

# ELLIOT LAKE COMMISSION OF INQUIRY

---

DAY 13

March 22, 2013

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ELLIOT LAKE COMMISSION OF INQUIRY

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--- This is DAY 13 in the Inquiry proceedings held  
before the Honourable Justice P.R. Bélanger,  
Commissioner, taken at the White Mountain Academy of the  
Arts, 99 Spine Road, Elliot Lake, Ontario, on Friday the  
22nd day of March, 2013, commencing at 9:30 a.m. ---

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REPORTED BY: Lisa Barrett  
CSR, CRR, RPR

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

2

3 Mark Wallace, Esq.

for the Commission

4 Natalia Rodriguez, Esq.,

for the Commission

5 Leo Longo, Esq.,

Ontario Building

6

Officials Association

7 Douglas Elliott, Esq.,

ELMAC/SAGE

8 Joseph Bisceglia, Esq.,

Gregory Saunders

9 Robert MacRae, Esq.,

Robert Wood

10 Paul Cassan, Esq.,

City of Elliot Lake

11 Steven Shoemaker, Esq.,

City of Elliot Lake

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NUMBER/DESCRIPTION

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No exhibits entered.

1 -- Upon commencing at 9:30 a.m. on Friday, March 22, 2013

2 THE CLERK: Order, all rise.

3 This hearing of the Elliot Lake Commission of Inquiry is  
4 now in session. Please be seated.

5 THE COMMISSIONER: Good morning,  
6 everybody.

7 We have a special occasion this  
8 morning. We won't say the number. I'm sworn to  
9 secrecy.

10 MS. KUKA: Thank you.

11 THE COMMISSIONER: Mr. Wallace.

12 MR. WALLACE: Yes, good morning,  
13 Commissioner.

14 This morning we're joined by video  
15 conference by Mr. Roger Pigeau. He joins us from  
16 Clearwater, Florida and we had a dry run with the  
17 facilities earlier and things seem to be working  
18 smoothly and we're ready to go.

19 THE COMMISSIONER: Good morning, Mr.  
20 Pigeau.

21 THE WITNESS: Good morning.

22 THE COMMISSIONER: I gather it's  
23 a little warmer where you are, than it is here.

24 THE WITNESS: It is, but it has sort  
25 of cooled off the last couple of days, down to about

1 70 degrees, I guess. A little bit warmer than  
2 Elliot Lake.

3 THE COMMISSIONER: We are not very  
4 sympathetic, sir. Thank you. Welcome. Thank you  
5 for being here this morning.

6 THE WITNESS: Thank you.

7 MR. WALLACE: Commissioner, I can  
8 also indicate to you that proposing a schedule for  
9 the examination of Mr. Pigeau along these lines:  
10 Starting at now and going until about 10:30,  
11 breaking for about 15 minutes and going until about  
12 11:45, and then adapting the lunch hour,  
13 accordingly.

14 THE COMMISSIONER: Thank you. That's  
15 fine. We're going to have to swear in. Is there  
16 someone to swear in Mr. Pigeau, locally?

17 MR. WALLACE: There was somebody with  
18 him in the room. Was there somebody else that could  
19 do that?

20 THE COMMISSIONER: Or we can do it.

21 MR. WALLACE: Yes, from here.

22 THE COMMISSIONER: Go ahead, Mr.  
23 Registrar.

24 We're going to swear you in, sir, or  
25 give you an opportunity to make a solemn declaration,

1 if you don't wish to swear an oath to a Bible or some  
2 other religious document.

3 THE WITNESS: Okay.

4 THE CLERK: Mr. Pigeau, do you prefer  
5 to swear on a religious document or do the solemn  
6 affirmation? It's entirely up to you.

7 THE WITNESS: Excuse me, could you  
8 repeat that?

9 THE CLERK: Do you prefer to swear on  
10 a religious document or do you prefer to do the  
11 solemn affirmation? It is entirely up to you.

12 THE WITNESS: Either one would  
13 suffice. First one, probably.

14 THE COMMISSIONER: Let's go with the  
15 Bible.

16 MR. WALLACE: Could you ask if  
17 there's -- I don't see a Bible in the picture.

18 THE CLERK: Do you have a Bible with  
19 you in the room or is there a way to obtain one?

20 THE WITNESS: Not to my knowledge. I  
21 can check, if you want me to.

22 THE COMMISSIONER: No, don't bother,  
23 sir. We'll take your solemn affirmation. That will  
24 be sufficient.

25 THE WITNESS: Okay.



1 THE CLERK: Do you solemnly affirm  
2 that the evidence to be given by you to the  
3 Commission shall be the truth, the whole truth and  
4 nothing, but the truth?

5 THE WITNESS: I do.

6 THE CLERK: Could you please state  
7 your name in full and spell it for the record?

8 THE WITNESS: Roger Pigeau.

9 The last name is P-I-G-E-A-U.

10 THE CLERK: Thank you.

11 ROGER PIGEAU: AFFIRMED.

12 EXAMINATION-IN-CHIEF BY MR. WALLACE:

13 Q. Good morning, Mr. Pigeau.

14 A. Good morning.

15 Q. I understand, sir, that you were  
16 employed as the Chief Building Official in  
17 Elliot Lake from August 1980 until November 1999?

18 A. Yes, I was.

19 Q. And I understand, sir, that you  
20 completed a civil engineering technology program at  
21 Cambrian College in Sudbury, and following that you  
22 worked as a -- for a consulting firm in North Bay by  
23 the name of RS McClelland.

24 A. Yes.

25 Q. You worked there for five years?

1 A. Yes, sir -- yes, sir.

2 Q. And, after that, you were  
3 employed as a Building Inspector for the City of  
4 North Bay for 10 years?

5 A. Yes, sir.

6 Q. And you came to Elliot Lake from  
7 the North Bay building inspector job?

8 A. Yes.

9 Q. Sir, as the Chief Building  
10 Official in Elliot Lake, could you give us some idea  
11 of your principal duties, please?

12 A. Well, the principal duties were  
13 the enforcement of the Ontario Building Code, and at  
14 that time, we were overly busy with the construction  
15 of approximately 2,000 houses. So, we were kept  
16 quite busy, just maintaining the inspection and  
17 making sure that the houses were being built  
18 properly.

19 I also was responsible for numerous  
20 by-laws which -- I could go on and on, whether they be  
21 Property Standards or animal control or lottery  
22 licensing.

23 I was also the trailer park manager.  
24 The job title was very onerous.

25 Q. You wore a number of hats, when

1 you were the Chief Building Official?

2 A. Definitely. My main purpose was  
3 the Chief Building Official, but I also had Property  
4 Standards, animal control, noise by-law, garbage  
5 by-law, quite a few other by-laws that I was  
6 responsible for.

7 Q. In terms of buildings, and  
8 safety, as I understand it, there were really two  
9 main aspects to the job, as the Chief Building  
10 Official.

11 One, in the construction phase, that  
12 is the approval of plans, and the inspection of  
13 buildings during the construction; is that correct,  
14 sir?

15 A. Yes, sir, yeah.

16 Q. And once the buildings were  
17 constructed, to enforce the property standards after  
18 construction?

19 A. Yes. Yes.

20 Q. Now, dealing firstly with the  
21 building inspections during construction, what type  
22 of building inspections were typically done, sir?

23 A. We got -- if it was done --  
24 housing for example, numerous houses that were  
25 built, we had inspection reports that had to be

1 completed, footing foundation, the floor assembly,  
2 the framing, insulation. These were all done  
3 through conformance to the Building Code.

4 Q. And in connection with  
5 commercial buildings, what type of inspections would  
6 be done?

7 A. We would intermittently do  
8 inspections, but basically the responsibility had to  
9 be borne solely by the design architect.

10 If it was a commercial building we  
11 would require that the building be designed under Part  
12 3 of the Building Code, and prior to occupancy we  
13 would require certificates from the engineers and the  
14 architect that it conformed to the design.

15 Q. And once you received  
16 a certificate from the architect and engineer, would  
17 then an occupancy permit follow?

18 A. Yes. Yes, it was.

19 Q. And that occupancy permit would  
20 be issued through your office; is that correct?

21 A. Yes, it would be.

22 Q. Now, specifically, with the  
23 Algo Centre Mall, were you involved in any of the  
24 inspections during the construction phase?

25 A. No, I wasn't.

1 Q. Now, the other important aspect  
2 and what we're going to be dealing with here today,  
3 sir, is the Property Standards aspect of your job,  
4 and if you could turn, firstly, to Tab No. 10.

5 A. By-law 39-15.

6 Q. Yes, this -- this was the  
7 Property Standards By-law that was -- I'm sorry,  
8 I should -- yes, that's Exhibit No. 6-6.

9 You are familiar with this by-law,  
10 sir?

11 A. Yes, I am.

12 Q. And this was the by-law that was  
13 in effect during your tenure as the Chief Building  
14 Official in Elliot Lake?

15 A. Yes, it was.

16 Q. And under Section 4.1 --

17 A. Yes, sir.

18 Q. -- it requires that:

19 "The owner of any property  
20 shall repair and maintain that  
21 property in accordance with the  
22 standards of this by-law, or  
23 clear the property of all  
24 buildings, structures, debris  
25 or refuse and leave in a graded

1 and level condition as detailed  
2 by an Order given by the  
3 Officer."

4 Correct?

5 A. Yes, sir.

6 Q. So, that was the obligation on  
7 an owner, that is to keep the property up to the  
8 standards, according to the by-law?

9 A. Yes, sir.

10 Q. If you turn the page, sir, it  
11 sets out the standards for various aspects of the  
12 building, and I'd like to draw your attention to  
13 paragraph 5.1.

14 And you can confirm that every --  
15 that as far as the structural soundness of  
16 a building is concerned, that the owner is obligated  
17 to maintain a building such that:

18 "Every part of a building  
19 shall be maintained in  
20 a structurally sound condition  
21 and so as to be capable of  
22 sustaining safely its own  
23 weight and any load to which it  
24 may normally be subjected."

25 Correct, sir?

1 A. Yes, you're right.

2 Q. And as far as a roof is  
3 concerned, if you look at the other page, the  
4 page to the right of it, that is 5.4, paragraph 5.4,  
5 it requires an owner to maintain a roof such that it  
6 is:

7 "... in a watertight  
8 condition, so as to prevent  
9 leakage of water into the  
10 building, and where necessary,  
11 shall be maintained by the  
12 repair of the roof and flashing  
13 or by applying waterproof  
14 coatings or coverings."

15 Correct, sir?

16 A. Yes, sir.

17 Q. And, in short, this is what the  
18 Property Standards By-law required -- the conditions  
19 that the Property Standards By-law required owners  
20 to keep their buildings in; correct?

21 A. Yes.

22 Q. And this would apply to both  
23 residential and commercial properties?

24 A. Yes, definitely.

25 Q. Now, this is what the by-law

1 required, and you were given powers under the by-law  
2 to enforce those standards, and that's set out in  
3 Section 9 and following -- that's at page 21.

4 A. Yes, sir.

5 Q. And you are familiar with the  
6 powers that were granted to you, to enforce the  
7 by-law; correct, sir?

8 A. Yes, sir.

9 Q. And in its simplest form,  
10 without going through every section and subsection,  
11 in its simplest form, the Property Standards  
12 Officer, following an inspection of the property,  
13 can order the property repaired or demolished as the  
14 case may be, and if the owner does not do that, the  
15 City can do the required work and sue the owner for  
16 the cost of doing that work; is that a fair  
17 statement, sir?

18 A. Yes, it is.

19 Q. There is an elaborate system  
20 that is set out in section 9, but in short summary,  
21 what I said is accurate.

22 A. Yes, it is very elaborate.

23 Q. Thank you.

24 Now, that is the enforcement  
25 mechanism. The first step, obviously then is



1 an inspection; is that correct?

2 A. Yes, sir.

3 Q. Now, was there, during your  
4 period as the Chief Building Official of  
5 Elliot Lake, was there a program of routine,  
6 proactive inspections of properties?

7 A. No, no, there wasn't. At that  
8 time we were overly busy and that was never pursued.

9 Q. Okay. Can you give us -- you  
10 started in 1980 -- can you give us some indication  
11 of your manpower that you had working for you?

12 A. In 1980 I had, to my knowledge,  
13 two building inspectors and one plumbing  
14 inspector --

15 Q. And the --

16 A. -- and a secretary.

17 Q. So there would be yourself, two  
18 building inspectors, a plumbing inspector and  
19 a secretary?

20 A. Sorry, I have to correct myself.  
21 I hired a second building inspector  
22 after I started, so there was only one building  
23 inspector and one plumbing inspector when I started.

24 And I subsequently hired another  
25 inspector.

1 Q. And I understand that during  
2 your tenure in Elliot Lake in that position, the  
3 city's population went down and accordingly, what  
4 was your staffing situation when you left the job in  
5 1999?

6 A. One inspector and a secretary.

7 Q. So you --

8 A. To my knowledge.

9 Q. I'm sorry?

10 A. To my knowledge, it was one  
11 inspector and a secretary.

12 Q. So you had lost an inspector and  
13 a plumbing inspector?

14 A. Yes, I had.

15 Q. And these positions were  
16 full-time positions; is that correct?

17 A. Yes, they were.

18 Q. Now, you've told us that there  
19 was not a system of proactive inspections, proactive  
20 routine inspections during your tenure as Chief  
21 Building Official. What would get the process  
22 started? What would trigger an inspection?

23 A. An actual complaint from  
24 an individual.

25 Q. And what form would this

1 complaint take? What I'm asking here is: Would this  
2 -- could this be a written complaint or would it  
3 have to be a written complaint or could it also  
4 include an oral complaint?

5 A. A written complaint would be  
6 preferred.

7 Q. And was it your -- was your  
8 experience that that -- that's what was, in fact,  
9 required, not only preferred, but that's what was  
10 required?

