

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Monday, October 3, 2022 at 9:30 a.m.

VOLUME 61

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1 Arbitration Virtual
2 --- Upon resuming on Monday, October 3, 2022 at
3 9:30 a.m.

4 MS. LIE: Good morning. As we
5 all know, last Friday was the National Day of
6 Truth and Reconciliation, which is an important
7 day of mourning and reflection. I would like to
8 open this hearing by acknowledging that the City
9 of Hamilton is situated based on the traditional
10 territories of the Erie, Neutral, Huron-Wendat,
11 Haudenosaunee and Mississaugas. This land is
12 covered by the Dish With One Spoon Wampum Belt
13 Covenant which was an agreement between the
14 Haudenosaunee and Anishinaabek to share and care
15 for the resources around the Great Lakes. We
16 further acknowledge that the land on which
17 Hamilton sits is covered by the Between The Lakes
18 Purchase 1792, between the Crown and the
19 Mississaugas of the Credit First Nation.

20 Many of the counsel appearing
21 at this hearing today are in Toronto which is on
22 the traditional land of the Huron-Wendat, the
23 Seneca and, most recently, the Mississaugas of the
24 Credit River.

25 Today this meeting place is

1 still the home to many indigenous peoples from
2 across Turtle Island and we are grateful to have
3 the opportunity to work on this land.

4 Commissioner, our next witness
5 is Nicole Auty, and I believe that Ms. Auty has
6 not yet been affirmed.

7 JUSTICE WILTON-SIEGEL: Good
8 morning, Ms. Auty.

9 AFFIRMED: NICOLE AUTY

10 EXAMINATION BY MS. LIE:

11 Q. Good morning, Ms. Auty.

12 A. Good morning.

13 Q. I understand that you
14 were the City solicitor at the City of Hamilton
15 from February 2017 to February 2021?

16 A. Yes, that's correct.

17 Q. And I understand that you
18 are currently employed as assistant City solicitor
19 for the City of Cambridge?

20 A. Yes.

21 Q. When did you start in
22 that position?

23 A. I started in that
24 position in May of 2021.

25 Q. So a few months after you

1 left --

2 A. Shortly after I left
3 Hamilton, yes.

4 Q. So that would be May
5 of 2021?

6 A. That's correct.

7 Q. I want to talk about your
8 role as City solicitor for the City of Hamilton.
9 Could you describe your role.

10 A. As the City solicitor for
11 the City of Hamilton it was my responsibility to
12 provide legal advice and legal counsel to city
13 council and the City of Hamilton through
14 coordinating the internal legal services and any
15 external legal counsel that was needed on
16 particular matters. I provided advice
17 specifically and directly to council as my client
18 and also to members of staff who were providing
19 services to the corporation as well.

20 Q. So you said that you
21 provided advice to council as your client, so did
22 you consider council to be your client?

23 A. So council is my client.
24 So the City of Hamilton operates through a board
25 of director system basically, which city council

1 is the operating mind, and they are -- both of
2 them together are my client.

3 Q. And in terms of -- I
4 think you mentioned providing advice to the
5 Corporation of the City of Hamilton. Is there a
6 distinction in your mind between providing --

7 A. No, there is not.

8 Q. Okay. And in your role
9 as City solicitor I take it that was the highest
10 legal position within the City?

11 A. Yes.

12 Q. Who did you report to?

13 A. So administratively I
14 reported to Mike Zegarac, who at the time when I
15 first began was the general manager of corporate
16 services. He later was in the role of interim
17 city manager. But my administrative reporting was
18 to the general manager of corporate services. My
19 direct reporting relationship in terms of
20 providing legal advice and legal reports was to
21 council directly.

22 Q. I understand that the
23 legal services department was structured into two
24 groups, dispute resolution and commercial
25 development and policy, or CDP; is that correct?

1 A. That's correct.

2 Q. What was the role of the
3 dispute resolution group?

4 A. So the dispute resolution
5 group was led by a deputy city solicitor and the
6 lawyers and staff that made up that group were
7 responsible for carriage of variety of litigation
8 files, administrative, various other types of
9 matters, but in the litigation realm.

10 Q. And the deputy -- the
11 city solicitor for dispute resolution, that was
12 Ron Sabo?

13 A. That's correct.

14 Q. How much contact did you
15 have with Mr. Sabo on a day-to-day basis?

16 A. So we would be in regular
17 contact.

18 THE REGISTRAR: Sorry,
19 Counsel. Can I just ask you to pause for a
20 second. I think there is an issue with the live
21 stream. I don't want to miss anything. I just
22 got alluded to couple of e-mails saying that it
23 wasn't popping up for everyone so I just want to
24 double check that for everyone. My apologies.

25 MS. LIE: I'm told it may be

1 working now if that helps.

2 JUSTICE WILTON-SIEGEL: Okay.

3 BY MS. LIE:

4 Q. So Ms. Auty, I was asking
5 you about the level of contact that you would have
6 with Mr. Sabo.

7 A. Yes. So Mr. Sabo and I
8 would have regular contact. He would engage with
9 me when there were any particular issues that he
10 felt that needed to be brought to my attention.
11 We also met monthly to review his files and the
12 various items that were -- needed to be sort of
13 reviewed with me and discussed with me. We would
14 have also regular meetings with the leadership
15 team for the legal services department which would
16 include Mr. Sabo, the deputy city solicitor in
17 charge of CDP, Debbie Edwards. In addition, the
18 risk manager Mr. John McLennan and the manager of
19 prosecutions. So we would meet on administrative
20 and file-related matters on a regular basis.

21 Q. And you mentioned that
22 the dispute resolution group does work in the
23 litigation realm so I take it that includes
24 litigation in which the City was named as a party?

25 A. Sorry, can you repeat the

1 question.

2 Q. When you say litigation
3 realm, that includes litigation or court actions
4 where the City has been sued?

5 A. Yes, or in some instances
6 we would bring actions as needed to recoup various
7 things.

8 Q. You mentioned the manager
9 of risk management. What was -- where did risk
10 management fit into the structure?

11 A. So shortly after I joined
12 the City it was reorganized to have the manager of
13 risk management services report into the deputy
14 city solicitor of dispute resolution, so
15 Mr. McLennan reported to Mr. Sabo.

16 Q. What was the role of the
17 risk management department?

18 A. So their responsibilities
19 were to procure and maintain the City's insurance
20 coverage and manage all claims that came into the
21 city under our insurance portfolio.

22 Q. How much contact did you
23 typically have risk management staff?

24 A. The risk management staff
25 minimal insofar as Mr. McLennan and I would have

1 contact as needed through various meetings unless
2 there was a particular issue that needed his
3 expertise or that we were dealing with directly.

4 Q. What level of involvement
5 did you have in litigation in which the City was a
6 party?

7 A. So the lawyers that were
8 dealing with their files operated with a fair
9 degree of autonomy insofar as they had their files
10 and their litigation matters that they would
11 address. They would handle those similar to sole
12 practitioners and they would have primary carriage
13 of those files. They did however have the benefit
14 of Mr. Sabo's experience in terms of bringing any
15 matters that they may need questions or
16 clarification on, and in addition, I was always
17 available to staff if they had any particular
18 concerns that may raise issues or have input or
19 relevance to council-related matters.

20 Q. Did you have a general
21 sense of the litigation that they were handling at
22 the time?

23 A. At a very high level.
24 The individual claims or matters unless there were
25 particular themes or areas that would raise to a

1 level of council concern, if there were reports or
2 if there was particular direction that we needed
3 to obtain from council, the staff handling the
4 files would draft the reports and they would go
5 through to council under my signature.

6 Q. And so you would become
7 involved when I think you said it reached a level
8 of council concern?

9 A. Yes, if there were
10 particular council issues or if a particular
11 matter required council approval or direction in
12 terms of final resolution.

13 Q. Were you involved at all
14 in the discovery process for these matters?

15 A. No, I was not. If staff
16 had particular questions on how to handle a file
17 those would be addressed primarily by Mr. Sabo.

18 Q. And I understand that
19 Byrdena MacNeil, who is now Justice MacNeil,
20 reported to Mr. Sabo at the time?

21 A. Yes, she did.

22 Q. What was her role?

23 A. She was one of our very
24 experienced litigators with respect to
25 administrative law matters and she had particular

1 expertise in the area of Freedom of Information
2 requests.

3 Q. I understand that Dana
4 Lezau and Dan Bartley were also part of the
5 dispute resolution group?

6 A. Yes, Ms. Lezau and
7 Mr. Bartley were also two of our experienced
8 litigation counsel.

9 Q. And they reported to
10 Mr. Sabo?

11 A. They did as well.

12 Q. And how much contact did
13 you typically have with the lawyers who were under
14 Mr. Sabo?

15 A. So I made it a practice
16 of engaging with my staff in terms of popping in
17 and saying hello, asking how they were doing, but
18 on a file-specific matter they largely handled
19 their matters unless there was a particular
20 interest or they thought that there was something
21 particularly interesting about a file they would
22 pass that on. But for the most part they handled
23 those matters directly.

24 Q. So what was the role of
25 the commercial policy development, or CDP group?

1 A. So generally the
2 department was divided into the two areas, being
3 litigation and the balance of the work that
4 lawyers traditionally do. With the CDP area it
5 has real estate lawyers who practice in the real
6 estate area, planning and development law, general
7 corporate commercial type work, and other general
8 solicitor work on -- to review contracts, provide
9 general advice, and in particular provide any
10 administrative advice on the Municipal Act or
11 interpretations for council or the clerk's
12 department.

13 Q. So the dispute resolution
14 was -- sorry, go ahead.

15 A. That's fine.

16 Q. Were you finished?

17 A. Yes, thank you.

18 Q. So the dispute resolution
19 group was primarily litigation; the CDP was
20 primarily solicitor work. Is that fair?

21 A. Yes.

22 Q. And I understand that the
23 City had its own office to deal with Freedom of
24 Information requests which was within the purview
25 of the City clerk's office?

1 A. Yes, that's correct.
2 There were a number of officers and staff that
3 worked in the Freedom of Information office of the
4 clerk's department.

5 Q. And it was that office
6 who would determine what documents would
7 ultimately be released pursuant to an FOI request
8 that was made to the City?

9 A. Yes. So they were
10 responsible for intake of the request, seeking the
11 necessary documents from the various departments,
12 and reviewing and assessing, if any, exemptions
13 under the Freedom of Information Act applied.
14 That was their primary role.

15 Q. So what role, if any, did
16 the legal services department play when the City
17 received a Freedom of Information request?

18 A. So generally speaking, on
19 receipt or review of an FOI request the legal
20 department would have limited involvement with
21 those types of matters, and the exceptions to that
22 would be if we had particular request from a
23 department who was responding to a particular
24 request, whether they had questions or concerns or
25 in the -- also if there were any particular -- if

1 it was related to a legal matter, where they were
2 seeking information in terms of a matter that was
3 potentially in litigation or otherwise we would
4 have involvement in that respect.

5 Q. So would the involvement
6 come from the FOI office or from other departments
7 within the City?

8 A. Both. So if it was a
9 request for matters that were in litigation
10 usually those would come to the FOI -- from the
11 FOI office, but in other instances where the
12 particular department had a question or concerns
13 around the information that was being sought, that
14 could come to us through that route as well. So
15 both instances.

16 Q. So if it was coming in
17 from a department who would it come to within the
18 legal services department?

19 A. That would vary depending
20 on the department. So the lawyers in both
21 divisions would have particular relationships with
22 clients, particular areas that they did a lot
23 work. Sometimes it would come through that to
24 them directly. But for the most part it would
25 come through -- to the CDP section either through

1 Ms. Edwards, or, if it was related to litigation
2 matter, through Mr. Sabo, and they would assign it
3 to the appropriate individuals and in most
4 instances that would be Ms. MacNeil, now
5 Justice MacNeil.

