

THE ELLIOT LAKE INQUIRY
LA COMMISSION D'ENQUÊTE SUR ELLIOT LAKE

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**Held at the Ernst Young Center
Room A, Ottawa, Ontario
on Monday, November 18, 2013**

**Tenu au Centre Ernst Young,
Salle A,
Ottawa, Ontario
Le lundi , 18 novembre , 2013**

ROUNDTABLE 1 – INCREASING PUBLIC SAFETY

**BEFORE /DEVANT : The Honorable/l'honorable P.R. Bélanger,
Commissioner/Commissaire**

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APPEARANCES:

P. K. Doody) Roundtable Mediator

PARTICIPANTS:

R. Froebelius) BOMA
S. Huxley) Association of Ontario Municipalities
D. Findlay) Ontario Building Officials Association
W. Perrin) Ontario Association of Property
Standards Officers
B. Lewis) Ministry of Municipal Affairs and Housing
A. Borooh) City of Toronto
P. Sharpe) On his own behalf
M. Ostfield) Toronto Lands Corporation

1 ---Upon commencing in Ottawa, Ontario, on Monday,
2 November 18, 2013 at 9:00 a.m.

3 **THE COMMISSIONER:** Welcome, Ladies and
4 Gentlemen.

5 Welcome to those of you who are
6 observing at the White Mountain Academy in Elliot Lake,
7 and welcome as well to those who are following these
8 Proceedings on the Commission's website.

9 My name is Paul Bélanger, I am a
10 retired Judge of the Ontario Court of Justice and I am
11 the Commissioner of the Elliot Lake Commission of
12 Inquiry.

13 As you know, or some of you know, in
14 any event, there are three phases to the Inquiry's
15 mandate.

16 The first is to examine the events
17 leading to the collapse of the Algo Centre Mall in
18 Elliot Lake on the 23rd of June, 2012.

19 The second is to examine the emergency
20 response to the collapse.

21 And the third, and probably the most
22 important, is to make recommendations both to prevent a
23 recurrence of the tragedy encountered by the citizens
24 of Elliot Lake; and as well to improve the emergency
25 management process.

1 Between late February and early March
2 of this year, until mid-October, we had over 125 days
3 of hearings of which something just slightly less than
4 120 were devoted to receiving and hearing evidence from
5 the summoned witnesses.

6 There were 117 witnesses who were
7 summoned to appear before the Commission.

8 Now, we are in Ottawa for the next
9 phase of our work, the Policy Roundtables, and then of
10 course to attempt to synthesize all of the information
11 that we will have received in order to prepare our
12 Final Report to the people of Elliot Lake and to the
13 people of the Province of Ontario through the Ontario
14 Government.

15 The purpose of these sessions here
16 this morning is simply to gather information to assist
17 me in making those final Recommendations.

18 And this is clearly the most important
19 aspect of what it is that we are called upon to do,
20 because what's done is done.

21 Not very much can be done about that,
22 but hopefully through your contribution we can all
23 together make Ontario a safer place.

24 As I have explained before, I was
25 determined to hold all of our evidentiary hearings in

1 Elliot Lake so that the residents could themselves hear
2 what actually took place in their community and get a
3 sense of intimate participation.

4 I think we succeeded in that aspect of
5 our mandate.

6 However, for these Policy Roundtables
7 it was simply not economically feasible to fly all of
8 you to Elliot Lake, so here we are in the Nation's
9 Capital this morning.

10 As I have indicated previously, these
11 sessions are webcasted on our website and they are
12 screened on a large screen at the White Mountain
13 Building in Elliot Lake for the residents who wish to
14 congregate and to attend at that location.

15 There will be two sets of Roundtables;
16 the first this week will consider issues relating to
17 the inspection of buildings and property standards and
18 the training and qualifications of building officials.

19 We will consider as well whether there
20 should be a greater sharing of reports and information
21 relating to the conditions of buildings and the roles
22 of architects, of engineers, of building inspectors and
23 the like.

24 And then the second half of our task
25 here at the Ernst Young Centre will be on December 5th

1 and 6th when we consider issues relating to the
2 emergency response.

3 Each session will discuss a series of
4 questions which are available on our website at
5 www.elliottinquiry.ca under the "Roundtables" tab.

6 Also on the website you will find a
7 list of Preliminary Responses to the question received
8 from our panelists.

9 At the end of each Roundtable there
10 will be an opportunity for those in attendance here in
11 Ottawa to ask questions of the panelists and for those
12 residents of Elliot Lake watching at the White Mountain
13 Building, to send in written questions.

14 As well, counsel with Standing at the
15 Inquiry will have an opportunity to ask questions by
16 phone.

17 We have assembled what I consider to
18 be and what everybody considers to be an outstanding
19 group of experts, and I am most grateful to each and
20 every one of you for taking the time out of your busy
21 schedules to assist us in our work.

22 I know that my Final Report will
23 certainly be all the better for that input.

24 Looked at in a certain way, Ladies and
25 Gentlemen, I am the only student enrolled in a course

1 given by an emeritus faculty of distinguished experts
2 in relation to very complex and important subjects.

3 My thesis is to write a dissertation
4 on the various themes discussed and that dissertation
5 will be the most important part of this Commission's
6 work.

7 The report, my ambition is to get
8 straight A's.

9 My problem, of course, is that I am a
10 Criminal Court Judge and I have very little or no
11 experience, background or previous education in
12 relation to the subject matter, which of course will be
13 given at the Doctorate or the Masters' degree level
14 this morning.

15 Fortunately, I am allowed to cheat on
16 my final exam because I have the good fortune to be
17 surrounded by people who know a lot more than I do
18 about the subject matter of my dissertation and their
19 advice and support is going to be invaluable to me.

20 Again, I thank you for being here this
21 morning.

22 By doing so, you render an important
23 public service to the citizens of this Province.

24 And now, without further ado, let the
25 classwork begin, and in the process, my education; and

1 I am happy to turn proceedings over to our Moderator
2 for the day, Mr. Peter Doody, one of the Commission's
3 senior counsel who will introduce our panelists.

4 Thank you.

5 Mr. Doody?

6 **MR. DOODY:** Thank you, Mr.

7 Commissioner.

8 Just before we begin, I thought I
9 should indicate the way in which I proposed proceeding
10 today.

11 I told you before, we went on air, as
12 it were.

13 My role here is to facilitate the
14 discussion of the issues and questions that we have
15 proposed for discussion today and tomorrow.

16 To that end, I will be asking
17 questions probably directed to individuals -- and I am
18 hopeful that once the talk begins that others would
19 want to speak to something that the speaker is speaking
20 to.

21 That is the goal, is to get a lively
22 discussion going.

23 And so, if you would like to speak in
24 response to what somebody else is saying, probably the
25 best way to do it is to get my attention, put your hand

1 up or something so that I will then call on you.

2 That will also facilitate those who
3 are dealing with the technical aspects of simulcasting
4 this.

5 I expect there will be a break at
6 about 10:30 in the morning.

7 The exact timing of that will be
8 dependent upon where we are at in terms of the
9 discussion.

10 One of my roles here is not only to
11 facilitate the discussion, but also to ensure that all
12 of the questions are discussed.

13 So I may find it necessary to bring
14 discussion on one issue to a halt so we can move on and
15 talk about the other discussions, the other questions.

16 So if we could begin by introducing
17 the people who are sitting around the table here,
18 starting on my left and moving in a clockwise
19 direction.

20 We have Mr. Dean Findlay, who is
21 immediate Past President of the Ontario Building
22 Officials Association and President of the Alliance of
23 Canadian Building Officials.

24 He is the Chief Building Official and
25 the Manager of the Building Division of the City of

1 Peterborough and has 19 years experience as a building
2 official in rural, small urban and large urban
3 settings.

4 To Mr. Findlay's left is Stuart
5 Huxley.

6 Mr. Huxley is Senior Legal Counsel
7 with the City of Ottawa.

8 He was called to the Ontario Bar in
9 2000.

10 He has worked exclusively as in-house
11 counsel with the City of Ottawa since before then when
12 he articulated for the City starting in 1998.

13 He leads the City's Prosecution unit
14 and has extensive prosecution experience with
15 regulatory matters, including the *Building Code*, the
16 *Fire Code Planning Act* and various municipal bylaws.

17 He practices Municipal Law and
18 Litigation before the Superior Court of Justice in
19 Ontario, and has also represented the City on
20 significant matters before a coroner's inquest, the
21 Divisional Court, Court of Appeal for Ontario and the
22 Supreme Court of Canada.

23 To Mr. Huxley's left, Ann Borooah has
24 been the Executive Director of the City of Toronto
25 Building and Chief Building Official for the City of

1 Toronto since November 2001.

2 She oversees a staff of over 400,
3 responsible for enforcing the *Building Code Act* in
4 Toronto.

5 If I could stop here.

6 This highlights one issue which is
7 live for discussion today, and that is the disparity in
8 terms of size and resources of the municipalities of
9 Ontario, because the evidence we heard in Elliot Lake
10 was that in the City of Elliot Lake there is one
11 individual who was responsible for both the *Building*
12 *Code* issues and the Property Standards issues, was both
13 a Building Official and a Property Standards official.

14 Whereas in Toronto, there are 400
15 responsible for enforcing the *Building Code Act* in
16 Toronto.

17 Ms. Borooah has overseen the
18 transition to a new *Building Code Act*.

19 Prior to joining the City, she held
20 the position of Director of the Development and
21 Buildings Branch in the Municipality of Municipal
22 Affairs of the Province since 1993.

23 She was responsible for the
24 introduction of the 1997 edition of the *Building Code*,
25 the transfer of septic system regulation to the

1 *Building Code* from environmental legislation and the
2 introduction of Bill 124 which was a comprehensive
3 review of the *Building Code Act* and related
4 legislation.

5 She studied architecture at the
6 University of Waterloo and holds a Bachelor of Arts in
7 Urban Studies and Geography and a Masters' of Science
8 in Urban and Regional Planning from the University of
9 Toronto.

10 She is also a registered professional
11 planner.

12 To her left, Mr. Warwick Perrin is
13 President of the Ontario Association of Property
14 Standards Offices. That is a volunteer professional
15 organization, promoting the interests of by-law
16 enforcement officers engaged in the enforcement of
17 property standards by-laws.

18 He has been President for the past two
19 and a half years and a Director since 1997.

20 He has eight years as chair of the
21 Certification Training Committee of the Association and
22 has been an instructor in the Certification Training
23 Program since 1992.

24 He is currently employed as an Acting
25 Supervisor in the Investigation Services Unit of the

1 Municipal Licensing and Standards Division of the City
2 of Toronto.

3 He has 23 years of municipal law
4 enforcement experience, with approximately 11 years
5 focussing on multiple residential properties.

6 To Mr. Perrin's left, Brenda Lewis is
7 Director of the Building and Development Branch of the
8 Ontario Ministry of Municipal Affairs and Housing.

9 She joined the branch in January 2012
10 and as Director she is responsible to ensure that
11 Ontario's building regulatory environment is efficient
12 and effective and that is promotes building safety.

13 She has been with the Ontario Public
14 Service for over 30 years and has held several
15 positions in the Federal and Provincial Government.

16 To Ms. Lewis's left, Peter Sharpe.

17 Mr. Sharpe retired in 2010 after 11
18 years as President and Chief Executive Officer of
19 Cadillac Fairview, one of North America's largest
20 investors owners and managers of commercial real
21 estate.

22 Mr. Sharpe joined Cadillac Fairview in
23 1984, as Vice President of Property Management in
24 charge of the Canadian office portfolio and later
25 assumed responsibility for the retail properties in

1 1988.

2 He was promoted to Executive Vice
3 President, Property Operations in 1996 and became
4 President and CEO in March 2000 when the Ontario
5 Teacher's Pension Plan purchased 100 percent of
6 Cadillac Fairview.

7 In addition to his role at Cadillac
8 Fairview, Mr. Sharpe also served as the Global Chairman
9 of the International Council of Shopping Centres, the
10 world's largest real estate association.

11 He graduated in 1970 from Wilfred
12 Laurier University with an honours degree in Business
13 Administration and Economics.

14 Moving around the corner of the table,
15 Wayne de L'Orme is the Director of Mining, Health and
16 Safety Review of the Ontario Ministry of Labour,
17 leading a review of the state of health and safety in
18 Ontario's underground mines.

19 He has a Bachelor of Science and a
20 Bachelor of Education from the University of
21 Saskatchewan and a Masters of Business Administration
22 from the University of Western Ontario.

23 Randal Froebelius is Secretary
24 Treasurer of the Building Owners and Managers
25 Association, or as it is more commonly known as "BOMA."

1 He is also President and Founder of
2 Equity ICI Real Estate Services.

3 He has over 17 years of experience in
4 the management, development and construction of
5 industrial, commercial office, retail, institutional
6 and residential properties.

7 He holds a Bachelor of Engineering
8 Science degree from the University of Western Ontario
9 and a Masters of Business Administration from the
10 Richard Ivey School of Business.

11 He is a licensed Professional Engineer
12 in the Province of Ontario.

13 The last person going around the
14 table, Michael Ostfield, currently Council to the
15 Toronto Lands Corporation, a wholly-owned subsidiary of
16 the Toronto District School Board.

17 Toronto Lands manages surplus school
18 properties on behalf of the Board.

19 Mr. Ostfield has over 30 years
20 experience in the development and management of
21 commercial real estate, both as a lawyer and for
22 several years as General Manager of Development for
23 Eaton's.

24 He was also employed as in-house
25 council with Famous Players, the Bank of Nova Scotia

1 Real Estate Group and Pet Value Inc.

2 His previous experience included the
3 management and operation of several major shopping
4 centres across Canada.

5 I should indicate that in addition to
6 the individuals seated around the table who we will be
7 able to hear from today, the Commission received
8 written submissions which are posted on our website,
9 and I may miss one for which I apologize, but there are
10 submissions from the Ontario Large Municipalities
11 Building Officials from the Ontario Association of
12 Architects and from the Stormont, Dundas and Glengarry
13 Legal Clinic, all of which Commission Counsel and I am
14 sure the Commissioner have read with interest and will
15 be taken into account by the Commissioner when he is
16 considering what Recommendations to make.

17 In terms of the Agenda, what I propose
18 we do today is make one small switch in terms of the
19 questions that have been circulated and are posted on
20 the website, and that is I propose we start with the
21 discussion of Question No. 2 before we discuss Question
22 No. 1.

23 So Question No. 2 is: *"Should there be*
24 *mandatory minimum property standards for all buildings?*
25 *If so, who should establish them (the province or the*

1 *municipality)? How should they be enforced?"*

2 And I thought it might be helpful if
3 before we heard from you I gave you some indication of
4 some of the evidence that we have heard on these issues
5 in Elliot Lake.

6 Firstly, the Law of Ontario provides
7 that municipalities may but do not have to enact
8 property standards by-laws.

9 If municipalities choose to enact
10 property standards by-laws, there are no mandatory
11 requirements.

12 So the municipalities can choose what
13 standards to require for the buildings within the
14 municipality.

15 The province has the ability, under
16 subsection 34(2) of the *Building Code Act*, to make
17 regulations in respect to minimum maintenance standards
18 for buildings in Ontario.

19 It has never made any such regulation.

20 So that authority in the hands of the
21 province, which could be enacted by regulations by the
22 Lieutenant Governor and Council, has never been
23 exercised.

24 So there are no minimum mandatory
25 uniform standards across the Province in respect of the

1 condition of buildings after they are built.

2 Of course, before they can be occupied
3 there has to be inspections to ensure that they comply
4 with the *Building Code*, but after they are occupied
5 there is a varying -- depending on where you are in the
6 Province, there are either no standards or different
7 standards enacted by the municipalities.

8 Some municipalities have property
9 standards by-laws and some do not.

10 There is a research paper which
11 Commission Counsel prepared, which is posted on our
12 website which describes differences among the
13 municipalities in that regard.

14 The City of Elliot Lake does have a
15 Property Standards By-Law.

16 It requires, among other things, that
17 buildings in the municipality be structurally sound,
18 which is defined as being capable of supporting the
19 building's own weight and any weight to which it may
20 expect it to be subjected.

21 That By-Law also provides that
22 buildings must be watertight.

23 The evidence which the Commission has
24 heard included evidence that the Property Standards By-
25 Law at the City of Elliot Lake was not enforced for

1 reasons which I am sure will be explored in the
2 Commissioner's Report when it is released.

3 But the evidence was that it was not
4 enforced in an effective manner over the 35 or so year
5 life of the mall.

6 So with that background, the question
7 is should there be mandatory minimum property standards
8 for all buildings?

9 Who should establish them and how
10 should they be enforced?

11 I wondered if we could hear from Mr.
12 Findlay from the Ontario Building Officials
13 Association.

14 Could you assist us in this
15 discussion?

16 I did not tell you, you were going to
17 be the first one!

18 --(Laughter)

19 **MR. FINDLAY:** Mr. Doody, people who
20 know me better ask me to relax and let everyone else
21 get a chance to speak before I spoke, but I will take
22 the invitation to go first.

23 If I can start with a summary to say
24 that the instances of occurrence in terms of
25 enforcement of property standards in Elliot Lake versus

1 *Building Code* enforcement is probably one of the first
2 things that we looked at in terms of a clear
3 distinction between the two duties.

4 I think it is hard to draw that
5 distinction when you look at a municipality like Elliot
6 Lake where you have the same people wearing two hats.

7 Indeed I think in smaller
8 municipalities or rural and northern municipalities it
9 can be confusing for the persons that wear those two
10 hats, deciding which is the most appropriate
11 legislation to pursue when you are dealing with
12 something and that goes to the content of the by-law.

13 I think AMO pointed out in their
14 submission that some municipalities only refer to
15 property appearance, sightlines and cleanliness in
16 terms of property standards where, indeed, some have
17 actually gone in to building structure, maintenance,
18 building safety.

19 I think that is an important
20 distinction to make when we talk about either mandating
21 by-laws or, you know, in the case some of the
22 suggestions we made about mandating specific content in
23 the provincial interest, I think OBOA's position, to
24 begin with, would be that there has to be a clear
25 distinction between the roles of property standards

1 officers and building officials.

2 There is a bit of ambiguity.

3 There has been discussion amongst our
4 own group with regard to the enforcement that was
5 taking place near the end of this whole process, was it
6 appropriate under property standards or would it have
7 been better suited under an unsafe building order.

8 That is hindsight and that is the
9 subject, I guess, a perspective of different persons.

10 So I think by keeping my answer fairly
11 simple and to the point, from the start, would be to
12 say that I think there would be some support for, you
13 know, if the province chose to mandate municipalities
14 past property standards, then the Province think to
15 establishing some content, but not prescribing the
16 entire by-law, leaving the municipality room to work,
17 but all of that on the basis that first and foremost
18 there is a very clear distinction between the functions
19 and property standards and building officials,
20 particularly in these types of cases.

21 **MR. DOODY:** Just on that point.

22 The *Building Code Act* allows building
23 officials to make certain orders where there is
24 evidence to believe that the building is unsafe or
25 where there is an immediate health and safety concern.

1 The property standards officials, as I
2 understand their submission, say that there is a
3 fundamental difference between a building official
4 whose role is essentially to enforce the *Building Code*,
5 and a property standards official, whose role is to
6 diagnose whether there is a problem with the building
7 going forward.

8 I wonder if Mr. Perrin might be able
9 to assist us with that.

10 Because as I understand it, Mr.
11 Findlay, your point is that the building officials are
12 the ones who ought to be dealing with structural
13 issues.

14 Is that fair?

15 **MR. FINDLAY:** I think it is safe to
16 say that is one of the concepts that we do put forward.

17 But it invokes a much larger
18 discussion because there is other building systems
19 outside of the structure that can make a building
20 unsafe to occupy.

21 But I think the first one that we all
22 look to, specifically in this case, is the structure.

23 I would agree that for the most part
24 the job of building officials is involved in enforcing
25 the requirements of the Code per design and inspection

1 and plans review, where property standards officers are
2 walking into existing conditions.

3 I can say though, where building
4 officials do get into that same type of work is where
5 we are dealing with renovation or the very nature of an
6 unsafe or an emergency order.

7 Then you are not dealing with
8 reviewing a co-compliant design.

9 You are getting into a potentially or
10 failed building, being asked to diagnose what is
11 occurring, bring in the relevant supporting
12 professionals and as the Chief Building Official,
13 making decisions about what to do in the very near
14 future or immediately without consultation.

15 **MR. DOODY:** So if I understand what
16 you have told us this morning, there could be, probably
17 should be minimum standards perhaps prescribed by the
18 Province under their regulatory power under that
19 subsection 34(2), but they should not be all-
20 encompassing.

21 **MR. FINDLAY:** I think that would be a
22 fair assessment to make at this point, yes.

23 **MR. DOODY:** And secondly, with
24 respect to structural issues, you would like to see
25 them in the hands of the building officials?

1 **MR. FINDLAY:** I would like to see a
2 fairly clear definition of what constitutes the
3 enforcement of property standards, particularly when a
4 condition may be migrating to that of an unsafe
5 building, ensuring there is a mechanism for escalation
6 to the building officials.

7 **MR. DOODY:** Mr. Perrin, would you
8 like to join in this discussion?

9 **MR. PERRIN:** Yes. Can you hear me?
10 That's better.

11 I believe the catalyst with regards to
12 the mall at Elliot Lake was not so much the authority
13 of the building officials or the property standards
14 offices, so much as it was the ability of the property
15 standards offices a) to recognize a defect when it was
16 identified; and b) the ability to analyse the report
17 when it came in objectively.

18 I believe that if there had been a
19 certain degree of critical thinking, then the potential
20 for the collapse would have been identified, not by the
21 report, but by what was missing from the report.

22 **MR. DOODY:** If I may.

23 If I understand what you are talking
24 about is the specifics of how the situation in Elliot
25 Lake might have proceeded differently had there been

1 training.

2 **MR. PERRIN:** Yes.

3 **MR. DOODY:** And we are going to have
4 an opportunity to discuss that either later today or
5 tomorrow.

6 But the question that I am interested
7 in now is in your view ought there to be minimum
8 property standards prescribed, and if so, by whom?

9 **MR. PERRIN:** Minimum property
10 standards for specific classifications, occupancy of
11 buildings would probably not be a bad idea.

12 As such, for specific occupancies and
13 classifications of buildings, depending on the
14 potential risk, I would say provincial standards would
15 be appropriate.

16 Having said that, above and beyond
17 those particular classifications and occupancies, the
18 regular property standards for what would be deemed to
19 be maybe single family, small building, small
20 commercial should stay within the purview of the
21 municipality.

22 **MR. DOODY:** And how do you
23 distinguish what subject areas should be, in your view,
24 in the hands of the Province and which should be left
25 to the municipality?

1 **MR. PERRIN:** I think that would be
2 done by a risk analysis, based on occupancy primarily
3 and the amount of people who may or may not be put at
4 risk if there is a building failure.

5 **MR. DOODY:** As I see it, there are
6 two issues.

7 Which buildings; which we are going to
8 talk about shortly; and also what subject areas.

9 And I think Mr. Findlay would have put
10 in some written submission, made a distinction between
11 structural safety issues and issues that could give
12 rise to structural safety issues and other kinds of
13 issues because the property standards by-laws cover a
14 broad range of activities.

15 Do you have a view on where you draw
16 the line between what subject areas should be in the
17 hands of the province and which subject areas should be
18 in the hands of the municipality?

19 **MR. PERRIN:** Again, depending upon
20 the types and classifications of the buildings, I would
21 say that if it's a situation that could affect the
22 structure, in such a manner that the structure may fail
23 or be compromised, then that would not be inappropriate
24 for the Province to set the standards.

25 **THE COMMISSIONER:** Our focus of

1 course is the publicly accessible commercial buildings
2 as opposed to any other forms.

3 **MR. PERRIN:** Yes, I understand that
4 and I realize that the focus is on a shopping mall in
5 this particular instance.

6 But I believe you have to also realize
7 that there are conversions out there, there are places
8 like transit terminals that sometimes have a lot of
9 people and sometimes do not.

10 You can have high-rise apartment
11 buildings which can have thousands of people within
12 them.

13 **MR. DOODY:** Mr. Findlay indicated
14 that in his view, issues such as structural issues
15 ought to be kept within the "bailiwick", if I can use
16 that term, of the building officials rather than the
17 property standards officials.

18 I am sure that many people in this
19 Province do not have a clear understanding of the
20 difference between those two officials and their roles.

21 Can you help us out on that?

22 **MR. PERRIN:** In my experience, I
23 would say that in the event a property standards
24 officer becomes aware of a situation which may be
25 deemed to be a structural issue, no property standards

1 officer I know would have a problem or hesitate in
2 bringing a building inspector into the mix if it became
3 necessary.

4 Generally speaking, what we were
5 looking for is to identify the problem first.

6 **MR. DOODY:** And do you agree that
7 there is a different skill set between the two?

8 **MR. PERRIN:** Absolutely.

9 That is why under 15.8 we would ask
10 for an engineer's report, and if the engineer
11 identified something that was significant, then there
12 is a good probability we would hand it over to building
13 and there would be a permit required.

14 **MR. DOODY:** If I could turn to Ms.
15 Borooah from the City of Toronto.

16 I saw in your written submissions that
17 the City's views that there need not be mandatory or
18 minimum property standards across the Province for all
19 buildings but that if necessary the Province could
20 consider using its regulatory power under the Statute.

21 Can you joint the discussion on that
22 point?

23 **MS. BOROOAH:** Certainly. Thank you,
24 Mr. Doody.

25 Our submission really the response is

1 to Question 2, need to be read together a little bit
2 with our response to Question 1 where we suggested that
3 a property standards scheme probably is not the right
4 vehicle given that it is established as a municipal by-
5 law traditionally and that those by their nature are
6 discretionary.

7 I think under the *Municipal Act* and
8 the parallel *City of Toronto Act*, that sort of system
9 is embedded in how municipal by-laws are adopted.
10 There does not tend to be provincial prescriptions for
11 how that takes place.

12 So it is a little out of place to set
13 up a requirement that would govern how a by-law would
14 be established, if we think about property standards as
15 a by-law adopted by council.

16 We suggest rather a requirement for a
17 periodic inspection or review of buildings that seem to
18 be -- certain types of buildings and certain elements
19 of certain types of buildings that seem to be at
20 greatest risk, such as the type of structure that was
21 the subject of the Elliot Lake situation; and that that
22 be conducted similar to a review that would take place
23 if say a chief building official had reason to believe,
24 or in some cases a property standards officer had
25 reason to believe that there might be some kind of

1 failure or unsafe situation arising of the building.

2 I am aware of jurisdictions where they
3 have used that kind of tool to deal with exactly this
4 kind of problem.

5 We do get into it in a lot of detail,
6 but the City of New York had problems with building
7 envelope failures which actually started with simple
8 problems with gargoyles falling on the sidewalks, which
9 then led to looking at ---

10 **MR. DOODY:** This was not during the
11 filming of Ghostbusters!

12 I think that happened in Chicago.

13 **MS. BOROOAH:** Uninitiated by a
14 filming crew, as I understand it.

15 Anyway, I think the history of that
16 measure was -- it started with gargoyles and spread to
17 the issues with building envelopes in general.

18 And building envelopes tend to be the
19 element that most affects the public, although that was
20 not specific to the case here, it actually affected the
21 structural integrity of the building, given the
22 location on the building.

23 So there are certain elements that if
24 they fail they are more likely to cause a risk to the
25 public in certain types of buildings, and we think that

1 some kind of periodic review of that be an obligation
2 placed on the owner of buildings, which is where the
3 onus should rest, but where issues are identified, they
4 should be brought to the attention of the regulatory
5 authorities.

6 It is our position that the expertise
7 for that rests more properly with a building official
8 community who deal generally with the structural
9 characteristics of buildings and are more comfortable
10 with that area.

11 So I think you heard in the context of
12 the response from Mr. Perrin around property standards,
13 that once you get to a structural issue, it is usually
14 the case that that matter, if the two disciplines are
15 distinct, gets referred back to the building official.

16 **MR. DOODY:** And in terms of the
17 standards that are going to be enforced when these
18 inspections take place, right now the only standard
19 that as we are aware of it really comes from the
20 *Building Code Act*, which allows orders to be made where
21 a building is unsafe.

22 The definition of "unsafe" is a
23 building that is structurally inadequate or faulty for
24 the purpose for which it is used or in a condition that
25 could be hazardous to the health or safety of persons

1 in the normal use of the building or persons outside
2 the building.

3 So one of the issues that the
4 Commissioner is going to explore and what we are
5 talking about here right now is are those standards
6 adequate or do we need more standards in respect of
7 buildings?

8 In other words, there is a lot more
9 required to issue an occupancy permit under the
10 *Building Code Act* than that, and yet after the building
11 is occupied, those are the only minimum standards.

12 So in your view, do you think more is
13 needed than that?

14 **MS. BOROOAH:** Our response is a
15 little equivocal on this, frankly.

16 And it is because we find it hard to
17 envision being able to write a standard that would
18 prescribe how you expected all buildings of all
19 characteristics to perform.

20 If you look even at the requirements
21 in the *Building Code* with respect to the construction
22 of the structural elements, they are largely
23 performance based.

24 There are certain prescribed standards
25 that are inherent within a performance-based system

1 that relies on the professional expertise.

2 So there is a lot of judgment
3 involved.

4 So because the buildings all vary,
5 they have been built at different times under different
6 regulatory regimes, some prior to the *Building Code*
7 being enacted in Ontario, we have some challenge in
8 thinking how a standard could be written that would
9 apply to all such buildings that would go beyond
10 basically the performance expectation that the building
11 should be structurally sound for the purpose for which
12 it was intended.

13 However, we are prepared to continue
14 that discussion about what might help guide how
15 professionals would look at such buildings.

16 But essentially it's an analysis of
17 the building and its characteristics and whether it is
18 performing as it should.

19 So we rather think a professional has
20 to review how that particular building is performing
21 and whether remedial measures or actions need to be
22 taken to that particular building.

23 We have some difficulty thinking that
24 you can develop a standard that would help you much
25 more beyond that.

1 **THE COMMISSIONER:** Have you in the
2 City of Toronto developed inventories relating to your
3 specific infrastructure?

4 Do you have any idea about the average
5 age, for example in on category the publicly accessible
6 commercial building, do you have any idea about the age
7 of your inventory?

8 **MS. BOROOAH:** No, sir.

9 And that I think gives you the sense
10 of the challenge inherent in it.

11 I can certainly give you an example
12 though.

13 **THE COMMISSIONER:** Yes.

14 **MS. BOROOAH:** As you probably have
15 thought about in the context of the Inquiry, the recent
16 failure of glass balconies, a lot of them concentrated
17 in the City of Toronto, but also experienced elsewhere
18 in the Province and outside of the Province and the
19 country, led us to develop an inventory of those
20 buildings that had that characteristic, which was not
21 an easy task in itself.

22 It was after the fact and after the
23 *Building Code* had been amended to specify what the
24 current standard post-July, I believe, 2012 should be
25 for those particular building elements, one building

1 element.

2 To do that we had to search all of our
3 permit records to find buildings with similar
4 characteristics that we believed would have glass
5 balconies.

6 And then we sent out our inspectors to
7 document it photographically and otherwise to create a
8 database.

9 And then, because we have no authority
10 today to ask anything of those building owners, we sent
11 them letters to advise them that the *Building Code* had
12 been amended and they should secure expertise, our
13 advice was to secure expertise to review whether their
14 particular buildings were at risk.

15 That created an inventory of about 185
16 buildings that had been built since 2005 that once we
17 had inspected them we determined had a similar
18 characteristic.