11 A. Yes, it would be required, yes.

12 Q. So, your office would respond to  
13 a written complaint; is that correct?

14 A. Yes.

15 Q. Would that complaint necessarily  
16 have to be directed to you, as the Chief Building  
17 Official, or could it, for example, be directed to  
18 some other City official, and find its way to you?

19 A. I would welcome it be directed  
20 to me personally. I hate getting anything  
21 second-hand.

22 Q. Well, I mean --

23 Let me put it to you this way: If  
24 somebody wanted to make a complaint about  
25 a property, but really wasn't very familiar with how

1 the City operated, and sent a complaint outlining  
2 the particulars to, say, the Mayor, and the Mayor  
3 handed you the document and saying, "This is really  
4 up your alley", would this be sufficient for you to  
5 act on it?

6 A. Yes, it would be.

7 Q. So the complaint had to be in  
8 writing, but it wouldn't necessarily have to be  
9 directed to you, but it would have to be something  
10 involving the property standards?

11 A. Yes, definitely.

12 Q. And the idea of the process  
13 getting started by a complaint, I've seen -- I've  
14 seen the term in the documentation that it was  
15 a "complaint-driven process"; is that a term that  
16 you are familiar with?

17 A. Yes, definitely.

18 Q. And was this the way it was,  
19 throughout your time there, sir?

20 A. Yes, it was.

21 Q. And this was a policy of the  
22 City of Elliot Lake; is that correct, sir?

23 A. Yes, it was.

24 Q. And just -- I'm not going to  
25 take Mr. Pigeau to it, but you can see

1 an explanation for this policy at Exhibit No. 6-8,  
2 just for those who care to look at it.

3           Would you be able to initiate  
4 an inspection on your own, for example, if in the  
5 absence of a written complaint, if you -- you or  
6 somebody on your staff observed something, could you  
7 initiate an inspection or would that require, again,  
8 a written complaint?

9           A.    The complaint would have come  
10 possibly from myself. I would -- personally I would  
11 initiate the action, if it was very obvious.

12           Q.    So, in that situation, where you  
13 yourself or, I suppose, also a member of your staff,  
14 observed a situation that merited an inspection, you  
15 were free to do so?

16           A.    In a case where it could be  
17 hazardous, I definitely would pursue it.

18           Q.    And like -- sorry --

19           A.    No, it's -- that's all.

20           Q.    Okay.

21           A.    If it was overly obvious then it  
22 would be my -- in my job description to pursue it.

23           Q.    Fair enough. And this is  
24 a situation where you have observed a dangerous  
25 situation, or I would expect, by extension, if one

1 of your staff made the same observation and told you  
2 about it, you wouldn't ignore it.

3 A. No, I wouldn't ignore it.

4 Q. Okay. But as a general rule,  
5 and feel free to correct me if I'm wrong, in order  
6 for you to exercise your powers of inspection, you  
7 required a written complaint; is that fair?

8 A. Yes.

9 Q. Let me ask it in another  
10 fashion: Did you feel that you had the power to  
11 inspect in the absence of a written complaint?

12 A. It would depend on the  
13 circumstances. Is it a dangerous situation? As  
14 a Property Standards Officer, if it proved to be  
15 hazardous, then I would pursue it.

16 Q. And is this -- would this be  
17 restricted, when we're talking about the dangerous  
18 situations, would this be restricted to those  
19 situations that either you or a member of your staff  
20 observed, or could it be wider than that, that  
21 somebody could just tell you something and you would  
22 conduct an inspection?

23 A. It would be advisable to have  
24 this individual give me a written complaint. We  
25 don't have the time ...

1 Q. I'm sorry?

2 A. No, I'm saying, it would be  
3 wiser for the individual to give us a written  
4 complaint.

5 Q. So would it be fair to summarize  
6 the situation, that in order for you to conduct  
7 an inspection, you required a written complaint,  
8 except if you or a member of your staff observed  
9 a dangerous situation; is that an accurate  
10 assessment of the -- how you perceived the powers  
11 then?

12 A. It would appear that that would  
13 be proper.

14 Q. Okay.

15 A. My staff could give me a memo as  
16 such, to their -- to their -- give me a memo with  
17 regards to the problem.

18 Q. And I suppose, if the staff gave  
19 you a memo, that would, in fact, constitute  
20 a complaint in writing?

21 A. Yes, it would.

22 Q. Now, I want to ask you a few  
23 questions about the mall itself.

24 A. Uh-hmm.

25 Q. Now, we have heard evidence that

1 there was leaking at the mall almost from the day it  
2 was built, and that the leaking continued on a more  
3 or less continuous basis up until the time it  
4 collapsed.

5 And were you aware of the -- of those  
6 two facts, that is that it leaked almost from the  
7 day it was built, and it had a chronic leaking  
8 problem up until -- almost up until it collapsed?

9 A. It depended on the time of the  
10 year. Spring would be a -- you'd have a few more  
11 leaks, to be fair, but basically you could see the  
12 pails located inside the building.

13 Q. So, would it be fair to say --  
14 and I don't want to put words in your mouth here --  
15 but would it be fair to say that you were aware of  
16 the chronic leaking problem that the mall  
17 experienced? Is that fair?

18 A. I wouldn't call it chronic.

19 Q. Okay. How would you describe  
20 it, then?

21 A. Well, intermittently there was  
22 a bucket here and there, and the water was  
23 accumulated in pails and the pails were emptied,  
24 whenever the -- whenever they were filled.

25 So, the problem was controlled.



1 Q. You were aware of the fact that  
2 buckets and other devices were being used to collect  
3 the water in the mall?

4 A. Yes.

5 Q. And that this was  
6 a long-standing problem; it wasn't something that  
7 lasted one winter; it was a persistent problem?

8 A. Well, to my knowledge, it  
9 started and it stopped intermittently and for some  
10 years it didn't pose -- didn't appear to be  
11 a problem, and then it would start up again.

12 Q. And --

13 A. So it -- whether it was seasonal  
14 or yearly, it could stop and start up again.

15 Q. It was, however, a problem that  
16 persisted over a number of years; fair?

17 A. Yes.

18 Q. It also appears from the  
19 evidence that we've heard, that the leaking roof at  
20 the mall was a well known fact within the community;  
21 would you agree with that?

22 A. I'm sure it was.

23 Q. Was it something that was spoken  
24 of amongst your colleagues at work, the fact that  
25 the roof was leaking at the mall?

1           A.    I can't really recall discussing  
2   it with any other personnel from City Hall.

3           Q.    But would --

4           A.    Except for -- except for the  
5   Librarian.

6           Q.    Well, we'll get to the  
7   discussion with the Librarian, but I'm really at  
8   this stage, when I'm asking you did you -- you heard  
9   it discussed at the mall -- sorry, at City Hall, I'm  
10   not even necessarily implying that it was the  
11   subject of an investigation of any sort, but rather  
12   just a topic of conversation.  "Have you" -- "I was  
13   at the mall on the weekend and I saw a whole bunch  
14   of pails out," or something along these lines?

15          A.    I don't quite understand what  
16   you're saying.

17          Could you repeat that, please?

18          Q.    I'm just asking you if, when  
19   we're talking about whether or not the leaking at  
20   the mall was the subject of conversation at work,  
21   I'm really simply asking, was it the subject of  
22   casual conversation as opposed to a professional  
23   investigation on your part?

24          A.    Yes, it would be discussed  
25   casually.

1 Q. Okay. Can you tell us, from  
2 your own experience, what did you see in the mall in  
3 terms of leakage?

4 A. There was the -- establishing  
5 pails underneath drips of water coming through the  
6 ceiling, and these were interspersed throughout the  
7 entire, you know, over a large area.

8 It could be a few leaks over an entire  
9 floor area, and these were being controlled by pails,  
10 and it did not have any effect on the business of the  
11 mall, and the tenants never complained about it, so we  
12 would necessarily assume that the problem was being  
13 dealt with and also that the maintenance staff for  
14 Algocen Realty were quite diligent in trying to -- in  
15 repairing the leaks and providing, as I said, the  
16 relief for the leakage and there was never any  
17 problems with water on the floor or anything to that  
18 extent.

19 It was -- I felt very comfortable that  
20 the problem was being controlled and it was being  
21 repaired.

22 As a -- they did quite a few repairs.  
23 You could see them working on the rooftop quite often.

24 Q. First of all, you've said the  
25 tenants never complained. I assume by that answer,

1 you meant the tenants never complained to you; is  
2 that correct?

3 A. That's right.

4 Q. You also said that the -- it was  
5 being controlled by the use of pails.

6 What I gather you're saying is that  
7 the collection of water leaking was being  
8 controlled; not the leaks themselves?

9 A. Well, the leaks were controlled  
10 too, because -- it could start in the morning and  
11 the staff would go up onto the roof and repair the  
12 leakage problems, whether it be at a joint or at  
13 a catch basin or a grate or -- in that situation the  
14 problem was repaired.

15 Q. The --

16 A. Because this was not  
17 an ongoing -- the leaks were never ongoing at the  
18 same location. They might have stopped here and  
19 started somewhere else, maybe further down the line,  
20 maybe a month, two months, three months later on.

21 Q. But the problem persisted; is  
22 that not a fair statement?

23 A. To my knowledge, it stopped for  
24 a length of time and then it started up again. And  
25 this is --

1 Q. Sorry, go ahead.

2 A. No, I -- I mean, it stopped and  
3 started, for years on end, it would stop.

4 Q. Did -- Mr. Snow was the head of  
5 maintenance at the mall; is that correct?

6 A. Mr. Snow?

7 Q. Ken Snow?

8 A. I'm not aware of that  
9 individual.

10 Q. Okay. Did you at any time, when  
11 you became aware of the fact that the leaking -- of  
12 the leaking problem, did you at any time either pick  
13 up the phone or walk over and speak to the head of  
14 maintenance at the mall and ask, you know, "What's  
15 the problem here? Why is it -- why do we have all  
16 these leaks?"

17 A. Umm... I can't recall that  
18 I did.

19 Q. Did you ever ask any of your  
20 staff to do that for you? Ever ask one of your  
21 inspectors to go over and, you know, "Just find out  
22 what's going on there"?

23 A. No, I can't recall that I ever  
24 did.

25 Q. Would you agree with me, Mr.

1 Pigeau, that a roof that is displaying these leaks  
2 that you have described, could not be classified as  
3 providing -- or being watertight?

4 A. Yes, it was not watertight.

5 Q. And that would then, at least,  
6 indicate that on the surface, that the roof was not  
7 conforming or complying with the Property Standards;  
8 correct?

9 A. Watertight, that means no  
10 leakage whatsoever? Is that -- is that your  
11 definition of "watertight"?

12 Q. Well, I thought that  
13 "watertight" would mean that it keeps the water out.

14 A. Well, the roof, at times, was  
15 leaking, but in most cases it was also watertight.

16 Q. Well, I'm sure it had -- parts  
17 of it would be watertight, but as an overall  
18 statement, if water is leaking in from the roof, you  
19 wouldn't describe it as being watertight.

20 A. That's true.

21 Q. So, getting back to my question.

22 When -- during the timeframe when you  
23 were the Chief Building Official, the roof on  
24 a number of occasions that you observed with your  
25 own eyes, was not watertight.

1 A. That's true.

2 Q. Given what you've told us  
3 earlier about seeing violations of the Property  
4 Standards Act, did you feel that you could do  
5 an inspection of the roof or cause one of your --  
6 the chaps working for you to do an inspection, based  
7 on what you saw with your own eyes?

8 A. Could you repeat that? I didn't  
9 get what you said.

10 Q. Did you feel, based on what you  
11 saw, and you are aware of the fact that it's not  
12 watertight, did you feel that you could do  
13 an inspection to see what's going on here?

14 A. Well, I was never -- never  
15 personally -- no complaints were given to myself  
16 personally so I can only assume that the people  
17 were -- the mall people were satisfied and repairs  
18 were ongoing, and the leaks were stopped and so why  
19 get involved when the problem was being resolved by  
20 Algoma Central?

21 Q. So, it was your understanding  
22 that the problem was being resolved to the  
23 satisfaction of the tenants; is that what you're  
24 saying?

25 A. I never received any complaints

1 from tenants, so I can only assume that they were  
2 satisfied with the repairs.

3 Q. Can you tell us whether or not,  
4 during your tenure as the Chief Building Official,  
5 were there ever any Property Standards inspections  
6 of the rooftop parking deck?

7 A. Whether there were any  
8 inspections of the rooftop?

9 Q. Any Property Standards  
10 inspections of the rooftop parking deck; are you  
11 aware of any?

12 A. No, there were none. No there  
13 weren't.

14 Q. Now, you were aware of the fact  
15 that the roof leaked and that it leaked over  
16 a number of years; correct?

17 A. I previously indicated to you,  
18 I think, through a span of years, it stopped and it  
19 started up again, you know, and it all depended on  
20 a season, whether it was spring or fall.

21 You know, some times of the years it  
22 was nice and dry inside, summer time and all that, and  
23 then the problem would reoccur. And it could be years  
24 before it would reoccur.

25 Q. Is it your understanding that



1 the -- that there were -- that the mall experienced  
2 periods of time, measured in years, where there  
3 wasn't any leaking?

4 A. To my knowledge, yes.

5 Q. And did you ever -- did you ever  
6 worry about the effect of the leaking, that it might  
7 have on the structural integrity of the building  
8 itself?

9 A. In the long run, I might have  
10 had concerns, yes.

11 Q. And did you conduct any Property  
12 Standards By-law inspections of the structural  
13 integrity of the mall itself?

14 A. No, I'm not a structural  
15 engineer so I couldn't really comment on that.

16 Q. You didn't conduct any yourself;  
17 is that correct?

18 A. That's right.

19 Q. And if you did, be free to tell  
20 me, but I don't understand that you ever solicited  
21 the assistance of a structural engineer to make that  
22 type of assessment; is that correct?

23 A. Well, I -- I was made aware that  
24 through Algoma Central Library there was a report  
25 forthcoming with regard to the problems at the mall,

1 structurally, to the parking.

