

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Friday, May 6, 2022 at 9:32 a.m.

VOLUME 9

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940-100 Queen Street
Ottawa, Ontario K1P 1J9
(613) 564-2727
900-333 Bay Street
Toronto, Ontario M5H 2R2
(416) 861-8720

APPEARANCES:

Robert A. Centa	For Red Hill Valley
Emily C. Lawrence	Parkway
Shawna Leclair	

Eli Lederman	For City of Hamilton
Delna Contractor	
Jenene Roberts	
Laura Macintyre	
Christina Shiels-Singh	
Sahar Talebi	
Samantha Hale	
Vinayak Mishra	

Heather McIvor	For Province of Ontario
Colin Bourrier	

Rachel Laurion	For Dufferin Construction
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Jennifer Roberts	For Golder Associates
Fabiola Bassong	Inc.

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1 Arbitration Place Virtual

2 --- Upon resuming on Friday, May 6, 2022

3 at 9:32 a.m.

4 MR. CENTA: Good morning,
5 Commissioner. My name is Robert Centa. I will be
6 leading the evidence today and I'm pleased to
7 present Mr. Chris Murray. Has Mr. Murray already
8 been sworn?

9 CHRIS MURRAY; AFFIRMED

10 EXAMINATION BY MR. CENTA:

11 Q. Thank you very much,
12 Mr. Murray. As I said, my name is Robert Centa.
13 I'll be asking you some questions today on behalf
14 of the Red Hill Valley Parkway Inquiry. After
15 that, counsel for the participants, including
16 counsel for the City of Hamilton, may also have
17 some questions for you. Hopefully the technology
18 works, but if at any point you can't hear me or
19 can't see me, please signal and let us know and
20 we'll try and fix that for you right away.

21 In addition, I have a number
22 of monitors in front of me and my eyes may be
23 darting around as I'm trying to find the next
24 document, so please understand that I'm not not
25 looking at you. I'm just trying to figure out

1 where we're going next.

2 A. Not a problem.

3 Q. Okay. You can hear me

4 okay?

5 A. Perfectly.

6 Q. Great. Mr. Murray, since

7 2018 I understand that you have been the city

8 manager for the City of Toronto?

9 A. That's correct.

10 Q. And before that you

11 worked at the City of Hamilton?

12 A. Yes.

13 Q. Okay. I'm going to ask

14 you some questions about the positions that you

15 held at the City of Hamilton. I understand you

16 worked there from 1995 to around 2018?

17 A. Correct.

18 Q. From 1995 to 2002, you

19 were an environmental planner in the special

20 projects office?

21 A. That's correct.

22 Q. From July 2002 to

23 June 15, 2007, you were the acting director of the

24 Red Hill Valley project?

25 A. Yes, acting project

1 director. Correct.

2 Q. And then you left that
3 position and you became the director of housing at
4 City of Hamilton and you held that position until
5 January 1, 2009?

6 A. Correct.

7 Q. And from 2009 to
8 August 13, 2018, you were the city manager for the
9 City of Hamilton?

10 A. That's correct.

11 Q. Okay. I'm going to ask
12 you some questions about your time as the acting
13 director of the Red Hill Valley project, which
14 spanned, as we just mentioned, from 2002 to
15 June 15 of 2007.

16 And I note in the documents
17 you are frequently referred to as the acting
18 director of the Red Hill Valley project. Why
19 acting?

20 A. It's a great question.
21 There was, I don't think, a decision made by upper
22 management to change the title, nor did it concern
23 me.

24 Q. Okay. Did it matter in
25 any way for your day-to-day functioning in the

1 role?

2 A. Mr. Centa, no.

3 Q. As acting director of the
4 Red Hill Valley project, you reported to Peter
5 Crockett, the general manager of transportation,
6 operations and environment?

7 A. Initially, yes, and then
8 later to Scott Stewart.

9 Q. Okay. Registrar, if you
10 could, please, call up HAM58525. And, Mr. Murray,
11 we see here an org chart as of November 2002, and
12 at that time it shows that you were one of the
13 direct reports to Peter Crockett, who was then the
14 general manager. And that accords with what you
15 just told me?

16 A. That's correct.

17 Q. If I could ask that that
18 document, HAM58525, be marked as the next exhibit.
19 Mr. Murray --

20 JUSTICE WILTON-SIEGEL: Let's
21 just make sure we've got the registrar on board
22 and he can tell us all what the number is so we
23 don't get lost in this.

24 THE REGISTRAR: Noted,
25 counsel. It should be Exhibit 34.

1 JUSTICE WILTON-SIEGEL: Thank
2 you.

3 EXHIBIT NO. 34:
4 Organizational chart
5 dated November 2002,
6 HAM58525.

7 BY MR. CENTA:

8 Q. Mr. Murray, the Red Hill
9 project had a long history that predated your
10 involvement as acting director of the project?

11 A. That's correct.

12 Q. Did you have any
13 involvement with the design or the construction of
14 the Lincoln Alexander Parkway?

15 A. No.

16 Q. If I could ask Registrar
17 to call up HAM31690. Mr. Murray, this is a
18 project update that you provided to the mayor and
19 members of the council in September of 2002, I
20 guess. Actually, I'm not sure what the date --
21 this would have been a 2002 project update?

22 A. So, Mr. Centa, yes, it's
23 definitely 2002, but whether it was September or
24 February, I'm not entirely sure.

25 Q. That's fine. Is this a

1 document that you prepared for the members of
2 council?

3 A. That's correct.

4 Q. Registrar, could we go to
5 image 5 of this document. On image 5, we see a
6 fairly lengthy history of the Red Hill Valley
7 project that indicates in the first bullet that
8 the planning goes all the way back to the 1950s.
9 And is that an accurate description, at broad
10 strokes, of the history of the project?

11 A. That's correct.

12 Q. Now, as project director,
13 you had a number of people working with you.
14 Registrar, if I could ask you to please pull up
15 HAM58527. And if we could just zoom, thank you.
16 This is an organizational chart dated February 19,
17 2004 and it shows that you had a number of people
18 reporting to you, including on the far left side,
19 Gary Moore, the manager of design and reporting to
20 him, Marco Oddi, senior project manager?

21 A. That's correct.

22 Q. Does this accord with
23 your recollection of at least the direct reports
24 to you in the Red Hill Valley project as of
25 February 19, 2004?

1 A. That's correct.

2 Q. Registrar, if I could
3 have that document marked as the next exhibit,
4 please?

5 THE REGISTRAR: Noted,
6 counsel, so Exhibit 35.

7 EXHIBIT NO. 35:
8 Organizational chart
9 dated February 19, 2004,
10 HAM58527.

11 MR. CENTA: Thank you.

12 JUSTICE WILTON-SIEGEL: Can I
13 just ask, it's not normally my role to get
14 involved in these technical details, Mr. Centa,
15 but should the previous document, the one which
16 set out the history on page 5, should that also be
17 treated as an exhibit?

18 MR. CENTA: That document is
19 already included in an overview document, so it
20 already forms part of the evidence of the inquiry,
21 Commissioner.

22 JUSTICE WILTON-SIEGEL: Good.
23 Thank you.

24 MR. CENTA: And I think that,
25 just to foreshadow, will be the case for all but

1 one of the remaining documents. All of them
2 already appear in an overview document.

3 JUSTICE WILTON-SIEGEL: Good.

4 Okay.

5 BY MR. CENTA:

6 Q. Registrar, if I could
7 have you call up overview document 3, page 10. At
8 paragraph 17, Mr. Murray, it describes that the
9 first version of the project charter was dated
10 March 25, 2003 and it sets out a number of the
11 roles and responsibilities for the members of the
12 team.

13 And if I could ask you,
14 Registrar, to please turn to the next image,
15 image 11, and call out the text under 8.2, Project
16 Director.

17 Mr. Murray, did this
18 description of your role as project director
19 accurately describe your role in practice?

20 A. Could I get you to shrink
21 that just a little bit, Mr. Centa? There we go.
22 Thank you. Generally, yes.

23 Q. Is there anything that
24 you would add to make it a more complete or
25 accurate description of your role on the project?

1 A. It appears to me to be
2 consistent with document 10101 or, sorry, 10101.
3 I'm just trying to compare this information to the
4 information of the project charter dated
5 February 2003. So, the wording looks pretty much
6 similar, so I don't know if I have anything else
7 to add to it.

8 Q. Okay. Would you prefer
9 if I pulled up, if we pulled up, that document or
10 does it matter? For broad strokes, roughly it's a
11 fair enough description of what you were doing?

12 A. It's fair enough.

13 Q. Okay. You yourself are
14 not an engineer?

15 A. That is correct.

16 Q. What skills and
17 experiences did you bring to your role as project
18 director?

19 A. My background, as pointed
20 out at the very outset of this session, is that of
21 an environmental planner, so my background is
22 urban planning, specifically related to
23 environmental planning and, therefore, a
24 background in environmental assessment, which this
25 project, as you noted in its history, has gone

1 through provincial EA and then was subject to
2 federal EA. So, I have reasonable knowledge about
3 environmental planning overall as it's carried out
4 certainly in this province at that time, and so I
5 was very familiar with the project itself in terms
6 of all the diverse skills that are necessary to
7 complete a project like this, including engagement
8 with stakeholders in the community, et cetera.
9 So, I had a broad understanding prior to taking
10 this role, so certainly that and other experience
11 that I had before joining the City of Hamilton and
12 its predecessor, the Region of Hamilton-Wentworth.

13 Q. Just to reassure you,
14 Mr. Murray, the text that we've called out in the
15 overview document, pages 10 and 11, is reproduced
16 from HAM10101, so it's same text, just in a
17 different format.

18 A. Thanks, Mr. Centa.

19 Q. Thank you. Registrar, if
20 I could ask you to now call out the text under
21 paragraph 8.3.1, Gary Moore, and, again, if you
22 could size it for Mr. Murray like the last text
23 box. Thank you.

24 Mr. Murray, in practice, was
25 this an accurate description of Mr. Moore's role

1 on the Red Hill Valley project?

2 A. I'm assuming here,
3 Mr. Centa, that it's taken from the same document
4 we just talked about?

5 Q. Yes.

6 A. So, I would agree it's --
7 it captures his responsibility.

8 Q. And is there anything you
9 would add to make this description more complete,
10 as a more complete description, of how it worked
11 on a day-to-day basis?

12 A. I think, as you had said
13 earlier, from a broad strokes perspective, I think
14 it captures.

15 Q. Who made the pavement
16 design and specification decisions for the Red
17 Hill Valley project?

18 A. Could you be more
19 specific? In terms of the project office or
20 just --

21 Q. Who at the City was
22 charged with making those decisions?

23 A. I would rely on Gary for
24 those decisions.

25 Q. Okay. And did Mr. Moore

1 have to seek your approval for engineering
2 decisions or did he make them and then relay the
3 information to you?

4 A. He would make those
5 decisions and I would be informed of them, yes.

6 Q. Who was responsible for
7 supervising the work of the engineering
8 consultants during the construction of the Red
9 Hill Valley project?

10 A. I think it's worthwhile
11 to provide a bit of context here. There were two
12 individuals within the project office, both
13 professional engineers with considerable
14 experience in roadway design and construction,
15 together with consultants who were hired to assist
16 with design elements, including pavement. So,
17 there was a very large group of people and
18 professionals that were assembled to work through
19 the details of this project from a civil
20 engineering standpoint.

21 So, there was obviously
22 anything that would be brought to market that
23 would be tendered would be subject to professional
24 engineering standards. So, there was certainly, I
25 think, a number of not just internal staff but

1 external staff or external parties that were
2 heavily involved in arriving at a final design.