6 Q. Would that come to your
7 attention specifically if an FOI came in and there
8 was a request for assistance from Mr. Sabo or Ms.
9 Edwards?

10 A. Generally speaking, no.
11 That part of their role, one of their main
12 purposes was to assign and distribute work amongst
13 their staff. If it was a particularly sensitive
14 matter or something that they thought would
15 warrant my knowledge or my involvement they would
16 raise it with me, but as a matter of course they
17 would take those matters and address them to the
18 satisfaction of the client department.

19 Q. So we talked about
20 Mr. Sabo, who is deputy city solicitor for dispute
21 resolution, Ms. Edwards who is deputy city
22 solicitor for the CDP group. Did you have any
23 other direct reports?

24 A. No, the two deputy city
25 solicitors were my primary direct reports.

1 Q. Did Mr. Sabo or
2 Ms. Edwards report to anybody else apart from you?

3 A. No.

4 Q. How often did the legal
5 services department come into contact with public
6 works department within the City?

7 A. Frequently. They were --
8 so our two main client departments were the
9 planning department and the public works
10 department. So a variety of files through a
11 variety of different issues would come through to
12 us, for assistance on particular reports or
13 viewing contracts. If it escalated to a dispute
14 with a contractor it might progress into a
15 litigation matter. So there's a variety of
16 matters that would be brought to us from public
17 works.

18 Q. When public works is
19 bringing an issue to legal services how does that
20 happen? Who did they bring it to?

21 A. Depends on the nature of
22 the dispute. So if it was contracts, general work
23 of that nature, that would go through the CDP
24 through Ms. Edwards. Her and Mr. McKinnon would
25 correspond. It would get assigned to the

1 appropriate lawyer with the necessary expertise
2 depending on the nature of the request.
3 Similarly, if it was related to a litigation
4 matter that was ongoing, those would go through
5 Mr. Sabo and again to the lawyer directly handling
6 the file.

7 Q. And so how much contact
8 did you have with the public works staff?

9 A. At a general manager
10 level a fair bit. We would meet through all of
11 the council and committee meetings that I would
12 attend, but that -- in terms of directly assigning
13 work or dealing with matters, that would largely
14 go through the deputy city solicitors again,
15 unless it was a matter that was at council or
16 where the reports were going to council, then I
17 would be generally made aware of whatever advice
18 was being provided by staff on particular council
19 reports and that -- yeah, if there were any
20 particular issues Mr. McKinnon could speak to me
21 about them directly.

22 Q. So your contact was
23 primarily with Mr. McKinnon?

24 A. Yeah, or the directors.
25 I mean, certainly if there was a particular issue

1 that they were dealing with they would speak to me
2 again as well. Certainly had conversations with
3 both of them.

4 Q. When you say both of
5 them are you referring to --

6 A. Sorry, director Soldo and
7 director McGuire.

8 Q. So what role did you play
9 in determining what issues would go to City
10 council and when?

11 A. So my responsibility was
12 to provide the corporation with -- and the City
13 with legal advice. So when there were particular
14 matters that -- from litigation and
15 solicitor-client advice perspective, if I was
16 drafting a report that needed to go to council I
17 would speak to at that point my general manager
18 and ultimately the City manager for the
19 appropriate timing to bring those reports,
20 depending on the urgency and the need to provide
21 the information to council. Those -- on
22 litigation and those matters that would go in
23 camera that we would draft those reports and
24 provide that directly.

25 In terms of other reports from

1 other departments, we would usually be asked to
2 provide some input into their report drafting, but
3 the timing of those reports again would be
4 determined by the general manager and ultimately
5 the City manager in terms of agenda management.

6 Q. So if there was a matter
7 that related to the litigation that needed to go
8 before council that was ultimately your decision
9 whether not to bring it?

10 A. So whether or not to
11 bring it, yes, that would be my decision. The
12 timing of that report would then be one assessed
13 and reviewed by the City manager, obviously with
14 my input if that was necessary.

15 Q. That was Mr. Zegarac at
16 the time?

17 A. At the time, yes.

18 Q. So the City has produced
19 some handwritten notes that you authored which are
20 in the inquiry database and are referred to in the
21 overview document. I just wanted to understand
22 what was your practice for taking notes during
23 this time, and I'll say from let's say mid-2018
24 through to early 2019?

25 A. Sure. So when I began at

1 the City I had developed a report writing -- a
2 note-taking template. So I had pads of paper that
3 had the note-taking template on it which I would
4 use to record my notes at particular meetings or
5 phone calls or that sort of thing. So I believe
6 you have copies of notes written on those
7 templates.

8 For a brief period in early
9 2019 I switched and started using an agenda, a
10 bound agenda with the calendar and room for notes
11 on the side, which I then abandoned and went back
12 to my note-taking templates which I liked better.

13 Q. So when you say early
14 2019, is that January 2019?

15 A. Yes. It was the
16 beginning of a calendar year. And the agenda
17 started in January and then I gave it a try and
18 then I ultimately went back to writing on my
19 template.

20 Q. Do you recall when you
21 went back to writing on your template?

22 A. I don't. It would have
23 been in the first -- towards the end of the first
24 quarter I believe.

25 Q. And I understand from the

1 City that the City hasn't been able to locate a
2 copy of the bound agenda book that you mentioned?

3 A. I understand that to be
4 the case. It was last -- I left it in my office.
5 I haven't seen it since then.

6 Q. So let me just pull up
7 one of the templates just so that we can have a
8 look at it together.

9 Registrar, can you pull up
10 HAM0064355. Is this template you're referring to?

11 A. It is.

12 Q. And in the template where
13 it says "topics to discuss" what -- did you
14 prepare in advance the topics that you wanted to
15 discuss?

16 A. Sometimes. It depended
17 on the situation. It was available there. If
18 that was the case I could put a few thoughts down
19 ahead of time.

20 Q. I take it the questions
21 to ask was if you had questions that you wanted to
22 ask in the meeting?

23 A. Yeah, when I came out or
24 follow-up questions. It could be both.

25 Q. And where it says "action

1 items," what did you record there?

2 A. Yeah, those are generally
3 things that -- my takeaways or things I was going
4 to do following the meeting, or if there were
5 things to assign to other people I would keep
6 track of those.

7 Q. And under "key dates," I
8 take it you were recording key dates?

9 A. Yeah, if there was
10 anything there. Yeah, these were all attempts to
11 trigger note taking in meetings for me.

12 Q. Did you take notes of all
13 calls and meetings?

14 A. Many of them. It would
15 depend on the nature of the call. If it was a
16 particular discussion that I felt needed to be
17 documented then I would do that, but it wasn't
18 every single call.

19 Q. Registrar, could we pull
20 up HAM0052704. I'm going to come back to that
21 note.

22 So here we have a Hamilton
23 Spectator article from July of 2017 called
24 "Highway Traffic Tragedies, Why Are There So Many
25 Crashes on the Red Hill." Do you recall being

1 aware of this article or ones like it in around
2 July of 2017?

3 A. No. I was generally
4 aware of there being crashes and accidents on the
5 Red Hill, but this particular article I wasn't
6 aware of at the time. I had just started at the
7 City a few months before and it hadn't been raised
8 with me.

9 Q. When you say you were
10 generally aware of there being crashes and
11 accidents on the Red Hill, was that as a result of
12 discussions within the City or do you recall --

13 A. No. So my general
14 awareness was that of one as a resident of
15 Hamilton as opposed to having any conversations or
16 particular discussions with staff at the City.

17 Q. Were you -- do you recall
18 being aware that Gary Moore had made some comments
19 to the Spectator?

20 A. Not at the time. I was
21 not aware of those comments.

22 Q. Registrar, could we pull
23 up HAM0064357.

24 So this is a letter from
25 Shillingtons lawyers addressed to Diana Swaby who

1 is a supervisor in claims administration. And I
2 understand that Ms. Swaby was in the risk
3 management department; is that right?

4 A. Yes, that's correct.

5 Q. Were you aware in January
6 of 2018 that Shillingtons was acting for the City
7 in respect of a motor vehicle accident that
8 occurred on the LINC?

9 A. No, I wasn't specifically
10 aware of their individual retainer on that matter.
11 I was generally aware that there were litigation
12 matters to deal with the Red Hill and the LINC but
13 not of this particular correspondence.

14 Q. When would the City
15 retain external counsel for something like a motor
16 vehicle accident case?

17 A. So it would vary
18 depending on the nature, but generally those would
19 be claims that were under our insurance if they
20 were above the deductible. Generally we would
21 deal with internal matters that were under our
22 insurance deductible in-house.

23 Q. Did you see this letter
24 at the time?

25 A. No, I did not.

1 Q. Registrar, could you just
2 go to the next page. Image 2.

3 So here, this letter includes
4 an update on review of City of Hamilton records.
5 Would you have expected to see a letter like this
6 at the time?

7 A. So the claims were
8 handled by the risk management staff. If at some
9 point it was needed to get council approval or to
10 deal with a particular issue that was beyond the
11 scope of the insurance that was in City council's
12 purview to address then those would come to me.
13 But the day-to-day and general administration of
14 these files, particularly in the risk management
15 department, were handled by risk management staff,
16 and if there were litigation matters they would be
17 handled by lawyers in the dispute resolution
18 section.

19 Q. Did you ever see this
20 letter except in the course of preparing for this
21 inquiry?

22 A. No, I did not other than
23 through this inquiry.

24 Q. So you'll see here on
25 image 2 in the second paragraph under City of

1 Hamilton records it talks about some records, and
2 then in the last sentence it says:

3 "To further complicate
4 matters, certain
5 engineering studies
6 commissioned prior to the
7 accident were never
8 submitted to council due
9 to deficiencies of
10 calculations. Overall,
11 the results of the
12 post-accident traffic
13 engineering reports do
14 not raise concerns
15 regarding the design and
16 operation of the LINC.
17 Interoffice e-mails and
18 buried reports however do
19 raise issues that will
20 have to addressed in
21 order to successfully
22 defend these actions."

23 Do you recall any discussion
24 within the legal services department about this
25 idea of potential buried reports?

1 A. No, I do not. Certainly
2 not at that time, if that's what you're asking,
3 sorry, to be clear.

4 Q. Yeah, at that time. Or
5 how about at any time before let's say November
6 of 2018.

7 A. So before the issue came
8 to my attention I was not aware of -- in November
9 the 2018 I was not aware of there being any
10 suggestion of buried reports.

11 MS. LIE: Before we go off
12 this document, this document is not in any of the
13 overview documents so I would ask that we mark it
14 as Exhibit 162.

15 THE REGISTRAR: Noted,
16 counsel. Thank you.

17 EXHIBIT NO. 162: Letter
18 dated January 31, 2018
19 from Shillingtons to
20 Diana Swaby, 11 pages;
21 HAM64357

22 BY MS. LIE:

23 Q. So you can take this
24 document down. Thank you.

25 So, Ms. Auty, when did you

1 first learn of the Tradewind report?

2 A. I don't have a specific
3 recollection of when I was made aware of the
4 Tradewind report, but I believe that it was
5 between November the 13th and November 20th based
6 on my review of documents for an inquiry.

7 Q. And what do you recall
8 about first learning about it --

9 A. Pardon me?

10 Q. How did it come to your
11 attention?

12 A. So it came to my
13 attention -- it was raised with me initially by
14 Ms. MacNeil. She had been asked to provide advice
15 to public works regarding an FOI request. It had
16 come to her attention that there was a report that
17 had not been previously provided to counsel. The
18 concerns that were raised to her through public
19 works staff at the time were initially that there
20 were some inconsistencies between comments that
21 were made regarding the existence of the report
22 and functionality of the roadway.

23 And in addition, as a result
24 of that, there was also concern that council had
25 not been provided with a copy of the report and

1 wasn't aware of the information within it and that
2 this might come to the public's attention through
3 release of the report through the FOI process
4 prior to it being provided to council. And so
5 those were the two concerns and how it was raised
6 with me.