2 Q. I think I know what you're  
3 talking about. Is this the report that the mall  
4 manager mentioned in a letter to the Librarian?

5 A. Yes, sir.

6 Q. Okay. I'll get to that in a few  
7 minutes, but what I wanted to -- what I'm asking you  
8 is, you've told us that you never conducted  
9 a Property Standards By-law inspection of the  
10 structural integrity of the mall; and the second  
11 part of the question then is: Did you ever retain  
12 the services of an engineer to do that on your  
13 behalf? Did you ever do that?

14 A. No, I didn't.

15 Q. I'm sorry?

16 A. No, I didn't.

17 Q. Okay. What efforts were you  
18 aware of, that the mall owners were taking to deal  
19 with the problem?

20 A. I was aware that they were  
21 trying to remedy the problem on the roof, and also  
22 to gather the water as it came down, and to mop up  
23 and try to keep the area reasonable, to be used as  
24 a library.

25 Q. Gathering up the water or

1 diverting the water is a way of dealing with the  
2 actual water coming in. What efforts were you aware  
3 that the mall was trying to stop the water from  
4 coming in, in the first place?

5 A. Well, they had the staff -- and  
6 they had hired -- to my knowledge, they had hired  
7 personnel to try and seal the -- seal the roof  
8 itself, and the maintenance staff themselves would  
9 do a lot of work on the roof.

10 Q. And I gather -- did you actually  
11 see from time to time, maintenance staff up on the  
12 roof?

13 A. Definitely.

14 Q. And what was it they were doing?

15 A. They were applying a  
16 waterproofing compound of some sort, over top of  
17 areas that needed it.

18 Q. And you also, I believe you  
19 said, that the mall had hired people to do some  
20 certain work.

21 A. Yes.

22 Q. And what work was that, do you  
23 know?

24 A. I can only assume it would be to  
25 repair the -- I forget what you call them -- the

1 grouting between the slabs and also the grates and  
2 wherever the -- the concrete assembly might be  
3 failing or the concrete might be spalling.

4 Q. We've heard evidence that the  
5 expansion joints up on the roof, there are three of  
6 them. Are you aware of that, that there are three  
7 expansion joints?

8 A. I'm aware of the expansion  
9 joints. I don't know how many, but I can only  
10 assume three, but I'm glad you mentioned that, the  
11 expansion joints, those were the areas that the  
12 staff was working on, the expansion joints.

13 Q. And in addition to that, we  
14 heard evidence, through Algoma Central, that the  
15 expansion joints had been replaced up there on two  
16 different occasions.

17 Were you aware of that?

18 A. I'm not aware of it -- of that.

19 Q. One of the functions of your  
20 job, is dealing with building permits; is that not  
21 correct, sir?

22 A. Yes, sir.

23 Q. And from the observations you  
24 made of the work that was going on, up on the roof,  
25 did -- did you, at any time, require the -- Algoma

1 to get a building permit?

2 A. No, I didn't.

3 Q. And you indicated that you were  
4 unaware of the expansion joints being replaced.  
5 Would the replacement of the expansion joints, would  
6 that have been something that, if you had known  
7 about it, you would have required them to get  
8 a building permit for, or is that something that you  
9 don't need a building permit for, in your opinion?

10 A. If -- if it was done by  
11 a structural engineer, I can only advise that --  
12 a building permit would be required.

13 Q. If the -- let me make sure  
14 I understand this.

15 If the expansion joint work, was  
16 being done -- I presume you mean by under the  
17 direction of an engineer?

18 A. Well, it would be advisable,  
19 that the work would be directed by a -- by somebody  
20 that would be qualified.

21 Q. Well, let me -- could you turn  
22 to Tab No. 3.

23 A. Tab No. 3?

24 Q. Yes, please. And that is  
25 Exhibit No. 6-5.

1 A. By-law 78-47?

2 Q. Yes. And if you could turn to  
3 the second page, this -- this is the building by-law  
4 of Elliot Lake?

5 A. Yes, it is.

6 Q. And you are familiar with that?

7 A. Yes, I am.

8 Q. And if you could refer to  
9 paragraph 3, "General Scope", it is on the second  
10 page.

11 A. Yes.

12 Q. There you are.

13 This tells you when a building permit  
14 is required. It says:

15 "When a building or any part  
16 thereof is altered, this by-law  
17 applies to the parts of the  
18 building that are altered."

19 Correct?

20 A. Yes, sir.

21 Q. And would it be your opinion  
22 that the replacement of an expansion joint, alters  
23 a building or it doesn't alter the building, in  
24 which case no building permit is required?

25 A. It depends on the extent of the

1 work that's being done. Is it being repaired or is  
2 it being changed or ...

3 Q. Let's just -- let's leave it to  
4 where you're taking out one expansion joint and  
5 putting in another one.

6 A. Yeah, under the by-law, it  
7 speaks to "altered" and I would think that the  
8 expansion joint would fall under that  
9 classification.

10 Q. So, would it -- what is your  
11 opinion? Did you think that if they were going to  
12 replace an expansion joint, they required a building  
13 permit?

14 A. Yes.

15 Q. And to the best of your  
16 knowledge, did you ever see any application for  
17 a building permit?

18 A. No, I was never aware that the  
19 expansion joint was being altered or repaired.

20 Q. And in the --

21 A. Nobody --

22 Q. Sorry?

23 A. Nobody ever approached us with  
24 that.

25 Q. And if -- if a building permit

1 had been applied for, you'd be aware of it, then?

2 A. Yes.

3 Q. Okay. Now, I just want to ask  
4 you a few more questions about the work that you  
5 were aware of. Did you ever go up on the roof while  
6 work was being done, to just see what was going on  
7 or were any --

8 A. Yes, I --

9 Q. Sorry, go ahead.

10 A. I saw the maintenance people  
11 doing work on the areas that appeared to be faulty.

12 Q. And was this because you went  
13 over and had a look or were you otherwise using the  
14 mall, like for shopping or something like that?

15 A. I was possibly there for other  
16 reasons.

17 Q. Do you recall ever going over  
18 specifically to see what it was that was going on?

19 A. I might have met with some of  
20 the workers to inquire what was being done and they  
21 just had a compound that they were applying to  
22 the -- to either the grates or the joints  
23 themselves, just repairing, no replacing.

24 THE COMMISSIONER: You asked me to  
25 remind you about time.



1 MR. WALLACE: This would actually be  
2 a good time to stop because we are switching to  
3 something else.

4 THE COMMISSIONER: We'll take a 15  
5 minute break.

6 THE CLERK: Order, all rise.

7 This hearing will resume in 15 minutes.

8 --- RECESS AT 10:31 A.M.

9 \* Reporter's note: Internet connection failure

10 --- RESUMED AT 2:00 P.M.

11 THE COMMISSIONER: Well, apparently,  
12 ladies and gentlemen, somewhere in "Cyberland" our  
13 fibre optic cable was interrupted, but it's now back  
14 on and working well, I gather, Mr. Wallace.

15 MR. WALLACE: Yes, thank you,  
16 Commissioner.

17 THE COMMISSIONER: Good afternoon,  
18 sir. We're sorry that we've held you up, but you're  
19 back, and that's the main thing.

20 Thank you.

21 BY MR. WALLACE:

22 Q. Mr. Pigeau, could you open your  
23 binder to Tab No. 48, please? That's Exhibit  
24 No. 1855.

25 A. 48?

1 Q. Yes, sir. It should be a letter  
2 that you wrote.

3 A. To Mr. Pinnell, yes.

4 Q. This is a letter that you wrote  
5 to Mr. Pinnell on the 12th of July, 1982.

6 In the letter you recall  
7 a conversation you had with him to the effect that  
8 the barricades in the upper parking area of the Algo  
9 Mall were inoperative and:

10 "... I have been advised that  
11 a few heavy trucks have been  
12 seen traversing over the area.  
13 I would welcome further action  
14 in remedying the problem as  
15 soon as possible, as the slab  
16 as I understand, has not been  
17 designed to carry such  
18 superimposed loads."

19 Do you recall the circumstances that  
20 caused you to write the letter?

21 A. I can only -- it must have been  
22 because of the -- my concern about the slab.

23 Q. And would it be fair to say that  
24 you had a safety concern, and that's what prompted  
25 the letter?

1 A. Yes.

2 Q. And it indicates that you have  
3 been advised that a few heavy vehicles had been seen  
4 traversing over the area.

5 What type of vehicle would you be  
6 referring to when you're talking about a heavy  
7 vehicle?

8 A. Possibly a dump truck or a bus  
9 or anything that -- a delivery van, or anything to  
10 that effect.

11 Q. The words here are "seen  
12 traversing over the area."

13 I understood that to mean, and  
14 correct me if I'm wrong, going from the lower mall  
15 and cutting across the parking deck; is that what  
16 you are referring to when you're talking about  
17 traversing over the area?

18 A. Yes.

19 Q. And the barricades that you are  
20 referring to as being inoperative, can you describe  
21 them for me, please? What did they look like?

22 A. They were just two members --  
23 I would be guessing that the height would be  
24 probably about 8-foot high -- that would either  
25 swing or operate vertically.

1 Q. And --

2 A. To limit the traffic to the  
3 upper mall.

4 Q. And were they -- was it  
5 a permanent barricade or was it something that could  
6 be opened and closed?

7 A. It could be opened and closed.

8 Q. And the barricades obviously got  
9 fixed; correct?

10 A. I can't recall. Must have been.

11 Q. Well, if you look at the very  
12 next tab --

13 A. Uh-hmm.

14 Q. Which -- sorry, it is -- I don't  
15 have the exhibit number written down -- Exhibit  
16 No. 3145.

17 A. Tab 49?

18 Q. Yes. You've got that there,  
19 sir?

20 A. Which tab are you looking at?

21 Q. It's the letter back to you from  
22 the general manager of the Algo Mall in response to  
23 your letter of the 12th?

24 A. Okay. Yes.

25 Q. You can see that he is

1 responding to your letter -- that is, the general  
2 manager of the Algo Centre -- and is indicating to  
3 you that he's expecting that the barricades will be  
4 fixed in approximately less than a week.

5 A. Yes, sir.

6 Q. And I gather that maybe it might  
7 not have been within that exact timeframe, but in  
8 fact the barricades got repaired.

9 A. Yes.

10 Q. Is it your recollection that the  
11 barricades, whatever the configuration of the  
12 barricades, that they remained the same throughout  
13 your timeframe there, sir?

14 A. Yes, I currently recall that  
15 they did stay the same.

16 Q. They were always movable  
17 barricades; they were never permanent barricades?

18 A. I assume -- they must have been  
19 permanent. I can only assume that because -- the  
20 fact that it had been a problem that they became  
21 permanent.

22 Q. No, I think the problem here is  
23 that the barricades got damaged, and what I'm  
24 wanting to know is they got fixed; correct?

25 A. Yes.

1 Q. The barricades that had been  
2 damaged were not permanent barricades, they were  
3 capable of being opened and closed. What I'm asking  
4 you is, to the best of your knowledge, when they  
5 were fixed, did they remain capable of being opened  
6 and closed?

7 A. I can't recall.

8 Q. Snow removal had to take place  
9 at the mall, obviously?

10 A. Uh-hmm.

11 Q. Did you ever see the snow  
12 removal process taking place?

13 A. No, I didn't.

14 Q. Did you ever inquire as to what  
15 vehicles were being used to remove of the snow?

16 A. I was told that half tons with  
17 plows were being used.

18 Q. Do you recall who told you that?

19 A. No, I don't recall.

20 Q. Whether or not you recall the  
21 actual person who told you, do you know if it was  
22 somebody within your staff, the snow removal company  
23 or the ownership of the mall?

24 A. It could have been a combination  
25 of either one.

1 Q. Were you informed, one way or  
2 the other, as to whether dump trucks were involved  
3 in the snow removal process?

4 A. No, I wasn't aware.

5 Q. So you didn't know whether they  
6 were or they weren't; is that fair?

7 A. Yes, sir.

8 Q. Do you recall whether or not you  
9 ever asked anybody, either from your own staff, the  
10 mall management or the snow removal company, what  
11 type of vehicles were being used?

12 A. No, I didn't.

13 Q. That is, you didn't ask or you  
14 don't recall whether you asked or not?

15 A. I don't recall whether I asked  
16 or not.

17 Q. Now, Mr. Pigeau, if you would  
18 open up the binder at tab 60, this is Exhibit  
19 No. 11-12.

20 A. Yes, sir.

21 Q. And if you would turn to the  
22 first page inside that, it's a letter from Janet  
23 Taylor to the mall manager. Do you see that?

24 A. Yes, sir. Yeah.

25 Q. The date of the letter is the

1 25 April --

2 MS. KUKA: You said Exhibit  
3 No. 11-12?

4 MR. WALLACE: Yes.  
5 It's tab 60, Exhibit No. 11-12.  
6 That's -- yes, that is.

7 BY MR. WALLACE:

8 Q. First of all, Mr. Pigeau, could  
9 you identify -- there is some handwriting at the  
10 bottom of the letter, if you could just scroll up.

11 A. That's my handwriting.

12 Q. Could you scroll up there,  
13 Ms. Kuka. Yes.

14 The handwriting on the bottom right  
15 is yours?

16 A. Yes, it is.

17 Q. Can you read for us, please,  
18 what your note says?

19 A. It says:

20 "Met with Larry Liataud and  
21 he advised that an engineer has  
22 been hired to analyze problem  
23 and report was forthcoming."

24 Q. And report was forthcoming; is  
25 that correct?



1 A. Yes, sir.

2 Q. It indicates, as well, the date  
3 of the 1st of May, '91, which I presume is the date  
4 that you met with Mr. Liataud?

5 A. Yes, sir.

6 Q. Now, I'd like to take you to the  
7 contents of the letter.

8 The chairman of the Library Board is  
9 writing to the mall manager, and it starts off by  
10 saying:

11 "The Library Board is very  
12 concerned with the continuing  
13 problems with the mall's roof,  
14 especially over the library  
15 location."

