some worked there.
20 And the members of our committee are all over
21 there -- the members of the group are all over
22 with their involvement.

23 The second group, if I can jump to
24 there, is SAGE. And they are on the next row at
25 the back, the second one from the back. And they

1 are a community-based group also. And they have
2 come here to show the flag so you have faces to
3 put eventually to what happened here.

4 The first group, ELMAC, also includes
5 other persons who were injured when the roof fell
6 in, former tenants of the mall, business people,
7 persons who've lost their employment at the mall,
8 and other citizens. Simple citizens who were not
9 necessarily there on the day of the collapse, but
10 were impacted through the community by the
11 collapse of the mall roof and its eventual
12 demolition.

13 The second group, SAGE, is an Elliot
14 Lake group whose stated purpose is to defend,
15 advance and communicate the common interest of its
16 members who are seniors and retirees.

17 As you will recall, SAGE sought standing
18 in this Inquiry with a focus on the emergency
19 management response to the partial roof collapse,
20 and has agreed at your suggestion to be grouped
21 with ELMAC with one grant of standing and funding.
22 They will be solely involved in the second part of
23 the Inquiry.

24 As I said a minute ago, ELMAC has over
25 70 members and SAGE has more than 40 members I was

1 advised today.

2 My colleague Mr. Elliot will have more
3 to say on the specific areas upon which each group
4 wishes the Inquiry to focus.

5 In addition to our named client, we take
6 the position that we represent all the citizens of
7 Elliot Lake who were collectively affected in some
8 way or another by the mall collapse. We are the
9 voice of the citizens of Elliot Lake at this
10 Inquiry. Our clients are neutral in interest.
11 They are not potential targets. They did not
12 build, design, or manage the mall, nor did they
13 have any responsibility to inspect or control the
14 facility over these many years.

15 Although we understand the first phase
16 of the Inquiry will proceed chronologically from
17 1979 when the mall was built, in order to have
18 some perspective I wish to give you a very brief
19 overview, from our point of view, of the history
20 of Elliot Lake. You will have a lot more details
21 in the materials that are coming before you, but I
22 would like you to hear it from people who have
23 been here.

24 Elliot Lake is a community of survivors
25 who refuse to give up in the face of adversity.

1 As you probably know, we began as a mining
2 community carved out of the wilderness of northern
3 Ontario in the mid-1950s and we became known as
4 the uranium capital of the world. Our population
5 peaked at about 25,000 in 1960.

6 This first boom ended abruptly when the
7 main purchaser of uranium found a cheaper source
8 elsewhere. And as a result, our population was
9 quickly reduced to about 6,000 people in the
10 mid-1960s when more than one third of the houses
11 were boarded up. First time I was here in 1967 I
12 saw those houses.

13 But Elliot Lake refused to die. With
14 the help of the federal government, uranium was
15 purchased by the government and stockpiled.
16 1976, Ontario Hydro signs a new long-term contract
17 with our two mining companies, Denison Mines and
18 Rio Algom Ltd. Once again, like a phoenix, the
19 community grew up to the point in 1979 we had a
20 population of over 20,000 people.

21 New mines were opened, new subdivisions
22 were built, new houses were built. And it was
23 expected that the population would be 30 to 40,000
24 people when the boom was to be finished and that
25 is the basic reason why the mall was built in

1 1979.

2 In fact, the city built additional water
3 and sewage treatment facilities. I understand the
4 hospital was expanded to meet anticipated demand.
5 But in 1990, Ontario Hydro announced they would
6 not renew their contract to purchase uranium from
7 the Elliot Lake area.

8 By 1996, the last mine, Stanleigh Mine,
9 closed down. Once again houses and apartments
10 owned by the mining companies were left vacant.
11 The second boom was over. Strike two.
12 Our population dwindled quickly again, this time
13 to 9,000 people. And people moved away, they
14 needed jobs, but many stayed. Some who stayed are
15 in this room today with you.

16 At the beginning, our community was
17 almost 50 per cent Francophone. These people came
18 from Abitibi, north of Quebec, everywhere in
19 Ontario to work in the mines.

20 In 1995, the ones that were still young
21 enough to continue to work had to leave to find
22 work elsewhere, others retired. And since 1995,
23 the newcomers that come because of our Retirement
24 Living Program are almost exclusively Anglophones.
25 It goes without saying that our population

1 continues to age and that we are losing some every
2 year.

3 For those who stayed after 1990 and
4 helped with the revival of the city and began to
5 develop and support a new principal industry,
6 namely retirement living. And Elliot Lake
7 Retirement Living, the corporation, was formed
8 with that object in mind.

9 Once more, people moved to Elliot Lake,
10 filled the empty houses, and today our city is
11 continuing as a retirement community. Over the
12 years we have also tried to attract new industries
13 and invested in many economic development
14 initiatives with varying degrees of success.
15 Our community continues to attract seniors and
16 other new residents by providing them with
17 affordable housing and other services, including a
18 reasonable level of shopping opportunities, which
19 of course until last year included the Algo Centre
20 Mall.

21 As you will see, Mr. Commissioner, the
22 mall was more than just a shopping area, it was a
23 meeting place. It was a focal point for many
24 seniors' days, and it was a place for people,
25 young and old, to go and meet friends out of the

1 weather all year round. It was the heartbeat of
2 the community.

3 And at one point or another, everyone
4 went to the mall to pick up something, to go to
5 the library, to pick up a small gift, to shop for
6 groceries, to go to the bank, when it didn't leak
7 in the bank, to have coffee or lunch with a
8 friend. And that's where we took our visitors on
9 rainy days.

10 The collapse of the mall on June 23rd,
11 2012, and the untimely death of two respected
12 members of our community was a serious blow to the
13 citizens of Elliot Lake and one, many believe,
14 could have been prevented.

15 The impact, as you have already guessed,
16 was tragic, emotional, personal, and economic.
17 The collapse of the mall was a third strike.
18 But this is not a regular ball game. Elliot Lake
19 cannot be counted out. We have in this community
20 a very strong tradition of rallying in the face of
21 adversity and we are not about to go gently into
22 that good night.

23 Those of us who are still here,
24 pioneers, second and third generation Elliot
25 Lakers, new arrivals, share a real and deep-seated

1 commitment to the future of this community. We
2 believe that Elliot Lake will survive, but we need
3 to know what happened on June 23rd. How it
4 happened. And more importantly, why it happened.
5 And it must never happen again anywhere else.
6 We, my colleagues and I, have undertaken a serious
7 task. We are here to represent our fellow
8 citizens. We are part of this community. I have
9 lived here and practiced law for over 35 years.

10 My colleague Mr. Elliot came to Elliot
11 Lake when he was two and he was raised here. I'm
12 not allowed to tell you how old he is. He
13 wouldn't let me do that.

