

Elliot Lake Commission of Inquiry

DAY 114

October 04, 2013



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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is Day 114 in the Inquiry proceedings held before
the Honourable Justice P.R. Bélanger, Commissioner, taken
at the White Mountain Academy of the Arts, 99 Spine Road,
Elliot Lake, Ontario, on the 4th day of October, 2013,
commencing at 9:00 a.m. ---

REPORTED BY: Lisa M. Barrett,
CRR, RPR, CSR

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

2

3 Peter Doody, Esq., Commission Counsel

4 Duncan Ault, Esq.,

5

6 Norm Feaver, Esq., OPP

7

8 Kristin Smith, Esq., Government of Ontario

9 Heather MacKay, Esq.,

10

11 Richard Oliver, Esq., For the City of

12 Toronto/HUSAR

13

14 Ernie Thorne, Ontario Professional

15 Fire Fighters

16

17 Paul Cassan, Esq., City of Elliot Lake

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19 Shawn Richard, Esq., ELMAC

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No exhibits entered

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

2

3 THE COMMISSIONER: Good morning,
4 everybody.

5 MR. DOODY: Good morning,
6 Mr. Commissioner.

7 THE COMMISSIONER: Mr. Doody.

8 MR. DOODY: Could we have Dr. Gerald
9 Posen to the stand.

10 THE COMMISSIONER: Good morning,
11 Doctor.

12 THE WITNESS: Good morning.

13 DR. GERALD POSEN: SWORN

14 EXAMINATION IN-CHIEF BY MR. DOODY:

15 Q. Good morning, Dr. Posen.

16 I understand you're presently retired, but you spent
17 your career practising as a nephrologist.

18 A. That's correct.

19 Q. And for those who are unfamiliar
20 with the term, a nephrologist is a specialist in
21 diseases of the kidneys.

22 A. Yes, he's a medical specialist
23 in contrast to a surgical specialist.

24 Q. And you were the Chief of the
25 Division of Nephrology at the Ottawa Civic Hospital

1 and an associate professor of Medicine at the
2 University of Ottawa, School of Medicine from 1973
3 to 1989?

4 A. That's correct.

5 Q. You established the hemodialysis
6 program at the Ottawa General Hospital in 1968.

7 A. That's correct.

8 Q. You established the renal
9 transplant program at the Ottawa General Hospital
10 same year, 1968.

11 A. That's correct.

12 Q. You established the first
13 independent health units for renal dialysis in
14 Ottawa and Cornwall in 1998.

15 A. Yes.

16 Q. You were the medical director of
17 the Ottawa Carlton Dialysis Unit and the Cornwall
18 Dialysis Unit.

19 A. Correct.

20 Q. You were the Director of
21 a clinic in Preventive Nephrology on the Akwasasne
22 Reserve.

23 A. Correct.

24 Q. You were a member of the College
25 of Physicians and Surgeons of Ontario Fitness to

1 Practice Committee from 2002 to 2006.

2 A. Correct.

3 Q. You were the scientific advisor
4 to a number of corporations.

5 A. Correct.

6 Q. And you've written over 50
7 articles in refereed journals.

8 A. Correct.

9 Q. And I'm going to ask you for
10 your opinion in respect of the levels of creatinine
11 and other substances in the vitreous fluid of
12 Ms. Lucie Aylwin and the relationship of those to
13 the issue of kidney failure.

14 Now, sir, when did we contact you in
15 respect of this?

16 A. About a week and a half ago.

17 Q. 23rd of September of 2013.

18 A. It was my birthday.

19 Q. I didn't know that. And do you
20 recall what we asked you to do?

21 A. Yes, you asked me to interpret
22 the elevated serum creatinine, in view of the fact
23 that previous creatinines on the patient, Lucie,
24 were normal, and a creatinine taken post mortem from
25 the vitreous was more than double what it had been

1 just two and a half months prior to that, and your
2 concern was you had looked it up and felt that this
3 showed she was in renal failure and you wanted me to
4 interpret this, in lieu of other results and other
5 findings.

6 Q. And we provided you with
7 a number of documents; correct?

8 A. Correct.

9 Q. And I'm not going to take you
10 through all of them, but among those documents
11 were -- if I could just have Exhibit No. 9260 which,
12 Doctor, would be the autopsy report which is at
13 tab 11 of the brief in front of you.

14 A. Yeah. Yes.

15 Q. And that was among the documents
16 we have provided you?

17 A. Yes.

18 Q. I'll come back to this, but if
19 we can go to page 9 of the report.

20 A. Page 9 of the --

21 Q. Of the autopsy report.

22 A. Sorry, yes. Yes.

23 Q. And this is the -- where in the
24 autopsy report the vitreous chemistry of the
25 substances, including creatinine are set out;

1 correct?

2 A. That's right, yes.

3 Q. In addition, we provided you
4 with a summary and the tests of the creatinine
5 levels over a 20-year period, and that's at tab 13.
6 It's Exhibit No. 9675.

7 A. Correct.

8 Q. And we'll just have that brought
9 up on the screen. And those are the creatinine
10 levels which are expressed in -- as I understand
11 it -- in micromoles per litre and that shows the
12 increase in creatinine levels from the previous
13 tests including one on April the 20th, 2012 at 71,
14 and then the autopsy level at 153.

15 And we also asked you to review
16 medical records of Ms. Aylwin, that we provided to
17 you and those are at Exhibit No. 9894 and I won't
18 take you to those at the moment, but they were --
19 that's some 156 pages of medical records?

20 A. Correct.

21 Q. Now, Doctor, what were you
22 looking for when you reviewed Ms. Aylwin's medical
23 records?

24 A. The first thing that I wanted to
25 know what her state of her renal function was. In

1 other words, I wanted to know how good or how normal
2 or abnormal her kidneys were.

3 She was a diabetic from age 20 --
4 12 years. She showed -- and as I went through her
5 charts -- protein urea for the last several years,
6 and also she had mild high blood pressure, but
7 significant high blood pressure.

8 In a diabetic with high blood
9 pressure and protein in the urine, it says that you
10 have some renal involvement. It does not tell you
11 what the percent of function is, and what I was
12 looking for in the chart was a more -- one of the
13 things I was looking for, was a more sophisticated
14 test called the creatinine clearance, to show me
15 exactly what per cent of function.

16 As I briefly -- I'm sorry, I try not
17 to wander -- but it is most important to understand
18 that the creatinine is a level which, although
19 normal, is just an estimate of the actual function
20 and when you do more sophisticated testing, the
21 function may be much -- may not be normal.

22 And my guess in her -- and it is
23 truly a guess, is she was functioning at 70 to
24 80 per cent of normal, not a hundred per cent of
25 normal.

1 THE COMMISSIONER: Can you tell me
2 for my education, what is creatinine?

3 THE WITNESS: Yeah, it's just
4 a chemical that is produced in muscle. It does
5 nothing. We use it as a marker and we used it as
6 a marker because it's not metabolized in the body
7 and is secreted wholly by the kidney, so as the
8 creatinine goes up the kidney is not secreting it
9 and that's why we use it as a marker.

10 THE COMMISSIONER: And is it
11 something that the body normally excretes?

12 THE WITNESS: Yes.

13 THE COMMISSIONER: It is not
14 something that has an intrinsic value in someone's
15 physiology, that's in someone's physical make up --

16 THE WITNESS: No.

17 THE COMMISSIONER: -- for lack of
18 a better expression?

19 THE WITNESS: No, we all make it, and
20 the more muscular you are, the more you make and
21 people who are body builders, weight lifters,
22 athletes, have an increased serum level of
23 creatinine and that's within -- even though it's
24 above normal range, when, again, it comes back to
25 the -- if you do a sophisticated testing, the kidney

1 is normal, so the creatinine -- the beauty of it is
2 that it is secreted, it's filtered through the
3 kidney and then excreted.

4 THE COMMISSIONER: Yes.

5 THE WITNESS: And it is not
6 re-absorbed by the kidney; it's not metabolized, not
7 broken down.

8 THE COMMISSIONER: I see.

9 THE WITNESS: So if we could design
10 a better marker, it would be hard to because there
11 it is, it goes out. If it goes up, you have to
12 consider is the kidney functioning. There are other
13 things that put it up, as I will discuss.

14 THE COMMISSIONER: Thank you very
15 much. That answers my question.

16 THE WITNESS: Thank you.

17 BY MR. DOODY:

18 Q. And so you were explaining what
19 you were looking for, the creatinine testing?

20 A. I was looking for the state of
21 the kidney. And when I came to the end I realized
22 the kidney had protein -- the lack of protein -- I'm
23 going to answer a question that you haven't given
24 me, but the protein in the urine is abnormal. And
25 normal people, we do not excrete protein. It is

1 reabsorbed in the kidney. The normal serum has
2 protein, and the kidney doesn't excrete it.

3 In somebody with kidney disease, one
4 of the first things that go wrong is they start
5 excreting protein. So, I was looking to see if she
6 had protein urea.

7 Q. And did she have protein in her
8 urine?

9 A. She did for at least ten years.

10 Q. And that was a sign to you of
11 what?

12 A. That the kidney was involved
13 with the diabetes.

14 Q. So there was some dysfunction of
15 the kidney?

16 A. There was some abnormality. It
17 may not have been dysfunctional. I can't make
18 that -- that's my guess. Because all you're
19 measuring is this one marker and the urea, which is
20 also a good marker, and they're normal, but the
21 protein suggests that there is more going on in the
22 kidney and structurally there is probably damage to
23 the kidney.

24 Q. And I understand, Doctor, you
25 produced a report for us.

1 A. Yes.

2 Q. And perhaps we could have that
3 up on the screen. It's Exhibit No. 9893.

4 This is the report, sir?

5 A. Yes.

6 Q. And can you tell us what
7 conclusions did you reach as to the reasons for the
8 elevated creatinine levels in Ms. Aylwin in the
9 autopsy report?

10 A. There are two possible reasons
11 that -- actually there's two parts to this question,
12 if I may.

13 Q. Okay.

14 A. The first question is: Why was
15 the creatinine elevated? And the cause, which is
16 part and parcel of that, which opens up the second
17 part.

18 The first part: Why was the
19 creatinine elevated, other than it occurs in renal
20 dysfunction. So, we'll leave that for a moment, if
21 we may, and then I looked through the chart and the
22 last page of the last part of her clinical visits to
23 her physician, she -- her physician noted that her
24 blood pressure was a little elevated.

25 Now, the blood pressure as

1 recorded -- for you and I -- is pretty normal but
2 for a diabetic, one likes the blood pressure to be
3 about 120 systolic and hers was 138.

4 So, the doctor did the proper thing.
5 She increased -- the patient was on a drug called
6 Fosinopril.

7 Fosinopril is a group of drugs that
8 are called angiotensin receptor blockers. They are
9 proven to be useful in combating the renal
10 dysfunction of diabetics and so we use them when
11 there is high blood pressure in diabetics.

12 One of the problems with this drug is
13 that when you start the drug the creatinine levels
14 may increase or when you change the dose or increase
15 the dose of the drugs, the creatinine level may
16 increase.

17 The creatinine that increases though
18 is asymptomatic. The patient knows nothing, feels
19 nothing and it is only picked up when the doctor
20 re-checks the serum level.

21 So, in this case, the Fosinopril was
22 increased on the last visit in April --

23 Q. We could actually go to that, if
24 I could have Exhibit No. 9894 and the second-last
25 page, the page that ends -155 on the lower

1 right-hand corner.

2 A. Yes.

3 Q. Just wait until it is up on the
4 screen, Doctor, so the rest of the people can see
5 it.

6 So this is the office visit. As you
7 can see the date is highlighted on April 27th, 2012
8 and under "Vital Signs" it says blood pressure 138
9 over 78.

10 A. Yes.

11 Q. And then if you turn the
12 page you can see under the heading "Assessment &
13 Plan" Ms. Aylwin's physician, Dr. Groh lists problem
14 number 2: hypertension, increase Monopril to
15 30 milligrams daily; is that what you were talking
16 about?

17 A. Yes. I would make one quick
18 comment if I may.

19 Q. Certainly.

20 A. "Hypertension; essential",
21 I disagree with that. It's probably due to the
22 diabetes and that's very important from, my point of
23 view.

24 Q. What's the difference between
25 essential in a diabetic?

1 A. "Essential" just means we don't
2 know the cause of. If you have high blood pressure,
3 or I have high blood pressure and we're nondiabetics
4 and don't have any other cause for it, we call that
5 "essential".

6 The important thing with the diabetes
7 and why I bring this up, is it means that she has
8 diabetic renal desist.

9 That is causing the blood -- high
10 blood pressure, and that's why it is important to
11 treat it, and so the doctor did the right thing.
12 She increased the dose of Fosinopril.

13 Q. And if we go back to your
14 report, Exhibit No. 9893, you were explaining to us
15 what your conclusions were as to the levels of
16 Ms. Aylwin and you said there were two parts and you
17 were just explaining the first.

18 A. Okay. Paragraph 6, if I may
19 read it:

20 "The patient was an insulin
21 dependent diabetic from age 13.
22 She had high blood pressure, and
23 was being treated with
24 Fosinopril, an angiotensin
25 receptor blocker which is

1 commonly used in treating
2 hypertension in diabetics. In
3 patients with even mild renal
4 problems, either commencing the
5 drug or increasing the dose ..."

6 MR. DOODY: If we could switch the
7 page there, thank you.

8 THE WITNESS: I am sorry, switch the
9 page:

10 "... commencing the drug or
11 increasing the dose may cause
12 an asymptomatic increase in the
13 serum creatinine, which is
14 reversible by lowering the dose.

15 In the patient's final
16 visit ..."

17 This is paragraph 7:

18 "In the patient's final visit
19 to her doctor, 2 months before
20 the accident, her blood pressure
21 was higher than recommended for
22 a diabetic. The doctor
23 increased her dose of Fosinopril
24 from 20mg/day to 30mg/day (see
25 [the numbers]). Since the

1 patient's visits were normally 3
2 months apart, the creatinine had
3 not been checked ..."