7 Q. Why was she raising it
8 with you as opposed to potentially with Mr. Sabo?

9 A. So I believe -- well, I
10 can't speak, but I imagine she would have also had
11 communications with Mr. Sabo, however, given the
12 sensitivity and the potential concern particularly
13 regarding the inconsistencies of the statement and
14 wanting to ensure that council was made aware of
15 the information in the report prior to it being
16 released publicly, those are both issues that I
17 had asked staff to make sure that if there were
18 any council or highly sensitive issues that they
19 did bring those to me directly. And so this
20 was -- she was providing that information to me so
21 that I could be aware and be involved in the
22 matter going forward.

23 Q. So you mentioned the
24 Freedom of Information request. Just in terms of
25 timing, that came into the City on November 8th,

1 2018?

2 A. That's my understanding.

3 Q. When you talked to
4 Ms. MacNeil did you ever have an initial view or
5 discussion about whether the Tradewind report
6 would have to be released under the FOI request?

7 A. So I don't recall the
8 specifics of our conversation, but I do recall
9 from the outset that it was her opinion that this
10 was a responsive document, that is, the Tradewind
11 report was a responsive document to the FOI
12 request, and as a result would likely and, if not
13 certainly, be released under that request.

14 The only issue or potential
15 aspect that she was continuing to review was if --
16 and largely based on my request, was to just
17 confirm that there was no exemptions that would
18 apply to the document and she was conducting that
19 review ongoing.

20 Q. Did you get a copy of the
21 Tradewind report at the time when she first --

22 A. No, I don't believe I
23 received a copy of the report at the time. She
24 was raising it with me for my situational
25 awareness at this point and to identify the

1 concerns that had been raised with her, and my
2 understanding was that she was continuing to
3 review and assist public works with their review
4 and gathering of the documents for the FOI request
5 and that that was ongoing.

6 Q. Did she tell you about
7 the content of the Tradewind report?

8 A. I believe at some point
9 early on, I can't recall if it was in our initial
10 discussion, in terms of the specific content of
11 it. I know that I was made aware of that fairly
12 shortly thereafter. And certainly by the time I
13 spoke with staff on November 20th.

14 Q. And when you say you were
15 aware of that in terms of the content, what was
16 your understanding of what the Tradewind report
17 said?

18 A. Initially, and my
19 understanding was that it identified friction
20 results, that were assessed based on a standard
21 that was not -- it was not reflective of a
22 Canadian or particularly North American standard
23 so we didn't have similar standards here to assess
24 the information. And it was also identified as
25 being at that point in time to me a draft report

1 or part of a draft report that had not been
2 finalized.

3 Q. Did you have an
4 understanding of what the Tradewind report said
5 about the friction levels vis-a-vis the standard
6 you just described?

7 A. Well, I understood that
8 there were standards identified and that they had
9 done testing, but that it was at an investigate
10 level, I believe, but at this point in time it was
11 really just the fact that there was a report that
12 had friction-related information that had not been
13 provided to council and that there were
14 inconsistent statements about how -- whether --
15 what impacts that report may have in terms of
16 comments made to the public and to council. So
17 the specific technical nature of it we didn't
18 discuss at that point.

19 Q. Who did you get that
20 information from in terms of the standard and it
21 not reflecting the North American standard?

22 A. So I don't recall the
23 specifics of that type of initial discussions, but
24 I believe that that information would have been
25 provided to me through conversations with

1 Mr. McGuire and potentially with either
2 Ms. MacNeil or Mr. Sabo based on their further
3 review. So they would have been the sources of
4 that discussion.

5 Q. So you recall speaking
6 with Mr. McGuire in those early days?

7 A. I recall having
8 conversations with him. The specifics and timing
9 I don't recall, but I know I did speak to him
10 about it at that time.

11 Q. Registrar, could we pull
12 up HAM64308. And I'm going to take you to
13 image 3.

14 Ms. Auty, this is an e-mail
15 exchange between Ms. MacNeil and Ms. Edwards.
16 You're not copied on it. But what I wanted to
17 take your attention to within that -- within the
18 bottom right-hand corner there's a handwritten
19 note from Ms. Edwards that says:

20 "Subsequent discussions
21 with D. McKinnon and
22 Zegarac, Ron and Nicole
23 re FOI request and next
24 steps November 13th,
25 2018."

1 A. Yes, I see that there.

2 Q. So earlier you mentioned
3 that you -- based on your review of the materials,
4 you believe that you learned of the Tradewind
5 report sometime between November 13th and the
6 20th?

7 A. Yes.

8 Q. Is this where you got the
9 November 13th date from?

10 A. Yes, I believe -- so I
11 don't recall specifically having the conversation
12 that Ms. Edwards refers to in her note. I believe
13 that there may have been subsequent discussions
14 around that time that Mr. Sabo attended. I don't
15 specifically recall being involved in a discussion
16 that Ms. Edwards refers to here. That said, I
17 have -- I don't have any reason to believe it
18 didn't happen, but I don't recall.

19 Q. Do you recall having any
20 discussions with Ms. Edwards about this issue?

21 A. I remember her
22 identifying that she had had some conversations
23 with Byrdena, or that Gord had raised the issue
24 with her and that she had suggested he speak to
25 Byrdena and Mr. Sabo. So she had directed it to

1 the appropriate individual to address.

2 Q. What do you recall about
3 the first time you met or spoke with Mr. McKinnon
4 or Mr. Zegarac about this issue?

5 A. I don't have any specific
6 recollections around when and how this was
7 discussed with them. I know that I did speak to
8 Mr. McKinnon and would have had his input and
9 assessment of the report.

10 In terms of speaking with
11 Mr. Zegarac, I know that there were subsequent
12 conversations that Mr. Sabo attended where
13 Mr. Zegarac was present. We also had further
14 discussions and following conversation that I had
15 with Mr. Sabo and that Ms. MacNeil following her
16 discussions on the 3rd, that I reached out to
17 Mr. Zegarac and requested that we have a
18 conversation with all of the parties to -- all of
19 the divisions and individuals who were involved in
20 the matter to suggest a coordinated approach going
21 forward.

22 Q. We're going to get to
23 those conversations, but you mentioned that you
24 spoke with Mr. McKinnon and you would have gotten
25 his input and assessment of the report. So what

1 input did he provide? Mr. McKinnon I mean.

2 A. So I don't recall the
3 specifics of those conversations and I don't
4 believe that I have any notes or documents that
5 speak to them. I believe that I would have had
6 conversations with him just around the nature of
7 the report and whether -- to get a sense from him
8 what, if any, concerns he had, and at no point in
9 time did he identify to me that he had any
10 particular concerns about the road being unsafe.
11 And then I would identify what steps I was
12 intending to take, which would be to ultimately
13 get a liability and risk assessment moving
14 forward. So I would have shared that information
15 with him.

16 Q. What about with
17 Mr. Zegarac? What were you talking to Mr. Zegarac
18 about in those early days?

19 A. Similarly my expectation
20 that we would be bringing a report to council to
21 identify the existence of the Tradewind report and
22 its content, and my contribution to that was the
23 liability and risk assessment so that I would
24 be -- I identified to him that that was what I was
25 intending to work on and that in order to do so I

1 was going to be retaining outside legal counsel.
2 So I would have identified that to Mr. Zegarac at
3 the time.

4 Q. So in those early days,
5 and when I say early days I mean kind of in around
6 November 13th to the 20th, had there been
7 discussions already to report to council?

8 A. It was always my
9 understanding that the report -- that the
10 Tradewind report would be identified to council.
11 At that point the question of the content of the
12 report, from staff that is, in terms of providing
13 the assessment would ultimately be determined
14 based on our review, like, our internal staff
15 review of the report and context and sort of
16 historical background and the liability
17 assessment, and a component of that would
18 obviously be what information was ultimately
19 determined to be responsive and provided through
20 the FOI process.

21 So all those things were being
22 considered and reviewed, but the decision and the
23 need for a report to council was always my
24 understanding.

25 Q. So from your perspective

1 what were the steps that needed to be taken before
2 the report could go to council? When I say the
3 report, I mean the staff report about the
4 Tradewind report.

5 A. So whenever we look at a
6 report to council the primary thing that as staff
7 we do is assess on balance the timing and the
8 urgency of the report and the nature and degree of
9 the information that needs to be provided so that
10 council can make an informed decision, if a
11 decision is asked of them, or be provided with the
12 necessary information to understand the context of
13 the information they are receiving.

14 In this case the balance, as
15 far as I understood it at the time, was not one of
16 urgency so there was not a need to bring a report
17 to council on an urgent basis on there being any
18 concerns that the road was unsafe or that imminent
19 work needed to happen to make the road safe. It
20 was really a question of ensuring that council was
21 aware that the report existed in a timely way with
22 sufficient information to digest that and to
23 address the inconsistencies of previous statements
24 from a liability perspective which was obviously
25 my contribution and my role in having those

1 discussions.

2 Q. Registrar, you can take
3 this document down. Thank you.

4 So you mentioned that there
5 wasn't a need for urgency, at least from the
6 perspective of public safety, but were you aware
7 that the deadline that had been given for the
8 materials to go to the FOI request office was
9 November 15th, 2018?

10 A. So initially I understood
11 that that was the ideal timeline and usually
12 30 days is provided to respond. In instances
13 where there is a great volume of materials or
14 staff identified that it's going to take longer,
15 they can request additional information -- sorry,
16 additional time from the clerk's office to provide
17 the information.

18 It was my understanding that
19 they were seeking additional time to provide --
20 that staff were seeking additional time to provide
21 their responses to the FOI office.

22 So in terms of urgency, there
23 was certainly a desire to ensure that council had
24 the information in advance of it being released
25 publicly and that we were attempting to coordinate

1 that to -- balance to get the right amount of
2 information to them in an appropriate amount of
3 time with when we anticipated the FOI request
4 would be released.

5 But ultimately, as I think
6 we've identified, the FOI office doesn't take
7 direction from me on those regards -- in that
8 regard, rather, so we were trying to anticipate
9 that when the FOI report released -- information
10 would be released in order to identify the
11 appropriate timing.

12 Q. So do you recall taking
13 part in discussions where you talked about getting
14 an extension to at least deliver the materials to
15 the FOI office?

16 A. I understood that to be
17 the case. I don't recall having specific
18 conversations about that, but it was my
19 understanding at various points that the timing of
20 the information being provided to the FOI office
21 was extended, and by the time we had conversations
22 in late -- mid-December that that expectation was
23 that that information would be provided in
24 January.

25 So the timing of the report to

1 council was ultimately reflected by timing at
2 which the information was going to be provided to
3 the FOI office and then in anticipation of it
4 being released to the public.

5 Q. When you say you had an
6 understanding, who did you get that understanding
7 from?

8 A. I can't recall whether
9 that came from Ms. MacNeil or from reaching out to
10 the FOI office directly, but I did have that
11 understanding. Ms. MacNeil was ultimately dealing
12 with that on a daily basis.

13 Q. But you wouldn't -- I
14 mean the FOI office wouldn't -- so did you reach
15 out to the FOI office before let's say
16 mid-January? Or January 2019?

17 A. I don't recall -- at some
18 point I did request that the FOI office advise if
19 they were able to -- when they anticipated the
20 report being released simply as a courtesy if that
21 was available to them, but not any way influence
22 their timing. And I did receive that information
23 from Ms. Pilon at some point; I believe it was in
24 February.

25 Q. I think we have a note

1 that to look --

2 A. Yeah.

3 Q. But in terms of the FOI
4 office, they can't release anything until they
5 actually obtain the materials?

6 A. That's correct.

7 Q. Okay. So when you said
8 that you had an understanding of -- that there
9 would be an extension requested, was that to
10 provide the materials to the FOI office?