19 So picture all the different types of
20 buildings you may have, built over different eras, it
21 would be impossible to think of having such an
22 inventory.

23 **MR. DOODY:** The City of London's
24 Business Licensing By-Law provides that when a building
25 license is transferred, among other times, that there

1 needs to be an inspection to determine that the
2 building is in compliance with the *Building Code*, the
3 *Building Code* in effect at the time the building was
4 originally built.

5 So they do not require that they be
6 brought up to speed, but there has to be an inspection
7 to determine whether or not the building is still in
8 compliance with the *Building Code* at the time it was
9 built.

10 So it is one way of sort of adopting
11 the *Building Code* standards into the property standards
12 for existing buildings, although it only comes into
13 play if a business is being carried on in it and if
14 that license is transferred.

15 So it is a bit hit and miss.

16 Perhaps Mr. Huxley could weigh in on
17 this as well.

18 But it would be interesting to hear
19 your reaction to that.

20 Because the interesting thing from the
21 Commission's perspective and surprising to at least
22 some of us, that there would be such a rigorous
23 requirement for safety and certification at the time a
24 building is built and then effectively nothing.

25 So what the City of London has done

1 is, be it only for some buildings, they have
2 effectively extended the *Building Code* provisions to
3 circumstances where the license is transferred.

4 Do you see issues with that sort of
5 adoption of the *Building Code* going forward as the
6 minimum standard?

7 **MS. BOROOAH:** I guess I am not aware
8 of the London provision, so I am thinking on the spot.

9 But I guess what I would suggest is
10 that that might be a little bit inconsistent because in
11 certain cases licenses are there for another purpose,
12 first of all, about the operation of a business and are
13 required again as a matter of discretion at the
14 municipal level.

15 The review and updating of the license
16 varies as well.

17 I am not sure whether you are
18 suggesting every time the license is updated this takes
19 place, which would seem onerous, but the times when a
20 new license is applied for varied considerably
21 depending on the business and how long it has been in
22 place.

23 I think it would be a bit hit and miss
24 getting at this issue that way.

25 I would argue a more systematic

1 periodic review based on building type, not building
2 user, be considered based on a risk analysis of where
3 those risks are by building type.

4 So if you picture, say, a large high-
5 rise building with multiple tenants in it, the issue is
6 not that the business -- Harry Rosen in First Canadian
7 Place is renewing its business license if they need
8 one.

9 I am not sure they do.

10 But if they happen to need one, it is
11 that they had some marble panels falling off that
12 building.

13 **MR. DOODY:** Mr. Huxley, do you want to
14 join into on the discussion?

15 **MR. HUXLEY:** Thank you, Mr.
16 Commissioner and Mr. Doody.

17 Just to clarify, I wish to just note
18 that I am appearing as a representative from the
19 Association of Municipalities of Ontario, or "AMO",
20 which is an organization of 400 municipalities across
21 Ontario.

22 I am pleased that the Director of
23 Policy, Ms. Turner, is with me today and on behalf of
24 AMO we are pleased to participate in this Roundtable.

25 I would also be remiss not to

1 introduce the City of Ottawa's Chief Building Official
2 who is in the room, Ms. Arlène Grégoire.

3 I have worked closely with Ms.
4 Grégoire on building matters and she is also an
5 executive of the organization you referred to earlier,
6 Mr. Doody, the Large Municipalities Chief Building
7 Officials.

8 I think the question is, and I think
9 you have pointed it out, that with respect to building
10 permits and the building officials process, there is a
11 question of bookends.

12 At the front end, the building
13 officials are involved through a permit process.

14 If you are applying for a permit for
15 construction or demolition, the *Building Code Act* is
16 triggered.

17 And then the building officials role
18 that deals with emergency issues or unsafe buildings at
19 the other end.

20 It is that gap that we are talking
21 about, the tools that would be available and the
22 question that has been posed, what tool is possible?

23 And you have spoken to property
24 standards by-laws, you have now spoken about licensing
25 tools and other avenues, whether it be section 34.2 of

1 the *Building Code Act* where the Province could impose
2 some standards.

3 I have looked at your research paper
4 by the *Property Standards Regulations* and it is noted
5 there are 99 municipalities that have no property
6 standards by-laws.

7 So when you are looking at that gap
8 between the permit process and then situations of
9 unsafe buildings, et cetera, the question is how do you
10 avoid those situations?

11 AMO is taking the position that
12 obviously this is a complicated question and you have
13 jumped right into Question number 2 firsthand.

14 The main issue is structural
15 integrity.

16 So of the 400 and so municipalities,
17 we know approximately 100 do not have by-laws.

18 Those that do vary from exterior
19 elements to cosmetic elements to the more comprehensive
20 Code.

21 You have examples in your paper on
22 that, and they deal with structural integrity through
23 the *Property Standards By-Law*.

24 The question though that may be
25 difficult is that municipalities, for whatever reason,

1 may not choose to have a Property Standards By-Law or
2 those provisions.

3 That may be related to resources, it
4 may be related to financial considerations, et cetera.

5 So if there is to be a minimum
6 property standards for all buildings, it would appear
7 that to deal with structural integrity the avenue may
8 not be best for the municipal by-laws, it may be in
9 some other form.

10 You have noted that there are no
11 regulations that the Province is enacted on in section
12 34.2

13 In AMO's submission, we have made
14 reference to a regulation that the Province has enacted
15 and that is the standard relating to maintenance
16 standards for residential tenancies.

17 So this is the Ministry of Municipal
18 Affairs and Housing, they have enacted maintenance
19 standards through Regulation 517-06 and it applies to
20 all residential tenancies in Ontario, whether they be
21 small residential apartments or the large residential
22 apartments.

23 And it reads like a comprehensive
24 property standards code and it does speak to structural
25 soundness, in a similar way that some of the

1 comprehensive property standards by-laws speak to
2 structural soundness.

3 So that is one example of one tool
4 that simply AMO wishes to bring to the Commission to
5 identify that there seems to be perhaps not a
6 precedent, but an example of a provincial standard that
7 applies to a certain type of building that is
8 residential tenancies.

9 **MR. DOODY:** If I understand you
10 correctly, AMO thinks that there ought to be some
11 minimum standards to govern which you call the space
12 between the bookends, but it should be done at the
13 provincial level and not the municipal level?

14 **MR. HUXLEY:** And dealing with the
15 issue of structural integrity, given the diversity and
16 the issues that municipalities may be facing on these
17 issues, if you are looking for a minimum mechanism or
18 tool, it may not be a by-law that would serve that
19 purpose.

20 **MR. DOODY:** Right. And you are also
21 concerned, if I read your submission correctly, with
22 potential liability issues for the municipality if this
23 was to be in the hands of the municipality.

24 Can you assist in explaining that
25 concern?

1 **MR. HUXLEY:** Certainly.

2 That is a theme that not only appears
3 in AMO submissions, but in other submissions.

4 Liability is obviously a
5 consideration, as well as resources.

6 Specifically with respect to liability
7 the question is whether municipalities that take on
8 additional inspections or municipalities to receive
9 additional reports or information, the impact would be
10 what are the liability considerations.

11 And one of the issues at the forefront
12 for municipalities in Ontario is the issue of joint and
13 several liability.

14 AMO has presented on this topic
15 previously and the fact that in the construction
16 industry part of my work is representing the
17 Municipality of Ottawa on *Building Code* cases in the
18 civil context where the joint and several liability
19 rules provide that 1 percent liability be found on the
20 municipality may result in 100 percent of the
21 requirement to pay damages.

22 So that is the concern that
23 municipalities have in the sense that in the
24 construction industry property owners may have changed
25 the developer or the construction company, the

1 tradespeople may be long gone or uninsured and the risk
2 of taking more on per municipality without tort reform
3 in the area of joint and severable liability is
4 certainly a consideration.

5 So that is the global view of that.

6 **MR. DOODY:** I understand how that
7 could be a concern in respect of the inspection.

8 But in terms of setting the minimum
9 standards, is there a concern on the municipality's
10 part that if there was a requirement for certain
11 minimum standards to be established in property
12 standards by-laws that that would somehow cause, in and
13 of itself, liability concerns?

14 **MR. HUXLEY:** Not necessarily in and
15 of itself, you are correct.

16 The question will be the standards
17 exist, how is it to be enforced and what is the
18 municipality's role.

19 So it is a two-pronged question.

20 **MR. DOODY:** Right.

21 Now we have not heard from the users
22 of these buildings in terms of this question of should
23 there be minimum property standards of some sort with
24 respect to buildings to cover the spaces.

25 Mr. Huxley said between occupancy

1 permit when they are in pristine condition, having been
2 reviewed by the professionals; and the end of life
3 scenario where they are unsafe, should there be minimum
4 property standards to cover that middle ground?

5 Mr. Sharpe, do you have a view on
6 this?

7 **MR. SHARPE:** Thank you.

8 You know, this is interesting and my
9 first involvement in such an Inquiry.

10 It strikes me that property standards
11 officers and building officials goals should be
12 perfectly aligned.

13 I don't see any reason and if it is a
14 jurisdictional thing about who enforces it or not, you
15 know, I would say that is the issue.

16 But to me, their goals should be well
17 aligned and I think somebody alluded to that, that this
18 would be very normal for this to be taken up.

19 But problems like this don't really --
20 I shouldn't say "never", but rarely come out of the
21 blue.

22 There is usually a series of failures
23 or something that would bring this, certainly to the
24 owners attention and possibly to the public's
25 attention.

1 But I think any responsible owner is
2 as concerned about public safety in their building as
3 any municipal official or member of the public, for
4 that matter, would be.

5 So they are concerned about that and
6 they are also very much concerned about the liability
7 associated with that.

8 So I think that any responsible
9 building owner is going to react and try to find the
10 root of the problem.

11 Certainly through the life of the
12 building, during these the bookends, it is hard to
13 imagine a building that has not had to go to the
14 municipality for building permits, for modifications,
15 and at that time certainly these things, there is an
16 opportunity there where these engineers do get involved
17 and architects do get involved and issues, again
18 assuming you are dealing with responsible
19 professionals, issues about structural integrity that
20 would become evident would be dealt with.

21 I was confused when I heard about
22 licensing.

23 But you were talking about the
24 licensing of a business ought to operate as opposed to
25 the ownership.

1 But as ownerships change, of course,
2 there is a significant exercise of due diligence that
3 goes on around structure, around conditions to look for
4 any potential deferred repair that has to be made
5 because obviously a new owner is taking on that
6 liability when they buy the building.

7 Any structural issues are clearly
8 identified during the sale process.

9 So you know, I think between the due
10 diligence, the normal building operation, I think the
11 *Building Code*, if a piece of legislation that simply
12 says that the *Building Code* should be adhered to or
13 that the, you know, they adhere minimum standards,
14 again I think to Mr. Huxley's point, if the -- doing
15 that without any follow-up or enforcement I am not sure
16 it accomplishes anything.

17 And if there is indeed follow-up or
18 enforcement, I think you do spread the liability from
19 the property owner or any professional advising the
20 property owner to the municipality.

21 I think that's perfectly a logical
22 thought process.

23 **MR. DOODY:** Mr. Ostfield, what are
24 your views?

25 Should there be minimum standards in

1 this middle period in terms of the property standards?

2 **MR. OSTFIELD:** Thank you for inviting
3 me.

4 I tend to agree pretty much with what
5 Peter Sharpe said.

6 I think retailers in particular
7 probably assume, like most consumers, that there are
8 minimum standards, that these buildings would not be
9 open to the public unless they had met some minimum
10 criteria, not only the *Building Code*, but operating
11 standards on a day-to-day basis.

12 Listening this morning, I am of the
13 view that yes, I think there should be some minimum
14 standards established.

15 There is the question of course of how
16 do you enforce them?

17 Certainly some of the building owners
18 probably should have obligations or inspections that
19 should take place periodically, because it seems to me
20 that probably most retailers -- smaller retailers, I am
21 not -- my association with Eaton's and with Famous
22 Players were because you had big spaces and big
23 buildings.

24 You had expertise in-house or
25 available on a regular basis as opposed to a small

1 retailer who has got 1,500 square feet and just assumes
2 that the building management takes care of the building
3 and if there were issues then, you know, that come up
4 that they will deal with them.

5 But certainly for a small retailer who
6 is probably very much like an every-day consumer, he
7 assumes that these things are happening.

8 In the particular case in Elliot Lake,
9 I mean there seemed to be a lot of smoke, if I can use
10 that expression, that you know, something was happening
11 and obviously there were signals and the fact that
12 something did not happen that could have prevented this
13 is a great shock, I think, to a lot of people.

14 But I think in fairness to the average
15 retailer, the small retailer, he assumes that these
16 things are -- there are standards, minimum standards in
17 place and I hate to say this, but I think they assume
18 that that is someone else's responsibility and somebody
19 else should be looking after it.

20 Certainly when you are in a situation
21 like I was, say, with Eaton's or Famous Players, where
22 you take a lot of space and you pay a lot of rent, you
23 have a lot more leverage with the landlords and with
24 building owners, if you are not one of the owners
25 yourself, to get these things dealt with.

1 Certainly that was my experience, that
2 when there were issues we could get them done, but that
3 was probably more because an Eaton's store had, you
4 know, 100,000 or 120,000 square feet or you were
5 dealing with theatres as well where they were part of a
6 major shopping mall, as opposed to a small mall in a
7 small town and limited resources.

8 And so obviously the idea of having
9 minimum standards I think certainly does a great deal
10 for the smaller communities.

11 I think the real is finding that
12 balance where it can be done on a basis that makes
13 sense that you are not going to destroy the economic
14 base of a small town by imposing onerous conditions on
15 a municipality that either it has not got the ability
16 to enforce or that people just cannot live with because
17 of the extent of the regulations.

18 **MR. DOODY:** Mr. Froebelus, how can
19 BOMA assist us in this discussion?

20 **MR. FROEBELUS:** I would say that
21 certainly at the provincial level, structural
22 requirements should be addressed as a regulation,
23 minimum standards.

24 It would be difficult to make every
25 property standards by-law at the provincial level, but

1 certainly where it is respecting public safety it
2 should be at the provincial level.

3 I think going one step further, you
4 know, the Province could issue directives with respects
5 to at risk structures, such as parking on roof decks,
6 that type of thing where there is an annual inspection
7 required and it has to be administered through the
8 building official in the jurisdiction.

9 But you know, just like the balcony
10 railing glass as well, something like that you know,
11 you should have at least a database put together, which
12 is I think fantastic that the City of Toronto did, but
13 as issues develop like that, it should be through the
14 *Building Code* at the provincial level as a mandated
15 exercise or annual inspection, that type of thing.

16 I think owners would step up and play
17 a willing part of that.

18 **MR. DOODY:** We have got three
19 representatives of the Province here, and the Province
20 is in a bit of a -- I am sorry, two representatives of
21 the Province.

22 The Province is in a bit of a
23 different situation with these discussions because
24 first the province Appointed Commissioner Bélanger to
25 investigate into and Report.

1 So it is a bit odd to ask the
2 Appointee to ask the Appointer what the Appointee
3 should do.

4 But I am sure you can assist us in
5 terms of letting us know what issues, from your
6 perspectives, arise with respect to the concept of
7 mandatory minimum property standards being enacted and
8 if so, at what level in the municipality or the
9 Province?

10 Do either of you want to help us with
11 that?

12 **MS. LEWIS:** I certainly think from a
13 *Building Code* perspective the government is interested
14 in hearing the recommendations that are going to be put
15 forward from the Commission on what steps needed to be
16 taken.

17 I think just as a point of
18 clarification, because it was alluded to, that the
19 *Building Code* takes effect at the beginning and at the
20 end.

21 There are other touch points.

22 The *Building Code* is triggered every
23 time a building permit application is needed, and that
24 is in substantial renovations or in change of use.

25 So there are a number of opportunities

1 that the *Building Code* enforcement provisions are
2 triggered.

3 Having said that, the tragedy did
4 occur.

5 There is broad based powers within the
6 *Building Code* to enforce and step in to determine the
7 structural integrity of the building.

8 How they are used?

9 Whether there could be more?

10 That is something we are willing to
11 explore.

12 Just as a point of clarification on
13 *Building Code* process, the one thing that the *Building*
14 *Code* does as a very proactive piece of legislation; is
15 it is very transparent in its development.

16 Anything that we do with the *Building*
17 *Code*, we tend to work with the industry in developing
18 changes for the *Building Code*.

19 So these are changes that we would
20 have to come back, as a government and consider them,
21 any of the recommendations that you make will have to
22 come back as a government, consider them, and then go
23 out and talk with the impacted people because this is
24 one area that the government cannot act all by itself.

25 The other pieces of the things that

1 the government looks at have been basically touched on
2 by everybody.

3 Some of the consideration that we need
4 to look at is the diversity of the building stock in
5 Ontario.

6 One standard could not be applied to
7 all buildings, so we would struggle with -- similar to
8 what Ann Borooh said -- struggle with how you put in
9 force requirements specific to every building in
10 Ontario.

11 The other impacts that the Government
12 will be looking at certainly was because of the
13 diversity of the building there is always going to be a
14 capacity and a cost factor in this.

15 The building industry is one of the
16 key economic drivers of the Province.

17 So if you put in owners, and it is one
18 of those struggles that we always face in putting in
19 regulatory requirements, is how do you balance the
20 affordability with the needs of and the commitments of
21 and the priorities of the Province and the needs of the
22 public and the diverse stakeholder interests within the
23 code and how it impacts them?

24 Certainly anything too far on one side
25 could upset the whole economic balance of the Province.

1 So that is one thing that we have to consider.

2 **MR. DOODY:** On that point, just
3 before you move on, what has been the subject of
4 discussion amongst Commission staff is this gap.

5 You talk about necessity to not be too
6 far on one side or the other.

7 But in the middle, between the
8 bookends, there is absolutely nothing.

9 You say there are touchstones.

10 There are touchstones.

11 There is a requirement for a building
12 permit where there is a repair or renovation which is
13 material.

14 The evidence in the Inquiry showed
15 that there was never a building permit sought with
16 respect to any of the work done of the roof of the
17 Elliot mall.

18 There were building permits sought
19 over the 35 year life of the mall for internal
20 renovations, tenant fit ups, change in the space
21 inside, things of that nature.

22 But not with respect to the repairs
23 which had been going on, on an ongoing basis some --
24 essentially the same kind of repair and maintenance and
25 once or twice a little more ambitious.

1 There was a debate amongst the
2 witnesses as to whether there was an assessment before
3 the building permit and the Code.

4 The *Building Code Act* is not entirely
5 clear on that because it says where there is a material
6 alteration or a repair of the building. That is
7 something you can debate.

8 So there really is in that area the
9 necessity for a building permit when you do a material
10 alteration or repair, there are no minimum standards.

11 So I guess amongst the Commission
12 staff, and obviously I don't speak for the
13 Commissioner, there was a genuine surprise that there
14 were no minimum standings and we would not have thought
15 that a rationale for that could be that it is expensive
16 since we have already decided to put in place a quite
17 rigorous regime in respect of the construction of
18 buildings.

19 We are now in a situation in the
20 Province where an awful lot of the infrastructure was
21 built 30 to 40 years ago.

22 So I guess the question that the
23 Commissioner is going to have to struggle with is the
24 economic cost one that is important enough to say that
25 what now is a vacuum ought to remain a vacuum?

1 **MS. LEWIS:** To be fair to what I was
2 trying to say is cost is one consideration. It's not
3 the end all be all.

4 Government is open to hearing all of
5 the recommendations from this, and as far as the
6 clarity of the *Building Code* on whether or not we could
7 provide better clarification when enforcement capacity
8 kicks in, that is something that could be formed as
9 part of the recommendation back to government, is to
10 provide greater clarity.

11 I am sure that based on the discussion
12 today you are considering whether or not a
13 recommendation to Government will be to look at
14 mandatory regulations for existing buildings; and that
15 is something Government would consider based on the
16 recommendations.

17 What I was trying to say is that when
18 we move forward, Government will look at a whole host
19 of considerations, cost being one of them.

20 The other is going to be the capacity
21 of -- quite frankly first we would look at the roles
22 and responsibilities of all the parties in play here.

23 There are roles and responsibilities
24 of not only the provincial government, as the
25 administrator of the *Building Code Act* and the

1 regulation, but the municipalities have the
2 responsibility to enforce and deliver.

3 Building owners have a responsibility.

4 The tenants within a building may have
5 responsibility.

6 The mortgagors, the lenders, the
7 insurers; they all have a responsibility in this.

8 I think what we need to consider as we
9 go forward from a Government perspective, is how best
10 we work together to provide better clarity, and if some
11 of it is for the regulation, then Government will
12 consider that.

13 **MR. DOODY:** Mr. De L'Orme, can you
14 assist?

15 **MR. DE L'ORME:** Maybe a couple of
16 practical considerations for the Commissioner to
17 consider.

18 One is that as you pointed out, Mr.
19 Doody, there is a large degree of differences in
20 resourcing between large municipalities and small ones.

21 One thing I would bring to the
22 Commissioner's attention is that occasionally there is
23 differential responsibility on work places in the Act
24 based upon sizes.

25 For instance, I think it has been

1 mentioned by Ms. Dennis, the key cornerstone of the
2 *Occupational Health and Safety Act* is the internal
3 responsibility system.

4 Within that there is a series of
5 worker participation mechanisms.

6 But at different sizes of workplaces,
7 there are different levels of responsibility.

8 So once you get above 5 to 20 you need
9 one worker rep, one management rep.

10 After 20 you have to have 2 and so on
11 up to the maximum of 4 reps.

12 So that is something that is a
13 possibility based on differential risks, maybe size of
14 municipalities that should be a recommendation for a
15 minimum regulation that could possibly be considered.

16 The one other thing I think, Mr.
17 Doody, that you pointed out at the very beginning about
18 this small municipalities/less resources.

19 I would also remind you that also
20 manifests itself in another way.

21 It is not only that you may have one
22 person filling in two roles, but in small
23 municipalities the people who are doing the enforcement
24 may not see a hazard often enough to be able to
25 recognize it as opposed to their counterpart in a very

1 large center.

2 So if you are in Toronto, you probably
3 see large-rise residential buildings or commercial
4 buildings quite often.

5 If you are in a small community, you
6 may have one.

7 The ability of the person who is doing
8 the inspection just gets eroded over time because they
9 are not seeing that type of building at a frequency
10 that would allow them to keep up their learning of a
11 subject.

12 **MR. DOODY:** What started as a nice
13 segway into the next issue, which is who should be
14 going the inspections and should there be periodic
15 inspections?

16 And unless anybody has something that
17 they would like to add to their discussion of this
18 topic, which is whether there should be mandatory or
19 minimum standards and who should create them, why don't
20 we move and get started on a discussion of what was
21 going to be the first question, which was should there
22 be mandatory ---

23 **MR. FINDLAY:** Just one quick point,
24 and I will keep this very brief.

25 With regard to the concept of trying

1 to administer the OBC in an ongoing fashion through
2 business licensing, not being wholly familiar with the
3 City of London's process, speaking more from personal
4 experience.

5 Through a business licensing procedure
6 it would be hard to try and mandate ongoing conformance
7 with the Ontario *Building Code* when there is really no
8 requirements for maintenance in the Ontario *Building*
9 *Code*.

10 Again, speaking strictly from a
11 personal area of knowledge.

12 In my case the building division's
13 involvement in the business licensing process, which is
14 set out in similar language about doing an inspection,
15 is quite honestly more about detecting non-compliance
16 with the *Building Code* as opposed to ongoing
17 compliance.

18 What I mean is, where you have changes
19 in occupancy, as the Director has mentioned, or where
20 you have encountered businesses where alteration to the
21 building is likely to have occurred to suit their use,
22 things like changes to the heating, ventilation, air
23 conditioning system, kitchen exhaust for restaurants,
24 we tend to become involved and be mandated as part of
25 the licensing process to attempt to better detect areas

1 of non-compliance, and that is maybe just the
2 additional piece of information that I would offer.

3 **MR. DOODY:** I think if I understood
4 the comments on the City of London's approach, it
5 raises more problems than it might solve.

6 This was the impression I got.

7 If we could move then to what was
8 going to be the first Question, which is: "*Should there*
9 *be mandatory periodic inspection of all buildings? If*
10 *so, by whom (province, municipality or building owner)?*
11 *How often? What kinds of buildings?"*

12 So this is a rather large question and
13 why don't we start with hearing from Mr. Huxley, if we
14 could, just to pick the name out of a hat on behalf of
15 the Association of Ontario Municipalities.

16 Mr. Findlay, I will not hit you first
17 up every single question; that would be unfair!

18 **MR. HUXLEY:** Thank you.

19 Certainly AMO's position is -- and I
20 guess the question would be what is the meaning of
21 "mandatory".

22 Certainly it would be AMO's position,
23 as we put in our submission, that mandatory inspections
24 of properties is common sense and is good business
25 sense for property owners.

1 So the question then would be are you
2 asking should it be a legal requirement for building
3 owners to do so.

4 I do not know if we will get consensus
5 around this table, but from the submissions we have
6 reviewed, it would appear that the vast majority of
7 submissions were suggesting that this onus and
8 responsibility of inspecting properties or buildings
9 would fall on the building owner.

10 There are a number of practical
11 reasons for that.

12 Should there be a legal requirement
13 for that?

14 There are some examples for building
15 owners to conduct various inspections from time to
16 time.

17 The example that we have given in our
18 submission is a simple example under the *Fire Code*.

19 Certain types of buildings are
20 required to inspect and test their fire alarm systems,
21 whether it be on a daily, monthly or annual basis.

22 Failing to comply with that
23 requirement can result in enforcement under the *Fire*
24 *Code*.

25 The recent example that I was actually

1 involved in was a prosecution where it was a tenant
2 fit-up and because of a licensing requirement the new
3 business needed a municipal license and the fire
4 inspector had to sign off on *Fire Code*.

5 He was addressing the specific tenant
6 fit-up and a conversation led to does the overall
7 shopping concourse have its fire inspection tested
8 annually.

9 And they were not able to produce the
10 document certificate that said yes, and that led to a
11 prosecution.

12 What the *Fire Code* is suggesting or
13 indicating is that building owners have responsibility
14 to inspect. It refers to a Canadian standard to do
15 that monthly and annually.

16 All they have to produce is their
17 certificate.

18 There is no need to file that with the
19 municipality or the municipality to do anything
20 further.

21 So these are obligations that building
22 owners should be aware of from time to time.

23 The question of how often they should
24 be inspected, I think that needs to be a matter of
25 further consideration, Mr. Commissioner, as to what

1 types of buildings.

2 Certainly AMO's concern is obviously
3 dealing with public places and work places and how they
4 may tie into the use and occupancy provisions of the
5 *Building Code*.

6 **MR. DOODY:** "The use and occupancy
7 provisions of the *Building Code*"?

8 What use and occupancy provisions?

9 **MR. HUXLEY:** Well, again there has
10 been some discussion about whether certain types of
11 buildings, for example, there are certain parts of the
12 *Building Code* that deal with small buildings, Part IX,
13 or there is larger buildings.

14 So the question is can you carve out
15 an inspection regime for larger buildings because of
16 the type of use and size of the building, or
17 distinguish from that type of perspective.

18 **MR. DOODY:** You said there were a
19 number of reasons why in the Association of
20 Municipalities that mandatory inspections ought to be
21 carried out by the owner rather than the province or
22 the municipality.

23 Can you help us on the rationale for
24 that?

25 **MR. HUXLEY:** Again, the owner knows

1 their building best.

2 They are the one that are there daily.

3 They have the resources and also the
4 interest in their property should they wish to attract
5 tenants, should they wish to sell this property on a
6 resale and to maintain their investment.

7 Municipalities, and presumably the
8 province, are of limited resources and cannot get into
9 every building.

10 So the expectation of the public would
11 be entry in a public place or a workplace would be the
12 person who owns that building and who is inviting you
13 into that building is taking the necessary
14 responsibility to make sure that building is safe.

15 So whether it's by exercise of law or
16 simply by good management and practice, whether it's a
17 property management company, they are making sure the
18 issues are being addressed.

19 It is one thing to inspect a fire
20 alarm system, there may be thousands of elements of a
21 fire alarm system, as we see in this room, but that can
22 be inspected by a fire service engineer.

23 When you are talking about structural
24 integrity of a building; that again is a more difficult
25 question.

1 What does that mean?

2 Are we expecting building owners to do
3 more evasive inspections to ensure that the structural
4 elements are being maintained and inspected?

5 Again, that is a question again that
6 needs further discussion.

7 **MR. DOODY:** That is a question which
8 is actually bang before the Commissioner. I am not
9 sure that it is going to necessarily be something that
10 ought to await further discussion.

11 Because the evidence in respect of the
12 mall in Elliot Lake was the element that failed, was
13 the connection between the upright column and the
14 horizontal beam had corroded, the weld had corroded as
15 a result of the ingressive salt-laden water over 35
16 years that corroded to the extent that it had no more
17 structural load-bearing capacity and it collapsed.

18 There were a number of reviews by
19 professionals over the years.

20 And while the evidence is not entirely
21 consistent on this, there is some evidence which,
22 depending on the Commissioner's factual findings, might
23 be to the extent that nobody ever looked at that well
24 or other wells, which were all in a similar state.

25 And so in terms of who is going to

1 conduct the inspection, I guess there are two
2 questions.

3 One, you suggested the owner.

4 And yet the norm is that there is a
5 minimum standard imposed for public safety, that
6 usually the inspection to determine whether that
7 minimum standard has been met is by somebody other than
8 the person whose own interest is at stake in that
9 inspection.

10 And then the second question is should
11 that sort of an inspection be conducted in some cases
12 by a professional?

13 But you indicated that the owners and
14 the person in the best position to do that inspection.

15 My question to you is why would that
16 be, are you not relying upon the owner to necessarily
17 be responsible, and of course the responsible owner
18 would not need a regulation to do that?

19 The evidence the Commission has heard
20 is that one or more of the owners fell short in that
21 regard.

22 So why would you leave it for the
23 owner when we have the City inspect to ensure *Building*
24 *Code* compliance?

25 **MR. HUXLEY:** Certainly.

1 The clarification would be this, Mr.
2 Doody.

3 The owner, when AMO refers to the
4 "owner", that would be the owner seeking out the
5 qualified personnel.

6 In the *Fire Code* example, that would
7 be a qualified fire protection company technician.

8 On structural integrity it would
9 likely be a professional engineer in the area of
10 professional engineering.

11 And that individual would obviously
12 assess the building, provide his or her stamp saying
13 these are the issues from a structural integrity
14 perspective and that is saying that the municipality,
15 the Province and the public can rely upon that there is
16 a degree of professional review that the owner was
17 responsible for it, is financially responsible for it,
18 but you have now brought in a professional, a properly
19 trained professional to look at that component.

20 **MR. DOODY:** Mr. Sharpe, I was just
21 going to ask you.

22 I am glad you put your hand up.

23 **MR. SHARPE:** I would agree with that
24 position.

25 I am sure in the situation in Elliot

1 Lake there had been numerous issues around spalling of
2 concrete and falling off which is not uncommon in
3 particularly parking structures constructed early 70's.

4 That spalling is an indication that
5 there is water migrating through the concrete slab and
6 inevitably it is corroding the re-bar that is
7 supporting it and the structural elements around it.

8 Before you could do any repairs to
9 that, you would need an engineer to review and specify
10 the repairs.

11 Any professional engineer would
12 certainly look beyond just what you need to do to fix
13 the spalling but looking at the scope of the problem
14 that has been created by this leakage.