4 In fact, on the patient's -- on that
5 previous office visit she talks about an appointment
6 and blood test in July which would have made it --
7 May, June, July, would have been three months, so in
8 fact that's what would have happened.

9 So, the ...

10 BY MR. DOODY:

11 Q. So you concluded what with
12 respect to the increase in the dosage of this
13 medication?

14 A. I concluded that it may have
15 contributed. I can't say for sure because the
16 normal situation is, you stop the drug and it goes
17 down and that's how you make the diagnosis. But it
18 was there, so it may well have contributed.

19 Q. And what other things did you
20 consider in answering the questions we asked you?

21 A. Okay. The other thing was the
22 serum creatinine was -- or the vitreous creatinine
23 was elevated.

24 In articles on crush injuries, when
25 muscle tissue is broken down, there are material

1 that are released from the muscle. Creatinine is
2 one of these elements, and as are myoglobin. Now,
3 the myoglobin, it is not common, it doesn't get into
4 the vitreous that quickly as far as I know. And I'm
5 sure it doesn't because it is a protein. So the
6 creatinine after the injury, and it could have been
7 after the first or second, doesn't matter, gets into
8 the circulation. So it could put up the creatinine.

9 Q. And what did that -- what
10 conclusions did you reach, if any, as a result of
11 that analysis?

12 A. I felt, therefore, that the
13 high-level of creatinine, which, frankly is not
14 exceptionally high, in the face of a normal BUN,
15 blood urea nitrogen, was against the creatinine
16 being due to renal failure.

17 Q. And what did that, if any, what
18 conclusion, did that drive you to, in respect of the
19 question of whether Ms. Aylwin survived for a period
20 of time after the crush injury?

21 A. I then felt it was important to
22 see -- to answer your question, because what you
23 wanted to know was if that creatinine was -- if
24 I may --

25 Q. Certainly.

1 A. -- go ahead? If the creatinine
2 was due to renal dysfunction, the kidney not working
3 properly, then she had to be alive to produce that,
4 to produce the renal dysfunction, renal failure.
5 That becomes a very important factor.

6 And then I looked at the urea, and in
7 my experience, the urea always goes up along with
8 the creatinine, so you don't get, in renal failure,
9 a high creatinine without a high urea.

10 So, that -- and, in fact, in
11 dehydration, which we come to later, the urea even
12 goes higher than the creatinine.

13 Q. And so what did that lead you to
14 conclude?

15 A. Well, I started looking at it
16 and saying "Okay, let's leave the urea alone.
17 I think that's a very important point. Let's look
18 at what else could cause the renal dysfunction."

19 Let's say she has renal dysfunction
20 and the urea is sort of a red herring. So what are
21 the types of renal dysfunction or what are the
22 things that can cause the kidneys to go into renal
23 failure in a crush situation? And the most common
24 is what's called "crush injury."

25 In crush injury, myoglobin is

1 released from the muscle along with creatinine,
2 along with many other things. Not with urea, but
3 urea goes up because of many things happening in the
4 body. Myoglobin is a very good marker in crush
5 injury, in crush injury renal failure and it causes
6 a renal failure because of two mechanisms.

7 One, it goes through the kidney and
8 gets into the tubules --

9 Q. The myoglobin?

10 A. The myoglobin goes through
11 the -- into the small tubules in the kidney which go
12 to the ureter and into the bladder and they block
13 the tubules. And the other thing that happens is
14 low blood pressure in association which makes it all
15 worse.

16 So, in renal dysfunction, secondary
17 to myoglobin in the urine or myoglobin in the serum,
18 if the patient would be alive, the kidney would be
19 excreting some of that, and that's what would cause
20 renal failure.

21 So, I start going through the reports
22 to see where there would be myoglobin. The first
23 place you look is in the pathology, in the
24 microscopic sections and the pathologist comments on
25 the kidney that it showed sclerosis.

1 I'm not sure what page -- that's in
2 the autopsy report.

3 Q. And that, just so that we can
4 all see that, that's Exhibit No. 9260, tab 11,
5 Doctor, at page 9 of the autopsy report.

6 A. And --

7 Q. Under "Histology" and the item
8 listed as 8 and 9, the left and right kidneys:

9 "Moderate arteriolosclerosis."

10 Is that what you are referring to?

11 A. And tubular autolysis which is
12 breakdown due to death, is the way I interpret that,
13 and moderate arteriolosclerosis is, as I comment in
14 my report, this is due to the diabetes, but there is
15 no myoglobin in the urine -- myoglobin in the
16 tubules and this is very easy to pick up. It does
17 not need a special stain, so the pathologist did not
18 see this.

19 Then, in the most -- then I realized
20 was there any urine in the bladder, and again,
21 I looked and on page 8 --

22 Q. The previous page?

23 A. The previous page, "Urinary
24 bladder".

25 Q. Right at the top of the page?

1 A. Is:

2 "Unremarkable, contains 30ml
3 of unremarkable urine."

4 Q. And what did that tell you?

5 A. That tells me there is no
6 myoglobin in the urine. Myoglobin in the urine,
7 causes the urine to be a very distinct reddish brown
8 colour.

9 Q. What did that lead you to
10 conclude?

11 A. That if she was in renal
12 failure, it was not due to myoglobin urea.

13 Q. And so what conclusions did you
14 reach as to whether Ms. Aylwin survived for a period
15 of time, after the crush injury?

16 A. I concluded -- I concluded that
17 the elevated serum, vitreous creatinine was not due
18 to acute renal failure, but due to other factors
19 such as the medication the patient was on, and/or
20 the crush injury itself, that the patient died very
21 soon after the crush injury.

22 Q. And Doctor, do you have
23 an opinion as to how long after the mall collapse
24 Ms. Aylwin suffered the crush injury?

25 A. No.

1 Q. You can't assist us with that?

2 A. No, it's beyond -- beyond my
3 expertise.

4 MR. DOODY: Thank you, Doctor. Those
5 are my questions. My friends may have some
6 questions for you.

7 THE COMMISSIONER: Anybody want to
8 tackle that? I don't know how long, gentlemen -- no
9 ladies this morning -- you've had to digest the
10 doctor's report.

11 MR. DOODY: Oh, my friends have had
12 the doctor's report for about a week.

13 THE COMMISSIONER: For some time,
14 okay, that's fine.

15 So you've had an opportunity to look
16 at it. Anyone have questions of the doctor?
17 Mr. Cassan or Mr. Kloeze.

18 MR. KLOEZE: I have no questions.

19 THE COMMISSIONER: Yes.

20 CROSS-EXAMINATION BY MR. CASSAN:

21 Q. Dr. Posen, my name is Paul
22 Cassan. I'm counsel for the City of Elliot Lake and
23 the Elliot Lake Fire Department, and I just have
24 a few questions; one with respect to the use of the
25 vitreous fluid. That's something that you deal with

1 frequently in this sort of analysis?

2 A. No, I never deal with it.

3 Q. All right.

4 A. That -- I can only go by what
5 has been said by the pathologist, who said that,
6 quoted a paper that how it's used.

7 Q. The other thing I want to ask
8 you about is the scenario that Ms. Aylwin was
9 possibly trapped within the rubble for a period of
10 time without having sustained the crush injury, and
11 then sustained the crush injury subsequent to her
12 being trapped. Is there anything in your analysis
13 that supports that theory?

14 A. No.

15 Q. Why do you say that?

16 A. If she had been trapped for
17 a while -- this is beyond what I can say -- all
18 I can say is she didn't -- her high creatinine could
19 be explained by other factors, other than her being
20 trapped. Her urea was normal, so I can't blame
21 dehydration on it.

22 I understand, from the testimony that
23 there was -- there may have been water available.
24 From my point of view, I cannot answer that
25 question. I can only say that the kidneys were

1 functioning before the crush. How long that was,
2 I cannot say.

3 MR. CASSAN: All right. Thanks very
4 much, Doctor.

5 THE WITNESS: You're welcome.

6 THE COMMISSIONER: No further
7 questions on cross. Any re-examination, Mr. Doody
8 arising out of that?

9 MR. DOODY: No re-examination,
10 Mr. Commissioner.

11 THE COMMISSIONER: Doctor,
12 I appreciate very much your evidence. I'm going to
13 have to read these transcripts four times and read
14 your reports so I can come to some basic
15 understanding.

16 THE WITNESS: That's all right. I've
17 read it about ten times.

18 THE COMMISSIONER: And even then
19 I may not understand what it is that you've said but
20 your expertise, sir, is obviously highly recognized
21 and appreciated and your work in the Ottawa region
22 where I come from, as well, and so I thank you very
23 much for having come to Elliot Lake and giving us
24 the benefit of your expertise.

25 THE WITNESS: Thank you.

1 THE COMMISSIONER: Have a good trip
2 back, sir.

3 THE WITNESS: It's been a real
4 interest for me, and I think you are doing
5 a wonderful job with this Inquiry. It's a very
6 difficult thing and I wish you the best.

7 THE COMMISSIONER: Thank you very
8 much.

9 THE WITNESS: I think you are all on
10 the right track. I hope something good comes out of
11 it.

12 THE COMMISSIONER: We hope so too.

13 MR. DOODY: Mr. Commissioner, the
14 next witness is not yet in the courtroom, but I'm
15 told he's on his way. It's one of those things we
16 discussed this morning. There is not always
17 a witness when you look for one, so if we could have
18 just a few minutes.

19 THE COMMISSIONER: Let's take a few
20 minutes. Thank you.

21 --- RECESS AT 9:33 A.M.

22 --- RESUMED AT 9:42 A.M.

23 THE COMMISSIONER: Mr. Sanders?

24 THE WITNESS: Sanders
25 [pronunciation].

1 THE COMMISSIONER: Yes, Sanders.
2 Good morning.

3 BRIAN SANDERS: SWORN

4 EXAMINATION IN-CHIEF BY MR. DOODY:

5 Q. Good morning, Mr. Sanders.

6 A. Good morning.

7 Q. I understand that you graduated
8 from the University of Western Ontario in 2001 with
9 a Bachelor of Engineering?

10 A. That's correct.

11 Q. And your major was structural
12 engineering?

13 A. Civil engineering with
14 a structural option.

15 Q. Right. You then went to work
16 for a firm called Johnson Engineering Consultants
17 which is a structural engineering firm working in
18 industrial, commercial and agricultural buildings.

19 A. That's correct.

20 Q. And you worked for them for two
21 years?

22 A. Approximately two years.

23 Q. And then you joined RJ Burnside
24 Associates, an engineering consulting firm working
25 in the structural engineering field and you worked

1 for them for seven years.

2 A. Approximately seven years, yes.

3 Q. And along the way you got your
4 Professional Engineer designation in 2005.

5 A. Yeah, October of 2005.

6 Q. And then in 2009, you joined the
7 Ministry of Labour as a regional engineer in the
8 Western region.

9 A. That's correct.

10 Q. And what is a "regional
11 engineer"?

12 A. A regional engineer is one that
13 is associated with the four different regions in
14 Ontario, so there is the Western region, Central
15 region, which is Toronto and surrounding area,
16 Eastern region, which is, like, Ottawa and up that
17 area, and then the Northern region which is where we
18 are right now.

19 Q. How many of the regional
20 engineers are structural engineers?

21 A. Currently they're hiring a few
22 more but at the time of this incident, there was
23 only four of us.

24 Q. And how many regional engineers
25 were there in the Western region in June of 2012?

1 A. In June of 2012. I believe
2 there was only four of us at that time, and I was
3 the only structural.

4 Q. Tell us, sir, what does your
5 work consist of?

6 A. My work consists of accompanying
7 inspectors on proactive and reactive field visits,
8 as well as assisting inspectors on investigations.

9 Q. What is a proactive or reactive
10 inspection?

11 A. A proactive inspection is when
12 you go to a workplace facility, or to a workplace
13 and you -- you just inspect what -- what's going on,
14 if there is any contraventions to the Occupational
15 Health and Safety Act.

16 Q. And what's a reactive
17 inspection?

18 A. A reactive inspection, which is
19 what I more get involved in -- I don't do proactive
20 inspections very often but the reactive inspections,
21 an inspector will call me and then I will go to
22 investigate something they've seen that they need
23 a structural engineer. Say there's a beam or
24 a column twisted in a -- in a workplace, that they
25 want my evaluation on.

1 Q. And what is an investigation?

2 A. An investigation is when there
3 is an incident such as a collapse or a buried
4 trench, or a -- anything where a worker or --
5 anything where a worker either gets injured or has
6 fatally ...

7 Q. And what is your role typically
8 in an investigation?

9 A. My role is to assist the
10 inspector on their investigation, so I will look at
11 various things, in this case, into the cause of the
12 collapse.

13 Q. And are these investigations
14 into potential offences under the Occupational
15 Health and Safety Act?

16 A. Sorry, I --

17 Q. When you do an investigation --

18 A. Right.

19 Q. -- are you looking to see
20 whether there's been a breach of the provisions of
21 the Occupational Health and Safety Act?

22 A. I don't get involved in that
23 part of it. I am looking at it from a structural
24 engineering standpoint, and I am assisting the
25 inspector and the inspector is looking more on that.

1 Q. So it's his job or her job to
2 investigate whether there's been a breach. It's
3 your job to advise the inspector as to the
4 structural engineering issues; is that fair?

5 A. That's fair.

6 Q. How many collapsed buildings
7 have you investigated?

8 A. Approximately a dozen.

9 Q. Have you been involved in --
10 prior to June of 2012, had you been involved in any
11 rescues?

12 A. There was one incident in
13 Windsor where I was in Toronto, at a training
14 session, and it was a parking garage in Windsor that
15 had collapsed and at the time that we got the call,
16 they were sending teams down to do a rescue, but as
17 we traveled from Toronto down to Windsor, which is
18 about a four-hour drive, the teams had been called
19 off because the two individuals that were missing
20 had been found, so it was no longer considered
21 a rescue.

