

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS  
HEARD BEFORE THE HONOURABLE J. WILTON-SIEGEL  
held via Arbitration Place Virtual  
on Thursday, June 30, 2022, at 9:31 a.m.

VOLUME 41

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Colin Bourrier    For Province of Ontario  
Heather McIvor

Chris Buck    For Dufferin Construction

Fabiola Bassong                                        For Golder Associates Inc.

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1 Arbitration Place Virtual

2 --- Upon resuming on Thursday, June 30, 2022,

3 at 9:31 a.m.

4 MS. HENDRIE: Good morning,

5 Commissioner. Our next witness this morning is

6 Heather Bell. Ms. Bell will need to be affirmed.

7 HEATHER BELL; AFFIRMED

8 EXAMINATION BY MS. HENDRIE:

9 Q. Good morning, Ms. Bell.

10 I would like to start today with some questions

11 about your professional background and your

12 employment history.

13 So, I understand that you have

14 been employed by the MTO since 2008. Is that

15 right?

16 A. Yes.

17 Q. And you are currently

18 employed by the MTO?

19 A. Yes.

20 Q. What is your current

21 position?

22 A. Senior bituminous

23 engineer.

24 Q. And is that in the

25 bituminous section?

1 A. Yes.

2 Q. Am I right that the  
3 office where you work is now called the  
4 engineering materials office, but formerly  
5 referred to or known as the materials engineering  
6 and research office?

7 A. Yes.

8 Q. When did you start in  
9 your position as senior bituminous engineer?

10 A. 2017.

11 Q. And prior to that, what  
12 positions did you hold with the MTO?

13 A. Materials project  
14 engineer and a project engineer.

15 Q. Were those --

16 A. In the engineering  
17 development program.

18 Q. And were those positions  
19 also in the bituminous section or different  
20 offices?

21 A. Different offices.

22 Q. Were you employed before  
23 you joined the MTO in 2008 or did you come to the  
24 MTO straight from school?

25 A. Straight from school.

1 Q. Okay. And where did you  
2 do your schooling?

3 A. McMaster University.

4 Q. And what was your degree  
5 in?

6 A. Civil engineering.

7 Q. Are you a licensed  
8 professional engineer in Ontario?

9 A. Yes.

10 Q. As of when?

11 A. 2000 and -- what would  
12 that be -- 12.

13 Q. In your current position  
14 as senior bituminous engineer, do you report  
15 directly to the head of the bituminous section?

16 A. Yes.

17 Q. And who is that?

18 A. Gelu Vasiliu.

19 Q. And prior to that, am I  
20 right that Pamela Marks was the head of the  
21 bituminous section?

22 A. Yes.

23 Q. Would the timing be right  
24 that she was the head of the bituminous section  
25 until she retired from the MTO in and around

1 June 2019?

2 A. Yes.

3 Q. And in your current role,  
4 do you have any people who report to you?

5 A. No.

6 Q. The inquiry heard  
7 evidence from a number of MTO employees back in  
8 May and some of whom were former employees in the  
9 bituminous section. But just for our benefit, as  
10 a refresher, can you describe what the bituminous  
11 section is responsible for?

12 A. Well, the bituminous  
13 section is responsible for things related to  
14 bituminous materials, asphalts, tack coats,  
15 emulsions, so mostly we write specifications and,  
16 as a head office function, provide advice to the  
17 regional offices with regards to how to use those  
18 specifications and administer them. We also do  
19 research and develop new test methods to improve  
20 the roads of Ontario and to use the taxpayers'  
21 dollars better and to make roads last longer.

22 Q. Specifically, what are  
23 your duties in your role as senior bituminous  
24 engineer?

25 A. So, I am the lead for the



1 hot in-place recycling specification, as well as  
2 the performance-graded asphalt cement and  
3 recovered asphalt cement specifications. I'm also  
4 the regional contact for the bituminous section  
5 for the regions for western region and northwest  
6 region.

7 Q. You said you were the  
8 lead for the hot in-place recycling  
9 specifications. Can you tell us a bit more about  
10 that? What specifically is involved in that role?

11 A. So, as the lead for hot  
12 in-place specifications, I am responsible for  
13 updating the specifications, helping the regions  
14 select appropriate jobs to do HIR, as well as  
15 helping field staff, quality assurance staff, in  
16 administering the contracts during construction,  
17 interpreting the test results and what to do when  
18 we get questionable results possibly.

19 Q. And when did you start in  
20 your capacity as hot in-place lead? Was that when  
21 you became the senior bituminous engineer in 2017?

22 A. Yes, with Pamela Marks.  
23 She, kind of, was passing the torch to me in that  
24 respect.

25 Q. Okay. So, had Ms. Marks

1    been the lead prior to you?

2                            A.    I believe so, in the  
3    past.

4                            Q.    You mentioned that you're  
5    the regional representative.  For the hot in-place  
6    specification role, are you the lead for the  
7    entire province or specifically for the regions  
8    that you mentioned?

9                            A.    For the entire province.  
10   The regional one is more just if they have  
11   specific issues, I will direct them.  They contact  
12   me and I will direct them to the correct lead.

13                           Q.    As part of the MTO's  
14   document production in the inquiry, we've received  
15   a number of scans or photos of pages of your  
16   notebooks, Ms. Bell, and I'll be taking you to a  
17   number of these notes during your testimony today.

18                            But before I do, can you  
19   describe for us generally what your practices are  
20   with respect to taking and retaining your notes?

21                            A.    So, I'm not that great at  
22   taking consistent notes, but I do usually jot a  
23   few notes down during the day about things that I  
24   need to remember to do, as well as if I have a  
25   conversation with someone and there's things that

1 I want to note while taking the conversation.  
2 They're not the most detailed notes and I'm not  
3 that great at always putting the date on the page,  
4 but they help for me to go back and look at  
5 things, like what-am-I-to-do list, mostly.

6 Q. So, you sort of use your  
7 notes as a to-do list and then also to, sort of,  
8 write down things that are discussed in a  
9 conversation or items coming out of a meeting or a  
10 phone call or things like that. Would that be  
11 fair?

12 A. Yes.

13 Q. Okay. And are you  
14 preparing notes on a weekly basis? On a daily  
15 basis? What are your practices with respect to  
16 timing?

17 A. On a daily basis, I will  
18 usually write something in my notebook.

19 Q. Okay. And would there be  
20 instances where, for example, you have a phone  
21 call or a meeting and you might not make a note?

22 A. Yes.

23 Q. And were these your  
24 note-taking practices in 2018 and 2019?

25 A. Yes.

1 Q. So, as background to what  
2 I'm going to be asking you about today and what  
3 we're going to discuss, we know that the City of  
4 Hamilton was involved in lengthy consideration  
5 about the use of hot in-place recycling in late  
6 2017 and into 2019, and that the City was  
7 considering using the hot in-place technology for  
8 resurfacing of the SMA layer of the Red Hill  
9 Valley Parkway.

10 And as part of the City's  
11 investigation, they hired Golder Associates and  
12 specifically Dr. Ludomir Uzarowski to study the  
13 feasibility of hot in-place on the Red Hill Valley  
14 Parkway, to do lab testing and to provide guidance  
15 on the hot in-place design and mix development.

16 And around that same time, we  
17 understand that the MTO was also looking at hot  
18 in-place recycling on a contract in Thunder Bay  
19 and also considering using hot in-place for future  
20 contracts.

21 And so, that's sort of the  
22 background piece. But before we get into some of  
23 the specifics of that, Ms. Bell, I'm wondering if  
24 you can tell us sort of in layperson's terms what  
25 hot in-place recycling is and how it works?

1                   A.    So, hot in-place  
2    recycling is where you keep the pavement, the  
3    existing pavement, usually with infrared heat to  
4    make it reactivate and warm and then you will hot  
5    mill, which is using a drum with teeth on it to  
6    dig into the existing warm pavement to remove it  
7    from the road and mix it.  Usually this is better  
8    than a cold in-place recycling because they cold  
9    mill without heating it first, which can actually  
10   break some of the aggregates, so this is actually  
11   a gentler process.

12                   Which then once you've got the  
13   material back off of the road, you will add some  
14   rejuvenator, rejuvenating agent, usually a liquid  
15   or oil-based product that, when mixed with that  
16   existing old pavement, will rejuvenate or  
17   re-soften the black asphalt cement, the tar  
18   product that we use to bind the aggregates in an  
19   asphalt pavement, making it like new again and  
20   less prone to cracking again.

21                   And that's likely the reason  
22   you're recycling, is because asphalt cement has  
23   aged, gotten hard and started cracking on the road  
24   and you want to take it up, make it soft again and  
25   put it back down with no cracks.  So, they pretty

1 much -- they mix it. They can add some new virgin  
2 or new asphalt cement from a plant if some is  
3 needed in order to add a shoulder or some added  
4 material that you don't have because you're using  
5 the existing material. And then mix that all  
6 together, place it like you normally would place  
7 an asphalt pavement, with a paver, and roll it  
8 with rollers for compaction and have a new  
9 surface.