14 Mr. Broadbent and his firm have had an
15 office here and worked in this community for over
16 15 years.

17 By the end of the Inquiry, I think
18 Ms. Carr will become an Elliot Laker.
19 And, Mr. Commissioner, by the time we finish this
20 Inquiry, you, as well as your staff, will feel
21 like honorary Elliot Lakers. We look forward to
22 working with you, sir, and with your permission I
23 yield the floor to our lead counsel, Mr. Elliot.

24 THE COMMISSIONER: Thank you very much,
25 Mr. Aube.

1 MR. ELLIOT: Mr. Commissioner, hello and
2 welcome. My thanks to my friend and senior
3 counsel, Mr. Aube. I also wanted to welcome
4 everyone here and this is not an adversarial
5 process. I truly mean everyone here, all of the
6 lawyers, the staff, everyone who is here working
7 on the Commission, to my beloved hometown.

8 We know many of you have disrupted your
9 home and personal lives to come here to aid the
10 people of Elliot Lake in this quest for truth and
11 justice. We know that you have made sacrifices to
12 help this community. And we sincerely thank each
13 and every one of you for participating in this
14 process.

15 I would like to take some time to
16 introduce some of the issues that our clients
17 anticipate will be important in the Inquiry. And
18 in the process, I will comment on some of the
19 principles that guide the Inquiry and the
20 challenges before you.

21 But my remarks ultimately, inevitably,
22 will be coloured by my very personal perspective
23 as a native Elliot Laker. It's inevitable.
24 I have divided my comments on the issues into
25 three parts. First are views about what the

1 Commission ought to consider about the events
2 leading up to the collapse. Second, what the
3 Commission ought to consider regarding the
4 emergency response. And third, some concluding
5 remarks where I'm going to touch on such things as
6 the question, Mr. Commissioner, that you raised
7 about the emotional burden of this process on
8 participants.

9 And I wanted to say how I've noticed
10 from the very beginning that you are so sensitive
11 to that, Mr. Commissioner, and for that I thank
12 you.

13 The events leading up to the collapse.
14 It's already apparent that the collapse of the
15 mall roof was not the result of some extraordinary
16 external event like a terrorist attack. It was a
17 bright summer day in Elliot Lake and the roof
18 parking deck was in normal use, as it had been for
19 decades. It just collapsed.

20 Although the Commission will have to
21 hear evidence on this point, there does not appear
22 to be any suggestion that there was an
23 extraordinary number or weight of vehicles on the
24 parking deck that day. Obviously there was no
25 snow. In short, it seems that the parking deck

1 was being normally used in ideal weather
2 conditions and a portion simply collapsed.
3 The fact that such an extraordinary tragedy could
4 occur in such ordinary circumstances is shocking.
5 What is even more troubling is that the failure of
6 this roof, in our view, the eventual failure of
7 this roof was predictable and preventable.
8 The collapse of the parking deck appears to have
9 arisen directly because some part of the steel
10 beams supporting the roof failed. However, we
11 believe that the evidence will show that there
12 were many underlying causes, such as the long-term
13 water corrosion, compounded by the effects of
14 salt. And that many persons, many organizations,
15 many entities, had an opportunity to prevent this
16 tragedy and failed to do so.

17 As I have heard it said by the people of
18 Elliot Lake to me so many times as I have shared
19 their pain, we knew it was bad, but we thought
20 someone would do something before it was too late.
21 You will hear from our members that there were
22 numerous and repeated signs of leaks and corrosion
23 of the steel and decay of the concrete structure
24 over many years. A number of people in Elliot
25 Lake, including our members, had repeatedly

1 complained about the state of the roof to the
2 owners and to the authorities.

3 Complaints about leaking in the mall
4 began immediately after it was built and were
5 virtually incessant since that time.

6 Anyone visiting the mall in later years could also
7 see visible evidence of rust and corrosion on the
8 steel.

9 Given that steel and the structure was
10 subject to over 30 years of corrosion from water
11 and salt infiltration, eventual failure of the
12 roof in some area was not only unsurprising, it
13 became virtually inevitable.

14 Our clients believe that no one person
15 caused this tragedy. The Commission will have to
16 examine the activities of many persons to arrive
17 at the truth of the matter.

18 The Commission will have to answer those
19 key questions about who knew what when and what
20 they did about it or didn't do about. There will
21 also be the very important question of what
22 information was shared and what information was
23 not passed on through oversight, neglect, or
24 otherwise.

25 The Commission will need to examine the

1 design and construction of this mall. An open
2 rooftop parking deck on top of a public mall was
3 unusual at the time. And in this community, with
4 its extreme changes in temperature over the years,
5 perhaps especially unusual. Why was it done? Was
6 it a reasonable innovation or a dangerous
7 experiment?

8 It has been a requirement for a long
9 time that any roof that is built in Ontario,
10 whether commercial or residential, must be
11 designed and built to keep the water out. It's
12 not exactly rocket science. This roof never did.
13 The fact that the leaks began so early and
14 continued so persistently suggested that the
15 Inquiry must consider many possibilities such as
16 faulty design, faulty installation or other
17 matters.

18 Municipal and provincial requirements
19 requiring waterproofing are just words on a page
20 if they are not effectively enforced.
21 Documents available from the public record show
22 that water and salt infiltration, and resulting
23 corrosion, were of major increasing concern for
24 all kinds of durable parking structures at the
25 time the mall was built and thereafter.

1 It appears that the conventional
2 solution, and eventual industry standard, was the
3 installation of an impermeable membrane. From
4 media reports we have seen, it appears that an
5 impermeable membrane was never installed on this
6 roof. The Commission must verify this through
7 evidence of course, but if it is true, why was it
8 not done? What alternative was used and why? Was
9 the alternative a reasonable and safe one at the
10 time based on the climate in Elliot Lake, the
11 design and expected use of the building? If so,
12 was it properly installed?

13 The Commission will be asked to look at
14 the decisions made by the architects, engineers,
15 builders and owners involved in the original
16 construction of the mall, as well as the City of
17 Elliot Lake's decision to approve the design and
18 to permit occupancy upon the completion of
19 construction.

20 Even if the decision to forego a
21 waterproof membrane on the rooftop parking deck
22 initially was reasonable, our clients believe and
23 expect that evidence will show that all three
24 owners knew that there was no membrane.
25 The Commission should consider whether at some

1 point it would have been reasonable to conclude
2 that whatever the original approach had been to
3 waterproofing that it had failed and that
4 consideration should have been given to going back
5 to the conventional solution of installing a
6 membrane.

7 Our clients believe that this
8 realization should have become obvious at some
9 time long before the collapse. If the evidence
10 establishes that, Mr. Commissioner, our clients
11 look to you for the answer as to why it was not
12 done.

13 Before considering the question of
14 repair and maintenance, the Commission will need
15 to examine the question of whether the roof
16 parking deck was used as intended.