22 Q. Have you received any training
23 on extracting people -- persons from collapsed
24 buildings?

25 A. No.

1 Q. At the time, in June of 2012,
2 what did you understand were the powers of
3 an inspector from the MOL in a rescue situation?

4 A. My understanding, as it is
5 today, is that we have the jurisdiction over
6 a rescue or recovery or any workplace. We have the
7 jurisdiction to -- like our Act is above all other
8 acts and that's section 22 of the Occupational
9 Health and Safety Act.

10 Q. So, what does that mean, in
11 terms of the role or powers of inspectors from the
12 MOL in a rescue?

13 A. That they have their
14 inspectorate powers. They can write orders, they
15 can -- they still have the same powers as they would
16 on a proactive field visit.

17 Q. So they can, if they want to,
18 issue an order stopping work?

19 A. It's never come up, it's never
20 happened.

21 Q. Right. That's the next
22 question.

23 A. The power, they do have that.

24 Q. Have you ever received any
25 training in how that authority should be exercised

1 in a rescue situation?

2 A. Not specifically no.

3 Q. Did you received any such
4 training generally? You said not specifically --

5 A. On the powers of an inspector?

6 Q. On how to exercise the powers --
7 on how inspectors as -- because you are an inspector
8 as well?

9 A. I am, yes.

10 Q. Have you received any training
11 in how inspectors should exercise their authority in
12 a rescue situation?

13 A. No.

14 Q. In June of 2012, did you have
15 an opinion as to whether or how the powers of
16 an inspector to stop what might be seen to be unsafe
17 work, should be exercised in a rescue situation?

18 A. Sorry, could you repeat that
19 please? I'm sorry, I --

20 Q. You told us you didn't get any
21 training about how those powers should be exercised
22 in a rescue. Did you have a -- in June of 2012,
23 what was your own opinion as to how or whether those
24 powers should be exercise in a rescue?

25 A. It is based on the discretion of

1 the inspector, the lead inspector.

2 Q. Did you have any idea or view as
3 to how that discretion should be exercised?

4 A. No.

5 Q. Did you think -- then, did you
6 think that the discretion should be exercised
7 differently in a rescue than in a non-rescue?

8 A. No.

9 Q. All right. So that if the
10 inspector saw something unsafe in a rescue
11 situation, he or she ought to stop it?

12 A. I think they would make aware
13 the rescue personnel. It's dependent upon the
14 inspector but I would think that the inspector would
15 make the rescue personnel or one of their
16 supervisors aware of the dangers that they're --
17 that they're putting themselves into.

18 Q. And that's the way it works in
19 a normal situation, as I understand it, that if in
20 a normal workplace, in a non-rescue situation --

21 A. Right.

22 Q. -- an inspector sees something
23 unsafe, his or her first step is to speak to the
24 workers or the management and say "this is unsafe";
25 is that right?

1 A. That's correct.

2 Q. And then if the workers or the
3 management don't fix it, the inspector can issue
4 an order on the scene to stop the work; right?

5 A. That's correct.

6 Q. In June of 2012, was it your
7 view that those powers of the inspector at a rescue
8 should be exercised in exactly the same way as in
9 a normal workplace?

10 A. They have the discretion at
11 a rescue or at a workplace. It's at the discretion
12 of the inspector as to how they want to use that
13 power.

14 Q. There is a difference though,
15 isn't there, that in a rescue situation, it is
16 inherently unsafe?

17 A. It is inherently unsafe, that's
18 correct.

19 Q. To use a common example, when
20 firemen go into a building that's on fire, they're
21 exposing themselves to the risk of harm; right?

22 A. That's correct.

23 Q. And did you receive any training
24 as to whether inspectors should apply a different
25 standard to whether they should issue a Stop Work

1 Order in a situation like firemen going into
2 a burning building; was that ever discussed in any
3 of your training?

4 A. Not that I recall.

5 Q. And you know of no written
6 policy about that?

7 A. Not that I -- not that I know
8 of.

9 Q. Now, how did you hear of the
10 Elliot Lake mall collapse?

11 A. I received a call from Roger
12 Jeffreys, the Provincial Engineer.

13 Q. Do you recall when that was?

14 A. It was approximately 5:30 on the
15 Saturday.

16 Q. The 23rd of June.

17 A. The 23rd of June, yes.

18 Q. And what did he tell you?

19 A. He didn't know -- he didn't have
20 a lot of details at that time. All he told me was
21 that a mall had collapsed in Elliot Lake, and that
22 they needed a structural engineer. He had actually
23 left a voicemail and I had called him back.

24 Q. And did you speak to him when
25 you called him back?

1 A. I did, yeah, and that's what he
2 had told me at that time.

3 Q. And did he tell you what he
4 wanted that structural engineer to do?

5 A. No, I've dealt with other
6 structural collapses. I -- he just wanted somebody
7 to go up there because we don't have a structural
8 engineer in the north, so he was calling around to
9 the others to determine -- or to get someone to go
10 up.

11 Q. And what was your -- what did
12 you think he wanted you to go up to do?

13 A. To help the inspector
14 investigate the cause of the collapse. That's what
15 I do in any incident.

16 Q. Did he say anything at that time
17 about doing something out of the ordinary such as
18 providing whatever assistance you could to the
19 rescuers?

20 A. No.

21 Q. What did you tell him about
22 whether you could go up?

23 A. I told him I couldn't go at
24 that -- for the next morning. The next morning my
25 godson was being baptized and I couldn't --

1 I absolutely couldn't miss it. He's my only godson
2 so ...

3 Q. Right. So you told him you had
4 to stay for that.

5 A. Right, but I could go the
6 following -- that following afternoon.

7 Q. And what did he tell you to do?

8 A. He said, "I will see if anybody
9 else can go and then I'll let you know."

10 Q. And did he let you know?

11 A. He did. He did. At
12 approximately 7:30 I was in my vehicle, and he had
13 let me know that -- that I was needed up there to
14 help the inspectors investigate.

15 Q. Now if I could have you turn in
16 the brief before you, sir, to tab 13 which is
17 Exhibit No. 6660.

18 A. Uh-hmm.

19 Q. Wait until we get it up on the
20 screen. And these are handwritten notes. Are these
21 your notes, sir?

22 A. They are.

23 Q. And that's your handwriting?

24 A. That is.

25 Q. When did you make them?

1 A. Either at the time of the entry
2 or shortly thereafter.

3 Q. What time did you arrive in
4 Elliot Lake?

5 A. It says there under June 24th at
6 10:24 p.m.

7 Q. What did you do when you got
8 there?

9 A. The police had had all the
10 entrances blocked, like they were monitoring in and
11 out. So, I had to call someone inside. The only
12 person I knew was Roger Jeffreys so I had called
13 Roger and he had come to get me to allow me into the
14 scene so ...

15 Q. And then what happened?

16 A. Then Roger came into my vehicle
17 and as we were driving toward the scene, we were on
18 the -- that map doesn't show it. We were on the
19 very south end of the parking lot and so it's maybe
20 a 30-second or 45-second drive across, and in that
21 time he said I would be in care and control of the
22 beam that had just been taken out. At the time
23 I had no idea what beam he had been speaking of
24 so ...

25 Q. Did you know anything about the

1 collapse at that time?

2 A. All I knew was that there had
3 been a collapse and there may be one fatality.
4 That's all I know.

5 Q. Okay.

6 A. I came up fully expecting no --
7 like, this was 32 hours after the initial collapse.

8 Q. Uh-hmm.

9 A. So what I came into, I was
10 shocked. Like I had no idea that the rescue
11 personnel would still be there.

12 Q. So, you'd not been listening to
13 it on the media?

14 A. As I had said, I had my godson's
15 baptism. Right after that, we went to my sister's
16 place and had like a little reception and from
17 there, I went straight north. I hadn't looked at
18 a TV.

19 Q. How did you learn that there
20 might be one fatality?

21 A. Roger -- when Roger had called
22 me back to say that I was required, at approximately
23 7:30 on the Saturday night, that's when he had said
24 there is reports that there is one fatality.

25 THE COMMISSIONER: Where was the

1 godson's reception? Where were you?

2 THE WITNESS: In Watford, Ontario.

3 THE COMMISSIONER: Where is that,
4 sir?

5 THE WITNESS: It's approximately 45
6 minutes west of London.

7 THE COMMISSIONER: I see. So you
8 drove from there up to Elliot Lake?

9 THE WITNESS: Straight up here, yes.

10 BY MR. DOODY:

11 Q. That's a fair drive?

12 A. Yeah, it's over eight hours.

13 Q. You said you were shocked. What
14 were you shocked at?

15 A. That the rescue personnel were
16 still there because I had never gone to a scene
17 where rescue personnel was still there. Like,
18 32 hours after, I assumed that, you know, so that's
19 when it hit me that this was -- this was much more
20 than -- than just a -- I don't want to say a typical
21 collapse but an incident that I would typically go
22 to.

23 Q. And you said that Mr. Jeffreys
24 asked you to look after the beam that had been cut.

25 A. Yes.

1 Q. Did he ask you to do anything
2 else?

3 A. At the time, no, because the
4 beam had just been extracted. It's the overhanging
5 beam that has ...

6 Q. The one that failed?

7 A. The one that had failed, yes.

8 Q. Right. And what --

9 A. At the time it was suspected
10 that was the one that had failed.

11 Q. Right.

12 A. But it had just been extracted.
13 I believe the cranes were just lowering it as we
14 were driving up.

15 Q. Uh-hmm.

16 A. So that's -- when my timing,
17 like, came in.

18 And at that time Roger said, you
19 know, we're going to want that beam for, you know,
20 to do testing on. And so it was just lightly
21 raining at the time so I was introduced to Inspector
22 Don Jones, the lead inspector, and Inspector Michel
23 Lacroix and they were at the beam -- they were just
24 about to start covering the beam with the
25 Elliot Lake Fire Department and then I had said,

1 "How about we get a shopping cart to keep it so that
2 we're not putting the tarp right on top of the beam
3 to keep the structural integrity of the beam and any
4 rust or whatever may be still on."

5 So we put a shopping cart and then we
6 wrapped it with a tarp and then we put MOL tape
7 around it and then I believe Inspector Jones took
8 some photos of that.

9 Q. And then what did you do?

10 A. Then Roger wanted to -- I was
11 introduced to Tony Comella and Roger wanted to --
12 just to kind of give me a lay of the land because
13 obviously I hadn't seen anything other than this
14 beam so far. So, we went in the main doors, if
15 I could --

16 Q. Certainly.

17 A. Yeah. So we went in the main
18 doors.

19 Q. Indicating the doors at the
20 south end directly --

21 A. Right, at the L-shape, we went
22 in the main doors there.

23 Q. Directly under the penthouse?

24 A. Yeah, directly under the
25 penthouse, and that's when I could see debris

1 hanging down. It was dark. It was dimly lit
2 because it was only the temporary lighting, so it
3 was dark but I could see debris hanging down and
4 I could see -- like, that's when Roger had told me
5 about the expansion joint on the right-hand side and
6 that's -- and I could see the debris -- yeah,
7 basically the debris hanging down and he said, "This
8 is where the escalators are."

9 Q. If we could have Exhibit No.
10 2114.

11 Sorry, I misunderstood what Mr. Ault
12 was telling me. The photo -- just for the record,
13 the photograph that you were using the pointer on
14 was Exhibit No. 2114.

15 A. Okay.

16 MR. DOODY: I can see
17 Mr. Commissioner was way ahead of me on that one.

18 THE COMMISSIONER: We've identified
19 it 20 times already.

20 BY MR. DOODY:

21 Q. I was only here for 15 of them.
22 So you've described what you saw when
23 you were in the hallway. Then what did you do?

24 A. Then Tony, Roger and I went
25 through the Zellers, up the stairs and then onto --

1 here, I'll use the pointer again on Exhibit No. 2114
2 again.

3 So we went in through the Zellers
4 back out here and then we came up and walked up to
5 the -- near the edge here.

6 Q. Near the western --

7 A. Near the west side of the
8 collapse zone.

9 Q. Yep.

10 A. On the roof parking deck.

11 Q. Yeah. What did you see?

12 A. That's when I could see the
13 rubble pile and the workers.

14 Q. What did you understand your
15 purpose was in this walk around? What were you
16 there for?

17 A. I understood my purpose was to
18 help the inspectors with their investigation. That
19 was the sole purpose -- as I get called in any
20 incident, so once I came up and saw that the rescue
21 was still on, then Tony and Roger had just asked me
22 to be another set of eyes was, I believe, the term
23 they had used, to just watch over the rescuers.

24 Q. Did Mr. Jeffreys ever tell you
25 that he wanted you to assist in giving your opinion

1 as a structural engineer to the rescuers, to assist
2 in the rescue?

3 A. No.

4 Q. Did you ever -- did you ever
5 give an opinion, a structural engineering opinion or
6 advice to any of the rescuers?

7 A. No.

8 Q. Did you ever give any opinion to
9 anyone about the safety of the workers?

10 A. No.

11 Q. Did you ever give an opinion to
12 anyone about the stability of the building?

13 A. No.

14 Q. Did you ever give an opinion to
15 anyone about the shoring, the issue of whether the
16 escalator, the beam under the escalator could be
17 strengthened by being shored up?

18 A. No.

19 Q. Did you meet James Cranford?

20 A. I did, at approximately 2:30 in
21 the morning on Monday, like, the early Monday
22 morning.

23 Q. That would be on the 25th?

24 A. On the 25th, yes.

25 Q. And what did you do when you met

1 him?