10 Q. Thank you. And I think  
11 one of the things you mentioned there was that  
12 using the heat doesn't crack the aggregate in  
13 terms of as compared to a cold in-place. What  
14 other benefits are there to hot in-place  
15 recycling?

16 A. The other benefit would  
17 be to the environment because you are not digging  
18 up new aggregates, which are, you know,  
19 non-renewable resources, as well as trucking  
20 those, crushing them, making a lot of new mix in a  
21 plant, which creates fumes, green house gases, the  
22 trucking even, right, to site and back. So, you  
23 save a lot of greenhouse gas emissions and other  
24 impacts on our planet. It's like a plant on  
25 wheels and it's using up to 100 percent of the

1 existing material, again, recycling.

2 And the other benefit is that  
3 it also is cost savings because you don't have to  
4 pay for all those new aggregates or a lot of new  
5 asphalt cement, which is fairly expensive, it's  
6 one of the most expensive components, so there's  
7 environmental and cost savings as well.

8 Q. And when you spoke about  
9 the, maybe you said plant on wheels, is that  
10 because the truck is actually, in addition to  
11 heating, heating the asphalt and milling it, it's  
12 then remixing it and placing it back on the road?

13 A. Yes, it's mixing.

14 Q. So it's like a plant on  
15 wheels?

16 A. Yes.

17 Q. And are there benefits in  
18 terms of timing compared to a traditional repaving  
19 or resurfacing?

20 A. Yes. That's also a  
21 benefit, is that it mills and places the lift in  
22 one pass of the lane. Traditionally, with a mill  
23 and pave job, you will have to have a separate  
24 milling machine that cold mills the material and  
25 you put it into a truck and take it away and then

1 they come and bring the new asphalt from the plant  
2 and pave it with a paver, usually a different day  
3 or a separate process. It's a separate -- yeah,  
4 separate process, so it can take longer that way.

5 This way, you are milling and  
6 putting down all in the same pass and it also can  
7 have safety benefits because you don't have that  
8 milled surface that people have to drive on.  
9 There's no difference in the lane you've milled  
10 and the lane you haven't milled. There's no drop  
11 off because you're milling it and then paving it  
12 to match exactly, so it can be a little bit safer  
13 and more convenient --

14 Q. And -- sorry, go ahead.

15 A. Sorry, during  
16 construction.

17 Q. Got it. So, we've just  
18 talked about some of the benefits. Are there any  
19 downsides or limitations?

20 A. There's definitely  
21 limitations, as with any pavement treatment. It's  
22 always, we like to say, the right tool for the  
23 right job at the right time, so it can only be  
24 applied to pavements that don't have structural  
25 distresses, meaning it's just the cracking is just



1 within that surface layer, that top 50 millimetres  
2 have you can recycle. If it's any further down,  
3 you really should do a deeper treatment to repair  
4 that, otherwise it's just going to reflect the  
5 cracks back up. So, that's one of the, you know,  
6 reasons you would only use it for -- you know,  
7 before the pavement gets too deteriorated.

8 Q. And in terms of the life  
9 span of a hot in-place recycled surface compared  
10 to the new surface of a pavement that's done with  
11 a shave and pave or a more traditional method,  
12 what's the difference there, if any?

13 A. So, we do estimate that  
14 it will be a couple years shorter with the hot  
15 in-place recycling job, you know, because -- so, I  
16 think typically it's like maybe 12 years for a  
17 shave and pave and it might be 9 to 10 years you  
18 would get from a HIR job. That's the estimate  
19 that we use for our design guidelines.

20 Q. Why is there that  
21 difference? What's the reason?

22 A. Well, just that it is a  
23 recycled product, so there is a lot of aged  
24 asphalt and the rejuvenating agent may not be able  
25 to reactivate all of it, and so some may still be

1 aged and you might get some cracking sooner  
2 because it's harder and brittle.

3 Q. Thank you. Registrar, if  
4 we could call up MTO38667. Thank you.

5 So, Ms. Bell, this is the  
6 November 2016 OPSS 332 and, as I understand it,  
7 it's from Chapter B of the Contract Design  
8 Estimating and Documentation manual that's  
9 prepared by the MTO. As I understand it, these  
10 are the MTO's guidelines for design, estimating  
11 and contract preparation for the use of hot  
12 in-place on MTO roads. Is that right?

13 A. Yes.

14 Q. And was OPSS 332, this  
15 chapter, something that you worked on or updated  
16 as part of your responsibilities as the hot  
17 in-place lead?

18 A. Yes.

19 Q. And can you tell us a bit  
20 about your involvement with this document?

21 A. So, I was tasked with  
22 updating this by Pamela Marks, the head at the  
23 time, in 2016. I started by actually updating the  
24 specification, which is OPSS 332, which is  
25 different from this document, so once we updated

1 the specification, then we would also update this  
2 CDED, this acronym for the document you said. We  
3 also update that guideline to designers about how  
4 to select the job at the time. We update the  
5 specifications usually.

6 Q. And it says November 2016  
7 there in the bottom left corner. Would this  
8 document, to your knowledge, have been the version  
9 of the CDED that was in effect or in force in  
10 2018?

11 A. Yes, it's my  
12 recollection.

13 Q. And the updates that  
14 happened in and around 2016, why was it being  
15 updated at that time?

16 A. So, the MTO hadn't used  
17 hot in-place recycling since the early 2000s. The  
18 equipment had left the province and we stopped  
19 putting out hot in-place recycling jobs. And so,  
20 at that time, in 2016, Pamela Marks, who had  
21 experience with hot in-place, as the head, wanted  
22 us to get back into hot in-place recycling for the  
23 benefits we've talked about. She believed in the  
24 technology and she tasked me with updating them so  
25 that we could try to bring it back to the province

1 for the benefits that we would like to see.

2 Q. And, Registrar, if we  
3 could call out the first paragraph under the  
4 bullets sections. Perfect.

5 So, Ms. Bell, this says:

6 "HIR is not suitable for  
7 pavements exhibiting  
8 structural distresses."

9 And then it gives some  
10 examples. And then it goes on to say:

11 "HIR is not suitable for  
12 pavements exhibiting  
13 severe or very severe  
14 ravelling or course  
15 aggregate loss due to  
16 stripping."

17 Is this what you were just  
18 telling me about in terms of what sort of  
19 pavements hot in-place is appropriate for and not  
20 appropriate for?

21 A. Yes.

22 Q. Registrar, we can end  
23 that call out and in the second last paragraph in  
24 the last paragraph there, Registrar, if we could  
25 call those out.

1                   So, the first call out there  
2    says:

3                                 "HIR is recommended only  
4                                 for existing flexible  
5                                 pavements, excluding  
6                                 SMA."

7                   And then in the very last call  
8    out, it says:

9                                 "The HIR process shall  
10                                not be used to recycle  
11                                SMA or composite  
12                                pavements."

13                   So, the MTO specifications in  
14    the CDED did not allow hot in-place on SMA. Is  
15    that right?

16                                A. Yes.

17                                Q. And why is that?

18                                A. I believe that in  
19    discussions with Pamela Marks, we decided that we  
20    didn't want to do it on SMA at first since we had  
21    done a complete overall of the HIR specifications,  
22    OPSS 332, you know, updating it and raising the  
23    bar for the quality of HIR, expecting it to be a  
24    surface course. In the past, a lot of times there  
25    was a new lift of asphalt placed over top of it,

1 so we were going to be asking a lot more of the  
2 HIR process and we wanted to test it out on some  
3 lower risk jobs and some mixes that we have HIR'd  
4 in the past and had experience with to get it  
5 established in the province to show that it works,  
6 and then eventually we would have looked at  
7 expanding what types of pavements it could be done  
8 on.

9 Q. Okay. So, in the past,  
10 when MTO had used hot in-place in the earlier  
11 2000s, SMA wasn't something that had been hot  
12 in-placed? Is that right?

13 A. To my knowledge, no. I  
14 don't even know if we had any SMA pavements yet.  
15 That was one of the first ones.

16 Q. And so, as I understand  
17 your answer, part of the concern would have been  
18 about lack of experience. Is that right?

19 A. Yes.

20 Q. Were there any other  
21 concerns or issues particularly related to the  
22 structure of an SMA pavement and recycling that?

23 A. Not to the structure, no.  
24 Sorry, I'm not quite sure what you mean by  
25 structure.

1 Q. Sure. So, any concerns  
2 about fibre content in an SMA pavement?

3 A. I'm not really an expert  
4 on SMA, so I'm not sure that was a concern.

5 Q. Were there any concerns  
6 about more generally in hot in-place, the hot  
7 in-place recycling process, are there any concerns  
8 about friction levels of a pavement that is being  
9 considered for hot in-place? Is that something  
10 that's taken into consideration?

11 A. No. Usually we don't  
12 check for friction issues. For an HIR job, I  
13 would rely on the region's regional geotechnical  
14 sections who are recommending a job to have, you  
15 know, checked that it was structurally okay, as  
16 you said. Right? So, I'm trusting that they  
17 checked for jobs that don't have much cracking.