11 A. Yes.

12 Q. And who did you get that
13 information from?

14 A. I don't recall
15 specifically. I believe it was either Ms. MacNeil
16 or Ms. (sic) McGuire in terms of whoever was --
17 they were the two that were coordinating the
18 development of that material, or the gathering of
19 that material.

20 Q. Whose decision was it to
21 request the extension?

22 A. I don't know. I wasn't
23 involved in that discussion.

24 Q. So it wasn't your
25 decision.

1 A. It was not my decision.

2 Q. So I take it you
3 understood that Ms. MacNeil was working on the FOI
4 request and you think you mentioned to gather
5 materials and determine if any exemptions applied?

6 A. So Ms. MacNeil was
7 assisting. So in terms of providing advice it's
8 the client department. So ultimately the public
9 works department that is responsible for gathering
10 all of the information regardless of whether an
11 exemption applied, gathering all the information
12 and providing it to the FOI office. If they had
13 any questions around whether a particular
14 exemption applied Ms. MacNeil could certainly
15 provide that advice, but ultimately even that
16 decision of whether the exemption applies or not
17 is made by the FOI office. But we would provide
18 some advice and guidance if requested.

19 Q. So what was your
20 understanding of what Ms. MacNeil was doing with
21 the FOI request at the time? And when I say at
22 the time I mean late -- let's say mid-to-late
23 November of 2018.

24 A. I knew she was meeting
25 and reviewing the documents that public works had

1 gathered. I was aware of that meeting that she
2 had on December 23rd. She spoke to me following
3 that meeting.

4 So it was my understanding
5 that she was assisting them with that review, but
6 again it wasn't necessarily something she was
7 dealing with on a daily basis. She had a number
8 of other files that she would have also been
9 working on. So in balance with her workload, she
10 was assisting them as best she could in terms of
11 assessing and providing advice on the review of
12 the documents.

13 Q. What advice would she be
14 providing? Because I take it that the FOI office
15 decides whether or not a document is exempt;
16 Mr. McGuire and the public works department were
17 gathering the materials. So what was
18 Ms. MacNeil's role in all of this?

19 A. So her role was to answer
20 any questions regarding the potential application
21 of any exemptions and to assist and answer any
22 questions that the public works department had on
23 those exemptions or on the document themselves, so
24 I don't know that I can answer it any better than
25 that.

1 Q. I take it even if the
2 legal services department believed that a document
3 might fall under an exemption it would still have
4 to go to the FOI office though --

5 A. Absolutely. So if we
6 were asked or if we had any advice that was
7 provided it was again advice, and ultimately the
8 officers and the staff and the Freedom of
9 Information office determined what documents were
10 released and what were not. But as we do with all
11 of our client departments, we provide advice and
12 offer assistance in understanding the legislation.
13 Certainly they are the subject matter expertise on
14 the day-to-day process and application of that --
15 with the exception maybe of Ms. MacNeil.

16 Q. Registrar, could we pull
17 up HAM62477.

18 Ms. Auty, here we have an
19 e-mail. It's from you to Mr. Sabo and
20 Mr. McLennan dated November 20th, 2018.

21 A. Yes, I see that.

22 Q. And the subject is PW Red
23 Hill matter, and you say:

24 "Hi, further to our
25 discussion last week, do

1 we have any concerns with
2 Dan McKinnon speaking to
3 Gary Moore on the issue
4 of the report regarding
5 the friction to get more
6 of his perspective and
7 determine if there are
8 any other documents we
9 need to be aware of."
10 So when you say the
11 report regarding the
12 friction I take it that's
13 the Tradewind report?

14 A. Yes, that's what I was
15 referring to.

16 Q. And so what discussions
17 had you had with Mr. Sabo and/or Mr. McLennan
18 before this e-mail?

19 A. So I don't recall the
20 specifics. I believe that the e-mail refers to
21 previous discussions and that I would have spoken
22 to them about it. I'm not sure exactly the nature
23 of the conversations, but I believe we had
24 initiated our discussions around retaining an
25 outside legal counsel in terms of providing a risk

1 and litigation assessment, and that's the second
2 part of the e-mail where we refer to
3 Mr. Boghosian. So I do recall speaking to them
4 about that.

5 Q. And why was Mr. McLennan
6 involved at that time?

7 A. At this point in time I
8 had drawn in both of my subject matter experts in
9 the department in terms of litigation and risk
10 management. So as I was aware that we had both
11 ongoing litigation matters and claims, I wanted to
12 have Mr. McLennan and Mr. Sabo involved in the
13 discussions to make sure that if the -- that I was
14 aware of all the necessary pieces of the story
15 about what was happening. So I had them involved.

16 I also wanted to confirm in
17 terms of the discussion around Mr. Boghosian, I
18 anticipated that either Mr. Sabo or Mr. McLennan
19 would be aware of any claims that might involve
20 Mr. Boghosian in terms of being aware in advance
21 of any possible conflicts before I spoke to him.

22 Q. Okay.

23 A. That's what I was asking
24 about.

25 Q. But before we get to the

1 second paragraph I want to stick to the first
2 paragraph for a moment where you talk about
3 concerns with Mr. McKinnon speaking with
4 Mr. Moore. Had you had any discussions about
5 Mr. McKinnon possibly speaking with Mr. Moore
6 about the Tradewind report at the time?

7 A. I don't recall
8 specifically, but if I refer to it -- I may or may
9 have had any conversations about Mr. McKinnon
10 speaking to Mr. Moore, but I believe that the
11 reason that I identify it here is that
12 Mr. McKinnon would have reached out to me just to
13 check and to see. I don't believe that there
14 would have been any reason for concern for the
15 conversation, but in light of the discussions I
16 wanted to just confirm again with Mr. Sabo and
17 Mr. McLennan that they weren't aware of anything
18 that maybe I wasn't before identifying to
19 Mr. McKinnon that we had no concerns.

20 Q. And do you recall if
21 Mr. Sabo and Mr. McLennan identified any concerns?

22 A. Not that I recall, I
23 don't believe so. I don't believe there were any
24 concerns.

25 Q. Did you have any

1 discussions with Mr. McKinnon about the
2 conversation with Mr. Moore?

3 A. I believe that I spoke to
4 him about his desire to speak to him and to get
5 additional information and ensure that we had
6 awareness of all of the information that he would
7 have dealt with at the time, but I don't recall
8 the specifics of the conversation. I certainly
9 had no concerns with him speaking to Mr. Moore.

10 Q. And then in the second
11 paragraph you say:

12 "Where are we with
13 regards to speaking to
14 David Boghosian and" I
15 think it should be "our
16 assessment of risk/impact
17 on litigation matters and
18 the need for an interim.
19 Should we set up a
20 meeting to review with
21 Byrdena that [inaudible]
22 issue?" (As read)

23 So who was David Boghosian?

24 A. David Boghosian is a
25 litigator who has particular expertise in road and

1 safety liability in particular with
2 municipalities, and I was aware of his work by
3 reputation and for having had awareness of him
4 being involved with other municipal issues
5 relating to road safety and liability.

6 Q. So by this time you had
7 decided that you wanted to retain Mr. Boghosian?

8 A. That was my suggestion.
9 I recall at the meeting I had with Mr. Sabo and
10 Mr. McLennan asking if they had any other experts
11 that they would recommend, and we landed on
12 Mr. Boghosian as our preferred option.

13 Q. So what did you want to
14 retain Mr. Boghosian to do?

15 A. So at this point in time
16 the concerns that were raised to me through
17 Ms. MacNeil and Ms. McGuire were relating to the
18 inconsistencies in statements that had been made
19 regarding the roadway and the impacts that that --
20 the impacts that the release of the Tradewind
21 report might have in terms of identifying some of
22 those inconsistencies. And I was also aware at
23 the time that we had ongoing litigation matters
24 relating to incidents on the Red Hill.

25 So based on both of those

1 issues, of potential discoverability and also
2 issues of ongoing litigation matters, I wanted to
3 have an expert in that type of law and review
4 conduct and provide the City with an opinion as to
5 the general liability and risk assessment that
6 would come from ultimately releasing the Tradewind
7 report to the public.

8 Q. So you mentioned that you
9 were aware that there were concerns regarding
10 inconsistent statements made about the roadway.

11 A. Yes.

12 Q. What do you recall about
13 those inconsistencies?

14 A. I recall them being
15 identified to me as there were previous statements
16 made both in council meetings and in the media
17 regarding the nature of the Red Hill. I don't
18 recall sort of the specifics around what was
19 identified, but that that was raised to me as an
20 issue. And so that was part of the reason that I
21 wanted to have an outside legal opinion on what,
22 if any, impacts this would have on our -- the
23 City's liability.

24 Q. I think you mentioned
25 that it was Ms. MacNeil that mentioned to you the

1 concerns with the inconsistencies?

2 A. So initially it was
3 raised -- those issues were raised when
4 Ms. MacNeil spoke to me at the outset. I also
5 recall that similar concerns were raised by
6 Mr. McKinnon and Mr. McGuire as we conversed on
7 that through the process.

8 Q. So by this time had you
9 spoken with Mr. McGuire?

10 A. The time being the 20th?

11 Q. Yes.

12 A. I can't say for sure. I
13 believe that I may have. I certainly know I was
14 speaking with him around this time. I can't
15 recall specifically.

16 Q. Do you recall generally
17 what your discussions with Mr. McGuire were about
18 around this timeframe?

19 A. Again it was they were
20 focussed on the release of the information, the
21 fact that he had learned about this as he was
22 going through his initial orientation -- his own
23 orientation to the department. He was concerned
24 about the inconsistencies of statements made, what
25 had previously been advised to council, and that

1 this report had not previously -- the information
2 in the report had not, as far as he was aware,
3 been provided to council specifically and that
4 that might raise concerns both for council and the
5 public once it ultimately was released. And he
6 wanted to ensure, as did the rest of the
7 leadership team, that council had that information
8 in advance of its public release.

9 Q. Did you tell him that you
10 were planning on retaining external counsel?

11 A. I believe I would have.
12 I don't recall specifically mentioning that to
13 him. I know that I would have identified that to
14 him at some point early on that that was my plan.
15 And certainly once I had spoken to David I did
16 convey that information and the nature our
17 discussions in further meetings with staff in
18 December.

19 Q. I think we'll get to
20 that. So at the time in November 20th, 2018 you
21 write about speaking to Mr. Boghosian about the
22 need for an interim. What were you referring to
23 there?

24 A. I believe that I was
25 referring to the need for -- the potential need

1 for an interim report to council, although I can't
2 say for certain.

3 Q. What is an interim report
4 to council as opposed to just a report to council?

5 A. So again, as I sort of
6 mentioned earlier, as staff constantly are
7 balancing timing, urgency and sort of amounts of
8 information that is provided to council, that's
9 our role. So from my perspective wanting to -- if
10 there was the need for any more urgent timing of
11 providing that information to council, which would
12 have been identified if there was an imminent
13 release of that information for FOI, but certainly
14 had there been any discussion or indication of
15 conditions about the road being unsafe or any
16 urgent need for work to be done, that would have
17 also then obviously triggered a more quick
18 response to council.

19 So sometimes, depending on the
20 nature of the information and what's happening, we
21 can provide a bit of an interim report, so a heads
22 up to say hey, this is an issue we're dealing
23 with, we're looking at it for you, wanted to make
24 sure it was -- that you were aware of it and that
25 we -- advise what we would be bringing. And

1 sometimes that actually gives council an
2 opportunity to raise any preliminary questions
3 they might or items that they would like,
4 particularly for staff, to identify in the final
5 report so we can -- sometimes it's done as an
6 iterative approach.

7 Q. And I think you had
8 mentioned earlier that you didn't see any
9 particular sense of urgency on the FOI side
10 because there was extensions were going to be
11 granted for the provision of the materials to the
12 FOI office.

13 A. Yeah, and that was an
14 early -- like that timeline was moving, right, so
15 that was a moving target as we processed through
16 the process.