17 Our members report, and the Commission
18 will hear evidence, that the roof was plowed by a
19 heavy snow plow in winter and salt was applied
20 regularly and liberally to the parking surface.
21 Was that in compliance with the design of the
22 system? Did it contribute to the failure?

23 The Commission will need to consider the
24 question of controlling access to the roof. Our
25 members report, and the Commission will hear

1 evidence, that the roof parking deck was used as a
2 convenient bypass for many years for congestion at
3 the corner of Hillside Drive and Ontario Avenue,
4 effectively turning what should have been a
5 parking lot with a slow speed limit into part of
6 the highway system of Elliot Lake.

7 Our members report, and the Commission
8 will hear evidence, that the signed warning that
9 appeared about weight restrictions, and the two
10 gates that theoretically limited access, were
11 routinely ignored. If this happened -- and you
12 must hear evidence of this of course, these are
13 only our submissions about what we expect -- if
14 this did happen, was it in compliance with the
15 design? Why did it happen? What could have been
16 done to stop it and by whom? And of course the
17 important question, did it contribute to the
18 collapse?

19 The's mall had three owners, most
20 recently Mr. Nazarian's company, Eastwood Mall
21 Inc.

22 Mr. Commissioner, any homeowner knows
23 that no roof lasts forever. It requires proper
24 maintenance and eventually replacement. Was this
25 done with respect to these commercial premises?

1 The Commission will also have to inquire about
2 into the maintenance of the mall and ask the
3 question whether it was properly maintained by
4 each of its three owners. The Commission will
5 have to ask what if anything could have been done
6 by each of the mall's owners, through proper
7 maintenance or major renovations, to prevent the
8 collapse.

9 Our members include many long-time
10 tenants of the mall and their evidence will be
11 that the roof leaking problem was always addressed
12 on a band aid basis. And these band aids either
13 never worked or only worked for short periods of
14 time.

15 They will also give evidence that the
16 general level of maintenance seemed to decline
17 under the last owner, Eastwood Mall Inc., because
18 of the owner's unwillingness to spend the money
19 required to do the job properly.

20 Even if the evidence should show that
21 the design was fatally flawed, or that the
22 installation of the so-called water-proofing
23 system was botched, our groups believe that the
24 evidence will show that at some point prior to the
25 collapse, there should have been a high level of

1 concern about safety and a thorough structural
2 investigation should have been performed by
3 competent professionals. Was that done?
4 There was one simple solution to reduce risk,
5 close the roof parking to all vehicles if it was
6 thought to be dangerous. It could have been done
7 by an owner or ordered by the city or the
8 province. So far as we know, it was never done,
9 until after the collapse, of course, when the site
10 was secured very securely by the government. But
11 of course then it was too late to save lives and
12 to avoid the injuries and psychological scars that
13 resulted from the collapse.

14 The Commission should consider if and
15 when this simple idea of closing access off was or
16 should have been considered as an alternative and
17 why it was in fact never done.

18 We believe that the evidence will show
19 that the leaking issues at the mall were not
20 ignored by citizens. They complained repeatedly
21 to anyone who would listen.

22 We believe that the evidence will show
23 that many regulators, professionals and trades
24 studied the leaks and studied them again, but
25 every time just band aid solutions were tried and

1 none of them ever worked.

2 The Commission will have to ask whether

3 any of those professionals ought to have

4 discovered the corrosion of the structural beams

5 that posed a serious safety risk to the employees

6 and patrons of the mall before the collapse.

7 Our clients firmly believe that the evidence will

8 show that this tragedy represents a failure of the

9 engineering profession of Ontario. A profession

10 on whom all of our lives depend every day.

11 Lastly, the Commission will be asked to

12 review the decisions and actions of authorities

13 responsible for regulating the construction and

14 maintenance of a safe public building. Many

15 complaints were made to the City of Elliot Lake

16 and the Ministry of Labour prior to the collapse

17 of the mall by our members and other tenants,

18 employees and patrons of the mall about the

19 leakage issues and the general state of disrepair.

20 It will be the Commission's responsibility to

21 review those complaints and the response, and the

22 relevant legislation, regulations, by-laws,

23 policies and procedures to determine if those

24 authorities had the authority to act. And if they

25 had the authority to act, if they carried out

1 their duties properly.

2 After reviewing each of these important
3 -- this was not a problem that was concealed from
4 the authorities, Mr. Commissioner.

5 After reviewing each of these important
6 issues, it is our submission that the Commission
7 will be invited to conclude that there were many
8 opportunities to prevent this collapse, but
9 unfortunately none of them were seized by anyone
10 in a position to do something about it.

11 The Commission will be fixed with the
12 important role of providing not only the
13 Government of Ontario, but the public with
14 suggestions about what can be done to prevent
15 similar tragedies in Canada's future.

16 I now want to turn to the emergency
17 response. To our knowledge, Mr. Commissioner,
18 this is the first public Inquiry into provincial
19 and municipal emergency management. The outcome
20 will provide the opportunity for all
21 municipalities, provinces and territories of our
22 great land to learn from the way that the
23 emergency situation in Elliot Lake was handled on
24 June 23rd, 2012.

25 The Commission will be asked to question

1 whether the emergency response to the collapse
2 followed the appropriate protocols and whether
3 anything could have been done to reach the victims
4 of the collapse sooner.

5 In particular, there appears to have
6 been a long delay between the initial rescue
7 strategy, which was deemed unsafe by an engineer
8 from the Ministry of Labour on the afternoon of
9 June 25th, 2012, and the alternate strategy which
10 began later on Monday evening.

11 And I wish to pause here to say that our
12 clients have made it very clear, because I know
13 that fire chief officer is in the room, I want to
14 make it very clear that our clients take no issue
15 with the conduct of the brave people from the
16 Elliot Lake Fire Department who did their very
17 best that day.

18 But there is this question about the
19 shifting strategy. It must be asked whether the
20 specialized excavator, which was ultimately used
21 to dismantle the collapsed mall, brought in four
22 days after the crisis began, could have been made
23 available sooner, or could for future tragedies be
24 made available sooner.

25 There appears to have been some

1 confusion as to which authorities were leading the
2 emergency response to the collapse. Particular
3 emphasis must be placed on questions of training,
4 command structure and execution of the City of
5 Elliot Lake's emergency response plan.

6 By delving into the emergency management
7 program of Elliot Lake and other laws,
8 regulations, policies, processes and procedures,
9 we hope to help the Commission. And that is our
10 goal throughout, Mr. Commissioner, to help you
11 with your work. To determine what worked, what
12 failed, the reasons for the failures, and how to
13 improve them in the future.

14 We must explore not only the requirement
15 imposed upon the provincial and municipal
16 governments and their agents, but also the
17 consequences of not complying. By so doing, and
18 making recommendations to improve emergency
19 management and planning, the Commission can help
20 Canada take some lessons from the tragic death of
21 two of the citizens of Elliot Lake and the
22 injuries of so many others.