18 They would also usually not  
19 choose a job that they know has a problem with  
20 friction. That would have been dealt with before  
21 or with a different method obviously because you  
22 can't hot in-place something that has an aggregate  
23 issue because you're not replacing those  
24 aggregates, so it's not -- it wasn't something  
25 that's standard MTO practice, to check for

1 friction during an HIR investigation.

2 Q. Right. And so, the  
3 reason, as you said, as I understand it, that you  
4 can't hot in-place something that has an aggregate  
5 issue is because those same aggregates that would  
6 be affected are then recycled and put back into  
7 the hot in-place or the new asphalt. Is that  
8 right?

9 A. Correct.

10 Q. Registrar, if we could  
11 end this call and if we could go to images 4 and 5  
12 of this document.

13 I think, Ms. Bell, this is  
14 maybe what you were referring to with the  
15 geotechnical region piece. So, you'll see in the  
16 bottom of the image on the left side there's a  
17 heading that says Pre-Engineering Investigation,  
18 and under General it says:

19 "This section describes  
20 procedures and tests to  
21 be carried out during  
22 pre-engineering contract  
23 investigations on  
24 potential Ministry HIR  
25 projects."



1                   And then in the following  
2 pages there is some discussion about what's  
3 involved in the investigation.

4                   And so, am I right that an  
5 investigation or a pre-engineering investigation,  
6 like what's described in this section, is always a  
7 part of the hot in-place process?

8                   A.    Yes.

9                   Q.    And why is that?

10                  A.    Well, we need to make  
11 sure that the material on the road can be  
12 recycled, so mostly we're looking for the  
13 existing, so the gradation of the aggregates.  
14 It's more, you know, not the actual aggregates  
15 themselves but how many large ones there are  
16 versus small ones, is within an acceptable range  
17 because, again, it's hard to make that completely  
18 changed, so you can make a little adjustment by  
19 adding some new mix, as I talked about, some new  
20 hot mix, so you could fix that, but we also are  
21 looking to see if the existing asphalt cement is  
22 too hard to be rejuvenated. And that's mostly the  
23 reason we will -- if we find a problem during the  
24 pre-engineering investigation, it is usually that  
25 the existing asphalt cement is too aged, too

1 brittle to be rejuvenated and we cannot do HIR.  
2 So, that asphalt cement, recovered asphalt cement,  
3 testing is important, but we also look at the  
4 asphalt cement content because, if it's already  
5 too high, adding liquid rejuvenator would be a  
6 problem in filling too many of the voids and you  
7 can get the asphalt cement coming out on the  
8 surface, so we want to avoid too high of asphalt  
9 cement contents as well. And if the air voids are  
10 already too low, again, adding liquid to those air  
11 voids will result in even lower air voids. So,  
12 those are some of the properties we're checking to  
13 see if it's a good candidate and if it meets those  
14 things we're looking for then we will go forward  
15 with planning to do HIR on it, and if it doesn't  
16 then we will probably change to a mill and pave or  
17 shave and pave option.

18 Q. And would this also be  
19 the stage where you're looking for the aggregate  
20 issues that we were just talking about?

21 A. Sorry, which aggregates  
22 issues?

23 Q. Like, would identifying  
24 potential aggregate issues or possible aggregate  
25 issues that would make a pavement not a good

1 candidate for a hot in-place, is that also  
2 something that you're looking for in this  
3 investigation stage?

4 A. So, no. This would be --  
5 if you -- we don't do any tests on the actual  
6 quality of the aggregate for MTO jobs because --  
7 at the investigation stage because, before that, I  
8 would have expected the regional geotech to know  
9 that, if there's an issue with the existing  
10 aggregate, then it's not a good candidate already.  
11 Like, knowing that's it's severely cracked, you  
12 would know that before you take samples and pay  
13 someone to test them. Right? So, we don't test  
14 the aggregates normally on an MTO job because we  
15 know that the existing road is good and it has  
16 been performing, so we know that the existing  
17 material is fairly good and we just want to verify  
18 that the properties, how it was mixed for the air  
19 voids and stuff is suitable to add some liquid to  
20 it. Right? And that the actual asphalt is within  
21 the range to be rejuvenated.

22 Q. And am I right that the  
23 investigations or considerations of pavements for  
24 hot in-place, that's a site specific process?

25 A. Sorry, the investigation

1 is?

2 Q. So, when you're looking  
3 at a pavement or you're considering hot in-place,  
4 is it site specific, so you're looking -- you're  
5 testing and investigating specifically the  
6 pavement that would be recycled?

7 A. Yes.

8 Q. And that's because, as  
9 you said, if there are issues with cracking or  
10 aggregate issues, whatever, it's specific to that  
11 pavement that's being recycled. Is that right?

12 A. Yes.

13 Q. So, things like the  
14 feasibility, mix design, those elements, they're  
15 all tied to the specific HIR candidate?

16 A. I'm not sure what you  
17 mean by feasibility, but these guidelines would be  
18 applicable to the specific pavement, yes.

19 Q. Okay. And, in your  
20 experience, how long do these investigations  
21 usually take?

22 A. A couple months, I guess.

23 Q. So, this is an MTO  
24 document, and so, as you said, it applies to MTO  
25 roads and MTO jobs. But how does it apply, if at

1 all, to municipalities?

2 A. Well, to my  
3 understanding, it doesn't apply to municipalities.  
4 It's available publicly for people to refer to if  
5 they want to.

6 Q. So, a municipality could  
7 look to and use these guidelines if they choose,  
8 but they're not obligated or required to?

9 A. Yes.

10 Q. You may have said this  
11 but just so I can cover it off in my notes, is  
12 top-down cracking a structural issue that would  
13 prevent the use of hot in-place on a road?

14 A. It depends on the cause  
15 of the top-down cracking. I mean, you know, if  
16 it's contained with only the surface, it is  
17 possible, but the cause of the top-down cracking  
18 sometimes is the quality of the asphalt cement,  
19 which then is a problem to try and recycle because  
20 it may be not be able to be rejuvenated because it  
21 was so hard that it's the reason it started  
22 cracking, not due to traffic loads or structure.  
23 Right? So, we would -- it would depend on the  
24 quality of that existing asphalt cement, if it was  
25 the cause of the top-down cracking.

1 Q. Registrar, I'm going to  
2 move on to the next document, but I believe this  
3 document needs to be marked as an exhibit, so that  
4 would be Exhibit 123.

5 THE REGISTRAR: Noted,  
6 counsel. Thank you.

7 EXHIBIT NO. 123:  
8 November 2016 OPSS 332,  
9 MTO38667.

10 BY MS. HENDRIE:

11 Q. Thank you. And,  
12 Registrar, if we could call up MTO38687 at image 3  
13 and we can end the call out on the left. Thank  
14 you.

15 So, Ms. Bell, this is an entry  
16 from your notebook. Is that correct?

17 A. Yes.

18 Q. And this is the first  
19 contact that we see between you and the City of  
20 Hamilton in your notebooks and you'll see in the  
21 top right there there's no date at the top. I  
22 won't read it all out to you, but there are  
23 references, you'll see, to it says Mike Becke,  
24 City of Hamilton, and then there's reference to  
25 Gary Moore, some references to fibre and HIR.

1                   And when I asked you before  
2    about your note-taking practices, you said you  
3    don't always date the pages of your notebook. And  
4    as I said, there's no date here, but I'm hoping  
5    that if I can take you to two other pages of your  
6    notebook, that can help us narrow down the date.

7                   So, Registrar, if we can keep  
8    this document up on the left and call out image 1  
9    of this same document.

10                  So, this is image 1 and it  
11    says April 13, 2018.

12                  And then, Registrar, if we  
13    could replace image 1 with image 7, and that says  
14    April 17, 2018, so that was image 1 and image 7  
15    and then on the left we have image 3, so this  
16    falls between those dates.

17                  So, what does that tell you,  
18    Ms. Bell, about when this note was prepared on the  
19    left?

20                  A.    That it's prepared  
21    between those dates.

22                  Q.    So, sometime between  
23    April 13 and 17?

24                  A.    Yes.

25                  Q.    But not able to narrow it

1 down more specifically within that range?

2 A. No. I don't recall the  
3 exact date.

4 Q. Okay. And so, now  
5 looking at the undated note and the reference to  
6 Mr. Becke, does this refer, to your knowledge, to  
7 a conversation that you and Mike Becke had?

8 A. Yes.

9 Q. What do you recall about  
10 your discussion with Mr. Becke?

11 A. Well, based on the notes  
12 and my recollection, we were calling because they  
13 had experience, the City of Hamilton, Mike Becke,  
14 had experience with using some reinforcing fibers  
15 that the MTO was using and interested in their  
16 experience with, so these reinforcing fibers were  
17 Forta-Fi and ACE are the product names of the  
18 fibres that we were looking at trying.

19 And I think the conversation  
20 eventually went to that they were looking to  
21 resurface the Red Hill and that I was the lead for  
22 HIR and that, you know, we were talking about how  
23 MTO was doing our first job since 2003 in that  
24 year, in 2018, that summer, in Thunder Bay and  
25 that if they wanted -- if Hamilton or Mike Becke,



1 the City, wanted to come visit to see the process,  
2 we could -- I would look into whether if they  
3 could come see it. And he mentioned that the Red  
4 Hill was an SMA perpetual pavement.