16 And then if you can drop down to the  
17 start of the next paragraph, it says:

18 "As you are aware, one of the  
19 main reasons for this move was  
20 the deplorable condition of the  
21 former location. Since the  
22 library opened in the mall,  
23 a major portion of the  
24 collection has to be covered by  
25 plastic in order that the books

1                   are not damaged, the floor is  
2                   littered with buckets and many  
3                   of the ceiling tiles are  
4                   missing. The hoses which hang  
5                   from the ceiling can be seen  
6                   the whole length of the mall  
7                   and negate any value which the  
8                   art displays might contribute  
9                   to the library's visual  
10                  appeal."

11                 Stopping there, this letter is  
12                 written on the 25th of April, '91, and we have heard  
13                 evidence that the library moved into the mall in the  
14                 month of June of 1989, so they've been there for  
15                 just a little under two years at the time of the  
16                 writing of this letter. And they're complaining  
17                 about the continuous leaking problem from the roof.  
18                 Would you not agree with that?

19                 A. Yes.

20                 Q. Would this letter not qualify as  
21                 a complaint in writing about the property standards?

22                 A. I was not cc'd, and so I can  
23                 only assume that this is an issue between the  
24                 landlord and a tenant.

25                 Q. If you look to the bottom left

1 of the letter --

2 A. Uh-hmm.

3 Q. It appears that you were cc'd.  
4 There are initials underneath that,  
5 "LB."

6 A. Uh-hmm.

7 Q. Do those initials mean anything  
8 to you?

9 A. Larry Burling, yes, the clerk.

10 Q. And in fact you actually met  
11 with Mr. Liataud, correct?

12 A. Yes, I did.

13 Q. So I'll repeat the question.  
14 Would this -- now that you've seen that you've been  
15 cc'd on the letter, would this not qualify as  
16 a complaint in writing about the condition of the  
17 roof?

18 A. It would, but the issue is being  
19 addressed by Mr. Larry Liataud and he had -- he  
20 advises an engineer had been hired to analyze the  
21 problem.

22 Q. Fair enough but -- sorry, go  
23 ahead.

24 A. No, I'm just stating that, to  
25 me, that -- the complaint wouldn't be necessary

1 because it's already being addressed.

2 So the problem with the -- the problem  
3 is already being addressed.

4 Q. But you would agree with me that  
5 the document itself would constitute a complaint in  
6 writing about the property standards; correct?

7 A. It could.

8 Q. Well, I mean, she's certainly  
9 not writing because she is thrilled with the  
10 condition of the library; would you not agree with  
11 that?

12 A. That's true.

13 Q. She is writing to complain about  
14 the condition, the leaking condition of the roof;  
15 correct?

16 MR. SHOEMAKER: Your Honour, if  
17 I could just --

18 THE WITNESS: Yes, sir.

19 MR. SHOEMAKER: Sorry, Roger.

20 The reality of that letter, Your  
21 Honour, if I can take a moment, is that it hasn't been  
22 established that Janet Taylor cc'd that to Mr. Roger  
23 Pigeau, which -- it has got Larry Burling's initials  
24 on the bottom left-hand corner, and I think that  
25 should probably be canvassed with the witness.

1 BY MR. WALLACE:

2 Q. Mr. Pigeau, you saw this letter,  
3 did you not, sir?

4 A. Yes, sir.

5 Q. In fact, I would guess that the  
6 reason we can be sure of that is for two things.  
7 Number one, your name is written on the bottom, and  
8 number two, you actually spoke to Mr. Liataud  
9 concerning the letter; correct?

10 A. Yeah.

11 Q. You agree?

12 A. Yes, sir.

13 Q. Thank you. Now, just getting  
14 back to my point, you will agree with me that this  
15 letter would constitute a complaint in writing about  
16 the leaking roof at the mall; correct?

17 A. I would have to say "yes".

18 Q. Yes. Now, you've said that it  
19 was your position that it appeared to be under  
20 control to the extent that Mr. Liataud told you that  
21 an engineer had been hired and that there was  
22 a report that was going to be forthcoming; correct?

23 A. Yes, sir.

24 Q. Now, if you could look at -- and  
25 this is, I think, the only time I'm going to ask you

1 to look at the small book of documents, and go to  
2 tab 34 in the smaller book of documents. This will  
3 be Exhibit No. 273.

4 A. Thirty-four, you were saying?

5 Q. Yes, please.

6 A. Okay.

7 Q. This is a letter from

8 Mr. Liataud to Ms. Taylor concerning the leaks.

9 Do you want to just take a quick  
10 moment and have a quick look at it?

11 A. Okay.

12 Q. If you look at the very end, the  
13 second page of the letter, you will see that you  
14 were cc'd on this one.

15 A. Yes.

16 Q. We can assume, can we not, that  
17 if you were cc'd, you actually saw the letter at  
18 some point?

19 A. Yes, sir. Yes.

20 Q. And --

21 A. I must have.

22 Q. If you look at the second  
23 paragraph, Mr. Liataud indicates:

24 "As you are no doubt aware,  
25 we had continuous problems

1                   until 1986, when after much  
2                   examination we implemented  
3                   a new maintenance procedure  
4                   which worked consistently until  
5                   the spring of 1990 with the  
6                   exception of one major  
7                   expansion joint which had to be  
8                   redone in July of 1989. Apart  
9                   from the latter, we also  
10                  waterproofed the deck in 1989  
11                  for added protection."

12                  So, in this paragraph Mr. Liataud is  
13                  indicating that there was -- in the early years of  
14                  the mall, at least up until 1986, there was  
15                  a continuous leaking problem.

16                  Would you agree with the  
17                  characterization of the leaking problem as  
18                  a continuous one, as the mall general manager  
19                  describes it?

20                  A.     When did the library move into  
21                  the mall?

22                  Q.     The library -- '89.

23                  A.     '89. My understanding was that  
24                  the problem was repaired prior to the library moving  
25                  in.

1 Q. This is what -- that's what the  
2 letter is saying, but what I'm asking you is that  
3 Mr. Liataud, the manager of the mall, in response to  
4 Ms. Taylor's complaint, is telling her that, "We've  
5 had a continuous leaking problem up until 1986."

6 I'm simply asking you: Do you agree  
7 with Mr. Liataud's characterization of the leaking  
8 problem being a continuous one up until '86?

9 A. Within the library?

10 Q. Yes -- well, he doesn't actually  
11 restrict it to the library. He's talking about  
12 a continuous problem until 1986. He actually talks  
13 about "problems", in the plural.

14 A. I have to get that clarified.

15 The problem wasn't necessarily over the  
16 entire floor. It could have been localized.

17 Q. Well, that's all I'm asking you,  
18 is how he is describing the problem -- in fact, he  
19 refers to them as "problems" -- as continuous  
20 problems until 1986. I don't think he's trying to  
21 restrict it to the library, per se.

22 He's talking about that, "We've had  
23 continuous problems with leaking up until 1986."

24 I'm asking you, would you agree with  
25 that characterization, that the leaking problem was



1 continuous?

2 A. I would have to accept your  
3 statement. I can only assume that ...

4 Q. Let's move down to the next  
5 paragraph then.

6 He talks about:

7 "Due to the large number of  
8 leaks which occurred in the  
9 spring of 1990, we re-did  
10 100 percent of the joints over  
11 the entire mall area, which,  
12 needless to say, did not fix  
13 all of the leaks. By the fall  
14 of last year after only  
15 marginal success, we conversed  
16 with a new consultant,  
17 Trow Consulting Engineers.  
18 After much discussion, a plan  
19 was formulated and on their  
20 advice a multitude of testing  
21 should be completed in the  
22 spring of 1991 in order to  
23 determine a reliable  
24 recommendation. We therefore  
25 retained their services and

1                   scheduled April 15, 1991 as  
2                   their commencement date."

3                   This presumably was the engineering  
4 report that Mr. Liataud referred you to on the  
5 1st of May; correct?

6                   A.     Correct.

7                   Q.     And just going back to the text  
8 of the letter, again Mr. Liataud is saying to  
9 Ms. Taylor that: "We weren't able to fix the problem  
10 of the leaking that has popped up since the spring  
11 of 1990. That's why we've hired the engineering  
12 company"; is that fair?

13                  A.     Yes.

14                  Q.     Now, my question to you is: You  
15 have been told by Mr. Liataud that they have hired  
16 an engineering company to look into it, and you've  
17 been told that there is a report forthcoming, and  
18 Mr. Liataud, in writing, confirms that.

19                  What I would like to know is: Did you  
20 ever ask Mr. Liataud for the report?

21                  A.     Yes, I did.

22                  Q.     Did you get the report?

23                  A.     No, I didn't.

24                  Q.     Did he give you a reason for not  
25 giving you the report?

1 A. No, he didn't.

2 Q. Well, describe the conversation,  
3 as best you can.

4 A. In regards to?

5 Q. The report, the engineering  
6 report.

7 A. Well, I can only surmise that  
8 the problems would be identified and it would be  
9 resolved by the mall, Algoma Realty.

10 Q. Is it your evidence that on the  
11 1st of May, 1991, when you met with Mr. Liataud, he  
12 told you that the engineers were -- they were  
13 retained and they were going to analyze the problem  
14 and that a report was forthcoming. And then on the  
15 7th of May, he wrote a letter that he cc'd you on,  
16 where he again tells you that the engineering  
17 company has been hired to look into the matter and  
18 make recommendations and, as a result of that, you  
19 asked Mr. Liataud for a copy of the report.

20 And you are saying he refused to give  
21 it to you?

22 A. Yes, he never gave it to me.

23 Q. Did you request that in writing?  
24 Did you send him a letter asking for the report?

25 A. Not to my knowledge. I was

1 no --

2 Q. Sorry?

3 A. As I indicated, not to my  
4 knowledge.

5 Q. You'd agree with me, or you have  
6 agreed that the letter of 25th of April -- that is,  
7 the letter from Ms. Taylor to Ms. Liataud -- would  
8 constitute a complaint in writing of a breach of the  
9 Property Standards By-law; correct?

10 A. It would, but the problem was  
11 being addressed.

12 Q. Well, you've made a very simple  
13 request; that is, Mr. Liataud is telling you, "We're  
14 going to address the problem by getting an engineer  
15 in here and he's going to produce or they are going  
16 to produce a report."

17 Your evidence is, quite  
18 understandably, you say, "I'd like to see the  
19 report." And you're saying he says, "No, you  
20 can't."

21 A. When was the report completed?

22 Q. Well, I can give you that date,  
23 but -- it was in May of 1991.

24 A. The report was completed in May  
25 of 1991?

1 Q. Yes. If you look at tab 62,  
2 that's Exhibit No. 1113.

3 A. Okay. This is the report.

4 Q. You will see --

5 A. The report was completed May of  
6 1991.

7 Q. You've got the report in front  
8 of you there, sir?

9 A. Yes, I do.

10 Q. The cover page says:

11 "Investigation of Parking  
12 Structure Algo Centre  
13 Elliot Lake, Ontario."

14 A. Yes, sir.

15 Q. "Prepared for Algoma Central  
16 Properties, Inc."?

17 A. Yes.

18 Q. "Trow Consulting Engineers  
19 Limited"?

20 A. Uh-hmm.

21 Q. And then it has got the date  
22 "May, 1991".

23 A. Yes, sir.

24 Q. So it's a report, the same  
25 engineering company that Mr. Liataud told you about.

1 The report is prepared for Algoma Central  
2 Properties, which you knew to be the owner of the  
3 mall; correct?

4 A. Uh-hmm.

5 Q. And it is a report that is  
6 looking at the parking structure at the Algo Centre  
7 Mall?

8 A. Yes, sir.

9 Q. I had asked you, prior to you  
10 asking the date of that, if you had asked him for  
11 a copy, and you indicated that you had.

12 Did he actually say to you, "No, you  
13 cannot have a copy"?

14 A. I don't necessarily recall him  
15 saying "no," but he was questioned as to why we  
16 hadn't received a copy.

17 Q. Did he give you any sort of  
18 a credible explanation for why you hadn't got  
19 a copy?

20 A. No, he didn't.

21 Q. And --

22 A. I can only -- I can only assume  
23 in looking at the report that the exorbitant cost to  
24 repair could be a problem.

25 Q. You can confirm that you never

1 saw this report while you were working as a chief  
2 building officer?

3 A. I never saw this report,  
4 exactly.

5 Q. The first time you saw this  
6 report was in connection with the preparation for  
7 this inquiry; is that correct?

8 A. Yes, sir.

9 Q. Now, you have received a written  
10 complaint that on the face of it is complaining  
11 about a Property Standards violation; correct?  
12 We've been through that.

13 A. Sorry, could you -- I don't  
14 quite understand the question.

15 Q. The letter of the 25th of April,  
16 1991, Ms. Taylor's letter --

17 A. Uh-hmm.

18 Q. -- that constituted, as you've  
19 indicated to us earlier, a written complaint about a  
20 Property Standards violation, the roof not being  
21 watertight; correct?

22 A. The roof was not watertight in  
23 that location, yes.

24 Q. Now, you could have acted on  
25 that complaint and performed an inspection as soon

1 as you got that letter, could you not?

2 A. Well, because the engineer --  
3 the structural engineer had been hired by  
4 Mr. Liataud, I couldn't see the purpose of  
5 duplicating the --

6 Q. I'm not asking you that. I'm  
7 not asking you why you didn't do an inspection. I'm  
8 just simply asking you, when you got that letter,  
9 and had been made aware of the contents of it, that  
10 would have allowed you -- you could have done  
11 an inspection of the roof as a result of that  
12 written complaint; correct?

13 A. I myself personally wouldn't  
14 have done an inspection because I'm not necessarily  
15 qualified to ascertain how the leaks started.