2 A. James had a copy of the steel
3 shop drawings.

4 Q. Yes.

5 A. And being that I was there to
6 help the inspectors investigate, I wanted to see the
7 framing layout and since that's the only drawings
8 that were on site at the time, was the steel shop
9 drawings, James was just kind of showing me, like,
10 how the connections, you know, what beams were
11 framing into what beams and columns.

12 Q. And what was the purpose of him
13 showing you that? For the investigation?

14 A. Yeah, for the investigation.

15 Q. And why were you interested in
16 that for the investigation?

17 A. I wanted to know how the beam --
18 since I hadn't seen the beam that had been
19 extracted -- I just wanted to know where it was
20 connected and how it was in place.

21 Q. I'm going to show you some
22 drawings and perhaps you can --

23 A. Sure.

24 Q. -- let us know if these were the
25 drawings you saw. If we could have Exhibit No. 215?

1 A. Is that a tab number or ...?

2 Q. I don't think it's a tab.

3 A. Okay, that's fine.

4 Q. We'll put it on the screen. So
5 these are steel shop drawings from York Steel
6 Construction from the original construction. Were
7 these the drawings you saw?

8 A. I don't recall seeing this one.
9 Specifically it was more just a drawing of the area
10 of the collapse with the escalators. It's probably
11 in this set but not this ...

12 Q. Well, I'll show you another one.

13 A. Sure.

14 Q. Exhibit No. 9279, page 70. Is
15 this the drawing?

16 A. Yes, yeah, that's ...

17 Q. And I'll just show you the
18 structural drawing from the complete drawing set and
19 ask you if you ever saw these and that is Exhibit
20 No. 1876, page 42. Did you ever see these?

21 A. I did, on the 27th.

22 Q. And if we turn to your document,
23 your note at tab 13, Exhibit No. 6660, to the
24 page that ends -624.

25 A. Yes.

1 Q. We can see about two-thirds of
2 the way down, your entry for the 27th. It says:

3 "Received drawings from HUSAR
4 at 1:23 p.m."

5 Are those the drawings we just looked
6 at?

7 A. No, those were the structural
8 drawings.

9 Q. Sorry, that's what I meant.

10 A. Okay, yes, I thought you were
11 referring to the York Steel drawings. No, that's
12 right.

13 Q. All right. They were the ones
14 we just looked at, Exhibit No. 1876, page 42.

15 And how was it that you got those
16 drawings at that time?

17 A. I don't recall. Like, HUSAR had
18 the drawings and I said we would like a copy of
19 those, and I know Don Jewett and I, the manager and
20 I had walked over to -- we had asked if there was
21 some way that I could copy these drawings because
22 they were the full size.

23 Q. When did you ask them for that?

24 A. When?

25 Q. Uh-hmm.

1 A. At probably two minutes before
2 1:23.

3 Q. Oh, okay on the 27th?

4 A. Yeah.

5 Q. Right.

6 A. So I had asked for -- we wanted
7 to see structural drawings but nobody had produced
8 them, so this was the first time that I had actually
9 heard or seen anything with the structural drawings
10 so then we went to, I believe, it was -- I have it
11 in my notes here, Torrance Surveying to have them
12 copied.

13 Q. And so --

14 A. And then I returned them back to
15 HUSAR, the originals.

16 Q. So how did you learn that they
17 did have these structural drawings there at that
18 time?

19 A. On the 27th?

20 Q. Uh-hmm.

21 A. That's a good question. I don't
22 recall if I had heard it or if I had walked by and
23 saw that they were different drawings. Like,
24 I don't recall exactly.

25 Q. When you saw them, were they

1 laid out on a table?

2 A. They were rolled up in
3 a bundle --

4 Q. Okay.

5 A. -- when I received them.

6 Q. So going back to your meeting
7 with Mr. Cranford on the 25th, who else was with you
8 when you met with him?

9 A. Well, Roger and Tony had
10 introduced me to him.

11 Q. After the meeting with
12 Mr. Cranford at 2:30 in the morning on the 25th,
13 what did you do next?

14 A. I believe Tony, Roger and I went
15 back up to where we were before.

16 Q. On the roof?

17 A. On the roof deck, yeah.

18 Q. And what did you do there?

19 A. Again, we were just observing
20 what the rescue workers were doing.

21 Q. And what did you understand your
22 role to be there?

23 A. Again, Tony had asked us to be
24 another set of eyes so, you know, safety.

25 Q. And did you have any

1 understanding of whether you were being expected to
2 use your powers as an inspector under the
3 Occupational Health and Safety Act?

4 A. No.

5 Q. Did anyone ask you to think
6 about doing that?

7 A. No.

8 Q. Did you think that's what you
9 were there for?

10 A. No. I --

11 Q. So what did you -- what did you
12 expect that you would do if, as another set of eyes,
13 you saw something that was -- well, what were you
14 looking for?

15 A. Any hazards, I guess. Like,
16 there -- as you've heard, there was widow-makers
17 and, you know, there was debris, and being that I'm
18 a structural engineer, like, any shifting or
19 movement, you would just be wary of that, I guess.

20 Q. And if you saw any such issues
21 developing, what were you going to do?

22 A. I would have told Tony and
23 Roger.

24 Q. When did you leave?

25 A. On the 25th.

1 Q. On the 25th.

2 A. At, I believe it was 4:21 a.m.
3 I left the scene.

4 Q. I think that's what it says
5 on --

6 A. Yeah, 4:21.

7 Q. In your notes at page -623.
8 And you were back on the scene,
9 according to your notes, at -- I think it's
10 11:21 a.m.?

11 A. That's correct. At 4:21 I had
12 left the scene and I went north of Elliot Lake up to
13 Dunlop Lodge, I think, Dunlop Lake Lodge. However,
14 it was closed at that time of day, and so I'd called
15 Roger, as he had left the scene shortly after I had,
16 and asked where he was staying and he was staying in
17 Blind River so I drove down to Blind River.

18 So I hadn't arrived there until about
19 6:00 a.m. by the time I had, you know, made the
20 calls, figured out where I was and -- so about
21 6:00 a.m. and so -- yeah, had a few hours sleep and
22 came back up.

23 Q. And what did you do when you got
24 back?

25 A. At that time we met with --

1 Roger and I had arrived on the scene, and we met
2 with Tony Comella and he had asked us to go with him
3 on a walk around, so --

4 Q. Did you do that?

5 A. Yes, we did.

6 Q. And who was on the walk around
7 with you?

8 A. It was Tony. Tony was leading
9 it and then there was Roger, myself and Michel
10 Lacroix.

11 Q. And did you look at any
12 monitoring devices on that walk around?

13 A. We did.

14 Q. Whereabouts?

15 A. First we went in the main doors,
16 as I had explained.

17 Q. On the lower level?

18 A. On the lower level.

19 Q. Right.

20 A. So we came in the main doors
21 through here under the penthouse at the main level.

22 Q. Yes.

23 A. And then we -- there was two
24 devices set up there, one on the east and one on the
25 west. And they were what I would like to call

1 tattle tales.

2 Q. Okay.

3 A. It was a stick from the ceiling
4 hanging down and a stick attached to the floor in a
5 vertical direction up, and on the two sticks there
6 were lines.

7 Q. Yes.

8 A. And the lines were not straight
9 horizontal at the -- when I had seen them. This is
10 the only time I had seen them. The lines were
11 off --

12 Q. Offset?

13 A. Offset is a good word.

14 Q. How far were they offset?

15 A. I would say a quarter to a half
16 inch and that was from the vantage point, 10 to
17 20 feet away so ...

18 Q. And were you told when the
19 tattle tale sticks had been put in place?

20 A. No, no, and I don't know who put
21 them up.

22 Q. And had you been asked for any
23 advice about these measuring devices?

24 A. No.

25 Q. Okay.

1 A. I was strictly there to observe
2 the walk around.

3 Q. Did you say anything at that
4 time about what the -- about what the offset
5 markings were an indication of?

6 A. No.

7 Q. Was there any discussion amongst
8 the group about that?

9 A. I don't recall. I don't recall
10 any. Like, Tony may have said, "It looks like it's
11 moved", but I don't recall, I don't have a clear
12 recollection of that.

13 Q. Did you look at another set of
14 measuring devices?

15 A. We did. We walked in, again,
16 through the Zellers up the stairs, similar to the
17 first route that I had said and then at that time we
18 had come up alongside the penthouse and we went in
19 these doors here, on the -- I believe that's the
20 west side.

21 Q. The doors that were facing the
22 collapse zone?

23 A. The collapse zone, yeah, we went
24 in those doors and we walked along the wall, along
25 the perimeter of the wall all the way around.

1 Q. Uh-hmm.

2 A. And then there was a device set
3 up at the top of the stairs here.

4 Q. And what did you see?

5 A. There's a photo of it in the --

6 Q. There's a photograph, if we
7 could go to tab -- I believe it's 62. No, tab 64,
8 page 27 of your report, the report you wrote with
9 Mr. Jeffreys, at the page that ends -028?

10 MS. KUKA: What exhibit?

11 MR. DOODY: Oh, Exhibit No. 6226.

12 MS. KUKA: This one?

13 MR. DOODY: No, -0028.

14 BY MR. DOODY:

15 Q. Is that the photograph you were
16 thinking of?

17 A. Yeah, that's the one.

18 Q. The top photograph?

19 A. The top photograph, yes.

20 Q. And is that what you saw when
21 you were up there?

22 A. I did.

23 Q. And can you tell us, describe
24 for us what the device consisted of?

25 A. It was wood. I believe it was

1 two by fours and plywood and I believe -- I don't
2 know for sure -- but I believe the tops of the two
3 by fours were level.

4 Q. Uh-hmm.

5 A. At the time that the device was
6 set up. I believe that's what Tony had indicated.

7 Q. And we're --

8 A. We're looking at the top photo
9 here.

10 Q. We're looking at the top photo
11 and we're trying to understand what is -- what each
12 side of the device consists of. Is it a sandwich in
13 effect so that we've got a two by four which is
14 lying on its -- on its four inch side, immediately
15 above another piece of wood?

16 A. I believe there was plywood
17 underneath. Like, to kind of shim it so that it was
18 at a level, location at the top.

19 Q. Okay.

20 A. So I believe there was a two by
21 four on the flat here on -- we'll say the right side
22 --

23 Q. On the --

24 A. On the side closest to the
25 stairs.

1 Q. Right.

2 A. And one adjacent to it and
3 I believe they were touching.

4 Q. Yes.

5 A. And they were level at the time
6 that they were installed. That was my understanding
7 from what Tony had indicated.

8 Q. And they were made level by
9 virtue of a shim under one of them?

10 A. Under one or under both. It's
11 hard to tell from --

12 Q. It is.

13 A. I can't recall exactly if there
14 was just one two by four but I think they had to
15 shim it because it would have -- it wouldn't have
16 laid perfectly flat just the way the top of the
17 stairs were.

18 Q. Because one of them was sitting
19 on the top stair, in effect, and one on the floor,
20 level with the floor level; is that right?

21 A. Yeah, if you look at the bottom
22 photo there, that's the top of the stairs.

23 Q. Yes.

24 A. So one would be almost right
25 where that red arrow is, is showing.

1 Q. Okay.

2 A. So one was laying there and one
3 was right adjacent to it, to the left.

4 Q. And your recollection is that
5 one or both of them were shimmed with plywood.

6 A. That's correct, just ...

7 Q. Looking at the top photograph in
8 the red circle -- and again we are just trying to
9 understand what the device consisted of -- the
10 bottom of the circle in the -- is that at the bottom
11 of a two by four on the left of the picture or is it
12 halfway down the two by four on the left side of the
13 picture? Do you understand what I'm asking?

14 A. I do understand what you're
15 asking, and I'd really like to help you out.
16 I can't say for certain.

17 Q. Can you give us an idea, if you
18 know, of the extent of the height differential
19 between the two blocks.

20 A. I would say it was a few
21 millimetres, maybe a centimetre. Like it wasn't ...

22 Q. And did you have an opinion as
23 to what that meant in terms of safety.

24 A. In terms of safety?

25 Q. Let me just ask the question:

1 Did you have an opinion as to what it meant, the
2 fact that this movement was indicated by this and by
3 the tattle tale device below?

4 A. Yeah, it indicated movement,
5 that the structure was moving. The beam underneath,
6 as you can see on page 28 of our report, Roger and
7 my report.

8 Q. So if we could turn to the next
9 page, the page that ends -029. Is that what you
10 are --

11 A. Yeah, that's the beam.

12 Q. Right.

13 A. It was showing that that beam
14 was in effect moving.

15 Q. And what did that mean in your
16 view as an engineer?

17 A. What did that mean?

18 Q. Yes.

19 A. That ultimately it's going to
20 collapse.

21 Q. And did you say that to anybody?

22 A. I did not, no.

23 Q. Did you think that that meant it
24 was unsafe for the workers, if there were still
25 workers in the --

1 A. There were no workers when we
2 were on the walk around. There were no workers in
3 the hot zone, is what HUSAR kept calling it so ...

4 Q. If there had been workers in the
5 hot zone would -- in your opinion at that time would
6 it have been unsafe for them?

7 A. I didn't know at that time,
8 like, how stressed that beam was. I hadn't seen
9 that beam at this vantage point at that time.

10 Q. Did you consider whether
11 an order ought to be issued at that time, to stop
12 any workers from going into the hot zone?

13 A. No.

14 Q. Was there any discussion about
15 that?

16 A. No.

17 Q. Did you hear anybody else
18 talking about the meaning of the movement and what
19 it meant for the building, and the stability of the
20 building?

21 A. Tony -- he had just indicated
22 that it had moved so when he had said that, that's
23 when I had assumed that the two two by fours were
24 level on top and touching.