5 Q. So, you think it was a  
6 phone call that you and Mr. Becke had?

7 A. Yes.

8 Q. And that you called him  
9 to talk about the fibres or the fibre technology?

10 A. I believe so.

11 Q. And so, the reference to  
12 the HIR, did Mr. Becke tell you or did you come to  
13 understand in the course of that conversation that  
14 the City of Hamilton was considering using hot  
15 in-place for the Red Hill Valley Parkway  
16 resurfacing?

17 A. I don't recall exactly  
18 how it came up, but I know that he mentioned that  
19 they were considering doing HIR on the Red Hill,  
20 and that's why the topic of coming to see our HIR  
21 pavement.

22 Q. Do you recall if he told  
23 you why the City was considering hot in-place?

24 A. I don't recall.

25 Q. Did he mention, Mr. Becke

1 mention, anything about the investigation that  
2 Golder was working on with the City?

3 A. No.

4 Q. And I think you said that  
5 the reference there at the bottom, the SMA  
6 perpetual 40mm, those are features of the Red Hill  
7 Valley Parkway. Is that right?

8 A. Yes.

9 Q. Okay. So, the SMA  
10 surface course, that it's a perpetual pavement and  
11 then I think the 40mm would refer to the 40  
12 millimetre wearing course. Is that right?

13 A. Yes.

14 Q. Prior to your call with  
15 Mr. Becke, were you aware of any of those details  
16 about the Red Hill Valley Parkway or were those  
17 all things that you came to learn through the  
18 course of your conversation?

19 A. I think I learned during  
20 the conversation.

21 Q. And the SMA piece, do you  
22 recall if you and Mr. Becke spoke at all about the  
23 fact that in the CDED, the MTO did not allow hot  
24 in-place on SMA?

25 A. I don't recall.

1 Q. Thank you, Registrar. We  
2 can end that call out and if we could go,  
3 Registrar, to overview document 9, pages 25 and  
4 26. Thank you.

5 So, Ms. Bell, you'll see in  
6 paragraph 64 in the document on the left, this is  
7 an internal e-mail at the City of Hamilton that  
8 Mr. Becke wrote to some of his colleagues. And  
9 you're not copied on it, but it's quite a long  
10 e-mail and it goes on to the next page. In  
11 Mr. Becke's e-mail, you are referenced.

12 So, Registrar, if we could  
13 call out the two paragraphs sort of in the middle  
14 where it says "with respect to the technology" and  
15 the paragraph below. Thank you.

16 And so, Ms. Bell, I'll let you  
17 read through this and just let me know when you're  
18 finished reviewing.

19 A. Yes.

20 Q. Thank you. So, you see  
21 in the middle there there's a reference to  
22 Mr. Becke having spoken to the PM at the MTO that  
23 is running this project, and this project, I  
24 believe, is the Thunder Bay project, and then he  
25 references you.

1                                   What was your role with the  
2 Thunder Bay project? Were you the project  
3 manager?

4                                   A.    So, no, I wasn't the  
5 project manager in the traditional sense of a  
6 project manager. Like, as I said before, our role  
7 is more of an advice head office role. So, the  
8 project manager at MTO would have been the  
9 geotechnical section, who was the engineer in the  
10 geotechnical section in northwest region who was  
11 running the design and selection of HIR for that  
12 job. Once awarded, it's more -- it goes to our  
13 operations section and there would be an area  
14 contract engineer in charge of it, as well as a CA  
15 contract administrator to administer the project.  
16 So, I was more providing an advice and guidance  
17 role than running the project itself.

18                                  Q.    Okay. So, more in  
19 connection with your role as the hot in-place  
20 lead?

21                                  A.    Yes.

22                                  Q.    The discussion that  
23 Mr. Becke refers to, do you know when that was?  
24 Would that have been the mid-April phone call that  
25 we just looked at or possibly another phone call?

1                   A.    I can't recall which  
2 phone call he would be talking about.

3                   Q.    And just to place this in  
4 time, this is -- it doesn't say in this e-mail, in  
5 this call out, but Mr. Becke's e-mail was on  
6 June 27, so it's about two months later after your  
7 phone call.  So, do you recall if there was more  
8 additional phone calls or e-mails or discussions  
9 between you and Mr. Becke at that time?

10                  A.    I can't recall.  I would  
11 have to see if I wrote a note and, again, as I  
12 said, sometimes and didn't write notes about all  
13 my phone calls, so I can't be sure if there were.

14                  Q.    So, it's possible that  
15 there were, that there was some additional  
16 contact, and that just didn't get reflected in  
17 your notebooks?

18                  A.    Yes.  I can't recall if  
19 there was.

20                  Q.    And looking at this  
21 e-mail and recognizing that it's not something  
22 that you wrote, it's something that Mr. Becke  
23 wrote, and that you don't specifically recall the  
24 phone calls or the conversations that you and  
25 Mr. Becke had around this time, does the

1 information that he relayed about the MTO's work  
2 in hot in-place, does it appear accurate to you?

3 A. The only additional thing  
4 to the PM comment that I would correct is that he  
5 is saying that we were looking to complete the  
6 first hot in-place resurfacing of an already hot  
7 in-placed resurfaced road, so technically the road  
8 that -- this is Kenora By-Pass, the one we were  
9 looking for for the 2019 construction season, the  
10 second HIR job we were going to do with the new  
11 specification. That job was hot in-placed. It  
12 was actually the last one we hot in-placed before  
13 hot in-place left in 2003. However, it was -- it  
14 had an overlay, so it had a new layer of asphalt  
15 placed over the hot in-place layer, so we were  
16 actually looking at recycling that layer, which  
17 was not a previously hot in-placed layer. So,  
18 technically, you know, we're not doing the layer  
19 that was already recycled, so that's the only  
20 correction that maybe he misunderstood in our  
21 conversation.

22 Q. And you'll see there's  
23 also a reference at the start of this paragraph to  
24 Mr. Becke having spoken with Pamela Marks. Do you  
25 recall if you were aware that Ms. Marks and

1 Mr. Becke had spoken about hot in-place?

2 A. I don't recall, but it's  
3 likely that she talked to him. We both were, you  
4 know, talking to each other about hot in-place, so  
5 I don't recall specifically her telling me,  
6 though.

7 Q. Okay. Thank you.  
8 Registrar, we can end this call out.

9 And so, Ms. Bell, as I said,  
10 this e-mail comes on June 27 and the next e-mail  
11 that we have between you and Mr. Becke is from  
12 July 30, 2018 and there's a number of e-mails  
13 exchanged between the two of you around this time,  
14 so I'll, sort of, take you through those documents  
15 and then I'll ask my questions at the end of that.

16 So, Registrar, if we could  
17 call up first HAM1390 at image 2.

18 So, this is that July 30  
19 e-mail from Mr. Becke to you and in the last  
20 paragraph he says:

21 "As for the Red Hill  
22 Valley Parkway, we, the  
23 City, has started our  
24 investigation process  
25 into recycling of SMA

1 using HIP."

2 He talks about Golder's  
3 investigation to work on the mix design analysis  
4 and references samples being taken, that are being  
5 that are being used to determine the mix design.  
6 Then he says:

7 "If you are interested, I  
8 can keep you in the loop  
9 on our findings as we  
10 progress through the  
11 process."

12 And, Registrar, if we could  
13 keep this document up and call up MTO38687 at  
14 image 8.

15 And so, this is your notebook  
16 and there's an entry two days later, on August 1,  
17 2018, that says City of Hamilton at the top and  
18 there's a number of notes there referencing BC  
19 contact, the City of Toronto, there's a phone  
20 number there in the middle, which I understand to  
21 be Mr. Becke's office phone, and then a number of  
22 other notes that appear to be responsive to some  
23 of the questions that Mr. Becke had asked in his  
24 July 30 e-mail.

25 And then looking back at the



1 e-mail chain on the left, there's another e-mail,  
2 Mr. Becke responding to his own e-mail, on August  
3 3, saying:

4 "Hi Heather. I just  
5 wanted to let you know  
6 that I did get your  
7 voicemail."

8 And he apologized for having  
9 not gotten back to you sooner and referencing that  
10 we would try to call you if you were around the  
11 next week.

12 So, looking at those three  
13 notes from July 30, August 1 and then August 3, do  
14 you think that the August 1 notes pertain to  
15 communications, possibly the voicemail, a  
16 voicemail, that you left for Mr. Becke on that  
17 date or in and around that date?

18 A. Yes.

19 Q. And looking at the notes,  
20 do those reflect things that you either wrote in  
21 your preparation for a call to Mr. Becke or that  
22 you would have communicated in a voicemail?

23 A. Some of them are in  
24 preparation for responding to his e-mail, likely  
25 in conversation with Pamela Marks as to what we

1 should respond to his e-mail and his questions on  
2 July 30 there. I probably did not share all of  
3 this in the voicemail as some of it was probably  
4 notes just about HIR with Pamela.