3 Q. Sure. And the external
4 consultants would give advice about various design
5 features and I think you said in the project
6 office there were two people responsible. Is that
7 Mr. Moore and Mr. Oddi?

8 A. That's correct.

9 Q. And from the City's
10 perspective, then, having received the advice from
11 the external consultants, it would be for
12 Mr. Moore and Mr. Oddi to receive that advice and
13 to make the decisions on behalf of the City?

14 A. That's correct.

15 Q. Thank you. If you could
16 end that call-out box and, staying in overview
17 document 3, Registrar, if we could move, please,
18 to image 13. And in paragraph 20, Mr. Murray,
19 Mr. Moore provided you with a document called the
20 Latest Version of the Preliminary Design Report.
21 And at pages 14 and 15 of the preliminary design
22 report, there was discussion of the possibility of
23 using SMA for the Red Hill Valley Parkway surface
24 layer.

25 And can you read the indented

1 text below paragraph 20 or would you like us to
2 call that out for you?

3 A. Could you call that out
4 for me, please?

5 Q. Sure.

6 A. Can I just see the last
7 part?

8 Q. Absolutely, yes.

9 A. Thank you. Okay.

10 Q. So, this is the
11 preliminary design report that was circulated on
12 February 25, 2003. Do you remember when you first
13 learned that the City was considering using stone
14 mastic asphalt as the surface course on the Red
15 Hill Valley Parkway?

16 A. I don't remember exactly,
17 no.

18 Q. Would this have been one
19 of the first times that you had heard about it, in
20 this version of the preliminary design report?

21 A. The idea of an SMA being
22 used?

23 Q. Mm-hmm.

24 A. I don't have the, you
25 know --

1 Q. Okay.

2 A. I don't have the recall
3 of exactly what I would have read and remembered
4 in 2003.

5 Q. If you can situate
6 yourself back in February 2003, did you know much
7 more about SMA than what is contained in the
8 preliminary design report?

9 A. Sorry, there's just some
10 noise outside the room here. Could you repeat
11 that question? Sorry about that.

12 Q. Of course. If you can
13 situate yourself back in February of 2003, did you
14 know much more about stone mastic asphalt than the
15 text that's set out in the preliminary design
16 report?

17 A. No. I would not have
18 known much more than what is in front of us right
19 now.

20 Q. Do you recall any
21 conversations with Mr. Moore or Mr. Oddi about
22 what they saw as the benefits of using stone
23 mastic asphalt?

24 A. In 2003?

25 Q. Yes.

1 A. I don't recall.

2 Q. Okay. There are a number
3 of benefits described in the preliminary design
4 report. In 2003, did you find any of those
5 features particularly attractive in your role?

6 A. If I may, just generally,
7 the -- and I can't attribute it to 2003
8 specifically and, again, I go back to the history
9 of the project and the efforts that were being
10 made to try and mitigate some of the environmental
11 consequences of the project. And when I say
12 environmental, I don't mean just strictly natural.
13 The socioeconomic, particularly noise.

14 So, in reading what we have in
15 front of us here and any discussion that would
16 have taken place potentially then or later, you
17 know, obviously the noise attenuation would be
18 certainly helpful in the overall project and what
19 we were trying to accomplish, along with obviously
20 maintaining a well designed civil engineering
21 project.

22 Q. Was one of your roles as
23 project director to talk about the project to
24 citizen groups and homeowners that were near the
25 planned route of the expressway?

1 A. Yes, myself and many
2 others.

3 Q. And was the noise
4 mitigation from the expressway a topic of concern
5 in those conversations?

6 A. Yes.

7 Q. Are you able to help us
8 pin down the date when the City decided that it
9 would be proceeding to use stone mastic asphalt as
10 the surface course?

11 A. There's certainly
12 reference to a -- I think it was an award,
13 application for an award, I believe, in July 2005,
14 and so that -- there was a submission being made
15 where there was mention of SMA as the preferred
16 asphalt treatment.

17 And then there was a more
18 direct e-mail, I believe, in 2006 from Mr. Moore
19 to myself and others within the organization where
20 it's probably even more declarative in terms of
21 SMA being the preferred asphalt treatment.

22 Q. So, to take it one step
23 at a time, Registrar, if you could first turn up
24 HAM20576. Mr. Murray, I believe this will be the
25 e-mail regarding the application for the award

1 that you just mentioned in your answer?

2 THE REGISTRAR: Sorry,
3 counsel, do you mind repeating the call-out for
4 that?

5 MR. CENTA: Sure. HAM20576.

6 BY MR. CENTA:

7 Q. This is an e-mail from
8 Stewart Scott dated July 21, 2005. The text is:

9 "Michelle, can you print
10 this for Chris and let
11 him know his mailbox is
12 full?"

13 The dreaded e-mail that your
14 mailbox is full. And if we could, Registrar,
15 please turn to image 3.

16 THE REGISTRAR: Sorry,
17 counsel, there only appears to be two.

18 MR. CENTA: So, the attachment
19 is different.

20 BY MR. CENTA:

21 Q. Can we please go to
22 HAM20577. This is the application for the award
23 and, Registrar, if we could please highlight the
24 fifth line of text that starts with Pavement Type.
25 You see there, Mr. Murray, I think that's the

1 reference that you were saying in the award
2 application to the type of pavement that was being
3 used. And I think we'll come in a couple of
4 minutes to the e-mail that you were describing,
5 which I think is dated March 7, 2006, so about six
6 or seven -- nine months later, I guess, after the
7 award application.

8 So, without being -- and we're
9 coming down to, sort of, a range of dates in which
10 the decision would have been made that the City
11 would go forward with an SMA surface course for
12 the Red Hill Valley Parkway. From your
13 perspective, regardless of the actual date the
14 decision was made, who made the decision to use
15 the SMA as surface course?

16 A. Within our office, Gary
17 Moore.

18 Q. In your role as acting
19 project director, on a day-to-day basis were you
20 reviewing engineering reports or reports, for
21 example, from Golder Associates about design
22 features or the pavement mix, or was that -- let
23 me stop there. Did you review those reports in
24 your role?

25 A. No.

1 Q. Okay. If you received
2 any information about those kinds of reports, how
3 did it come to you?

4 A. I would rely on
5 Mr. Moore.

6 Q. And would he communicate
7 that through e-mail or in meetings or both?

8 A. By both generally.

9 Q. Thank you. Registrar, if
10 we could stop that call-out and turn, please, to
11 overview document number 3, image 9. In addition
12 to the Red Hill Valley project team, which
13 consisted of City staff, I understand there was
14 also a group called the expressway implementation
15 committee that was later renamed the parkway
16 implementation committee. Is that right?

17 A. This is a -- could you
18 just expand on that?

19 Q. Sure.

20 A. This is reference to
21 exactly what? Sorry.

22 Q. So, it's my understanding
23 that in 2002 a committee of councillors was
24 established that went by two different names at
25 two different times, either the expressway

1 implementation committee or the parkway
2 implementation committee. And, initially, in
3 April of 2002, as set out in paragraph 15 of the
4 overview document, City council established the
5 expressway implementation committee and appointed
6 seven councillors initially to sit on that
7 committee.

8 And my first question for you
9 is: Do you recall why these councillors from
10 these wards served on the expressway
11 implementation committee?

12 A. If you could just --
13 because I just want to look at all the names
14 first.

15 Q. Sure. Could we call that
16 out, paragraph 15, please?

17 A. So, generally speaking,
18 the individuals that are listed here were ones
19 whose wards were either directly or indirectly
20 impacted by the project, the Red Hill Valley
21 project. That is meaning that it traversed
22 through wards.

23 There are, though, included
24 here is Larry Di Ianni, who I believe at the time
25 would have been mayor, but -- and then I want to

1 point out that Councillor Braden, whose ward was
2 removed from the immediate project area, was a
3 long-time outspoken critic of the project and was
4 part of the committee, I believe, for that reason.

5 Q. I believe that Councillor
6 Di Ianni was elected mayor and served as mayor in
7 the 2003 to 2006 term.

8 A. Okay.

9 Q. So, I think this would
10 have been just prior to his election as mayor when
11 he was still serving as councillor for ward 10.

12 A. Okay.

13 Q. From your perspective as
14 the project director on the Red Hill Valley
15 project, the staff site, how did you interact with
16 the expressway implementation committee?

17 A. Largely to provide
18 information, updates, as to, now that the project
19 was continuing, ensure that they were clear on its
20 progression, afforded the project office an
21 opportunity to understand any specific issues or
22 concerns that individuals had based on
23 conversations that were being held with the
24 constituents.

25 So, really, more than anything

1 else, it was an effective way to communicate with
2 those, as I say, directly and somewhat indirectly
3 affected by the project.

4 Q. Did this committee have a
5 decision-making role with respect to the project?

6 A. It did not.

7 Q. Okay. So, where
8 decisions needed to be made, those were still made
9 at the standing committee or council level?

10 A. That is correct.

11 Q. What level of detail was
12 provided to the members of the expressway
13 implementation committee around engineering issues
14 and the technical side of the project as opposed
15 to concerns being raised by the public or other
16 stakeholders who had an interest in the project?
17 Do you recall the balance?

18 A. I couldn't tell you
19 exactly the proportion of engineering-related
20 information versus non-engineering would be, but
21 both were communicated.

22 Q. Registrar, if I could ask
23 you to end that call and, staying in overview
24 document 3, please turn to image 21, and if you
25 could call up both image 21 and 22 at the same

1 time, that would be great.

2 And I think, Mr. Murray, this
3 is the e-mail that you were referring to earlier
4 when I was asking you the questions about pinning
5 down the time that the decision to use SMA was
6 made. This is now January of 2006 and Councillor
7 Braden is raising some questions about the asphalt
8 conditions on the LINC, and in response,
9 Mr. Murray, on February 6, 2006 -- sorry,
10 Mr. Moore. You copied in Mr. Moore and Mr. Moore
11 drafted the response that appears as the indented
12 text on image 22. If I could ask the registrar to
13 call out that text. Thank you.

14 First, am I right that this is
15 the e-mail you were thinking about earlier when we
16 were trying to pin down the date of the decision?

17 A. Yes.

18 Q. And it seems that by
19 January of 2006, as you said, there's a
20 declarative statement:

21 "We will be using SMA mix
22 on the north-south
23 expressway surface."

24 Did you have a chance to
25 review that?

1 A. Yeah. I thought I
2 answered your question.

3 Q. No, you did. I was going
4 to end the call-out but I didn't want to do it
5 while you were still reading.

6 A. We're good.

7 Q. Thank you. Registrar,
8 please end the call-out. If I could ask,
9 Registrar, to please turn to HAM32478.
10 Mr. Murray, this is an information update to the
11 mayor and members of council from you. Who would
12 have drafted this information update?

13 A. As with most of these
14 kinds of documents, I mean, there would be a
15 variety of people. I don't think you could pin it
16 down to one in particular, so I would suspect this
17 one would have come from various members of the
18 project team.

19 Q. And you would have played
20 a role in coordinating that input, integrating it
21 and editing?

22 A. I think that's a fair
23 statement, yeah.

24 Q. Okay. Registrar, if I
25 could ask you to call out the second paragraph

1 that begins "paving." Take a moment to read that,
2 Mr. Murray.

3 One general question. This
4 memo is in the form of something called an
5 information update to the mayor and members of
6 council. What is an information update and does
7 it differ from other kinds of reports that go to
8 council?

9 A. This is a -- it is as
10 it's intended. It is an opportunity to ensure
11 that, as we had committed to communicating as much
12 as we could, as often as we could information
13 about the project, this was a, if you will, an
14 informal way of keeping members of council aware
15 of progress that's being made. And so, it differs
16 from a formal report that would go to a standing
17 committee and ultimately council, with the powers
18 that do vest in municipalities, for them to give
19 direction to staff or to approve direction that is
20 being requested.