25 Q. Right.

1 A. Because they were -- the one was
2 off just a little, right, like the little bit that
3 I had indicated before.

4 Q. So was there any discussion
5 with -- by anybody about what that meant for the
6 stability of the building?

7 A. Tony -- right after our walk
8 around, Tony had gone to talk to James Cranford.

9 Q. Okay.

10 A. About what he had seen so ...

11 Q. Did you hear what their
12 discussion was?

13 A. I wasn't part of it.

14 Q. Okay.

15 A. They were in the command tent or
16 the HUSAR tent.

17 Q. When you were on the site on the
18 25th, did you see any workers in the hot zone?

19 A. I don't believe I had.

20 I had arrived at 11:21.

21 Q. How long did you stay there?

22 A. On the scene or ...?

23 Q. On the scene.

24 A. I had stayed until the CCG
25 meeting at approximately 6:15.

1 Q. And during that time did
2 Mr. Jeffreys speak with you?

3 A. Of course he spoke with me.

4 Q. I'll ask the question more
5 specifically. Mr. Jeffreys went to a CCG meeting at
6 3:30. Did he speak to you after that meeting?

7 A. Yes, he did.

8 Q. And was that a telephone
9 conversation?

10 A. At three o'clock, I believe.

11 Q. At three o'clock. When he spoke
12 to you was it a telephone call or in person?

13 A. See, at that time -- can I just
14 back up a little?

15 Q. Certainly.

16 A. At two o'clock James had
17 indicated to me what the -- what the stresses were
18 on the beam that we see here, and on the two on
19 either side of the escalator.

20 Q. What did he tell you?

21 A. He had just said that it was
22 428 per cent stressed and the ones on the side were
23 137 per cent stressed.

24 Q. What did you understand that to
25 mean?

1 A. That they were -- that's,
2 I think that's when it came to me that it will
3 ultimately fail because if something is more than
4 four times its capacity then it's going to fail.

5 Q. Okay.

6 A. Whether it's minutes or hours,
7 it's going to fail.

8 Q. Who else was with you when
9 Mr. Cranford told you that?

10 A. I believe it was just Roger and
11 I. I believe Roger had asked me to come talk to
12 James.

13 Q. Then what happened?

14 A. As that discussion was going on
15 it was just before two o'clock and the reason I know
16 this is because at two o'clock they were taking --
17 sorry, just before two, they were taking photos of
18 the beam, the beam that they had extracted.

19 Q. Outside in the parking lot?

20 A. Right, the forensic unit was
21 taking photos of the beam and at 2:00 p.m. Roger had
22 said "Hey, look, they're doing something with the
23 beam. You should be down there."

24 So I went down the hill at 2:00 p.m.

25 And I know it's at 2:00 p.m. because,

1 in Dale Burns' photos there is an eight-minute gap
2 from 2:00 p.m. to 2:08 and that's when Dale reviewed
3 all the photos with me what he had already taken of
4 the beam and had asked me what other additional
5 photos that I would like for the investigation.

6 Q. Okay.

7 A. So, at 2:00 p.m. I no longer was
8 talking to James and I had gone down the hill to the
9 beam.

10 So, all I had heard is 428 per cent
11 and 137. And I didn't memorize those numbers at
12 that time but he had said them and I knew it was
13 quite stressed.

14 Q. So then what did you do?

15 A. Shortly after that -- after the
16 photos were all taken, the beam -- we decided to cut
17 the end of the beam off because it was a very large
18 beam. It was approximately 35 feet or something.
19 And so they had -- I had suggested we take about
20 18 inches off the end, to -- and keep that in
21 continuity so that we could do the testing on the
22 18-inch piece. So that happened at approximately --
23 I'm going to say around 2:30, give or take five or
24 ten minutes, and then Michel Lacroix and I were
25 there with the beam for continuity, and Roger had --

1 my understanding now is Roger had gone to the -- and
2 Don had gone to the CCG meeting.

3 Q. So then after that meeting, did
4 Mr. Jeffreys talk with you?

5 A. He did. I believe he initially
6 called me and the reason I say that is because it
7 was right about that time we were taking the 18-inch
8 piece of the beam.

9 It was approximately four o'clock,
10 4:15, we took the end of the beam, the 18-inch piece
11 and put it in the back of a police truck and locked
12 it so the continuity was maintained.

13 Q. He called you and --

14 A. He had called me at that time
15 and, you know, I was kind of dealing with the beam
16 and then he calls and he says:

17 "Bill Neadles has now called
18 it a recovery."

19 And I was shocked. I was just blown
20 away, like -- you know.

21 Q. Why were you shocked?

22 A. Well, potentially there was
23 still, you know, victims in there and they had
24 called off the rescue.

25 Q. Did Mr. Jeffreys tell you

1 anything other than Mr. Neadles was -- it had become
2 a recovery?

3 A. He did. He stated at that time
4 that Don Jones would be writing orders to the owner
5 on the remainder of the building.

6 Q. Okay.

7 A. And an engineering assessment --
8 and when we were doing our walk around -- I'm sorry,
9 I hadn't completed our walk around but when we were
10 doing our walk around we had seen many tarps and
11 pipes and hoses and such that we were, like,
12 throughout the mall, damaged ceiling tiles.

13 Q. And what did that cause you to
14 conclude?

15 A. That an engineering assessment
16 was required. Like, this was more than just
17 an isolated area, at least in my mind that's what
18 I had thought.

19 Q. There was potential danger
20 elsewhere in the building?

21 A. Potential, yes.

22 Q. And so Mr. Jeffreys told you
23 that Mr. Jones would be writing an order.

24 A. Since Mr. Jones was the lead
25 inspector, he would be the one writing the orders.

1 Q. And what did he tell you the
2 order would say?

3 A. He didn't tell me anything as to
4 what the order would say, just that orders would
5 be -- would be issued to the owner at a later time
6 so ...

7 Q. And did he speak -- you said
8 initially he called you. Did he come to see you as
9 well?

10 A. Yeah, the CCG meeting and the
11 scene are relatively close by.

12 Q. The CCG meeting was in
13 City Hall, right, or the police station?

14 A. I don't -- yeah, I think that
15 one was at City Hall, but I'm not sure. I never
16 attended one at City Hall so --

17 Q. Right.

18 A. However, in that course of time
19 I don't know if he had -- I don't know if he had
20 quickly told me, you know, it's now a recovery and
21 then he had told me in person that Don would be
22 writing orders or if he had told me that over the
23 phone and then afterwards had asked me to update
24 Gabriel Mansour.

25 Q. That's what I was going to ask

1 you, what did he ask you to do, update Mr. Mansour?

2 A. He did.

3 Q. About what?

4 A. He had said that Gabriel,
5 Mr. Mansour had been asking to give him an update
6 and Gabriel is -- he is a structural engineer, he
7 was the Provincial Engineer and now he is the
8 Provincial Coordinator or Roger's manager and so he
9 had been calling Roger, I guess through the course
10 of the day to give him an update and this is when
11 I had first learned that Roger had asked me to give
12 an update because he was dealing with other matters
13 such as the CCG meetings, et cetera.

14 Q. So you then wrote the --
15 an e-mail to Mr. Mansour?

16 A. Well, first I went back to James
17 Cranford to get the numbers that he had indicated
18 earlier, approximately 2:00 p.m.

19 Q. Yes.

20 A. So I just wanted to include
21 those numbers into my e-mail.

22 Q. Did you have any discussion with
23 Mr. Cranford about shoring?

24 A. I did not, no.

25 Q. Did you have any discussion with

1 him about any method of securing the concrete slabs
2 that were on top of the escalator?

3 A. I didn't, no.

4 Q. Did you have any discussion with
5 him about methods by which to prevent any forward
6 movement of the escalator?

7 A. No, no.

8 Q. Did you have any discussions
9 with him about anything other than the amount of
10 weight being supported by the beam under -- and the
11 beam beside the escalator?

12 A. Just the stress values. That's
13 all he had given me.

14 Q. Okay.

15 A. He had shown me the numbers on
16 his piece of paper, and he had indicated that they
17 had run -- it's called a SAP, a SAP analysis in
18 Toronto. And I didn't -- I now know it was
19 Stephenson Engineering but he just said his
20 engineering team back in Toronto so ...

21 Q. Did you know what a SAP analysis
22 was?

23 A. To some degree. Like I don't
24 use SAP but to some degree I knew it was a modeling
25 program.

1 Q. To determine ...?

2 A. To determine stresses.

3 Q. Now, if we could turn to tab 24,
4 sir, it is Exhibit No. 9280.

5 THE COMMISSIONER: Do you need
6 a break now, Madam Stenographer?

7 MR. DOODY: Thank you,
8 Mr. Commissioner.

9 THE COMMISSIONER: Let's take our
10 morning break, Mr. Registrar.

11 --- RECESS AT 10:33 A.M.

12 --- RESUMED AT 10:54 A.M.

13 MR. DOODY: Thank you,
14 Mr. Commissioner. If we could have Exhibit No. 9280
15 and this is tab 24.

16 BY MR. DOODY:

17 Q. And this is the e-mail that you
18 wrote to Mr. Mansour after you spoke with
19 Mr. Jeffreys; correct?

20 A. That's correct.

21 Q. And in the third paragraph you
22 wrote this:

23 "The concrete parking slab has
24 fallen onto an escalator (at the
25 south of the building) and

1 continues to slide toward the
2 north (the remainder of the
3 collapsed area), as shown by the
4 HUSAR indicator readings."

5 Now, did you mean to say that the
6 slab was continuing to slide towards the north or
7 the escalator?

8 A. The escalator. And the stairs,
9 like they --

10 Q. Right.

11 A. -- were side-by-side --

12 Q. The two of them?

13 A. -- so they were -- that's where
14 the indicator readings were.

15 Q. And then you said:

16 "The fallen load is being
17 mostly supported by
18 an approximately 17' 6" beam.
19 This lower beam had already been
20 supporting the second floor
21 framing and has continued to
22 deflect under the new loads now
23 present."

24 And how did you know that, that it
25 had continued to deflect?

1 A. That was -- first off, that
2 approximately 17 foot 6 inch beam --

3 Q. Yes.

4 A. -- that was just the beam above
5 the escalator and the stairway.

6 The length of the beam was
7 approximately 35 feet.

8 Q. Right.

9 A. But that was just the area that
10 was being under the --

11 Q. Right.

12 A. -- most amount of stress.

13 Sorry, but to answer your question,
14 it was based -- my understanding is it was based on
15 the indicator reading when Tony had communicated
16 with James Cranford. So James had just relayed that
17 message, that is...

18 Q. From the indicator readings?

19 A. Right, from the indicator
20 readings that -- that it is continuing to deflect.

21 Q. And then it says:

22 "Based on the readings, this
23 beam will ultimately fail as it
24 is at 428 per cent stress or
25 over four times what it was

1 intended to support. The
2 (HUSAR'S calculations from their
3 engineering team). The beams
4 alongside the escalator are at
5 137 per cent stressed. (Also
6 HUSAR's [calculations])..."
7 And that's what Mr. Cranford had told
8 you; right?

9 A. Yes, that's what I'd indicated
10 earlier.

11 Q. And then you wrote:

12 "Once failure occurs, the
13 damage will most likely be
14 catastrophic from all accounts."

15 And is that -- was that your opinion
16 or what others had told you?

17 A. That seemed to be the word that
18 was -- that was being used. I don't know if --
19 I don't know if James had come up with that word or
20 Roger or Tony, but that was the word that had been
21 used and it made sense.

22 If that beam failed and there was
23 workers present underneath that beam or in the
24 vicinity, it would have been catastrophic.

25 Q. Then you said:

1 "HUSAR has pulled all of their
2 team out of the collapse area
3 and are not planning to send
4 them back in."
5 Now, where'd you get that information
6 from?

7 A. That was in my conversation --
8 well, I -- I'd seen that there was no workers.

9 Q. Right.

10 A. Right. So HUSAR had pulled
11 their workers but that was also in the conversation
12 with Roger. And whether it was the phone call or
13 the meeting shortly thereafter, I ...

14 Q. So he told you -- you told us
15 earlier that he told you it had changed from
16 a rescue to a recovery. I take it that he also told
17 you then that HUSAR was not planning to send their
18 workers back in?

19 A. That's correct.

20 Q. So if there was a recovery, it
21 was not going to be done by HUSAR?

22 A. Right, and -- and at that time,
23 HUSAR was -- their workers were like -- they're
24 packing some stuff. Like, it appeared they're like
25 packing up some of their containers and -- it

1 appeared like they, you know, may be leaving.

2 Q. Okay. Then you wrote:

3 "No-one is in the building at
4 this time Roger and I have had
5 numerous meetings on site with
6 the HUSAR staff, especially with
7 James Cranford, their structural
8 engineer, and Tony Comella in
9 regards to the safety of all on
10 site."

11 Now, did you -- did you express any
12 opinions about the safety of the people on the site
13 in your meetings with the HUSAR staff?

14 A. I did not.

15 Q. Okay. Did Mr. Jeffreys?

16 A. I don't believe so.

17 Q. So, why did you write that you
18 and Roger had had numerous meetings with the staff
19 in respect -- in regards to the safety of all on the
20 site?

21 A. This was the message that I was
22 relaying to Gabe and -- Gabriel -- and the numerous
23 meetings, they were impromptu meetings. Roger and
24 Tony were together quite often on the site, and
25 then, you know, we -- I would join them or I would

1 see James. Like it was all fairly impromptu. It
2 wasn't --

3 Q. Right, but the -- this
4 sentence --

5 A. Okay.

6 Q. -- that makes it sound like you
7 and Mr. Jeffreys were meeting with Mr. Comella and
8 Mr. Cranford about the safety of the people on the
9 site. That's what it says?

10 A. Right. And that's the
11 Ministry's mandate, right, as to --

12 Q. But if in those meetings --

13 A. -- the health and safety of all
14 workers.

15 Q. In those meetings, did you
16 express -- did you or Mr. Jeffreys express any
17 opinion about the safety of the workers?