5 Q. Are you able to  
6 distinguish, looking at the notes, what you think  
7 would have been made in preparation and then what  
8 would have been things communicated on the  
9 voicemail?

10 A. I don't believe I wrote  
11 things during leaving a voicemail. I probably  
12 wrote these in preparation and then just said the  
13 voicemail while looking at these. So, I wouldn't  
14 have written notes about specifically what I said  
15 in the voicemail.

16 Q. Okay. Thank you.  
17 Registrar, we can end the call out of the notes  
18 and if we could keep up HAM1390, but if we can  
19 have images 1 and 2 of that e-mail chain up.  
20 Perfect. Thank you.

21 Okay. So, Ms. Bell, you'll  
22 see then on the left there's quite a long e-mail  
23 that you send to Mr. Becke on August 7 and there  
24 is a notebook entry also in your notebooks. I can  
25 take you there if it's helpful, but there is a

1 notebook entry reflecting that you sent him an  
2 e-mail response as well.

3 And looking at this e-mail  
4 from you, it looks like there's some overlap in  
5 terms of the notes that we had just looked at in  
6 your notebook and the information that you  
7 communicated in your August 7 e-mail. So, is that  
8 fair, that the information in your e-mail is  
9 generally consistent with the notes you made on  
10 August 1?

11 A. Yes. I think there's  
12 some things in the notes that I didn't put in the  
13 e-mail. As I said, they were more for my  
14 reference in my conversation with Pamela. And the  
15 e-mail is more just responding directly to the  
16 questions that he posed, and so not everything in  
17 the note was put into the e-mail.

18 Q. And at the top there it  
19 says:

20 "Attachments, the CDED  
21 B332."

22 So, you sent Mr. Becke the  
23 CDED guide that we had just looked at. Do you  
24 recall why you sent him that guide?

25 A. Just to be helpful in

1 providing some of the things that MTO looks for in  
2 collecting it and as for our testing, so just to  
3 provide him some guidance, advice, if he was to  
4 look at it about what MTO has done on our new  
5 version of HIR.

6 Q. And in your e-mail, you  
7 say:

8 "Regarding the longevity  
9 of HIR, I would recommend  
10 you first look at  
11 Hamilton's history with  
12 HIR."

13 So, there, what was the basis  
14 for your knowledge that Hamilton had done hot  
15 in-place in the past?

16 A. So, through conversations  
17 with Pamela Marks, she had indicated to me when we  
18 were discussing Mike Becke's questions, that she  
19 told me that Hamilton has done a lot of HIR in the  
20 past likely in the '80s, '90s, 2000s, when MTO was  
21 also doing it. I wasn't at the MTO at the time  
22 and she was, so just secondhand from what she's  
23 told me. I believe also some HIR contractors have  
24 told me they used to do some HIR work for  
25 Hamilton, so I knew they had done it in the past

1 from secondhand from people saying Hamilton had  
2 done it.

3 Q. And I asked you before  
4 about whether you were aware in your earlier  
5 conversations with Mr. Becke about Golder's  
6 investigation, and in the July 30 e-mail there's a  
7 reference there to Golder having been retained for  
8 that process.

9 So, do you think you were  
10 aware prior to receiving Mr. Becke's July 30  
11 e-mail or would that have been possibly the first  
12 time you were made aware of Golder's  
13 investigation?

14 A. I'm not sure if he  
15 mentioned it in a phone call before. It is likely  
16 this is the first time I heard about it.

17 Q. And the elements of the  
18 investigation that Golder had been retained to do,  
19 are those consistent with the steps that MTO would  
20 typically take in their investigation?

21 A. So, like, just from what  
22 this e-mail says their steps were, because it's  
23 not very detailed about what they're doing.

24 Q. Yeah. So, are those  
25 things, I guess, just based on the information

1 that he provided, are those sort of things  
2 consistent with things that MTO would also have  
3 done?

4 A. So, MTO would have looked  
5 at past mix designs if we had them available of  
6 the road we were considering. As well, we would  
7 take some samples and do testing. We normally  
8 wouldn't actually complete a full mix design, if  
9 that's what's being implied here.

10 Q. Why is that?

11 A. Because the mix design is  
12 left up to the contractor. It's his process. We  
13 can't -- we don't normally dictate how they will  
14 design a mix. We leave that up to the contractor,  
15 because they choose which rejuvenator they're  
16 using, so we can't really do a mix design ahead of  
17 time not knowing what products they're going to  
18 use, as well as if they're going to add new mix,  
19 we can't predict what their mixes they have, what  
20 aggregates they have access to to complete the  
21 overall mix design, so we just do kind of  
22 analysis, some checks, estimates, to, you know,  
23 see that it seems like a reasonable candidate that  
24 adding a reasonable rejuvenator that we know are  
25 out there and some type of mix that is possible to

1 make would work. So, we don't usually spend the  
2 time and money doing a full mix design because our  
3 contracts do not dictate to the contractor the mix  
4 design he shall use. We leave it up to the  
5 contractor to make their own mix that will meet  
6 what we want.

7 MTO more does end results, so  
8 we look at the final product meeting the  
9 requirements, performing as we expect, not telling  
10 them to use certain things.

11 Q. So, your e-mail doesn't  
12 say anything about the MTO's restriction on hot  
13 in-place for SMA. Do you think by this time, you  
14 and Mr. Becke had discussed that the MTO didn't do  
15 hot in-place on SMAs?

16 A. I can't recall.

17 Q. Was that ever something  
18 that you and he spoke about specifically?

19 A. I don't remember.

20 Q. Given those restrictions  
21 in the CDED that we looked at, did you have any  
22 concerns about the City's consideration of hot  
23 in-place on the SMA surface course or the  
24 feasibility study that Golder had been retained to  
25 do?

1                   A.    No.  I thought it was a  
2    very reasonable thing to do an investigation and  
3    maybe even look at doing a mix design, which is a  
4    further step than I just explained MTO would do,  
5    because it is a different type of mix than the  
6    typical Superpave mixes that we were looking at  
7    hot in-placing or MTO was.  So, I wasn't -- I was  
8    more just interested in the results and if there  
9    was anything in the lab work that, you know,  
10   showed it was or was not possible so that it would  
11   help us with experience or going to see Hamilton's  
12   SMA being recycled to get the experience and feel  
13   comfortable possibly do it on an MTO job.  So...

14                  Q.    Okay, so it wasn't  
15    something -- sorry, go ahead.

16                  A.    Sorry.  I was just more  
17    interested in their results.

18                  Q.    That was going to be my  
19    question.  So, it wasn't something that concerned  
20    you; it was something that interested you --

21                  A.    Yes.

22                  Q.    -- from the perspective  
23    of forward-looking for things depending on how it  
24    went for the City in their investigation,  
25    something that possibly MTO could consider?



1 A. Yes.

2 Q. In your e-mail when you  
3 say you would be very interested in your findings  
4 for hot in-place of the Red Hill Valley Parkway,  
5 that's, sort of, just you communicating that  
6 interest to Mr. Becke?

7 A. Yes. And, in his e-mail,  
8 he says he can keep me in the loop on the findings  
9 as we progress through the process, so that was me  
10 confirming I was interested in being provided with  
11 some results and information about how it goes.

12 Q. And I asked you this  
13 before when we were talking more generally about  
14 hot in-place, but in the third last paragraph of  
15 your e-mail there's a reference to the life  
16 expectancy of a hot in-place roadway and it says:

17 "Properly designed and  
18 constructed, HIR  
19 resurfacing has a minimum  
20 life expectancy of  
21 approximately nine to ten  
22 years on a non-freeway  
23 and eight to nine years  
24 on a freeway."

25 So, the minimum life

1     expectancy, what sort of factors would affect or  
2     impact the actual life expectancy of an HIR  
3     surface?

4                     A.     The traffic volumes,  
5     which you can probably infer from that is longer  
6     on a non-freeway versus a freeway, which has  
7     higher traffic volumes, so a lower life expectancy  
8     because it's getting beat up more.  Higher loads  
9     cause it to crack sooner.  And as I think I  
10    mentioned earlier, that the recycled material has  
11    some older asphalt cement that's brittle will be  
12    prone to aging faster, even if it's rejuvenated,  
13    so it will crack sooner than a new asphalt cement  
14    pavement.

15                    Q.     Thank you.  Registrar, we  
16    can end the call out of this document.

17                    So, now, jumping forward a few  
18    weeks in time, Ms. Bell, I'll take you to,  
19    Registrar, overview document 9, image 62.  That's  
20    not right.  Hold on.  You can close that call out.  
21    Just a moment.  Sorry, it's image 51 and 52.  
22    Thank you.

23                    So, Ms. Bell, you'll see in  
24    paragraph 123 there there is a transcription from  
25    your notebook on August 21, 2018, so we've just

1 typed up your notes.

2 And, Registrar, if we could  
3 call out that transcription. Sorry, it's just the  
4 other one. Thank you.

5 Ms. Bell, are you able to help  
6 us out? Is this a phone call that you had with  
7 Mr. Becke on that day?

8 A. Possibly.

9 Q. I believe that the phone  
10 number there is Mr. Becke's office phone, if that  
11 helps.

12 A. Mm-hmm. Yeah. Again, it  
13 could be that I called him, as I wrote the  
14 number down, or I could have written it down, you  
15 know, written it as a preparation and then written  
16 it down. But definitely the second paragraph  
17 there that starts with his name would have been a  
18 phone call portion.