21 Q. Is one of the differences
22 that an information update does not contain a
23 request for council or a committee to take a
24 particular action?

25 A. I believe council would

1 rely on professionals within the organization to
2 advise or make those kinds of recommendations, so
3 we're not expecting council to be experts in
4 asphalt.

5 Q. No, sorry. A different
6 question. I was speaking more generally about
7 what goes in an information update versus a report
8 through a committee, and I was asking if one of
9 the differences is that if there's a request for
10 council to do something, to take a step, to
11 approve something, to enact a by-law, whatever,
12 that is a report that goes through the committee
13 and council process.

14 An information update, I'm
15 asking you if you would agree with this
16 characterization, is a more informal way of
17 updating council about the progress or
18 developments in a project, but the information
19 update itself does not contain a request for
20 council to take a step?

21 A. Correct.

22 Q. Okay. And this update is
23 in June of 2007 and in the called-out section it
24 contains an explanation both of perpetual pavement
25 and the use of stone mastic asphalt on the surface

1 course and lists a couple of the benefits that
2 come along with the use of stone mastic asphalt.

3 Do you know if this 2007
4 information update was the first time council was
5 made aware that SMA would be used on the Red Hill?

6 A. I can't say for certain.
7 Just it's difficult with, you know, recalling, you
8 know, 15 years of history. But, yeah, I can't say
9 for certain.

10 Q. Okay. The information
11 report highlights two features of the SMA,
12 improved skid resistance and lower noise
13 generation. At this time, we're now 2007, what do
14 you remember about what you knew about stone
15 mastic asphalt's ability to improve skid
16 resistance?

17 A. I would not -- it's not
18 my -- it's obviously not my profession, it's not
19 my background, it's not my expertise, so that
20 would be my answer.

21 Q. Do you remember that
22 being a topic out of much discussion between you
23 and others in the project?

24 A. No, it wasn't of much
25 discussion. My interest, I think as I had

1 indicated, in trying to find ways to lessen the
2 consequences of this project environmentally and
3 broadly defined, you know, the lower noise
4 generation was certainly of interest to me in
5 particular.

6 Q. Given your role, was the
7 lower noise generation more important to you than
8 the skid resistance features of SMA?

9 A. No. You know, I wouldn't
10 want to contrast one against the other. You know,
11 we're obviously designing and building a road
12 that, you know, meets engineering requirements,
13 but also at the same time trying to address some
14 of the environmental consequences of building a
15 road in the valley, so we were trying to
16 accomplish basically two fundamental objectives.

17 Q. Do you remember in the
18 discussion of -- let me take a step back. Do you
19 recall discussion of any problems with early age
20 friction levels on stone mastic asphalt in 2007?

21 A. No.

22 Q. Over time -- let me take
23 a step back. We know that the history of the
24 project was quite long and there were a number of
25 delays to the planned execution of the

1 construction schedule and the overview document
2 summarizes a number of cost increases that
3 happened over time, that work was bid, but by the
4 time it was executed, cost had increased, input
5 costs, steel costs, asphalt, a bunch of
6 construction costs had increased. And over time,
7 you had to explain that the budget of Red Hill
8 Valley Parkway project needed to be increased in
9 order to meet -- in order to build it at that time
10 as opposed to when some of the other plans were
11 made.

12 Do you recall whether or not
13 councillors expressed significant concerns to you
14 about the increased budget for construction?

15 A. They didn't.

16 Q. Registrar, if I could ask
17 you to turn up overview document 3, image 65. On
18 October 16, 2007, the MTO conducted friction
19 testing on the Red Hill Valley Parkway. By this
20 time, you have left your role as the acting
21 project director and you're now the director of
22 housing.

23 Did you know in 2007, at any
24 time in 2007, that the MTO had conducted friction
25 testing on the Red Hill Valley Parkway?

1 A. I don't recall, no.

2 Q. Do you recall when you
3 first learned that the MTO had conducted friction
4 testing on the Red Hill?

5 A. I mean, it's been more of
6 a recent understanding, which is subject of this
7 whole process that we're in.

8 Q. So, after your departure
9 from the City?

10 A. Correct.

11 Q. Prior to your exit from
12 the role as acting project director, did you ever
13 discuss with Mr. Moore or Mr. Oddi the idea of
14 conducting friction testing on the Red Hill Valley
15 Parkway?

16 A. I can't be 100 percent
17 confident in saying one way or another.

18 Q. Do you recall any such
19 conversation, though?

20 A. Again, time period before
21 I left?

22 Q. Before you left the
23 acting project director role.

24 A. I mean, there was a
25 document that spoke to the operations and

1 maintenance of the project. Whether that
2 contained information about friction testing or
3 not, I do not have a specific recollection of
4 that, but I do of wanting to make sure that, you
5 know, as this project left the construction and
6 became a project that was going to be, you know,
7 the subject of operations and maintenance
8 requirements, that there was, you know, some
9 guidelines that were going to be provided to other
10 parties in the organization to look after.

11 Q. And that, am I right --
12 are you referring to the scan test?

13 A. No.

14 Q. No. I've got that --
15 we'll come back to that. It comes a little bit
16 later in time.

17 In your role as acting project
18 director, did you have any direct discussions with
19 Dr. Ludomir Uzarowski from Golder Associates?

20 A. About SMA or any --

21 Q. Taking one step. More
22 generally, did you have any direct conversations
23 with him?

24 A. I don't recall.

25 Q. Okay. Do you recall

1 whether you ever discussed with Dr. Uzarowski the
2 MTO or anyone else conducting friction testing on
3 the Red Hill?

4 A. No.

5 Q. Registrar, if I could ask
6 you to turn up overview document 4, page 50, and
7 if I could ask you to please call out paragraph 11
8 and the text below it. And, Mr. Murray, this is
9 an e-mail chain that does not involve you. It
10 originates within the Ministry of Transportation
11 of Ontario discussing potential of upcoming
12 friction testing at the MTO. And in the second
13 and third line of the e-mail, it says:

14 "He mentioned that there
15 were very limited City of
16 Hamilton staff around
17 this week, including the
18 project manager, so we
19 may not get the result
20 for a few days."

21 By this time, you're no longer
22 the acting project director. You've moved on to
23 become the director of housing. Did anyone ever
24 discuss with you the possibility of the MTO
25 conducting friction testing on the Red Hill

1 Valley?

2 A. No, I don't recall.

3 Q. Okay. Before you left
4 the City of Hamilton, did you ever see any
5 friction test results from the Red Hill Valley
6 Parkway?

7 A. No.

8 Q. I understand that from
9 time to time there were periodic meetings with
10 representatives of the Ministry of Transportation
11 of Ontario to do things like coordinate the
12 construction and discuss the interchange between
13 the Red Hill Valley Parkway and the QEW. Did you
14 attend those meetings?

15 A. Those high level
16 meetings, yes.

17 Q. Okay. And at those high
18 level meetings, do you recall the topic of
19 friction testing, the Red Hill Valley in 2007,
20 ever coming up?

21 A. I don't recall that, no.

22 Q. You left to become the
23 director of housing on June 18, 2007 and I believe
24 that that was after paving had just started on the
25 Red Hill but before the SMA surface layer had been

1 placed. Does that accord with your recollection?

2 A. I don't have it -- I
3 don't have those specific dates in mind. So, I
4 had certainly had left the project director role
5 and, as you point out, became housing director in
6 June, and so I think my understanding is that the
7 paving had started, but I certainly wasn't in my
8 former role to see it through completion.

9 Q. After you became director
10 of housing, did you have any residual ongoing role
11 with the Red Hill Valley project?

12 A. I did attend an event
13 when the road was eventually opened and I think I
14 MC'd it, and that would have been my last official
15 or semi-official anything to do with the project.

16 Q. And any ongoing
17 day-to-day responsibilities from June when you
18 stepped into your new role as director of housing
19 until you MC'd and cut the ribbon on the opening
20 of the roadway?

21 A. So, okay. Sorry. Is
22 there a question there or are you just --

23 Q. There was. So, no
24 day-to-day responsibilities between the time you
25 became the director of housing and the MC'ing of

1 the opening?

2 A. Correct.

3 Q. As director of housing,
4 did you have any ongoing interactions with
5 Mr. Moore or Mr. Oddi?

6 A. No. As it relates to
7 this project?

8 Q. Yes, as it relates to
9 this project.

10 A. No.

11 Q. You became city manager
12 in January of 2009?

13 A. Correct.

14 Q. In your time as project
15 director, were you aware that Golder Associates
16 was one of the consulting engineers on the Red
17 Hill Valley project? Did that name -- was that a
18 meaningful name to you?

19 A. Could you repeat that?
20 I'm sorry.

21 Q. Sure. When you were
22 acting project director, did you know that a
23 company called Golder Associates was one of the
24 consulting engineers on the project?

25 A. Yes.

1 Q. In 2009, did you know
2 that Golder was preparing for the City of Hamilton
3 phase 1 of the pavement and materials technology
4 review and that report was delivered to the City
5 in November of 2009? Did you have any insight
6 into that project?

7 A. No.

8 Q. Okay. Registrar, if I
9 could ask you to call up overview document 3,
10 page 77, and call out paragraph (e). In 2009, did
11 you know that Golder Associates received the 2009
12 Ontario Consulting Engineers Award for its work on
13 perpetual pavement on the Red Hill Valley Parkway?

14 A. I don't recall, no.

15 Q. That award was presented
16 to Golder Associates on June 2, 2009 in Ottawa.
17 Did you know that Mr. Moore attended that
18 ceremony?

19 A. I wouldn't have known at
20 that time, no.

21 Q. Did you know at that time
22 that Golder Associates paid for Mr. Moore and his
23 wife to fly from Toronto to Ottawa and back to
24 attend the ceremony?

25 A. No.

1 Q. Did you know that Golder
2 Associates paid for Mr. Moore and his wife to stay
3 two nights at the Château Laurier?

4 A. No.

5 Q. In 2009, did Mr. Moore
6 ever discuss with you the fact that Golder offered
7 this trip to him?

8 A. No. I don't recall that
9 at all.

10 Q. Do you recall anyone
11 raising this issue with you?

12 A. No.

13 Q. Registrar, if you could
14 please turn up HAM58896. As city manager,
15 Mr. Murray, you were familiar with the City's Code
16 of Conduct policy that applied to all of its
17 employees?

18 A. Correct.

19 Q. And this policy was first
20 approved in 1995 and at the top it says,
21 "Eligibility: All employees." Am I correct that
22 all employees were expected to comply with this
23 policy? That's what eligibility means in this
24 context?

25 A. I agree.

1 Q. Okay. Registrar, if you
2 could please highlight the first sentence of the
3 text in the box beginning, "The City expects."

4 The policy begins with the sentence:

5 "The City expects every
6 employee to conduct
7 themselves with the
8 highest degree of
9 personal integrity and
10 ethics."

11 And, Registrar, if you could
12 also highlight the leading text of paragraph 4
13 that begins "Conflicts of interest" and stops
14 before the indented text. One paragraph down.
15 Thank you.

16 So, you agree with me,
17 Mr. Murray, that the policy starts out by stating
18 an expectation that employees will conduct
19 themselves with the highest degree of integrity
20 and ethics and then explains that:

21 "Conflicts of interest
22 and breaches of trust can
23 take many forms. It is
24 impossible to list them
25 all. What follows is a

1 list of some of the more
2 obvious examples."

3 If I could ask you, Registrar,
4 to call up image 2, leave image 1 up and call up
5 image 2, and if I could ask you to highlight
6 paragraph 2. Mr. Murray, do you agree this is a
7 broad prohibition on accepting benefits from any
8 business that has a contract with the region to
9 supply goods or services unless that benefit is
10 available to all persons?