17 So initially I think there
18 was, and maybe at this point in time more a
19 concern, that that information might be released
20 more quickly. But as we moved through the process
21 and PW continued their review of their documents,
22 the volume and the time needed to review that I
23 think grew and so the need for an extension
24 developed.

25 I can't say particularly at

1 this moment whether I knew that the extension was
2 happening or not, but that was the concern.
3 Making sure that council -- you know, in the
4 absence of any indication of a safety concern,
5 making sure that council -- that that issue was
6 addressed and not part of our consideration, then
7 the real issue was making sure that council had
8 the information in advance of it being released
9 publicly. And that that information was then --
10 we had sufficient time to build and provide a
11 meaningful presentation to council which was
12 ultimately provided in February.

13 Q. And why were you
14 asking -- why were you potentially going to be
15 retaining Mr. Boghosian to give you an opinion on
16 whether or not you needed to make an internal
17 report to council?

18 A. So I wasn't asking him
19 whether he felt I should bring an interim report
20 to council; it was a question of timing. So I
21 wanted to ensure that I had an opportunity to
22 speak with David, or at least get that process
23 started, if we were bringing an internal report to
24 council based on our factors. So David wouldn't
25 have any involvement or provide opinion nor was he

1 asked to provide an opinion on the need or the
2 timing of an interim report to council.

3 Q. Were there any
4 discussions at this time about determining if any
5 interim safety measures would be required? When I
6 say interim safety measures I just mean pending
7 the resurfacing of the road because I understand
8 that the plan was to resurface the road in 2019.
9 And so when I say interim safety measure that's
10 what I'm referring to.

11 A. So in terms of whether
12 there were discussions around interim safety
13 measures that needed to be done, I would -- that's
14 not my role. My role is to review the litigation
15 and the potential liability issues. So that was
16 the work that I was undertaking.

17 I was aware, maybe not
18 initially at this exact moment but at some point
19 very soon, that the public works department were
20 engaging in reviews, safety reviews independently
21 with CIMA, and that that work was being
22 undertaken, and certainly if not exact this
23 moment, very shortly, I was made aware of those --
24 that work being done by CIMA both in 2015 and the
25 subsequent work that was ongoing.

1 So I wasn't looking at the
2 interim safety measures or anything to do with the
3 safety of the roadway. That was public works
4 staff's responsibility. I certainly wouldn't have
5 the technical expertise to be able to provide that
6 information.

7 Q. Did you have any
8 discussions with public work staff about potential
9 interim safety measure on the roadway and the work
10 that they were doing?

11 A. So I was aware that they
12 were doing a safety review and that there was a
13 number of reports that they were working on in
14 terms of additional considerations that they were
15 bringing forth regarding the Red Hill.

16 In terms of safety measures,
17 it was my expectation that if there were any or
18 any concerns related to the safety of the roadway,
19 that they were dealing with those directly. And
20 certainly at no point in time during any of the
21 conversations that I had with the general manager,
22 with either of the directors, did they indicate to
23 me that there was any concerns about the roadway
24 being unsafe.

25 We did have subsequent

1 conversations. I am particularly recalling
2 December the 14th a discussion where we did speak
3 about the countermeasures and the information that
4 CIMA had provided around additional steps that
5 could be taken to make the road more safe, and
6 from my perspective those discussions were related
7 to the potential for that to improve the City's
8 position from liability in terms of undertaking
9 those mitigation measures and that public works
10 was dealing with them from the public safety side
11 of things. So that's the conversations that I had
12 with them about that.

13 Q. We'll get to the
14 December 14th conversation.

15 By this point did you have a
16 date in mind as to when you might be providing a
17 report or interim report to council?

18 A. No, I think the concern
19 was, and again that balance, I'm trying to strike
20 balance between getting information to them
21 quickly and having enough time to provide the
22 information that would be the most valuable to
23 them. As the concern was again once -- in the
24 absence of there being a concern about whether the
25 road was unsafe, the timing really was one of when

1 the FOI information would be released and that was
2 a moving target. So we were -- and certainly one
3 that we had no control over.

4 So the desire was to ensure
5 that it went in advance of it being released
6 publicly, and that was ultimately as we moved
7 through the process extended to at least January
8 when we would expect that information to be
9 provided to the FOI office and ultimately then
10 released. So that was the timing initially.

11 And by December we had
12 determined that that was our preferred -- or not
13 preferred approach but our recommended approach,
14 and we had a conversation with the mayor in
15 December to confirm that that was appropriate and
16 then proceeded on that basis to Amir (ph).

17 Q. We're going to get to the
18 conversation with Amir too.

19 So if the thinking at the time
20 was potentially providing an interim report to
21 council, this heads up about this issue, what
22 needed to happen before that heads up or interim
23 report could be made?

24 A. So I think the balance
25 again was to try and find enough -- try and get

1 enough information in front of council in advance
2 of their being a release of the information
3 publicly, and from my perspective my role was to
4 provide a liability and risk assessment. So we
5 needed to know what information was going to be
6 provided to the FOI office and ultimately if there
7 were any exemptions that would apply, and our
8 review -- Byrdena was working on that component.

9 I was then looking at
10 retaining and getting a legal opinion from
11 Mr. Boghosian in terms of the risk assessment, so
12 I wanted to have that information complete, or at
13 least in the reasonable assessment, so that I
14 could provide even a preliminary review of that
15 liability review work.

16 And then in addition there
17 was -- at some point I became aware that public
18 works was also working on the safety -- additional
19 safety review and other reports that they were
20 attempting -- or that they were intending to bring
21 to council. So all of that work was then being
22 collaboratively reviewed and discussed and
23 ultimately that was the approach that we took.

24 Q. So that was all of the
25 work that needed to be done before the heads up or

1 interim report could be made?

2 A. Well, it really depended
3 on where we were in the process if the FOI was
4 going to be triggered more quickly. So the need
5 for an interim report was again dictated by that
6 timing. In December we weren't -- my
7 understanding was maybe initially that that was a
8 potential and ultimately that got extended further
9 based on the review of the FOI.

10 We did ultimately take an
11 interim report to council on January the 23rd,
12 which was again an attempt to make sure that -- we
13 knew at that point that the material had been
14 provided to the FOI office, though we had no idea
15 how long and had no influence over how long it
16 would be before that information was released. So
17 again we provided that information that was in the
18 23rd report and then followed up the next week
19 with the balance of the presentation that was
20 provided.

21 Q. Registrar, could you pull
22 up HAM61984, and we'll go to image 2.

23 So in the middle of this page
24 we've got an e-mail from Mr. McLennan to you and
25 to Mr. Sabo November 20th, 2018?

1 A. Yes.

2 Q. And Mr. McLennan writes:

3 "My review indicates we
4 have four significant
5 claims which could
6 theoretically be impacted
7 by the FOI request."

8 So why was Mr. McLennan
9 reporting to you on this?

10 A. So I had asked him when I
11 met with him and Mr. Sabo to provide me with this
12 information. It would be necessary to discuss and
13 have for whoever was ultimately going to do our
14 external legal opinion to have some sense of the
15 existing claims that the City was facing.

16 Q. And I understand that the
17 existing claims, the City of lawyers on those, was
18 it Dan Bartley, Dana Lezau and Shillington, those
19 were the lawyers?

20 A. Yes, that's correct.

21 Q. Registrar, could you pull
22 up the image 1, just the very end of image 1.

23 So at the very bottom of
24 image 1 you will see an e-mail from Mr. Sabo dated
25 November 21st. And Mr. Sabo says "I'll check with

1 Dan on the issues raised in his matters." It's my
2 understand that's Dan Bartley?

3 A. Yes, Daniell Bartley.

4 Q. And then he says:

5 "The fact that Boghosian
6 is not involved in these
7 claims means if we really
8 wanted to involve him we
9 could."

10 What's your understanding of
11 why Mr. Sabo was writing that?

12 A. So as I indicated
13 previously, we were -- I wanted to ensure that
14 Mr. Boghosian was not acting in relation to any of
15 our existing claims as that would create a
16 potential conflict and would preclude me from
17 reaching out to him. So I asked for staff to
18 confirm and this is that confirmation.

19 Q. Did you also want to
20 ensure that Mr. Boghosian was not acting for the
21 City on existing matters as well?

22 A. I don't think that would
23 have been a concern as much as in terms of there
24 being a conflict of him acting against the City,
25 but certainly his involvement in other matters

1 would be relevant information but not a concern.

2 Q. Were you looking to hire
3 external council who had no involvement either for
4 or against the City on these matters?

5 A. So I wanted to retain an
6 individual who had the appropriate expertise.
7 Whether or not they had involvement or not, I
8 don't know that that was a particular concern of
9 mine. What I did want to ensure was that he had
10 no conflicts in advance of me speaking to him. So
11 it was more of a fact rather than a consideration
12 whether or not he was involved in the current
13 matters for the City.

14 Q. And then on image 1
15 you'll see the e-mail in the middle of the page
16 from Mr. McLennan dated November 21st, 2018 to Mr.
17 Sabo and to you. And Mr. McLennan says:

18 "I think we should let
19 the insurer chime in on
20 this too. If they
21 disagree with the City
22 decision to release the
23 report it might adversely
24 impact coverage."

25 And so what discussions, if

1 any, did you have with Mr. McLennan or anyone else
2 about bringing the insurers into the loop?

3 A. So part of the reason why
4 Mr. McLennan was involved in these discussions was
5 because it's his responsibility to provide
6 information and notice to the insurer of claims of
7 potential issues that the City is dealing with.
8 In terms of the particular comments he makes
9 there, I can't speak to those. Mr. McLennan would
10 have to. But that's the reason that he was
11 involved, to make sure the insurer had all the
12 necessary information that may have come from the
13 report being released.

14 Q. Did you have any
15 discussions about potentially sharing the report
16 with the insurer? The report being the Tradewind
17 report.

18 A. I don't recall any
19 specific discussions with them about that, but I
20 would have assumed with conversations -- that any
21 conversations Mr. McLennan would have had with
22 them, had they wished to or had any interest in
23 seeing a copy of it, that he would have provided
24 it to them.

25 Q. Would the insurer's view

1 had impacted the decision to release the report?

2 A. No, it would not. As we
3 discussed earlier, the release of information
4 under the FOI is legislated and is not -- was not
5 influenced by whether or not any particular
6 individual or -- wanted to have that information
7 released or not.

8 Q. Right. And as you said,
9 ultimately it's the FOI office's call.

10 A. Absolutely. And not
11 influenced by and certainly no one from my office
12 would attempt to influence that decision.

13 Q. So were you involved in
14 any discussions, whether with Mr. Sabo,
15 Mr. McLennan or anyone else, about communications
16 with the insurer and when?

17 A. So my decision -- I don't
18 remember specifics, but I do recall having
19 conversations with Mr. McLennan that at some point
20 we would need to make sure that the insurer had
21 notice and was provided with whatever information
22 they needed with respect to the report. So I know
23 I did discuss that with him but I don't recall
24 specifically when and the nature of it. So that
25 would be his responsibility.

1 Q. And then Mr. McLennan
2 then goes on to say:
3 "I just spoke with Dan
4 briefly on his two claims
5 and let him know you will
6 be speaking with him.
7 Diana, can you please put
8 a call in to Terry
9 Shillington as soon as
10 possible tomorrow,
11 thanks."

12 So what discussion did you
13 have about notifying Dan Bartley, Dana Lezau and
14 Shillingtons about this issue surrounding the
15 Tradewind report?

16 A. So I don't recall the
17 specifics of particular conversations, but I do
18 know that I spoke with Dana and Dan and
19 Mr. McLennan together and separately on a number
20 of occasions. I believe I would have wanted to
21 ensure that they were certainly aware of the
22 report, aware that staff were looking at -- and
23 that the legal services department were looking at
24 getting an external legal opinion on the overall
25 liability, not specifically dealing with any

1 individual claims.