23 I now turn to my concluding remarks,
24 Mr. Commissioner.

25 Let me begin my concluding remarks by

1 reiterating to you, Mr. Commissioner, and your
2 excellent team with whom we are so impressed and
3 who we pose the utmost confidence, we stand ready
4 to do everything necessary to cooperate with you
5 in your pursuit of the truth regarding the past
6 and devising wiser choices for the future.

7 However, we're human beings and not robots. There
8 is always an emotional dimension to an Inquiry
9 like this into a tragedy. Long before your report
10 is submitted, this process itself will have an
11 effect.

12 There is a social good in allowing
13 injured parties a voice to a person in a position
14 of authority who is there to listen with care.
15 And there is also a social good to holding
16 decision makers to account in a transparent public
17 process.

18 As I have spoken to my fellow Elliot
19 Lakers in the days leading up to this hearing,
20 four emotions have become recurring themes. I
21 want to thank you for that quiet room. That is a
22 great idea.

23 The first is anguish. Our client
24 Roberta Raeburn lost her beloved mother Doloris.
25 The Aylwins lost a daughter. This was a mining

1 town and it still is a town of tough, ordinary
2 folk, but this was a disaster that has left a
3 painful mark on every citizen.

4 Elliot Lake has had more than its fair
5 share of bad luck, but that was the worst tragedy
6 that every befell this city. Beneath the smiling
7 faces that you see around this lovely town lurks
8 deep pain. The pain, Mr. Commissioner, of a
9 preventable tragedy is that much more bitter.
10 The second pervasive feeling that I have
11 experienced is guilt. The phenomenon of
12 survivor's guilt is well known. And in this case,
13 it is exacerbated by the feeling that since so
14 many of us knew about the leaks that somehow we
15 are all responsible for the collapse. Let me say,
16 Mr. Commissioner, to my fellow citizens clearly,
17 it's not their fault.

18 They have a right to expect that
19 professionals, that builders, architects,
20 engineers, tradesmen, suppliers will erect safe
21 buildings. They have a right to expect that
22 owners of buildings will engage in proper repair
23 and maintenance to avoid such conditions. And
24 when such persons are incompetent, or careless, or
25 sacrifice safety to make a few extra dollars and

1 do not do what they ought to do, citizens have a
2 right to expect that their governments will do
3 their duty to protect them. A shopping center
4 roof should never just fall down.

5 The third emotion is fear. Some fear
6 that the truth will not come out. I have no
7 concerns about that, Mr. Commissioner. We have
8 confidence in you. More fear that the truth will
9 come out and that the stream of bad news about the
10 evidence at this Inquiry will simply damage this
11 city further.

12 Mr. Commissioner, we have such
13 confidence in you, but we must acknowledge that
14 this process will reveal some unpleasant truths.
15 In the end, however, I want to say to my fellow
16 citizens that I believe that this Commission will
17 be the best thing that ever happened to Elliot
18 Lake in the end.

19 The final emotion I want to speak about,
20 Mr. Commissioner, is hopefulness. Elliot Lakers
21 need hope. I was a young lad when Elliot Lake
22 crashed the first time in the early '60s. It was
23 a time of despair, of boarded up buildings and
24 talk of a ghost town. Along came a wise man who
25 had never lived here, but who believed in a

1 brighter future for the people of Elliot Lake and
2 he made it happen.

3 Even as a young boy, I could recognize
4 the famous bow tie of Lester B. Pearson. We need
5 a man like Mike Pearson and Mike Pearson's team
6 again. And we believe that we have that man and
7 that we have that team. That the jewel in the
8 wilderness will gleam again. We're going to make
9 it through this process and we will have the best
10 Elliot Lake we have ever had.

11 And if I can say a few words in French,
12 I hope that we will have flowers to ease our pain.
13 Thank you.

14 THE COMMISSIONER: Thank you very much,
15 Mr. Elliot, for those eloquent comments.

16 I am just looking at my watch. Would this be an
17 appropriate time to take a short health break?
18 Perhaps only 10 or 15 minutes, if you don't mind,
19 sir, and we'll start in 10 or 15 minutes.

20 THE REGISTRAR: Order, all rise. This hearing
21 will break for 15 minutes.

22 --- Morning break taken at 11:35 a.m.

23 --- Upon resuming at 11:50 a.m.

24 MR. SUBRAMANIAM: Good morning,
25 Mr. Commissioner. I'm here today on behalf of

1 Roger Oatly as well, he's senior counsel.
2 First off, I would like to say that we represent
3 the victims or victims' families. Present today
4 is the daughter of Doloris Perizzolo, Teresa. She
5 is in the front bench with her husband Darren.
6 In this Inquiry, what we're looking for is
7 basically we want to get to the bottom of why this
8 collapse occurred and why these needless deaths
9 occurred.

10 We may not be present for all of the
11 witnesses, but we will be following all of the
12 evidence through the webcast. We will certainly
13 be present when we are hearing evidence from the
14 City of Elliot Lake, from M.R. Wright and
15 Associates and the building owners.

16 I'll keep my remarks brief,
17 Mr. Commissioner. I just want to say that we hope
18 that we play a constructive role throughout this
19 Inquiry. Thank you.

20 THE COMMISSIONER: Thank you very much,
21 Mr. Subramaniam.

22 Mr. Cassan, are you next?

23 MR. CASSAN: Yes. Thank you.

24 Honourable Commissioner Belang er, my name is Paul
25 Cassan and I appear before you representing the

1 Corporation of the City of Elliot Lake, the
2 municipality in which the Algo Centre Mall was
3 located.

4 I will be assisted by my associates
5 Steven Shoemaker and Matthew Shoemaker of Wishart
6 Law Firm in Sault Ste. Marie. I would like to
7 introduce to you, Mr. Commissioner, chief officer
8 who is with us today, and Councillor Fিন্নamore who
9 are here on behalf of the municipality.

10 I would also like to introduce to your
11 Honour Piper Curtis who is a crisis counselor.
12 The municipality's Social and Wellness Committee
13 has set up a soft room, as you have previously
14 indicated, to provide assistance to anybody with
15 intense emotional response. That room, your
16 Honour, is at room 310.

17 THE COMMISSIONER: Did I say 311?

18 MR. CASSAN: You did and I wanted to
19 correct you.

20 THE COMMISSIONER: I thought it was 310,
21 I was told 311. In any event, it's right opposite
22 the elevator for anyone going up to the third
23 floor.

24 MR. CASSAN: Yes, thank you.

25 Your Honour, on behalf of the City, I

1 welcome you, your legal team, and their
2 accompanying staff to Elliot Lake. We are pleased
3 that the public hearings will take place here so
4 that the citizens of Elliot Lake can attend and
5 participate in this important process. We expect
6 that there will be significant public media and
7 social media attention paid to this Inquiry, in
8 particular given the media attention even this
9 weekend of another rescue and recovery mission
10 outside of Tampa, Florida.