11 A. I apologize --

12 Q. Take your time.

13 A. I want to make sure I
14 read --

15 Q. Please highlight that
16 paragraph and call it out so it's easier to read.
17 Thank you.

18 A. I think your summation,
19 Mr. Centa, is correct.

20 Q. Thank you. And, to be
21 fair, in paragraph 4 there is an exclusion from
22 the policy for gifts and benefits of nominal
23 value. So, it's not all gifts and benefits.
24 There's an explicit exclusion for gifts and
25 benefits of nominal value. In this case, it

1 appears that Golder Associates spent at least \$880
2 on the flights and hotel room, from the documents.

3 Would \$880, Mr. Murray, have
4 exceeded your definition of nominal value in 2009?

5 A. Yes.

6 Q. Registrar, if you could
7 please call up image 3 of this document and if you
8 could call out just the last paragraph. It begins
9 "Caution." Yes. It says:

10 "Caution is always the
11 best guide to behaviour
12 in this area. Employees
13 are encouraged to discuss
14 any circumstance about
15 when they have the lease
16 doubts -- "

17 I think that should say
18 "least" doubts:

19 " -- with their
20 supervisor or department
21 head."

22 And I think you told me
23 earlier that Mr. Moore did not discuss whether or
24 not he should accept this offer with you?

25 A. Correct.

1 Q. If Mr. Moore had
2 discussed Golder's offer with you, what would your
3 advice to him have been as city manager in 2009?

4 A. I think this sentence
5 allows us an opportunity as an organization to
6 decide whether we would provide that support. So,
7 again, I look at it on the face value that you're
8 presenting it and I think if it would have been
9 presented to me, I would have found another way,
10 one that doesn't create the situation that I think
11 this creates, meaning, you know, I would have
12 entertained, you know, the idea of potentially
13 sending Mr. Moore. But, again, it's -- I would
14 have considered it. It's not necessary -- it
15 doesn't necessarily mean I would have done it, but
16 I would have considered it.

17 Q. When you say you would
18 have considered it, you would have considered
19 finding another way of getting Mr. Moore to attend
20 the event without having Golder pay the costs of
21 the flight and the hotel?

22 A. Correct. I would have
23 considered another option, not necessarily agreed
24 to do it but just I would have considered it at
25 least.

1 Q. I understand. Would you
2 have considered just approving Mr. Moore to accept
3 the benefit?

4 A. No.

5 Q. Mr. Murray, I would like
6 to ask you some questions about some consultants'
7 reports about the Red Hill Valley Parkway that
8 were prepared in 2013 and 2014, so we're moving
9 ahead in time from where we have been.

10 In 2013, if you're able to
11 situate yourself at that point in time, were you
12 aware that City staff had received complaints from
13 citizens and the police about perceived slippery
14 conditions on the Red Hill Valley Parkway,
15 especially during wet weather?

16 A. I don't recall, no.

17 Q. In fall 2013, did you
18 know that Mr. Moore had requested that Golder
19 Associates conduct friction testing on the Red
20 Hill Valley Parkway?

21 A. No.

22 Q. To be fair, given your
23 span of control as city manager, is that the sort
24 of thing you would have expected someone to tell
25 you?

1 A. No.

2 Q. Okay. In 2014, did you
3 ever see a copy of the Tradewind report, which was
4 the friction testing that was done on the Red Hill
5 Valley Parkway?

6 A. No.

7 Q. Did anyone talk to you
8 about that report?

9 A. No.

10 Q. In 2014, did you see or
11 otherwise learn about the Golder Associates report
12 on the state of the Red Hill Valley Parkway? And
13 that was the overarching report to which the
14 Tradewind report became an appendix and was
15 discussed, but the bigger report was Golder
16 Associates. Did you ever see that?

17 A. No, I didn't.

18 Q. And similar question.
19 Did anyone talk to you about the existence of the
20 Golder report?

21 A. No. And to your earlier
22 comment, I wouldn't expect them to provide me
23 those kinds of fine details, if you will.

24 Q. Sure. As a general rule,
25 if a report from a consultant identified matters

1 of concern to public safety, what was your
2 expectation about what a City staff member who
3 receives that report should do next?

4 A. Well, we retain
5 consultants for a variety of reasons, one of which
6 is to rely on their expertise. I think one has to
7 treat public safety as high on our list as any
8 consideration that we're ever going to give
9 anything, so I would expect that it would be, you
10 know, taken seriously and dealt with accordingly.

11 Now, I just want to provide a
12 little bit more context to what I just said.

13 Q. Please.

14 A. As you point out, not
15 aware of the reports, not aware of what's in the
16 reports, so I have answered the question, I think,
17 in a very kind of generic way.

18 Q. No, and that's very fair.
19 These questions are not in any way designed to
20 suggest that you had actual knowledge of the
21 existence of the report. I think that the
22 documentary evidence suggests otherwise.

23 My question was more general
24 and it goes to your expectations as the city
25 manager, recognizing that you can't and don't

1 expect to see all of the reports that are being
2 generated by all of the departments under your
3 span of control?

4 A. That's correct.

5 Q. My question was: When a
6 staff person gets one of those reports that
7 suggests that there may be an issue related to
8 public safety about your expectations about what
9 they do next, and what I took from your answer was
10 you expected to take it seriously because of the
11 priority that's placed on public safety.

12 If a staff member receives
13 such a report, is it your expectation that the
14 staff person would escalate the report and share
15 it to receive input from others about what to do
16 next?

17 A. Again, in this particular
18 case, I think context is everything, so that would
19 be an option certainly. But, again, I don't know
20 what's in the report, I don't know how --

21 Q. Sure.

22 A. I don't know what the
23 consultant would be recommending, how it's said.
24 You want emphasis, so we're talking in very
25 generic terms right now, so I would -- but I think

1 that what you described is an option certainly,
2 you know, and again I don't know. I don't know
3 enough about the report to say one way or another
4 it should be X or Y.

5 Q. And I'm not asking about
6 a particular report. I'm, rather, asking about
7 the expectations that you had of your staff and
8 the expectations that you set for the
9 organization.

10 So, starting with a more
11 general question than the specifics of this
12 report, I'm trying to understand, as a municipal
13 leader at the time, how you would have expected
14 your staff to respond. And it is admittedly, in a
15 generic situation, somewhat removed from this
16 report?

17 A. Well, again, given the,
18 you know, serious or the risk that's being
19 communicated by the consultant --

20 Q. Right.

21 A. -- you know, making a
22 determination as to the magnitude of that risk and
23 the likelihood of that risk becoming something
24 that needs to be addressed, the chain of command
25 that does exist and even as an organization

1 certainly is there for a reason and I would expect
2 that if the nature of the risk is such that it's
3 material, then certainly, you know, whoever that
4 individual is directly accountable to, that person
5 should be given the courtesy of what's being said
6 and the importance of that.

7 Q. Thank you. I want to ask
8 you about interactions between councillors and
9 staff in the context of consultant reports. If a
10 councillor asks a staff person for a copy of a
11 consultant's report, how would you expect the
12 staff person to respond to that request?

13 A. I mean, generally
14 speaking, we like to share information with all
15 members of council, including the mayor, and I
16 think that's how we're expected to treat, you
17 know, council and the mayor fairly. So, in this
18 particular case, you know, for a councillor to ask
19 for a copy of a consultant's report, it's not a
20 daily occurrence. I can say that.

21 Q. Mm-hmm. If a staff
22 person does not want to provide the report to the
23 councillor, for whatever reason, how should the
24 staff member proceed? Should they discuss it with
25 their supervisor? Is this a topic of conversation

1 or is it a decision that is left to the individual
2 staff member?

3 A. Usually we're aware of
4 issues that are being raised be members of
5 council, you know, in these kinds of one-on-one
6 situations that you're describing, and so I don't
7 think it would be unusual to communicate, you
8 know, a particular councillor is looking for a
9 report and what decision the individual may have
10 made.

11 That said, being a member of
12 council can, through a standing committee and
13 ultimately council, request any information that
14 they want from us.

15 Q. You've mentioned in one
16 of your earlier answers that -- I think the way
17 you put it was you wanted to facilitate
18 information sharing?

19 A. Mm-hmm.

20 Q. If a staff person in a
21 different city department asks for a copy of a
22 consultant's report because they felt the report
23 contained information that was useful to them to
24 do their job, what would you have expected the
25 custodian, staff person who had custody of the

1 report, to do when asked for a copy of it?

2 A. I mean, given the nature
3 of municipalities, I mean, we are responsible for
4 delivery of a variety of services, we find
5 ourselves more often than not working in
6 collaboration with each other, so the idea of
7 sharing information, you know, with other members
8 of staff that have a direct, even a tangential
9 interest or need for information, it should be
10 something that is encouraged and acted upon.

11 Q. And if the person who had
12 requested the report could not obtain it from the
13 other staff member who had the report, in general,
14 what should they do next?

15 A. I would expect that they
16 would raise the matter with a superior and then,
17 you know, ensure that the extra effort is made to
18 obtain what is necessary.

19 Q. In 2013, the consulting
20 company CIMA was retained to conduct the Red Hill
21 Valley Parkway safety review. Did you have any
22 involvement in that project?

23 A. No.

24 Q. Did you have any
25 involvement in drafting or editing the staff

1 report that went to Public Works Committee and
2 city council about that report?

3 A. No.

4 Q. Given the amount of
5 reports that are generated at the City, was it
6 your practice at the time to review all reports
7 that were going to a committee of council?

8 A. No. What is the
9 practice, though, is to have at least an
10 understanding of, you know, the types of
11 information that are going to the various standing
12 committees and, you know, to have some sense of
13 that. That would be about the level of
14 involvement that I would generally have, unless
15 something is brought to my attention causing me to
16 have to focus on something. And if that occurs,
17 then there's a different level of consideration
18 that I have to give it.

19 Q. And I take it you would
20 rely on the directors that were reporting to you
21 to flag for you issues of particular concern or
22 where they wanted your input or advice on a
23 matter?

24 A. The general managers,
25 yes, and those general managers, I would meet with

1 regularly as a senior leadership team, yeah.

2 Q. On November 18, 2013,
3 report PW-130-81 went to the Public Works
4 Committee and it was an information report about
5 the 2013 CIMA report. That information report
6 that was prepared by staff did not attach a copy
7 of the consultant's report. It was just the staff
8 summary of it.

9 Did you have a view in your
10 role about whether or not consultants' reports
11 should be included alongside the staff report that
12 went to the committee?

13 A. Could you maybe rephrase
14 the question? Are you suggesting that
15 consultants' reports be attached to all reports of
16 staff to committee and council?

17 Q. I'm asking if you have a
18 view as to whether or not consultants' reports
19 should always be attached to staff reports that go
20 to committee?

21 A. Well, I mean, that would
22 be a lot of information and, you know, in fairness
23 to our elected officials, for them to have to go
24 through what could be in a given standing
25 committee meeting, ultimately council meeting, an

1 awful lot of information, so I don't know how
2 practical that really is.

3 Q. What factors should staff
4 bear in mind when deciding whether or not to
5 include a consultant's report alongside a staff
6 report?

7 A. Well, again, I use the
8 word "risk" and I think if there's, you know,
9 something that's material in that sense, that
10 would be potentially one reason. But, again, you
11 know, you're asking in general and, again,
12 everything that we do, you know, needs to be
13 looked at on a case-by-case basis. I have to be,
14 you know, cognizant of, I think, your question,
15 but, you know, and, again, as a report author, I
16 would, you know, ask myself the question, what is
17 it that is going to be important for, you know,
18 representatives of the public to understand and
19 communicate it accordingly.