2 And just to make sure that the
3 communication was open between their matters and
4 the general matter of the release of the Tradewind
5 report just to ensure that everybody had the same
6 information and was operating with the best
7 information that they had.

8 Q. Do you recall if they
9 ever got copies of the are Tradewind report?

10 A. I --

11 Q. Mr. Bartley, Ms. Lezau,
12 and Shillingtons?

13 A. So I don't recall
14 specifically whether or not they did, but it
15 certainly was available to them, and yeah, I don't
16 see any reason why -- I don't recall whether they
17 were provided or not, but I believe that it would
18 have been available to them.

19 Q. Were you or Mr. Sabo or
20 anyone else keeping them up to date on the
21 progress of this issue as in -- until the time it
22 got to council in January 2019?

23 A. I believe we had
24 discussions in December with myself and the
25 lawyers that were handling the files, and after

1 that point in time I believe Mr. Sabo was
2 providing them with updates as needed. And
3 certainly they were advised of all the relevant
4 information at the time, which is that the report
5 existed and that we were proceeding to have an
6 external legal opinion provided. But it wasn't
7 specifically dealing with their matters but just
8 to make sure they were aware of what was
9 happening.

10 Q. Registrar, could we pull
11 up HAM61985.

12 So here we just have a
13 calendar appointment. This is for November 26th,
14 2018, so almost a week later, sent to you,
15 Mr. McLennan, Mr. McKinnon, and it's re- -- and
16 Mr. Sabo, Mr. Sabo is there. And the subject is
17 next steps on RHV. Do you recall this meeting?

18 A. I don't recall the
19 specifics, no.

20 Q. Do you recall generally
21 what discussions you would have been having with
22 this group of people around this time?

23 A. I don't unfortunately,
24 I'm sorry.

25 Q. Registrar, could we pull

1 up HAM0061989.

2 So this is an e-mail exchange
3 between Diana Swaby and Terry Shillington. You're
4 not copied on this. But you'll see at the very
5 bottom of image 1 there's an e-mail from Ms. Swaby
6 to Mr. Shillington and Colleen Crawford, who is a
7 clerk in his office, November 26, 2018, that says:

8 "Hi, Terry. This
9 afternoon I am meeting
10 with the GM of public
11 works as well as the
12 director of legal
13 services and John
14 McLennan of our office
15 concerning an FOI request
16 to release this report.
17 I take it they do not
18 want to release this
19 report."

20 And then it goes on to say "if
21 you have a moment to discuss."

22 A. I see it says that, yes.

23 Q. Are you aware of a
24 director of legal services?

25 A. No, there is no one that

1 holds that title.

2 Q. Are there director level
3 positions within the City though?

4 A. There are, but not within
5 the legal department.

6 Q. I see. Okay. So kind of
7 within the legal department you didn't use terms
8 like director?

9 A. No.

10 Q. Do you recall having a
11 meeting with Ms. Swaby?

12 A. I do not.

13 Q. Do you recall having any
14 discussions with Ms. Swaby in November,
15 December 2018 time period?

16 A. Not directly, no, I
17 don't.

18 Q. You don't recall any -- I
19 just want to be --

20 A. No, I don't recall
21 speaking with her, no.

22 Q. Do you recall any
23 discussions where there was a general sense of not
24 wanting to release the report?

25 A. No. To the contrary. In

1 fact, in all of the discussions that I had with
2 staff the expectation was that the report would be
3 released and that staff offered no opinion as to
4 whether they wanted to or not; it was just that
5 was the fact.

6 MS. LIE: I'm going to move on
7 to another document. I wonder if we can take our
8 morning break, Commissioner. We're a few minutes
9 early.

10 JUSTICE WILTON-SIEGEL: That
11 would be fine. Let's take 15 minutes. We will
12 return at 11:15.

13 --- Recess taken at 10:58 a.m.

14 --- Upon resuming at 11:15 a.m.

15 BY MS. LIE:

16 Q. Ms. Auty, before the
17 break you had mentioned that you weren't sure if
18 the Tradewind report was provided to Mr. Bartley
19 and Ms. Lezau and to Shillingtons but it was made
20 available to them. How was the report made
21 available to the lawyers?

22 A. So I said it would have
23 been made available to them I believe if they had
24 needed it. It was certainly within the legal
25 services department and had they asked for it it

1 was available to be provided to them. I don't
2 specifically remember whether it was provided to
3 them or not but I believe it would have been.

4 Q. It would have been if
5 they asked for it?

6 A. Yes. And if not, I can't
7 say whether Mr. Sabo or Mr. McLennan may have
8 provided it to them directly, I can't speak to
9 that. So I didn't provide it to them
10 specifically, but I certainly discussed it with
11 them and they were aware of it.

12 Q. Did you have discussions
13 with them -- when you said you discussed it with
14 them, what did you say about the report to them?

15 A. I don't recall the
16 specifics. I know we discussed that it existed
17 and that there were potential implications that we
18 were reviewing, and if it was relevant to any of
19 their particular matters I wanted them to be aware
20 of it.

21 Q. And this is a
22 conversation with Ms. Lezau and Mr. Bartley?

23 A. Yes, and Mr. McLennan in
24 November.

25 Q. So your recollection is

1 just generally you talked about it with them so
2 that they had a heads up?

3 A. They had awareness of it,
4 yeah, and the general nature of the material that
5 was in it, and if it was relevant to their matters
6 that they could have an awareness of that fact.

7 Q. And did they talk to you
8 about whether or not it was relevant to their
9 matters?

10 A. I don't recall there
11 being anything specific about their particular
12 matters that would make it relevant, but I can't
13 say for sure.

14 Q. Do you recall if they
15 told you if they had known about it previously?

16 A. No, I don't recall that
17 being discussed.

18 Q. You didn't talk to them
19 about whether or not they had ever heard about it
20 before you talked to them?

21 A. So I know we would have
22 discussed it but I don't recall the specifics.
23 Certainly would have wanted to know whether they
24 had any awareness of it previously.

25 Q. So you would have wanted

1 to know that, you just don't remember what they
2 said?

3 A. Yes.

4 Q. So you did talk to them
5 about it, you just don't remember what they said?

6 A. I don't recall
7 specifically, but I believe I would have wanted to
8 speak to them about it and to know whether they
9 had any previous awareness of it.

10 Q. Did you have any
11 communications with Shillington, the external law
12 firm?

13 A. No, I did not.

14 Q. Did you learn at some
15 point that Shillingtons had a copy of the
16 Tradewind report?

17 A. I believe so, but -- yes,
18 I did at some point learn that, but I don't recall
19 when that would have happened.

20 Q. Who told you about that?

21 A. Again, I don't recall. I
22 believe it would have been Mr. McLennan but I
23 don't recall.

24 Q. And in terms of timing,
25 you said -- do you recall if it was kind of

1 early -- was it before the holidays in December,
2 November, or was it after, January, February?

3 A. I don't recall.

4 Q. Did you talk to
5 Mr. McLennan or anyone else about how Shillingtons
6 had obtained a copy of the Tradewind report?

7 A. No, I did not.

8 Q. When it came up that
9 Shillingtons already had a copy of it you didn't
10 ask how they got it?

11 A. Honestly I don't recall
12 when and how that came up so I can't speak to any
13 of the specifics around it. I don't recall that
14 context of when and how I found out about it, that
15 it had been provided to Shillingtons.

16 Q. And would it have been
17 important to find out how it had been provided?

18 A. I don't believe at the
19 time that it was relevant. I think it was later
20 in the process but again I can't recall
21 specifically. It certainly wasn't critical to --
22 at the point in which I determined that it had
23 been provided.

24 Q. When you say later in the
25 process, so do you think it happened after

1 disclosure to council?

2 A. I do not recall the
3 relative timing at all.

4 Q. When you said that you
5 didn't believe that it would be relevant to find
6 out how Shillington obtained the report, why
7 wouldn't that be relevant?

8 A. Again, I don't remember
9 how -- I don't remember the context or the
10 discussions, but I believe that had it been
11 necessary or relevant to whatever I was doing at
12 the time I would have made those inquiries. We
13 were working on a lot of different things and
14 bringing a lot of different information to
15 council, not just this matter but a number of
16 them, and my role was to review and provide
17 council with their liability assessment. The
18 details of the history and all of that were not
19 necessarily pertinent to that assessment when I
20 was working on the file.

21 Q. Was anybody looking into
22 the details and the history about what happened
23 with the report?

24 A. Again, largely the
25 historical review was public works and that they

1 were the owners of the document. So we conducted
2 our own review in terms of what our files were
3 doing and what information had been provided, but
4 that -- the bulk of that information and review
5 was public works.

6 Q. When you said that you
7 were conducting your own review in terms of what
8 the files were and what had happened, so wouldn't
9 that include determining how Shillingtons had
10 obtained the Tradewind report?

11 A. For the purposes -- no,
12 because the purpose of the report that I was
13 preparing and the information that I was
14 gathering, whether or not they had it wasn't
15 relevant information not to the provision of the
16 liability assessment. That was not necessarily
17 relevant to that discussion. And certainly while
18 important to know for this purpose, wasn't --
19 didn't have any impact on our liability assessment
20 and review, and largely because it was also a high
21 level discussion and we weren't focusing
22 particularly on the individual files.

23 Q. You weren't doing a deep
24 dive into what --

25 A. Not at that point in

1 time. The opinion and the review that we were
2 conducting was at a high level. The impact of the
3 release of the report on the City's overall
4 general liability and risk assessment we knew, and
5 certainly conversation and the information that
6 was provided in Mr. Boghosian's opinion identified
7 that it could likely and may likely have impact on
8 the individual matters, but again that would
9 really depend on an individual review and whether
10 they were relevant factors in the particular
11 matters or not. We weren't at that level at this
12 point in time.

13 Q. And before the break you
14 mentioned that the timing of the interim report to
15 council, which ultimately was on January 23rd,
16 2019, was driven by the timing of the release to
17 the FOI office?

18 A. Yes. Certainly the
19 desire from staff was to ensure that council had
20 an opportunity to review the report and have
21 information about it in front of them before it
22 was released through the process.

23 The challenge that we faced
24 was that while we were aware and could be made
25 aware of when the materials were provided to the

1 FOI office, the timeframe of that review once it
2 was received by the FOI office prior to it being
3 released to the public was an unknown quantity and
4 certainly one that wasn't influenced or had any --
5 we didn't have any bearing on that decision. FOI
6 staff had to do their own review, and so we
7 weren't able to know and really ascertain how much
8 time that would be. So it was -- the trigger
9 really was when we would know that it was in hands
10 of the FOI office and could be released at any
11 time.

12 Q. And so if there had been
13 a determination that some exemptions might apply
14 and the report might not have to be released
15 publicly, would that have affected what you told
16 council?

17 A. Not necessarily. I
18 think -- certainly from my -- my understanding
19 from early onset and certainly in the
20 conversations that I had with Ms. MacNeil in early
21 December there were no exemptions that were
22 necessarily going to apply, and even if they had,
23 the report and the assessment would have been
24 provided to council on the basis of what was in
25 that report regardless. It may have determined

1 how some of that assessment was completed, but
2 ultimately the entirety of the report was going to
3 be provided and reviewed by council.

4 Q. When you say the
5 assessment are you referring to the liability
6 assessment?

7 A. Yes, the liability
8 assessment.

9 Q. I see. So I just want to
10 make sure I understand. So you wanted to figure
11 out what was going to go to the FOI office and
12 whether or not any -- whether or not the report
13 would have to be released because that would
14 inform the potential liability assessment and you
15 needed all that before you could make the interim
16 report to council. Is that a fair
17 characterization?