16 Q. Let's just --

17 A. I would --

18 Q. Sorry, go ahead.

19 A. I would have more than likely  
20 gone to a professional to see what the causes of the  
21 leaks was.

22 Q. Let's just take this back one  
23 step further. You've told us that the enforcement  
24 mechanism of the Property Standards By-law, the  
25 first thing that has to happen is that you need



1 a complaint in writing; correct?

2 A. Yes, sir.

3 Q. You've got a complaint in  
4 writing in the form of this letter of the 25th of  
5 April.

6 A. Uh-hmm.

7 Q. Correct?

8 A. Well, if you classify it as  
9 a complaint, yes.

10 Q. Well, you had earlier agreed  
11 with me that it was, in fact, a complaint.

12 A. Okay.

13 Q. All I'm asking you at this stage  
14 is if you had chosen to, you could have instituted  
15 an inspection -- either yourself or somebody that  
16 you retained to do it for you -- you could have  
17 instituted an inspection of the roof on the 25th of  
18 April or thereabouts; correct?

19 A. I could have.

20 Q. Okay. You've told us -- and I'm  
21 not suggesting you've done anything wrong here --  
22 I mean, you --

23 MR. SHOEMAKER: Your Honour, Your  
24 Honour. Sorry to interrupt you, I apologise.

25 When I made the previous mention of

1 establishing when and how Roger received this  
2 letter --

3 THE COMMISSIONER: Could you refer to  
4 their second names, please?

5 MR. SHOEMAKER: Sorry, Mr. Pigeau.  
6 When and how Mr. Pigeau received this letter, you  
7 know, there is a bit of an issue with the fact that  
8 he didn't receive it on April 25th.

9 There is a stamp from the City on the  
10 letter, if we pull it up as -- on the screen here,  
11 that says the City received it on May 1.

12 So that needs to be clarified.  
13 Otherwise the witness, Mr. Pigeau, is getting confused  
14 about this.

15 THE COMMISSIONER: Well, you're  
16 telling him that he ought to be confused.

17 I don't see -- I don't hear him being  
18 confused. I think that question is perfectly proper.

19 I'll let Mr. Wallace continue.

20 BY MR. WALLACE:

21 Q. Mr. Pigeau, the point I'm trying  
22 to make here is, you've got this complaint, as  
23 a result of the complaint, you could have inspected,  
24 but you went and you spoke to Mr. Liataud and he  
25 explained to you, "We've got an engineering company

1 looking into this and they're going to report back  
2 to us."

3 And as a result of that, I assume  
4 you, quite sensibly, thought, "Okay, well, there's  
5 no sense in me going and looking at the roof.  
6 They've got engineers looking it."

7 Is that a fairly concise summary of  
8 the thought process at that point in time?

9 A. Yes.

10 Q. That's all well and good.

11 So he tells you that on the 1st of  
12 May. You get this letter on the 7th of May.

13 Sorry, the letter is dated the 7th of  
14 May of 1991. Given the fact that it's going  
15 probably less than a block, I wouldn't imagine it  
16 would have taken too long to get to your office, but  
17 in any event, you would have gotten the letter  
18 shortly after the 7th of May, 1991 -- that is, the  
19 letter from Mr. Liataud to Ms. Taylor -- where,  
20 again, the fact of the engineer is mentioned;  
21 correct?

22 A. Yes.

23 Q. And you told us then that you  
24 spoke to Mr. Liataud and he refused to give you the  
25 engineering report; correct?

1 A. Correct.

2 Q. At that point in time, given the  
3 fact that you could have inspected the roof  
4 yourself, why didn't you do exactly that when he  
5 refused to show you the report?

6 A. Because I was assuming that the  
7 problem would be resolved by the report.

8 Q. Did it occur to you that the  
9 reason it wasn't shown to you was that there was  
10 something he was trying to hide from you?

11 A. Yes.

12 Q. Did you confront him with that  
13 fact?

14 A. Not that I recall.

15 Q. Because it seems to me, from  
16 where I'm sitting here, is that you've got the  
17 leverage in this situation, because if you wanted  
18 to, you could say to him, "Okay, I don't care if you  
19 give me the report or not. We're going to inspect  
20 the roof ourselves to see what's going on."

21 Correct?

22 A. Correct.

23 Q. I gather, however, that  
24 conversation never took place.

25 A. I can't -- I'm not aware that it

1 did.

2 Q. And you did not, in fact,  
3 inspect, yourself, or cause to be inspected the roof  
4 of the mall; correct?

5 A. Correct.

6 Q. Let me ask you this, since we're  
7 on the topic of that -- that is, the report, would  
8 you turn to tab 61 -- or, sorry, 62, still the same  
9 exhibit number.

10 Your evidence is that you never did  
11 see this report until you started to get prepared  
12 for these proceedings; correct?

13 A. Exactly.

14 Q. If we look at page 13 of the  
15 report -- if you look at -- you're at page 6, sir?

16 A. I'm at page 13.

17 Q. Yes, sorry. I'm sorry, page 13,  
18 point number 6 at the bottom of the page.

19 A. There's only 5 -- okay. Okay.

20 Q. You will see the last point at  
21 the bottom of the page:

22 "It is our opinion ..."

23 A. Yeah.

24 Q. (Reading)

25 "... that the design used for

1                   this roof slab is inappropriate  
2                   in achieving a watertight  
3                   condition over commercial  
4                   areas."

5                   Do you see that?

6                   A.    Yes, sir.

7                   Q.    You would agree that that is  
8                   a fairly clear statement that this roof does not  
9                   meet the Property Standards; that is, of being  
10                  watertight; correct?

11                  A.    Through the improper design of  
12                  the slab, from what I can assume.

13                  Q.    Yes.  But no matter what the  
14                  cause, it is quite a clear statement that what you  
15                  are looking at, this roof, is not conforming to the  
16                  Property Standards By-law; correct?

17                  A.    Yes.

18                  Q.    If you had seen this report at  
19                  the time, what, if anything, would you have done?

20                  A.    Looking at the investigation, it  
21                  would appear that the roof slab did pose an  
22                  immediate problem, and I would have necessarily  
23                  pursued it, either through the Ontario Building Code  
24                  or the Property Standards By-law.

25                  Q.    And specifically, what would you

1 have done? Would you have --

2 A. Issued an order -- pardon?

3 Q. Sorry, go ahead. I interrupted  
4 you.

5 A. No, I would have issued an order  
6 under the Property Standards By-law or I would have  
7 checked with the Building Code Commission to see if  
8 there's anything more prevalent they could use with  
9 regards to enforcement.

10 I'm not really quite sure whether --  
11 because of provincial legislation, it probably would  
12 be a lot more involved than the municipal by-law.

13 Q. Whatever course of -- whatever  
14 vehicle you had taken -- that is, whether it was  
15 under the Building Code or the Property Standards  
16 By-Law -- there would have been an order issued  
17 through your office; is that correct?

18 A. Yes, sir.

19 Q. And the order would have been  
20 directed to do what?

21 A. To pursue the investigation of  
22 the parking structure, Algo Centre Mall, as  
23 identified by Trow Consulting.

24 Q. And --

25 A. They are the professionals who

1 would -- could only -- they are the only individuals  
2 that could actually tell you what to do in order to  
3 remedy the problem.

4 Q. Without tying you down to  
5 specific words used, would you have asked or would  
6 you have ordered that the problem be investigated;  
7 that is, the source of the leaking be investigated  
8 and fixed, in it's simplest terms?

9 Would you have made that order?

10 A. Yes.

11 Q. Do you recall, in dealing with  
12 Mr. Liataud about the report, did you have a single  
13 conversation with him -- that is, "I'd like to see  
14 the report," and he says, "No, you can't" -- or was  
15 it something that you revisited with him on more  
16 than one occasion?

17 A. I was concerned about the issues  
18 and so I asked him for a -- to view the report. He  
19 necessarily didn't want to give me a copy, but  
20 I wanted to view the report.

21 Q. And my understanding from  
22 listening to you this afternoon, the long and the  
23 short of it was you never did see it?

24 A. Exactly.

25 Q. Okay.



1           A.     There must have been a reason  
2     and I -- my only conclusion why is, after looking at  
3     the report, I can see that the repairs were  
4     exorbitant.  And I -- regardless of whether we were  
5     concerned about it or not, there were other  
6     subsequent reports that were done.  It seems to me  
7     it should have been addressed immediately.

8           Q.     That is, the repairs should have  
9     been addressed immediately?

10          A.     Yes.

11          Q.     What conclusion did you come to,  
12     if any, between the not seeing the report and the  
13     cost of the repairs?  Was there any connection in  
14     your mind?

15          A.     No, not really.

16          Q.     Do you understand what I'm  
17     asking you?

18                     Did you understand the question?

19          A.     No, not really.

20          Q.     You have said on an earlier  
21     occasion this afternoon that when you saw the size  
22     of the cost to remediate the problem you said you  
23     could see why he didn't show it to you.

24                     All I'm asking you is to expand on  
25     that.

1           A.    Well, I can only assume, if  
2 I would have seen the report and pursued it, then  
3 that money would have had to come out of the coffers  
4 of Algoma Central Realty to repair the problem.

5           Q.    And it was a lot of money;  
6 correct?

7           A.    Yes, a lot of money.  Otherwise  
8 I can't see why they wouldn't have provided it.

9           Q.    But they never did; right?

10          A.    Never did.

11          Q.    Now, this is in May of 1991.  
12 I want to move to August of 1994 and ask you to turn  
13 to Tab No. 70.  And this would be Exhibit No. 611.

14          A.    The Trow inspection summary?

15          Q.    Exactly, sir.

16                Just to situate you here, these are  
17 some notes made by Rod Caughill.  You've met him,  
18 I assume?

19          A.    Yes, I did.

20          Q.    And he is at the mall, visited  
21 the mall on the 23rd and 24th of August of 1994.  He  
22 was there in the company of an engineer from Trow.  
23 And if you look at the second page of the report or  
24 the summary there, you will see the words "In  
25 General" about a third of the way down the page?

1 A. I see it.

2 Q. What he writes there is:

3 "Iamonico does not believe  
4 that we have a structural  
5 problem yet but he cautions  
6 that the corrosion seen will  
7 accelerate exponentially if the  
8 leakage is not treated."

9 I gather you did not see this  
10 document during the time that you were working as  
11 the Chief Building Official; correct?

12 A. Yes.

13 Q. And, again, like the earlier  
14 report, the first time you saw this document it was  
15 in preparation for your evidence at this inquiry?

16 A. Yes, sir.

17 Q. I'll ask you the same question  
18 as I asked you with respect to the 1991 Trow report.  
19 If you had seen this document in 1994, what, if  
20 anything, would you have done about it?

21 A. I would have pursued it.

22 Q. How would you have pursued it?

23 A. As I indicated, either through  
24 the Property Standards By-Law or through the  
25 Building Code, whichever would be ...

1 Q. And would you have issued an  
2 order either under the Building Code or under the  
3 Property Standards By-Law?

4 A. Yes, I would have, under the  
5 Building Code Act or under the Property Standards  
6 By-law.

7 Q. If you could look at Tab No. 71,  
8 this is Exhibit 11-12.

9 A. Uh-hmm.

10 Q. Have you got that there, sir?

11 A. Yes, sir.

12 Q. There's handwriting again at the  
13 bottom of the page.

14 Is that your writing?

15 A. Yes, it is.

16 Q. First of all, if we look at the  
17 letter itself, it's a letter from Barbara Fazekas --

18 THE COMMISSIONER: You have got the  
19 wrong one there on the ...

20 MR. WALLACE: Yes, sorry.

21 This is ...

22 MS. KUKA: The last exhibit you asked  
23 for was actually 11-11.

24 MR. WALLACE: Okay.

25 MS. KUKA: This is actually 11-12.

1 MR. WALLACE: Give me a second here.

2 THE COMMISSIONER: The one on screen  
3 now, Mr. Wallace?

4 MS. KUKA: The one on screen right  
5 now is 11-12.

6 The first one that we looked at earlier  
7 is actually 11-11.

8 MR. WALLACE: Okay.

9 MS. KUKA: And it's been sorted out  
10 in Relativity so it's ...

11 BY MR. WALLACE:

12 Q. Now, this is a letter from  
13 Barbara Fazekas, the librarian, to Mr. Bauthus, the  
14 CAO of the City of Elliot Lake, dated 12 September,  
15 1994.

16 The title of the -- the caption of  
17 the letter is "Safety of Library Patrons and  
18 Collection."

19 A. Uh-hmm.

20 Q. Looking at the second paragraph,  
21 she is drawing to his attention:

22 "However, when replacing the  
23 tiles, they discovered that the  
24 work in the original renovation  
25 in 1989 was done improperly as

1 some hooks that were to be  
2 attached by insertion into the  
3 cement were merely glued on.  
4 Since 1989, some of the glue  
5 has weakened due to the  
6 moisture in the ceiling area,  
7 causing the tile loosening."

8 And then she says:

9 "My concern is that the rest  
10 of the ceiling is similarly  
11 attached and the whole ceiling  
12 is in jeopardy. When requested  
13 to determine the safety of the  
14 rest of the ceiling, the mall  
15 manager and maintenance staff  
16 rushed to tell me not to panic.  
17 I then called the City's Chief  
18 Building Officer for an opinion  
19 on the subject. Although he  
20 did visit the site to ensure  
21 that the ceiling damage was  
22 fixed, he did not share my  
23 concerns regarding the rest of  
24 the ceiling."  
25 I'm going to ask you, if you would,

1 read for us, please, your handwritten notes.

2 A. (Reading)

3 "Barb Fazekas met with me to  
4 thank me for a quick response  
5 on the Algo Mall ... Had  
6 repaired the gridline wall.  
7 Advised Mr. Bauthus. Met with  
8 Fred and advised only that  
9 the gridline wall is a problem  
10 and that Algo Mall will repair  
11 if City agrees to lower catch  
12 basin on their property."

13 Q. Now, this letter is talking  
14 about the fact that some ceiling tiles were falling  
15 in or coming loose; correct?