19 Q. And, with reference to  
20 your notes, what are you able to tell us or what  
21 do you recall about the phone call or the  
22 conversation with Mr. Becke on August 21?

23 A. It looks like that he  
24 told me that Golder and Ludomir, who was running  
25 the investigation for the Red Hill. I don't

1 recall what the 12.5 FC2 for mix would be about.  
2 Solid pieces means the samples they took were  
3 solid slabs, not cores. And then it looks like he  
4 told me the Red Hill was paved in 2007 and opened  
5 in November 2007. And then, again, more about the  
6 samples were 20-metre patches and so there were  
7 three of them and that maybe they needed to take  
8 some more. I'm not sure about the new patches  
9 needed. And then I'm not sure what should 12.5  
10 lanes SMA means. Hazardous material, RAC, I guess  
11 he was asking me whether transporting the  
12 recovered cement samples would require hazardous  
13 material transportation or not.

14 Q. So, does the RAC stand  
15 for recovered or reclaimed asphalt cement?

16 A. Recovered asphalt cement,  
17 yes.

18 Q. And so would this, sort  
19 of, with reference to the MTO's and the e-mails we  
20 had looked at before, was this the information  
21 that Mr. Becke gave you or that you spoke about?  
22 Was that more of just an update of sort of the  
23 status of where things are at on the City side?

24 A. I believe so.

25 Q. Okay. Thank you,

1 Registrar. If we can close that call out.

2 And, Ms. Bell, I'm going to  
3 take you to another document that you are not  
4 copied on. It's an internal City document.

5 Registrar, if we can call up  
6 HAM35540, images 1 and 2.

7 So, Ms. Bell, this is a  
8 chronology of events that staff at the City of  
9 Hamilton put together. And you'll see on the left  
10 or, sorry, on the right side sort of about  
11 two-thirds of the way down, on August 21, which is  
12 the day we just looked at, that you had a notebook  
13 entry. It says:

14 "Heather Bell from MTO  
15 forwarded HIP spec to  
16 Mike."

17 And so, Registrar, if we could  
18 keep this document up, image 2, and call up also  
19 MTO38662 at image 2.

20 So, you'll see, Ms. Bell,  
21 towards the middle there there's an e-mail,  
22 another e-mail, from you to Mr. Becke saying:

23 "Hi, Mike. Before I  
24 forget, below is the CA  
25 contact info for the HIR

1 contract."

2 Thank you, Registrar.

3 And so, I just want to sort of  
4 piece together what was sent on what days. So,  
5 the chronology says that the HIP spec was  
6 forwarded on August 21 and here we have an e-mail  
7 where you're forwarding the CA contact  
8 information. So, do you recall if you did send  
9 the spec to Mr. Becke on that day or was it just  
10 the CA contact information that you sent?

11 A. I believe I just sent the  
12 CA confirmation, contact information, on that  
13 date.

14 Q. Okay. And I think we had  
15 looked at the CDED that you sent at the beginning  
16 of August, so possible that there was just a mixup  
17 of dates on the City side of what was sent on what  
18 days?

19 A. It's possible. I don't  
20 know.

21 Q. But just from your  
22 perspective, this was, to your knowledge looking  
23 at this, there was nothing else that you sent on  
24 the 21st?

25 A. Correct.

1 Q. And why were you sending  
2 this contact information to Mr. Becke?

3 A. We had discussed him  
4 coming up to Thunder Bay to see the HIR process on  
5 our job that was going in 2018. Since they were  
6 considering doing HIR, we had invited them to come  
7 see it. So, to be able to go visit an MTO  
8 construction site, you need to notify the contract  
9 administrator who is in charge of everything to do  
10 with that contract, so that's why I was providing  
11 the contact information, so he could contact them  
12 and let them know what day he wanted to come see  
13 it and arrive onsite safely and properly.

14 Q. And, Registrar, we can  
15 close the document on the left there, but if we  
16 could keep up image 2 and also call up image 1 of  
17 that document. Thank you.

18 So, Ms. Bell, you'll see that  
19 the e-mail chain between you and Mr. Becke sort of  
20 continues on throughout September 2018, following  
21 your August 21 e-mail. And there's some e-mails  
22 where you appear to be following up with Mr. Becke  
23 on his request to go up to Thunder Bay and letting  
24 him know what your plans or the MTO's plans are  
25 and discussing the potential visit.

1 Am I right that the City's  
2 visit to Thunder Bay didn't actually ever take  
3 place?

4 A. That's correct. From my  
5 knowledge, it didn't take place.

6 Q. What was your  
7 understanding of why it didn't take place?

8 A. I think just Mike was too  
9 busy to find the time to go. That seems to be  
10 what he told me, I believe.

11 Q. Okay. And there, in the  
12 very top e-mail, which is on the right side, the  
13 top, you have a line that says:

14 "Let me know how Golder's  
15 investigation goes."

16 And that's consistent with  
17 what you had written in some of your earlier  
18 e-mails that we looked at. Do you recall if  
19 Mr. Becke did keep you updated on how the  
20 investigation went?

21 A. No, I never saw any  
22 actual test results.

23 Q. And did he, sort of --  
24 we'll come to some discussion that you and  
25 Mr. Becke had later in October, but, sort of,



1 between this time, in late September, and the end  
2 of October, was there any contact between you and  
3 Mr. Becke where he updated you?

4 A. No.

5 Q. Okay. Thank you,  
6 Registrar. We can close those documents down and  
7 if we could call up images 91 and 92 of overview  
8 document 9.

9 So, Ms. Bell, you'll see in  
10 paragraphs 227 and 228, on October 23, it doesn't  
11 say the date there but it's October 23, that the  
12 MTO received a media enquiry from a reporter at  
13 the Hamilton Spectator related to resurfacing of  
14 the Red Hill Valley Parkway. And the inquiry has  
15 received a number of different e-mail chains where  
16 the initial media request was sent and then there  
17 are some subsequent follow-ups, follow-up  
18 questions, from the reporter that were circulated  
19 and discussed internally at the MTO. And I won't  
20 take you to all of them but I will take you to one  
21 of them.

22 Registrar, if we could call up  
23 MTO38653 and if we could call up images 1 and 2.

24 So, you'll see, Ms. Bell, it  
25 looks like there's a number but it's a bit hard to

1 read, so I'll call out the e-mail that I want to  
2 take you to, but it looks like there's a number of  
3 e-mails where the question from Nicole O'Reilly at  
4 the Hamilton Spectator gets sent to the media  
5 office at the MTO, and then after some internal  
6 circulation it eventually gets sent to Stephen  
7 Lee. And I believe at this time Mr. Lee was the  
8 head of pavements and foundations. Does that  
9 sound right? This is October 2018.

10 A. Yes, he was the head of  
11 pavements.

12 Q. So, Registrar, if we  
13 could call out on the document that's on the left  
14 side the response from Mr. Lee, that entire  
15 e-mail. Yes. Perfect. Thank you.

16 So, Mr. Lee sends a response  
17 October 23 at 1:04 p.m. and you'll see that,  
18 Ms. Bell, you are copied on this response as well  
19 as Ms. Marks and Ms. Lane and a number of other  
20 MTO staff. And so, do you recall -- I appreciate  
21 that you weren't copied on the initial enquiry,  
22 but do you recall receiving these e-mails about  
23 these media enquiries?

24 A. Yes.

25 Q. And what, if any,

1 involvement did you have in preparing the response  
2 that Mr. Lee circulated?

3 A. I helped draft some of  
4 the wording to the first question.

5 Q. The first question, the:  
6 "I know there was a pilot  
7 using hot in-place  
8 happening"?

9 A. Yes.

10 Q. Can you tell us which  
11 part of the response you helped draft and, sort  
12 of, how you -- what steps you took to prepare that  
13 response?

14 A. To my recollection, I  
15 probably talked to Pamela Marks about it as I was  
16 not too -- I wasn't around when the pilot happened  
17 on the 401, so I went to her to ask if she  
18 remembers that happening in the past and what we  
19 can write about it. And then I would have drafted  
20 some of this response and sent it to her for her  
21 review or her and Stephen. I'm not sure who I  
22 would have sent it to.

23 Q. So, you would have had  
24 some discussion with Ms. Marks and possibly  
25 Mr. Lee and, as a result of that discussion, this

1 answer gets generated and sent by Mr. Lee?

2 A. To my knowledge, yes.

3 Q. The last bullet under

4 this question says:

5 "It's our belief that the

6 project Hamilton was

7 considering would have

8 involved recycling stone

9 mastic asphalt mix,

10 which, to date, the

11 Ministry has no

12 experience hot in-place

13 recycling."

14 Did this information come from

15 you, about the belief that the City was

16 considering HIR of a SMA?