18 A. In part. My
19 understanding from the outset was that the
20 Tradewind report would be released in its
21 entirety. I knew we were reviewing to confirm
22 that there were no exemptions or other provisions
23 that would apply, but certainly my opinion, based
24 on my conversations with Ms. MacNeil, was that
25 there weren't really -- there weren't any

1 exemptions that would apply and that the entirety
2 of the report would be released. And certainly my
3 conversations with Mr. Boghosian in and around
4 that time in December as well were on the basis
5 that the entirety of the report would be released.

6 At the same time, all that
7 information, there was still public works
8 conducting their review and making sure that they
9 had provided all the relevant documents to the FOI
10 office, but that -- the component that was
11 relevant to me I was aware of when we were
12 preparing that report.

13 Q. By the time -- we're
14 going to get to this. By the time you get
15 Mr. Boghosian's opinion, you already have what you
16 need to provide your interim report to council,
17 don't you?

18 A. So we were still working
19 on providing -- well, for starters, I was looking
20 to have a draft -- an information from Mr.
21 Boghosian regarding his opinion, which was
22 provided in draft in December. At the same time,
23 we were reviewing -- public works was reviewing a
24 number of items and other reports, which we
25 discussed at our meeting on December -- sorry,

1 December 14th. So we shared that information, and
2 there was still work ongoing at that point in
3 time. But in particular, like, we were -- the
4 balance of the timing -- so I had a lot of what I
5 needed at that point in time, but there was other
6 work that was ongoing in other departments in
7 other areas, and the balance between providing --
8 getting all of that context and all of that
9 information gathered versus providing an interim
10 report to council, that approach was confirmed
11 then by the mayor in December, and ultimately was
12 determined that the January report was
13 inappropriate -- sorry, the January reporting
14 cycle was an appropriate time to bring the interim
15 report to council.

16 Q. So we had looked at the
17 e-mail where Mr. McKinnon had asked you about --
18 or, sorry, you were asking Mr. Sabo and
19 Mr. McLennan about concerns about having
20 Mr. McKinnon speak with Mr. Moore. I understand
21 that Mr. McKinnon and Mr. McGuire met with
22 Mr. Moore on November 26, 2018. Did you have any
23 discussions with Mr. McKinnon or Mr. McGuire about
24 that meeting and what was discussed?

25 A. No, I don't recall having

1 any specific discussions with them following the
2 meeting. I believe I would have had conversations
3 with them about the information that they would
4 have been provided, but I don't recall the
5 specifics of it, and I know that Mr. McKinnon did
6 send me a copy of his notes which I had -- which
7 were transcribed by my assistant at the time.

8 Q. Did you --

9 A. To the best of her
10 ability.

11 Q. Did you provide any input
12 on what they would be discussing before the
13 meeting?

14 A. Not that I recall.

15 Q. What did you -- so you
16 got the notes from the meeting. What, if
17 anything, came of that?

18 A. I provided a
19 transcription back to Mr. McKinnon, and that
20 information was then in the hands of public works.
21 I don't recall anything further as a result of
22 that.

23 Q. Why was Mr. McKinnon
24 sending you the notes? Certainly wasn't just to
25 transcribe it.

1 A. No, it was so that I
2 could be aware of the contents of them, and
3 certainly I reviewed those and was aware of what
4 they had discussed. It was so that I was aware of
5 what they had discussed.

6 Q. Did you talk to Mr. Sabo,
7 Ms. MacNeil, or anyone else in legal services
8 about that?

9 A. I don't recall whether I
10 did or whether there was any follow-up as a
11 result.

12 Q. Did you ever meet with
13 Mr. Moore?

14 A. No, not during that
15 period of time.

16 Q. Did you meet with him at
17 another period of time?

18 A. No, I -- no, not with
19 related to this.

20 Q. So you had met with
21 Mr. Moore but not relating to the Red Hill, is
22 that what you mean?

23 A. Yes.

24 Q. Registrar, could we pull
25 up overview document 9A, and we'll go to image

1 177. You'll see at paragraph 422, this is
2 December 3rd, 2018, Ms. MacNeil requests a
3 discussion regarding the RHVP/MFIPPA file, and
4 then at paragraph 423 Ms. Auty responds asking if
5 she come by around 1:30.

6 Do you recall meeting with
7 Mr. MacNeil on December 3rd, 2018?

8 A. I recall that we met. I
9 don't recall the specific details of the
10 conversation.

11 Q. What's your recollection
12 of the general -- what's your general recollection
13 of that conversation?

14 A. My general recollection
15 was that she was providing me with an update of
16 her meeting with Mr. McGuire and other public
17 works staff earlier in the day, and that they had
18 reviewed and discussed the documents that they had
19 gathered up until that point and the nature of
20 whether or not there were any exemptions that
21 would apply, and that she had determined that in
22 her opinion there were likely no exemptions that
23 would apply.

24 Q. Did she tell you if she
25 conveyed that to the public works staff in her

1 meeting with them?

2 A. I don't recall the level
3 of detail of the conversation that we had. I
4 believe if she was providing that advice, she
5 would have provided it to the client directly.

6 Q. Do you recall if you had
7 any discussion about the retainer of Mr. Boghosian
8 at this meeting?

9 A. I don't recall. I
10 suspect we likely did given that I was
11 anticipating retaining him and ended up speaking
12 to him the next day with her present.

13 Q. In terms of the timeline,
14 this is December 3rd, but you spoke with Mr.
15 Boghosian on December 7th, just situate that in
16 your mind?

17 A. Yes.

18 Q. So when you said you
19 spoke with --

20 A. Sorry, I thought we had
21 preliminary discussions with Mr. Boghosian before
22 the 7th. But if it was the 7th, then I stand
23 corrected.

24 Q. Did you have any
25 discussions with Ms. MacNeil about what you were

1 going to be retaining Mr. Boghosian to do?

2 A. I don't believe so at
3 this point in time, other than to provide a
4 general assessment of the potential impact to risk
5 and liability for the City.

6 Q. So you would have told
7 Ms. MacNeil that you were retaining Mr. Boghosian
8 to provide a general assessment of the potential
9 impact to risk and liability?

10 A. I believe so. We would
11 have discussed the nature of that, at least at a
12 high level, prior to having our later
13 conversations.

14 Q. Registrar, could you go
15 to -- actually, no, we're at the right page.
16 Paragraph 425. So at the bottom of this page,
17 you'll see that there's notes dated December 3rd,
18 2018, that are made following a meeting attended
19 by Mr. McGuire, Ms. MacNeil and Ms. Cameron. So
20 you referenced in your answer earlier a meeting
21 that Ms. MacNeil had with public work staff.

22 A. Yes.

23 Q. Who did you understand
24 Ms. MacNeil to be meeting with?

25 A. I don't know whether I

1 knew the full details of all of the participants,
2 but I certainly was aware that she met with Mr.
3 McGuire to speak about the FOI request documents.

4 Q. Registrar, if you could
5 go to page 179. These are the notes, and I
6 appreciate that you were not at this meeting, but
7 you'll see at point number 5 it says:

8 "Who is providing
9 direction on this reply?
10 Gord will lead and
11 Byrdena will provide
12 client support."

13 Was that consistent with your
14 understanding of what was happening at the time?

15 A. Yes.

16 Q. At number 6 it says:

17 "If there is a need to
18 inform council of this
19 matter, legal, Nicole,
20 City manager, Mike and
21 GMPW, Dan will decide on
22 the strategic direction
23 with Gord's input."

24 (As read)

25 Was there an open question at

1 this time about whether council would have to be
2 informed?

3 A. Sorry, I can't speak to
4 what was discussed at this meeting. I wasn't
5 there. Certainly in my mind it was not an open
6 question. The council would be informed of the
7 report, and it was -- we were in the process of
8 determining what the balance was between the
9 information and the timing of that report.

10 Q. In your discussions with
11 Ms. MacNeil, was she aware that council was going
12 to be informed?

13 A. I believe so, but you
14 would need to ask her that question.

15 Q. Do you recall telling her
16 that council was going to be informed?

17 A. I do recall having that
18 discussion with her, yes.

19 Q. So you recall telling her
20 that council would be informed, it was just a
21 matter of when?

22 A. Yes, I do.

23 Q. From your perspective,
24 whose decision was it to inform council or not
25 inform council?

1 A. Ultimately the timing of
2 a report and whether it goes on the agenda is the
3 decision of the City manager. That said, given
4 the implications and the various components, it
5 would certainly have sought input from myself on
6 the litigation and liability piece, and had there
7 been any concerns about whether the road was safe
8 or -- obviously, as I've indicated previously,
9 there had been no such concerns -- those would be
10 raised by public works and appropriately
11 identified and brought to council. The City
12 manager with input from their general managers and
13 the City solicitor, but ultimately that decision
14 is the City manager's.

15 Q. By this time, December
16 3rd, 2018, you recall already speaking with
17 Mr. Zegarac and -- and coming to a conclusion that
18 the report would be made to council?

19 A. I can't recall exactly
20 when that decision was made, but it was certainly
21 my understanding that that was the case. And that
22 was the -- those were the -- that was
23 understanding that I was operating under.

24 Q. So you don't have any
25 information about why it looks like there might be

1 an open question, at least in this note, about the
2 need to inform council?

3 A. That's correct. In my
4 mind it was not. And certainly not based on any
5 conversations that I had had.

6 Q. Registrar, could you go
7 to the next page, image 180. You'll see here at
8 paragraph 426 this is just the second set of
9 notes. These notes are made by Ms. Cameron.
10 Registrar, could we go to the next page, so image
11 181.

12 You'll see here at the very
13 last bullet it says:

14 "Looking to Ron and
15 Nicole. Waiting to hear
16 from Byrdena. When is
17 the letter going out?
18 Not before Christmas.
19 Mid-January release."

20 Do you recall having
21 discussions with Ms. MacNeil around this time
22 about this timing?

23 A. I do recall being aware
24 by the time we spoke with staff in December, so
25 December, within the next week or so, that the

1 expectation was that they would have the materials
2 provided and submitted to the FOI office in
3 January.

4 Q. Did you have any
5 understanding of why it wouldn't have been ready
6 to submit to the FOI office before the holidays?

7 A. No, I don't. I wasn't
8 involved at that level of the discussions around
9 what materials they had, whether they had had an
10 opportunity gather and source. So no, I hadn't.

11 Q. Did you have an
12 understanding of whether there was a sense of
13 urgency in the public works department to gather
14 all the materials together?

15 A. I can't speak to how they
16 were perceiving the urgency or not. You would
17 need to speak to them about that.

18 Q. Do you recall having any
19 discussions with either public works staff or Ms.
20 MacNeil that would give you that sense?

21 A. Certainly I was aware
22 that this was a priority item amongst a number of
23 others, and so we were all collectively balancing
24 various priorities and workload items. So
25 specifically related to public works, I can't say,

1 but certainly I do believe and was aware that we
2 were all collectively taking steps to move the
3 matter forward, and based on our collective
4 understanding of the urgency and timing of the
5 report going to be -- of the report being released
6 under the FOI.

7 As I indicated I think before,
8 there was no -- no one had raised the issue of
9 there being a safety -- the road being unsafe, so
10 we weren't operating on any more urgent basis than
11 ensuring that council had the information in the
12 report prior to it being released by the public.

13 Q. You said that there's a
14 collective understanding of the urgency and
15 timing. So I just want to understand. Was there
16 urgency on the part of public works to at least
17 get the materials over to the FOI office?

18 A. As far as I understood,
19 but you would need to ask them that question.

20 Q. You understood that there
21 was at least a sense of urgency to get it to the
22 FOI office. Then I have your evidence that the
23 timing of the report to council was driven by when
24 that was ultimately provided to the FOI office?

25 A. Yes, on the basis --

1 because there were no other concerns about the
2 road being unsafe. Had there been any other
3 driving forces to make it a more urgent matter,
4 then it would have come to them sooner.

5 At this point we were trying
6 to strike the balance between ensuring that they
7 had enough information and the timing of that, and
8 again, we did confirm that with the mayor at our
9 meeting on the 18th of December.