16 A. Yes, sir.

17 Q. But it appears that the reason  
18 this is happening is because of moisture in the  
19 ceiling area causing the tile loosening; correct?  
20 At least that's what she's saying.

21 A. I can't -- there's -- I can't  
22 state that the -- there was glue that was -- tiles  
23 were fastened with glue, because the idea there is  
24 that in 1989 -- I can only assume that the Library  
25 Board hired a consultant, Pam Thomson, to design the

1 library itself. And I'm not aware that -- if the  
2 ceiling tiles were changed or not.

3 So, no, we can't specifically state  
4 that the hooks were attached by insertion into the  
5 cement by glue.

6 Q. Okay.

7 A. We ...

8 Q. My only point here is that the  
9 complaint seems to be based on a ceiling tile  
10 problem that has as its root the moisture in the  
11 ceiling area. Do you agree with me there? That's  
12 what the complaint is.

13 A. Is that -- we're not sure that  
14 the -- it was the moisture that caused the ceiling  
15 to collapse. Was the entire ceiling replaced?

16 Q. No, I'm just asking you to look  
17 at the letter itself, okay? At this stage, at  
18 least, I'm not asking you what happened after the  
19 letter was written, but I'm just asking you to look  
20 at the letter.

21 A. Was the moisture obvious?

22 Q. Well, the complaint, however, is  
23 about the moisture in the ceiling, is it not?

24 A. Well, we're assuming that it was  
25 the moisture that weakened the ceiling, the glue



1 holding the ceiling.

2 Now, to me, that is an assumption.

3 Q. Let me ask you this: Did you  
4 make any connection between the fact that the  
5 library has been experiencing a leaky ceiling and  
6 this particular problem? Did you make any  
7 connection between the two?

8 A. I guess that could be the  
9 moisture coming from the leaks, I guess.

10 Q. Yes. And all I'm asking you is  
11 if you made that connection -- that is, that the  
12 source of the moisture is the leaking roof -- does  
13 that seem reasonable?

14 A. Yes, it's reasonable.

15 Q. Did you inquire of the mall  
16 manager, "What are you doing about the leaky roof?"

17 A. I don't think the mall  
18 manager -- I recall, I don't think I -- we discussed  
19 anything with the mall manager.

20 Q. Well, if there was a maintenance  
21 problem with the roof, you, as the Chief Building  
22 Official, who would you discuss it with from the  
23 owner's side?

24 A. Basically I discussed it with  
25 Barb and Fred.

1 Q. Sorry?

2 A. I discussed it with Barb and  
3 Fred. Barb Fazekas and Fred Bauthus.

4 Q. But neither -- sorry, go ahead.

5 A. I can only state that during my  
6 visit, the ceiling damage was fixed, had been  
7 repaired.

8 Q. Did you understand that the  
9 leaking of the roof was no longer an issue at the  
10 Algo Mall?

11 A. Could you repeat that, please?

12 Q. Did you feel, at this point in  
13 time -- that is, in 1994 -- that there was no longer  
14 any leaking problems at the Algo Mall?

15 A. I can only make comment that  
16 from the letter dated -- from Janet Taylor to the  
17 letter sent by Barbara to Fred was a time lapse of  
18 over three years.

19 Now, we can only assume that because of  
20 the time lapse that the problem had been resolved.

21 Q. Were you aware of any particular  
22 steps that the mall owners had taken to deal with  
23 the leaking roof in that three-year period?

24 A. They were trying to remedy the  
25 problem, I can imagine, applying grout or the

1 compound, some kind of compounds to try and repair  
2 the leaks.

3 Q. Now, if you would look at Tab  
4 No. 72 -- this is Exhibit No. 44.

5 A. Uh-hmm.

6 Q. This is a further report from  
7 Trow Consulting Engineers, and it's dated the 9th of  
8 November of 1994.

9 A. Sir.

10 Q. Did you see this report during  
11 your tenure as the Chief Building Official?

12 A. No, I didn't.

13 Q. Again, you saw it for the first  
14 time when you were preparing for these proceedings?

15 A. That's right.

16 Q. If you would turn to page 15 of  
17 the report?

18 A. Yes, sir.

19 Q. This is the page that contains  
20 the conclusions.

21 A. Uh-hmm.

22 Q. I would draw your attention to  
23 the fourth conclusion, paragraph 4, and ask you to  
24 read that, please, and tell me what, if anything,  
25 you would have done if you had been aware of these

1 facts in 1994.

2 A. What I would have done was  
3 pursued it as I would have for the other two  
4 reports.

5 There's an update now. You would have  
6 to -- are these more problems that have surfaced or --  
7 can we assume that they're --

8 Q. They're looking at the  
9 difference in the condition between '91 and '94, and  
10 I'm asking you, if you had this information, would  
11 have you acted on it?

12 A. Yes, I would have.

13 Q. And, again, you would have  
14 issued an order either under the Property Standards  
15 By-law or under the Building Code Act; is that  
16 correct?

17 A. Yes, sir.

18 MR. WALLACE: This might be a good  
19 time to take a break.

20 THE COMMISSIONER: Let's take  
21 a 15-minute break.

22 MR. WALLACE: We are going to break  
23 for about 15 minutes, Mr. Pigeau.

24 THE CLERK: Order. All rise. This  
25 hearing will now recess for 15 minutes.

1 --- RECESS AT 3:08 P.M.

2 --- RESUMED AT 3:28 P.M.

3 THE COMMISSIONER: Mr. Wallace?

4 BY MR. WALLACE:

5 Q. Mr. Pigeau?

6 A. Sir.

7 Q. Thank you. I'd like you to turn  
8 to Tab No. 78, please.

9 And this is Exhibit No. 51.

10 A. Yes, sir.

11 Q. This, Mr. Pigeau, is another  
12 Trow report. This one is dated the 6th of November,  
13 1995.

14 And the purpose of this report is set  
15 out in the second paragraph. It states:

16 "As previously discussed, the  
17 purpose for the structural  
18 review and analysis was to  
19 confirm whether the concrete  
20 topping is required (since  
21 there were several  
22 inconsistencies in the original  
23 drawings for this project) and  
24 to determine what type of  
25 waterproofing system could be

1                   installed (i.e., thick or thin)  
2                   on the deck depending on the  
3                   allowable loading on the slab  
4                   due to the waterproofing  
5                   system."

6                   So we can see that the -- Algoma is  
7 still looking for a solution to their leaking  
8 problem.

9                   And did you see this report, sir,  
10 during your tenure as the Chief Building Official in  
11 Elliot Lake?

12                   A. No, I didn't.

13                   Q. And I'll just refer you to the  
14 third page of the report, paragraph number 3 at the  
15 top of the page. The question is:

16                   "'What is the estimated life  
17 of the composite roof deck?'

18                   "The roof deck presently contains  
19 areas of debonded concrete topping.  
20 These areas need to be removed and a  
21 new bonded topping installed to  
22 maintain the structural integrity of  
23 the slab. This should be carried  
24 out as soon as possible."

25                   Stopping there, if you had had that

1 information, what, if anything, would you have done  
2 as the Chief Building Official?

3 A. I would have pursued it under  
4 the Property Standards or the Ontario Building Code  
5 Act.

6 Q. And "pursued it" meaning issue  
7 an order under either one of those pieces of  
8 legislation?

9 A. Yes, sir.

10 Q. And just to carry on:

11 "If the debonded topping is  
12 not repaired, the core slabs  
13 will not be able to safely  
14 carry the dead load of the  
15 topping since the topping and  
16 core slabs must be bonded.  
17 Ongoing leakage through the  
18 joints in the topping and core  
19 slabs will continue to cause  
20 deterioration of the topping  
21 and core slabs due to the  
22 freeze/thaw cycles and chloride  
23 contamination of the core slabs  
24 and subsequent corrosion of the  
25 prestress strands in the core

1                   slabs and the supporting steel  
2                   beams."

3                   Again, I will repeat that question:  
4                   What would you have done if you had had that  
5                   information back in 1995?

6                   A.     I would have issued an order  
7                   under the Property Standards or the Building Code  
8                   Act.

9                   Q.     If could you turn to tab 105,  
10                  this is Exhibit No. 65.

11                  A.     Yes, sir.

12                  Q.     This is a report dated the  
13                  26th of October, 1996, by an engineer from Sault  
14                  Ste. Marie by the name of Paul Meyer.

15                  And, again, did you see this report  
16                  when you were Chief Building Official?

17                  A.     No, I didn't.

18                  Q.     And at the last page of the  
19                  report at the top of the page, I think it's actually  
20                  easier to read on the screen than it is on the -- in  
21                  the actual text, but it says:

22                                 "Concrete slabs at the  
23                                 parking deck may have been  
24                                 overloaded into the past,  
25                                 leading to cracks in the



1 grouted joints between slabs.  
2 This does not compromise the  
3 strength of the slabs, but may  
4 be leading to cracks in the  
5 waterproof concrete topping and  
6 water entry into the building.  
7 Ongoing monitoring of the slabs  
8 for leaks and prompt repair of  
9 those leaks should continue."

10 And I'll ask, again, the same  
11 question I've asked with respect to the other  
12 engineering reports.

13 First of all, you didn't see this,  
14 number one; correct?

15 A. Correct.

16 Q. And number two, if you had this  
17 information in 1996, what, if anything, would you  
18 have done?

19 A. I would have issued an order  
20 under the Property Standards By-law or the Building  
21 Code Act.

22 If --

23 Q. Now --

24 A. If the -- if -- excuse me. If  
25 the order would have been issued for the first

1 report that was done by Trow, these would only be  
2 subsequently used as evidence, wouldn't they?

3 Or ...

4 Q. Well, I guess it's pretty  
5 speculative, because we don't know -- if you'd  
6 issued an order back on the first Trow report and  
7 the problem had been fixed, then we wouldn't be  
8 looking at other engineering reports.

9 A. You're right. You're right,  
10 sorry.

11 Q. I'd just like to draw your  
12 attention to one other fact on the last page of this  
13 report, under "Recommendations" by Mr. Meyer:

14 "Currently, there are movable  
15 gates at the bottom of the  
16 ramps that lead to the parking  
17 deck."

18 So it would appear that, at least at  
19 1996, the gates were not permanent, they were  
20 movable gates; correct?

21 A. Yes. It would appear to have  
22 been that way, yes.

23 Q. Yes. And are you aware, having  
24 seen this now, are you aware of the gates being  
25 changed after 1996, to be made permanent?

1 A. I'm not aware of --

2 Q. Okay.

3 A. -- that comment.

4 Q. Now, the next document I would  
5 like you to look at is at tab 106, and this is  
6 Exhibit No. 390.

7 A. Mm-hmm. Sure.

8 Q. This document is titled a  
9 "Non-Disclosure Agreement," and you can see the  
10 parties to the agreement are Algoma Central  
11 Properties and the Non-Profit Retirement Residences  
12 of Elliot Lake as -- they identify as ELRL.

13 Just by way of some background, this  
14 document is executed on the 15th of May, 1998. You  
15 can see that from looking at the last page?

16 A. Okay.

17 Q. At that point in time, Elliot  
18 Lake Retirement Living were considering purchasing  
19 the Algo Centre, and they wished to get, among other  
20 things, an opinion as to the condition of the  
21 building. This is in 1998.

22 And the effect of this document was  
23 to prevent them -- that is Elliot Lake Retirement  
24 Living -- from sharing that information with anybody  
25 else, except with the written approval of Algoma

1 Central Properties; okay?

2 A. Okay.

3 Q. And it goes on to say that if  
4 that consent to release the information is refused  
5 with respect to that list of persons, Mayor George  
6 Farkouh, Fred Bauthus, Carol Lister, Jerry Bauthus,  
7 Troy Speck, Terry Croteau, Lynda Young, Mavis  
8 Boreham, Fred Mann -- do you recognize those names?

9 A. Yes, I do.

10 Q. They represent the Mayor and  
11 Council of Elliot Lake at the time, including the  
12 CAO, Mr. Bauthus?

13 A. Yes, sir.

14 Q. Now, the document says if the  
15 consent is not given by Algoma to release that  
16 information, then the cost of the building condition  
17 report that Elliot Lake Retirement Living paid will  
18 be -- up to \$12,000 -- will be reimbursed to  
19 Elliot Lake Retirement Living.

20 The first question I have is: Did you  
21 have any knowledge of this document at the time?

22 A. No, I didn't.

23 THE COMMISSIONER: Could you repeat  
24 your answer, please, sir?

25 THE WITNESS: No, I wasn't aware of

1 this documentation.

2 THE COMMISSIONER: Thank you.

3 BY MR. WALLACE:

4 Q. Were you aware back in May of  
5 1998 of any interest on the part of Elliot Lake  
6 Retirement Living in purchasing the mall?

7 A. I had heard that there was a  
8 possibility, yes.

9 Q. And do you recall when you heard  
10 that? Was it in May of 1998? Is it after May of  
11 1998, or is it before that?

12 A. More likely it was after.

13 Q. And --

14 A. I can't be sure, but ...

15 Q. Are you able to -- well, let me  
16 put it to you this way: The building was purchased  
17 by Elliot Lake Retirement Living in June of 1999.  
18 Are you able to -- using that as a yardstick, are  
19 you able to say how -- what period of time prior to  
20 the actual purchase you became aware of it?

21 A. I don't know how long the  
22 negotiations took place, so I really couldn't tell  
23 you. It's difficult to set a date on that.

24 Q. Now, it's my understanding that  
25 if you turn to the next tab, that is tab 107,

1 Exhibit No. 66, there is a "Building Condition  
2 Assessment for Elliot Lake Retirement Living Final  
3 Report."

4 The date of that is November 12th,  
5 1998.

6 It's my -- it's my understanding that  
7 this report is the building condition assessment  
8 that is spoken of in the nondisclosure agreement  
9 that I just showed you a few moments ago; okay?