17 A. Yes. This was drafted by

18 me in consultation with Pamela Marks based on my

19 knowledge and conversations with Mr. Becke that

20 they were considering hot in-placing the Red Hill.

21 Q. Okay. Just looking at

22 the top there, there's a bit of a lead-in, which I

23 understand comes from the Hamilton Spectator

24 reporter, where she says:

25 "The City had been

1                                    considering hot in-place  
2                                    technology but said it  
3                                    doesn't have enough  
4                                    information that it will  
5                                    work here, so it's going  
6                                    ahead with regular  
7                                    resurfacing."

8                                    This e-mail, was this the  
9                                    first you heard or became aware that the City was  
10                                   going to be moving ahead with a regular  
11                                   resurfacing?

12                                   A.    Yes.

13                                   Q.    Thank you, Registrar. We  
14                                   can close out that document. And I believe this  
15                                   document will need to be marked as an exhibit.  
16                                   That would be Exhibit 124.

17                                   THE REGISTRAR: Sorry,  
18                                   counsel, I think it's 123.

19                                   MS. HENDRIE: I think I marked  
20                                   another document earlier this morning as 123.

21                                   THE REGISTRAR: Okay. Sorry.  
22                                   I'll double check.

23                                   MS. HENDRIE: Thank you. And,  
24                                   Registrar, I believe the last document I called  
25                                   up, just while I'm on this, I believe the last

1 document that I called up, which was MTO38662,  
2 also needs to be marked as an exhibit. So, on my  
3 end, that would be Exhibit 125, I believe.

4 THE REGISTRAR: Okay. Thank  
5 you.

6 MS. HENDRIE: Okay. Thank  
7 you. We can close out this document.

8 JUSTICE WILTON-SIEGEL: Just  
9 before we go, now I'm confused. We have MTO38667,  
10 the OPSS 332 page, that's Exhibit 23?

11 MS. HENDRIE: Yes, 123.

12 JUSTICE WILTON-SIEGEL: Now,  
13 which was 124?

14 MS. HENDRIE: This document  
15 that I have up right now, Commissioner, MTO38653.

16 JUSTICE WILTON-SIEGEL: Yes.

17 MS. HENDRIE: That would be  
18 124.

19 JUSTICE WILTON-SIEGEL: Okay.

20 EXHIBIT NO. 124: E-mail  
21 chain regarding Hamilton  
22 Spectator, MTO38653.

23 MS. HENDRIE: And the e-mail  
24 chain that I had up previously, which was the  
25 August 21 into September e-mail chain between

1 Ms. Bell and Mr. Becke, which is MTO38662, that  
2 would be 125.

3 JUSTICE WILTON-SIEGEL: Thank  
4 you.

5 EXHIBIT NO. 125:  
6 August 21 to September  
7 e-mail chain between  
8 Ms. Bell and Mr. Becke,  
9 MTO38662.

10 BY MS. HENDRIE:

11 Q. Okay. So, keeping on the  
12 subject of the media request on October 23,  
13 Ms. Bell, Registrar, if we could call up MTO38704.

14 So, Ms. Bell, this is a  
15 continuation of the chain following the MTO  
16 providing their final response on October 23, and  
17 you'll see on October 24 there was one follow-up  
18 question that was sent where it says:

19 "The City of Hamilton  
20 said that the main reason  
21 they're not using hot  
22 in-place recycling is  
23 because there isn't  
24 enough information that  
25 it works here because the

1 MTO project outside  
2 Thunder Bay is behind.  
3 Can you clarify?"

4 And I appreciate you aren't  
5 copied on this follow-up response, but just more  
6 for our benefit, to your knowledge, would the  
7 MTO's Thunder Bay project have had any impact on  
8 the City's own analysis of the hot in-place on the  
9 Red Hill Valley Parkway?

10 A. I don't think I can  
11 comment on whether the City would have considered  
12 how our project was going. Could you try to  
13 rephrase what you're asking? Sorry.

14 Q. Sure. So, the MTO's hot  
15 in-place project in Thunder Bay, as I understand  
16 it, that was not an SMA pavement. Correct?

17 A. Correct.

18 Q. And so, the information  
19 about it working here, would that -- I interpret  
20 that as either being the hot in-place technology  
21 or the hot in-place technology on the specific  
22 type of pavement that's being considered by the  
23 City.

24 And so, I guess my question is  
25 really more: What impact, if any, would the MTO's



1 progress on Thunder Bay have had on the City's  
2 consideration?

3 A. I can guess that if I was  
4 the City, I would maybe be concerned that they  
5 didn't get too far or maybe they're concerned  
6 about it not being working in our climate, but I'm  
7 not sure it really has much bearing because we've  
8 done HIR in the past in Ontario, so I'm not too  
9 sure what is being --

10 Q. Okay. Thank you. I  
11 appreciate it's not your investigation, not  
12 something that you were considering, but that's  
13 helpful. Thank you.

14 Okay. Thank you, Registrar.  
15 We can close out this document. So, Registrar, if  
16 we could call up overview document 9, image 93.  
17 Thank you.

18 So, you'll see there,  
19 Ms. Bell, there's an e-mail that Mr. Becke sent  
20 internally at the MTO or, sorry, at the City to  
21 Mr. McGuire and Ms. Jacob about a call he received  
22 from the MTO. He says:

23 "I got a call from the  
24 MTO today. The Spectator  
25 contacted them about HIP.

1                   The MTO provided them  
2                   with information  
3                   regarding HIP but also  
4                   included the fact that  
5                   they do not allow it on  
6                   SMA. They did not go  
7                   through my contact and  
8                   the information was  
9                   provided by their  
10                  communications  
11                  department."

12                   And so, the call that  
13                  Mr. Becke references there, was that a call with  
14                  you?

15                   A. I don't know what his  
16                  e-mail is referring to, but I would assume yes,  
17                  it's about the call that I had with him.

18                   Q. And I can take you to --  
19                  perhaps this might assist. I can take you to a  
20                  transcription of your notes, which are, Registrar,  
21                  I believe at overview document 9, images 91 and  
22                  92. Perhaps that might assist. Sorry, I think it  
23                  might be 92 and 93. I might be off by a page.  
24                  There we go. So, if we could call out those  
25                  notebook entries.

1                   So, Ms. Bell, looking at  
2 these, which are a transcription of your notes, do  
3 these assist at all in refreshing your memory  
4 about communications you and Mr. Becke had on  
5 October 23?

6                   A.     Yes.  I knew I had a  
7 conversation with him.  I more meant I didn't know  
8 if in his e-mail he's referring to his call with  
9 me specifically or with somebody else.  It's  
10 likely with me, but I can't confirm what his  
11 intention was when he wrote it, is what I meant.

12                  Q.     Okay.  Understood.  So,  
13 now that we have these notes up here, what can you  
14 tell us about your conversation with Mr. Becke on  
15 October 23?

16                  A.     That I called him after  
17 receiving the media request because it was, as we  
18 established, the first time I had heard that they  
19 were not proceeding with HIR on the Red Hill and I  
20 was interested in finding out what caused that.  
21 So, these are my notes from that phone call.

22 Well, part of it is a media response.  The second  
23 bullet with the HIR is the actual phone call.

24                  Q.     So, would that be where  
25 it says, "It's our belief Hamilton project"?

1                   A.    No.  That's part of the  
2    first HIR bullet, which is the media response.

3                   Q.    Okay.  So, it's the  
4    samples came back, friction numbers and below  
5    that?

6                   A.    Yes, that's the notes  
7    from the phone call with Mike Becke.

8                   Q.    Okay.  And can you tell  
9    us what you and Mr. Becke discussed on that phone  
10   call?

11                  A.    So, I called him to tell  
12   him that we got a media enquiry from the Spectator  
13   that Hamilton was no longer considering HIR on the  
14   Red Hill and that was the first I heard of it, and  
15   so I called him asking, oh, so I hear you're not  
16   doing it anymore.  I'm interested to find out what  
17   the reasons were.  Did you get results from Golder  
18   that showed that it wasn't feasible?

19                  I was more, you know,  
20   interested in what about the pavement, you know,  
21   because typically on an MTO job it is the  
22   recovered aggregate is too hard, so I was  
23   expecting something like that.  But, you know,  
24   maybe since it was SMA, maybe there was something  
25   else.  So, my notes are here that he told me that

1 the samples from Golder came back with friction  
2 numbers that caused them some concern, and so that  
3 was the reason they were not going to HIR it.

4 He said that even using a  
5 beneficiating hot mix, so the new hot asphalt of  
6 30 or 40 percent of a 12.5 FC2 mix and a 15  
7 millimetre grade increase by adding that new  
8 material would still probably not solve the  
9 problem, I think. The 50/50 probably means that  
10 they would have to do 50 new material to 50 of the  
11 existing material in order to get a PSV, which I  
12 think is polished stone value, in an acceptable  
13 range. So, that's -- I think that's mostly he  
14 told me that they weren't going ahead because of  
15 the friction and the aggregates were a problem,  
16 and that was the extent of the conversation.

17 Q. And what specifically, if  
18 you recall, did he say about why there was a  
19 concern with the friction numbers or the  
20 aggregates or what the specific source of the  
21 concern was?