20 Q. If the consultant's
21 report is not attached to the staff report or the
22 staff report is going to committee on its own,
23 does that increase the importance that the staff
24 report accurately and completely describe the
25 consultant's report that is not attached?

1 A. Again, you're asking me
2 generally speaking?

3 Q. Mm-hmm.

4 A. I would expect there
5 would be some reference to the consultant report.
6 I would expect that it would summarize, you know,
7 the salient details that are important from a
8 decision-making standpoint. So, you know, I
9 think, you know, in capturing really what the
10 consultant is saying would be an important
11 consideration in anything staff would put forward
12 to a standing committee or council.

13 Q. In your view, is it
14 appropriate for staff to share a draft of a
15 consultant's report with some but not all members
16 of the committee?

17 A. A standing committee of
18 council?

19 Q. A standing committee of
20 council.

21 A. That is not a typical
22 practice.

23 Q. Do you see any dangers
24 with that practice?

25 A. Well, I mean, I won't say

1 I've read every single page of the Collingwood
2 inquiry, but I would say it starts to call into
3 question some of those findings in terms of the
4 relationship between the administration and
5 council.

6 Q. And is one of those
7 dangers that you then have members of the
8 committee operating with different levels of
9 information about the topic at hand?

10 A. Yeah. I think as I said
11 before, Mr. Centa, that is a concern. As well,
12 though, you know, the role that we play is in the
13 administration in terms of, you know, helping an
14 elected group make an informed decision, so, you
15 know, it's our job to give our best advice and
16 that advice sometimes is informed by consultants
17 and capturing the essence of what the consultant
18 report is saying in a report that we would give,
19 as I said, noting that we're basing some of what
20 we're writing on a consultant's report, you know,
21 those would be, I think, reasonable and a
22 reasonable approach to informing council.

23 Q. In your experience, how
24 much input should City staff have into the text of
25 a consultant's report?

1 A. If there's factual
2 errors, those need to be pointed out. But, again,
3 you know, again, typically when we're working with
4 specialists, you know, we are purchasing their
5 expertise.

6 Q. And, as you said,
7 correcting factual errors is important so the
8 consultant's report proceeds on a sound factual
9 footing. Beyond that, do you see dangers in staff
10 taking on a role editing and revising consultant's
11 reports?

12 A. It's a -- again, I need
13 context. And I apologize for repeating myself
14 here, but context is everything. And factual
15 errors, there could be other circumstances where
16 we might advise or suggest. But I think, if I
17 understand the basis of your question, you know,
18 I'm not -- when we retain and compensate, you
19 know, a specialist firm to provide advice, it's,
20 you know, assuming that, you know, the facts are
21 facts and that there's no other, you know,
22 concerning matter, that we should be accepting
23 their advice as it's been stated.

24 Q. Thank you. In May of
25 2015, there was an accident on the Red Hill Valley

1 Parkway that killed two young women, Olivia
2 Smosarski and Jordyn Hastings, the fairly high
3 profile collision resulting in two fatalities. Do
4 you recall that accident?

5 A. I do.

6 Q. Registrar, if I could ask
7 you to call up HAM58622. And, Mr. Murray, this is
8 an e-mail chain that you exchanged with someone
9 named Darlene Barber. Who is Darlene Barber?

10 A. My executive assistant.

11 Q. And in the second e-mail
12 from the top, which you sent at 9:47 p.m., you
13 wrote:

14 "The fact that it was on
15 the Red Hill makes what
16 is unimaginably sad even
17 worse."

18 Can you explain what you meant
19 when you wrote that?

20 A. Yes. You know, as
21 pointed out at the very beginning of today's
22 testimony, this project has had a very long
23 difficult history, and, you know, even after it's
24 completed, as evident of this hearing, it
25 continues to be challenged in different ways.

1 And so, in this particular
2 situation, as you go further down the e-mail
3 chain, you see that this is one of the young women
4 that was killed mom worked for the City of
5 Hamilton. That obviously, when we look at our
6 staff and what we try to do is support our staff,
7 it's very difficult.

8 And there's actually a third
9 reason why my e-mail is -- and my daughter would
10 have been around their age.

11 Q. At this time, May of
12 2015, did you have any concerns about the safety
13 record of the Red Hill Valley Parkway?

14 A. I didn't, none that were
15 brought to my attention.

16 Q. That was going to be my
17 next question. Had you heard anything,
18 anecdotally or otherwise, that raised concerns
19 about the slipperiness of the parkway or its
20 safety record in May of 2015?

21 A. No. And there was
22 nothing that was brought to my attention that -- I
23 mean, all roadways, as you know, no matter how
24 straight or not that they are, whatever their
25 grade may be, you know, will present challenges.

1 I mean, that's -- so, I don't have or was given
2 anything that, you know, in my capacity as city
3 manager, to cause me to start to seriously
4 question the safety of that road.

5 Q. Following the accident in
6 May of 2015, and we'll come to this, CIMA is
7 retained to do a further investigation of the
8 safety of the Red Hill. In the discussions that
9 followed this accident, did anyone bring to your
10 attention the friction test results from Tradewind
11 or the Golder report that was prepared and
12 delivered in draft in January of 2014?

13 A. No. And I wouldn't have
14 expected it, I mean, as pointed out earlier.

15 Q. Registrar, if I could ask
16 you to call up HAM47. I'm sorry. Just before we
17 move off that -- thank you, Ms. Leclair -- this
18 document we were just looking at at HAM58622
19 should be marked as the next exhibit.

20 THE REGISTRAR: Noted,
21 counsel. Exhibit 36.

22 EXHIBIT NO. 36: E-mail
23 chain between Mr. Murray
24 and Darlene Barber,
25 HAM58622.

1 BY MR. CENTA:

2 Q. Registrar, if I could ask
3 you to take us to HAM4779.

4 THE REGISTRAR: Sorry,
5 counsel, do you mind repeating that?

6 MR. CENTA: HAM4779.

7 THE REGISTRAR: Thank you.

8 BY MR. CENTA:

9 Q. And if I could ask you to
10 go to the second image. Mr. Murray, this is an
11 e-mail you received from a member of the public in
12 October of 2015 and she's asking you some
13 questions about the timing of delivery of certain
14 reports, including the report that we're going to
15 talk about, which is the 2015 CIMA report.

16 You respond to her and copy in
17 Dave Ferguson and, you know, passed the issue
18 along to Mr. Ferguson to ask him to respond. And
19 that is your last involvement in the e-mail chain.
20 You're not copied on any of the e-mails that
21 happen later, but I want to ask you a question
22 because you're mentioned in it.

23 So, Registrar, if we could go
24 back to the first image and if you could call out,
25 Registrar, the first substantive e-mail from

1 Mr. White that was sent at 2:14, if you could call
2 out the text beginning, "Geoff, we already had a
3 draft written," and include the paragraph that
4 begins, "Frankly."

5 Mr. Murray, this is an e-mail
6 discussion among Martin White, Geoff Lupton and
7 Dave Ferguson and, again you're not copied into
8 this message. And Mr. White is talking about the
9 draft report and raises some concerns that the
10 report is recommending guide rail and lighting
11 review and asphalt testing, all the things Gary
12 argues against. And I believe in context that's a
13 reference to Mr. Moore?

14 "Despite that, I believe
15 them to be prudent and
16 required that we do this
17 ethically and technically
18 responsibly. We can talk
19 after Dave sends it to
20 us. Thanks."

21 He concludes:

22 "Frankly, I think Chris
23 Murray should be included
24 on the discussions. He
25 built the roadways. We

1 can prevent some of these
2 accidents from occurring
3 and we should take
4 action."

5 Do you recall after October 30
6 whether or not you were involved in any
7 discussions about the content of the 2015 CIMA
8 report or the staff report to council about that
9 report?

10 A. No, I don't.

11 Q. Do you remember ever
12 discussing the draft 2015 CIMA report with
13 Mr. Ferguson or Mr. White?

14 A. I did not.

15 Q. In the fall of 2015, did
16 you know whether or not Mr. Moore had any opinions
17 regarding the certain recommendations made by
18 CIMA?

19 A. No.

20 Q. Registrar, if I could ask
21 you to please call up overview document 2,
22 page 13. And, actually, if we could go back to
23 image 12. There we go. Thank you. Perfect.

24 On March 30, 2015, city
25 counsel directed the city manager to review the

1 size and scope of the Public Works department. Do
2 you remember that exercise?

3 A. I do.

4 Q. What prompted this
5 review?

6 A. A comment made by the
7 general manager.

8 Q. The general manager of?

9 A. Of the Public Works.
10 Sorry.

11 Q. And what was that
12 comment?

13 A. That he felt that it was
14 too much to have to manage. I'm paraphrasing.
15 Those aren't the exact words, but that's what my
16 memory --

17 Q. I understand. And who
18 was the manager of Public Works at that time?

19 A. Gerry Davis.

20 Q. And did Mr. Davis
21 describe how his concerns about the department
22 being too large to be managed, how that problem
23 was manifesting itself on a day-to-day basis at
24 the City?

25 A. I don't recall that

1 exactly the way you put it. You know, I do recall
2 talking to Gerry or Mr. Davis, sorry, about, you
3 know, what's occupying his, you know, day-to-day
4 responsibilities. And this is a general
5 statement, you know.

6 From time to time, even as
7 you, you know, move up an organizational chart,
8 you always have to be thinking about am I doing
9 the work that is necessary at this level of the
10 organization. So, if you find yourself getting
11 into the weeds, you know, then you have to ask
12 yourself, am I allocating responsibility the way I
13 should be?

14 And so, at the time, and I
15 don't have total recall as to all the things that
16 were on Gerry's plate, which were, you know, as
17 with any general manager there's always things
18 that you're, you know, having to manage, the
19 day-to-day things but also the direction that your
20 department is moving in. I think it was probably
21 as a result of just that plate being full that led
22 to his comment that he made at -- I believe it was
23 council. I could be wrong. But I think that's
24 what triggered the request of council to direct me
25 to go look into it, and that's what I did.

1 Q. And do you recall whether
2 or not Mr. Davis expressed any concerns about
3 information sharing or information overload as
4 being concerns that he had as the general manager?

5 A. No, not information
6 sharing. I think in the context of the way you've
7 presented it here today, no, that was not -- and
8 information overload, I mean, we are, you can
9 imagine, I think, as a city manager, just the
10 broad array of what goes on in an organization,
11 what it is that you have to focus on and those
12 things that you're going to have to rely on others
13 to take care of.

14 So, I don't recall
15 specifically those words from Gerry, information
16 overload, but I can certainly appreciate, you
17 know, the challenges of being a general manager in
18 general, whether it's Public Works or planning
19 economic development or whatever. There's a lot
20 of demands put on you, you know, in your day to
21 day, including, you know, the work that you do
22 with council, et cetera.

23 Q. You described the dangers
24 of a general manager being too, I think you put
25 it, in the weeds and needing to ensure that

1 decisions are being made at the appropriate level
2 of the organization.

3 Given the range of
4 responsibilities at that city manager level and
5 the general manager level, from your perspective,
6 how important is the ability to delegate
7 effectively to others to achieve the goals of
8 senior staff?

9 A. I think it's quite
10 important. In fact, if you go back to the
11 charter, that's exactly what that document was
12 intended to do, was to make clear who the project
13 sponsor was and make clear what my role was, to
14 make clear what others in the office roles. That
15 setting out of roles and responsibilities, even in
16 a project, is important, not just for those that
17 are there but others that may join that office to
18 understand what that office does.