11 In order to ensure transparency to the
12 residents of Elliot Lake, we have established an
13 Inquiry web page on the city's website.

14 Honourable Commissioner Bélanger, on
15 behalf of the mayor, council, city staff and all
16 residents of Elliot Lake we extend our sincerest
17 sympathies to the families and friends of those
18 who perished on June 23rd, 2012.

19 We hope that the findings and
20 recommendations that are presented at the end of
21 the Commission's mandate ensure that a disaster
22 like the mall collapse will never be repeated, and
23 that no municipality, nor its residents, are ever
24 subjected to this type of tragedy again.
25 We regret that the set-up of this courtroom does

1 not allow people in the gallery to see counsel
2 well. I personally wish that we did not have to
3 question witnesses with our backs to the gallery.
4 The city views this Inquiry as primarily for the
5 citizens of Elliot Lake and recognizes and
6 emphasizes the importance of the process for its
7 residents.

8 We are, however, pleased that the
9 proceedings are being broadcast and webcast to
10 allow for the maximum reach to all interested
11 persons.

12 We confirm that you have granted the
13 city standing and funding in all aspects of the
14 Inquiry. It is our intention to attend and
15 participate in the entire Inquiry and to assist
16 you and your considerable staff in discharging the
17 mandate that you have been given by the provincial
18 government.

19 We believe that an examination of the
20 structure and of the response is critical in
21 achieving a full understanding of the incident.
22 Additionally we believe that you must examine the
23 role that all agencies, organizations and
24 corporations played in the incident both prior to
25 and after the collapse.

1 In addition, there have recently been
2 publications and a seminar that purport to give
3 the full story of the collapse. We believe that
4 this is an impossible task until this Inquiry is
5 completed and your report is published.

6 Mr. Commissioner, Elliot Lake has a
7 population of 11,500 people and, as you know, is a
8 small city in northern Ontario. The collapse has
9 touched the entire community and the larger
10 district of Algoma. This event has changed Elliot
11 Lake forever.

12 Your Honour, the city wishes to
13 publically commend and thank its firefighters,
14 emergency responders and the Community Control
15 Group who worked relentlessly on the rescue
16 efforts until they were ordered out of the mall by
17 the Ministry of Labour on June 25th, 2012.
18 We thank the Ministry of Labour for providing
19 inspectors and engineers. We thank the province
20 for providing other emergency response services,
21 including the Ontario Provincial Police, their
22 specialty teams and the HUSAR team.

23 The city notes that the partial collapse
24 of the Algo Centre Mall was a career rescue, the
25 magnitude and destruction of which has never been

1 seen by firefighters throughout the province and
2 hopefully will, with the recommendations of this
3 Inquiry, hopefully never be seen again.

4 It was quickly learned after the
5 collapse that the magnitude of destruction was
6 beyond the capabilities and equipment of the
7 Elliot Lake Fire Department. And as such, an
8 emergency was quickly declared and provincial
9 resources accessed to assist in the rescue.
10 The city wishes to thank all of the other parties
11 that assisted in the response, including the
12 Ontario Fire Marshall's office, the Ontario
13 Provincial Police and their specialty teams as
14 well as the HUSAR team from southern Ontario.

15 As you know, Mr. Commissioner, and as
16 you indicated in your statement of August the 1st,
17 2012, there is an enormous amount of work to do in
18 this Inquiry.

19 The city has been working with many of
20 your counsel, and has been collaborating and
21 co-operating with counsel for other parties for
22 many months to prepare for this day. Counsel for
23 the Commission and other parties have been in
24 communication and working together on an almost
25 daily basis since you established your team.

1 Hundreds of thousands of pages of documents have
2 been produced and reviewed in preparation for this
3 hearing. We do not yet know how many witnesses
4 will be called, but there will be many.

5 We are aware of the optimistic deadline
6 of January 19th, 2014, that has been imposed on
7 you by the government. It is the city's intention
8 to work hard to support you and your counsel as we
9 strive to meet that date together.

10 The municipality was established in
11 1955. It has gone through economic boom and
12 suffered some very difficult financial times when
13 the uranium mines closed.

14 Frankly, one of the options considered
15 when that took place was to close down the city
16 and move everyone out. Instead, the city has
17 reinvented itself as a retirement living community
18 and it has so far weathered the financial storm by
19 cutting services and municipal staffing levels
20 significantly, while focusing on offering
21 amenities appropriate to its new demographic.
22 In addition to the financial difficulties that the
23 city has faced, the level of responsibilities have
24 significantly increased due to provincial
25 downloading.

1 It is important in the Inquiry process,
2 vis-a-vis the city, to understand that
3 municipalities in northern Ontario are staffed by
4 elected officials who put forward their time and
5 effort, who sacrifice of themselves and their
6 family lives for the betterment of their
7 community. For a large number of these officials,
8 including the mayor and council in Elliot Lake,
9 their role is in addition to their full-time jobs.
10 Oftentimes municipal staff in northern Ontario
11 face significantly restricted resources and are
12 frequently required to take care of multiple
13 facets of the municipal function.

14 The city looks forward to this Inquiry
15 to allow the full and fair analysis of all of the
16 evidence before reaching your conclusions. This
17 is a process that has not been available to date.
18 So our residents have not been able to obtain a
19 full understanding of the event and rescue
20 efforts.

21 We especially support you and one of the
22 purposes you stated in your August 15, 2012,
23 address being to foster public confidence in
24 government institutions.

25 The city looks forward to participating

1 in your efforts to improve public safety and for
2 your recommendations with respect to emergency
3 services and response throughout the country.

4 Mr. Commissioner, thank you and welcome.

5 THE COMMISSIONER: Thank you very much,
6 Mr. Cassan.

7 Mr. Kearns, good morning.

8 MR. KEARNS: Good morning, Mr.
9 Commissioner. My name is Doug Kearns. I'm here,
10 as you are aware, representing Retirement Living
11 and NorDev Business Corporation.

12 As the Inquiry knows, we owned the mall
13 from 1999 to 2005. My corporation is set up of a
14 volunteer board of 12 members, five of them come
15 from the community. There are two members from
16 the city, and five additional members are
17 appointed by community leaders and community
18 agencies. It was, as you know, commenced in 1991
19 and has been integral to the success of Elliot
20 Lake.

21 Today, on behalf of the board, I wish
22 you and the Commission welcome to Elliot Lake.
23 You will hear a great deal of evidence as it
24 relates to us. You will hear of our involvement.
25 You will hear a bit of our history. What we did

1 in 1991 and how we acquired the housing stock and
2 moved the community forward.