22 A. I don't recall. I think  
23 from my notes, it seems mostly he just said that  
24 the friction numbers were a concern. He didn't  
25 say specifically what they were or if they were

1 really bad or not. I don't know how bad they were  
2 from the conversation, just that there were some  
3 concerns with the numbers and, therefore, they are  
4 saying it's not a good candidate for HIR. So, I  
5 don't know how bad they were or good they were.

6 Q. And was your impression  
7 from your conversation with Mr. Becke that at that  
8 point the City had decided they were not going to  
9 do the HIR and they were going to proceed with a  
10 regular resurfacing or a shave and pave?

11 A. Yes.

12 Q. And I had just taken you  
13 to that e-mail where there was the media request  
14 about the City not having enough information  
15 because of the status of the MTO's Thunder Bay  
16 project. Did Mr. Becke express anything related  
17 to that, about the City not having enough  
18 information because of the MTO's -- the delay in  
19 the MTO's Thunder Bay project or was that  
20 something that wasn't discussed?

21 A. Not to my recollection.  
22 That's the first time hearing about it.

23 Q. Okay. And after you  
24 spoke with Mr. Becke on October 23, were there any  
25 further discussions that you and he had related to

1 the hot in-place recycling on the Red Hill Valley  
2 Parkway?

3 A. No. This phone call is  
4 our last discussion.

5 Q. Throughout your  
6 discussions with Mr. Becke and, sort of, when we  
7 looked at from April 2018 up until now in October,  
8 was Mr. Becke the only person you spoke to with  
9 the City about the RHVP HIR consideration?

10 A. Yes.

11 Q. So, any information that  
12 you received about the City's investigation,  
13 leaving aside the Spectator enquiry, any other  
14 information, that all came to you from Mr. Becke?

15 A. Yes.

16 Q. Thank you. Registrar, we  
17 can end that call out.

18 And, Ms. Bell, there are some  
19 references to your name in Dr. Ludomir Uzarowski's  
20 notebooks that are, sort of, in and around this  
21 same time period as what we've just been talking  
22 about, so your discussions with Mr. Becke and the  
23 City's consideration of hot in-place on the Kenora  
24 By-Pass and the project in Thunder Bay.

25 So, I can take you to those

1 entries if it would be helpful for you to see what  
2 they are, but, I guess, just generally my question  
3 is: Did you ever have any contact or speak with  
4 Dr. Uzarowski about hot in-place recycling in  
5 Hamilton?

6 A. No.

7 Q. Do you know  
8 Dr. Uzarowski?

9 A. Yes.

10 Q. Did you have  
11 conversations and discussions with Dr. Uzarowski  
12 more generally about hot in-place recycling?

13 A. Yes.

14 Q. But it wasn't related to  
15 the Red Hill Valley Parkway or the City of  
16 Hamilton?

17 A. Correct.

18 Q. Thank you. Okay. One  
19 last area of questions, Ms. Bell.

20 Sorry, just actually before I  
21 go to this next area, Ms. Bell, which is a little  
22 bit of a different subject, going back to your  
23 call with Mr. Becke on the 23rd of October and the  
24 notes that we have up on screen, you mentioned  
25 that there were aggregate concerns and friction



1 concerns and you referred to the samples, but did  
2 you understand if the friction concerns arose from  
3 the asphalt samples that Golder had taken and that  
4 you and Mr. Becke had spoken about previously or  
5 from something else?

6 A. Mike Becke told me that  
7 the samples came back with these friction numbers.  
8 As my notes say, samples came back, so I believe  
9 he told me that the samples had poor friction, not  
10 anything else.

11 Q. Okay. Thank you. That's  
12 helpful.

13 Okay. So, now I'm going to  
14 take you a little bit forward in time, Ms. Bell,  
15 to mid-February 2019, which is following the  
16 public disclosure of the Tradewind report and the  
17 City of Hamilton becoming aware of friction  
18 testing that the MTO conducted from 2008 to 2014  
19 as part of the administration of the DSM list.

20 So, Registrar, if we could  
21 call up HAM54585 and if you could call up, I  
22 guess, both images of this document. Thank you.

23 So, Ms. Bell, you aren't  
24 copied on these e-mails. This is communications  
25 between Kevin Bentley at the MTO and Edward Soldo,

1 who is at the City of Hamilton, and Ms. Lane is  
2 also copied in on some of these e-mails. And so,  
3 on February 12, you'll see an e-mail on the right  
4 side from Mr. Bentley to Mr. Soldo in which  
5 Mr. Bentley sent -- and I can take you to the  
6 attachments afterwards -- a one-page PDF from the  
7 Red Hill Valley Parkway mix design and he also  
8 sent a spreadsheet containing friction test  
9 results from the northbound and southbound lanes  
10 of the Red Hill Valley Parkway.

11 And so, Becca Lane, who  
12 testified in May, when she testified her evidence  
13 was that she provided the documents and the  
14 information that Mr. Bentley provided to the City  
15 of Hamilton and that the information that Ms. Lane  
16 provided to Mr. Bentley, which then went on to the  
17 City, was provided to her by staff in the  
18 materials, engineering and research office.

19 And, Registrar, if we could  
20 call up the first attachment to this document,  
21 which is HAM54587.

22 And so, while that document is  
23 coming up, Ms. Bell, Ms. Lane, her evidence was  
24 that she recalled that the City was asking about  
25 the SMA mix, and so as a result of that, she came

1 to the bituminous section and spoke to you about  
2 the mix design and she recalled that you located  
3 this mix design report that we have on the screen  
4 here in Anil Virani's old files. And, as I  
5 understand it, Mr. Virani was a senior bituminous  
6 engineer prior to you. Is that right?

7 A. Yes, he was.

8 Q. Do you recall that  
9 discussion with Ms. Lane that led to this mix  
10 design report being produced?

11 A. No, I don't remember it.

12 Q. Okay. So, is it that you  
13 don't remember or it didn't happen? It's possible  
14 it happened, you just don't recall?

15 A. It's possible and likely  
16 that she asked me to find the mix design. I just  
17 don't remember doing it because it's something  
18 of -- a minimal task that I would have done for  
19 anybody.

20 Q. So, you don't recall  
21 having any recollection of any discussions with  
22 Ms. Lane at the time, in and around February,  
23 mid-February, 2019?

24 A. No, I don't remember.

25 Q. And there was another

1 document that Mr. Bentley provided that I  
2 mentioned, which was the friction test results of  
3 the MTO's friction testing analysis, and so I'll  
4 just pull up that document as well for you.

5 Registrar, if you could call  
6 up HAM54586. You might have to call it up in  
7 native actually. It's in Excel. Sorry.

8 So, Ms. Bell, this is the  
9 other document that was attached that Mr. Bentley  
10 sent. Have you seen this document before?

11 A. No.

12 Q. So, I take it you didn't  
13 have any involvement with either putting together  
14 this document or providing it to Ms. Lane?

15 A. No.

16 Q. Thank you very much,  
17 Registrar. We can close that out. Just one  
18 moment.

19 Thank you, Commissioner.

20 Those are my questions for Ms. Bell.

21 JUSTICE WILTON-SIEGEL: Okay.

22 MS. HENDRIE: And I understand  
23 that counsel for the City may have some questions  
24 for Ms. Bell.

25 MS. CONTRACTOR: Thank you,

1 Commissioner. We don't have any questions for  
2 Ms. Bell.

3 JUSTICE WILTON-SIEGEL: Okay.

4 Thank you, Ms. Contractor.

5 MS. HENDRIE: And I would ask  
6 counsel for Golder. I understand they have  
7 reserved five minutes.

8 MS. BASSONG: We don't have  
9 any questions.

10 JUSTICE WILTON-SIEGEL: Thank  
11 you.

12 MS. HENDRIE: And, similarly,  
13 Commissioner, I understand counsel for Dufferin  
14 also reserved five minutes.

15 MR. BUCK: Thank you. We  
16 don't have any questions for Ms. Bell.

17 JUSTICE WILTON-SIEGEL: That  
18 leaves Mr. Bourrier.

19 MR. BOURRIER: I don't have  
20 any questions either for Ms. Bell.

21 JUSTICE WILTON-SIEGEL: Well,  
22 then I think, Ms. Bell, it simply remains for me  
23 to thank you for appearing before the inquiry  
24 today and for your evidence. You're excused.

25 THE WITNESS: Thank you.

1 MS. HENDRIE: Thank you,  
2 Ms. Bell.

3 JUSTICE WILTON-SIEGEL: And,  
4 Ms. Hendrie, if there's nothing further that we  
5 have today --

6 MS. HENDRIE: There is not.

7 JUSTICE WILTON-SIEGEL: There  
8 is not?

9 MS. HENDRIE: No.

10 JUSTICE WILTON-SIEGEL: Then I  
11 want to wish everyone a good Canada Day weekend  
12 and we'll stand adjourned until Monday at 9:30.  
13 Thank you.

14 --- Whereupon the proceedings adjourned at  
15 11:14 a.m. until Monday, July 4, 2022,  
16 at 9:30 a.m.

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