19 But take that example and
20 think about it from the standpoint of a department
21 and how that department relates to the city
22 manager and that should give you some idea of how
23 you would delineate roles and responsibilities and
24 ultimately accountabilities.

25 Q. What was the answer to

1 the question: Is the Public Works department too
2 large?

3 A. It wasn't.

4 Q. When you were -- thinking
5 back in time and I want to ask you some questions
6 about working with Mr. Moore. When you were the
7 acting director for the Red Hill project,
8 Mr. Moore reported to you. Was that the first
9 time you had worked with him?

10 A. No.

11 Q. What was your previous
12 experience working with him?

13 A. When I joined
14 Hamilton-Wentworth in 1995, I was part of the
15 special projects office and Gary was a member of
16 that office. In fact, I think he was a manager at
17 the time. And its responsibilities were, in part,
18 you know, the Lincoln Alexander/Red Hill, but also
19 we were doing road EAs in general and as well as
20 cycling. And so I came in as, you know, a front
21 line unionized planner, and so that's when I first
22 met Gary.

23 Q. Over the years in working
24 with him, I take it you had the opportunity to
25 observe his skills as an engineer?

1 A. Correct.

2 Q. Recognizing that you're
3 not an engineer, what was your opinion of his
4 engineering skills?

5 A. I had worked before
6 joining the Region of Hamilton-Wentworth for a
7 consulting firm that specialized in engineering
8 planning and architecture, and so most of my
9 career has been spent working with engineers up
10 until, you know, I started to do housing and then
11 the pursuits that I'm involved with now, so
12 certainly exposed to a number of different
13 engineers and, you know, I felt Gary was talented
14 and, in comparison to many that I've worked with
15 directly, I thought him to be quite a good
16 engineer, as well as Marco, Mr. Oddi.

17 Q. Mr. Oddi. And from your
18 perspective and based on what you knew at the
19 time, did you feel he made a positive contribution
20 to the work of the Red Hill Valley project?

21 A. Yes.

22 Q. Given his length of
23 involvement with the project, how would you
24 describe his importance to completing the project
25 and getting the roadway open?

1 A. Well, Gary was certainly
2 a key, you know, individual responsible for the
3 Lincoln Alexander roadway as well as the
4 completion of the Red Hill, so not just, you know,
5 some historical knowledge or understanding but
6 also, you know, played a critically important role
7 certainly in the project office that I had joined
8 back in 1995 and had worked under John Vandermark,
9 who reported to Dale Turvey as Commissioner. So,
10 certainly historical knowledge was considerable
11 and as well as engineering knowledge was
12 considerable.

13 Q. Registrar, if I could ask
14 you to turn up HAM58739. This is a document
15 titled "City of Hamilton Performance
16 Accountability and Development Form." Are you
17 familiar with these kinds of forms?

18 A. Yes.

19 Q. What is its purpose?

20 A. To evaluate the
21 performance of a senior official within the
22 organization.

23 Q. This one is for Mr. Moore
24 in 2017 and you are listed at the top as the
25 reviewer in your position as city manager. What

1 does that mean?

2 A. Well, it's, you know, I
3 obviously would assess the performance of those
4 that report to me directly and obviously I want to
5 know how those -- that report to the general
6 managers, how they're performing, so it gives me a
7 line of sight not just to the immediate reports
8 but to the more indirect reports to understand how
9 their teams are functioning. And so, reviewer in
10 the sense that, you know, I have an opportunity to
11 see whether or not there are -- you know, how the
12 work is getting done, and so it gives me that kind
13 of line of sight into that level of the
14 organization, so reviewer in that context.

15 Q. Thank you. And this is
16 the form for Mr. Moore, who was then the director
17 of engineering services. Just below his title,
18 there's the leader, Daniel McKinnon, the GM of
19 Public Works, so that's Mr. Moore who reports to
20 Mr. McKinnon and Mr. McKinnon reports to you, so
21 you become the reviewer of Mr. McKinnon's
22 assessment of Mr. Moore. Is that fair?

23 A. That's fair.

24 Q. Okay. And, Registrar,
25 could we go to image 5, please. This is not the

1 best copy of a document we have looked at today,
2 so let me see if I can make it a little bit
3 bigger. Registrar, if you could please call out
4 the block of small text that begins, "Gary has had
5 another." Thank you. That's better.

6 Can you see that okay or would
7 you prefer to resize the text box?

8 A. Just shrink it a little
9 bit more. That would be much appreciated.

10 Q. Sure.

11 A. Yeah.

12 Q. At the end of that
13 comment box, the last couple of sentences read:

14 "Gary's career is marked
15 by the delivery of
16 significant city shaping
17 capital projects as well
18 as a capital program that
19 was successfully
20 delivered year after
21 year. Gary and I
22 continue to have
23 fundamental differences
24 around leadership style,
25 but having said that, I

1 feel Gary and I agree on
2 the fundamentals of many
3 issues and I always
4 appreciate our spirited
5 conversations. I wish
6 Gary all the best going
7 forward."

8 And if we could also call out,
9 Registrar, the handwritten comments below the
10 Reviewer box that begin -- yes, that part of the
11 document.

12 Mr. Murray, I think that's
13 your handwriting?

14 A. Correct.

15 Q. If you could read what
16 you wrote into the record for us?

17 A. I wrote:
18 "I fully appreciate the
19 use of the term
20 'spirited.'"

21 In quotation marks:

22 "When done the right way,
23 it's great.

24 Otherwise -- "

25 I can't see the rest of it.

1 Sorry. I just need the bottom part:

2 "Otherwise, problematic."

3 Q. Okay. Thank you. What
4 did you mean by that?

5 A. Gary is very direct and,
6 you know, not everyone is direct in their comments
7 and their style, so he's a challenger. And I've
8 worked with a number of challengers, not just in
9 that engineering field but in your field and many
10 other fields, and I know for some people, people
11 who tend to ask a lot of questions and do so in a
12 very straightforward, direct way, you know, it can
13 create, you know, some problems, you know. So,
14 just in terms of relationships, that's what I mean
15 by that.

16 But, you know, as I think I've
17 said in my submission to this process, you know,
18 prior to joining the Region and then the City
19 obviously, you know, I've worked with very direct
20 people who challenge my statements and I find, you
21 know, working in that environment to be, you know,
22 very straightforward and helpful. So, he is
23 spirited and, you know, he's not one to leave you
24 reading between the lines, so there's value in
25 that.

1 Q. In your experience with
2 Mr. Moore, was he spirited the right way or in the
3 problematic way?

4 A. Well, the right way with
5 me.

6 Q. Were you ever made aware
7 of any complaints about Mr. Moore being spirited
8 in the problematic way?

9 MR. LEDERMAN: I'm sorry just
10 to interrupt Mr. Centa during the course of his
11 questions. I just want to make sure I understand
12 the relevance of Mr. Murray's assessments of
13 Mr. Moore. We're raising some question as to what
14 extent are we pinning down the direction of trying
15 to understand what is meant by spirited in the
16 right way and spirited in the wrong way.

17 MR. CENTA: Sure. Thank you,
18 Mr. Lederman.

19 Commissioner, term of
20 reference number 3 for the inquiry is: Why was
21 the information in the Tradewind report or the
22 information or recommendations contained therein
23 not provided to council or the public once the
24 report was submitted to the department of
25 engineering services in 2014? Term of reference

1 number 5 is: Was there any negligence,
2 malfeasance or misconduct in failing to provide
3 the report or the information and recommendations
4 contained therein to council and the public? And
5 in term of reference number 15, you're asked to
6 identify any changes to the City's by-laws,
7 policies and procedures to prevent any such future
8 incidents of non-disclosure of significant
9 information. And we have, in the overview
10 documents, documentary evidence that suggests that
11 City employees were aware and would joke that
12 Mr. Moore would, from time to time, get angry with
13 other City employees.

14 Registrar, if you could please
15 call up overview document 8, pages 33 and 34.

16 MR. LEDERMAN: Sorry, if I
17 could just ask a question before we get to that.

18 MR. CENTA: Sure.

19 MR. LEDERMAN: I understood
20 Mr. Centa to be connecting this line of
21 questioning to the terms of reference he just
22 identified. Before we start looking at other
23 documents contained in the overview document, I
24 guess what I'm struggling with is understanding
25 the connection between asking Mr. Murray for his

1 assessment about being spirited in the right way
2 and spirited in the wrong way in relation to the
3 specific terms of reference Mr. Centa identified.
4 I don't think by looking at these documents that
5 that really addresses that question of relevance.
6 That's the point that I'm trying to understand.

7 MR. CENTA: One of the
8 questions at the heart of the inquiry is why was
9 the Tradewind report not shared with other
10 employees, and we will be hearing some evidence
11 from employees as to their understanding of why
12 that happened. Trying to understand and answer
13 that question of why is crucial to answering term
14 of reference 3 and term of reference 5.

15 It may also be necessary for
16 the Commissioner to address additional policies
17 and procedures, among other things, to include
18 ensuring that steps are taken to improve the
19 information flow among employees. But trying to
20 get at the heart of why this report was not
21 shared, in my view it is appropriate and relevant
22 for us to put before you, Commissioner, evidence
23 that sheds light on Mr. Moore's interpersonal
24 relations with other employees, in some ways his
25 managerial skills, not because conclusions had

1 been drawn already but because it is evidence that
2 we think will help understand, help you
3 understand, the dynamics at play in the department
4 and ultimately answer the question of why this
5 report was not shared.

6 And we are attempting to be
7 fair to all participants when we ask questions
8 about why that report was not shared and utilized
9 by members of the traffic department, among
10 others, and that's the relevance that we see
11 between these questions and some of the evidence
12 that's already been placed in the overview
13 documents.

14 MR. LEDERMAN: If I could just
15 reply to that. I appreciate that that is the
16 exercise that is intended, but indeed if there is
17 specific evidence that relates to those terms of
18 reference that shows that there was a connection
19 between that and any issue around the disclosure
20 of the Tradewind report, that obviously we want to
21 hear that evidence.

22 What I'm concerned about are,
23 in particular, when we're talking about any term
24 of reference dealing with a suggestion of
25 misconduct, that if we're talking about personal

1 reputations, then character evidence at large
2 about people's assessment as to how they act is
3 not the correct way to get to relevant evidence
4 that would assist this inquiry in answering
5 questions and specifically those terms of
6 reference.

7 So, that's the concern that I
8 have, is that we don't want to turn this inquiry
9 into witnesses being called upon to express their
10 views or their opinions about individual character
11 traits at large. If there's obviously a specific
12 piece of evidence or a connection to one's
13 behaviour, one's attitude, to the terms of
14 reference, then absolutely those questions should
15 be asked and answered during the course of this
16 inquiry.

17 JUSTICE WILTON-SIEGEL:

18 Mr. Centa, anything further?

19 MR. CENTA: No, except to say
20 that I don't think that the evidence that I
21 described or was eliciting from Mr. Murray is
22 properly described as character evidence. It is
23 evidence of how Mr. Moore interacted with his
24 supervisor, to whom he may or may not have shared
25 the Tradewind report, and I think that that is

1 right at the centre bull's eye of the terms of
2 reference that you have been asked to address.
3 Nothing further.

4 JUSTICE WILTON-SIEGEL: So, it
5 may be that the issue really arises as a result of
6 the rather general words "spirited rightly or
7 wrongly." I'm going to suggest that the
8 substantive issue is clear. It goes beyond simply
9 Mr. Moore's interaction with respect to this one
10 particular matter, the Tradewind report, and
11 questions along that line are certainly
12 appropriate.

13 With respect to his character,
14 I think we have to stay away from general
15 questions about his character and concentrate more
16 on his relationships with other people, both in
17 his department and with other members of the
18 Public Works department.