3 You will learn that in 1997 we learned,
4 along with the community leaders, that it was the
5 intention of Algoma Central to close the hotel and
6 to demolish it.

7 You will hear of what the financial
8 situation of and psychological situation of the
9 city was in 1997 as well as Retirement Living.
10 You will hear of the pressures on our board to
11 make a decision to make this purchase. You will
12 hear about the due diligence investigations that
13 we did and the report of our structural engineer
14 on what needed to be done to make that building
15 safe. You will hear what it was that we did in
16 light of his recommendations over the period of
17 time that we owned the mall. And you will learn
18 of the reasons behind the sale of the mall in
19 2005.

20 If I could be permitted, I would like to
21 point out that I have a fair deal of personal
22 knowledge with respect to this period of time. My
23 career started here in Elliot Lake in 1981, just a
24 year after the mall opened.

25 My partner and I put together the legal

1 framework for Retirement Living in 1991. We acted
2 for the corporation when we bought our housing
3 stock from Denison and Rio.

4 When he left the community to begin
5 practice in British Columbia, I took over the file
6 in its entirety. I acted for Retirement Living
7 when we bought the mall. I acted for us when we
8 sold it.

9 On a personal level, like many people
10 here today in the gallery, I was a frequent
11 visitor to the Algo Center as part of a lunchtime
12 exercise regimen. I would walk from my office and
13 go into the Foodland store to get a sandwich and a
14 pop and a paper. And I did that every day right
15 up until the mall collapsed. My walk took me
16 probably about ten metres away from the lower
17 level where the collapse ended.

18 Mr. Elliot has given his wish that this
19 will be a positive exercise for Elliot Lake, the
20 best thing that happens to Elliot Lake, and I
21 certainly hope that he's right.

22 I do have some concerns about that,
23 though, and I would like to just mention them to
24 you briefly.

25 When I look around the room here today,

1 aside from Mr. Aube, I realize that come
2 September, the rest of you will all be gone and
3 we'll be left here. And as the Commission
4 proceeds, I hope that you are able to keep mindful
5 of the fact that Elliot Lake does need to be a
6 better place when you leave.

7 There are challenges to that. There are
8 a number of people who will be giving evidence
9 here about decisions that they made, about actions
10 that they either took or didn't take. Many of
11 those people will be from outside of the community
12 and they will return to Toronto, or to Sault Ste.
13 Marie, or Sudbury entity and to the anonymity that
14 their hometown brings for them.

15 However, many of the people that you
16 will hear from will return to their homes in this
17 community and return to their family and their
18 neighbours.

19 What will happen of course is there will
20 be a permanent record of what they said. There
21 will be no doubt as to what you said at the
22 Commission because there will be a transcript of
23 it and there will be a video, no doubt, that is
24 archived that they can watch as well.

25 The activities of these days will mark

1 these people's lives in a way that may not be a
2 positive one.

3 We learned this morning that we now
4 have, I think, 15 people with standing for part
5 one of the hearing. And if we add Commission
6 counsel, and we add your ability to ask questions
7 when you think it's necessary, every person who
8 takes the stand here is going to be subject to
9 potentially 17 different lines of
10 cross-examination.

11 I know a little bit from my career what
12 that's like. And if any of them know what to
13 expect, I'm sure that they are very recalcitrant
14 and they should be worried about what will happen
15 here. And I know that all the Commission can do
16 is to treat its witnesses and treat its counsel
17 with the civility and temperance that I think we
18 will ask for.

19 I do ask for your consideration,
20 Mr. Commissioner, as this matter does proceed, to
21 do your best to make sure that the City of Elliot
22 Lake is a better place when this is completed.
23 Thank you.

24 THE COMMISSIONER: Thank you very much,
25 Mr. Kearns. You can be reassured that that is our

1 intention. Certainly it is mine.

2 Who's next? Yes, ma'am.

3 MS. MACKAY: Good afternoon,
4 Commissioner. My name is Heather MacKay. I'm one
5 of the counsel representing the Government of
6 Ontario at this Inquiry. My colleagues, Ken Hogg
7 and Norm Feaver, who are representing the Ontario
8 Provincial Police, are also here today. And
9 Ontario will be represented by Darrell Kloeze,
10 Kristin Smith and Judith Parker throughout the two
11 phases of the Inquiry.

12 The Government of Ontario was granted
13 party standing for both parts one and two of the
14 Inquiry. The government is pleased to be able to
15 participate in assisting the Commission to achieve
16 the important mandate of examining the
17 circumstances surrounding the collapse of the Algo
18 Centre Mall and the emergency response to that
19 collapse.

20 Various entities of the government were
21 involved in the matter set out in the Commission's
22 terms of reference. This primarily includes the
23 Ministry of Labour, the Ministry of Community
24 Safety and Correctional Services, and the Ontario
25 Provincial Police. Each of these entities had a

1 clear and important interest in the issues raised
2 by the Order in Council.

3 First in relation to part one of the
4 Inquiry, which will look into the events prior to
5 the collapse of the mall, the government welcomes
6 the opportunity to assist the Commission in
7 understanding the relevant legislation, regulation
8 and by-laws, and relevant policies, processes and
9 procedures of provincial and municipal governments
10 and other parties with respect to the structural
11 integrity and safety of the mall.

12 We also welcome the opportunity to
13 assist in clarifying the involvement of the
14 Government of Ontario with the mall prior to its
15 collapse.

16 Ontario had significant involvement in
17 the events following the collapse of the mall in
18 Elliot Lake, which is subject of part two of the
19 Inquiry, and welcomes the opportunity to assist in
20 clarifying that involvement, particularly the
21 involvement of the role of the Ministry of Labour
22 in the decision to call off the rescue which has
23 been inaccurately described in a number of forums,
24 including in some of the opening statements today.
25 Officials in the Ministry of Community Safety and

1 Correctional Services, in particular those in
2 Emergency Management Ontario, the Office of the
3 Fire Marshal, the Commissioner of Community
4 Safety, officers of the OPP, and employees of the
5 Ministry of Labour were directly involved in
6 supporting the emergency response to the collapse.
7 Also the Office of the Chief Coroner has
8 investigated the cause of death of the two women
9 who were killed.

10 Officials from each one of these
11 provincial bodies were on site in Elliot Lake in
12 the hours, days and weeks after the collapse to
13 provide support to the community, its senior
14 officials, the local first responders and the
15 Toronto HUSAR team which played a key role in the
16 emergency response.

17 HUSAR was deployed to Elliot Lake at the
18 government's direction to assist in the search and
19 rescue operation. Once deployed, HUSAR came under
20 the direction of the local incident command at
21 Elliot Lake.

22 The Government of Ontario has been fully
23 co-operating with Commission counsel, and the
24 Commission administrative team in providing
25 disclosure of all relevant documents in the

1 government's possession related to the history of
2 the Algo Centre Mall and in response to the
3 collapse.