18 A. I did not, and Mr. -- like we
19 weren't always together, so I don't know if
20 Mr. Jeffreys had -- had had a separate meeting,
21 but --

22 Q. I'm just trying to understand.

23 A. I understand that. It's --

24 Q. If you had meetings with the
25 safety, wouldn't you have said something about the

1 safety?

2 A. Again, I was relaying a message.
3 I was handling -- sending this to Gabe and, you
4 know, he's -- he's gone through -- like he's been
5 with the Ministry for years and years. He
6 understands that like the safety of all on site is
7 the Ministry's mandate, and that's -- I just put
8 that in to try and tie it all together. But, you
9 know, we're still concerned about the safety of all
10 on site.

11 Q. So is that what you were doing
12 there? Were you on the site because of your concern
13 for the safety of the workers there?

14 A. I was on site to help the
15 inspector with the investigation of the collapse.

16 Q. So you were not on site to
17 assist with respect to the safety of the workers?

18 A. Being part of the Ministry of
19 Labour, I feel that that's just part of our mandate,
20 that that's a given.

21 Q. But you did nothing to --
22 further that part of the mandate?

23 A. I did not.

24 Q. And did you see Mr. Jeffreys do
25 anything to --

1 A. I didn't see him do anything.

2 Q. Then you wrote:

3 "In respect to the rest of the
4 building, there are numerous
5 signs of rust and fatigue
6 throughout the building (many
7 reports and indications of water
8 damage), hence our determination
9 in shutting down the whole
10 facility until an engineer can
11 determine that it is safe to be
12 in, or determines complete
13 demolition of the structure.
14 Either way, a report from
15 an engineer will be required
16 before we will let them proceed
17 further."

18 Who was the "them" you were writing
19 about in the last sentence?

20 A. As I indicated earlier, that's
21 the owner. The order that did get written was to
22 the owner as all orders get written.

23 Q. The order that was written was
24 written on the 26th of June; right?

25 A. 25th, the late evening of the

1 25th.

2 Q. After the Premier's phone call?

3 A. Sometime after, yes, like it
4 wasn't --

5 Q. After --

6 A. It wasn't completed and vetted
7 until the very early morning, I believe, just past
8 midnight on the 26th.

9 Q. Right, but it was written after
10 Mr. Neadles had announced that he'd spoken to the
11 Premier and that the matter was -- that the
12 operation was underway again?

13 A. When that order started to be
14 written, I don't know the exact timing on that.

15 Q. Okay, but it was certainly
16 completed after?

17 A. It was certainly completed after
18 the Premier had ...

19 Q. Right. So, going back to your
20 letter --

21 A. Uh-hmm.

22 Q. -- you'll agree with me that
23 nowhere in your letter do you make any reference to
24 the owner?

25 A. That's correct.

1 Q. And what you reference to, in
2 terms of workers, is the HUSAR workers. And
3 particularly, in the -- fourth last line in the
4 third paragraph you write:

5 "HUSAR has pulled all of their
6 team out of the collapse area
7 and are not planning to send
8 them back in."

9 And then in the next paragraph you
10 write:

11 "Either way, a report from
12 an engineer will be required
13 before we will let them proceed
14 further."

15 But it's your evidence that the
16 "them" in the fourth paragraph is referring to the
17 owner, not to the HUSAR people?

18 A. That's correct.

19 Q. And did you ever hear any
20 discussion before you wrote this letter, about the
21 Ministry of Labour issuing an order which would
22 prohibit anybody from entering the entire site?

23 A. I did not, no. That never --
24 never came up.

25 Q. And when Mr. Jeffreys spoke to

1 you, did he say anything about whether the order
2 that he said Mr. Jones was going to write was going
3 to apply to everybody, or whether there would be --
4 or whether it was going to apply to everybody except
5 the rescue workers or recovery workers?

6 A. Okay. On that, this -- the last
7 paragraph is in respect to the rest of the building.
8 So, being that this is an internal e-mail to Gabe
9 who has many years of experience with the Ministry,
10 has gone through -- like he -- he was a structural
11 engineer, just as I am. He was the Provincial
12 Engineer. He knows all about policy and procedure.
13 So, being that it is, I'd sent this, and said:

14 "In respect to the rest of the
15 building ..."

16 So from our walk around we saw the
17 numerous signs of rust and fatigue, and there's also
18 the other reports. Other people had said, you know,
19 "We saw a bucket here, a bladder here." Then our
20 determination -- that's the Ministry's
21 determination, the Ministry of Labour's
22 determination -- in shutting down the whole
23 facility, the whole remainder of the facility, in
24 respect to the rest of the building, the whole
25 remainder of the facility, to the tenants that

1 wanted to come in -- like there was reports that
2 tenants wanted to go retrieve their belongings. So
3 we were shutting down the building to those tenants,
4 and we were shutting down the building to the owner
5 because the order gets addressed to the owner. So,
6 Gabe would have understood that.

7 And then I say in the last sentence:

8 "If you have any further
9 questions, please call me."

10 Q. But my question to you, sir,
11 was: When Mr. Jeffreys spoke to you and told you
12 what you needed to know to write this letter, did he
13 say that the order that Mr. Jones was going to issue
14 was going to apply to everybody or that it was going
15 to apply to --

16 A. He --

17 Q. -- everybody except the rescue
18 or recovery workers?

19 A. He didn't indicate. He
20 didn't -- he didn't -- he didn't say. He just said
21 that a requirement order would be issued on the
22 remainder of the building. So...

23 Q. Did he say "on the remainder of
24 the building"?

25 A. Just as I wrote here, "in

1 respect to the rest of the building," he said on the
2 remainder of the buildings from what we had seen.

3 Q. Did he mention anything about
4 whether the order that was going to be written would
5 apply to rescue or recovery workers?

6 A. No.

7 Q. And it was your understanding at
8 the time, as you've told us, that the Ministry of
9 Labour powers existed even in respect of workers
10 undertaking a rescue; right?

11 A. That's correct.

12 Q. So, on your understanding at the
13 time, there would be no reason not to include the
14 rescue workers in the order.

15 A. Can you repeat that? Sorry. I
16 was just ...

17 Q. Well, you told me earlier this
18 morning, that your understanding of the -- both the
19 jurisdiction and the policy of the Ministry was that
20 there was no difference in terms of exercising the
21 powers of an inspector in a rescue or in
22 a non-rescue situation?

23 A. Right.

24 Q. Right. So as far as you knew at
25 the time you wrote this letter, there was no reason

1 to exclude rescue workers?

2 A. It was deemed a recovery at that
3 time. Like, that -- that was announced; and
4 actually, almost the same time that I had sent this
5 letter, Bill Neadles was in the press conference
6 announcing that it had been -- it's no longer
7 a rescue.

8 Q. Did you know that when you sent
9 the letter?

10 A. I didn't know that, but I did
11 know that it was now a recovery. Roger had told me
12 that. That was at 4:00 p.m.

13 Q. And you say that the -- you'd
14 understood that the order was going to be in respect
15 of the rest of the building, but the language you
16 used was that the -- and I quote:

17 "Our determination in shutting
18 down the whole facility..."

19 A. Right, to the tenants.

20 Q. So, it's your evidence when you
21 wrote the words "the whole facility," you meant just
22 the part of it that was not the collapse zone?

23 A. Yes, I would say so.

24 Q. Now, is it possible to get to
25 the collapse zone without going through part of the

1 rest of the facility?

2 A. Sorry?

3 Q. Was it possible to get to the
4 collapse zone without going through part of the rest
5 of the building?

6 A. You could enter through the back
7 or you could enter through the front. Obviously,
8 both were dangerous but ...

9 Q. Okay. So, the area that you
10 thought the order was going to be was for everything
11 in the mall, except for the area from the south
12 entrance to the collapse zone and the north entrance
13 to the collapse zone?

14 A. Right, basically the pathway
15 through that zone.

16 Q. Okay.

17 A. The areas where we had seen the
18 tarps and stuff hanging down.

19 Q. Now, did you go to the CCG
20 meeting at 6:15?

21 A. I did.

22 Q. And who was at that meeting; do
23 you recall?

24 A. I do, but I know there's a list.

25 Q. Okay. So, let me --

1 A. I do recall many of the
2 individuals that were there.

3 Q. Okay. If you turn to tab 5
4 which is Exhibit No. 3743, the page that ends -037.

5 A. Yeah.

6 Q. This is the page that ends --
7 from the CCG meetings, June 25th at 6:15, and
8 there's not a list of attendees there, as there
9 often is.

10 A. Right.

11 Q. Was Mr. Jeffreys at that
12 meeting?

13 A. He was.

14 Q. Okay. So, we --

15 A. There is a list on -- I believe
16 Mr. Jeffreys had it in his notes.

17 Q. Right. So I was just going to
18 take you to that. So if we could turn to --

19 A. Because we had to write our
20 phone numbers down.

21 Q. Tab 62, Exhibit No. 9449, at
22 page -- the page that ends -734 in the bottom right.

23 A. There we are.

24 Q. Now, so is this the list of
25 people --

1 A. That is the list.

2 Q. Okay, and that's your writing
3 beside your name there?

4 A. Yeah.

5 Q. Can you tell us, what can you
6 recall about this meeting?

7 A. It was a meeting what -- where
8 they were trying to figure out where to -- where to
9 proceed next, like, Where do we go from here? What
10 do we do? Who can get in, and, you know, demolish
11 the front of the building in order to, you know, get
12 access to the pile?

13 Q. What was the -- what was the --
14 was there a consensus as to who could do that?

15 A. There wasn't. It was a --
16 everybody went around the room, and nobody seemed to
17 have the authority, other than the owner who wasn't
18 present, to actually demolish his building.

19 Q. Okay. Did you see Staff
20 Inspector Neadles that night?

21 A. I did.

22 Q. What time --

23 A. Later on.

24 Q. What time was that?

25 A. It was right at 9:00 p.m.

1 Q. Did he speak to you?

2 A. Just very briefly.

3 Q. What did he --

4 A. He just --

5 Q. What did he say?

6 A. All he said is, "You're from
7 Ministry of Labour? I nodded, and he said, "Come
8 with me." And we went into the command tent.

9 Q. Did he say anything about what
10 had occurred during the conversation with the
11 Premier?

12 A. All he had said is that --
13 I believe his words were, "It's back on. Premier's
14 order."

15 Q. Okay.

16 A. And I had -- at that time, I had
17 quickly typed an e-mail to Roger, who was in the --
18 a following meeting. I think it was another CCG
19 meeting at 8:30 I'll say, who was in that meeting
20 and he didn't -- and all I said was, "Premier's
21 order. Call me immediately." And I never did get
22 a phone call.

23 Q. And, sir, did you ever advise
24 that the rescue should be shut down?

25 A. No.

1 Q. Those are my questions, sir.

2 Thank you.

3 A. Thank you.

4 THE COMMISSIONER: Thank you.

5 Ms. Mackay.

6 MS. MacKAY:

7 EXAMINATION IN-CHIEF BY MS. MacKAY:

8 Q. Mr. Sanders, are you aware if it
9 was ever the intention of anyone else from MOL to
10 shut down the rescue operations?

11 A. No, I'm not aware.

12 Q. And did you issue such an order
13 at any time?

14 A. I've never issued an order.

15 Q. Never?

16 A. Never.

17 Q. And are orders, to your
18 knowledge, normally directed at an owner or
19 an employer?

20 A. Sorry?

21 Q. Are orders normally directed at
22 an owner or an employer?

23 A. Yeah, or a constructor.

24 Q. Or a constructor. And that
25 would happen in the normal course?

1 A. Yes.

2 Q. Thank you. Those are my
3 questions.

4 THE COMMISSIONER: Cross? Nobody is
5 saying anything.

6 MR. DOODY: No questions in
7 re-examination. I assume my friends, the same. So,
8 that appears to conclude this witness.

9 THE COMMISSIONER: Thank you very
10 much, Mr. Sanders.

11 MR. DOODY: Ms. Bray is in the
12 courtroom. We could call her as the next witness.

13 THE COMMISSIONER: Thank you.
14 Good morning, ma'am.

15 THE WITNESS: Good morning.

16 THE REGISTRAR: Could you please
17 state your name and spell it for the record.

18 THE WITNESS: Natalie Bray,
19 N-A-T-A-L-I-E, B-R-A-Y.

20 THE REGISTRAR: Thank you. And would
21 you prefer to swear on a religious document, or
22 would you like to affirm?

23 THE WITNESS: I'll swear on a
24 religious document.

25 THE REGISTRAR: Do you have the

1 Bible, the Old Testament?

2 NATALIE BRAY: SWORN

3 EXAMINATION IN-CHIEF BY MR. DOODY

4 Q. Ms. Bray, I understand that you
5 are the administrative assistant to the Mayor and to
6 Mr. DeBortoli, the Chief Administrative Officer of
7 the City?

8 A. Yes.

9 Q. And you were in attendance at
10 the Community Control Group meetings in the days
11 following the mall collapse and -- and took notes at
12 those meetings?

13 A. Right.

14 Q. And if you could turn to tab 5
15 of the thicker of the two briefs in front of you,
16 it's Exhibit No. 3743, and turn to the page that
17 ends -33 on the bottom right-hand corner. Do you
18 have that?

19 A. Yes.

20 Q. And these notes indicate that
21 they are of the meeting at 3:00 p.m. on the 25th of
22 June, and I take it this is your handwriting?

23 A. Yes, it is.

24 Q. And it records the individuals
25 who were present at that meeting; right?

1 A. Yes.

2 Q. Now, under the heading -- well,
3 you've got various headings here, one is for Rob,
4 one is for Bill Neadles, and then on the next page,
5 MOL and OPP.

6 What did -- what did you mean to
7 convoy by the headings?

8 A. Well, our meetings were
9 conducted in a manner where it would be called to
10 order, and then everyone would take a turn providing
11 updates. So I would put the title of the person
12 giving the update, and then everything under that
13 was what came from that person.