15 So I would agree that this is an
16 owner's responsibility and it is equally the owners's
17 responsibility and very much in his own interest to
18 have a professional engineer do the inspection and talk
19 about the overall integrity, and that has certainly
20 been our experience.

21 They would look and say listen, this
22 structure has a remaining life of 20 years, you know,
23 you might be able to expand that by doing this, this
24 and this, but you know, these structures do not last
25 forever, and particularly parking structures are

1 vulnerable to that kind of deterioration.

2 **MR. DOODY:** It is interesting.

3 The evidence that the Commission heard
4 was that at least one of the owners had recognized that
5 an issue was the long-term effect of the ingress of the
6 salt-laden water on the structural capacity of the
7 building, and yet never got a report that dealt with
8 that, instead sold the building on.

9 And so as you said, a responsible
10 building owner will do this and he will instruct
11 engineers to look for these sorts of things.

12 But the question is -- and I should
13 also say there was some evidence that the engineers in
14 some circumstances may have had a concern, or rather an
15 interest, in getting more work from the building owner.

16 So how do you deal with the less than
17 perfectly responsible building owner if you leave the
18 inspection of the minimum standards to the building
19 owner?

20 Because we don't ask building owners
21 to on their own hook insure compliance with the
22 *Building Code* when it's built, there is a municipal
23 inspection.

24 So how do you deal with the less than
25 responsible building owner?

1 **MR. SHARPE:** I think any engineer who
2 did an inspection and failed to point out these issues
3 would in fact be incurring potential liability for lack
4 of professionalism in his report.

5 Certainly when spalling and these
6 things occurred, these are usually pretty major
7 repairs.

8 The building department is consulted,
9 I am sure, for permitting in order to do this.

10 So there is an opportunity for the
11 building department to look and say 'well, you know,
12 are we sure this is the only problem? Is it just a bit
13 of concrete here, but what is the structural
14 ramification of all this leaking water through the
15 slab?'

16 **THE COMMISSIONER:** The problem is
17 that there are inspections of inspections.

18 For example, we have heard evidence
19 about lenders who were perfectly satisfied that the
20 engineer provide a visual inspection and a visual
21 inspection only, as opposed to a destructive inspection
22 which, in this particular case, would have permitted a
23 look at the welds and connections.

24 But the directions given engineers
25 vary.

1 It just seems to me that there is room
2 here for definition of "inspection standards."

3 An engineer could be acting quite
4 professionally and yet, in conducting a strictly visual
5 inspection, not picking up on what in Elliot Lake was
6 the fundamental problem.

7 **MR. SHARPE:** I am not sure an
8 engineer would be doing his job if he saw evidence of
9 deterioration and failed to do core samples and look
10 beyond that.

11 So I think that is a professional
12 standard within the engineering community.

13 **THE COMMISSIONER:** But should there be
14 a legislatively mandated level of inspection?

15 **MR. SHARPE:** If that were the case,
16 as a suggestion, as was done with the glass balconies
17 where it was suggested to owners that these are common
18 issues in structures constructed in this time frame and
19 that the owner should be diligent in ensuring that the
20 structural integrity of the building is safe, and that
21 inspections would be part of that, I mean that clearly
22 puts the onus on the building owner to ensure that
23 those inspections have taken place.

24 But if you think there was an issue,
25 as has been described to us around inventorying the 185

1 buildings built since 2005 or something in Toronto, you
2 cannot imagine the number of parking structures that
3 would have to be inspected, and I think the
4 practicality of that is just nonsensical.

5 **MR. DOODY:** Mr. Froebelius, you
6 indicated you wanted to join the discussion?

7 **MR. FROEBELIUS:** I was just going to
8 add, just as Stewart mentioned, the *Fire Code* and the
9 annual inspection.

10 The *Fire Code* is very prescriptive
11 about what your monthly is and your annual testing is.

12 If building owners do not have that
13 certificate on file, Toronto Fire or the fire
14 department shows up and you don't produce that, then
15 there is a charge or you are written up for not having
16 that in place.

17 Similarly, the TSSA with elevators in
18 the Province of Ontario have very prescriptive monthly
19 annual tying with the fire alarm. The testing that is
20 required is very prescriptive.

21 Another one is the roof anchor system.

22 So the Ministry of Labour -- the roof
23 anchors for window washing, very, very strict.

24 So building owners comply with all of
25 these very prescriptive formats.

1 If it came down to it and parking
2 garage structural annual inspections was an issue, then
3 I think you know in fairness to just have some kind of
4 annual inspection done there is so many questions.

5 Where does that report go?

6 What types of tests are required?

7 Is it prescriptive?

8 Does it go to the building department?

9 Is the building department going to
10 have the resources to do through every report for an
11 annual inspection?

12 It opens a whole other realm of
13 questions that I think you would really have to look
14 at.

15 But having a more prescriptive review
16 of structural parking decks, I do not think is that
17 much of a push.

18 I think you could have an annual
19 regime where, especially if certain types, structural
20 steel with pre-cast slabs, you know, there are certain
21 things that you have to do.

22 Structural steel with case in place,
23 certain things you have to do.

24 Cast in place concrete. Certain things
25 you have to do.

1 So I think you could come up with that
2 and one of our member from Québec actually when we
3 circulated the questions, mentioned that they do now
4 have a prescriptive program in place for parking garage
5 inspections in the Province of Québec.

6 Maybe that would be something that
7 would be worthwhile examining as well.

8 **MR. DOODY:** Thank you.

9 Mr. Commissioner, this might be an
10 appropriate time to take the morning break.

11 **THE COMMISSIONER:** Thank you. We will
12 take 20 minutes.

13 **--- RECESSED AT 10:30 A.M.**

14 **--- RESUMED AT 10:50 A.M.**

15 **MR. DOODY:** Just before the break,
16 the issue of what Québec does came up.

17 I just thought it might be helpful
18 just to indicate what our research has shown has
19 happened in Québec.

20 And this is actually a change in the
21 law that came into effect only in March of this year,
22 so it is quite new.

23 But owners of buildings of five or
24 more years have to have the façade of the building
25 inspected by an engineer every five years.

1 The engineer has to determine that
2 whether the façade has been maintained so as to ensure
3 safety and prevent the development of a dangerous
4 condition.

5 This came about because Québec, and
6 particularly Montreal, had problems that we had in some
7 buildings in Toronto, things falling off the buildings
8 onto the sidewalk and putting people at risk.

9 So they brought that in.

10 And in addition there is a requirement
11 that multi-storage garages have to be maintained so as
12 to ensure safety and prevent the development of a
13 dangerous condition and there has to be an annual
14 report prepared by the owner and an engineer has to
15 provide a report every five years, verifying that the
16 garage is not in a dangerous condition.

17 There is a requirement as to what that
18 report has to contain.

19 So Québec has brought this in,
20 requiring every building to which the public has access
21 over five stories be inspected, periodically, only with
22 respect to the façade and also with parking garages
23 similarly.

24 So there is obviously an issue with
25 how do you deal with the existing inventory of

1 buildings.

2 But Québec has apparently taken the
3 position that you have got to bite the bullet at some
4 point, and so bite the bullet.

5 So it gets back to this particular
6 question that we are supposed to be discussing right
7 now, which is who should carry out these inspections,
8 which as we have said there is two prongs to the issue,
9 which is is it the City, the Province or the owner?
10 And then should it be done by an engineer?

11 **MR. OSTFIELD:** Mr. Doody, could I
12 intervene?

13 **MR. DOODY:** Yes.

14 **MR. OSTFIELD:** Just listening to
15 this, I go back to what Stuart Huxley suggested
16 initially with his comments that the onus should be --
17 and I feel fairly strongly about this -- on the owner
18 of the building.

19 In listening to this discussion, I am
20 concerned that we will end up what is known as the law
21 of unintended consequences by imposing very strict
22 regulations on what I feel are most property owners are
23 responsible.

24 We will never achieve 100 percent, in
25 my view.

1 As much as we would all like to
2 achieve 100 percent and I don't want to sound
3 unsympathetic because two people lost their lives up at
4 Elliot Lake because of the lack of supervision of this
5 property and inspection and a lack of repairs.

6 But at the same time my own experience
7 for years, certainly in the shopping centre business,
8 was that we took a very responsible view of our
9 properties.

10 We inspected them regularly.

11 We deferred repairs where they could
12 be deferred for a period of time. We did work when we
13 had to do it.

14 Certainly when it came to parking
15 structures, and this is some years ago, but as Peter
16 Sharpe mentioned, back in the 70's and 80's when these
17 problems started to occur, they changed the
18 construction method for these parking structures.

19 As best as I recall, that once these
20 problems started to occur, it was first of all we had
21 to fix a number of parking structures because the
22 concrete was coming off and it exposed the steel and
23 you could see where the corrosion was, and obviously if
24 something did not happen fairly soon these structures
25 would deteriorate even further.

1 But at the same time, they changed the
2 rules, if I can put it that way, about how we were
3 going to build parking structures so that the steel
4 could be protected from water and salt particularly,
5 where they get into the joint and destroy the
6 structure.

7 I do not know that much about the
8 Elliot Lake situation, obviously, other than what I
9 have read recently, I guess I am somewhat surprised
10 that it went on that long and that something over a
11 period of close to 25 years something did not happen or
12 cause someone to look into that parking structure,
13 because certainly the ones that I was involved with,
14 and there were a number, but it was quite common.

15 I mean, the City of Toronto all over
16 the place where buildings, parking structures, had to
17 be fixed.

18 We had a number with Cadillac
19 Fairview, there were other developers as well in
20 Ontario that we had to fix.

21 My sense was at the time that
22 everybody was doing the same thing.

23 **MR. DOODY:** But as I understand it,
24 what led to that was --

25 I am sorry, let me back up.

1 First of all, there were no mandatory,
2 minimum standards imposed by law for parking garages.

3 **MR. OSTFIELD:** That's right.

4 **MR. DOODY:** The drive was in some
5 cases municipalities had property standards by-laws,
6 which they enforced.

7 In many cases there was concern about
8 civil liability obviously, on the part of the owner.

9 And those two things led to a number
10 of parking garages being fixed and regularly
11 maintained.

12 But what the evidence in this case has
13 been is there were a series of owners, over 35 years,
14 and amongst the owners was one of the largest and
15 longest standing corporations in the Province of
16 Ontario.

17 They did not conduct periodic
18 inspections to answer the question of; is this salt-
19 laden water causing damage to our buildings? Even
20 though they knew that that was an issue.

21 And so one would have thought that
22 that particular corporation fell into the category of
23 responsible building owners, and yet that issue was
24 never looked at.

25 And so regulations, like the *Building*

1 Code -- I mean a responsible building owner does not
2 need a *Building Code*.

3 He or she builds the building safely
4 and has engineers and architects tell him that it is
5 safe and he goes ahead.

6 Yet we have the *Building Code* there in
7 place to cover the situations where you have a less
8 than perfectly responsible building owner.

9 So if you have the building owner do
10 the inspection, I guess the question that we are hoping
11 there will be a discussion about, is that going to
12 adequately protect the public?

13 Because it's not the issues of the
14 financier, the lender, requiring inspections, the
15 insurer requiring inspections, those are for the
16 economic interests of the lender, the owner, the
17 insurer. They are not for the protection of the
18 public.

19 If the public is protected it's a ---

20 **MR. OSTFIELD:** But there is a
21 safeguard for the public, because when the insurers or
22 the financing institutions want to be satisfied that
23 their investment is safe, they want to see those kind
24 of reports, they want to know that --

25 I mean, ---

1 **MR. DOODY:** It didn't happen.

2 **MR. OSTFIELD:** It did not happen.

3 I think the point simply is there are
4 rare exceptions, and unfortunately people lost their
5 lives in Elliot Lake, which is tragedy, and I
6 acknowledge that.

7 But I think at the same time we have
8 to be careful that we don't impose very strict
9 regulations, costly regulations on the vast majority of
10 property owners who are doing the proper thing.

11 As much as we would all like to
12 achieve perfection, I really am concerned, as I said a
13 few minutes ago, that this could end up being the law
14 of unintended consequences.

15 **MR. DOODY:** So how do you distinguish
16 this from the *Building Code* certification at the time
17 of building, which is necessary to protect the public?

18 I think everybody agrees that is what
19 the *Building Code* is there for. It's to protect the
20 public...

21 **MR. OSTFIELD:** Yes.

22 **MR. DOODY:** ...so that we have
23 buildings that are safe in a number of ways.

24 That is required.

25 There are minimum significantly highly

1 developed minimum standards with the requirement for
2 third party inspection and professional involvement.

3 How do you distinguish that from the
4 ongoing maintenance, particularly in a situation where
5 in this Province we are now at the stage where the
6 buildings that were built in the building boom of the
7 70's and early 80's are now 30 or 40 years old.

8 How do you explain why in the first
9 case when they are built we need these protections with
10 independent certification, but we don't need it after?

11 **MR. OSTFIELD:** I don't have an answer
12 for that.

13 I come back to saying that I think it
14 is a fair comment to make that most building owners are
15 responsible people; they look after their buildings.

16 Certainly in my own experience where,
17 to use your example, where Eaton's stores were of
18 considerable age; that steps were taken to refurbish
19 these stores to bring them up.

20 In many cases there were problems with
21 them because City said 'hey, you have got to conform to
22 the *Building Code* now', even though that building, like
23 take downtown Winnipeg, was built in 1905, there was no
24 *Building Code*. They built it whatever way they wanted.

25 So you ---

1 **MR. DOODY:** Then you had significant
2 repairs.

3 **MR. OSTFIELD:** Yes. And those issues
4 came up in Montreal, they came up in downtown Toronto,
5 but even where some buildings were built in the early
6 1960's, the early shopping centres, when it came to the
7 80's, you know, these buildings were coming up to 30
8 years old and it was a question of renewing the leases.

9 I mean, yes, we went through this
10 whole thing of refurbishing these buildings and
11 spending millions of dollars and having to comply with
12 the 1989 laws for instance, whereas the building was
13 built in 1959. You know, which was a totally different
14 regime.

15 But I come back to saying that I think
16 it's a fair comment, there have been rare exceptions
17 and there have been tragedies, I mean we have to
18 acknowledge that.

19 But I have some grave reservations
20 that by imposing very strict and severe new
21 regulations, that you really are hurting the
22 responsible property owners.

23 It will obviously impact all our lives
24 in one way or another and certainly as much as we would
25 all like to achieve a perfect solution, I don't know

1 that you can always ---

2 **MR. DOODY:** But won't a responsible
3 owner inspect regularly?

4 **MR. OSTFIELD:** Yes.

5 **MR. DOODY:** So what is the problem
6 with requiring all owners, both the responsible ones
7 and the less than responsible ones, to inspect
8 regularly?

9 **MR. OSTFIELD:** If that's all it was,
10 it's not a problem.

11 My concern is that there would be a
12 regime set up to make sure that that is enforced
13 against everybody.

14 So that every owner has got to file a
15 report, prepare the reports, file them in a certain
16 manner with certain offices.

17 You are going to have to have a
18 bureaucracy that is going to have to go through all of
19 these documents and ensure that they are all taken care
20 of.

21 As I say, in my view at least, I am
22 concerned that it will just become a very onerous thing
23 for the overwhelming majority of property owners who
24 are doing the right thing.

25 I am back to the same point.

1 As much as we would all like to
2 achieve protection, I question whether we will end up
3 with that.

4 **THE COMMISSIONER:** But you speak
5 about a strict regime.

6 Surely it is possible to conceive of a
7 regime which strikes a happy balance between the
8 interests.

9 And I agree, sure it could be
10 extremely strict and it could have a huge number of
11 unintended consequences.

12 But it could also be a finely tuned
13 one depending on what it is that you are looking at,
14 its age and the inventory that we were talking about.

15 **MR. OSTFIELD:** The establishment of
16 minimum standards which we talked about earlier this
17 morning for property standards, across the Province, I
18 don't have a problem with that.

19 I think that makes logical sense where
20 you have got a municipality that might have a property
21 standards by-law that is 50 pages long and someone 50
22 miles away does not have one at all.

23 I think that should be dealt with in
24 some manner.

25 But as we have moved forward today and

1 we have talked about the obligation for looking after
2 the buildings and who is going to inspect them and how
3 this is going to happen, I have some, as I say, grave
4 reservations if the recommendation ends up being that
5 every municipality has got to have property standards
6 officers go and examine every building.

7 As Stuart Huxley had said, the person
8 who knows these buildings best is the owner of the
9 building.

10 Certainly in the retail concept where
11 you have either some large tenants, some small tenants
12 or if they are smaller buildings with some small
13 tenants, I do not think it is an unreasonable
14 expectation that people will go to the owner and say
15 'look, my roof is leaking or, you know, there are
16 problems with the buildings, there is cracks in the
17 floor or in the ceiling or that kind of thing.'

18 I mean reasonable people would expect
19 that something would happen.

20 And as I say, I think fortunately we
21 have only had some rare exceptions to these kinds of
22 situations and that we have been very fortunate in that
23 respect.

24 **MR. DOODY:** Mr. Sharpe, you had a
25 point?

1 **MR. SHARPE:** Just to pick up, Mr.
2 Bélanger mentioned that there had been a number of
3 owners of this building.

4 So I reiterate the point that there
5 are several sort of systematic checks that cover these
6 kinds of issues.

7 Certainly a new owner, in due
8 diligence, would insist on a structural review of the
9 building.

10 For self-preservation, for the
11 liability they are taking on, there is no question
12 about it.

13 When these problems which were widely
14 evident in the 70's and 80's, and I am not an engineer
15 but I recall being told that it was mainly because of
16 the quality of concrete they were able to quite reduce
17 the thickness, which in fact let the moisture get to
18 the rebar earlier.

19 But anyway, that's for somebody else
20 to discuss.

21 But it is certainly not uncommon in
22 financing a building, particularly an older building
23 that the lender would insist on these reports and it is
24 not uncommon for the lender to insist that money be put
25 aside to make these repairs.

1 That is equally true of insurance.

2 Insurers, in fact, have a very vested
3 interest in ensuring that the owner or the property
4 that they are covering is not likely or that they can
5 only assess the risk by having such reports.

6 And then we go back to building
7 permits and so on through the life of a building where
8 it is required that we go to, for permits, and again,
9 there is an opportunity for these reports to be
10 solicited.

11 So there is lots of built-in stuff on
12 an ongoing basis to ensure that.

13 People who have a vested interest in
14 making sure it's right, not to mention the owner.

15 **MR. DOODY:** Right.

16 And the evidence is, that in this
17 case, when the first owner sold it to the second owner,
18 the second owner got an engineering report, which
19 looked at the structural situation and that report
20 recommended two options for dealing with the watering
21 ingress situation.

22 Arguably, neither of those were
23 followed by the owner.

24 The second owner owned the building
25 for, I think, six years.

1 Sold it to the third owner.

2 The third owner did not get a
3 structural review when he bought it.

4 His lender did get a structural review
5 but that engineer was advised to do a visual inspection
6 only.

7 So that engineer did not look at the
8 condition of the steel.

9 In fact, didn't even know that the
10 building had leaked for 30 years at that point.

11 So those things that are built into
12 the system did not work in this case.

13 **MR. SHARPE:** Only because common
14 sense was not exercised.

15 You cannot legislate common sense and
16 you can't regulate those who are not going to maintain
17 the standards of their profession.

18 If you get someone who is
19 irresponsible, you get someone who is going to be less
20 that professional; it's going to happen no matter how
21 many rules and regulations you have.

22 **MR. DOODY:** Right.

23 But if you had a requirement for say
24 the owner to ensure that periodic inspections are
25 carried out by the appropriate professional, the

1 responsible owner is going to do that anyway.

2 And if you then required everybody to
3 do it, you are not imposing a more onerous burden on
4 the responsible owner, in fact, you are maybe levelling
5 the playing field because now the irresponsible
6 building owner has to spend the same amount of money as
7 the responsible building owner.

8 Rather than have the City do the
9 inspection, have the owner do the inspection, but have
10 a requirement, which is what Québec has done.

11 They don't have a rigorous set of
12 standards or detailed set of standards, they just say
13 an engineer has to inspect the façade and the parking
14 garage so as to ensure safety and prevent the
15 development of a dangerous condition.

16 **MR. SHARPE:** That in and of itself, I
17 agree, is not an issue, because I think any owner would
18 do that.

19 And if the owner fails to do it or if
20 the engineer fails in his responsibilities; then that
21 is a liability issue that they endure.

22 So that as a regulation or guideline
23 out there I don't think is an issue.

24 To have it managed by the municipality
25 or the Province, I think becomes a terribly cumbersome

1 and onerous thing, which is unnecessary.

2 **MR. DOODY:** Mr. Huxley, you look like
3 you are jumping at the bit there.

4 **MR. HUXLEY:** I think just to clarify
5 what AMO's position is certainly not to reinvent the
6 wheel here.

7 Municipalities administer and enforce
8 two main public welfare statutes in the building area:
9 the *Building Code Act* and the *Building Code* and the
10 *Fire Protection Prevention Act* and the *Fire Code*.

11 Both of those codes put the onus on
12 the owner, so AMO's submission is not to change that,
13 to deviate from that practice on the issue of
14 structural integrity.

15 What I am hearing is the responsible
16 owner does this type of inspection but the point the
17 Commissioner has raised is what you do with that
18 irresponsible owner?

19 And you need to stick, recognize that
20 you need to stick.

21 What the municipalities are after is
22 not to create a bureaucracy, quite the opposite.

23 The information, the "registry" if you
24 wish to call it, would be maintained by the individual
25 property owner.

1 If the stick is necessary it may be
2 simply that they have not maintained or been able to
3 produce the required certificate engineer's report.

4 It could serve as a sufficient
5 deterrent for the irresponsible owners to get to that
6 level of being a responsible owner and doing a periodic
7 inspection, whether it's five years or otherwise.

8 And I think that is the submission
9 that AMO is trying to advance, is that we are not
10 trying to re-change the entirely regulatory world here.

11 The onus to date has always been on
12 the owner in this type of environment.

13 **MR. DOODY:** Mr. Perrin, I do not
14 think we have heard from you on this point yet.

15 **MR. PERRIN:** I have a number of
16 things that were just passing through my mind.

17 Everybody is speaking to the
18 responsibility of the onus of providing engineer
19 reports.

20 But I believe if you look at the
21 situation with Elliot Lake, there were engineers
22 reports and the obvious problem was that the engineers
23 report that was submitted the last time was deficient.

24 So if you are going to have a
25 mandatory scheme of inspections, I believe what you

1 need is a basic standard for the inspection itself.

2 If you looked at the last engineers
3 report, one of the primary concerns that they brought
4 forward was the fact that the sprayed on fire proofing
5 on the structural steel was being washed off by the
6 water penetrating the roof.

7 So they obviously looked at the steel,
8 but they didn't look at the welds, which to me says
9 it's a deficient inspection.

10 And had that been brought forward, I
11 suspect this tragedy may have been averted.

12 **MR. DOODY:** And that issue is one of
13 the issues on the table at the discussion for Wednesday
14 or Thursday.

15 **MR. PERRIN:** Unfortunately, I won't
16 be here on Wednesday.

17 **MR. DOODY:** I am sure Mr. Carr-
18 Harris, who is moderating those days, who is in the
19 audience now, will pass on your remarks.

20 The people who are coming to those
21 days are the people that are more intimately connected,
22 like the PEO, et cetera.

23 And one of the issues is should there
24 be mandatory minimum standards for these sorts of
25 inspections and in fact, do they already exist and can

1 they be made a professional or other regulatory
2 obligation?

3 That's an issue that is going to be
4 discussed.

5 **MR. PERRIN:** Because I believe that
6 in this particular instance that is a catalyst. That
7 and the simple fact that the property standards
8 officer, on reviewing the report, didn't pick up on
9 that fact.

10 **MR. DOODY:** From the City of Toronto?

11 **MS. BOROOAH:** A couple of points I
12 would like to pick up on.

13 One was the mention that the specific
14 circumstances of the failure may have been partly
15 addressed by some subsequent changes to the *Building*
16 *Code* where the actual construction method today should
17 be more reliable than was the case on the Algo Mall.
18 And my understanding is that that change occurred in
19 1988, so parking structures should, in fact, have some
20 design features that would avoid some of the
21 deteriorations that occurred in this particular
22 structure.

23 **MR. DOODY:** That's right.

24 But changes to the *Building Code* are
25 only going forward.

1 **MS. BOROOCH:** I understand that.

2 **MR. DOODY:** Of course it's a broader
3 question than just parts of the ---

4 **MS. BOROOCH:** So it goes to the
5 relative risk of the parking structure and the design
6 of it.

7 I just wanted to confirm that point
8 that was mentioned in passing.

9 But to the point of who does the
10 inspection?

11 The City of Toronto's position is in
12 fact that we should not shift the onus from the owner
13 where it currently rests to maintain the integrity of
14 their building, which -- and we should not -- I know
15 there have been some suggestions that the inspection is
16 done by a third party in the case of construction, but
17 it is not solely the responsibility of the third party,
18 that it is really a three-legged stool where the
19 designer, the owner and the municipality share
20 responsibility for ensuring compliance.

21 With the *Building Code* it's not simply
22 the responsibility of the municipality.

23 I wanted to make mention of the
24 practicality of some of the comments that have been
25 raised.

1 That the type of inspection required,
2 and I think if you read through the current recently
3 developed PEO standards, they talk about what you need
4 to do in order to locate an existing building would not
5 easily rest with the municipal official.

6 It wouldn't be sufficient to determine
7 whether or not the structural integrity of a building
8 is intact. And that in practice today if there is some
9 doubt about whether a building is performing
10 structurally as it should, we inevitably ask an
11 engineer to give us advice on that.

12 A third party engineer retained by the
13 owner, and should they fail to provide that, we have
14 the power to get it ourselves.

15 We could in fact do it, but even in
16 the City of Toronto where we employ lots of engineers,
17 we don't do it ourselves.

18 **MR. DOODY:** A point of information.

19 When you require that are you
20 requiring it as part of the property standards by-law
21 regime or is it simply under 15.8, 15.9 of the ---

22 **MS. BOROCH:** It can be done under
23 the property standards regime, normally in the form of
24 an order, because it is a reactive system, but my
25 experience is typically when we get into structural

1 issues -- and I think Mr. Perrin said this earlier,
2 they are more frequently referred to the building
3 official and the use of the on-site powers under 15.9.

4 **MR. DOODY:** And as Mr. Huxley pointed
5 out, the powers under 15.9 are related to whether
6 something is unsafe.

7 **MS. BOROOAH:** That's right.

8 **MR. DOODY:** Compared to Québec where
9 it talks about unsafe conditions that may arise.

10 **MS. BOROOAH:** So there is a couple of
11 points I would like to emphasize on that.

12 That yes, our powers are limited to
13 where we have evidence that there might be some failure
14 or some reason to request, and I have had that fairly
15 firmly confirmed in my recent experience, that I can't
16 go after a situation where I might think there is a
17 problem.

18 So two things I think would be of
19 value here.

20 One is that requirement that the
21 periodic review by the owner be codified in some way.

22 And that that obligation be clarified
23 to really sort of codify what a reasonable owner would
24 do to ensure the building is maintained in a safe
25 condition from those key structural elements.

1 garages were in issue, I might have done so.

2 I think the Province could also enable
3 a review under certain circumstances if they had reason
4 to believe there was an issue across the Province.

5 So I think there should be some kind
6 of codification of what the expectations of owners is.

7 I don't think you should expect
8 municipalities to track that for everybody. It would
9 be an onerous task.

10 But in the event we wanted to get
11 access to that information, we should be able to obtain
12 it from the owners. Or request it if we think there is
13 a risk that they may not have identified.

14 **MR. DOODY:** An example of a situation
15 where there was imposed on an existing inventory of
16 buildings requirement for a periodic inspection and
17 report is condominiums.

18 I can't remember when this changed and
19 the legislation came about, it was within the last 15
20 or 20 years, there was a problem, as I am sure
21 everybody at the table knows, of condominiums requiring
22 repairs and there was not enough money in the condo
23 corp. to pay for it and owners being hit with demands
24 for cash calls in effect.

25 So what the province imposed was a

1 requirement for a periodic inspection by an engineer to
2 assess the elements, the important elements of the
3 building and do a life analysis, and that would include
4 a structural -- it's probably a more detailed analysis
5 than is being talked about around this table.

6 But that happened and it was an owner
7 responsibility, responsibility on the condo corp. and
8 it requires an engineering report on a periodic basis.

9 And I am not sure whether that is an
10 example without dealing with the content of the
11 inspection that might be looked at.

12 Mr. Findlay had his hand up.

13 **MR. FINDLAY:** I think that we can
14 probably express agreement with a lot of the sentiment
15 that has been displayed.

16 You know we work obviously for and
17 with the municipalities of AMO with the City of Toronto
18 and the Ministry.

19 We also work with the owners in the
20 industry and we are not anxious to see anything imposed
21 that is overbearing and not efficient.

22 And the previous references to
23 statutes specifically such as the *Fire Protection and*
24 *Prevention Act* that already sees a need for inspection
25 to be coordinated at the responsibility of the owner is

1 a very valid reference.

2 The fact that it seems that the
3 building owners, being the responsible people, would be
4 more than willing and be actually diligent in having
5 those reviews done is another good thing to hear.

6 I say this because, as the Chief
7 Building official for Toronto has pointed out, if you
8 look at the closing submissions from PEO, they have
9 actually gone, I would say, to a fairly significant
10 degree in recommending changes to their practices
11 currently.

12 And they do very much speak to
13 structural adequacy reports for buildings and they even
14 mention providing those to chief building officials.

15 Now, I can assure you that I don't
16 think I can say on behalf of the Ontario Building
17 Officials Association, I don't think we want to see
18 every single report that is done by an engineer for
19 every building in the Province of Ontario.

20 But similar to what has been said, if
21 the engineers were in such a practice standard, which I
22 believe under the regulatory structure that practice
23 standard is actually regulation, if they are agreeable
24 to providing the chief building officials those reports
25 that determine any concerns or potentially unsafe

1 conditions, I think we would probably have a mechanism
2 in which there is a reliability on the professional to
3 inform chief building officials of potentially
4 problematic circumstances.

5 We have this process almost
6 implemented by the ongoing responsibility of the owners
7 and as was said, not an army of inspectors going out
8 and reviewing every building, every two or three years.

9 It seems like a reasonable thing and
10 the only kind of rider we would put on that is that
11 those reports being received by the chief building
12 officials it would be important to us that those
13 building officials are, across the province, competent
14 in analysing and taking the correct action via whatever
15 process is required or order.

16 And to the point of having that
17 process codified, I think that is the last major part
18 of OBOA's concern, and this is where you have the
19 owners that choose not to do that or choose not to
20 comply.

21 You have to consider what the penalty
22 is going to be and who is administering the penalty.

23 Is it going to be not only a situation
24 of a potential fine for non-compliance, but would you
25 be looking to authorize a party to step in and do the

1 study on the owner's behalf.

2 So it is going to become a very
3 important decision as to where exactly this
4 responsibility, if it is adopted, be implemented in
5 terms of legislation.

6 **MR. DOODY:** If I understand Ms.
7 Borooah properly, I think she was indicating that if
8 there was no study done, that the City and potentially
9 the Province have sort of the back-up authority to
10 order that it be done.

11 Would that include, Ms. Borooah, in
12 your view, the authority for the municipality to do it
13 itself and then add it to the tax bill, in effect?

14 **MS. BOROOAH:** Yes.