19 So, perhaps I might ask you to
20 rephrase the question, avoiding the language of
21 "spirited" and focusing on the dynamic questions
22 of his relationships.

23 MR. CENTA: That's fine.
24 Thank you, Commissioner.

25 MR. LEDERMAN: Thank you.

1 BY MR. CENTA:

2 Q. Turn, then, to -- I note
3 that it is 11:30, Commissioner. I don't
4 anticipate that I will need more than about 15 or
5 20 minutes following the break, but this might be
6 an appropriate time to take the break so that I
7 can canvass with counsel their expected time for
8 cross-examination. And then if we could come back
9 at, let's say, if it would be okay with you,
10 11:50, we can, I'm sure, give you a road map for
11 the rest of the day.

12 JUSTICE WILTON-SIEGEL: Sure,
13 that would be fine. Let's take a break. We stand
14 adjourned, then, until 11:50.

15 --- Recess taken at 11:33 a.m.

16 --- Upon resuming at 11:51 a.m.

17 MR. CENTA: Thank you,
18 Commissioner. Thank you, Mr. Murray.

19 BY MR. CENTA:

20 Q. Registrar, if I could ask
21 you to call up RHV890. Mr. Murray, this is an
22 anonymous letter that was delivered to the City's
23 internal auditor and copies were sent to the
24 mayor's office and also to representatives of the
25 media. Are you the author of this letter?

1 A. No.

2 Q. Do you know who wrote it?

3 A. Do not.

4 Q. Registrar, could you
5 please call out the first bullet. Mr. Murray,
6 would you say that you have a personal interest in
7 the parkway?

8 A. No.

9 Q. Did you ever take steps
10 to avoid exposing flaws in the parkway?

11 A. Exposing flaws?

12 Q. Did you ever take steps
13 to avoid exposing flaws in the parkway?

14 A. Never to avoid exposing
15 flaws, no.

16 Q. Thank you. To the best
17 of your knowledge, did the name change Red Hill
18 Valley Parkway, to Red Hill Valley Parkway, have
19 anything to do with the design standards used on
20 the roadway?

21 A. No, it did not.

22 Q. Thank you. Registrar, if
23 you could stop that call-out and go to image 2,
24 and please call out the first full paragraph below
25 the bulleted paragraph.

1 Mr. Murray, please describe
2 how Mr. Moore came to retire from the City and
3 then go to work on the LRT project?

4 A. You know, I think he had
5 reached his number of years and was eligible to
6 retire. I can't speak to whether or not it was
7 with or without any penalty. I don't know, nor
8 have I looked into those details. But certainly,
9 you know, the reason for involving him in the LRT
10 was, given the nature of the LRT project affecting
11 both surface and subsurface infrastructure, Gary's
12 job is being responsible for capital and
13 engineering, it would be hard to find anyone that
14 has a more complete knowledge of the City's
15 infrastructure than Gary.

16 Q. Did you recommend him for
17 the job with the LRT?

18 A. I did.

19 Q. And did you do so for the
20 reasons that you just described?

21 A. Correct.

22 Q. Did you have any concerns
23 about Mr. Moore's work at the City that prompted
24 you to want him to retire?

25 A. No.

1 Q. Thank you. If we could
2 end that call-out, please, and if you could call
3 out the italicized, eight italicized sentences, in
4 the lower part of the page.

5 Mr. Murray, the letter
6 contains eight examples of statements the author
7 attributes to Mr. Moore. To the best of your
8 knowledge, did Mr. Moore ever speak in this
9 manner?

10 A. Not in this manner at
11 all.

12 Q. Did you ever observe
13 Mr. Moore to be quick to anger with fellow
14 co-workers?

15 A. Not anger at all. I
16 mean, opinion, yeah, absolutely, and direct in the
17 manner which I said earlier. So, yeah, I don't --
18 when I look at this, you know, it's unfortunate.
19 Let's just say that.

20 Q. And, finally, did you
21 ever see any signs of Mr. Moore bullying other
22 City staff to get his way on a particular
23 decision?

24 A. Again, you know,
25 Mr. Centa, I think, you know, Gary has, you know,

1 an ability to get to the point and to make his
2 opinions known and to challenge people. And I
3 want to be accurate in answering your question, so
4 if you could just restate your question so that
5 I'm accurate.

6 Q. Sure. My question was:
7 Did you ever see Mr. Moore, any signs of
8 Mr. Moore, bullying other City staff in order to
9 get his way on a particular decision?

10 A. No.

11 Q. Thank you. Commissioner,
12 those are my questions for Mr. Murray and I
13 anticipate that we will be able to complete the
14 cross-examinations by the lunch break. We have
15 spoken to counsel and got their time estimates.
16 If it is agreeable to counsel, I might suggest
17 that we start with the Ministry of Transportation
18 of Ontario. I don't believe that Dufferin or
19 Golder have any questions, but if that's changed
20 over the break, counsel, please just let me know.
21 And then we can turn to the City for their
22 questions.

23 MR. LEDERMAN: Excuse the
24 witness. I do want to express a concern just
25 about that last document that was raised with

1 respect to questions of admissibility and
2 questions as to weight associated with an
3 anonymous document. Obviously as you know,
4 Commissioner, an anonymous piece of correspondence
5 can't be tested in any way. We don't know
6 anything about the author of a document such as
7 that and, as a result, I think there are two ways
8 in which the courts have looked at treatment of
9 anonymous documents. One is to render something
10 like that to be inadmissible and the other, from
11 my view of the legal principles, are that any
12 weight that would be ascribed to such a letter is
13 typically either zero or next to zero.

14 So, I raise that because I'm a
15 bit concerned that the document that was put
16 before the witness, and there's real questions as
17 to admissibility, whether it's an administrative
18 proceeding, civil proceeding or judicial inquiry,
19 such as what weight can be given to such evidence.

20 MR. CENTA: And, certainly at
21 this point in time, Commissioner, commission
22 counsel is not suggesting that any weight be
23 given. That will be a matter at the end of the
24 day after all the evidence is heard. And in our
25 view, in fairness, it's important to explore these

1 issues and give Mr. Murray, for example, an
2 opportunity to expressly deny the allegations that
3 are made in this letter and he has done so. And
4 exploring these issues, again, where someone has
5 provided this letter to the City, one of the
6 purposes of the inquiry is to explore the facts
7 around allegations like this.

8 Ultimately, it will be for you
9 to draw the conclusions at the end of the day as
10 to whether any weight should be ascribed to this
11 letter or none at all, but at this point those
12 are, in our view, important issues to be aired and
13 questions to be asked and answered. And,
14 Mr. Murray, you heard his evidence, unequivocal
15 evidence, on those points.

16 MR. LEDERMAN: I would just
17 say in reply to that, absolutely, Mr. Centa and
18 all participants can question Mr. Murray and other
19 witnesses who are going to testify as to the
20 issues in this proceeding that are set out by the
21 terms of reference. That can be achieved without
22 putting forward material that does not have any
23 ability to be tested in the form of anonymous
24 correspondence or other types of --

25 JUSTICE WILTON-SIEGEL: Right.

1 So, let me, if I may, just cut this short by a
2 couple of comments.

3 I said earlier when we had
4 another question, this is an inquiry. The strict
5 rules of evidence that apply in a trial, I think
6 we all agree, do not necessarily apply here.
7 There's a certain flexibility that is accommodated
8 in a public inquiry. For that reason, I see no
9 reason why the letter wouldn't be taken and
10 received as an exhibit.

11 But on the substantive point,
12 based on where we are today, there is no weight
13 that I would give to this particular document. I
14 think I would give some weight to Mr. Murray's
15 denials in respect to the questions put to him,
16 but no weight to this particular document.

17 If, in the course of this
18 trial, something arises that requires that we
19 revisit that assessment of the probative value of
20 this document, then we'll address it at that
21 point, and obviously you'll have every opportunity
22 to make submissions then and/or at the end of the
23 procedure after all the evidence is in. But I can
24 assure you that I don't make determinations on the
25 basis of an untested anonymous document, the

1 contents of which are denied by the only witness
2 who is asked to speak to them.

3 MR. LEDERMAN: And I
4 appreciate that, Commissioner, and that's
5 satisfactory. Thank you.

6 MR. CENTA: Is counsel for the
7 Ministry of Transportation prepared to proceed?

8 MS. MCIVOR: I am,
9 Commissioner.

10 EXAMINATION BY MS. MCIVOR:

11 Q. Hello, Mr. Murray. My
12 name is Heather McIvor and I'm counsel for the
13 MTO. I'm just going to ask a few questions and I
14 don't expect I'll be very long.

15 Earlier today Mr. Centa asked
16 you whether you had any conversations regarding
17 friction testing on the Red Hill Valley Parkway
18 before you left your position on the project, and
19 you mentioned that there was a document that spoke
20 to maintenance of the parkway and you said that
21 that it was intended to provide guidelines to
22 other parts of the organization to look after
23 maintenance.

24 Is the document you're
25 referring to the pavement sustainability plan that

1 Stantec was assisting with?

2 A. No, it's not.

3 Q. Okay. And you recall
4 specifically a document that recommended friction
5 testing after the parkway was constructed. Is
6 that --

7 A. No. Prior to the
8 completion of the project, we had undertaken some
9 work to make sure that the maintenance and
10 operations people, when they inherit the project,
11 you know, when it's operational, that they were
12 clear on what it was they were inheriting. And
13 the title of that escapes me right now, but the
14 purpose of that document was to highlight some of
15 the unique features that are a part of this
16 project. So, for example, the natural channel
17 design, there were commitments made to the federal
18 government under the Fisheries Act that allowed us
19 to build one of the longest urban natural channel
20 designs in certainly Canada, I think it goes
21 beyond that.

22 But it was important in
23 receiving information from the federal government
24 and, for that matter, the provincial government
25 that we honour the certificates or the approvals

1 that we were given, and it was important that we
2 have a document that not only specifies that but
3 lays out some of the things that, you know, people
4 within our organization should be cognizant of and
5 maintaining so that we don't find ourselves out of
6 compliance with those approvals.

7 And so, it also afforded us an
8 opportunity to, as a project office, you know,
9 give justification for others in the organization
10 if they needed resources in order to manage
11 whether what is a fairly unique project to at
12 least point to a document that says these are some
13 of the unique characteristics of this project.
14 So, it was not just the environmental components,
15 I believe. I believe it covered civil engineering
16 components as well, so that's what my recollection
17 is referring to.

18 Q. Okay. And to your
19 recollection, that also covered friction on the
20 parkway in some respect?

21 A. I believe so and I
22 hesitated to speculate on anything.

23 Q. Of course.

24 A. But I believe so.

25 Q. Okay. Thank you.

1 Mr. Centa also asked you about meetings to discuss
2 the QEW interchange, coordinate construction
3 between the interchange and the parkway. You
4 indicated that you did attend some of those high
5 level meetings and those would have been meetings
6 with MTO staff. Is that your evidence?

7 A. They would have been, I
8 believe, with Roger Hamner and the individual who
9 I think took over for Roger when he left, so...

10 Q. Okay. And those would be
11 the only two individuals that you were meeting
12 with or --

13 A. I can't be 100 percent
14 certain.

15 Q. Okay. And now, Mr. Oddi
16 spoke to attending meetings about the interchange
17 as well. Would you and him both attend the same
18 meetings or are those different meetings?

19 A. No. Mine would be, you
20 know, more with the regional director at that kind
21 of level. Specifics in terms of what I could
22 describe as day-to-day-type activities would be
23 mostly in the hands of our engineering staff.

24 Q. And Mr. Centa also asked
25 whether friction or friction matters ever came up

1 at those meetings. You said, "I believe." You
2 said, "I don't recall." I just want to clarify.
3 Are you certain that they didn't occur or you just
4 can't recollect that far back?