10 A. Yes. Yeah.

11 Q. And I'd like to draw your  
12 attention to page 11 of that.

13 A. Yes, sir.

14 Q. And draw your attention to point  
15 2.2, "Parking Deck Structure".

16 A. Mm-hmm.

17 Q. (Reading)

18 "A rooftop parking deck  
19 structure is located on the  
20 third floor of the building.  
21 The deck surface generally  
22 consists of a concrete topping  
23 wear layer installed over  
24 precast concrete slabs. It is  
25 our understanding that the

1 integrity of the waterproofing  
2 ability of this structure has  
3 been a continuous maintenance  
4 issue. From our review of the  
5 existing drawings and visual  
6 inspection, the presence of an  
7 integral waterproofing membrane  
8 could not be determined."

9 And then dropping down to the next  
10 paragraph, it said:

11 "... there are concerns and  
12 recommendations expressed by  
13 the structural consultant  
14 regarding the structural  
15 integrity of the concrete  
16 slabs. Recommendations are  
17 provided for conducting  
18 additional inspection and  
19 testing to accurately assess  
20 the extent of any  
21 deterioration. The results of  
22 this additional inspection and  
23 testing may have significant  
24 cost implications if the  
25 structural integrity of the

1 slabs has been affected.  
2 Concerns and restrictions  
3 regarding live loadings and  
4 structural capacities are also  
5 indicated."

6 This information that I've just given  
7 you calls into question both the watertightness of  
8 the roof and the structural integrity of the  
9 building itself; is that not correct?

10 A. This report addresses that.

11 Q. I'm sorry? I just didn't hear  
12 you.

13 A. The report addresses that.

14 Q. Yes. And if you had had that  
15 information, what, if anything, would you have done?

16 First of all, I don't think I've  
17 established: Did you see this report?

18 A. No, I didn't.

19 Q. If you had received this report  
20 and had been aware of the information I've just told  
21 you about, what, if anything, would you have done?

22 A. I would have pursued it under  
23 the Ontario Building Code Act and the Property -- or  
24 the Properties Standards By-law.

25 Q. And the orders that you would



1 issue would be to what?

2 A. The instability of the load had  
3 to -- I'd have to read through it to give you more a  
4 detailed...

5 "... structural integrity of  
6 the concrete slabs ..."

7 And testing the ...

8 ... waterproofing ability of  
9 this structure ... concrete  
10 topping wear layer ..."

11 You -- you would have to be very  
12 specific as to what you were charging -- laying the  
13 charge on.

14 Q. Would you want to be satisfied  
15 that both the building is waterproof and  
16 structurally sound?

17 A. Yes.

18 Q. And would your order address  
19 those two issues?

20 A. It would speak to that one,  
21 because of the -- what you have identified as  
22 problems.

23 Q. I've shown you a number of  
24 engineering reports over the course of the  
25 afternoon, and you've told us that you did not see

1 any -- any of them.

2 With the exception of the one that  
3 Mr. Liataud told you about, were you aware of the  
4 fact that these reports were being prepared?

5 A. No, I was not aware whatsoever.

6 Q. Were you aware that there were  
7 engineers retained by, mainly, Algoma Central, and  
8 latterly, Elliot Lake Retirement Living, actually on  
9 the premise doing inspections?

10 A. No. I was not aware of that.

11 Q. And the last report I wanted to  
12 show you is tab 113. That, I believe, is Exhibit  
13 No. 70. At least I hope it is. Yep.

14 This is another report, dated the  
15 10th of May, 1999.

16 Like the other reports, can you tell  
17 us whether or not you saw this while you were the  
18 Chief Building Official?

19 A. No, I didn't.

20 Q. And I'll draw your attention to  
21 the "Executive Summary," which is the second page  
22 in. If you look about a third of the way down, it  
23 says that:

24 "Our objective was to:

25 - identify existing conditions

1 requiring repair;

2 - identify defects that could  
3 affect the durability of the  
4 structure;

5 - establish a basis for making  
6 recommendations for the treatment of  
7 such deficiencies; and

8 - develop a repair and  
9 maintenance strategy that will  
10 minimize current and future repair  
11 costs."

12 And then they identify the following:

13 "The major forms of  
14 deterioration include:

15 - Leakage through cracks and  
16 construction joints;

17 - Corrosion of steel beams and  
18 suspended ceiling hangers; and

19 - Debonded or freeze-thaw damaged  
20 concrete topping along the joints."

21 Again, if you had that information in  
22 1999, what, if anything, would have you done with  
23 it?

24 A. I would have issued an order  
25 under the Building Code Act or the Properties

1 Standards By-law.

2 Q. And the effect of the orders --  
3 whichever vehicle you chose -- would be to address  
4 the problems that are identified, that I've just  
5 mentioned?

6 A. Yes, sir.

7 Q. Now, if you could refer to  
8 tab 114, that is Exhibit No. 11-3.

9 We'll start at the page with the  
10 number at the bottom right corner, that ends in  
11 3972. It is an interoffice memo.

12 Are you there, sir?

13 A. Yes, I've got it, yeah.

14 Q. This is a memo from a Mr. Phil  
15 Butler, who is identified as the secretary of the  
16 Joint Health and Safety Committee.

17 Do you know Mr. Butler?

18 A. Yes, I do.

19 Q. And this is -- the memo is from  
20 him and it's to Ms. Fazekas, the librarian, and it's  
21 dated the 5th of November, 1998.

22 And just to situate you here, because  
23 I want to show you some further documents,  
24 Mr. Butler is informing Ms. Fazekas that there had  
25 been an inspection of the library on the 26th of

1 August, 1998, by members of the Joint Health and  
2 Safety Committee.

3 There were a number of things that  
4 needed to be addressed, and she -- he was asking her  
5 to reply as to how -- what action has been taken as  
6 far as those areas.

7 And if you turn over to the next  
8 office memo, you will see the reply of Ms. Fazekas.  
9 And the reply that she sends to Mr. Butler is dated  
10 the 9th of December, 1998.

11 And she talks about the ceiling tiles  
12 and indicates that she had had discussions with  
13 Mr. Bauthus on the 9th of October. And:

14 "He had met with Mr. Liataud  
15 mall manager, earlier that day  
16 without resolution of the  
17 issue. Mr. Bauthus seems  
18 reluctant to pressure the mall  
19 on this issue. Later in the  
20 month, I discussed the issue  
21 with Mr. Bishop who suggested  
22 that the Board withhold their  
23 rent in protest."

24 The Library Board passed a  
25 resolution, wishing to appear before the Council on

1 the 11th of January, to bring the following to the  
2 Council's attention:

3 "Whereas the Library is  
4 constantly subject to water  
5 damage from the leaky roof,

6 Whereas, this water affects the  
7 condition of the collection,  
8 presents health and safety problems  
9 and presents an unpleasant aesthetic  
10 appearance in a public building,

11 Whereas, the Library Board has  
12 repeatedly approached the landlord  
13 but has not received a positive  
14 response,

15 Whereas, there is concern that  
16 municipal insurance coverage may be  
17 affected by lack of action.

18 Be it resolved that the City  
19 Council be approached to increase  
20 the Library's operating budget  
21 sufficiently that the Library Board  
22 can address these ongoing  
23 maintenance concerns."

24 Now, I'd like to draw your attention  
25 to the opening of the "whereases" where it says:

1                   "Whereas, the Library is  
2                   constantly subject to water  
3                   damage from the leaky roof ..."

4                   Would you not agree with me that this  
5                   would constitute a complaint about a Property  
6                   Standards violation and it's a complaint in writing?  
7                   Would agree you agree with that?

8                   A.     What -- what timeframes are we  
9                   looking at?

10                  Q.     I'm sorry? I just didn't hear  
11                  you.

12                  A.     No, I was just -- yeah, I can  
13                  only ...

14                  I was never involved in -- in these  
15                  discussions under the -- under the Joint Health and  
16                  Safety, but ...

17                  Water damage, what would that include?

18                  Q.     Well, it's a lot of things, but  
19                  I'm just asking you right now whether there -- this  
20                  document -- when you've read it and you've looked at  
21                  it, would it constitute a written complaint about  
22                  the fact that the roof is not watertight?

23                  A.     Yes.

24                  Q.     Do you -- so this document on --  
25                  dated the 9th of December, was that document ever

1 brought to your attention?

2 A. No, it wasn't.

3 Q. Were you aware in December of  
4 1998 that the library was suffering leakage  
5 problems?

6 A. No. I was never approached to  
7 look into that problem.

8 Q. When you say "never approached,"  
9 are you referring to December of 1998, or ever?

10 A. I'm referring to December '98,  
11 you're asking for --

12 Q. Yes.

13 A. -- specific dates?

14 Q. No, that's fine. I just want to  
15 be fair to you and understand your answer correctly.  
16 That's all.

17 Other than the documents that I've  
18 shown you earlier this afternoon, were there any  
19 other occasions that you can recall where the  
20 library approached you with respect to water leakage  
21 from the roof?

22 A. No. I can only identify the --  
23 Janet Taylor's letter and Barb Fazekas's letter.  
24 And I -- I guess I was cc'd on -- on -- on Janet  
25 Taylor's letter, from what I recall.



1                   Those were the two occasions.

2                   Q.    Let's move along to the next  
3 page.  Just flip that page over, and you will see a  
4 letter dated the 30th of December, 1998?

5                   A.    Yes.

6                   Q.    This is a letter to Mr. Burling?

7                   A.    To Ms. Fazekas, or ...

8                   Q.    No, it's from Ms. Fazekas to  
9 Mr. Burling; do you see that?

10                  A.    Okay.

11                  Q.    And in this letter, it -- she is  
12 outlining the fact that the Library Board would like  
13 to appear before City Council on the 11th of  
14 January, to address the concerns that they have with  
15 the Mayor and members of Council.

16                  Do you see that, in the very last  
17 paragraph?

18                  A.    Yeah, I see it.

19                  Q.    And the reason they're there is  
20 because it says:

21                                "Whereas the library is  
22                                constantly subject to water  
23                                damage from the leaky roof ..."

24                  Do you see that?

25                  A.    Yes, sir.  Yeah.

1 Q. And it also -- the documentation  
2 also indicates that there is a report attached to  
3 the letter. And if you flip the page -- you will  
4 see "Maintenance of Library Physical Plant". Do you  
5 see that?

6 A. Yes, sir. Yeah.

7 Q. And then it goes on to give  
8 back -- to give background information, and it  
9 states the following:

10 "In 1989, the Library was  
11 moved to the Algo Centre Mall,  
12 an area of some 8,500 s.f. At  
13 the time of negotiation, the  
14 Library Board was assured that  
15 the mall's chronic problem with  
16 a leaky roof had been dealt  
17 with. From that time on, the  
18 Library has had problems with  
19 water damage, poor air quality  
20 and decrease in the aesthetic  
21 quality of the library's  
22 appearance. Despite  
23 considerable correspondence  
24 with the Mall Manager, the  
25 situation has not been improved

1 to the satisfaction of the  
2 Library Board."

3 This letter, as I've showed you, was  
4 in 1998, and they're talking about going back to  
5 1989. And they're indicating that they have had  
6 problems from 1989 till the present time with water  
7 leakage; do you see that?

8 A. Yes, sir. Yes.

9 Q. And also that the problems of  
10 leakage were described as being "chronic" problems,  
11 prior to moving into the mall; do you see that on  
12 the second line?

13 A. You're saying -- yeah. Okay.  
14 Yes.

15 Q. And then to answer your question  
16 about the type of damages -- if you drop down to the  
17 paragraph, the second paragraph under the heading  
18 "Analysis"?

19 A. Mm-hmm.

20 Q. (Reading)

21 "The water damage created by  
22 the leaky roof does not always  
23 occur in the same place;  
24 however, almost every time it  
25 rains, the roof does leak

1                    somewhere in the Library. When  
2                    the staff is aware that it is  
3                    raining, they try to cover  
4                    possible spots with plastic  
5                    where rain might come in as it  
6                    has come in previously."

7                    So you will agree with me that they  
8                    are describing a very serious leakage problem, if  
9                    it's leaking every time it rains?

10                    A.    It would appear, yeah.

11                    Q.    And this document, the letter of  
12                    the 30th of December, 1998, with the attached  
13                    background that I've just read to you, you would  
14                    agree with me that this is a document that would  
15                    constitute a written complaint about a Property  
16                    Standards infraction or violation; correct?

17                    A.    Yes, sir.

18                    Q.    And this letter was written to  
19                    Mr. Burling, the City Clerk. Were you made aware of  
20                    the contents of this letter?

21                    A.    No, I wasn't.

22                    Q.    Were you not aware that the  
23                    library personnel were going to be making a  
24                    presentation before City Council?

25                    A.    No. I wasn't aware.

1 Q. And if you would -- just before  
2 I get to that, what they are asking for is, if you  
3 turn over to the last page of that document that I  
4 showed you.

5 A. Mm-hmm.

6 Q. It says:

7 "Maintenance of Library  
8 Physical Plant."

9 A. Yes.

10 Q. So what they're asking for is  
11 for plastic sheet covering at \$10 a roll, a ladder  
12 for a 20-foot ceiling in order to replace the  
13 damaged tiles; they estimate the cost of the ladder  
14 at \$90. Ceiling tiles at \$10 each, about 10 a year.

15 Then it goes on to talk about what I  
16 perceive as being replacement costs that could be  
17 incurred.

18 And it talks about a shelving unit  
19 with 188 books, and a replacement cost for books  
20 damaged by water would be at \$6,580 minimum. A  
21 video stand that had had leaks before, and there are  
22 141 videos. They cost \$25, for a replacement cost  
23 of \$3,525. Then replacement cost for computers, and  
24 a television and a video cassette recorder.