15 That is what I was suggesting.

16 It would not be the easiest thing to
17 do.

18 I hope that in most circumstances it
19 would essentially trigger and I think that's generally
20 our experience in unsafe situations, the owner to
21 undertake the work because you would have to make
22 provision for access to internal elements to the
23 buildings and so on that are not necessarily easily
24 accessible.

25 You would have to think about that in

1 the event that the owner did not either provide the
2 documents or undertake the work and it wasn't provided
3 upon request.

4 **MR. DOODY:** Mr. Froebelius?

5 **MR. FROEBELIUS:** As far as I know,
6 for example, in the *Fire Code*, when your annual
7 inspection is done a list of deficiencies does not go
8 to the fire department, it goes to the owner who has
9 the opportunity to correct the items that are on the
10 deficiency report.

11 If you were to get to the point where
12 each engineering report had to go to the city or the
13 chief building official, I think that would become
14 very, very cumbersome.

15 And certainly I know from experience
16 on recent inspections, if an engineer does spot
17 something that they think is of immediate concern, they
18 will highlight it very stringently and state, you know,
19 these items require immediate attention.

20 Frankly, I think the underlying tone
21 is that if something isn't done immediately, it will
22 escalate to appropriate reporting at the city.

23 So I think that is starting to happen
24 regardless.

25 But to say that each report would have

1 to go to the chief building official, I think that
2 would probably go a little too far beyond where owners
3 would be comfortable.

4 **MR. DOODY:** That is a couple of
5 questions down the road as to what to do with these
6 reports.

7 But the evidence that we heard in
8 Elliot Lake was that in fact there were, and we saw
9 engineering reports that said there are going to be
10 serious structural problems if you don't fix this
11 immediately.

12 The evidence was that those reports
13 never found their way to the City, and arguably were
14 not acted upon.

15 So that is an issue as to what you do
16 with the report.

17 But at this stage, this particular
18 question is directed to should there be a requirement
19 for some mandatory minimum inspections by the owner or
20 somebody else.

21 And perhaps we can hear from the
22 province on the Province's views of issues that might
23 arise.

24 **MS. LEWIS:** From my perspective, in
25 relation to the *Building Code*, we have heard a lot

1 about who should do it and who shouldn't do it and
2 where the onus of responsibility lies.

3 Outside of that, from listening to the
4 discussions that happened, some of the considerations
5 Government would be looking at in order to develop the
6 policy around the steps going forward is the types of
7 building to be inspected.

8 The *Building Code* applies to a wide
9 spectrum of buildings and even within public access
10 buildings we would have to clearly understand what the
11 scope of the problem is that we are trying to get at
12 with this.

13 Will it be tied to specific
14 requirements?

15 So if you are looking at making
16 recommendations for mandatory requirements for existing
17 buildings then I would need to know, you know, we would
18 have to look at what considerations that we would have
19 to do to tie it to that.

20 Scope of the inspection and at what
21 point within the building life cycle.

22 Certain parts of a building could have
23 more wear and tear on others, like we have heard
24 specific concerns about parking structures. They may
25 be required to be inspected on a more frequent basis.

1 So you would want to consider that as
2 you go forward.

3 The building history.

4 So if you are going to have these
5 reports how is that history going to be captured so
6 that some building officials have that kind of history
7 to go in and look at what has happened in the past.

8 And the enforcement capacity.

9 Is there sufficient or is there
10 additional tools that we could give municipalities in
11 order to help make sure that the requirements are
12 enforced and what is the escalation process?

13 So those are some of the policy
14 considerations that we have been looking at.

15 As far as recommendations, again, we
16 are here to listen and help make sure that what you
17 recommend is doable by Government.

18 **MR. DOODY:** Dealing with one of the
19 things you talked about, which is on our questionnaire
20 here, which buildings?

21 Québec has said any building -- this
22 is for the façade inspection:

23 (Reading)

24 *"a requirement that the façade*
25 *of the building be inspected*

1 *every five years, any building*
2 *of five or more stories used*
3 *or intended to be used to*
4 *shelter or receive persons,*
5 *animals or goods and*
6 *facilities intended for use by*
7 *the public."*

8 So that is a very broad description,
9 but it is only the façade.

10 In Ontario, there is certain
11 categories of buildings with require regular
12 inspection: nursing homes, schools, periodic
13 inspections, but others which don't.

14 Shopping centres.

15 There was a requirement for roofs of
16 hockey arenas, indoor ice arenas to be inspected which
17 was in place for a few years and then I think in 1979
18 gotten rid of.

19 So the question is what buildings
20 should there be if it was a minimum standard, as the
21 Commissioner said, a happy medium between too detailed
22 an inspection and no inspection at all.

23 If there was a minimum standard with
24 the periodic inspection by the owners, what buildings
25 would it apply to?

1 Does anybody have thoughts on that?

2 **MS. LEWIS:** From a provincial
3 perspective, that is one of the reasons why we work in
4 a transparent process.

5 We would bring stakeholders together.

6 We have used that process in the past
7 and it has been very effective when we bring all
8 interested stakeholders to the table to have that
9 discussion on how best to move forward to capture it.

10 **MR. DOODY:** Right. That is what we
11 are doing here.

12 We have got stakeholders we have asked
13 that specific question.

14 What building?

15 And Québec appears to have taken the
16 approach of over-inclusiveness rather than under-
17 inclusiveness.

18 To date Ontario has picked particular
19 things, like nursing homes and schools and hospitals
20 and left others out.

21 Is there a reason to not take the
22 inclusive approach when you are dealing with public
23 safety, if it's a minimum level of inspection, which a
24 responsible owner would do anyway?

25 **MS. BOROOAH:** If I may point to the

1 submission from the Large Municipalities Chief Building
2 Officials of Ontario, and it is pretty parallel with
3 what we said in the Toronto submission, that while
4 there is information before this Commission with
5 respect to specific buildings, there is information
6 missing.

7 I think if you were to enact such a
8 scheme, we want to make sure it's risk based and that
9 you have determined both those building types and
10 building elements where this level of attention is
11 warranted and needs a regulation.

12 I think LMCBO probably says it more
13 clearly than we do in the Toronto submission, that you
14 need to do some more research about where this should
15 be placed.

16 It's logical to conclude and maybe the
17 Commission wants to make some recommendations on the
18 specifics on the type of building that collapsed should
19 be considered in such a scheme, but that might not be
20 the full scope of what should be considered in the
21 review.

22 **MR. DOODY:** If the standard was of a
23 sort, the standard language of a property standards by-
24 law, it is very common to find this language in the
25 property standards by-laws across the Province.

1 The two provisions which were at issue
2 in Elliot Lake were a requirement that the building be
3 structurally sound, meaning capable of supporting its
4 own weight and any weight to which it might be
5 subjected, and water tight.

6 Neither of those are detailed.

7 Neither of them are complicated and
8 would not any building to which the public has access,
9 would not the public expect that that building would be
10 at least the first structurally sound and not in a
11 situation where if something is not done it is going to
12 be structurally unsound at some point in the future.

13 Would there be a necessity to further
14 put under the microscope which buildings you would want
15 the owners to have periodic inspections of to determine
16 structural soundness, or is that the kind --

17 Because the other problem which we
18 have all seen in public policy is you can explore it
19 until you never stop gazing at your navel.

20 But if you take a very simple concept
21 like that, would there be an issue with saying require
22 on a periodic basis owners of a particular class of
23 buildings broadly described to look at the structural
24 adequacy now and in the foreseeable future.

25 Mr. Sharpe?

1 **MR. SHARPE:** I think the point was
2 made at some point you have to assess risk.

3 So clearly the structural integrity of
4 the floor slab and structure of an apartment building
5 or an office building built to code at any point in
6 time, the structural integrity of that is likely to be
7 challenged by -- it is less likely to be challenged
8 other than by some structural work within the building,
9 which might compromise the integrity of the structure.

10 A structure like a parking structure,
11 which keeps coming up and obviously that is exposed to
12 the elements, clearly there is a higher risk there of
13 deterioration than an office building or residential
14 tower or whatever.

15 Parking garages in residential towers
16 are more exposed because of water and salt being
17 brought into the building.

18 But the floor slab on the 5th floor of
19 a building, unless something is done to interrupt the
20 integrity of that slab, it could be a very, very long
21 time before there is any risk of structural failure.

22 **MR. DOODY:** If the PEO developed
23 inspection standards which take into account those
24 sorts of things, as I expect they would, they would say
25 if it's a parking garage you have got to do this, if

1 it's the 5th floor of a multi-storey building you've
2 got to do this.

3 Wouldn't that deal with those issues?

4 I mean right now, residents of
5 condominium buildings in Ontario have the comfort at
6 least of knowing that there has been a periodic review
7 by an engineer of all of the important elements of the
8 building.

9 Tenants of multi-storey residential
10 buildings don't necessarily have that comfort.

11 People who go to work in office
12 buildings certainly don't have that comfort or go to a
13 shopping mall.

14 So if the requirement is for an
15 inspection of the structural elements on a periodic
16 basis, to standards developed by the PEO which are
17 risk-based, haven't you met the issues?

18 **MS. BOROOAH:** I just wanted to more
19 of less first respond to your previous question, which
20 is I think there is a fair amount of consensus.

21 The issues that are raised are with
22 respect to the structural integrity and the water
23 tightness of the buildings that may be most at risk.

24 And I would agree with Mr. Sharpe's
25 comments that the sort of fundamental structural design

1 of the building I think is unlikely, in most cases, to
2 be the question.

3 It's more where those structure
4 elements, particularly the envelope, are exposed to the
5 elements and deteriorate as a result of that.

6 Sometimes that might be an interior
7 parking garage because elements are brought into the
8 building.

9 But I think the more difficult
10 question is where do you draw the line?

11 At what scale, scope and size of
12 building should be subjected to that level of review or
13 even a regulatory requirement that it be undertaken.

14 So the Québec model is fairly broad.

15 I think they are isolated to Part III
16 or larger buildings if I am not mistaken, in Québec.

17 **MR. DOODY:** It's any building of 5
18 stories or more.

19 **MS. BOROOAH:** Which would be a Part
20 III building, pretty much.

21 There are some of those buildings that
22 don't tend to be visited by the public frequently.

23 One of the things we talked about in
24 our submission was around industrial or occupancy
25 buildings, which have significant structural design

1 questions associated with them, but are rarely visited
2 -- they are public, but limited public access to those
3 buildings.

4 Sometimes they don't have a -- storage
5 buildings, for example, don't have a lot of public.

6 So whether that type of building
7 should be included or not, I think Brenda Lewis has
8 described to us a level of comfort we have with having
9 a fair amount of inter-stakeholder discussion and
10 sometimes information, more information in front of us
11 about what the history or risks of those buildings are
12 before we would feel comfortable saying well this
13 building and not that building.

14 **MR. OSTFIELD:** How do we deal with the
15 irresponsible owner?

16 If you set up a regime along the lines
17 you have discussed and all the responsible owners get
18 the inspections done, you get the engineering reports
19 and whatever.

20 Irresponsible owner does not do it,
21 because he does not care whether it's an Elliot Lake
22 type of situation or any other location in Ontario.

23 So how do you enforce this?

24 It seems to be the only way you can
25 enforce it is you have to have everybody file something

1 with some office so they will have a list of buildings
2 and they will check off and say, you know, we have got
3 25,000 buildings and 24,999 have filed a report. One
4 hasn't, so we have got to go and find that guy and make
5 sure and find out why he has not done it and go from
6 there.

7 That, I think, is really my point is
8 that fortunately there have not been that many
9 incidents.

10 I think to try to achieve a level of
11 perfection that -- and I am not objecting, I mean, I
12 agree with you it would be nice if we could.

13 I just don't know how you can get
14 there without creating an onerous situation for
15 responsible property owners.

16 And so as I say, I am back to your
17 point, you want to deal with the bad guys, but how do
18 we do it?

19 **MR. DOODY:** Mr. Findlay?

20 **MR. FINDLAY:** A point of
21 clarification.

22 In referring to the Professional
23 Engineers recommendation surrounding the practice, I
24 think we tried to include the provision that the
25 municipality -- and I am not speaking on behalf of Mr.

1 Huxley --- but in terms of the building officials are
2 not interested in seeing every engineering report that
3 is done.

4 We would specifically ask the ones
5 that identify any significant concerns before to the
6 CBO.

7 So for our part, the clear intention
8 is not to become a repository for every report that is
9 done, only to be notified of the ones that do have an
10 issue and then, you know, perhaps in providing the
11 owners time to remedy that before we get involved.

12 But I just wanted to provide that
13 point of clarification.

14 **MR. DOODY:** And one of the issues on
15 tomorrow's agenda, and I appreciate I do not think you
16 are going to be here tomorrow, is what do you do with
17 the report and do you register it on title, something
18 which has resulted in a relatively unanimous reaction,
19 what were you thinking of titles or title instruments
20 which is probably a bonafide point, but what do you do
21 with the report?

22 Mr. Huxley indicated that there would
23 be a fallback of potential for municipal prosecution of
24 failing to abide by this, just as there is a potential
25 for municipal prosecution of failure to get a Fire Code

1 review, even though there is no requirement to file the
2 Fire Code report.

3 **MR. HUXLEY:** And certainly we are
4 operating on the basis today that there is no
5 regulation in this area and are operating on the
6 understanding that most responsible owners are doing
7 this inspection anyway.

8 We are looking for a smaller target.

9 The mere codifying or providing some
10 type of regulation will achieve a certain level of
11 additional compliance and then if there is still non-
12 compliance the prospect of enforcement and prosecution
13 will again serve to seek out further compliance from
14 that smaller section of non-compliant owners and
15 through prosecutions and successful enforcement -- in
16 any area of life, I mean there is a lot of regulations
17 that simply are there to achieve compliance.

18 It may serve an education component
19 and it may serve a compliance component, because the
20 fines that are contemplated under the *Building Code* or
21 the *Fire Code*, for example, can be sufficient enough
22 for a property owner to say 'okay, it's time for us to
23 change our system and get into what responsible owner
24 is doing.'

25 **MR. DOODY:** And interestingly in

1 Elliot Lake, there were deficiencies in the *Fire Code*
2 inspection, and the City did prosecute.

3 Not all of them. But a lot of them
4 were fixed even by an owner who, on some version of the
5 evidence, was a less than perfectly responsible owner.

6 The *Fire Code*, because the City did
7 initiate a prosecution and that resulted in some fixes.

8 Ms. Borooah, you wanted to say
9 something?

10 **MS. BOROOAH:** I just wanted to make
11 sure we don't overlook that the typical scheme of
12 enforcement in the *Building Code Act* is one where you
13 seek compliance.

14 So prosecution is a remedy, but it is
15 not always the most effective remedy and the fact that
16 you will get a report that identifies that a remedy
17 should be undertaken there may be some additional
18 clarity in the legislation about the obligations of
19 both the municipality and the owner to fix the remedy,
20 but we believe the current powers that we see under
21 15(9) for the most part are adequate to take the steps
22 necessary to make sure that the problem that is
23 identified is fixed.

24 We have raised some issues with lack
25 of clarity in the language under section 18, where it

1 talks about requesting reports from experts and we
2 think that should be looked at in the context of this
3 scheme and clarified.

4 But those steps to obtain compliance
5 is what we do most of the time and that is really why
6 having the requirement would be, we think, an effective
7 tool.

8 **MR. DOODY:** And 15.9 allows you to
9 issue orders to fix buildings which are unsafe, right?

10 You can issue remedial order to render
11 the building safe.

12 What about a situation where the
13 report indicates that it -- right now it is
14 structurally sound, but if you don't do something in
15 the next "X"-period of time, it's going to become
16 structurally unsafe.

17 Is 15.9 adequate for that?

18 **MS. BOROOAH:** We are not suggesting
19 it is adequate unless you tie it to the requirement for
20 the regular review.

21 If you provide those powers and make
22 it clear that they would apply to the recommendations
23 of the engineer and that the chief building official
24 can require that the necessary steps be undertaken to
25 follow the recommendations of that review.

1 I only think it would be an adequate
2 power.

3 **MR. DOODY:** Thank you.

4 Mr. Froebelius?

5 **MR. FROEBELIUS:** Just back to your
6 earlier comment on how broad a brush this applies to,
7 and I really do think it comes back to the comment
8 about risk.

9 To apply an annual structural review
10 to every single building in the Province, I think would
11 be far too onerous.

12 You would have to narrow it down to
13 types of structure and risk associated with it.

14 It would just become far too onerous
15 for building owners to do that.

16 I was going to just make one other
17 comment.

18 And that is that the types of owners,
19 there are many, many different types of owners in the
20 province and you know, we seem to have categorized
21 between responsible and irresponsible and I don't think
22 it's necessarily responsible and irresponsible.

23 There are small owners that are very
24 small investors that might have a six-unit apartment
25 building with a small parking deck at the back that

1 would have no idea what they are supposed to do.

2 That could cause as many fatalities et
3 cetera if there was a collapse.

4 So it's not necessarily that they were
5 responsible, it's that they need guidance; that they
6 need some kind of outline as to what they are supposed
7 to be doing with this type of thing.

8 **MR. DOODY:** Right.

9 You said an annual inspection would be
10 onerous.

11 But we did not have any discussion
12 about how frequent it would be.

13 Other regimes require periodic, I
14 don't know how frequent, I think it's five years for
15 condos.

16 **MR. FROEBELIUS:** It's three years
17 without a site visit and six years with a site visit I
18 think is the way it works.

19 For certain types of structures,
20 certainly, annual, if it was pre-stress parking garage
21 or something like that, or something that was deemed to
22 be a higher risk than certainly.

23 But to do an annual structural
24 inspection of a 20-storey office building that should -
25 - it's a concrete structure, should last forever,

1 frankly.

2 **MR. DOODY:** Anybody else want to
3 assist on this question?

4 Mr. Sharpe?

5 **MR. SHARPE:** An annual inspection I
6 think to the extent that would be appropriate in a
7 parking structure would only be after a point in time
8 where issues had started to evolve.

9 Clearly an annual inspection of a new
10 parking structure would be a waste of everybody's time.

11 But if engineering indicated and that
12 you know, there is considerable spalling and they have
13 done cores and you know, over the next few years there
14 is going to have to be a larger fix than simply
15 replacing concrete, you know, in a case like that, that
16 may merit an annual inspection review.

17 **THE COMMISSIONER:** Should we be
18 recommending a study of the periodicity of inspections
19 depending on building types?

20 We do not yet have the tools, but
21 surely that is something we could look at.

22 **MR. FINDLAY:** One of the things I
23 failed to mention is that the Ontario Building
24 Officials Association is an agreement that I think the
25 scope of buildings to potentially be subject to this,

1 as well as the risks that are inherent with the type of
2 building and the periods of inspection are all
3 something that deserves significant consultation with a
4 number of stakeholders, probably even well beyond what
5 is here today.

6 That was the only conclusion we
7 reached is the construction type, size, occupancy, we
8 well as field issues, known engineering issues, those
9 buildings makes it something that is very large in
10 scope and probably beyond anything that could be done
11 here today.

12 **MR. OSTFIELD:** Certainly I think with
13 engineers and architects in the reports, they often
14 recognize things that will need to be done over a
15 period of time.

16 So the fact that they have established
17 today that if you are going to have to replace the roof
18 in the next five years or you are going to have to
19 replace windows within a certain period of time, these
20 become an element that has to be recognized that there
21 are often things that have to be done, but won't
22 necessarily have to be done immediately.

23 So I think that distinction should be
24 noted, that there are often those, especially roofs are
25 a good example that at least involvement the schools

1 like to think that they are good for 20 years, but
2 sometimes they last for 30 or 30 plus, and sometimes
3 they don't last for anything.

4 **MR. DOODY:** In fact, that is what the
5 condo reviews do, right, they do exactly that, looking
6 forward 10 or 15 years, 'here is what you are going to
7 have to do. And so you had better get the money to do
8 it.'

9 Mr. Perrin?

10 **MR. PERRIN:** Just speaking of the
11 periodic inspection of parking garages was the comment.

12 From personal experience I have dealt
13 with a parking garage where the engineer recommended a
14 regime of repair that lasted over a period of five
15 years.

16 In order to facilitate that what we
17 did was issue five separate orders with five different
18 compliance periods to ensure that the work was
19 completed on the engineer's schedule.

20 Which to me seemed to be very
21 appropriate because if we had only worked with one
22 order, we would not have been able to do anything until
23 the expiry of that order.

24 **MR. DOODY:** And that order would be
25 one under the property standards ---

1 **MR. PERRIN:** Yes, the engineers
2 report was obtained under a 15.8 order.

3 That report was reviewed and one of
4 the elements that we asked for under an engineer's
5 report was the schedule of work and estimated date of
6 completion.

7 What the engineer did was break it
8 down into five specific time frames.

9 So what we did was your five orders in
10 compliance with those five time frames, and
11 subsequently the work got done.

12 **MR. DOODY:** Ms. Borooah?

13 **MS. BOROOAH:** This issue is not
14 something we have paid a lot of attention to in the
15 written submissions.

16 But it seems to me listening to the
17 comments around the table that keeping in mind we want
18 to keep the regulation to a minimum necessarily to
19 achieve the goal, but the obligation to report to the
20 authorities should probably only apply to those issues
21 that should be addressed within the time frame of the
22 review.

23 So let's say the period is established
24 at whatever, five years or less or more, depending on
25 the circumstances, that certainly that -- you should

1 not stop an engineer from reporting on a longer term
2 view, but you only would be obliged to report to the
3 regulator if that was adopted, things that should be
4 undertaken within that time frame.

5 So you can keep sort of the scope of
6 the review to a minimum, reasonable, to ensure that it
7 is done.

8 And then obviously the next review
9 triggers a further consideration.

10 I don't disagree with what Mr. Perrin
11 said, that you can establish a scheme of orders or
12 enforcement mechanisms under the tools we currently
13 have to give a reasonable time frame to whatever work
14 has to be undertaken.

15 Let's say within two years you expect
16 something to need "X", the order can actually establish
17 that schedule. 'I want this report by that date, or
18 that report by that date' and so on.

19 It's a bit of a management exercise
20 and that is why I am saying it should be kept to only
21 those things within the time frame prior to the next
22 required review so it is not onerous.

23 **MR. DOODY:** You only need to be told
24 about what you are acting on?

25 **MS. BOROOAH:** We only need to know.

1 Yes.

2 **MR. DOODY:** Mr. Sharpe?

3 **MR. SHARPE:** I am assuming in the
4 example given that the structure, whatever the issue
5 was, had reached a critical point when that was.

6 Because I can tell you that any owner
7 would get engineering reports, roofing reports, that
8 would map out for the benefit of the owner in order to
9 financially schedule a prudent program of preventative
10 maintenance.

11 Those I don't think merit submission
12 to anybody other than the management of the building.

13 I think once if a building has come to
14 or an element has come to a critical point and the
15 engineer is saying 'here's what needs to be done and
16 here is a time table', you know, maybe there is an
17 argument there that that should be submitted.

18 But you know, you almost dissuade the
19 prudent owner from getting the engineering report,
20 which would be typically used to program preventative
21 maintenance over the next decade from doing so, for
22 fear that somebody is going to say 'okay, well, they
23 said this roof should be repaired in stages over the
24 next five years', and there are ten years and 'here is
25 the first five and I want to make sure that is done.'

1 I think that's unnecessary and
2 inappropriate.

3 **MR. DOODY:** I guess the issue is how
4 do you decide what becomes so important that it's
5 important enough?

6 **MR. SHARPE:** And really if we are
7 talking about public safety we are talking about the
8 structural integrity of a building.

9 You know, waterproofing, that's cause.
10 That's more a preventative thing, I think, certainly
11 there are probably -

12 I am not thinking of all examples, but
13 in terms of a roof or a parking structure the
14 penetration of water obviously will ultimately present
15 a hazard.

16 But really what you are after here is
17 public safety and that really boils down in the
18 examples I can think of at the moment, to the
19 structural integrity.

20 **MR. DOODY:** And what we saw in Elliot
21 Lake was exactly that.

22 It was long-term leaks that undermined
23 the structure of integrity.

24 **MR. SHARPE:** I am sorry.

25 There is no explanation for how this

1 could have been leaking for all these years and all
2 those reports and changes of ownership and insurance.
3 It can happen to the point that occasionally these
4 things happen but it's highly improbable, obviously not
5 impossible.

6 **MR. DOODY:** You did have engineering
7 reports that said if you don't deal with this it is
8 going to lead to structural problems.

9 **MR. SHARPE:** That is true of any
10 leak.

11 A leak, in day one of a brand new
12 building you could say here you have a leak here, and
13 this will lead to structural problems, which is
14 absolutely true, left unattended for 20 years.

15 This is an extraordinary circumstance.

16 **MR. DOODY:** It is, although your
17 example of left unattended for 20 years, there were
18 engineering reports 20 years after the building was
19 built, exactly 20 years after, which said you need to
20 deal with this leak or there is going to be structural
21 problems.

22 **MR. SHARPE:** And they chose not to do
23 it. And so they are liable.

24 **MR. DOODY:** They chose not to do it,
25 and the public was put at risk.

1 So would that kind of a report be of
2 the kind that ought to be given to a regulator?

3 **MR. SHARPE:** Well, an engineer would
4 have to believe, in my view, that there was imminent
5 risk and I do not know what "imminent means"?

6 Certainly if in two to three years
7 they could view deterioration and say "this will fail",
8 then I would be supportive of that kind of a report
9 being made public.

10 But so many of these reports are
11 really for the benefit of the owner to plan and
12 maintain their building that you are getting into a
13 whole area that I think is unnecessary.

14 **MR. DOODY:** Does anybody else want to
15 comment on this question?

16 Mr. Perrin?

17 **MR. PERRIN:** I would like to weigh in
18 again.

19 From a practical perspective, of the
20 years I have conducted what we called audits of many
21 multi-storey high-rise buildings maybe 150 to 200
22 buildings, in my experience the average garage needs
23 looking at between every three to five years.

24 I can tell you, of all those 150
25 buildings I have inspected, one building and one

1 building only I did not ask for an engineer's report on
2 the garage and the balconies.

3 There was a gentleman who brought some
4 engineers and every year to take a look at the
5 building.

6 **MR. DOODY:** So the other 149 had not
7 done it every three to five years?

8 **MR. PERRIN:** You would go out there
9 and you would see distinct evidence, specifically in
10 garages and also on balconies, of potential.

11 And what we were looking for there is
12 generally we were looking for rust staining and
13 spalling cracks, things of that nature. Water
14 penetration.

15 **MR. DOODY:** So in those circumstances
16 you would ask for an engineer report to assess the
17 structure?

18 **MR. PERRIN:** Yes. I am not an
19 engineer.

20 I am just looking for the evidence
21 that would require an engineer.

22 **MR. DOODY:** Mr. Findlay?

23 **MR. FINDLAY:** Just with regards to
24 the language surrounding when an issue may or should or
25 would be brought to the attention of a chief building

1 official from an engineer, in terms of what we use in
2 the Code imminent would actually put us into a whole
3 other level of enforcement, that being an emergency
4 order where we believe, you know what I mean?

5 **MR. SHARPE:** I am not familiar with
6 the code.

7 **MR. FINDLAY:** So what we prefer to
8 reinforce is that where we see an engineer with items
9 of concern regarding the structure of the building,
10 that is when we think it is appropriate to have that
11 report copied to the building official, just for
12 clarification.

13 **MR. DOODY:** Anybody else on this
14 point?

15 I am in your hands, Mr. Commissioner,
16 it is just past noon.

17 I understand lunch is ready.

18 We had thought we would break a little
19 later, but we did start at 9.

20 **THE COMMISSIONER:** We could re-start
21 a little earlier then perhaps at 1:30.

22 **MR. DOODY:** Sure. So there is lunch
23 available.

24 We will reconvene at 1:30.

25 **--- LUNCHEON RECESS AT 12:05 P.M.**

1 **--- UPON RESUMING AT 1:15 P.M.**

2 **MR. DOODY:** I should say it's now
3 1:15.

4 We had anticipated going I think to
5 4:45, including an opportunity for questions and
6 considering what we have discussed so far we may well
7 finish earlier.

8 Usually when someone says that it
9 makes everybody in the room happy, so that's why I said
10 it.

11 The next Question that we were going
12 to look at was -- we have already had some discussion
13 about this, but just to ensure everybody has a chance
14 to be heard on it, the Question is: *"Should those who*
15 *have responsibility for public safety in buildings*
16 *(municipalities, MOL etc.) have the power, or be*
17 *required, to force owners to retain a professional*
18 *(engineer or architect) to approve proposed repairs or*
19 *maintenance to existing buildings? Should a record be*
20 *kept of all remedial actions undertaken by the owners?"*

21 And one of the issues is the adequacy
22 of the existing system under the *Building Code Act*,
23 which -- and I think it comes into play in two aspects,
24 one is when is a building permit required for repair,
25 and we touched on that briefly, but the Act essentially

1 says you need a building permit for material alteration
2 or repair of a building.

3 And so if it is not material you don't
4 need a building permit.

5 And the other is the provisions of
6 15.8, which allow an inspector or building official to
7 require the production of drawings and order the owner
8 of the property to take and supply such tests and
9 samples as are specified, and also alone or in
10 conjunction with a person possessing special or expert
11 knowledge make examinations or take tests, et cetera,
12 for the purpose.

13 So the question is: are those
14 adequate, should there be an expansion to make it clear
15 that somebody exercising such authority can force
16 owners to retain a professional to approve proposed
17 repairs or maintenance, because right now, as I
18 understand it, it is not clear that there is such an
19 authority.

20 So I wonder if we might start with Mr.
21 Perrin on this.

22 **MR. PERRIN:** Thank you, Mr. Doody.

23 It is the position of the Ontario
24 Association of Property Standards Officers that section
25 15.8 of the *Building Code Act* does provide sufficient

1 authority for a property standards officer to ask for
2 any element of a property to be examined by an expert.

3 In that respect, what we are talking
4 about is when the property standards officer has an
5 indication that there is an issue with a building or
6 with a property that it is beyond his level of
7 expertise to full diagnose.

8 Where we do have an issue, however, is
9 that once a report has been produced by an expert, and
10 in this case it would have been a professional
11 engineer, generally speaking what would happen is that
12 the property standards officer would evaluate that
13 report and then issue a 15(2) order to comply to get
14 the necessary repairs completed.

15 There is nowhere in the legislation in
16 the Act that specifies that the engineer who made the
17 recommendations is required to verify that the work is
18 done in accordance with his recommendations.

19 Now, from a personal perspective, and
20 I have done it myself many times, we in Toronto have
21 asked for a letter of compliance from the engineer or
22 record as a matter of policy.

23 But having said that, there is nothing
24 in the Act that requires it.

25 So you could actually have an engineer

1 go out and check a property, give you a report, and
2 then you can go and get Bert the Builder to go fix it.

3 And there is nothing to say that the
4 engineer or the architect that made the recommendations
5 has to clear the repair.

6 **MR. DOODY:** Could you issue another
7 order under 15(8) to have an engineer inspect the work
8 that has been repaired?

9 **MR. PERRIN:** I expect you could, but
10 there would be no guarantee that the second engineer
11 would have the same requirements as the first engineer.

12 I personally have situations where a
13 property owner has changed engineers on us.

14 What we have asked for is an
15 undertaking from the second engineer, a written
16 undertaking to say that he will fill the obligations
17 that the first one set out.

18 **MR. DOODY:** Does 15(2) give you
19 enough authority?

20 15(2) says you can make an order where
21 you find that a property does not conform with any of
22 the standards prescribed in a by-law.

23 But what if you have got a situation
24 where it does conform; it is structurally sound.

25 But if certain maintenance is not

1 done, it is within an approximate period of time going
2 to be in a situation where it does not conform.