5 A. Well, you know, and
6 again, I think we got to be careful we're not
7 blurring timelines here, because there is the work
8 prior to the opening of the parkway and then
9 there's the work after. I have no recollection of
10 any conversations with the provincial government
11 about friction testing or anything because I had
12 moved on to be housing director and city manager.

13 I don't recall, you know, that
14 friction was an issue prior to the project being
15 opened and I don't recall having those kinds of
16 conversations prior to my departure.

17 Q. Okay. MTO's evidence
18 will be prior to your departure, so into the
19 spring of 2007, there were ongoing MTO industry
20 discussions about changing from SMA on MTO
21 contracts to Superpave, and certainly individuals
22 such as Mr. Hamner were kept apprised of these
23 developments and whatnot. Is it possible that you
24 discussed these issues with him?

25 A. Well, the first I've ever

1 heard of Superpave was about three seconds ago, so
2 it's not a term I'm used to.

3 Q. Okay. And you had no
4 discussions about SMA in general at those
5 meetings?

6 A. I don't recall that at
7 all.

8 Q. Okay. Mr. Murray, we
9 heard that during your time on the project -- or
10 why don't I ask you. I'm not sure if this was
11 your testimony. During your time on the project,
12 did you form any safety concerns about issues on
13 the parkway in terms of construction or any
14 related matters?

15 A. Not roadway safety. I
16 mean, we had a role in our office to ensure that
17 our environmental commitments that we had made
18 vis-à-vis the approvals and certificates, that we
19 build the project in a way that was compliant with
20 those approvals. So, I think that's a very
21 different answer to the question that you asked.

22 Q. Okay. And so, I take it
23 if we're talking about friction concerns or
24 friction-related safety concerns, that's not
25 something that you would have reached out to

1 individuals at MTO to discuss?

2 A. Correct.

3 Q. Okay. And what about in
4 your subsequent positions for the City of
5 Hamilton, either as director of housing or city
6 manager? Did you have any contact with MTO to
7 flag any concerns about friction on the Red Hill?

8 A. No.

9 Q. Now, I appreciate of
10 course you were in a different position by the
11 time the parkway opened. We heard that you had
12 some interest in SMA because it was known to
13 generate lesser noise and that was, from your
14 environmental perspective, seen as quite a
15 benefit.

16 Did you ever follow up or make
17 any enquiries to assess whether the SMA
18 effectively achieved that?

19 A. I'm trying to recall
20 whether we had post-construction noise monitoring
21 and that may be something in that document I
22 referred to earlier as something that we may have
23 monitored for, but I can't be 100 percent certain,
24 so sorry about that.

25 Q. Okay. And in the

1 documents we saw earlier, along with the potential
2 for reduced noise there was the potential for
3 increased skid resistance, so I take it there were
4 no sort of post-construction enquiries on your end
5 regarding the skid resistance quality of the
6 highway?

7 A. No. I think to your
8 earlier comment, when I left the project office
9 and took on other responsibilities, my direct
10 day-to-day interest ended.

11 Q. Fair enough. Thank you,
12 Mr. Murray. Those are my questions.

13 MR. CENTA: I'm not seeing
14 counsel for Golder or Dufferin turning on their
15 cameras to ask questions. I believe that leaves
16 City of Hamilton to conduct their examination.

17 MS. JENENE ROBERTS: Thank
18 you, Mr. Centa.

19 EXAMINATION BY MS. JENENE ROBERTS:

20 Q. Mr. Murray, I just have a
21 few questions following up on some of the
22 testimony that you have given this morning.

23 First, you had a discussion
24 earlier with commission counsel about the City's
25 use of consultants and I wanted to ask you: When

1 City staff asks for advice from a consultant, do
2 the City staff then rely on the consultant's
3 expertise?

4 A. Generally, yes.

5 Q. But am I right that City
6 staff also sometimes have technical expertise,
7 depending on their position?

8 A. Yes, that's true.

9 Q. So, is it the expectation
10 that staff will rely on their own judgment in
11 conjunction with the advice that's provided by
12 consultants when they're making decisions?

13 A. Yes. I think there are
14 going to be instances where their own advice will
15 be taken into consideration in informing, you
16 know, a decision or making known matters to a
17 standing committee or to council. I mean,
18 generally speaking, that's not beyond the realm of
19 possibility.

20 Q. Okay. And does City
21 staff sometimes have knowledge of additional
22 factors that should be considered that a
23 consultant might not be aware of?

24 A. That is possible.

25 Q. And would those

1 considerations include things such as resource
2 limitations or prioritization of issues by the
3 City?

4 A. I think we're getting
5 into something very generic here, so if you could
6 maybe be more specific. I think just a generic
7 question will yield a -- I don't know if it will
8 be a useful response.

9 Q. Sure. That's fine. What
10 I was asking you is are there occasions where a
11 consultant might not be aware of all of the
12 details that City staff would be aware of that
13 would go into city council, for example, making
14 decisions, such as resource limitations or how the
15 City is prioritizing certain issues?

16 A. Yeah. I mean, all those
17 kinds of other details aren't necessarily going to
18 be germane to what the consultant is being hired
19 to do. But again, you know, through the course of
20 retaining a consultant to give specialist's
21 advice, you know, there's usually a sharing of
22 information, and so I think it's -- whether that
23 has any effect whatsoever on the consultant's
24 work, I guess it really depends on specifics.
25 But, you know, there are going to be things that

1 are separate and different from what the
2 consultant's been asked to do for us, if that
3 answers your question.

4 Q. Yes. Yes, it does. And
5 would you expect that City staff and particularly
6 staff in leadership positions would use their
7 judgment in applying the advice that's contained
8 in a consultant's report?

9 A. To a point. It really
10 depends on the nature of the consultant's advice.

11 Q. Okay. I want to ask you
12 now about consultants' reports. You had a
13 discussion earlier with commission counsel about
14 consultants' reports that are sometimes prepared
15 for the City of Hamilton. Was there a policy
16 about whether City staff were required to provide
17 consultant reports to city council?

18 A. I'm not aware of a
19 specific policy that mandates or requires all
20 consultant reports to be provided to council, no.

21 Q. Okay. So, does that mean
22 it was left up to City staff's judgment as to
23 whether council would need a copy of a specific
24 consultant's report?

25 A. Yes, it certainly could

1 be left up to the staff person's judgment. But,
2 again, I think in answering the question that I
3 was asked previously, you know, it's not
4 unreasonable to expect that reference to a
5 consultant's work would be made in such a report
6 that we would be providing a standing committee or
7 council.

8 Q. Okay. And then this
9 might flow from your previous answer, but was
10 there a policy about whether staff could provide
11 some council members with copies of reports if so
12 requested by some councillors?

13 A. I'm not aware of that
14 policy.

15 Q. Okay. And then in your
16 experience, was it unusual to provide a copy of a
17 report to certain councillors if they had a -- if
18 it was particularly relevant to their councillor,
19 for example, because of their ward or their
20 constituency?

21 A. You know, again, I think
22 the reference earlier to was -- and I'll just
23 split a hair here -- is that draft reports are,
24 for that matter, reports. There are going to be
25 conversations with members of council in terms of

1 things that affect their wards. You know, the
2 sharing of that kind of information, I don't think
3 we have -- I don't recall there ever being such a
4 policy in Hamilton and I'm not aware of, you know,
5 those kinds of policies elsewhere.

6 You know, and, again, maybe
7 I'll just get you to, Ms. Roberts, rephrase your
8 question again so I can answer it properly?

9 Q. Okay. I think you've
10 answered my question, but I'll ask sort of a
11 related one now. For reports to council that do
12 discuss a consultant's report, as you mentioned,
13 they often reference a report but don't actually
14 attach the report. Can city council then request
15 that staff provide a copy of the report?

16 A. Absolutely, yes.

17 Q. Okay. And given such a
18 request from council, staff would then be required
19 to provide a copy. Is that right?

20 A. That would be my
21 expectation, yes.

22 Q. Okay. A slightly
23 different topic. You were asked about Mr. Moore's
24 acceptance of a trip to Ottawa for a 2009
25 Consulting Engineer Awards in recognition of

1 Golder's work on the RHVP, and you told us that if
2 the issue of accepting that trip was raised to you
3 at the time, you would have entertained a
4 different option that could have allowed Mr. Moore
5 to attend the award ceremony.

6 And I wanted to ask you in
7 your view, what impact, if any, did Mr. Moore's
8 acceptance of that trip have on Mr. Moore's work
9 on the Red Hill Valley Parkway?

10 A. Yeah. I think Mr. Moore,
11 you know, in the time that I've worked with him on
12 the project, had always, as I had said earlier,
13 demonstrated, you know, a good engineering
14 ability. As I pointed out, I think he's one of
15 the, you know, engineers that, when I look back on
16 all that I've worked with, has been, you know,
17 quite good at his job. And so, a gift of that,
18 although I think I've answered the question in
19 light of our Code of Conduct, the acceptance of
20 such a gift not being a great choice, I do not
21 think it would influence his expertise or his
22 recommendations as an engineer. I think he would
23 still give us, you know, his best advice.

24 Q. Okay. And then just a
25 slightly different question. What impact, if any,

1 did Mr. Moore's acceptance of that trip have
2 specifically on any safety issues with respect to
3 the Red Hill Valley Parkway?

4 A. I don't see a connection.

5 Q. Okay. And then another
6 related question. What impact, if any, did you
7 see that Mr. Moore's acceptance of this trip to
8 Ottawa would have had specifically on the
9 disclosure of any friction reports to council or
10 to the public?

11 A. Again, you know, the
12 judgment to accept a gift, I've already commented
13 on, but I still think connecting that to, you
14 know, his decisions about a report, that one
15 that's in question here, I think those are two
16 very separate matters.

17 Q. Okay. And there's one
18 more question about the anonymous letter that
19 commission counsel asked you about earlier. You
20 confirmed that, contrary to the statement that was
21 contained in there, you did not take steps to
22 avoid exposing any flaws on the Red Hill Valley
23 Parkway.

24 Did you have any concern that
25 Mr. Moore took any steps to avoid exposing flaws

1 on the Red Hill Valley Parkway?

2 A. No, I don't believe he
3 took any steps to avoid flaws. And I will just
4 add, you know, the use of the term "parkway" had
5 more to do with the road's location in a park-type
6 area, so it wasn't to avoid a standard or anything
7 of that nature.

8 Q. Thank you, Mr. Murray.
9 Mr. Commissioner, those are all my questions.

10 MR. CENTA: Nothing further
11 from commission counsel.

12 JUSTICE WILTON-SIEGEL: Okay.
13 Well, then I think we're done. I want to thank
14 Mr. Murray for attending and giving his evidence
15 today. You're excused, if you want to sign off,
16 Mr. Murray.

17 And I think we're done for the
18 day, the intention being that counsel and the
19 Commissioner certainly can use Fridays, to the
20 extent they're available, for reviewing the
21 evidence and I intend to do that. I think that's
22 reflected in our schedule thus far.

23 So, unless there's anything
24 else, Mr. Centa, that we have to do today --

25 MR. CENTA: No, Commissioner.

1 I think we stand adjourned until Monday morning.

2 JUSTICE WILTON-SIEGEL: At

3 9:30.

4 MR. CENTA: At 9:30. Just to

5 remind counsel, next week we are sitting Monday,

6 Tuesday and Wednesday. We will not be sitting

7 Thursday and Friday.

8 JUSTICE WILTON-SIEGEL: Okay.

9 Thank you very much.

10 --- Whereupon the proceedings adjourned at

11 12:24 p.m. until Monday, May 8, 2022

12 at 9:30 a.m.

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