25 If you look -- if you go to Tab

1 No. 43 in the small binder --

2 MR. WALLACE: And the document  
3 number, Ms. Kuka, because I don't have an exhibit  
4 number for this, is CEL --

5 THE WITNESS: 43, you said?

6 MR. WALLACE: Yes.

7 CELE, and the last five digits are  
8 12240.

9 A. Is that a ...

10 BY MR. WALLACE:

11 Q. Minutes of a regular meeting of  
12 Council?

13 A. Yes, sir. I've got it.

14 Q. We're just going to wait until  
15 it's up on the screen here.

16 MS. KUKA: What were the last five  
17 digits?

18 MR. WALLACE: 12240.

19 MS. KUKA: That's Exhibit No. 2015.

20 MR. WALLACE: Thank you.

21 BY MR. WALLACE:

22 Q. These are the minutes of the  
23 regular meeting of council on the 11th January.

24 That is the meeting that Ms. Fazekas  
25 had written to Mr. Burling about wanting to attend?

1 A. Mm-hmm.

2 Q. And if you look at the second  
3 page, second-last item from the bottom, on the  
4 right-hand side:

5 "Request for increase library  
6 operating budget." [As read.]

7 And if you look on the left-hand side  
8 of the page, it indicates that:

9 "The resolution number 37/98  
10 of the Public Library Board  
11 dated November the 12th, 1998  
12 concerning a request for an  
13 increase in their operating  
14 budget to deal with maintenance  
15 concerns be received." [As  
16 read.]

17 And that was carried.

18 Were you aware of that, sir?

19 A. No, I wasn't.

20 Q. Can you -- if you had been made  
21 aware, as you've indicated, in respect of the  
22 correspondence from Ms. Fazekas to Mr. Burling and  
23 also the correspondence from Ms. Fazekas to  
24 Mr. Butler, you agreed with me that both of those  
25 documents constituted written complaints about a

1 Property Standards By-law deficiency; correct?

2 A. Yes.

3 Q. These -- both of these documents  
4 were things that, if they had been brought to your  
5 attention, you could have acted upon; is that  
6 correct?

7 A. Yes, sir.

8 Q. And if they had been brought to  
9 your attention, given the fact that they're -- they  
10 talk about longstanding problems, what, if anything,  
11 would you have done?

12 A. I would pursued it under the  
13 Property Standards By-law.

14 Q. And in this case here,  
15 specifically what would you have done?

16 A. Again, I'm not aware of the  
17 lease agreement with the mall. I understand from  
18 the -- that the City had to pay for the replacement  
19 of certain items. I'm not really quite sure.

20 So I -- I would ask that the problem  
21 be -- be addressed, and that the ceiling tiles be  
22 replaced because of the fact that it's a fire  
23 separation. And ...

24 Q. The lease is an agreement  
25 between parties, between the mall owner and, in this



1 case, the Library Board or the City, as the case may  
2 be.

3 That's talking about obligations  
4 under a contract. The fact that the roof leaks,  
5 leaving aside the lease, that presents a Property  
6 Standards By-law issue; correct?

7 A. In which way?

8 Q. Well, the Property Standards  
9 By-law mandates -- it doesn't suggest, it  
10 mandates -- that the owners keep their roofs in a  
11 watertight condition; correct?

12 A. Correct.

13 Q. The correspondence that  
14 you've -- we've gone through makes it abundantly  
15 clear that the roof at the Algo Mall isn't doing the  
16 job. Water is leaking every time it rains -- the  
17 roof is leaking every time it rains, rather;  
18 correct?

19 A. Yes.

20 Q. Do you agree?

21 A. Right.

22 Q. Yes. Therefore, it seems to me  
23 whether -- it doesn't matter what the lease says as  
24 to who pays for the damage, the responsibility is  
25 the owner's to provide a watertight roof; correct?

1 A. Correct.

2 Q. So I'll get back to my question:  
3 What would you have required of the owner, if you  
4 had had this information?

5 A. Repair the facilities, and issue  
6 an order.

7 Q. Now, did anybody at the City  
8 come to you and seek your assistance as to how to  
9 deal with this problem?

10 A. I'm not aware of anybody  
11 actually asking us how to -- how to deal with the  
12 problem.

13 I think the problem was very, very  
14 obvious. Replacing ceiling tiles or ...

15 Q. Well, replacing ceiling tiles is  
16 just sort of like the small part of the piece here.

17 If the roof didn't leak, you wouldn't  
18 have to replace ceiling tiles; correct?

19 A. That's right.

20 Q. And the --

21 A. You would need to repair --

22 Q. Sorry?

23 A. You would need to repair the  
24 roof.

25 Q. Yes.

1 THE COMMISSIONER: "Need to repair  
2 the roof."

3 BY MR. WALLACE:

4 Q. The City, through you, had the  
5 means to address this problem, did they not?

6 A. Yes, they did.

7 Q. And you're -- what you're  
8 telling us is that nobody at the City brought this  
9 documentation to your attention; correct?

10 A. Correct.

11 Q. Or brought to your attention the  
12 fact that the Library Board and the -- sorry, that  
13 the Council approved an increase of the operating  
14 budget of the library to deal with this leaking  
15 problem -- or the consequences of the leaking  
16 problem; correct?

17 A. Yes.

18 Q. Can you think of any reason, if  
19 the City had the ability, through you, to deal with  
20 the problem, can you think of any reason why this  
21 was -- information was being withheld from you, or  
22 at least not given to you?

23 A. I can't necessarily understand  
24 why. Whether it would be through the -- my  
25 immediate boss, to try and resolve the problem, or

1 the Treasurer, who would -- I'm not really quite  
2 sure how it -- you could deal with it.

3 Q. Well, we can agree that the  
4 state of the roof is the owner's responsibility;  
5 correct?

6 A. Yes.

7 Q. And the owner has to provide a  
8 watertight roof?

9 A. Yes.

10 Q. Agreed?

11 A. Yes.

12 Q. And clearly, in this case, the  
13 owner wasn't doing that; correct?

14 A. Correct.

15 Q. And the library was suffering  
16 damage to property as a direct result of the owners  
17 not having a watertight roof?

18 A. Yes.

19 Q. And this was actually costing  
20 the City money that they would otherwise not have to  
21 spend; correct?

22 A. Correct.

23 What I can't understand, unfortunately,  
24 is, if this was an ongoing problem for heaven knows,  
25 if the library was still there when the mall

1 collapsed, why did it not move? If this is such a  
2 prominent problem, to me it would be more simple to  
3 find another location.

4 And I understand that the lease was  
5 re-signed, in 1996, I think.

6 Now, you know what I mean, it's -- it's  
7 like anything else, you know, if you're -- if you're  
8 in the midst of problems, why it was not -- this was  
9 an ongoing problem for -- to my understanding, from  
10 reading all the discussions with Mrs. Janet Taylor,  
11 the Library Board and Barb Fazekas, that that this was  
12 an ongoing problem, and yet they clearly remained  
13 there.

14 And I don't know if they couldn't get  
15 out of the lease, but they actually renewed the lease  
16 in '96.

17 Was there any reason for that, or ...

18 Q. You will agree with me that  
19 the -- as far as solving the leaking problem, the  
20 City had tools at their disposal to force the owner  
21 to fix the roof; correct?

22 A. Yes.

23 Q. And as far as you know -- at  
24 least you can tell us that during your time as the  
25 Chief Building Official, you never issued any order

1 to the City to fix the leaking roof; correct?

2 A. Any orders to the City, or to  
3 Algoma Central?

4 Q. To Algoma Central.

5 A. Yeah.

6 Q. I mean, the City doesn't own the  
7 mall, so you can't issue an order -- the order goes  
8 to the owner; correct?

9 A. Exactly. Exactly.

10 Q. So you never issued an order to  
11 the owner of the mall in the entire time that you  
12 were Chief Building Official?

13 A. No, I didn't.

14 Q. And more specifically, an order  
15 to make the roof watertight; correct?

16 A. Exactly.

17 Q. And I'll just get back to my  
18 question: Are you able to offer any explanation as  
19 to why this information wasn't given to you?

20 Because you could do something about  
21 it; agreed?

22 A. I could have, but under the  
23 circumstances, I didn't think the problem was overly  
24 critical. It did not create an unsafe situation, an  
25 unsafe condition. And the mall people didn't

1 complain and the -- the business was conducted on an  
2 ongoing basis, even though everybody was talking  
3 about leaks. And the mall people sort of maintained  
4 an ongoing maintenance of the problem.

5 So I -- I could not see any immediate  
6 dangers to -- to try and repair the problem.

7 Q. Well, let's examine that for a  
8 second.

9 First of all, we've seen that the  
10 library has been complaining about the problem over  
11 the span of about eight years.

12 A. Mm-hmm.

13 Q. Correct?

14 A. Correct.

15 Q. So clearly, the library was not  
16 happy, and they have complained in a fashion that  
17 you have agreed would constitute written complaints,  
18 that would allow you to have conducted an  
19 inspection; correct? Right?

20 A. Yes.

21 Q. Now, you also said that you  
22 didn't see it as a problem that presented a safety  
23 issue; correct?

24 A. Correct.

25 Q. My question to you is: How would

1 you know that, given the fact that -- as far as I  
2 can tell from our conversation today -- you never  
3 did an inspection of the roof, the leaking roof?

4 A. As it was, I didn't think it was  
5 a problem.

6 Q. And all I'm asking you is: If  
7 you didn't do an inspection, how could you come to  
8 that conclusion, that it wasn't a safety risk?

9 A. Because it wasn't necessarily a  
10 problem with -- with any other tenants. I don't  
11 know, you know, here again, we're localizing  
12 strictly the library here. I don't think there was  
13 any complaints from any other tenants.

14 And why that problem was so -- so  
15 prevalent in -- in the library, I -- I don't really  
16 know why.

17 Possibly because of it backing onto the  
18 hill, and there was a swell created at the back of the  
19 property, accumulated storm water. You know, here  
20 again, and -- to me, the only one that was doing any  
21 complaining was the library.

22 And if it was such a problem, I -- I  
23 can't see why they wouldn't have moved into a better  
24 location.

25 Q. So is that what the answer would



1 be, is that the tenant has to move out of a leaking  
2 building? Or does the City not have a  
3 responsibility to make the owner provide -- as the  
4 Property Standards By-law says -- provide a  
5 watertight roof?

6 A. If -- if the tenancy is not  
7 occupied, then do we have to provide a watertight  
8 roof? If there's no tenants --

9 Q. Well, for --

10 A. -- in that location?

11 Q. I guess if it's an empty  
12 building, no one is going to be worrying about it,  
13 but this building wasn't empty.

14 You had a significant tenant, 8,500  
15 square feet, and they were complaining consistently.

16 MR. SHOEMAKER: Your Honour, I think  
17 we should perhaps have some specification to when  
18 Mr. Wallace says "complaining" -- what did you say  
19 -- "continuously"?

20 MR. WALLACE: "Consistently."

21 MR. SHOEMAKER: "Consistently".

22 There were two complaints over a period  
23 of nine years. You know, it's misleading the witness  
24 to what that should be.

25 THE COMMISSIONER: Were you here when

1 Ms. Fazekas was giving her evidence?

2 MR. SHOEMAKER: Pardon me?

3 THE COMMISSIONER: Were you here when  
4 Ms. Fazekas was giving her evidence?

5 MR. SHOEMAKER: I've read  
6 Ms. Fazekas's transcript.

7 THE COMMISSIONER: Mr. Wallace, I  
8 wonder if we've gone astray.

9 MR. WALLACE: Yes. I think we have,  
10 and I think I've actually come to the end of the  
11 day. Yes.

12 And I'm actually -- I'm finished.

13 THE COMMISSIONER: Thank you.

14 Obviously we're going to have to recall  
15 this gentleman on Monday morning.

16 What time would counsel like to start  
17 Monday morning? I'd very much like, at the end of the  
18 day, that cross-examination is complete, of  
19 Mr. Pigeau.

20 MR. MacRAE: 9 o'clock would make  
21 sense, Your Honour, if we're all available.

22 THE COMMISSIONER: Okay. Is  
23 everybody available that you know?

24 MR. WALLACE: Yes.

25 And, Mr. Commissioner, the

1 understanding among counsel, subject to your approval  
2 is that Mr. Bauthus will be available to give evidence  
3 if Mr. Pigeau is finished on Monday.

4 THE COMMISSIONER: All right. Well,  
5 counsel are made aware of that now.

6 You are going to be some time, I take  
7 it, or Mr. Shoemaker, whichever one is doing the  
8 cross?

9 MR. SHOEMAKER: Mr. Commissioner, we  
10 will take a little bit of time, Your Honour, in  
11 adducing new evidence, and also in re-examination at  
12 the end.

13 MR. AUBE: Mr. Commissioner, could we  
14 also have some idea of the schedule for next week,  
15 so I can coordinate my co-counsel? Does anybody  
16 know yet?

17 THE COMMISSIONER: Well, obviously  
18 because we've gone -- we've had the technical  
19 problems today, that has created difficulty. And I  
20 gather that counsel are rejigging.

21 MS. KUKA: There has been an e-mail  
22 sent out just before.

23 THE COMMISSIONER: An e-mail has gone  
24 out, Mr. Aube. I wasn't aware of that, so ...

25 In any event, you can speak also to

1 Mr. Wallace.

2 MR. AUBE: Yes.

3 THE COMMISSIONER: And I'm sure  
4 counsel will use their best efforts to ensure that  
5 the schedule is before you, the tentative schedule,  
6 in any event.

7 Thank you all very much. Have a good  
8 weekend. Everybody going back home, have a safe trip.  
9 And we'll see you at 9 o'clock on Monday morning.

10 Thank you very much, sir.

11 THE CLERK: Order. All rise.

12 This inquiry is now adjourned until  
13 9 o'clock on Monday, March 25.

14

15 --- Whereupon at 4:27 p.m. the Inquiry proceedings  
16 adjourned to 9:00 a.m. on Monday, March 25, 2013

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REPORTER'S CERTIFICATE

I, LISA M. BARRETT, RPR, CRR, CSR,  
Certified Shorthand Reporter certify;

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

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

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

Dated this 22nd day of March, 2013.

*Lisa Barrett*

NEESON & ASSOCIATES

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PER: LISA BARRETT, RPR, CRR, CSR

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