3 **MR. PERRIN:** I believe you will find
4 that most property standards by-laws have catch-all
5 phrases that refer to an owner shall maintain a
6 property in good condition and free from any potential
7 safety hazards, and you may end up falling back on
8 something like that.

9 **MR. DOODY:** And of course then we
10 have got the same problem we had before, which is lack
11 of uniformity of property standards by-law.

12 **MR. PERRIN:** Well, that is correct,
13 yes.

14 **MR. DOODY:** Ms. Borooah from the City
15 of Toronto, do you want to add to this?

16 **MS. BOROOAH:** Certainly, Mr. Doody.
17 While we think in the context of where
18 our powers are intended to apply with one exception,
19 that they do provide us with all the power to request
20 the reports, and that is largely in the context of, as
21 we said the beginning and the end, under the permitting
22 process and then if you have evidence that something is
23 unsafe.

24 Where we have some gaps are in the
25 middle, and that's why we have suggested and inserted

1 questions 1 and 2, that we should have some powers to
2 request such reports very similar to the powers under
3 section 15(9) and with some modifications to section 18
4 to request reports from engineers should we have reason
5 to believe there might be a risk, as opposed to
6 evidence of a failure.

7 If I could just elaborate a little bit
8 more on section 18.

9 We have had some push back through
10 cases where we have tried to obtain an engineered
11 review of an engineered design in, say, a Part IX
12 building and being unsuccessful that we have not been
13 able to effectively use section 18 for that purpose.

14 So we would like more scope to request
15 not only a report from an engineer or expert, but the
16 review of that work.

17 There are cases where our ability to
18 have that work reviewed have been drawn into question.

19 **MR. DOODY:** Review of the work as
20 done?

21 **MS. BOROOAH:** As done, that's right.

22 **MR. DOODY:** Does BOMA have a view on
23 this, Mr. Froebelius?

24 **MR. FROEBELIUS:** You know, in our
25 response I had mentioned about the -- again, the roof

1 anchor approval system and the fact that we are
2 required to have a professional engineer look at
3 certain aspects of our buildings for inspection, that
4 type of thing.

5 The one area that I would add on is
6 there is some confusion as to when you are required to
7 get a permit.

8 I think you ---

9 **MR. DOODY:** For repairs.

10 **MR. FROEBELIUS:** For repairs.

11 You know if you were to change the
12 membrane on a parking deck is that something that you
13 need a permit for?

14 I think different owners would have
15 different opinions on that, and most municipalities
16 that I have been involved with that have worked in know
17 there is a pamphlet as to when do you need a building
18 permit, that type of thing, which is helpful.

19 I have seen pamphlets at the counters
20 and the building departments at various municipalities
21 that says 'this is when you need a building permit',
22 that type of thing.

23 But I think there are a lot of owners
24 that are confused about when you do and you don't need
25 a permit and what type of inspection goes along with

1 that type of work.

2 **MR. DOODY:** If a building permit is
3 issued for a repair, is there at present the ability to
4 have a review of the work as done, at the end of the
5 work?

6 Anybody from Toronto looks good!

7 **MS. BOROOAH:** I guess as I was trying
8 to explain in answer to the last question, that if it
9 is work subject to professional review, there is the
10 authority to ask for general review under a permit.

11 But if it is not work being done by a
12 professional architect or engineer, then you don't have
13 that authority.

14 **MR. DOODY:** Anybody else want to
15 weigh in on this?

16 Mr. Sharpe or Mr. Ostfield?

17 **MR. SHARPE:** Permitting it is out of
18 my field of expertise, but when you apply for a
19 building permit you would typically submit drawings,
20 submit the specifications of what you are proposing to
21 do, and these are reviewed by the building department.

22 It would surprise me if they don't
23 have the ability to inspect or come back and ensure
24 that the work was done in accordance with the drawings
25 and specifications which they approved.

1 I would have just assumed they did,
2 but maybe that's not the case.

3 **MR. DOODY:** Mr. Huxley, in the OAM's
4 submission, you indicated that there should be some
5 strengthening or clarification in the regulations to
6 ensure that work that was being done would be overseen
7 by a qualified professional.

8 Can you elaborate on that?

9 **MR. HUXLEY:** Well, a couple of
10 points.

11 First off, AMO would echo the comments
12 mainly made by the Chief Building Official for Toronto
13 with respect to section 18 and section 15.8.

14 They present an available tool to
15 property standards and chief building officials, but
16 there are cases that have gone through the courts which
17 suggest there is perhaps some scoping that needs to be
18 addressed.

19 Obviously with respect to qualified
20 professionals, some municipalities take the view that
21 those provisions clearly allow the officer or the
22 building official to direct what type of professional
23 should be undertaking the work, and we have had some
24 push back on that.

25 Another example would be what type of

1 professional.

2 It could be a structural engineer, but
3 does that structural engineer have the necessary
4 capacity and, for example, that the City of Ottawa
5 deals with heritage considerations.

6 So are these provisions suitable
7 enough to direct what the municipality may be concerned
8 about, someone with heritage expertise or experience to
9 do the work, or is it simply sufficient for a
10 professional engineer to be qualified.

11 That's where we get push back or
12 municipalities may get push back from building owners
13 as to what type of professional they are prepared to go
14 along with.

15 I am also glad that you raised the
16 issue of material alteration.

17 That is an issue that has been before
18 the courts and I am just looking at the annotated
19 *Building Code Act* and one of the main cases under that
20 provision is a case from the City of Ottawa where the
21 Provincial Offences Court found that a building permit
22 was not required because it was not a material
23 alteration.

24 That matter is going before the Courts
25 through the Appeal process, but it would be helpful to

1 have that discussion on what is a material alteration,
2 because that may then cause permits to be applied for
3 more readily than to have the supervisory role of the
4 building official through the permit process.

5 **THE COMMISSIONER:** Was that a Judge
6 or a Justice of the Peace?

7 **MR. HUXLEY:** That was a Justice of
8 the Peace.

9 **THE COMMISSIONER:** Has it gone to the
10 second level of Appeal?

11 **MR. HUXLEY:** No, that's pending in
12 the Ottawa Courts.

13 **MR. DOODY:** Perhaps you could send us
14 a note with the name of that case, and anybody else who
15 has any.

16 I know that the City of Toronto, Ms.
17 Borooah, also I think mentioned some jurisprudence and
18 cases that sort of illustrate these issues, so it would
19 be helpful if we could have a look at them.

20 **MR. HUXLEY:** Certainly.

21 **MR. DOODY:** Anything you give us, of
22 course, will be shared with everybody else and ---

23 **THE COMMISSIONER:** Do you remember
24 who your Justice of the Peace was?

25 **MR. HUXLEY:** I do.

1 I just have to refresh my memory on
2 that, but I will forward that information as well, Mr.
3 Commissioner.

4 **MR. DOODY:** Did Mr. Huxley admit that
5 he lost that case?

6 That's why it's being appealed!

7 --(Laughter)

8 **MR. HUXLEY:** Correct.

9 **MR. DOODY:** Does anybody else want to
10 weigh in on this issue?

11 Mr. Ostfield?

12 **MR. OSTFIELD:** When you talk about
13 proposed repairs or maintenance to existing buildings,
14 I mean it seems to me that it is quite broad.

15 Aren't we really talking about
16 structural repairs or structural maintenance as opposed
17 to, say, repairing a roof or some other kind of repairs
18 to the building, remodelling office space or some kind
19 of ---

20 **MR. DOODY:** I think the intent was
21 that all of this would be tied to the minimum
22 standards, which we discussed earlier today, and work
23 that is required to ensure that the building is at
24 those minimum standards.

25 So I do not think the intent was any

1 piece of work, but Mr. Huxley raises an interesting
2 point, which is -- and others have as well -- which is
3 under the present regime, when do you need a building
4 permit for a repair?

5 And it's a material alteration or
6 repair. A material repair.

7 Right now there appears to be
8 confusion about that.

9 Mr. Findlay?

10 **MR. FINDLAY:** That would cause a lot
11 of building officials concern as well.

12 Because where it is found that a
13 permit is not required for whatever alteration or works
14 taking place, then you are left with probably the sole
15 course of action for retaining the report by
16 professionals to 15(9), in which case you have to be
17 prepared to advance the arguments and the position of
18 an unsafe building.

19 **MR. DOODY:** It has got to have
20 reached the stage where there is some urgency?

21 **MR. FINDLAY:** Yes.

22 **THE COMMISSIONER:** We have the issue
23 with expansion joints.

24 You cannot tie that in to an emergency
25 situation.

1 **MR. DOODY:** But if they were not
2 fixed in Elliot Lake, if the expansion joints had not
3 been fixed properly, and some evidence is that they
4 were not, that in fact may well have been the cause of
5 the particular failure, was an expansion joint that was
6 not replaced properly.

7 **MR. FINDLAY:** I am sure, Mr. Doody,
8 that the building officials would probably benefit from
9 a discussion and clarification on what constitutes
10 material alteration, because we are faced with that
11 challenge at all times.

12 A lot of places would not require,
13 say, a permit for remedial repair to a roofing
14 membrane.

15 But obviously that type of repair was
16 directly linked to what has occurred in Elliot Lake, so
17 I think there is probably a lot of discussion that
18 could take place around that clarification on its own.

19 **MR. DOODY:** Is it the kind of thing
20 which can be put into clearer words?

21 I am sure that is why originally the
22 legislature chose the language they did, which is
23 because it may be hard to anticipate without falling
24 into Mr. Ostfield's trap?

25 **MR. OSTFIELD:** I was going to say

1 that in the legal profession this word, "material", has
2 a very interesting definition, depending on your point
3 of view.

4 Is it material or it's not material?

5 Is it a material default under a lease
6 or material default under an agreement?

7 I mean this is, you know, the \$64
8 question.

9 **MR. DOODY:** It is meat for lawyers to
10 chew on.

11 **MR. OSTFIELD:** But earlier we talked
12 about minimum property standards and about water
13 proofing.

14 And I don't know the answer to this
15 question, but I don't believe you need a building
16 permit to replace and repair a roof.

17 That is all to do with water proofing,
18 so you know, because if you don't fix the roof it is
19 going to leak.

20 **MR. DOODY:** To completely replace a
21 roof, tear it off and put a new one on?

22 **MR. OSTFIELD:** Well, I don't know if
23 you need ---

24 **MR. DOODY:** Let's ask Mr. Findlay
25 what he thinks, as a building official.

1 Do you need a building permit to tear
2 a roof off and put a new one on?

3 **MR. FINDLAY:** I was really looking to
4 defer the answer on this one.

5 I think we have to say at the end of
6 the day that decision is up to the chief building
7 official, for which you probably have almost or more
8 than 400 in the Province of Ontario.

9 I think when I speak to the potential
10 for clarification; it is a very difficult subject.

11 Is the work on a roofing membrane
12 affecting other building systems, like ventilation?

13 Are they doing it to install rooftop
14 service anchors?

15 It's a very hard question to answer.

16 Some municipalities would say yes and
17 many would say no, it's not required of us.

18 I think that is probably the
19 difficulty is the extensive number of viewpoints that
20 are involved in making that decision makes it probably
21 hard to nail down one specific answer.

22 **MR. DOODY:** But it should not be 400
23 different meanings in 400 different municipalities.

24 It is provincial legislation. It
25 should mean the same.

1 So if you need a building permit to
2 replace a roof in Napanee, you should need one in
3 Toronto or Peterborough.

4 Am I right that what people generally
5 believe is that the requirement for a building permit
6 is there to ensure that there is proper design and then
7 proper carrying out of the design.

8 That is what a building permit is
9 required for, essentially?

10 **MR. FINDLAY:** That's correct. Yes.

11 It is, again as I said, it is really
12 because it is a determination of one person, it is
13 based on their experience, their opinions, their
14 knowledge of the building science and their level of
15 concern with what is being done.

16 The ideal is that everyone does it the
17 same way; the reality is that is not always the case.

18 **MR. DOODY:** Is there a better way to
19 express that than material?

20 Ms. Borooah, you put your hand up.

21 **MS. BOORAH:** Not to answer that
22 question!

23 Yes, my short answer would be "yes",
24 there should be a better way to express this and I
25 would agree I think with Mr. Findlay, around the fact

1 that there are multiple ways of interpreting this, both
2 in the courts and from municipality to municipality.

3 And traditionally these have been
4 matters of policy or practice and you will see those
5 brochures issued at the counter that say you need a
6 building permit when, and they are not consistent.

7 Just in terms of some of the advice I
8 am getting on this topic, if it is any help.

9 My Council has suggested that perhaps
10 we need to be more principled, individually and as a
11 group, in terms of determining when we require those
12 permits in keeping with the intent of the definition of
13 material alteration.

14 I think when things are insignificant
15 or building departments have decided it is not worth
16 their while to inspect certain matters, we have often
17 excluded those from when a permit is required, as
18 opposed to when you actually substantially affect the
19 performance of the building.

20 So I am being advised that we should
21 require a building permit every time there is
22 potentially an effect on the performance of the
23 building in accordance with what the Code prescribes.

24 So safely, I think the tradition has
25 tended to be anything that has a structural impact,

1 especially in terms of renovation.

2 And if it is superficial and you are
3 not replacing the actual design of the system, you
4 don't need a permit.

5 I will give you an example.

6 We had quite a debate with the -- I
7 had mentioned this earlier -- First Canadian Place
8 around whether a permit should be required to replace
9 the exterior cladding.

10 And while they were taking down one
11 panel and replacing it with clips, it was determined
12 that the actual weight of the panel was different.

13 That was how they were dealing with
14 the loading issues that were encountered and
15 maintenance issues.

16 **MR. DOODY:** They were putting a
17 lighter panel on.

18 **MS. BOROOAH:** Heavier, actually.

19 **MR. DOODY:** Heavier.

20 **MS. BOROOAH:** Heavier. A thicker
21 panel.

22 And we suggested to them that that was
23 a material alteration and they should have thought of
24 coming in for a permit.

25 Which, of course, after an order they

1 ultimately did.

2 So I would say that some additional
3 clarity would be beneficial. I could not give you the
4 language today though.

5 **THE COMMISSIONER:** We could have
6 argued or it could have been argued in the case that we
7 are dealing with that the material alteration in
8 replacing the roof or at least putting a membrane in
9 had a potentially significant effect on the structure,
10 on the integrity of the structure.

11 Because it required the removal prior
12 to installation of the membrane of the cement topping
13 over the slabs, and those two worked together to
14 provide a level of structural integrity.

15 So in that respect, changing the
16 composition of went on top of the core slab potentially
17 had a consequence on structural integrity.

18 It just seems to me though that, we
19 have seen it in a number of statutes, where for the
20 sake of greater clarity attempts were made at the very
21 least at the definition and how is it said?

22 Without affecting the generality of
23 the foregoing, the expression material alteration shall
24 include anything that involves affecting the structural
25 integrity of the building, that kind of thing, and

1 attempting at the very least to define that expression.

2 **MR. SHARPE:** It is not easy.

3 But a replacement of a membrane is a
4 routine property management maintenance, preventative
5 maintenance matter and it in itself does not impact the
6 structural integrity of the building.

7 Not doing it and allowing persistent
8 leaking, obviously it can potentially do that.

9 I think the development community
10 would generally feel that a building permit is required
11 when any of the major systems or structure of the
12 building are being impacted, i.e. modified, changed,
13 attached to whatever.

14 And I think that is entirely
15 appropriate, but replacing the waterproof membrane on a
16 parking structure, replacing the waterproof, even the
17 insulation on a roof of a building is just part of
18 normal operations and does not impact in and of itself
19 the structural integrity of that structure.

20 **THE COMMISSIONER:** I am just saying
21 in this particular case it would have.

22 **MR. SHARPE:** It would have, had they
23 done it.

24 And they were talking about a million
25 and a half to do it.

1 **MR. DOODY:** Yes, and there was no
2 membrane before.

3 So what they were proposing to do was
4 take off a three-inch concrete overlay, put down a
5 membrane and then something like a wearing on the
6 membrane.

7 So there was an issue as to whether
8 they needed a building permit, the City of Elliot Lake
9 took the position that they did.

10 The owner took the position that he
11 did not think he did.

12 And as you can see, there is room for
13 debate about it.

14 **MR. SHARPE:** Yes.

15 **MR. DOODY:** And if they didn't do it
16 right, obviously, there would be potential structural
17 issues.

18 **MR. SHARPE:** I would intend on the
19 face of that to agree with the building owner, that
20 that in and of itself should not have required a change
21 in the waterproof membrane system again does not in and
22 of itself affect the structural integrity of the
23 building.

24 **MR. DOODY:** Does anybody else want to
25 say anything on this point?

1 So moving on to Question 4 then, which
2 is: *"Should clear guidelines be established in the*
3 *regulations governing the Chief Building Official in*
4 *cases where safety may be at risk based on the degree*
5 *and imminence of the threat and the response of the*
6 *owner, making it clear that in cases where an owner is*
7 *either unwilling or unable to take steps necessary to*
8 *avoid risks to human safety that (a) an order be*
9 *promptly issued; (b) a clear period of time be allowed*
10 *for compliance; (c), at the end of that time, the city*
11 *must take further enforcement steps to prosecute,*
12 *conduct the work at the owner's expense or to close and*
13 *condemn the structure."*

14 And what the purpose of this question
15 was to put on the table the question based on the
16 evidence we heard, which was that on two occasions the
17 City did issue, first of all, a notice and then an
18 order under the Property Standards By-Law requiring
19 that the building be fixed, that the roof be made water
20 tight, and the first time that that was done, a period
21 of some three years went by and nothing was done to
22 enforce, either to comply with the work suggested in
23 the notice and nothing was done by the City to enforce
24 it.

25 Then when the subsequent order was

1 issued on one view of the evidence, part of the order
2 was clearly not complied with and the City chose to
3 release the owner from the obligation set out in the
4 order.

5 So the question is, recognizing there
6 are issues with respect to discretion, where there are
7 risks to human safety, should there be an obligation on
8 the enforcement authority, or the chief building
9 official, to take the steps that he or she has the
10 discretion to take.

11 That is, to force the work to be done
12 or to shut the building down.

13 And so I am interested in people's
14 response to that and I notice that Ontario, in its
15 responses, it typically, for reasons that we explored
16 this morning, good and valid reasons, has chosen to
17 stand back because you want to hear what the Commission
18 has to say.

19 But on this point, Ontario said it
20 should be discretionary.

21 I am interested in hearing from the
22 province as to why the Province chose to say that.

23 **MS. LEWIS:** The *Building Code Act*
24 actually provides broad range powers and it is up to
25 the building official to determine in each

1 circumstance.

2 That is why we look at is it
3 discretionary power, because from our perspective we
4 can't say that in every case what the considering
5 factors are.

6 As in this case, we feel that the
7 *Building Code Act* provides a number of powers.

8 We don't know the specifics on why the
9 individual building official did not choose to exercise
10 the full authority that is given under the Act.

11 So that is part of the reason why we
12 need to sit back and listen to what is being said at
13 this to see if anything needs to be tightened.

14 **MR. DOODY:** Okay. But the question
15 is, setting aside the facts of this case, which is the
16 Commissioner is going to make his findings based on the
17 evidence.

18 But in a situation where the building
19 official has clear evidence that people's safety is at
20 risk, should there be an obligation on him to do
21 something to solve that, or should the individual
22 building official have complete discretion to do
23 nothing?

24 **MS. LEWIS:** Well, I think the
25 discretion is more on line of what steps to take to

1 move forward.

2 **MR. DOODY:** But should he or she have
3 the authority to say we are simply not going to deal
4 with this?

5 **MS. LEWIS:** That is something that we
6 will definitely consider going forward.

7 I don't think that I can, in my
8 position, that I can verify one way or the other
9 whether or not we should be changing legislation.

10 That is one of the pieces that we are
11 certainly going to take the advice from this, the
12 Commission, to figure out what we need to do next.

13 **MR. DOODY:** I would be interested in
14 Mr. Findlay's thoughts on this, since I saw him waving
15 his little finger.

16 **MR. FINDLAY:** Thank you, Mr. Doody.

17 I think in the example of Walkerton
18 (sic.), maybe just provide a quick clarification
19 between that and the question as it is phrased here, I
20 note that the question here refers to the Chief
21 Building Official and in the interviews and the
22 evidence presented at Elliot Lake, I am sorry, not
23 Walkerton.

24 The issue was the Chief Building
25 Official who had issued property standards orders.

1 **MR. DOODY:** You are absolutely right.

2 There was loose language used here and
3 the fact was that in Elliot Lake the same person wore
4 two hats.

5 **MR. FINDLAY:** Two hats, exactly.

6 So I think with regard to the question
7 as it is worded here, I think it is OBOA's position
8 that there is sufficient authority residing in the
9 *Building Code Act* now, specifically under unsafe
10 buildings and potentially even emergency orders to deal
11 with threats to the safety of anyone.

12 Whether or not there should be
13 mandatory language as opposed to permissive that "may"
14 issue an order versus "shall" issue an order, you know,
15 I think as long as the building official again a point
16 to be made is well informed of their duties and
17 obligations, which is something that the Province
18 brought up in their support about knowing their
19 enforcement authorities and is competent in knowing and
20 using those enforcement authorities, I don't think
21 there is going to be much of a question as to whether
22 or not it would have to be used, whether it is
23 permissive or instructive.

24 But that being said, I believe for the
25 most part in terms of the authorities given to chief

1 building officials for unsafe buildings, I think we
2 could say that the Statute is certainly robust enough
3 for what we have encountered to-date.

4 **MR. DOODY:** But the difficulty the
5 Commission is faced with is that in this case, at least
6 on one view of the evidence, of course there were
7 adequate powers, but they were chosen to not be
8 exercised.

9 So on one view of the evidence the
10 responsible official at the City issued an order and
11 then chose to not enforce it, for reasons which may be
12 debated.

13 But should there be an obligation to
14 enforce it, if there is a clear risk to human safety?

15 Because otherwise the public safety is
16 left in the pure discretion of the statutory officer.

17 Mr. Sharpe...?

18 **MR. SHARPE:** I find it quite
19 unbelievable that the individual has gone to the point
20 of issuing the remedial action and walks away from his
21 response, his or her responsibility at that point.

22 **MR. DOODY:** I mean on one view of the
23 evidence, I will say it again, it clearly happened.

24 And was justified on the basis of
25 discretion.

1 'You can't tell me what to do.'

2 So there is discretion to be free from
3 direction as to whether to not enforce something, and
4 then there is discretion 'you can't tell me what to do,
5 period.'

6 And ought the law to allow the public
7 safety of individuals to be subject to somebody saying
8 'you can't tell me what to do.'

9 That is the state of the law, as we
10 understand it.

11 Does that make sense?

12 **MR. SHARPE:** No, not really.

13 **MS. LEWIS:** From a provincial
14 perspective, again the powers of the Act are there for
15 a building official to take action.

16 I think to a degree we would have
17 expected the same thing.

18 Consideration could be looked at as to
19 whether or not we need to provide enhanced mechanisms
20 within the Act to ensure follow up, or if there is
21 additional tools that we could give building officials
22 if we think that -- in this circumstance, quite
23 frankly, I am not sure yet what the issues are. We are
24 going to wait for the outcome as to why action was not
25 taken?

1 That is not my role to determine.

2 Generally, the province sets
3 legislation and regulations to fit the vast majority.

4 We don't set regulation for the one.

5 However, having said that, if there
6 are gaps we should consider on how best we can
7 strengthen the legislative powers that are there, and
8 if that means closing a gap, that there is an obligated
9 responsibility to follow up, then that is something we
10 could consider.

11 But with each regulatory power, we
12 would have to explore the full impact.

13 **MR. DOODY:** I understand that.

14 But again, and this is something the
15 Commission is going to have to deal with, so we are
16 interested in your responses.

17 What could the public policy
18 justification be for giving that discretion when you
19 say you deal with the majority of cases, but public
20 safety regulation, by its nature, is intended to deal
21 with the minority of situations where the good will of
22 people is not enough.

23 Right?

24 That is what it is there for?

25 **MS. LEWIS:** Not speaking for the

1 Province now, speaking on my own behalf, I am a little
2 bit mystified by the same thing.

3 If they went that far to issue an
4 order, what were the reasons they did not follow
5 through on it?

6 **MR. DOODY:** Right.

7 But we all know, we have all lived
8 lives of reality.

9 We all know that there are a million
10 different reasons why the right thing is not done.

11 So the question is should the law have
12 an "extra layer", as Mr. Ostfield might call it, of
13 regulation by saying 'well if it's this bad that lives
14 are at risk, you have to do it.'

15 **THE COMMISSIONER:** I am sorry, Mr.
16 Ostfield.

17 At least this type of layer, the
18 requirement for justification for exercising or
19 refusing to exercise the discretion in cases involving
20 public safety without necessarily taking away the
21 discretion, at least requiring some form of
22 accountability.

23 In addition here, the other problem
24 that this municipality had was there is no continuity
25 on record.

1 The order was there but there was no
2 tickler system, nothing to bring it back up, right, of
3 that nature.

4 So it just lay there, there was a
5 change of personnel, things were forgotten.

6 I am sorry to interrupt.

7 **MR. OSTFIELD:** It just seemed to me,
8 in reading this and hearing what you have said about
9 the evidence at the inquiry, it seems that the official
10 concern felt he had a double discretion in the sense
11 that I am exercising my discretion that there is a
12 concern for public safety, but now I am exercising my
13 discretion once he has issued the order not to do
14 anything.

15 It is so totally inconsistent and
16 counter-intuitive that I mean it would seem to me that
17 any legislation that gives someone the discretion to
18 determine there is an issue of public safety, there has
19 to then be a procedure to enforce that.

20 He can't then turn around and say
21 'yes, there is a threat to public safety, but I don't
22 think I am going to do anything about it if the owner
23 doesn't.'

24 That is why I think the public gets
25 unhappy with politicians and with lawyers and

1 generally.

2 There is no sense to it.

3 But I am not blaming the government, I
4 am just saying that these ---

5 **MS. LEWIS:** But the Act does have
6 provisions within it that further steps could be --
7 there is prosecution, there is ability to fine, there
8 is ---

9 **MR. OSTFIELD:** But they are all
10 discretionary.

11 **MS. LEWIS:** Yes, they are.

12 We give them a host of tools to select
13 from in order to enforce the Act.

14 Then it is the responsibility of the
15 municipal government, which is the level of government
16 responsible for the enforcement of the Act, do
17 determine what tool is best in that circumstance.

18 If there is gaps and there is need to
19 strengthen, I think government is willing to consider
20 any recommendation coming forward, but there is a whole
21 set of tools within the *Building Code Act* and its
22 enforcement regime that are there at the discretion of
23 the municipality to determine how best to move forward.

24 In this circumstance we have to figure
25 out okay, what failed?

1 **MR. OSTFIELD:** It seems to be they
2 have to do something.

3 They may have discretion to be a, b,
4 c, d, e, f or g, but at the end of the day they must do
5 one of them to keep the ball moving.

6 I mean, we just can't -- it seems to
7 me -- just close the file and say 'well, we are not
8 going to do any of them.'

9 It just does not make sense.

10 **MR. DOODY:** Mr. Froebelius?

11 **MR. FROEBELIUS:** Perhaps some
12 worthwhile research would be comparing with the *Fire*
13 *Code* and what the Chief Fire Official is required to do
14 if there is an instance of a non-compliant fire alarm
15 panel or something like that, or a dangerous situation.

16 Are they compelled or is it at their
17 discretion as well, because it would be an interesting
18 comparison to see.

19 **MR. DOODY:** That's a good idea.

20 **THE COMMISSIONER:** Mind you, the
21 Commission may very well conclude that it did make much
22 sense, but not for the right reasons.

23 We are not there yet, but it may not
24 entirely be without justification, but the kind of
25 justification ---

1 **MR. DOODY:** Mr. De L'Orme, were you
2 looking to say something?

3 **MR. DE L'ORME:** Sure.

4 We have a totally different regulatory
5 regime and directive to our inspectorate than my
6 colleague at the MMAH.

7 So my comment just has to be taken in
8 that guise.

9 We do issue stop work orders for
10 dangerous situations and the direction given to
11 inspectors are if they come across an employer who is
12 working through the stop work order that we will
13 prosecute.

14 We have always felt that without this
15 enforcement of our most serious orders, the orders
16 become weak and are no longer applicable.

17 **MR. DOODY:** Mr. Sharpe?

18 **MR. SHARPE:** It seems to me
19 internally that once an order of that significance was
20 issued, internally at a minimum there should be a
21 follow-up with a written explanation as to what
22 resulted or why further steps weren't taken.

23 And at least that would force a
24 discipline within the municipality to ensure that these
25 things are not just forgotten.

1 **MR. DOODY:** Mr. Perrin?

2 **MR. PERRIN:** On reviewing the audit
3 that was issued by the City of Elliot Lake, it became
4 apparent to me that the officer mentioned the leakage
5 through the roof and his direction to the property
6 owner was to have the structure examined by a
7 professional engineer and basically do what a
8 professional engineer tells you to do.

9 **MR. DOODY:** And fix the leaks.

10 **MR. PERRIN:** And fix the leaks.

11 My point here is that one of the
12 requirements for an order on the 15(2) is reasonable
13 particulars of repair.

14 And his idea of reasonable particulars
15 of repair was to do what the engineer told you to do,
16 which means that once they did what the engineer told
17 them to do, they complied with the order, no matter how
18 shoddy the engineer's report may or may not have been.

19 The problem, to my mind, is the fact
20 that the engineer's report was requested under a 15.2
21 order instead of 15.8, because it removed the ability
22 of the municipality to review that engineer's report.

23 That's just my point.

24 **MR. DOODY:** Which leads to the issue
25 of education and training, which is on the list. It's

1 on the list.

2 Mr. Findlay?

3 **MR. FINDLAY:** I think in terms of the
4 discretionary wording, as Director Lewis pointed out,
5 the discretion -- I don't know, I can't say this for
6 sure, but a lot of the use of that discretion is in
7 terms of what the chief building official feels to be
8 the best approach to take to deal with a particular
9 matter.

10 You may well have a building that is
11 experiencing some structural trauma.

12 Through review, it might meet all the
13 requirements of an unsafe but perhaps you feel that the
14 appropriate venue is an emergency order based on a more
15 immediate and imminent threat.

16 So that is an example of where we
17 would use that discretion to move between the
18 appropriate steps, not to get out of it.

19 Quite personally, for myself, you
20 know, having participated in a number of unsafe orders
21 and emergency orders where you are actually taking
22 action without even giving the property owner a chance
23 to get in before you, I don't know how you can make the
24 decision to issue an order and then not follow through.

25 We were not there and I was not there.

1 I do not know what the circumstances
2 were that led to that.

3 To me, the best option you have is
4 once you have decided on the proper course of action
5 and initiated the order, I do not know that there is
6 any recourse but to follow-up, if that has to be
7 enshrined then so be it.

8 But speaking from a group that values
9 training and competency and what its members do, to me
10 that is just an inherent.

11 If you are moved to the point of
12 issuing the order, you have got to perform the follow-
13 up.

14 That's just offered from a practical
15 perspective.

16 **MR. DOODY:** As Mr. Ostfield says, you
17 have got to decide which of the tools to use. Is that
18 correct?

19 **MR. FINDLAY:** Yes.

20 **MR. DOODY:** Mr. Huxley, I saw you
21 looking anxious to say something.

22 **MR. HUXLEY:** Just on the topic of
23 emergency orders, AMO has set out its concerns about
24 that particular provision.

25 I think we identified there are the

1 tools in the relevant legislation.