4 As well, inspectors from the Ministry of
5 Labour and investigators from the Ontario
6 Provincial Police have and continue to be involved
7 in investigations subsequent to the collapse of
8 the mall.

9 While the terms of reference of this
10 Commission direct the Commission to avoid
11 interference or conflict with any ongoing
12 investigation related to this matter, both the OPP
13 and the Ministry of Labour have been co-operating
14 with the Commission in sharing materials that we
15 anticipate will be of assistance and benefit to
16 the Commission in fulfilling its mandate.
17 The Province of Ontario recognizes the profound
18 effect this tragedy has had on the people of
19 Elliot Lake and particularly on the families of
20 the women who were killed.

21 The work of the Commission in the coming
22 months will lead to important recommendations that
23 will inform the response of various entities in
24 the future in emergency incidents.
25 We look forward to working closely with the

1 Commission and Commission counsel in developing
2 these recommendations. Thank you.

3 THE COMMISSIONER: Thank you,
4 Ms. MacKay.

5 MR. LONGO: Good afternoon,
6 Mr. Commissioner. My name is Leo Longo and I am a
7 senior partner with Toronto law firm of Aird and
8 Berlis. I'm counsel to the Ontario Building
9 Officials Association.

10 The OBOA was founded in 1956 as an
11 organization committed to establishing and
12 maintaining a high professional standard in the
13 field of Building Code administration and
14 enforcement.

15 The association has been continued as a
16 self-governing, not-for-profit professional
17 association by a special provincial act in 1992.
18 Our client's members are appointed by their
19 respective municipalities to administer and ensure
20 provincial laws, municipal by-laws, codes and
21 standards related to the construction of all types
22 of buildings and structures to ensure that the
23 public's life, health and safety are protected.
24 The purpose of the Building Code is to,
25 "...establish standards for public

1 health and safety, fire protection,
2 structural, sufficiency, conservation,
3 including without limitation energy and
4 water conservation, and environmental
5 integrity and to establish barrier-free
6 requirements with respect to buildings."

7 As such, the role and responsibilities
8 of building officials has progressively expanded
9 in recent years.

10 The OBOA has and continues to play a
11 leading role in the education, training and
12 professional development of Ontario's municipal
13 building officials.

14 The OBOA was pleased to have been
15 granted standing for part one of this Inquiry and
16 is most grateful for the Commissioner's
17 recommendation that the association receive
18 provincial funding to allow it to participate in
19 the important work of this Inquiry.

20 Mr. Commissioner, the OBOA perceives its
21 role at this Inquiry as being twofold. The first
22 is that of offering assistance to the Commission
23 and all participants in better understanding the
24 state of the law and practices respecting both the
25 inspection of buildings while under construction

1 in code enforcement and the inspection and
2 maintenance of buildings once constructed.
3 The second role is to suggest legislative and
4 policy changes that will address and positively
5 improve upon the matters this Commission has been
6 charged to investigate and consider as part of its
7 terms of reference.

8 To date we have provided input to
9 Commission counsel respecting the content of
10 certain overview reports which will be filed at
11 this Inquiry.

12 As well, the association has responded
13 to the Commission's request for production of
14 specific documentation touching upon a variety of
15 association-related objectives and activities.
16 We will participate in this evidentiary phase of
17 part one proceedings to the extent necessary to
18 fulfill our perceived role.

19 We intend to be more directly involved
20 in the phase two portion of the Inquiry, which
21 will address and hopefully recommend legislative
22 and policy changes respecting Building Code
23 administration and enforcement that will ensure
24 that the public interest is better served and
25 life, health and safety protection is enhanced in

1 the future and that the tragedy suffered by the
2 victims of this roof collapse and this community
3 will not go unheeded or be repeated.

4 The association believes that the
5 current law and practices respecting building
6 construction, code enforcement and building
7 maintenance should be improved upon.

8 Matters that we suggest ought to be addressed will
9 include, number one, mandatory CBCO certification.
10 That is the Certified Building Code Official
11 certification be required of and obtained by all
12 building officials in our province.

13 Number two, establish a minimum
14 "competence" qualification standard for building
15 officials which requires education, training and
16 experience, in addition to the current Ministry
17 exam and that knowledge maintenance be required
18 once so qualified.

19 Number three, establishment of a
20 legislative framework for the regulation of
21 building officials which encompasses the
22 aforementioned minimum competence qualification
23 standard.

24 And, finally, number four, recognition
25 and acknowledgment of the chief building officials

1 independence from their municipal council and
2 employment terms that implement said independence.
3 Mr. Commissioner, in an OBOA submission to the
4 Minister of Municipal Affairs and Housing dated
5 July 14, 2009, and entitled "OBOA Self-Management
6 Final Report" the following observation was made
7 by my client respecting the uneven enforcement of
8 Building Code legislation.

9 "In line with this thought, a
10 proposal to improve public safety and to
11 further the public interest should not
12 have to arise from a coroner or provincial
13 inquest, or from a history of failings.

14 If Ontario takes one lesson from the
15 Walkerton event, it is that there is a need to
16 ensure strong and certain competence assessment
17 and enforcement procedures exist in the
18 application of public safety legislation.

19 When circumstances of diminished
20 competence, inconsistent professional and ethical
21 conduct, and lacking enforcement of legislation
22 align themselves, a failure or even a tragedy may
23 result.

24 Ontario's buildings are not falling down
25 around us, but circumstances exist within the

1 province that require pro-active attention in
2 keeping with the lessons of Walkerton."
3 We are hopeful that one of the lasting outcomes of
4 this Inquiry will be legislative amendments that
5 recognize the importance of building officials as
6 a profession and require that all building
7 officials have the requisite core knowledge and
8 experience to properly administer, and vigilantly
9 enforce the life, health and safety standards of
10 the Building Code.

11 Mr. Commissioner, the OBOA welcomes the
12 opportunity of being part of this Inquiry and
13 contributing to the formulation of recommendations
14 that will arise from the Inquiry's investigations
15 and proceedings.

16 All of which is respectfully submitted.
17 Thank you, sir.

18 THE COMMISSIONER: Thank you, Mr. Longo.

19 MS. RITACCA: Good afternoon, Mr.
20 Commissioner. My name is Luisa Ritacca from the
21 firm of Stockwoods in Toronto. I am outside
22 counsel acting on behalf of the Association of
23 Professional Engineers of Ontario, also known as
24 PEO.

25 From time to time, either PEO's in-house

1 counsel, regulatory compliance Leah Price or I
2 will be participating in this hearing phase.

3 I am happy to say I have with me today Linda
4 Lathem, who's in the back of the room. She is PEO
5 Deputy Registrar, regulatory compliance.

6 As you know, sir, PEO is the licensing
7 and regulatory body for professional engineering
8 in the Province of Ontario, pursuant to the
9 authority it's given under the Professional
10 Engineers Act, PEO regulates the practice of
11 professional engineering in the province and
12 authorizes companies to engage in the business of
13 offering engineering services to the public in
14 Ontario.