14 Q. Okay. Now, under the name Bill
15 Neadles, you've written:

16 "Decision, tough one, based on
17 advice by engineer, MOL, remove
18 HUSAR team from structure as it
19 has been deemed unsafe.

20 "Stress on stairwell and
21 escalator beams excess of
22 100 per cent of strength,
23 capacity."

24 The next page:

25 "Could fall any time -

1 decision had to be made for
2 safety of workers. 3:05,
3 official designation,
4 reclassified from rescue to
5 recovery. Turned back to
6 (Elliot Lake Fire Department)
7 jurisdiction."

8 Do you recall anything else other
9 what's written there, what Mr. Neadles said?

10 A. No, that pretty much summed up
11 what he said.

12 Q. And did he indicate whether the
13 decision -- which as he says -- or you've written at
14 the top of the page, had to be made for the safety
15 of the workers, did he indicate whose decision it
16 was?

17 A. No.

18 Q. And then under the heading
19 "M.O.L." you've recorded a number of things there.
20 Who was speaking?

21 A. Roger Jeffreys spoke first and
22 kind of confirmed what Mr. Neadles had said about
23 the building moving, and they weren't sure why it
24 was moving. Later on, Don Jones also spoke.

25 Q. Can you tell us which -- which

1 portion of the notes indicate -- show what Mr. Jones
2 said and which portion show what Mr. Jeffreys said?

3 A. Yeah. Everything up to when it
4 goes "it will go catastrophically," I recall that
5 coming from Mr. Jeffreys. And Mr. Jones spoke to
6 an MOL stop order.

7 Q. And the words you've written
8 down say:

9 "MOL stop order so no-one can
10 enter."

11 Do you recall what, if anything, he
12 said more than that?

13 A. Not word-for-word, just that
14 that -- what was going to be happening and that
15 no-one would be allowed on the property.

16 Q. Did he -- did he say anything
17 about whether the order he was going to write would
18 apply to the recovery workers?

19 A. No.

20 Q. What was your understanding of
21 what that order would apply to? Did you know
22 whether it would apply to the recovery workers?

23 A. No. I was under the impression
24 that absolutely nobody would be allowed back on the
25 site, and I think everybody in the room was under

1 that impression as well.

2 Q. And was there any discussion
3 about that at all?

4 A. Like, I know -- like a little
5 bit later on in that same page, there were questions
6 about whether they could go through again and could
7 we put the dogs in, and that was a "no" because they
8 needed men in there with the dogs and that no-one
9 could be on top of the roof to support the bucket
10 going back down. So those were all not options.

11 Q. Okay, and did you think that the
12 inability to put men back in with the dogs was --
13 was because of the order that was going to be issued
14 or for some other reason?

15 A. No, that was my understanding.

16 Q. And did you have any -- was it
17 your understanding -- back up.

18 From what you heard at the meeting,
19 what did you think was the reason the order, the MOL
20 order, that was being discussed, was going to be
21 issued? Was it the -- because of the unsafe
22 conditions or was it because the rescue was being
23 terminated?

24 A. No, I understood that because
25 the building was so unsafe and there was continuous

1 movement, that it could go anytime, so that's why
2 the order was being issued that no-one could be in
3 there anymore.

4 Q. I'm going to turn to another
5 meeting later that day at 8:30 p.m. So if you turn
6 to the page that ends -040, bottom right corner. It
7 is actually page 41 of your notebook.

8 This is notes of a meeting at
9 8:30 p.m., and there's a list of attendees and I see
10 Mr. Jeffreys is listed there, as are you. What was
11 your practice in terms of listing the attendees?
12 Did you list them all at once, or if people arrived
13 later did you add their names?

14 A. This one is actually not my
15 writing. I had -- went home after the previous
16 meeting, because we weren't going to meet again
17 until the morning.

18 Q. Okay.

19 A. Then I had got a call that
20 a meeting had been called and to come back. So
21 Trudy Rheume had started this list, and that's why
22 I think my name is at the bottom because I came in
23 last and she had started taking the minutes actually
24 at the beginning of this meeting, and then I took
25 over.

1 Q. Okay. Can you show us where --
2 in the next pages where you took over?

3 A. It's almost immediately.
4 There's two sentences written by Trudy, and then
5 I -- then I stepped in.

6 Q. Okay. So, the -- what can you
7 tell us, from the notes and from your recollection?
8 What was the purpose of this meeting?

9 A. Well, when we left the last
10 meeting it was -- that it was done, there was
11 nothing further that could be done. This meeting
12 was that now there might be something else we could
13 do.

14 Q. About what?

15 A. To get back in there to proceed
16 with the rescue.

17 Q. The rescue or the recovery?

18 A. I'm not sure about the wording.
19 I know that was tossed around a lot, whether it was
20 a rescue or recovery at this point.

21 Q. And this was before Mr. Neadles
22 returned from the phone call with the Premier;
23 right?

24 A. Yeah. I think he comes in later
25 in this meeting.

1 Q. And at the top of the
2 page that's numbered 42 in your notebook it says:

3 "Trying to expedite authority
4 to demolish to recover bodies."

5 A. Oh, right. Yes. Sorry. Okay.
6 So, we were trying to get a way to do just that.

7 Q. To get the bodies?

8 A. Yes.

9 Q. And it's -- and was there
10 a discussion about how that was going to be done and
11 who had that authority to do it?

12 A. Yeah. I think we were trying to
13 get through to Mr. Fabris, who was the solicitor for
14 the owner of the mall.

15 Q. Okay. Which reminds me --

16 MR. DOODY: I wonder if I could have
17 Exhibit No. 9911.

18 BY MR. DOODY:

19 Q. I'll show you a copy of it. I'm
20 not sure which is easier. This is a handwritten
21 note dated June 25th, and at the top of the page it
22 says:

23 "Roger Jeffreys, Provincial
24 Engineer, R. Fabris/P.
25 Officer/B. Ewald/N. Bray."

1 And then the next line says:
2 "For the province -- and it
3 says:
4 "Advised René need owner's
5 support. René said full
6 authority to proceed in any way
7 we need. Safely - MOL still
8 involved."
9 Is this your writing?
10 A. Yes.
11 Q. And then on the bottom of the
12 page it says:
13 "June 25/12."
14 Is that 9:20 p.m.?
15 A. 9:20 p.m.
16 Q. (Reading:)
17 "I, Antoine-René Fabris,
18 solicitor for Eastwood Mall
19 Inc., have full authority from
20 the owner, Robert Nazarian, to
21 allow emergency services to
22 perform what work demolition
23 necessary to continue the rescue
24 or recovery process."
25 And then it's signed by you and Mr.

1 Fabris; is that right?

2 A. Yes.

3 Q. Can you tell us what this
4 document is about?

5 A. We were obtaining permission to
6 move forward into the building, I think, to try and
7 expedite getting in there, not having to wait.
8 I think there was talk about having to wait a week
9 for an order, and for the owner to get an engineer
10 on site or something along those lines; and this was
11 just giving us kind of a faster way to get that
12 done.

13 Q. Now, if you go back to your
14 notebook, which is Exhibit No. 3743, and to the
15 page that we were looking at, which was page 41, and
16 that's the beginning of the notes about -- the
17 page that ends -041, page 42 of your notebook, the
18 page that is at the beginning of the 8:30 CCG
19 meeting, and that records discussion about getting
20 the bodies. And then if you turn over to page -04
21 -- that ends -043 at the bottom, page 44 of your
22 notebook, about halfway down the page, it says:

23 "Bill Neadles arrived. Dan
24 Hefkey, Premier Dalton McGuinty
25 plan to go in. Will send

1 whatever we need."

2 Do you recall Mr. Neadles arriving?

3 A. Yes.

4 Q. And do you recall what he said?

5 A. I think that he had been on the
6 phone with Dan Hefkey or the Premier -- I don't
7 remember which one -- but that we did have the
8 support to go forward, to move ahead.

9 Q. And before Mr. Neadles arrived,
10 was there any discussion about the TF-3 team, the
11 HUSAR team going back into the site?

12 A. Not that I'm -- I can remember,
13 and I don't -- I think only Bill Neadles would speak
14 to what the HUSAR team was doing, and he wasn't
15 there at that time.

16 Q. All right. Now, the note that
17 you witnessed, signed by Mr. Fabris, which is
18 Exhibit No. 9911, the handwritten note, was this
19 before or after Mr. Neadles arrived at the 8:30 CCG
20 meeting? The time indicates it was 9:20.

21 A. It would have been after;
22 because I completed that meeting with the CCG, and
23 then we found Mr. Fabris and went into the Council
24 Chambers and signed that note.

25 Q. Okay, and then if you go to the

1 next page in your notebook, the page that ends -044,
2 page 45 of your notebook, you've written:

3 "Efforts to continue - resume
4 operation is back on."

5 What does that mean?

6 A. Well, it had been called off as
7 far as we were concerned, and now we were moving
8 ahead.

9 Q. Okay. Thank you. Those are my
10 questions.

11 THE COMMISSIONER: Just going back to
12 the notes, Ms. Bray, that you made in relation to
13 the earlier of the two meetings. Could we flip
14 back?

15 MR. DOODY: That would be page -- the
16 notes start on the page that ends -033 in the lower
17 right-hand corner.

18 THE COMMISSIONER: Go to MOL, for
19 example.

20 MR. DOODY: The next page.

21 THE COMMISSIONER: Yes. Now, I take
22 it you didn't have a tape backup or anything of --
23 mechanical or digital to record what was being said?

24 THE WITNESS: No.

25 THE COMMISSIONER: And there's about

1 11 lines there, four, five words per line. How long
2 did both the speakers take to say what they had to
3 say? Mr. Jones and the engineer, Mr. Jeffreys.

4 MR. DOODY: Mr. Jeffreys.

5 THE COMMISSIONER: How long would you
6 say that they were speaking?

7 THE WITNESS: I wouldn't say very
8 long. This was one of our quickest meetings.
9 I believe it was only half an hour in length and
10 there were five people giving updates.

11 THE COMMISSIONER: And your summary,
12 how accurately does it capture, in your view,
13 everything that was said by MOL? Does it just -- is
14 it just the highlights or does it attempt something
15 more precise than just hitting the high points?

16 THE WITNESS: No, I was writing
17 whatever was said. I was writing down. And I know
18 that from reviewing other notes, like my notes are
19 pretty consistent with other people who were in the
20 room.

21 THE COMMISSIONER: As I noted, when
22 Mr. Doody was speaking, that it took him about 30
23 seconds to read what's on there.

24 Were the -- did the speakers take
25 longer than 30 seconds to say what they had to say?

1 THE WITNESS: I would say longer than
2 30 seconds, yes.

3 THE COMMISSIONER: All right, and --
4 and so I take it you don't purport to tell me that
5 this is a word-for-word account of what was said?

6 THE WITNESS: No, I wouldn't say
7 that.

8 THE COMMISSIONER: All right. And
9 can you give me an estimate of how long Mr. Jeffreys
10 would have spoken?

11 THE WITNESS: No, I'm sorry.

12 THE COMMISSIONER: Or Mr. Jones?

13 THE WITNESS: I know Mr. Jones --

14 THE COMMISSIONER: Just the one line?

15 THE WITNESS: -- didn't speak as much
16 as Mr. Jeffreys. Mr. Jeffreys spoke much more with
17 respect to the building and the state of the
18 building and the structure.

19 THE COMMISSIONER: And were there
20 interventions from others in the room, for example,
21 while he was speaking?

22 THE WITNESS: No. The way the
23 meetings went, each person gave their update.

24 THE COMMISSIONER: And so they --
25 those updates were given without any questions or

1 interruptions or comments; is that your evidence?

2 THE WITNESS: Yeah. If -- if
3 questions were asked, I would -- like whatever was
4 said, I was writing down. I was trying to write
5 down -- as quickly as it was being said, I was
6 trying to write it down.

7 THE COMMISSIONER: All right. Thank
8 you. Anything arise out of that?

9 MR. DOODY: No, Mr. Commissioner.

10 THE COMMISSIONER: Thank you.

11 Mr. Cassan.

12 EXAMINATION IN-CHIEF BY MS. CASSAN

13 Q. If we could just stay on this
14 page. Was this a question-and-answer period?

15 A. No. The meetings were conducted
16 more as updates.

17 Q. And can you look at this
18 page and show us if there were any examples of
19 questions that may have been asked?

20 A. Yeah. I would say when
21 Inspector Jollymore was inquiring about a second
22 sweep and, you know, could the bucket be used, could
23 the dogs go in? That was a question, and the
24 answer -- I don't write who wrote it, but it is
25 right there.

1 "Could no longer go in because
2 could not have support teams on
3 top. No longer able to send
4 dogs in because could not send
5 crew with them." [As read.]

6 Q. Okay.

7 MR. CASSAN: I wonder, Ms. Kuka, if
8 we could turn to page 38.

9 BY MR. CASSAN:

10 Q. Sorry, before we leave that
11 page, Mr. Jones makes the statement:

12 "MOL stop order so no one can
13 enter."

14 Did anyone else from the MOL object
15 to that statement?

16 A. No.

17 Q. If we turn to page 38?

18 MS. KUKA: 38 of the notes or --

19 MR. CASSAN: No, -38 of your document
20 this time. Sorry, maybe we could go back.

21 BY MR. CASSAN:

22 Q. At the bottom of this page --
23 sorry -- I was having a hard time finding it -- it
24 says:

25 "Inspector to mediate the

1 difference between Coroner & the
2 MOL."

3 What does that mean?

4 A. I don't remember much detail
5 given; but, again, it was a statement made that was
6 an update from -- from the inspector.

7 Q. And I suppose this is
8 a different meeting than the three o'clock meeting;
9 right?

10 A. This is -- looks like the
11 6:15 meeting.

12 Q. If we could turn to page 40.
13 I believe this is the same meeting, and I'm just
14 wondering if you can tell us about the entry under
15 Fire Marshal where it says:

16 "MOL closing property."