2 The standard review of a building
3 official or inspector or officers action is based on
4 reasonableness. It will be a case-by-case basis.

5 And there are immunity provisions in
6 the *Building Code Act* that as long as they are acting
7 in good faith, that will be absolved individuals from
8 liability.

9 One of the concerns about the
10 *Emergency Act* orders would be, I think it was commented
11 on just a minute ago, really the municipality is really
12 positioning itself to take over a property.

13 That would have a number of
14 considerations for a municipality of any size.

15 There are a number of financial costs
16 associated with taking over a property, and really
17 keeping the owner out until certain works were done.

18 The legislative regime right now
19 requires or allows for the owner to appeal that order
20 in Superior Court.

21 There is a legal mechanism that is
22 going to be engaged.

23 In addition, the Emergency order
24 requires the Chief Building Official to go to court and
25 to get that order confirmed and to confirm the remedial

1 measures undertaken.

2 Those may be considerations that any
3 municipality would be thinking about, we are taking
4 over a property and do we have the immediate resources
5 to dealing with this property.

6 Yes, there is provision to tax role
7 the repairs.

8 But these are real practical
9 considerations that municipalities have.

10 We have put in an example of a case
11 where an emergency order was imposed at a property here
12 in Ottawa, related to a building that failed in 2007.

13 Four years of litigation ensued
14 because of that, just to get the order confirmed.

15 In that case, the municipality spent
16 approximately \$430,000.

17 This is Ottawa, a larger municipality.

18 These would be practical
19 considerations that a chief building official in a
20 smaller municipality would behold on, 'you know, let's
21 plot this down the map. We are going to be dealing
22 with this issue 5, 6 years from now, and at the best
23 the most we can get is maybe a tax roll of the costs
24 that the municipality incurs.'

25 So I am just suggesting there are some

1 practical considerations.

2 Everyone seems to say yes, there are
3 all these great powers, but they are looked at and
4 considered very carefully because of the practical
5 costs to the municipality.

6 **MR. DOODY:** How does a municipality
7 weigh the issues where what is at stake is public
8 safety?

9 In other words, I would have thought
10 that -- to put it another way -- a municipality would
11 be loathe to sign off on a building, the *Building Code*,
12 at the construction stage on the basis that if we don't
13 sign off and allow occupancy, there is going to be huge
14 economic concerns.

15 But at the other end of the line,
16 where if you close the building, there is going to be
17 economic concerns.

18 In both cases it is public safety.

19 How does the municipality weigh those
20 issues and should that decision be made by somebody
21 other than a municipal official who is operating in the
22 environment that you describe where there are serious
23 and significant financial issues at stake for the
24 municipality if they decide to go the route of closing
25 the building or doing the work themselves?

1 **MR. HUXLEY:** I will certainly defer
2 to the Chief Building Official from Toronto.

3 But I would expect that a
4 municipality, where there are resources to consult with
5 other internal stakeholders, as well as external
6 stakeholders, I suspect a chief building official can
7 seek out professional engineering opinions to help his
8 or her decision, then consider a whole array of orders
9 that would be available under the *Building Code Act*
10 from tests to samples all the way up to an emergency
11 order.

12 Whether it would simply be barricading
13 the building just for the basis public safety, how long
14 is that going to satisfy public safety?

15 So these are all the considerations
16 that chief building officials need to access to
17 resource this, of whether it is internal or external
18 resources to help him or her guide them in their
19 decision.

20 But there are practical considerations
21 that have to be ---

22 **MR. DOODY:** The evidence we heard in
23 Elliot Lake included when there was a piece of concrete
24 fell from the underside of the roof deck, because it
25 was the roof and the deck, the pre-stressed slabs were

1 both the deck upon which cars parked and the roof, the
2 ceiling below, they were just a suspended ceiling
3 underneath.

4 So a piece of concrete fell off the
5 underside of the slab into a restaurant.

6 It didn't hit anybody but it was a
7 piece of concrete about 3 feet long.

8 And that was reported to the Chief
9 Building Official and the evidence was that his
10 response was 'well, what do you want me to do, close
11 the building, close the mall? Is that what you want me
12 to do? Shut the mall?'

13 And that could be viewed as the
14 building official making the decision on his own, 'well
15 the economic consequences are too great to shut them
16 off, so I am just not going to do anything.'

17 On one view of it, that is an
18 inappropriate reaction.

19 Is it possible to draft a better set
20 of regulations to make sure that that sort of reaction
21 is not one that governs the day, or maybe it isn't
22 inappropriate?

23 I don't know.

24 **MS. BOROOAH:** That is a challenging
25 log to catch!.

1 But just browsing some of the Caselaw
2 on this point, while this discussion has been going on,
3 and I would agree with the representation from AMO that
4 the test is one of reasonableness, which is what we
5 always discuss as we apply any of these orders.

6 If you read the cases, 95 percent of
7 them essentially, the municipality experience, appear
8 to be defending why they required something?

9 **MR. DOODY:** I was going to say that
10 you don't get the a judicial review of a decision to do
11 nothing.

12 **MS. BOROOAH:** Of the building owner.
13 You could if there were damages,
14 although it could come in the form of claims.

15 **MR. DOODY:** Right.

16 **MS. BOROOAH:** And there are cases
17 like that and unfortunately in many cases they are not
18 reported because they are settled.

19 **MR. DOODY:** Right.

20 **MS. BOROOAH:** Right.

21 So there is that balancing act that I
22 think we all take when we -- and we were quite aware of
23 the potential for damages.

24 Surely in the municipal forum we know
25 that building failures are not the biggest risk,

1 usually.

2 Damages associated with public space,
3 slips and falls and so on, tend to be the largest area
4 where municipalities experience claims.

5 But that potential for claims where a
6 municipality has knowledge of a situation is
7 significant and I think governs most of our behaviour
8 when we take action, because it is not necessarily
9 something you want to take on lightly.

10 I think the Caselaw supports that,
11 that any action you take has to be defensible as a
12 reasonable action to take under the circumstances,
13 which leads me to the conclusion I think we have
14 already reached in our submission, and that is it is
15 very difficult to specify that in the absence of the
16 cases, that one size fits all is unlikely to result in
17 the perfect answer.

18 So those two pressures on the
19 discretionary authority leads a reasonable person to
20 come to some decision.

21 And I think the way it is structured
22 in the legislation is probably as good as it can get.

23 **MR. DOODY:** So you disagree with Mr.
24 Ostfield who says 'you have to do something'?

25 **MS. BOROOAH:** No, I don't disagree.

1 You do have to do something.

2 But I think it's that obligation on
3 you to make a reasonable decision about what should be
4 done.

5 **MR. DOODY:** Including the decision to
6 do nothing?

7 **MS. BOROOAH:** Well, I think we may
8 not be here if everybody thought that was the right
9 decision in that case.

10 So clearly there is pressure for
11 someone to make the right decision and I don't think
12 that decision can be made in the absence of looking at
13 the facts.

14 **MR. OSTFIELD:** You are still faced
15 with someone who exercises discretion and found that
16 public safety is at risk.

17 I can't imagine a situation where you
18 would just walk away from that, unless some intervening
19 act has happened which removes the risk to public
20 safety.

21 It lacks common sense, doesn't it?

22 **MR. DOODY:** It boggles the mind, as
23 my kids would say.

24 **MR. OSTFIELD:** It boggles the mind,
25 right.

1 **MR. DOODY:** Mr. Findlay has another
2 point.

3 **MR. FINDLAY:** Just one thought and I
4 think it is probably along the same vein, is that I do
5 not really think that it is going to be either really
6 possible or practical to try and legislate the proper
7 use of discretion.

8 Nobody is going to question it if it
9 was applied properly.

10 So I think maybe the better tact is to
11 ensure that the people are charged with exercising that
12 discretion are doing so from an informed and competent
13 and reasonable point taking the best steps that you can
14 do to make sure that that is the case.

15 **MR. DOODY:** That is the perfect
16 segway into the next Question, which is: *"Is the*
17 *training for building officials, in particular, for*
18 *property standards officers, sufficient?"*

19 So we use the word "building officials
20 without capitals, it's not Chief Building Official.

21 *"Should there be mandatory training,*
22 *competency qualifications and certification of property*
23 *standards officers? What degree of independence should*
24 *property standards officers have from other municipal*
25 *officials? Should building officials, including*

1 *property standards officers, be regulated as a*
2 *profession?"*

3 Let me explain the background.

4 Many of the submissions that we got
5 assumed, quite reasonably from the wording, that we
6 were talking about a self-governing professional like
7 lawyers or architects or engineers.

8 What the intent of the question was to
9 highlight the fact that chief building officials are
10 regulated in the sense that there is certain training
11 required under the *Building Code Act* that they have to
12 be certified as having achieved certain levels of
13 training and property, while there is a Property
14 Standards Officer's Association which does offer
15 training and certification. It is not mandatory.

16 So the officials who are enforcing the
17 maintenance requirements as opposed to the construction
18 requirements, are not required to be trained or
19 certified at all.

20 The question is, is that appropriate?

21 And so on that point, perhaps we can
22 call on Mr. Perrin, whose organization is quite clear
23 on this point.

24 **MR. PERRIN:** Thank you, Mr. Doody.

25 The Ontario Association of Property

1 Standards Officers obviously would like to see
2 mandatory property standards by-laws throughout the
3 Province.

4 We would also, obviously, like to see
5 mandatory certification. I don't think that will be
6 any secret to anybody.

7 Having said that, I have said it
8 before, I believe that property standards officers are
9 a subset of building officials.

10 But as such, they are a distinctive
11 different subset in that the two disciplines are
12 somewhat separate and that building inspection, if you
13 look at it from the get-go, from the application for a
14 permit to completion, there is a prescriptive set of
15 inspections.

16 There are a number of inspections laid
17 down by the Code.

18 Whereas property standards inspection
19 is more diagnostic in its nature, you tend to be
20 presented with a symptom and if you are any good at the
21 job, you try to find out what is causing it, which I
22 believe is probably the primary contributor and factor
23 to the collapse that we are all here about.

24 **MR. DOODY:** That they did not attempt
25 to find out what was causing it?

1 **MR. PERRIN:** I think that the water
2 coming through the roof on the Algo Mall had become so
3 commonplace that they were taking it for granted.

4 I think there was shoddy property
5 standards enforcement in the way that the orders were
6 issued.

7 I think there was shoddy inspection by
8 the engineer and I think there was a shoddy review of
9 that report by the property standards officer.

10 I think the system fell down at least
11 three different places.

12 **MR. DOODY:** Can you assist us at all
13 with what proportion of property standards officers in
14 the Province have taken your training and been
15 certified?

16 **MR. PERRIN:** We have, it is my
17 understanding we have about 300 members now, and I
18 think we have about 1,600 certified property standards
19 officers.

20 **MR. DOODY:** I am sorry, you have how
21 many certified?

22 **MR. PERRIN:** I believe it's around
23 the 1,600 mark.

24 I could be open to correction on that,
25 because I did not bring those facts with me.

1 and III, all basic, intermediate and advanced, but
2 there is also a requirement for two years field work
3 before we certify somebody.

4 Basically, if you start off in part I
5 you do II and III, you've got your two years in, you
6 get your two years of field work and you can apply for
7 certification.

8 Whether the scheme would be such that
9 you could only work in property standards if you were
10 certified might be an issue.

11 Because it would be very difficult to
12 get the two years field work if you weren't allowed to
13 work in the field unless you were certified. It is the
14 catch-22 situation.

15 **MR. DOODY:** Other
16 occupation/professions that dealt with that issue by
17 allowing somebody to work under the supervision of
18 somebody who was certified for a period of time.

19 **MR. PERRIN:** Obviously, those would
20 be conditions that would have to be brought up with a
21 negotiation with the Province, probably, because they
22 authorize the certification.

23 **MR. DOODY:** Does the OPOA have the
24 capacity to train ---

25 **MR. PERRIN:** The OPOA used to offer a

1 property standards course, I am not sure if they still
2 do.

3 **MR. DOODY:** I am sorry, the Ontario
4 Property Standards Officials (OPSOA.) I hate acronyms!

5 You have the capacity, you would not
6 need more capacity?

7 I was not offering to offload it on
8 Mr. Findlay's organization.

9 Although he was happy to get the
10 revenue I think!

11 **MR. PERRIN:** Initially we could
12 probably do it if we had to.

13 We could train more instructors.

14 We are prepared to move the courses
15 around the Province.

16 We just completed a part III course in
17 Thunder Bay, which really we did it on a break-even
18 basis and ensured that it does not cost the association
19 any money, but we don't make any money off of it,
20 because it costs a lot to get there and it costs a lot
21 to stay there, et cetera.

22 **MR. DOODY:** Now, there is an issue
23 which we alluded to this morning and this may be the
24 best time to see if anybody else has any thoughts on
25 it.

1 That is the Building Officials
2 Association has said that any minimum standards in
3 respect to structural capacity of existing buildings
4 ought to be kept within the bailiwick of the building
5 officials rather than the property standards officials.

6 So how does your organization view
7 that debate, Mr. Perrin?

8 **MR. PERRIN:** I don't believe that
9 Property Standards Officers Association would have any
10 concern about building officials taking carriage of
11 structural issues.

12 The point is that generally speaking
13 building inspectors rarely go out to existing
14 buildings. They go out to buildings under
15 construction.

16 So what is necessary is a property
17 standards officer to go out and inspect existing
18 buildings; that is what they do.

19 So we need the ability to be able to
20 recognize the potential for the structural issues in
21 order to bring the building officials into the picture.

22 And we usually do that by asking for
23 an engineer's report.

24 If the engineer's report comes back
25 and indicates there is a significant issue, we go talk

1 to the building division straight away.

2 **MR. DOODY:** Do I understand correctly
3 that the way in which you would achieve the ability to
4 recognize a potential problem is through better
5 training?

6 **MR. PERRIN:** Yes.

7 We already train and build an envelope
8 and poured concrete construction, the part III
9 construction, part of the certification and training
10 program.

11 Basically it is aimed at instructing
12 people on how to recognize the signs, what to look for.

13 And once we see those indications,
14 then we would ask for an engineer's report.

15 And as I said, if the engineer
16 indicates that there is a significant issue, we would
17 pass it over to the building.

18 We would still maintain an interest in
19 it.

20 **MR. DOODY:** Mr. Findlay?

21 **MR. FINDLAY:** Just in quick response
22 to what Warwick laid out.

23 We would have an interest in that as
24 well, and I think we do currently.

25 There are possibly structural issues

1 that are not really going to immediately necessitate an
2 unsafe situation.

3 You could have evidence of structural
4 systems being affected that are not at the point of
5 either failure or major concern.

6 That quite honestly is the situation
7 which a lot of times property standards officers and
8 building officials work together, where they do bring
9 those items to our attention, or even follow-up and
10 pursue their remediation and repair of those minor
11 structural defects, you now, if it does not require a
12 building permit, as Mr. Perrin said.

13 **MR. DOODY:** And in fact, just to
14 interrupt, that is precisely what happened in Elliot
15 Lake.

16 There were a number of engineering
17 reports.

18 There was no report that said this
19 building is structurally unsound and will collapse
20 imminently.

21 There were a number of reports that
22 said if you don't do such and so, it is going to have
23 structural problems.

24 So that is the situation.

25 It wouldn't meet the imminent danger,

1 or the emergency powers standard.

2 **MR. FINDLAY:** That is one of the key
3 points that we have talked about, I think, where there
4 is an intersection of the interest between building
5 officials, chief building officials and property
6 standards officers, is kind of being a little bit
7 familiar with each other's territory.

8 But knowing, you now, having an
9 interest in when property standards officers know to
10 bring these issues to the attention of the building
11 department if there is not that close linkage already,
12 and then again secondly, as we have already said, the
13 knowledge of the building official, the chief building
14 official and what to do with the situations that are
15 brought to their attention.

16 You know, with regard to the
17 importance of training to OPSOA we support their
18 training.

19 I believe OBOA did used to provide
20 property standards training, I think the decision has
21 been made in the meantime to leave that expertise to
22 the experts of their association.

23 With respect to property standards
24 interest in moving up, if there is an interest in the
25 qualification regime that is present now within the

1 *Building Code*, I think it's important to note that that
2 qualification regime is focussed on examination and not
3 training, currently.

4 It is simply the completion of exam;
5 training is optional, as pointed out by the Ministry.
6 But that is one important distinction.

7 **MR. DOODY:** Do you think it should
8 include an exponential experience element?

9 **MR. FINDLAY:** Absolutely.

10 If I can, without going whole hog into
11 a lot of the information, we provided a lot of
12 information and a briefing note as you will know, Mr.
13 Doody and Mr. Commissioner.

14 I think that this will probably
15 explain where I got the previous reference to
16 Walkerton, someone who followed that Inquiry for
17 different reasons at that period of time.

18 It became quite apparent and was
19 apparent from the decision of that Inquiry that
20 competence has three primary components, and that is
21 examination, experience and education.

22 We do not say that all municipalities
23 are in or facing problem situations like what occurred
24 in Elliot Lake.

25 But we do say that the only true test

1 of having competent persons across the board is to make
2 sure that you have those three key pillars in place for
3 determining competency.

4 We don't see the need to reinvent the
5 wheel when that review has taken place, the Walkerton
6 review took place with the Municipal Safety Enforcement
7 staff, they just happened to be water system operators
8 and not building officials and property standards
9 officers can probably be included in the same light.

10 So we presented a large amount of
11 material on that one specific interest, and I won't go
12 into it any further unless there are questions
13 specifically on it.

14 **MR. DOODY:** Does anybody else want to
15 say anything on this point?

16 Ms. Lewis?

17 **MS. LEWIS:** I have heard a lot of
18 discussion so far about what currently is within the
19 *Building Code*, but it appears to me based on some of
20 the discussions that you are going to go down a path
21 that could include requiring more regulation for
22 requirements for existing buildings, which would impact
23 the qualification registration program that currently
24 is within the *Building Code*.

25 I agree with Mr. Findlay that right

1 now the qualification and registration program within
2 the Code focusses on examination.

3 Should we need to expand that to
4 include property standards, if we expand the scope of
5 the *Building Code*, I think government would be
6 considering that plan also.

7 And we are looking at how best we can
8 continue on with knowledge maintenance.

9 We have got knowledge maintenance
10 requirements within the Code, but again it focusses on
11 examination.

12 We could look at enhanced
13 requirements.

14 It would require a legislative change,
15 but training could become a mandatory requirement
16 should Government choose to expand that requirement and
17 if that is a piece that is within the recommendations
18 of the Commission's report.

19 Having said that also, the Government
20 has always provided and spent a great deal of time
21 making sure that training material is available should
22 people wish to choose it.

23 We are in the process of reviewing
24 that model and determining how best we can strengthen
25 that and bring it forward.

1 **MR. DOODY:** On that point, I guess
2 one of the issues for the Commission is not only on
3 this point, but on others, should optional be made
4 mandatory?

5 And I can tell you that, that was a
6 common theme both in Part I and Part II.

7 Are there certain things that we ought
8 not to give municipalities or individuals options on?

9 **MS. LEWIS:** And that is quite frankly
10 something that we were looking at within my branch
11 before this tragedy occurred, whether or not this
12 needed to be?

13 The program that was put in place as
14 put in place at a time, it was introduced in 2003 and
15 became mandatory -- it slowly phased out.

16 It is time for us to review that
17 program and we are looking at it to determine its
18 effectiveness and it is getting what we intended to do.

19 We are certainly going to watch very
20 closely what comes out of this, but we were exploring
21 the options on how best to move forward with this and
22 get a more fulsome approach to make sure that this was
23 going to achieve its intended goals anyhow.

24 As with any government program, as we
25 implement things, you hit a time when you have to

1 review and that time came -- actually, we started down
2 that path before this happened.

3 **MR. DOODY:** Anybody else on this
4 point?

5 Ms. Borooah?

6 **MS. BOROOAH:** Well, if I may say, I
7 think the submissions from the Large Municipalities
8 Chief Building Officials and the City of Toronto are
9 parallel on this point.

10 I think it is worth considering and I
11 think some of the other questions raised sort of
12 bringing us to the floor, that we are talking about a
13 municipal responsibility where there is liability
14 associated with carrying out those responsibilities,
15 which has its own drivers towards what level of
16 performance we are generally acquired to achieve.

17 It has been our view that the level of
18 attention paid to qualification in the context of the
19 building regulatory community as compared to other
20 regulators across the municipality, including fire
21 officials and even water, which came out of the
22 Walkerton situation, has to be looked at in balance.

23 That there is a mandatory requirement
24 to pass certain tests, and that is how you verify the
25 knowledge.

1 That is a larger hurdle for many
2 municipalities to go over then applies to many of their
3 employees.

4 It is not without a cost.

5 It took in our case, in the City of
6 Toronto, notwithstanding our resources, the better part
7 of five years to get all of my inspectors appointed
8 under the Act qualified.

9 At the end of the day, I had to let a
10 few of them go, which because it is a legislative
11 requirement, I could, even though they were unionized
12 employees.

13 I think that is what is missing from
14 some of the discussion of this.

15 We are talking about public sector
16 employees working for a level of government that has
17 inherently obligations associated with it who are
18 liable for their actions and who carry out fairly
19 prescriptive responsibilities, who pass tests that
20 really were developed based on historical training
21 developed at the provincial level.

22 The courses, the materials that have
23 circulated for these decades or the last decade were
24 really based on training materials prepared by the
25 Province in the tradition that they had historically

1 prepared them.

2 And they have been adopted and
3 delivered and modified a little bit by various parties
4 over the years in delivering those programs.

5 So some people are capable in that
6 context of studying and passing a test because they are
7 knowledgeable. Others require more training.

8 In our experience we found some have
9 to go to the training courses two or three times before
10 they pass. There is not a one-size fits all model to
11 this.

12 So I go to my last point.

13 There is the employee-employer
14 relationship here where the employee -- I am sorry, the
15 employer is a municipality and it is not a private
16 entity with no governance associated with it is my
17 point.

18 So I think there is a benchmark that
19 we have established and our employees have to reach,
20 but I think it is a bit like the owner responsibility,
21 you don't want to overdo it, because overdoing it comes
22 with a cost.

23 **MR. DOODY:** But if there is a
24 requirement to do the job adequately, that people have
25 reached a certain skill level, and whether you show

1 that by examination or you achieve it by training
2 examination and experience, but if there is a
3 requirement to have that ability of skill to do the
4 job, isn't it a given that out of the existing body of
5 people who were doing that job that are not yet
6 certified, that some of them will not meet the skill
7 level? That's why you are imposing it.

8 So isn't it a good thing if they don't
9 have the skill level that they can't do it?

10 Unless the skill level is set
11 artificially high.

12 But isn't that the whole point, to
13 protect the public you need to know that the people who
14 are saying a building is safe have the skills to say
15 that.

16 **MS. BOROOAH:** I am not suggesting you
17 roll back the clock.

18 But what I am saying is the bar is
19 already set quite high.

20 **MR. DOODY:** For building officials.

21 **MS. BOROOAH:** For building officials.

22 With respect to property standards,
23 and I will move to that point, I guess our basic
24 premise, and this applies both to the Large
25 Municipalities Chief Building Officials submission and

1 ours, is that that is inherently a permissive and
2 discretionary scheme adopted by by-laws as I said
3 earlier.

4 And it is very difficult to develop a
5 one-size fits all kind of training program for that
6 context.

7 When you want to have a mandatory
8 standard, we should fit it within the mandatory scheme.

9 So when Brenda started to talk about
10 well, if this is to become a mandatory requirement, the
11 skill level associated with carrying out those
12 provision of the Act should be established at the
13 provincial level.

14 So we don't disagree with that.

15 If there is a mandatory standard for
16 existing buildings, which we argue should be a report
17 from the owner, not shifting the onus, that the people
18 administering that regulatory requirement should
19 understand that and the qualifications associated with
20 carrying out those responsibilities can be tested like
21 the others.

22 **MR. DOODY:** But would it not also
23 help, even if you had -- and I will come back to you,
24 Ms. Lewis -- would it not also help if you had a
25 minimum standards set by the province which, for sake

1 of argument, says "structurally sound and watertight",
2 or uses the language that Québec uses.

3 And that was enforced by requiring the
4 owners to conduct periodic inspections to see whether
5 or not it was met.

6 If you also train your property
7 standards officers, so that when they were doing the
8 property standards inspection, they would have the
9 training to allow them to recognize when there is at
10 least a potential issue so they could order that an
11 engineer do that.

12 In other words, you would not be
13 training on everything in property standards, but you
14 would be training the property standards officials so
15 that they were able to do their job in the context of
16 the provincially mandated minimum standard.

17 **MS. BOROOAH:** We may all have
18 somewhat different views of that that minimum standard
19 is and where it rests and I guess as I have stated
20 earlier, my position is it should rest under section
21 34.2 and the standard should be, if a minimum standard
22 across the province is to apply, it should support the
23 review done by -- reported to the building officials.

24 So we would not have a minimum
25 property standards on structural; you wouldn't have a

1 minimum property standard on those matters, on
2 structural ---

3 **MR. DOODY:** No, it wouldn't be a
4 minimum property standard, it would be a property
5 standard brought in force ---

6 **MS. BOROOAH:** And therefore mandatory
7 training of property standards would not be required.

8 And I go back to the comments from
9 AMO, where while there are property standards that have
10 those provisions in them across the Province, not all
11 municipalities have property standards to begin with
12 and a further minority of them have property standards
13 addressing that issue.

14 So that is not where -- although in
15 some jurisdictions there is expertise, there is not
16 expertise across the Province and it would be a large
17 hurdle to overcome to get there.

18 So I would suggest, and I think our
19 submission suggests, as does the Large Municipalities
20 Chief Building Officials, you go to where that
21 expertise currently resides.

22 Although focussed, as we described it
23 earlier, on the beginning and the ends of the process
24 here, when the building is being constructed and when
25 there is a failure today, the expertise with structural

1 sufficiency largely rests in the regulatory world with
2 the building officials.

3 **MR. DOODY:** Ms. Lewis?

4 **MS. LEWIS:** So even just based on this
5 conversation.

6 One of the things that I would be
7 looking at from the provincial policy set or position
8 is if you have a property standards regulation and a
9 discretionary property standards by-law citing
10 authority, there is going to be a lot of public
11 confusion.

12 So one consideration I would be giving
13 as a policy maker is differentiating between the two
14 and giving them two separate titles.

15 That is just a general thing; it's
16 just easier to defend.

17 From there, then you have to look at
18 okay, if you regulate and from a Provincial Government
19 perspective whoever enforces it will look at it and
20 will figure out how to do it.

21 But you have got building officials,
22 you have got property standards and then you have got
23 Ministry of Labour inspectors that are in there -- I am
24 sorry Wayne, I hate to drag you into this, but
25 clarifying the roles of each -- like, not only do we

1 have an education piece that maybe needed to be
2 enhanced within the organizations that are actually
3 doing this, but there might be a public education piece
4 that we need to do too, because we need to clarify the
5 roles of each so people know where to go.

6 That is just a personal opinion from
7 sitting back and hearing all the confusion on who does
8 what just at this table.

9 We are not sure.

10 **THE COMMISSIONER:** There is a
11 practical reality we have not spoken about, that has to
12 do with the recruitment to remote and isolated
13 communities.

14 It isn't easy getting somebody or at
15 least it is not as easy for Hearst, Hornpayne or Red
16 Lake to get a properly qualified building standards
17 official, as it is in Toronto.

18 Then that is something we have heard
19 on a number of occasions during our hearings.

20 **MR. DOODY:** Mr. Findlay?

21 **MR. FINDLAY:** That is also one of the
22 points that we wanted to touch on.

23 As Anne has mentioned, the nature of
24 the employer/employee relationship I think does change
25 and the understanding of the obligations of each does

1 change based on the areas of Ontario that you get to.

2 I thought there was a really good
3 point made by Wayne from the Ministry of Labour in
4 discussing even the experience in some of these remote
5 or smaller areas of even knowing when they are looking
6 at an unsafe building or any other potentially
7 dangerous situation.

8 The issue of providing support to
9 these municipalities and their building officials and
10 the issues of recruitment are certainly a huge
11 challenge in remote northern communities, but they are
12 even a challenge for rural and small urban communities
13 within Southern Ontario.

14 Myself, who is speaking today, one of
15 my associates, Mr. Allan Shaw, who will be speaking
16 tomorrow, both of us have experience as chief building
17 officials in not only large urban centres where we are
18 now, I started as a chief building of a 3,000 person
19 municipality, I did all jobs, including property
20 standards.

21 Mr. Shaw has experience working in the
22 north.

23 When we bring these perspectives
24 forward, we do so also as the Ontario Building
25 Officials Association in great respect of the

1 submissions of the City of Toronto and the Large
2 Municipal Chief Building Officials we are directly
3 engaged with municipalities like Elliot Lake and the
4 challenges of doing their job.

5 We did hear from the members in
6 question from Elliot Lake about the issues they were
7 dealing with.

8 We have to be quite honest that the
9 certification that OBOA puts forward and has extended
10 to its members for a number of years was present in the
11 building division in Elliot Lake.

12 We draw a lot of thought about what
13 that means to the Inquiry and to the people in Elliot
14 Lake.

15 We almost would like to treat it in
16 the same sense that there were also other professional
17 designations present in that situation and that we have
18 to look at what the reaction has been and the primary
19 point that I would make is what we have touched on
20 already was a professional association like PEO, given
21 the regulatory status is already well underway into
22 taking corrective action, based on what they have
23 termed that the problems were, if any, in the handling
24 of that situation.

25 We think that is something that we

1 would expect from a professional body and a profession,
2 actually.

3 When we talk about certification and
4 training and perhaps mandatory for building officials,
5 I think we view it in two direct ways: a) we really
6 wish that we were at a point at this Inquiry to be
7 saying that we now are making the recommendations on
8 what is going to change in the immediate future to help
9 ensure these things don't occur again.

10 Unfortunately we are not at that
11 point.

12 We are now trying to determine if and
13 when there will be a will to institute that type of
14 change.

15 We don't know exactly what that change
16 or that model is going to look like.

17 But one thing that we do envision is
18 that certification for building officials and by
19 extension property standards officers, even mandatory
20 not only assist building officials in being able to
21 discharge the duties that they are given.

22 And I would leave that statement on
23 behalf of property standards officers to Warwick and
24 his group, but that it be mandatory so municipalities
25 are encouraged and even directed to ensure that their

1 employees and staff are getting the proper support,
2 education, training and the ability to register with a
3 certification that requires experience as a part of
4 delivering these essential functions.

5 So I think at the end of the day one
6 of the things that I would like to promote on behalf of
7 OBOA is that when we have presented a lot of these
8 issues going forward, we are doing it from the view
9 point of the rural, small urban and northern
10 municipalities who are facing some complexities that
11 maybe some of our larger centres are not.

12 **THE COMMISSIONER:** Can you educate me
13 on funding in relation to training?

14 How much of that funding comes from
15 the province?

16 **MR. FINDLAY:** Currently, and I may
17 seek clarification from the Director, the Province has
18 in the past created with the support of many other
19 stakeholders training for the *Building Code* on the
20 various disciplines that reside within the Code.

21 The dollars to access that training
22 and hopefully utilize it to prepare for examination
23 come directly from the municipalities and their
24 building divisions.

25 So in maybe some of the larger, more

1 structured municipalities where you are building permit
2 revenues and cover your complete costs of operation;
3 access to training for building officials is perhaps
4 covered by those revenues.

5 In smaller municipalities where you do
6 not have the same amount of revenue to cover expenses,
7 quite often some of those training functions would have
8 to be funded by the tax base, and it changes from
9 municipality.