15 And while its principal object is to
16 regulate the practice of professional engineering
17 and govern its license holders, PEO in addition is
18 responsible for establishing, maintaining and
19 developing standards of knowledge and skill among
20 its members; establishing, maintaining and
21 developing standards of qualification and
22 standards of practice for the practice of
23 professional engineering; establishing,
24 maintaining and developing standards of
25 professional ethics among its members; and,

1 promoting public awareness of the association.
2 Following the tragic collapse of the Algo Centre
3 Mall in June 2012, PEO became aware that one or
4 more of its professional engineer license holders
5 appeared to have examined the structure and
6 provided professional services to the mall owners
7 prior to its collapse.

8 In addition, PEO determined that one of
9 its licensees, John Kadlec, was the structural
10 engineer responsible for the original structure
11 and design.

12 Once this Commission was established by
13 Order in Council 1097 of 2012 and calls for
14 standing were made, PEO recognized that it could
15 be of assistance to the Commission in fulfilling a
16 significant part of its mandate in part one as set
17 out in your terms of reference, sir.

18 And in particular, PEO recognized that
19 it could provide assistance in three areas. One,
20 the review and examination of professional
21 engineering legislation, policies and guidelines
22 as they may be relevant to the facts here.

23 Two, provide relevant evidence concerning the
24 engineers involved with the mall and evidence
25 concerning the regulation of professional

1 engineers and professional engineering in Ontario.
2 And three, make submissions with regard to
3 possible recommendations this Commission may make
4 concerning the regulation of professional
5 engineers in the province.

6 Mr. Commissioner, in your ruling
7 released November 8th, 2012, you recognize PEO's
8 interest and expertise in the issues raised in the
9 terms of reference. And in particular in your
10 decision on standing you stated,

11 "The PEO is the licensing and
12 regulatory body for professional
13 engineering in the Province of Ontario.
14 It has launched two investigations related
15 to the collapse of the Algo Centre Mall.
16 The PEO has issued guidelines in
17 connection with the practice of
18 professional engineering, including
19 guidelines relating to professional
20 engineers, providing services in
21 construction and building. The PEO
22 clearly has an important interest and
23 expertise in the issues raised by the
24 Order in council and is granted standing
25 in relation to part one as requested."

1 Prior to today, sir, a PEO has had
2 ongoing dealings with your counsel. And in
3 response to two summons issued by this Commission,
4 PEO has produced several hundreds of documents,
5 many of which are now in the system, and has -- or
6 is in the process of assisting your counsel with
7 an overview report, which we have prepared for
8 your counsels' review and which we understand will
9 be finalized in the upcoming days and will be
10 entered as an exhibit in these hearings.

11 PEO looks forward to continuing to work
12 with you and your counsel and assisting you in
13 fulfilling your mandate and in particular to
14 providing submissions with regard to potential
15 recommendations arising from the process.

16 Thank you, sir.

17 THE COMMISSIONER: Thank you,
18 Ms. Ritacca. The floor is open.

19 MR. MACRAE: Thank you, Mr.
20 Commissioner. My name is Robert MacRae and I
21 appear as counsel for Mr. Robert Wood.
22 What I would like to indicate is the exceptional
23 degree of assistance that we have received in
24 preparation for these hearings from all of the
25 staff at your Commission. And the task that has

1 been undertaken, and successfully completed to
2 date, has been very beneficial to myself and other
3 counsel as well.

4 My comments will be brief. Mr. Wood is
5 represented by myself and I will be present
6 throughout the phase one of the hearing.
7 Mr. Wood has co-operated completely, and I
8 anticipate that Mr. Wood will be a witness and
9 also will be attending in the near future in order
10 to complete a witness statement.

11 The comments from Mr. Elliot, I think,
12 are particularly important. This is not an
13 adversarial situation. This is a situation where
14 you have been tasked with the responsibility of
15 providing a report not only to the community of
16 Elliot Lake, but also to the Province of Ontario
17 that sets out information about what happened and
18 how this situation can be avoided.

19 And so with that in mind, I can give you
20 my personal undertaking as counsel that I will
21 cooperate completely in that task. There may be
22 difficult questions that have to be asked, but it
23 is not an adversarial situation.

24 So on behalf of Mr. Wood I can indicate
25 that the participation is important, very

1 important and we will be present.

2 THE COMMISSIONER: Thank you very much,
3 Mr. MacRae.

4 MR. BISCEGLIA: My name is Joe
5 Bisceglia. I'm with the firm of Bisceglia
6 Dumanski from Ottawa and Sault Ste. Marie. I
7 represent Mr. Craig Saunders. Mr. Saunders was a
8 shareholding officer in M.R. Wright and Associates
9 and that company was involved in the preparation
10 of the last inspection report.

11 Firstly on behalf of Mr. Saunders and on
12 behalf of myself, I extend my condolences to the
13 community and the families that suffered tragedy
14 as a result of this occurrence.

15 I don't know how to put it in words and
16 I can only say that even though I don't live in
17 Elliot Lake, in 1973 when I started to practice
18 law I opened up an office on behalf of a firm,
19 which Mr. Cassan is now associated with, and came
20 here for many years.

21 So I'm very familiar with the
22 courthouse, with all of the facilities that are
23 here, and stayed at that hotel many days and many
24 nights.

25 Mr. Saunders also is independently

1 represented from M.R. Wright and Associates and
2 Mr. Woods.

3 While his company at the time prepared
4 the report, he had no personal actual involvement
5 in the inspection and for that reason he was given
6 independent standing.

7 During the course of these proceedings,
8 I hope it doesn't become adversarial, but I intend
9 to cooperate as much as possible to get at the
10 truth. And I can't express better than Mr. Elliot
11 the issues that have to be canvassed. Thank you
12 very much.

13 THE COMMISSIONER: Thank you, Mr.
14 Bisceglia.

15 If there are no other comments -- do
16 Commission counsel wish to reply in any way?

17 MR. DOODY: No.

18 MR. COMMISSIONER: Thank you very much.
19 That being so, then we'll adjourn until 9:30 sharp
20 tomorrow morning when we begin hearing from
21 Mr. Craig, the engineer, about how construction of
22 a building is thought of and executed from
23 beginning to end. That should be interesting for
24 all of us.

25 Until tomorrow morning, thank you all

1 very much.

2 --- Whereupon the Inquiry proceedings
3 adjourned for the day at 12:30 p.m.

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REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth;

That the testimony of the witness and
all objections made at the time of the examination
were recorded stenographically by me and were
thereafter transcribed;

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken.

Dated this 7th day of March, 2013.

Helen Martineau

PER: HELEN MARTINEAU

CERTIFIED SHORTHAND REPORTER

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