17 Who was speaking there and what was
18 being discussed?

19 A. That would have been Mr. Thorpe.
20 Oh, and so that was -- there was questioning whether
21 or not Mine Rescue could go in and there -- they're
22 saying, well, if MOL is closing the property, if
23 HUSAR is not allowed, then nobody would be allowed.

24 Q. And did anybody from the MOL
25 object to that statement?

1 A. No.

2 Q. And then if we could go to
3 page 41, this is the 8:30 meeting. Was Mr. Jeffreys
4 late for this meeting?

5 A. No. I was the last one in that
6 meeting. I was -- I was late to that meeting.

7 Q. And if we could turn the page,
8 please, Ms. Kuka, what does it mean when you write:

9 "Ministry of Labour will do
10 what they can. Will write the
11 order to aid us."?

12 Sorry, that's in the top quarter of
13 the page under "private building mall."

14 A. I'm not sure. I just sat down
15 to my chair at that point. I don't really remember
16 what that was ...

17 Q. If we can turn to page 44,
18 please, Ms. Kuka. I understand this has Mr. Ewald
19 giving a report at the beginning, and is the second
20 paragraph:

21 "Prevented (sic) by the MOL"?

22 A. Sorry, is it what?

23 Q. Was that presented by the MOL?
24 Who's making the statement?

25 A. Yes, that would be -- the MOL

1 was saying that. I don't recall exactly who at that
2 point.

3 Q. And they says:

4 "Says we can [hyphen] City
5 takes the responsibility for
6 bringing it down safely."

7 What does that refer to, do you know?

8 A. I think in reference to what
9 Bruce was saying:

10 "An emergency order to
11 demolish, to ensure safety."

12 Q. Okay. So it doesn't have
13 anything to do with whether or not people can go
14 into the -- the building?

15 A. Not that I --

16 Q. Okay.

17 A. -- remember.

18 Q. Okay. I understand in your
19 capacity as Duty Officer for the CCG that you made
20 some arrangements for food for both the rescuers and
21 the Collins Hall, and I'm wondering if you could
22 tell the Commission about that, please.

23 A. Yeah. Myself and Darla
24 Hennessey -- she's responsible for Social
25 Services -- we had the Collins Hall opened by five

1 o'clock for -- as a missing persons, like
2 an information centre, and there were a lot of
3 people gathering there. And Councillor Finnamore
4 went down to the Collins Hall to see what the need
5 was there. And by 6:00 p.m. there were trays of
6 food delivered. We had arranged through St.
7 Joseph's Hospital to have food and beverages and
8 that delivered that night.

9 Going forward throughout the rest of
10 the emergency, there were hot meals delivered to the
11 Collins Hall for breakfast, lunch and dinner based
12 on the number of people and the need at the time.
13 They would make phone calls to Jocelyn LeBreche
14 {phonetic}, she's also a member of our group, and
15 she was there throughout the entire emergency.

16 Darla and I were making the
17 arrangements for feeding all of the rescue workers.
18 Their main meal would be dinner at the church across
19 from City Hall, and we would deliver their day lunch
20 at noon for the day shift and their midnight lunch
21 at night for the night shift.

22 MR. CASSAN: Okay. I'm wondering,
23 Mr. Commissioner, if we could look at the other
24 large photograph.

25 THE COMMISSIONER: Exhibit No. 2115?

1 BY MR. CASSAN:

2 Q. Ms. Bray, there is a laser
3 pointer on the desk in front of you, I believe, and
4 I'm wondering -- one of the HUSAR witnesses a few
5 days ago indicated that there were civilians in the
6 collapse zone.

7 And I'm wondering if you can comment
8 about that and show us on that photo where you may
9 have gone.

10 A. Yeah. So, myself and Darla were
11 delivering coffee, water, ice, meals, to the rescue
12 workers. And we would arrive in the City vehicle,
13 clearly marked "City of Elliot Lake," and we had our
14 CCG badges on, which we had to show to the OPP to
15 even get on the site.

16 I -- there was tables and a tent in
17 this upper parking area, and I'd say some coolers
18 over here in this area where they had water and
19 drinks.

20 Q. And so to try and describe that,
21 the area of the upper parking area is where we see
22 a car parked to the north of the large evergreen
23 tree, and then straight to the west of that would be
24 where you suggested you were providing drinks?

25 A. Yes.

1 Q. And did either of you ever go
2 into the actual collapse zone or the debris pile?

3 A. Never.

4 Q. Were you doing that out of the
5 goodness of your heart, or was that part of
6 an official capacity?

7 A. Darla's role in the CCG as
8 Social Services is to ensure that fire and rescue
9 people are fed, and so I was assisting her doing
10 that, delivering those meals.

11 Q. We heard about items coming from
12 No Frills and Canadian Tire; do you know anything
13 about those?

14 A. Yes. We had -- Joss (phon.)
15 LaBreche had been contacted by Canadian Tire and
16 saying, If there's anything you do need let us know.
17 And so when we assessed the needs at the Collins
18 Hall, we had made those arrangements to have certain
19 items dropped off.

20 Q. And what about No Frills?

21 A. No Frills, there was water,
22 I believe, and those were all coordinated through
23 the CCG.

24 Q. And who paid for all that stuff?

25 A. What -- the City at the time.

1 Q. How long have you been involved
2 in the Emergency Response Plan?

3 A. Since I commenced my employment
4 with the City in 2007.

5 Q. And on this instance, how did
6 you feel that everybody performed with respect to
7 their CCG roles?

8 A. I think that they did
9 an excellent job, and I was very proud to be part of
10 that team. We -- everyone did the absolute best
11 they could.

12 MR. CASSAN: Those are my questions
13 in-chief, Mr. Commissioner.

14 THE COMMISSIONER: Thank you.

15 Other questions of cross? All
16 indicating "no." Ms. MacKay -- Mackay
17 (pronunciation) sorry.

18 MS. MacKAY: That's fine.

19 CROSS-EXAMINATION BY MS. MacKAY:

20 Q. Ms. Bray, I am counsel with the
21 Government of Ontario, including the Ministry of
22 Labour.

23 I'd just like to take you back to
24 that 3:00 p.m. CCG meeting. What was the mood like
25 at that meeting?

1 A. That was a very tense meeting.
2 It was very somber, and the room was very -- you
3 could hear a pin drop. It was very quiet in there.

4 Q. Fair to say it was very
5 emotional?

6 A. Yes.

7 Q. And it was very quick as well?

8 A. It was one of our shorter
9 meetings. It was only half an hour.

10 Q. And what's your purpose in
11 taking minutes of the CCG meetings?

12 A. As duty officer, I'm to keep the
13 Main Event Log of the emergency.

14 Q. So, it's -- a log of the main
15 things that are happening with respect to the
16 emergency response?

17 A. Correct.

18 Q. Right. I think, as you told us
19 earlier, it's not intended to be a verbatim
20 transcription of what was said?

21 A. No, I wouldn't say that.

22 Q. It's what you're capturing to
23 the best of your ability, and I imagine under fairly
24 stressful conditions?

25 A. Yes.

1 Q. Yes. And it's not your
2 evidence, is it, that no-one ever asked questions at
3 those meetings?

4 A. No. I'm not saying that.

5 Q. And do you have any sort of
6 training in note-taking or keeping minutes?

7 A. Yeah, I'm secretary to several
8 committees for the -- in my capacity as Assistant to
9 the CAO.

10 Q. And you've received formal
11 training in taking the minutes or just training on
12 the job?

13 A. I would say on the job.

14 Q. Thank you. Now, you told us
15 that it was your impression that the order that was
16 going to be happening with MOL was going to prevent
17 everybody from entering the site?

18 A. Yes.

19 Q. And that was the impression of
20 everybody in the room?

21 A. I would say the majority of the
22 people in that room felt that way.

23 Q. Yeah. And how -- did you ask
24 them how they felt or what their interpretation was?

25 A. No, but since this event, from

1 reading through notes, that everybody had that
2 opinion.

3 Q. But that's your impression, not
4 having asked them specifically at the time what
5 their impression was?

6 A. Correct.

7 Q. Okay. And do you have any
8 knowledge of how MOL, Ministry of Labour, orders
9 work?

10 A. None.

11 Q. And no experience with the
12 Occupational Health and Safety Act?

13 A. No.

14 Q. Now, to take you to the later
15 meeting where you indicated that you were late?

16 A. 8:30?

17 Q. Yes.

18 A. Uh-hmm.

19 Q. And you told us that Roger
20 Jeffreys wasn't late, you were late. You were the
21 last to arrive; is that correct?

22 A. Yes, uh-hmm.

23 Q. You have to say "yes" for the
24 record. Sorry, Ms. Bray.

25 A. Sorry.

1 Q. So if you were the last to
2 arrive, you don't know when Mr. Jeffreys arrived;
3 you only know that he arrived before you?

4 A. That would be a fair statement,
5 yes.

6 MS. MacKAY: Those are all my
7 questions, Your Honour. Thank you.

8 THE COMMISSIONER: Mr. Doody?

9 MR. DOODY: I just have one question.

10 MR. CASSAN: Mr. Commissioner,
11 I wonder if I may?

12 MR. DOODY: I'm sorry.

13 THE COMMISSIONER: I should have
14 asked you first, Mr. Cassan. I'm sorry.
15 I overlooked you.

16 MR. CASSAN: Thank you.

17 RE-EXAMINATION BY MR. CASSAN:

18 Q. Ms. Bray, you told Mr. Doody
19 with respect to the stop order statement at the
20 three o'clock meeting that it was written -- or said
21 by Don Jones; how do you know that?

22 A. He was sitting directly across
23 from me and ...

24 Q. And how do you know Mr. Jones?

25 A. Well, that would have been the

1 first meeting I'd seen him. I know that -- I knew
2 he was a -- a gentleman by the name of Don who had
3 said it. I was unsure of the last name at first
4 because we had met two Dons from the MOL during this
5 event.

6 Q. And which two -- who are those
7 individuals?

8 A. Don Jones and Don Jewett,
9 I believe --

10 Q. Okay.

11 A. -- is the other person's name.

12 And when I reviewed my notes, Don
13 Jones was the one at this meeting.

14 Q. Okay. If it was not the
15 intention of the Ministry of Labour to order the
16 rescuers out and if that was not perception of the
17 command, would you have expected anything different
18 to happen than what did? Do you understand my
19 question?

20 A. Yes. And this is why I said
21 that I believe everybody was under the impression
22 because I don't think we would have went to a press
23 conference to announce to the community that we were
24 stopping the rescue.

25 I think we would have just continued.

1 Q. And with respect to that order,
2 was there any discussion about it being verbal first
3 and documented -- or to be documented later?

4 A. I don't remember the wording
5 around that. I remember that it was pretty much
6 a verbal, that Mr. Neadles was given a verbal that
7 there was a stop order --

8 Q. Okay.

9 A. -- and that they were just
10 awaiting the official paperwork.

11 Q. And then the last questions that
12 Ms. MacKay was asking you about were with respect to
13 the 8:30 meeting. Do you know what time you arrived
14 at?

15 A. I would say fairly quickly after
16 the meeting, because Trudy only had a chance to
17 write down two sentences. I don't know the exact
18 time I arrived, though.

19 Q. Okay. Thank you very much, Ms.
20 Bray.

21 THE COMMISSIONER: Mr. Doody.

22 MR. DOODY: I just have one question,
23 Mr. Commissioner.

24 RE-EXAMINATION BY MR. DOODY:

25 Q. If I could have you turn in your

1 notes, Exhibit No. 3703, to the page that ends in
2 -039.

3 And Mr. Cassan read you this note
4 under the heading "Fire Marshal" after there was
5 a question about -- or the note reads -- I'll read
6 it:

7 "Mine Rescue? [question mark]
8 Contact Mine Rescue bracket
9 [faint hope issues] end bracket.
10 Mandate? [question mark] Legal
11 authority? [question mark] MOL
12 closing property. If HUSAR is
13 not allowed, unlikely that Mine
14 Rescue. Answer will be in the
15 morning."

16 Mr. Cassan asked whether anybody from
17 the MOL had said anything or raised any objection or
18 asked a question about that, after that was said at
19 the meeting, and my question to you is: Can you --
20 was there anybody from the MOL at that meeting? It
21 looks like this was the meeting that started at
22 6:15. And if you go back to page 38 of your
23 notebook, the page that ends -037, in the exhibit
24 there's no list of the attendees --

25 A. Uh-hmm.

1 Q. -- as there was with other
2 meetings.

3 A. I'm not sure.

4 Q. Do you recall?

5 A. I know they were at more than
6 one meeting. I just -- I can't say for sure if they
7 were at that meeting.

8 Q. Okay. Thank you.

9 THE COMMISSIONER: Thank you very
10 much, Ms. Bray, for your evidence this morning.

11 And I take it, Mr. Doody, that that's
12 all of the evidence that you propose to present this
13 Friday?

14 MR. DOODY: That's correct,
15 Mr. Commissioner.

16 Nine o'clock on Monday morning,
17 Mr. Carr-Harris will be calling the evidence of --
18 I'm not sure whether it's --

19 THE COMMISSIONER: Mr. DeBortoli?

20 MR. DOODY: -- Mr. DeBortoli and then
21 and the Mayor, Mayor Hamilton.

22 THE COMMISSIONER: Thank you. Then
23 we'll rise until Monday the 7th of October at nine
24 o'clock. Have a good weekend everyone.

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--- At 11:51 a.m. the Inquiry proceedings adjourned
to 9:00 a.m. on Monday, October 7, 2013 ---

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REPORTER'S CERTIFICATE

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

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

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

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

Dated this 8th day of October.
2013.

NEESON & ASSOCIATES
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CERTIFIED REAL-TIME COURT REPORTER.

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