10 So as you can appreciate in some
11 municipalities, it is not a cost neutral issue and
12 sometimes there can be difficulty for building
13 officials and even chief building officials in
14 accessing the training that is required to do the job
15 properly.

16 **THE COMMISSIONER:** Would
17 recommendations from the Commission in that respect be
18 of some value?

19 Particularly we are dealing here with
20 a small municipality with a budgetary problems and I am
21 sure it is not alone and it is not unique.

22 **MR. FINDLAY:** I think without being
23 supremely accurate, we have the Large Municipal Chief
24 Building Officials group -- again, I could be
25 corrected, I think comprises about 40 to 42

1 municipalities, which do probably constitute the bulk
2 of where the development is in the Province, but there
3 are almost 400 other municipalities out there that are
4 not of that size that do not have the access easily to
5 training that would benefit from certifications that
6 help instil a number of different things.

7 One of the reasons that we promote
8 mandatory certification is because in the OBOA
9 framework, for example, training not just examination
10 is a mandatory component of certification process, such
11 as was recommended Walkerton.

12 Actually, the Inquiry spoke
13 specifically to the need to have high quality dedicated
14 training developed as part of that overall competency
15 assessment, and I really don't know, aside from the
16 technical subject matter, I don't understand how we are
17 in a venue that is any different.

18 That is a municipal safety program.
19 The logistics are completely different, but I think the
20 intent is the same.

21 As hard as it is for rural
22 municipalities and their staff to remain current and as
23 was said, some municipalities might not see an unsafe
24 condition for five or eight or ten years, or if ever.

25 It is very hard to expect them to

1 react completely appropriately when they have very
2 little subject matter with the occasion.

3 The only thing you can do is hope that
4 the training has been the best possible training to
5 advise them on how to conduct themselves in that
6 situation.

7 You hope that there has been a
8 maintenance program of some type that requires them to
9 participate in ongoing learning and keeping up to date
10 with changes to the regulation.

11 And you would hope that they would
12 have access to a mentorship type service that should
13 they run into a problem like this, they have people to
14 call on.

15 I think that is part of our concern is
16 that aside from various projects in the past; that
17 really does not exist for the most part.

18 **MR. DOODY:** Ms. Lewis?

19 **MS. LEWIS:** Although I certainly
20 understand the concern about the small municipalities
21 because it is something, as a Province, that we deal
22 with on a daily basis.

23 When you indicate is there a
24 recommendation there that the funding be provided to
25 small municipalities?

1 I would have to put forward a caution
2 in all good conscience.

3 The building officials, yes, deal with
4 the building science and public safety.

5 However, there is a broad based of
6 official capacity within municipalities that also have
7 to pay membership fees and registration and things like
8 that.

9 If you go down and start offering
10 provincial funding or making recommendations on
11 provincial funding, it could have bigger impacts.

12 And again, it would hit our tax role.

13 So there is always that fine balance
14 that you have to play in providing funding for some and
15 not for others.

16 The *Building Code Act* provides the
17 authority for small municipalities to join forces to
18 share costs equally to reduce that impact.

19 I would encourage you to consider that
20 in your recommendations when you are going forward with
21 this piece of work.

22 In addition, that is one thing that we
23 are looking forward do, doing some forward thinking on,
24 is how do we build capacity in smaller municipalities
25 once they establish those core curriculum requirements?

1 Then from a training perspective, I
2 would encourage you to look at the capacity of
3 different sector organizations to actually develop and
4 deliver on their own, because there is certain pieces
5 of our legislative regime that unless you are in the
6 heads of the people that are writing it, you are not
7 going to understand the true intent.

8 And I would offer up also that there
9 are services that are provided by the Province to help
10 small municipalities in getting that understanding of
11 what the Code intent is, and that is through our Code
12 of advisory line.

13 We are doing some work on that now to
14 actually figure out how best we can provide better
15 support.

16 So I would encourage you to look at
17 that piece.

18 **THE COMMISSIONER:** That is useful.
19 Thank you.

20 **MR. DOODY:** Ms. Borooah has a point
21 she wants to make, but just before we leave Ms. Lewis,
22 your point.

23 If what is being mooted as it has been
24 today, the possibility of the Province enacting by
25 regulation under 34.2 of the Act, certain minimum

1 standards, ought it be left to municipalities to
2 enforce that, or ought the province to enforce its own
3 regulation?

4 Because if the result of leaving it to
5 the municipalities is that the citizens of Ontario who
6 live in the smaller municipalities are deprived of the
7 benefit of it because they can't afford to pay for
8 someone to do it or to be trained to understand how to
9 do it, ought that be something that should be shared by
10 all the taxpayers of the Province?

11 Or are we in a situation where only
12 the taxpayers who live in the 40 big municipalities get
13 the benefit?

14 Is that a conundrum?

15 **MS. LEWIS:** Well, I guess I would
16 flip that back around on you saying would the Province
17 be in any better capacity to do that?

18 We do not have regional offices in all
19 those small communities. We don't have staff in those
20 small communities.

21 Our capacity to actually deliver would
22 be less so than the small rural areas.

23 So it is a conundrum that we share
24 equally across the Province and those small
25 municipalities on how we work together.

1 Like I said, we can look at different
2 options, municipalities currently have provisions to
3 look at different options.

4 We have to start exploring why they
5 are not taking those powers and actually looking
6 across.

7 Could the province help through
8 discussions and empowering and helping small
9 municipalities get a better grasp on how to deliver?

10 Perhaps. That is something we could
11 explore.

12 But I would beg to differ that the
13 Province is the one that is in the better spot to go
14 out and enforce because that is why it was determined
15 municipalities were to begin with because they are
16 located in those communities. We're not.

17 **MR. DOODY:** Ms. Borooah, you had a
18 point?

19 **MS. BOROOAH:** Just a couple of points
20 on the recent discussion.

21 It was mentioned by Mr. Findlay.

22 But I think it warrants emphasis that
23 a number of the officials in this situation were in
24 fact certified and trained building officials.

25 Members of the executive of the

1 organization, in fact, who nonetheless weren't always
2 taking an action that perhaps in retrospect we think
3 was the right action to take.

4 Not everything can be legislated or
5 insured through that program.

6 So the point I guess I wanted to make
7 about this is that let's not let too much emphasis be
8 placed on that point when it does not appear to be a
9 deficiency that was evident in Elliot Lake, that the
10 capacity or training or background or experience of the
11 officials were not in dispute; and that perhaps more
12 attention be paid to some areas where that might not
13 have been the case where the responsibility may more
14 rightly lie.

15 What I am saying is that let's not
16 have the tail wag the dog.

17 Let's figure out what the dog is and
18 address those issues as the primary issues and some of
19 the other things would be nice to have, but they are
20 not fundamental to solving the problem of the day.

21 **MR. DOODY:** The one point that I
22 would appreciate hearing from people on that we have
23 not talked about in this question is what degree of
24 independence should property standards officers have
25 from other municipal officials?

1 And we did touch on this, but we did
2 not sort of lay it on the table.

3 This arises out of some of the
4 evidence we talked about earlier where the property
5 standards officer says: "you can't tell me what to do",
6 in effect.

7 And there are really two aspects of
8 this.

9 One is can council or senior municipal
10 staff tell the building official how to do his or her
11 job, the property standards officer, the CPO, either
12 one.

13 Can they tell him or her how to do the
14 job?

15 Is it appropriate to bring issues to
16 their attention for their consideration?

17 And is it appropriate for council or
18 senior municipal officials to say to a CPO or a
19 property standards officer to say 'lay off on this
20 particular file'?

21 Both issues arose, depending on one's
22 view of the facts, was there an explicit or implicit
23 suggestion to lay off?

24 Was there a suggestion to enforce that
25 was not followed, both as I say, on the evidence, both

1 sides of the coin arose in Elliot Lake on the evidence.

2 And so what are the appropriate
3 standards and do we need something in a legislation or
4 regulation to make it clear.

5 Mr. Perrin?

6 **MR. PERRIN:** Property standards
7 officers, by virtue of their role are by-law
8 enforcement officers who, according to definition, do
9 fall within the purview of being peace officers.

10 Councillors, on the other hand,
11 municipal political representatives, represent the
12 public.

13 It is not unusual for complaints,
14 property standards and/or the by-law complaints to be
15 referred to by-law enforcement officials through
16 councillors.

17 That is not an unusual thing.

18 And in addition to that, it is not
19 unusual for councillors to pick up a complaint where
20 maybe a complainant or a property owner feels that they
21 are either not receiving adequate service or they are
22 being penalized.

23 Quite often the councillors, they will
24 listen to the constituent and often they take -- no, I
25 don't want to say they take the constituent's side, but

1 they want to be seen to be assisting their
2 constituents. Put it that way.

3 I have seen that happen on many
4 occasions and one of the truly easy ways to get a minor
5 complaint pushed to the top of the file is to have a
6 councillor behind it.

7 That does happen.

8 I have personally never seen a
9 councillor or municipal official come to a by-law
10 enforcement officer and tell them to go away and stop
11 doing the job.

12 Now, I don't know if that is because I
13 work in Toronto, formerly North York, and they were big
14 municipalities.

15 It is my understanding it does happen
16 in smaller municipalities.

17 It is also my understanding that in
18 one place, I believe, a councillor came to an officer,
19 told them to back away, and that officer went next door
20 to the Crown court and spoke with a Crown prosecutor
21 and that councillor was spoken to somewhat
22 significantly.

23 **MR. DOODY:** So from our perspective,
24 is this a problem that is in the category of 'if it
25 ain't broke, don't fix it'?

1 Is there something that the Commission
2 needs to recommend to deal with this problem, or is it
3 a non-problem?

4 **MR. PERRIN:** I would suspect it would
5 not hurt to have some formal policy or regulations
6 around it.

7 Councillors, especially new
8 councillors, tend to want to make a name for
9 themselves; they want to stand out, they want to be
10 noticed.

11 Especially within a counsel the size
12 of Toronto's, which let's face it is large, to say the
13 least.

14 There are some smaller municipalities
15 and they only have four, five, six or seven
16 councillors. We have got 44 down there.

17 It is easy to get lost in the crowd.

18 So new councillors sometimes do want
19 to stand out.

20 **MR. DOODY:** And do I understand what
21 you are saying correctly, that it is inappropriate for
22 a property standards or a building official to be told
23 to lay off, to not do anything, it's inappropriate to
24 be told how to do his or her job, but it is appropriate
25 that a building official of property standards officer

1 be asked to look into something.

2 **MR. PERRIN:** In essence, yes.

3 There is no reason why a situation or
4 a condition should not be brought to your attention,
5 either by a member of the public or via a councillor.

6 But at that point it is up to the
7 discretion of the property standards officer or the
8 building official to make the appropriate decisions on
9 examination.

10 Once you have made that decision to
11 move forward, as we have seen here, it is almost
12 imperative that you take it to the end.

13 The bottom line with property
14 standards is prosecution is not what we are looking
15 for.

16 Compliance is what we are looking for.
17 Prosecution is just a tool towards
18 compliance.

19 **MR. DOODY:** Mr. Findlay?

20 **MR. FINDLAY:** I would agree with
21 Warwick, I think there are on occasion instances where
22 there is maybe a bit of crossing the lines, so to
23 speak.

24 I think the position of OBOA has been
25 that while I think the concept is fairly clear of CBO

1 independence, it certainly would not hurt to have
2 clearer and more direct wording for both building
3 officials and property standards officers that there is
4 a clear independence.

5 It might be understood that that
6 independence is there.

7 Whether it is fully respected all the
8 time is perhaps a better question.

9 A lot of times it will come down to
10 the decision of the official, either the property
11 standards officer or the chief building official to
12 perceive what their course of action, once having been
13 warned off.

14 That is where you get more to the
15 professionalism and the understanding of the job, is
16 the need to proceed and deal with potential conflict
17 issues later.

18 But I certainly think we would speak
19 for a majority of building officials when we say that
20 clarity in that independence would certainly help in
21 terms of wording in the legislation.

22 **THE COMMISSIONER:** There is nothing
23 specific, in my understanding in the Act, at the
24 moment.

25 **MR. FINDLAY:** I could be corrected by

1 the Director, but speaking directly to the statement of
2 a chief building official or property standards officer
3 being independent from council in terms of their
4 decisions under the Act, I don't know that that is laid
5 out that clearly, but I defer to comments from ---

6 **THE COMMISSIONER:** Is it laid out at
7 all?

8 Is there any mention of it anywhere in
9 that ---

10 **MR. DOODY:** I think the legislation
11 is silent on it.

12 **THE COMMISSIONER:** Totally silent.

13 **MR. DOODY:** Mr. Huxley, does the AMO
14 have a view on this?

15 **MR. HUXLEY:** Certainly just the Act
16 itself, the way that the scheme of the *Building Code*
17 Act is set out, the chief building official has certain
18 duties, the chief building official shall issue a
19 building permit if certain commissions are met.

20 If the municipal council wishes to
21 challenge that decision, and there are examples in
22 Ontario where the municipal councils have challenged
23 their own chief building official.

24 It's not through any sort of
25 interference on a chief building official's duties. It

1 is through the appeal process. As an agreed person,
2 the municipal council can challenge that decision.

3 And I would suggest that is the
4 process that demonstrates the independence of an
5 official.

6 Municipalities are sophisticated and
7 complex institutions, we have a number of statutory
8 officers and we have a number of operational
9 independent staff.

10 Municipalities have a medical officer
11 of health who he or she has certain obligations to do
12 and may run contrary to a member of council or the
13 council as a whole.

14 The city clerk has certain obligations
15 under access to information. The city treasurer, et
16 cetera.

17 The language of the legislation does
18 not necessarily have to spell out the independence of
19 that particular officer. It is the practical effect
20 and how that is being interpreted.

21 I am a municipal prosecutor and my
22 independence as a prosecutor is recognized through
23 municipalities through a council approved policy, a
24 conflict of interest policy, which indicates that no
25 person shall interfere or influence upon municipal

1 prosecution.

2 So while that is not set out in any
3 statute, there are policies or other avenues.

4 Another tool would be a code of
5 conduct.

6 Municipalities have codes of conducts.

7 All building officials or authorities
8 have to have a code of conduct for their building
9 official staff and now under the *Building Code Act*.

10 So there are avenues that recognize
11 that level of independence, either legal or operational
12 independence. I think those tools are being used and
13 can be recognized.

14 **THE COMMISSIONER:** Your code of
15 conduct is Ottawa's Code of Conduct, right? It's a
16 specific by-law.

17 **MR. FINDLAY:** Yes.

18 There is an Ottawa Code of Conduct and
19 then specifically the Chief Building Official for
20 Ottawa has implemented under section 7.1 of the
21 *Building Code Act* a Code of Conduct specific for her
22 building officials.

23 **THE COMMISSIONER:** I can't recall,
24 did Elliot Lake have anything like that?

25 **MR. DOODY:** Yes, Elliot Lake has, as

1 I recall the evidence, a Code of Conduct under 7.1 and
2 7.1 talks about, in fact I believe it requires
3 municipalities to have a code of conduct for building
4 officials, but only for building officials, not for
5 property standards officers.

6 I would have to look at it. But I am
7 not sure that it speaks to this issue. I don't think
8 that it does speak to this issue.

9 Anybody else on this point?

10 Mr. Sharpe?

11 **MR. SHARPE:** Way out of my area of
12 expertise, but it just seems as a matter of good
13 governance a municipality, if a building official is
14 taking any kind of significant action, which could
15 ultimately have financial consequence to the
16 municipality.

17 I think as the building inspector, I
18 would want, looking at it from that side, I would want
19 to know that council had my back on this, or if they
20 really felt strongly it should not happen, then that
21 should be a council decision, because that is where the
22 ultimate liability is going to lie.

23 So I just throw that into the mix.

24 But just from a governance standpoint
25 I would not want employees, whether it is in a public

1 environment or in a private environment, out there
2 doing things that could have dramatic financial
3 consequence to the organization and sort of just behind
4 well, I am independent and I do what I think is right.

5 So I am not sure how you balance that
6 off, as an observation.

7 **MR. DOODY:** Do you have a thought on
8 that Mr. Findlay?

9 **MR. FINDLAY:** Where that employee is
10 just not simply an employee, but for the lack of a
11 better word, say a statutory officer such as a chief
12 building official or a clerk or a property standards
13 officer.

14 In requiring them sometimes to
15 exercise a significant piece of judgment related to the
16 public safety, I don't know that they can be fully
17 accountable for making that decision if they are
18 allowed to be interfered with, I guess is the best way
19 I would put it.

20 **MR. SHARPE:** Where would the
21 liability rest should that individual go ahead with
22 something which turns out to be wrong, or
23 inappropriate?

24 Who stands behind that from a
25 liability standpoint?

1 Is it the municipality?

2 Is it the provincial government?

3 Is it the association?

4 I don't know.

5 **MR. FINDLAY:** My understanding would
6 be is it all depends on the way you have conducted
7 yourself.

8 If you have conducted yourself in a
9 reasonable manner, say as a chief building official and
10 exercised the discretion and the authorities that you
11 are required to under the legislation, you are not
12 going to be held liable for that.

13 If in fact it is found that you have
14 been negligent, in terms of a chief building official
15 not doing what he should be doing in the standard of a
16 reasonable person, then the chief building official
17 could find themselves quite liable.

18 I cannot reference specific Caselaw,
19 but I know there has been cases where municipalities
20 have taken action against former employees who expose
21 them to liability through negligent acts.

22 But again, it depends on the
23 circumstance.

24 There is not a one answer fits all.

25 You have to recognize when you do the

1 job of a chief building official, you are performing a
2 statutory duty but you still have certain obligations
3 to your employer.

4 The best example I can give you is
5 either is AMO' referenced the issue concerning unsafe
6 orders.

7 While you may be going out and issuing
8 an unsafe in the aim of protecting the public, at the
9 very same time you are potentially exposing your
10 municipal employer to potentially massive costs, a lot
11 of litigation.

12 You are going out without giving the
13 owner significant opportunity to do anything,
14 undertaking work on their behalf, potentially burdening
15 your employer with that cost, then left to proceed to
16 court to see whether or not you get it back.

17 So I found, and the most specific
18 example that I can find being an emergency order, is
19 that sometimes you exercise the job in consultation
20 with your municipality, with your city solicitor, with
21 your chief administrative officer.

22 And you I think have to hold firm on
23 those things that are placed specifically in your
24 hands, whether or not you issue that order.

25 How you deal with the ramifications,

1 you know, what kind of money are we going to spend, is
2 this the best way to procure that service or, you know,
3 if you don't have the authority to commit the
4 corporation just out of expenditure, what steps are we
5 going to take?

6 I think in a lot of cases in the worst
7 case you have to combine the two.

8 So there is an acknowledgement that
9 while there is an independent legal function to the
10 chief building official and other statutory officers,
11 there is a reporting component to your employer that
12 you have to balance.

13 And sometimes I think, as I said, if
14 the wording is clear that in terms of just charging the
15 duties specifically under the legislation, there is an
16 independence that assists in clarifying the scope of
17 what everyone has to deal with.

18 I can't go out on the basis of an
19 order and commit the corporation to spending hundreds
20 of thousands of dollars without some ramifications if I
21 don't do it in a reasonable manner.

22 That's about the best way I can answer
23 that.

24 **MR. DOODY:** Mr. Huxley, do you want
25 to weigh in on this?

1 **MR. HUXLEY:** Certainly at the end of
2 the day the way the legislation is worded, and I will
3 use the issuance of the permit, it is the chief
4 building official that has to issue or shall issue the
5 permit if certain conditions are met, regardless of the
6 consultation that may occur, if those conditions are
7 met she has to issue that permit, or a decision to
8 issue an order, again the liability would only be
9 attracted where the chief building official was acting
10 in bad faith or immune for good faith actions.

11 Yes, there is concern that the
12 municipality would be held vicariously liable for any
13 actions of its employees and the standard is not good
14 faith or bad faith, it's simple negligence.

15 These are obviously considerations
16 that any municipality, large, small, rural or urban or
17 otherwise has to take into consideration.

18 But presumably the thought has been
19 put into the legislation to separate certain functions
20 from a political function, the issuance of permits,
21 medical officer of health, et cetera, et cetera.

22 **MR. DOODY:** But what about the closure
23 order under 15.9?

24 Or a decision to step in and do the
25 work rather than close.

1 Those both are things that a chief
2 building official can do under the legislation by
3 virtue of the office that he or she holds.

4 Particularly the do the work one has
5 financial ramifications to the municipality.

6 Ought the CBO to be able to be
7 completely independent on making that decision?

8 Or as Mr. Sharpe says, ought the
9 council, which is the ultimate decision making body of
10 the municipality, be the person to make that kind of a
11 decision?

12 **MR. HUXLEY:** Again, I think it gets
13 back to the reasonableness of the circumstance and
14 certainly I think the court would look at or anyone
15 reviewing a decision such as that would look at yes, it
16 may be a discretionary power to a chief building
17 official.

18 But in the circumstances that
19 discretionary power may actually convert itself to an
20 obligation.

21 What did the chief building official
22 arrive at to make that decision?

23 Consult an independent legal advice
24 internally or externally.

25 Consult council municipality and got

1 council's input.

2 These may be all types of variations
3 that may occur on a case-by-case basis, but ultimately
4 it is the chief building official in those
5 circumstances that has to have the ability to make
6 those important decisions.

7 I think the question of -- it was
8 raised earlier -- the question about a chief building
9 official balking on making those decisions because, I
10 think in your example in Elliot Lake, closing down a
11 mall may have a number of ramifications.

12 Again, one of those issues is the
13 liability consideration.

14 If a chief building official closes
15 down a mall, am I exposing a municipality then to loss
16 of income claims, economic loss, et cetera, et cetera?

17 I don't want to turn this into a tort
18 reform exercise.

19 But that is a consideration that not
20 just council as a whole, but municipal employees and
21 officials have is that once the cat is out of the bag,
22 the municipality may expose themselves to liability,
23 and that is why that cautious approach may be taken in
24 some circumstances.

25 Yes, it may be the right thing to do

1 something, but getting involved that one percent step
2 is a consideration that may cause some officials to ---

3 **MR. DOODY:** And it is not just
4 liability.

5 But in the case of Elliot Lake on one
6 view of the evidence it may have been because there was
7 a thought that if you closed the mall down the town
8 dies.

9 So it is not just liability, it is the
10 very existence of the municipality.

11 **MR. HUXLEY:** Certainly.

12 **MR. DOODY:** Which is a purely
13 political issue and is it appropriate that that be in
14 the hands of a statutory officer, or should it be, as
15 Mr. Sharpe points out, in the hands of the body that
16 has got the authority to govern that municipality?

17 Ms. Boroohah?

18 **MS. BOROAH:** Well, a bit earlier in
19 the discussion I was simply going to add I do not think
20 there is a lot of doubt in the statute that the chief
21 building official has significant independence and that
22 putting other language in the Act, I don't think is
23 going to clarify that point because probably the
24 councillor that may or may not raise it is not reading
25 the Act at that moment that the question is raised.

1 The Caselaw is pretty crystal clear on
2 this. I don't think there is much dispute.

3 And it is a matter of making the
4 argument if there is a question, which does arise from
5 time to time, and I imagine it could be more
6 challenging in a smaller context where an individual
7 decision might have a broader cross-municipal
8 implication.

9 I think we need to keep in mind that
10 there is -- and I think Mr. Huxley mentioned it in the
11 context of section 25, there is the -- not only is the
12 independence outlined under a lot of the powers and
13 opportunities, but at the end of the day if any person,
14 and that has been interpreted to include the municipal
15 council as a person, finds themselves aggrieved of the
16 decision of the chief building official, they have that
17 appeal mechanism.

18 So that further enforces the level of
19 independence already embedded in the statute.

20 **MR. DOODY:** So you are in the 'if it
21 ain't broke, don't fix it' camp?

22 **MS. BOROOAH:** It's a cross we have to
23 bear from time to time.

24 Sometimes you are not popular if you
25 are independent, but what you have to explain is why

1 you have to do what you have to do.

2 **MR. DOODY:** It is not a quarter past
3 3 and Mr. Commissioner, subject to your views, I
4 understand that there is a question or two that Mr.
5 Cassan, counsel for the City of Elliot Lake wishes to
6 put.

7 I don't know if other council or
8 parties or persons in the room wish to put questions.

9 We have to deal with that, and also I
10 would appreciate an opportunity here from each of you,
11 having heard the discussion today on your top 5
12 recommendations.

13 I am wondering if we could take a
14 break now, it being the 3:15 sugar depletion point, and
15 then come back at 3:30 and deal with that.

16 **THE COMMISSIONER:** That makes sense
17 to me.

18 --- **RECESSED AT 3:15 P.M.**

19 --- **RESUMED AT 3:32 P.M.**

20 **MR. DOODY:** I understand that Mr.
21 Paul Cassan, counsel for the City of Elliot Lake, has
22 three or four questions and so he is going to be on the
23 speaker, I understand, if the system works.

24 And so he will ask a question, we will
25 ask for discussion of it, and then he will move on to

1 the next one.

2 So Mr. Cassan, if you can hear me,
3 let's hear your first question.

4 **MR. CASSAN:** Thank you very much.

5 Mr. Commissioner, there has been a lot
6 of focus this morning in the discussion on looking at
7 publicly accessible commercial buildings.

8 It seems to me that in fact industrial
9 processes would more often cause building deterioration
10 failures.

11 So is it not therefore appropriate to
12 look at both commercial and industrial buildings, true
13 they are not necessarily publicly accessible, but they
14 are certainly accessed and staffed by employees and
15 workers.

16 **MR. DOODY:** So what is the thought of
17 the individuals around the table in terms of which
18 buildings should be subject to if there are going to be
19 minimum standards rather than property standards, we
20 are going to call them, should those buildings include
21 not only buildings to which the public has access, but
22 also industrial buildings?

23 Anybody have a thought on that?

24 Mr. Sharpe?

25 **MR. SHARPE:** I think we talked about

1 assessing risk and I think with the *Building Code* and
2 the risks to that building, once built in accordance
3 with that code on an ongoing basis, if the risk is
4 there then I see no reason it would not fall under a
5 similar measure to a parking structure or an office
6 building, all relative risk.

7 **MR. DOODY:** Ms. Lewis?

8 **MS. LEWIS:** From a provincial
9 standard, I would have to look at, number one, moving
10 forward with regulation I would want to speak to all
11 impacted stakeholders so that we could figure out how
12 best to regulate.

13 But in making those determinations, we
14 would look at other laws.

15 Public spaces would be where people
16 from the public go in and out and they would have no
17 other governing legislation that would have protections
18 for them.

19 Whereas an industrial space more
20 likely that is not a public area, and you would have
21 other legislation such as the *Occupational Health and
22 Safety Act* that employers would be responsible for the
23 safety of the people within those buildings.

24 So I am not saying that it should fall
25 under one or the other.

1 But I think we should look at the
2 regime of all to make sure that whatever legislative
3 powers that we put in place, it would -- because there
4 is capacity.

5 If you put blanket over everything,
6 then you weaken the capacity of enforcement and
7 implementation officers to actually enforce it.

8 So those are the things that we would
9 consider as government on determining how best and what
10 buildings should be applicable.

11 **MR. DOODY:** But the OSHA, as I
12 understand it, does not require any periodic
13 inspection.

14 Is that not correct, Mr. De L'Orme?

15 **MR. DE L'ORME:** That is correct.

16 **MR. DOODY:** So if it was thought
17 there as a requirement for periodic inspection,
18 commensurate with risk was discussed, extending that to
19 the industrial building would add a layer of protection
20 to the employees.

21 **MS. LEWIS:** I don't think I was
22 saying one way or the other.

23 That's just some of the considerations
24 that we would be looking at, is what powers are out
25 there, who are we trying to protect and what capacity

1 is already there.

2 And then figure out, okay, based on
3 that how should we move forward?

4 **MR. DOODY:** Ms. Borooah?

5 **MS. BOROOAH:** Mr. Doody and to the
6 questioner.

7 Our submission from the City of
8 Toronto does start to look at those issues and takes a
9 similar position to what Ms. Lewis presented, and that
10 is that if there is already something in place, for
11 example we mentioned the *Condominium Act* requirements
12 that already apply, you would not necessarily need to
13 duplicate those and you might want to focus on those
14 areas where the need is the greatest.

15 **MR. DOODY:** Mr. De L'Orme...?

16 **MR. DE L'ORME:** I would also say that
17 in industrial work places, especially larger ones, I
18 think the whole concept of reporting incidents of
19 potential workplace safety is much more established in
20 some other sectors.

21 So I think that in an industrial
22 workplace, workers would understand if they believed
23 there was a structural issue they would be much more
24 likely to involve the Ministry of Labour.

25 **MR. DOODY:** In fact, it is

1 interesting because the evidence in this case is that
2 there were a number of complaints under the OHSA to the
3 Joint Health and Safety Committee of the employer, both
4 the City for the Library and also some of the tenants,
5 the larger tenants, HBC and others, and the Joint
6 Health and Safety Committee made recommendations, which
7 at least in the case of the City were not on one view
8 of the evidence followed up on.

9 Then there was no subsequent complaint
10 by the employees to the MOL, it wasn't entirely clear
11 why that was so, although there was some suggestion
12 that maybe they were worried about their place of
13 employment being shut down.

14 So again, the periodic inspection
15 would deal with those issues.

16 Anybody else on this point?

17 ---(No response)

18 **MR. DOODY:** Mr. Cassan, I think you
19 have three more questions, so let's hear your second
20 one.

21 **MR. CASSAN:** The next one is a
22 northern Ontario viewpoint.

23 Please keep in mind when we are
24 talking about who should be doing these inspections,
25 that there are certainly quite a number of commercial

1 and industrial buildings that are not in any organized
2 municipality, especially in Northern Ontario.

3 And for tax reasons, many businesses
4 are setting up just outside of municipal boundaries.

5 So I just would be interested in
6 people commenting on how that might affect the regime
7 if it is municipalities that are encouraged or saddled
8 with the burden of doing the inspection.

9 **MR. DOODY:** Just before we answer
10 that, I understand, Paul, that you can't hear the
11 answers, is that right?

12 **MR. CASSAN:** Yes, I can hear you
13 quite well, Peter and I really can't hear many of the
14 speakers.

15 **MR. DOODY:** So if I could ask people
16 to speak even more closely into their microphone, it
17 has to go all the way to Elliot Lake, or probably Sault
18 Ste Marie, which is even further.

19 So the second question, which is how
20 do you deal with the situation where a building which
21 falls within the group of buildings that ought to be
22 subject to periodic inspection for these minimum
23 standards is outside, just outside a municipal
24 boundary, thereby in the north there are unincorporated
25 areas which would then have no municipality to inspect

1 or enforce.

2 Anybody have any thoughts on how that
3 could be dealt with?

4 **MS. LEWIS:** As far as the provincial
5 perspective on that, all businesses, all buildings
6 built in the Province of Ontario are expected to comply
7 with the *Building Code* requirements.

8 In unorganized areas, there is no
9 issuance for building permits because there is no
10 municipal authority.

11 The Province has a policy on how they
12 would handle enforcement in unorganized areas, and that
13 would be that the Province is responsible, and in that
14 circumstance, because we don't have the capacity in
15 those areas to go out, we would either look at hiring
16 the services of a nearby municipality to do the
17 inspection for us, or we could exercise the powers
18 under the Act that would allow us to go to a registered
19 Code agency.

20 As far as informing the Province of
21 where these buildings are coming up, that is something
22 that we would consider working with the municipality to
23 identify areas.

24 **MR. DOODY:** And does the Statute
25 allow the Province to exercise the authority, for

1 example, under section 15.8, 15.9 and 18?

2 **MS. LEWIS:** Yes.

3 **MR. DOODY:** Okay.

4 Does that answer your question, Paul?

5 **MR. CASSAN:** It sounded like you were
6 looking to municipalities to ---

7 **MR. DOODY:** No, I think the
8 opposite.

9 Ms. Lewis said in unorganized areas
10 the Province's policy is that the Province takes over
11 that activity and they can do it by entering into
12 agreements.

13 She did not say by entering into
14 agreements with neighbouring municipalities, she didn't
15 say and paying them for it, but I thought that was
16 implicit.

17 **MS. LEWIS:** Yes.

18 **MR. DOODY:** There you go!

19 **MS. LEWIS:** I don't expect the
20 municipality to take on the requirements of the
21 Province to do it.

22 I am sure that any municipality, and I
23 can turn to my colleague who is here from AMO, would
24 expect us to step up and not expect it to be done for
25 free, but that would be the negotiating factor.

1 Other than that, we could look at
2 other resources that could do it.

3 **MR. CASSAN:** The question that I had
4 out of that response, earlier Peter was it sounded like
5 the province would look to municipalities to advise the
6 Province where these buildings were being built.

7 Of course if they are being built
8 outside of municipalities that my concern is they may
9 go under the radar.

10 **MR. DOODY:** Is that a problem, that
11 people actually are building commercial or industrial
12 buildings and nobody knows about it?

13 **MR. CASSAN:** I would not expect
14 nobody would know about it.

15 People work there.

16 **MS. LEWIS:** You are treading in on
17 the area where it is outside of my responsibilities.

18 I know that there is planning
19 requirements even in organized territories with zoning
20 orders.

21 So the Province would be made aware of
22 any large organized -- and I would have to confirm this
23 because again, I am here for the *Building Code and*
24 *planning* I am not.

25 But I believe that the Province issues

1 municipal zoning orders to allow building in
2 unorganized territories.

3 In that event, we would know where
4 they were going up and we could work with the
5 municipality or even the neighbouring municipality or
6 another one or a registered Code agency on how best to
7 move forward with that.

8 **MR. DOODY:** Mr. Findlay?

9 **MR. FINDLAY:** I can confirm on behalf
10 of the OBOA over a number of years we have a chapter
11 structure in which members are spread throughout the
12 Province, including the north, and we have had the
13 issue of construction taking place in the unorganized
14 territories being a concern of building officials,
15 either neighbouring or in the vicinity of those areas.

16 We have had concerns expressed over
17 the potential safety of some of the construction that
18 has been going on and the members in the north have
19 been expressing that for some time.

20 I don't know that we have ever
21 discussed the model of municipalities providing support
22 to those unorganized territories, I don't think that is
23 something that has come across our table.

24 But we have heard of certainly of the
25 presence of concerns about that type of construction.

1 **MR. DOODY:** Your third question,
2 Paul?

3 **MR. CASSAN:** Again, it would deal
4 with Northern Ontario particularly.

5 We have a number of small
6 municipalities in the north who might be a one industry
7 or a very small municipality.

8 We don't have the facilities or the
9 expertise on board to do annual or short-term periodic
10 inspections of industrial or commercial buildings.

11 I am just wondering if people have
12 thoughts about how that practical problem is going to
13 impact municipalities in light of the fact that
14 industries are a significant taxpayer and retaining
15 engineers from out of town would significantly impact
16 the municipal budget.

17 **MR. DOODY:** Does anybody have a
18 thought on that?

19 **MS. LEWIS:** I am not sure I heard the
20 question entirely.

21 **MR. DOODY:** The question was, if I
22 could paraphrase it.

23 If the obligation to inspect is going
24 to fall on a municipality in terms of these minimum
25 standards, that is going to cause particular problems

1 with smaller municipalities, particularly smaller
2 municipalities which may be one industry municipalities
3 where the one industry is the one being inspected by
4 the municipality and what are the ways in which that
5 could be dealt with?

6 I had thought that that was one of the
7 issues that was discussed today which led to the
8 suggestion, particularly from the City of Toronto, that
9 the obligation be on the owners to have the inspection
10 conducted by an independent engineer.

11 **MR. HUXLEY:** Mr. Doody, I understood
12 the question to be if the onus is on the owner and the
13 business is in northern Ontario, and there may not be
14 a professional engineering outfit in a particular
15 Northern Ontario municipality, they may have to look to
16 other centres, whether it is Eastern Ontario or
17 Southern Ontario, and I guess that would be a
18 consideration that -- I think that is what I understood
19 the question to be as well and how do you address that
20 issue?

21 Certainly AMO's position is regardless
22 of where the infrastructure is, if it is going to be a
23 structural integrity standard that may be imposed
24 through this recommendation, that it should apply
25 equally across the board through some type of standard

1 under section 34.2 for example.

2 Perhaps if there is going to be
3 difficulties for accessing professional assistance, and
4 there will likely be an increased cost if you have to
5 bring engineers or architects from out of town,
6 certainly that AMO would be pleased to work with the
7 Province and other stakeholders as to any programs or
8 incentives that may facilitate that process.

9 As recognized in Northern Ontario,
10 there are certain resources that may not exist
11 currently.

12 But access to that important
13 professional advice is needed and is necessary, and I
14 think that is what this exercise is demonstrating.

15 **MR. DOODY:** Did you hear that, Paul?

16 **MR. CASSAN:** I heard it.

17 My question was particularly for the
18 smaller municipalities.

19 If the burden does fall to the
20 municipality, frankly I think it is one of the reasons
21 it should not.

22 But I am interested in hearing that
23 they will try to help out the small municipalities to
24 get the expertise if that burden fell to the
25 municipality.

1 **MR. DOODY:** So you made a note of
2 that, as well as Ms. Lewis's non-promise!

3 **MS. LEWIS:** Which non-promise would
4 that be!

5 --(Laughter)

6 **MR. DOODY:** About paying for the work
7 outside the municipality.

8 What is your next question, Paul?

9 **MR. CASSAN:** The next point really is
10 it appears that municipalities at this point are not
11 currently the insurers of commercial or industrial
12 buildings.

13 I am concerned that if we shift the
14 burden of ongoing inspection to a municipality then
15 effectively they are going to become insurers of these
16 buildings.

17 I am wondering what people in the
18 panel think about that obligation and how we are going
19 to avoid that problem.

20 **MR. DOODY:** If there was an
21 inspection requirement on the owner to ---

22 **MR. CASSAN:** I am sorry, Peter.

23 I am saying if the inspection
24 obligation falls to the municipality.

25 I am concerned that effectively you

1 are going to be making municipalities insurers of
2 commercial and industrial buildings in their region.

3 **MR. DOODY:** Is that yet another
4 reason to not shift it to the municipality?

5 **MR. CASSAN:** In my opinion, yes.

6 **MR. DOODY:** I think that probably
7 that is the consensus here as well.

8 **MR. OSTFIELD:** It is either that or
9 the legislation would have to exempt the municipality
10 from any liability regardless.

11 **MR. DOODY:** Right.

12 **MR. CASSAN:** And I would support that
13 idea too.

14 **MR. DOODY:** Right.

15 **MR. CASSAN:** Next issue, Peter was
16 basically a paraphrasing of the evidence from the
17 inquiry where you had indicated that the building
18 officials issued an order and simply chose not to
19 enforce it.

20 I think that it is probably useful for
21 the panel to understand the facts in this case, because
22 it might well be to recommendation and that is that the
23 first building official, which is Mr. Allard, issued an
24 order and then an engineering firm came to the table
25 indicating that they would do the inspection and that

1 didn't come to fruition because they did not pay for it
2 I guess.

3 Mr. Allard then retired and then a new
4 chief building official came in, and so perhaps there
5 is recommendations to be made with respect to
6 succession planning. I know that has already been put
7 in place in Elliot Lake, but then there was a second
8 order and actual engineering report.

9 I think those are important facts and
10 I am just wondering if that would lead to further
11 discussion of the panel.

12 **MR. DOODY:** I think to be fair I said
13 on one view of the evidence, and I think on one view of
14 the evidence the 2009 Order which said 'fix the leaky
15 roof', that was one part of it, the second was 'get an
16 engineering report', and the City got an engineering
17 report, but no steps were taken to fix the leaky roof
18 any different than had been done for the previous 30
19 some years.

20 That was what I meant by on one view
21 of the evidence an order was issued and nothing was
22 done to enforce it, because the order said fix the
23 leaks and they weren't fixed.

24 So I mean, you and I have had debates
25 on this before.

1 But I think on one view of the
2 evidence, that is a legitimate conclusion which could
3 be reached by the Commissioner, obviously the
4 Commissioner has not made his decision on the facts.

5 **THE COMMISSIONER:** Just hold on,
6 Paul, don't base your comments or your views on any
7 preconception that one of my lawyers has expressed
8 here!

9 We will see.

10 **MR. CASSAN:** Thank you, as always,
11 Mr. Commissioner, I appreciate it.

12 Those are my questions, Mr. Doody.

13 **MR. DOODY:** Thanks very much, Paul.

14 Mr. Froebelius wants to say something.

15 **MR. FROEBELIUS:** I have to say I did
16 not realize that there were parts of our Province where
17 you could construct a building without having
18 inspection or permits in place.

19 So it just underlines something, I
20 think for all of us here, where we are from the south
21 of the Province, say, where we know we have so many
22 more resources available.

23 I think one of the recommendations
24 coming out of this may be that the more isolated
25 communities or smaller municipalities that there is a

1 program put in place so there is more resources made
2 available for them to share, maybe an organized effort
3 to combine four or five municipalities, et cetera, or
4 ten municipalities with some kind of shared resource on
5 the physical side and the building side for sure.

6 **THE COMMISSIONER:** And that has
7 certainly been, I think the motivator behind some of
8 the more recent amalgamations that we have seen in
9 Northern Ontario.

10 **MR. DOODY:** Now, we have got to the
11 stage where I had asked for your top five, I have got
12 your top five in writing.

13 But having heard the debates today or
14 the discussion today, I think it would be helpful if we
15 go around the room and ask each of the people at the
16 table for their top two or three, not top five.

17 So now you have to pare your list
18 down, starting with Mr. Findlay.

19 As I understand, Mr. Sharpe might have
20 to leave a little early.

21 **MR. SHARPE:** Thank you.

22 I think from what I have heard today
23 the most compelling recommendation to me would be
24 around enhanced and improved training and
25 qualification.

1 And in my view that is clearly one and
2 having these individuals understand the responsibility,
3 I am not suggesting they don't today, but clearly in
4 this case things were allowed to slip.

5 So I think the reaffirming the
6 responsibility and enhancing the training would be my
7 sort of top recommendation to come out of what I have
8 heard today.

9 **MR. DOODY:** Thank you.

10 Now moving to Mr. Ostfield, we are
11 going to get to you last, Mr. Findlay, since we didn't
12 start with you!

13 **MR. OSTFIELD:** I have read some of
14 the recommendations.

15 I only have one recommendation to make
16 and this is what we have been talking about.

17 Because of the limited resources of
18 the smaller municipalities, there really has to be some
19 kind of a formula or means for them either to merge
20 their resources or in extreme cases, like what we
21 talked about in Elliot Lake was the Chief Building
22 Officer had made a recommendation about something that
23 needed to be done because of public safety, the roof
24 was leaking.

25 And it seems to me that because this

1 opened up a broader question, that if he pulls the plug
2 and closes the mall, the whole town might close down.

3 My suggestion is that in limited
4 circumstances in these smaller municipalities, that
5 somebody like the chief building officer should have
6 access to some third party at Queen's Park in
7 particular, who he can go to and say 'look, I have got
8 this problem. I am being told if I pull the plug that
9 this could have very dramatic economic repercussions in
10 this particular municipality. I am looking for
11 assistance.'

12 And then in those kind of -- I will
13 call it extreme circumstances, that official at Queen's
14 Park can either authorize a legal or engineering or
15 some professional assistance to be provided to
16 determine just how severe the issue is and then assist
17 the municipality, either in telling the chief building
18 officer 'look you are over reacting' or in the case
19 where it is critical, that then the provincial
20 government can step in, in certain circumstances.

21 But in listening to this evidence or
22 the discussion today and certainly limited reading I
23 have had, there is obviously some very major questions
24 here about the viability of the City of Elliot Lake,
25 which of course does not occur in Toronto or Hamilton

1 or Ottawa or those larger centres.

2 So that is the one thing that struck
3 me, in addition to what Peter had just mentioned about
4 training.

5 Sometimes there has to be a safety net
6 for somebody in a smaller city to have professional
7 assistance where significant questions arise about not
8 only the public safety, but about the viability of the
9 municipality.

10 **MR. DOODY:** I said I wasn't going to
11 have any debate on the comments, suggestions debated by
12 the entire group, but I think I have to ask Ms. Lewis
13 whether she has any comments on that.

14 Obviously you can't say yes or no, but
15 is that something the province would consider, do you
16 think?

17 **MS. LEWIS:** That the Province step
18 in?

19 **MR. DOODY:** No, that the Province
20 allow sort of a) a mentor and b) step in if necessary I
21 think is what ---

22 **MS. LEWIS:** Well, number one, the
23 Province already offers our Code advisory capacity.

24 We are working on strengthening that
25 capacity now.

1 We have got a team or engineers within
2 my branch that take telephone inquiries from
3 municipality and the general public to provide the
4 intent of what the *Building Code* policy is. So that is
5 there.

6 Could we consider different ways to do
7 it better?

8 Sure.

9 And we are looking at that now.

10 As far as capacity of municipalities,
11 I think you have to look at what the roles and
12 responsibilities are of each level of government.

13 It is one of those interesting
14 dynamics where the Province always gets call in to step
15 in if there has been a problem.

16 However, at the same time I have got
17 the Province on a number of fronts will have
18 municipalities coming over and coming out and saying
19 the Province needs to leave us alone.

20 We are a mature level of government,
21 we want the responsibility, we have assumed
22 responsibility, don't step in.

23 So it is one of those dichotomies that
24 we are stuck on both sides.

25 As I said, in small municipalities we

1 are not out there.

2 Do they need support?

3 Sure, we can consider how best to
4 support them, we can help them determine different
5 mechanisms and different approaches that they can take.

6 Should the Province step in?

7 I don't know. We would have to look
8 and see why they think we would be better.

9 **MR. DOODY:** I think one of the
10 issues, and I suspect it is behind Mr. Ostfield's
11 suggestion, is that there isn't the money to pay for
12 the capacity and there isn't the human resources
13 available to get somebody in many of these areas to be
14 easily available who has the skill level.

15 And I guess the issue, as you say it
16 is a balancing act, and one of the issues is the public
17 interest in being safe.

18 Is it fair to have a lower level of
19 protection for the safety in a small municipality in a
20 remote area compared with a larger, wealthier
21 municipality in a more populous area.

22 **MS. LEWIS:** I don't think I said ---

23 **MR. DOODY:** I know you didn't, but
24 that is an issue.

25 **MS. LEWIS:** That is the part that we

1 are going to struggle with right now.

2 Is how do we ensure consistency across
3 the Province, and perhaps that is where we need to have
4 discussions with smaller municipalities on how they
5 structure themselves.

6 Perhaps if you combine services across
7 a number of municipalities, which some of them have
8 already done that, they are shared servicing so that it
9 does not cost one municipality the total price.

10 And then how best can the Province
11 support that kind of amalgamated building department on
12 getting the capacity that they need to deliver.

13 I think the Province is willing to
14 step up to the table and consider how we can work
15 together on those pieces.

16 But what my point was more in mind was
17 that I don't think it is the responsibility of the
18 Province to step in and take over.

19 We need to figure out how to work
20 together to fix this.

21 **MR. OSTFIELD:** And that is what I
22 intended.

23 If somebody makes a phone call and the
24 Province takes care of the problem, then everybody and
25 his uncle will just call somebody at Queen's Park to

1 solve the problem.

2 What I meant was ---

3 **MS. LEWIS:** And they do that.

4 **MR. OSTFIELD:** In these small
5 communities who often need, to use your expression,
6 needs some mentoring.

7 What should we do?

8 Should we hire an engineer or can you
9 give us some kind of professional assistance?

10 It is just mentoring as much as
11 anything else that I was referring to.

12 **MR. DOODY:** Mr. Froebelius?

13 **MR. FROEBELIUS:** Aside from the
14 enforcement issues and the discussions today, I think I
15 would like to comment that I think the *Building Code*
16 process that we have in Ontario is excellent and I have
17 been involved with some other panels with the *Building*
18 *Code* where you have to appreciate the depth of the
19 engineering and the background that the department has
20 and the capabilities that are there are phenomenal.

21 I think that when we get into the
22 discussion about mandatory either annual or every five
23 year inspections, that type of thing, I think that is
24 where we can really look at the *Building Code* as a tool
25 and the fact that, you know, increasingly something as

1 important as parking garage structures, which was
2 ultimately the cause of this incident, that the
3 Ministry of Housing or the *Building Code* process could
4 target more at-risk types of structures.

5 This again comes back to the risk
6 assessment that we talked about earlier.

7 So that what I am getting at is the
8 Province could issue more targeted directives at
9 specific types of structures and get them out to the
10 municipalities so that they can be targeted and
11 addressed on an individual basis.

12 Something like that where, again, if
13 it was this particular type of garage, if the
14 municipality had known about it, it might have been
15 easier for them to be aware of it and to take action.

16 But certainly the annual review by
17 owners and then the five year review by engineers,
18 something like that I think that process, that road
19 should be examined further.

20 **MR. DOODY:** Thank you.

21 Mr. De L'Orme?

22 **MR. DE L'ORME:** In the discussion
23 today I think the one point that has not been mentioned
24 yet that strikes me is the fact that there is a myriad
25 of regulatory frameworks out there in terms of

1 buildings and building codes.

2 Different players, as my colleague
3 mentioned, have impact on building structural safety.

4 And I think it just emphasises the
5 fact that somehow we have to be very clear to the
6 stakeholders about who does what and who has what power
7 in terms of impacting on building structures.

8 I always prided myself in knowing
9 something about regulatory framework and I was
10 surprised to know how little I knew about the *Building*
11 *Code* and how it is applied across the Province and I
12 think that many of the people out there are in the same
13 spot as I am.

14 **MR. DOODY:** Thank you.

15 Ms. Lewis?

16 **MS. LEWIS:** I think I have said most
17 of my considerations, but to sum it up.

18 As you go forward I think what we need
19 to do, and again I am not here to make recommendations,
20 I am here more to learn and to figure out what needs to
21 happen next.

22 But in going forward I think
23 collectively we need to consider the roles and
24 responsibilities of all the people in the structure of
25 a building, right from the building owner to the

1 mortgages and lenders, to insurers, to occupants, to
2 the building officials, right through to the Province.

3 I think that needs to clearly look at
4 it.

5 In regards to training, it is what is
6 the role of the Province, what is the role of the
7 individual, what is the role of the employer and what
8 is the role of the association?

9 All of those players have a role in
10 this, so we need to clearly define what is the role of
11 each one, and then we need to work together.

12 As far as the regulatory and
13 legislative frameworks, I think we need to be clear on
14 what we are doing.

15 So as I said, confusing two issues in
16 one is just going to create more confusion.

17 So whatever the recommendation is,
18 make sure that you tell government exactly what you
19 want us to do, and then in moving forward, we need to
20 look collectively at not only what tools are within the
21 *Building Code*, the effectiveness of them and what, if
22 anything, we could do further to enhance tools that are
23 already made available to municipalities in order to
24 enforce it.

25 That is about the only considerations

1 I would ask to be made.

2 **MR. DOODY:** Thank you.

3 Mr. Perrin?

4 **MR. PERRIN:** Property standards
5 officers would obviously like to see mandatory property
6 standards by-laws across the Province with minimum
7 standards for buildings.

8 Obviously we would like to see
9 certification mandated as well with the appropriate
10 training.

11 And in light of the Elliot Lake
12 Inquiry, I am thinking that there should be a
13 responsibility for engineers who come across possible
14 structural, major structural issues with buildings to
15 have a responsibility to report them to the chief
16 building official of the municipality.

17 Or if there is no municipality, to
18 the Province. That would be my top three.

19 **MR. DOODY:** Thank you.

20 Ms. Borooah?

21 **MS. BOROOAH:** I am going to try to
22 collapse mine.

23 **MR. DOODY:** As judges always say to
24 me, 'we have read your materials.'

25 But in this case it's true.

1 I am sorry, Your Honour.

2 **THE COMMISSIONER:** I told you not to
3 tell them!

4 --(Laughter)

5 **MR. DOODY:** So it's all there, you
6 don't have to worry about collapsing them.

7 **MS. BOROOAH:** So basically I like to
8 focus on my recommendations 2 and 3.

9 But I think 3 can be read to include
10 the sufficient powers to act upon that authority.

11 So the first is basically the regular
12 review be required of the owner with the appropriate
13 expertise and then that review be provided to the chief
14 building official.

15 And the second recommendation is to
16 also provide the authority for the chief building
17 official to request such a review under circumstances
18 that they determine leads them to the conclusion that
19 that should be undertaken, as opposed to waiting for a
20 failure to occur.

21 And in that case, the related powers
22 should accompany that authority to be able to act on
23 the review if the situation warrants it.

24 **MR. DOODY:** Thank you.

25 Mr. Huxley?

1 **MR. HUXLEY:** Mr. Commissioner, thank
2 you.

3 Mr. Doody, on behalf of the
4 Association of Municipalities of Ontario and Ms. Turner
5 the Director of Policy, thank you for letting us
6 participate in this phase of the Roundtables.

7 AMO has set out five recommendations
8 in its materials, and I will simply touch upon two of
9 those.

10 Firstly would be, as has been
11 discussed this morning and today, the development of a
12 risk management framework, appropriate to look at
13 buildings and structures is recommended.

14 We would invite the further study of
15 the type of buildings and structures that should be
16 subject to any proposed standards, and also invite a
17 study as to the -- and I believe this is the
18 Commissioner's words, the appropriate periodicity or
19 periodical inspection regime.

20 That process, in AMO's submission,
21 should also include or have regard to the
22 municipalities considerations, and one of those would
23 be, as I have indicated previously, the underlining
24 concerns of liability, and I will just leave it at
25 that.

1 Should there be a need for consistency
2 in respect of standards or structural integrity, and
3 based on the discussion today it appears that seems to
4 be a recommendation that may be reasonable coming out
5 of this process.

6 AMO's position is that municipal
7 property standards by-laws is not the appropriate
8 mechanism or vessel for that.

9 And one tool that has been raised
10 would be the option under section 34.2 of the *Building*
11 *Code Act*.

12 And again, one of the recommendations
13 that came from the floor would be from a nomenclature
14 perspective, to perhaps differentiate that from
15 property standards and perhaps refer it to some type of
16 structural integrity regulation or standard, with
17 again, the owner being the focal point of that regime.

18 The other recommendation would be
19 number four in our materials.

20 I preface this by saying that building
21 life cycle maintenance is not popular.

22 From the municipal perspective,
23 repairing municipal sewers, roads, bridges and
24 buildings is not popular in the sense of while we
25 recognize it is necessary, it never gains the

1 attraction of a ribbon cutting ceremony, repairing of a
2 roof membrane is not going to get the attraction of
3 'wow, what a great thing!'

4 But I think we recognize the
5 importance of it.

6 So there needs to be a cultural shift
7 and also behind that would be a recognition of
8 incentives and programs to allow that to occur.

9 So in recommendation number 4 we have
10 suggested that the existing initiatives and programs
11 either be enhanced or they are not there to be
12 developed, with the assistance of the province and the
13 Federal Government to make funding resources available
14 to address the challenges that Ontario's infrastructure
15 will be facing.

16 And that includes both the public
17 infrastructure and the private infrastructure.

18 Thank you.

19 **MR. DOODY:** Thank you.

20 Mr. Findlay?

21 **MR. FINDLAY:** Mr. Doody,

22 Commissioner, I would just like to quickly say on
23 behalf of the Ontario Building Officials Association
24 thank you for inviting us to attend the Roundtable as
25 well as providing Standing at the Inquiry.

1 We learned a lot of things and we were
2 able to, at the same time, bring a lot of our concerns
3 to the table.

4 I actually have not a lot of problem
5 in paring down to maybe a couple of discussion points
6 and I am sure everybody is probably to be quite sure
7 what the first one is, and that is certification for
8 building officials qualification, including property
9 standards officers in the ways that they see fit, given
10 their independent association.

11 Quickly, to summarize this, the goal
12 is to ensure competence of building officials
13 performing their functions across the Province, not
14 just in certain areas.

15 It is fully respected that many of the
16 issues that might have materialized in the review of
17 the situations in Elliot Lake are probably not apparent
18 or a problem in several large municipalities.

19 To be sure, I think I can safely go on
20 record as saying that there are a number of other
21 municipalities who are probably having a pretty good
22 understanding of the challenges that Elliot Lake are
23 facing, maybe just have not had the unfortunate tragedy
24 occur in their municipal boundaries that Elliot Lake
25 has been faced with.

1 In saying that, we have held out
2 mandatory certification and the CBCO certification of
3 individuals as an option.

4 I think I would be remiss in not
5 saying that if there was another certification scheme
6 that was found to be better, then we would be open to
7 that.

8 The first and foremost point for us is
9 ensuring competence and as I have said, particularly
10 competence as it was set out at the Walkerton Inquiry
11 regarding municipal safety staff.

12 The issue of mandatory certification
13 goes a little bit further for us than just experience,
14 education and examination.

15 Part and parcel with that we have
16 often considered the support of not only northern
17 municipalities, but rural and small urban and within
18 the Ontario Building Officials Association, both within
19 the structure of the organization and with its
20 individual members and board members, I can tell you
21 that we have participated significantly in the
22 mentorship of rural, small urban and northern
23 municipalities.

24 We have been involved in supporting
25 northern municipalities on specific projects outside of

1 their scope of comfort.

2 We have been involved in assisting
3 councils of municipalities with regard to conduct
4 policies of building officials, we have been involved
5 in assisting rural and northern municipalities with
6 assignment of correct job descriptions for chief
7 building officials and their recruitment.

8 And those are just some of the things
9 that we think are, you know, included by the term
10 "mentorship."

11 I really liked Mr. Ostfield's comment
12 about being there to provide the needs, whatever they
13 may be, whatever the challenges they are facing,
14 because as we have heard today, a one size fits all
15 solution is a very hard thing to come by, but I think,
16 you know, we have to do the best thing that we can do.

17 And I have heard the reference today
18 and I believe -- and I hope I am not wrong -- but it
19 was from the Commissioner, that there is a standard
20 here and there is a standard here and that perhaps we
21 can shoot for somewhere in the middle.

22 In the submissions given by the
23 various parties involved in both of the consultation
24 and the Roundtable, with regards to building officials
25 and by extension property standards officers, we have

1 heard everything from the, you know, it's not broken,
2 don't fix it, to there should be some type of full
3 regulatory status.

4 Our position has been from the start
5 of this, maybe there is something in-between.

6 Maybe there is an ideal middle ground
7 that would form a provincially acceptable bar of
8 practice that gives every municipality the same comfort
9 level.

10 That is what we have attempted to try
11 and introduce in our submission materials, and really I
12 am heartened to hear that everything has been read
13 because I know we put a lot of material in at the last
14 minute, it was offered in good faith and it has been
15 offered by the personal experiences of people like
16 myself and Mr. Shaw and the rest of the Ontario
17 Building Officials Association.

18 I think I will probably leave it at
19 that.

20 Secondly, it was probably a point that
21 saw more concise discussion.

22 But I would go back and reiterate the
23 importance for building officials that are sometimes in
24 areas that do not understand the obligations that are
25 imparted to building officials and are not specifically

1 aware of the independence that a building official
2 needs to operate in.

3 And I am talking about municipalities
4 that, as an example, do not have in-house counsel and
5 are relying on external counsel for this type of
6 advice.

7 We really feel that it would be
8 extremely helpful to both those municipalities and
9 their chief building officials that there be explicit
10 wording outlining the independence of the chief
11 building official and building officials from municipal
12 council and senior administrative staff.

13 We don't want to try and fix something
14 that is already working.

15 We just have experience and the fact
16 that it is not always working in all areas.

17 And respectfully, we think that this
18 could probably be done with minimal impact on what is
19 already working properly for the other larger
20 municipalities.

21 Thank you.

22 **MR. DOODY:** Thank you.

23 I turn it over to the Commissioner,
24 but from my own perspective I have learned a great deal
25 today. I am sure the rest of the Commission staff have

1 as well.

2 **THE COMMISSIONER:** Yes, thank you all
3 very much.

4 I think this has been a real learning
5 opportunity for me.

6 Some of the things that I retained out
7 of our discussions today is that this is an
8 opportunity, perhaps, of thinking to use an overused
9 expression, "thinking outside the box" to being to
10 think about new models and new solutions for the
11 delivery of municipal services.

12 The isolation and the remoteness of
13 places like Elliot Lake and many other municipalities
14 in this Province need no longer be the problem that
15 they used to be.

16 I will give you just one brief
17 example.

18 This Commission and the way in which
19 it is operated was significantly different in terms of
20 its access to resources and its access to data than
21 other commissions that I have experienced over just the
22 last decade.

23 I am thinking of things like
24 communications and data management.

25 I look at training, for example, on my

1 Court and the training opportunities available to
2 judges and compare that to what it was like not when I
3 was Appointed 35 years ago, but only ten years ago,
4 distance learning, this type of thing.

5 These are all things that are
6 eminently practical and practicable and things that can
7 be done essentially without any form of additional
8 cost.

9 The mountain of data that we were able
10 to garner and to collect was something that in a sense
11 was both a bane but a blessing as well because it
12 allowed us to look at things that other commissions
13 could never have looked into.

14 But the new world in which we live,
15 the new electronic tools available to us have enabled
16 us to a) make our work known to all of the citizens of
17 the Province of Ontario at relatively little and
18 relatively modest costs.

19 So that is certainly something that we
20 may wish to look into when we talk about training.

21 When we talk about combining the
22 services available to smaller municipalities and to use
23 the cooperative model as going ahead, going into the
24 future.

25 In any event, these were just idle

1 thoughts that go through my mind, the bottom line here
2 is that your expertise and your wisdom and your advice
3 is valuable to the Commission and we certainly thank
4 you very much for it.

5 But what I do retain as well, and I
6 think Mr. Ostfield was perhaps the most eloquent
7 proponent of that proposition, is that the work we do
8 and the result we produce has to be practical, it has
9 to be effective, it has to be realistic.

10 We are quite conscious of that.

11 We don't live in a perfect world and
12 whatever we recommend has to be realistic.

13 I thank you all very much.

14 I think some of you will not be
15 returning and some of you will remain tomorrow.

16 Mr. Findlay, certainly I think you are
17 leaving us this afternoon, and Mr. Perrin.

18 Mr. De L'Orme, of course, Mr. Sharpe
19 has already left.

20 Mr. Ostfield.

21 Thank you very, very much for having
22 taken the time, and as I began by saying when I made my
23 Introductory Remarks earlier on this morning, you
24 render a significant public service by being here, by
25 devoting your time and giving us the benefit of your

1 advice.

2 Thank you all very much.

3 Have a safe trip back those that are
4 leaving, and we will see you tomorrow morning those
5 that aren't.

6 ---

7 The Roundtable Closed at 4:22 p.m. to resume on
8 November 19, 2013 at 9:00 a.m. for Roundtable No.2

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Roundtable 1
Increasing Public Safety

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M. Bolduc, C.C.R.