10 Q. Registrar, could you go
11 to the next page. This is image 182. At the very
12 top it says:

13 "Agenda for January 14th.
14 Collision of reports and
15 information about Red
16 Hill already going to
17 council. No significance
18 in lighting."

19 Were you aware that there was
20 already a plan for public works to bring certain
21 reports to council on January 14th, 2019?

22 A. So I was aware by the
23 December 14th meeting that there were other
24 reports that PW was working on, a number of them,
25 that they had a particular date and deadline in

1 mind for that, no, I wasn't aware of that
2 particular date. I was generally aware that they
3 were working on other reports which we discussed
4 at the meeting in December.

5 Q. And then in the second
6 last bullet on the note, it says:

7 "Nicole, Dan, Edward,
8 Byrdena, next week about
9 the next steps,
10 timelines, what is our
11 message to the FOI staff?
12 Need documents from Mike
13 Beck on the asphalt
14 testing."

15 Do you recall having
16 discussions with Ms. MacNeil or Mr. McGuire about
17 the question of what is our message to the FOI
18 staff?

19 A. No, my expectation would
20 be that if there were any of those conversations,
21 that that was at a file level and that Byrdena
22 would have those conversations with public works.
23 Ultimately the decision or the discussion around
24 timing and how much time public work staff needed
25 to complete what -- based on that note looks like

1 additional information from other parties, that
2 would be within public works' purview to advise
3 and determine -- or to determine and then advise,
4 FOI office.

5 Q. There's a reference there
6 to Edward. Had you had any discussions with Mr.
7 Soldo by this point?

8 A. I don't recall the
9 timing. I know that I did speak to Mr. Soldo at
10 various points, but I don't recall the specific
11 conversation at this time.

12 Q. Do you recall having
13 those conversations with Mr. Soldo early on, like
14 late November, early December-ish?

15 A. Certainly by the time we
16 met as staff in December 14th I had had
17 conversations with him. If not at that meeting,
18 certainly around that time.

19 Q. What were you talking to
20 Mr. Soldo about during that time?

21 A. I don't know. I don't
22 recall having any particular conversations, but I
23 may have. I certainly know we met on the 14th.

24 Q. And what discussions were
25 you having at the time with Mr. McGuire?

1 A. Again, we were -- so I
2 was compiling and working with Mr. Boghosian on
3 the liability piece. I knew that Mr. McGuire and
4 others, including Mr. Soldo, were working on other
5 reports that related to the Red Hill, and we met
6 in December at the 14th -- on the 14th to share
7 that information in terms of what each of us had
8 been working on with a view to bringing a report
9 to council together in the new year.

10 Q. But before you retained
11 Mr. Boghosian, you had had discussions with Mr.
12 McGuire and possibly Mr. Soldo about the fact that
13 you were going to be speaking with them?

14 A. Yeah, certainly Mr.
15 McGuire. I'm not sure whether I would have had an
16 opportunity to speak to Mr. Soldo, but I certainly
17 had advised Mr. McKinnon, and so that my
18 expectation was that public works were aware of
19 what we were doing in terms of reviewing the
20 information that we had been provided with Mr.
21 Boghosian.

22 Q. I understand that
23 Mr. Sabo was on vacation the week of December 3rd
24 to the 7th of 2018. Does that accord with your
25 recollection?

1 A. I have no recollection of
2 that, it's entirely possible, so I can't say.

3 Q. Do you recall there was a
4 week when Mr. Sabo wasn't involved in any meetings
5 or calls?

6 A. Yeah, absolutely, that's
7 entirely possible. There were a great number of
8 things that were happening at that time of the
9 year, so I suspect if that's the case then I have
10 no reason to believe otherwise.

11 Q. What was Mr. Sabo's role
12 at this time, in early December 2018, on this
13 file?

14 A. So Mr. Sabo was
15 continuing with all of his duties and
16 responsibilities in terms of the staff that he was
17 supervising. Particularly with respect to this
18 matter, he had attended meetings, I believe on my
19 behalf, in early -- late November, but also had
20 attended further meetings with me as the deputy
21 City solicitor with the most expertise as this was
22 a litigation matter. So I was relying on him to
23 assist and provide his expertise as we moved
24 forward through the process.

25 So he was reviewing documents,

1 he was speaking with clients, he was doing --
2 attending meetings, similar to me, so that we had
3 both our expertise to bear on the file.

4 Q. Registrar, could we go to
5 image 195, still on the overview document 9A. At
6 paragraph 443, you'll see that there's an e-mail
7 from you to Mr. Zegarac and Mr. McKinnon on
8 December 4th, 2018, and you say:

9 "Based on my
10 conversations with Gord
11 and Byrdena today, I
12 think we need to get
13 everyone together at the
14 same time to discuss the
15 totality of the reports
16 and information on this
17 issue and review options
18 for next steps. I would
19 propose Thursday
20 afternoon if possible."

21 And then you list that you
22 would want Mr. McLennan, Mr. McGuire and Ms.
23 MacNeil, plus anyone else. Thursday, it would be
24 December 6th, 2018. Do you recall having a
25 conversation with Mr. MacNeil -- sorry, Mr.

1 McGuire and Ms. MacNeil on December 4th?

2 A. I remember having
3 conversations with them generally. I don't
4 specifically recall that conversation.

5 Q. When you reference "the
6 totality of the reports and information on this
7 issue," what are you referring to there?

8 A. I don't recall
9 specifically, but I believe that I had been
10 advised that the public works was engaged in a
11 number of reports that related to the Red Hill
12 Parkway, and so I felt that it was important that,
13 given the potential liability and the work that we
14 were all collectively doing, that we have an
15 opportunity to speak to other each, as we often
16 did, in terms of collaborating on matters to make
17 sure that council had all the relevant information
18 that would be of assistance to them at the time.
19 So I was attempting to assist Mr. Zegarac in
20 bringing that collaboration together.

21 Q. Do you recall if you did
22 bring that collaboration together?

23 A. Certainly we did. We met
24 a number of times around that time and certainly
25 by December 14th had had a meeting where we

1 brought all of that information together and
2 shared it amongst the various divisions.

3 Q. So when you say you
4 brought all of that together and shared it, so
5 what were you sharing and what were they sharing?
6 "They" being public works.

7 A. So at the meeting of
8 December 14th, is that where you're --

9 Q. No, in this week of
10 December 3rd.

11 A. I don't recall what
12 information was shared back and forth at this --
13 like, in that intervening time period, but I do
14 know that when we met on the 14th we had a
15 discussion around what preliminary information I
16 had at that point in time regarding the liability,
17 and similarly, Edward and Gord discussed the
18 technical aspects of the safety components of the
19 report and what other work they were doing at that
20 point, as we were working towards pulling that
21 information together for council.

22 Q. Before the December 14th
23 meeting, I think you said that you had shared that
24 you would be retaining Mr. Boghosian. Did you
25 have any discussions with public work staff about

1 CIMA and its role?

2 A. Not that I recall. Not
3 specifically, no.

4 Q. So you don't recall any
5 conversations where CIMA came up kind of in
6 that -- before the December 14th meeting?

7 A. No, not specifically.
8 Certainly my expectation would be that if there
9 were any concerns or that Mr. McGuire or Mr. Soldo
10 felt that they needed to speak to CIMA for any
11 particular purpose relating to the safety of the
12 Red Hill Parkway, that they would certainly have
13 those conversations and provide that information.

14 Q. Did you know who CIMA was
15 at the time in --

16 A. Yes, I was aware of the
17 reports. Certainly I provided some of their
18 reports and discussions -- and discussed them with
19 Mr. Boghosian in December.

20 Q. Registrar, could we go to
21 image 201. I'm sorry, I took you to the wrong
22 page. Image 193. This is paragraph 437. There's
23 an e-mail from Ms. MacNeil to you, copying
24 Mr. Sabo, under the subject line "RHVP reports,"
25 attaching the Tradewind report and the 2015 CIMA

1 report. And she wrote:

2 "Further to our
3 discussion of this
4 afternoon, here are two
5 of the four key reports.
6 The third one, Golder, is
7 very large and still
8 hasn't appeared in my
9 in-box yet although
10 scanned. I will send it
11 and the fourth, smaller
12 one, along to you
13 tomorrow."

14 So do you recall having a
15 discussion with Ms. MacNeil about the four key
16 reports?

17 A. Not beyond what's
18 contained in the e-mail, unless you provided them
19 to me.

20 Q. So why was she sending
21 you the Tradewind report and the 2015 CIMA report
22 at this time?

23 A. I can't answer that
24 except to say that I believe she would have felt
25 that those were important for me to have and

1 ultimately to share with Mr. Boghosian regarding
2 the assessment of the liability and risk
3 associated with the report.

4 Q. So by this time you were
5 having discussions about sharing these -- the key
6 reports with Mr. Boghosian?

7 A. We were anticipating what
8 materials we would want to share with
9 Mr. Boghosian, so I believe Byrdena was providing
10 those to me so that I would have them and be able
11 to discuss them with Mr. Boghosian.

12 Q. Did she tell you how she
13 identified the four key reports?

14 A. Not that I recall.

15 Q. Was this the first time
16 you received the Tradewind report?

17 A. I believe so. I
18 certainly don't have any recollection or documents
19 that suggest I had it before then.

20 Q. Did you review it at the
21 time?

22 A. I remember looking at
23 certainly parts of it to get a general sense of
24 what it (garbled audio) but as a technical report,
25 sort of beyond my expertise to fully assess. So I

1 was looking to provide -- to get that expertise
2 and review from Mr. Boghosian on the liability
3 component.

4 Q. What discussions did you
5 have about the 2015 CIMA report by this time?

6 A. Beyond the discussion --
7 or beyond what -- or them being provided to me, I
8 don't recall any specific conversations around the
9 report.

10 Q. Do you recall your
11 understanding of why the 2015 CIMA report was
12 important?

13 A. No, but I mean I believe
14 it was because it had been part of CIMA's -- it
15 had been part of the public works review and
16 the -- and in terms of what was happening on the
17 Red Hill Valley Parkway to that point in time.

18 Q. Did you talk to Mr.
19 McGuire about the CIMA's 2015 report?

20 A. I don't recall
21 specifically. I don't recall specifically having
22 that conversation, but I believe I would have.

23 Q. Do you recall if Mr.
24 McGuire or anyone else told you about any ongoing
25 work that CIMA was doing?

1 A. I know that they -- I
2 know that we discussed with Mr. McGuire that there
3 was ongoing work. I don't recall at what point in
4 time. I certainly was aware that CIMA was
5 doing -- had done this work, and I believe at some
6 point in December I was also made aware that they
7 were doing additional work, but that may not have
8 been until the December 14th meeting.

9 Q. Do you recall any
10 discussion about whether or not CIMA had seen the
11 Tradewind report by this time?

12 A. I don't recall having
13 that -- I don't recall that information.

14 Q. Do you recall talking to
15 anyone in public works about that, or Ms. MacNeil
16 about that?

17 A. At this point in time, I
18 was focused on providing the relevant information
19 to Mr. Boghosian and getting an extra legal
20 opinion on the risk assessment. So my role was to
21 provide that information to him and to get that
22 information to council on the liability component.
23 What work was being done by public works and by
24 CIMA on any of the other issues related to the Red
25 Hill or the safety of that facility, it was my

1 understanding that that was happening -- if that
2 was happening, that that was within the purview of
3 public works, and certainly as much as I was aware
4 of it, it was relevant -- as it was relevant to
5 the information that I needed to do my work.

6 Q. But wouldn't it have been
7 important to know if the City safety consultant
8 CIMA had seen the Tradewind report as part of any
9 liability assessment?

10 A. So at this point in -- so
11 as I indicated, I was looking to get a general
12 liability assessment. Anything to do with safety
13 and the safety of the Red Hill was information
14 that I expected public works to be reviewing and
15 to be assessing, and at no point in time did
16 anybody indicate to me that there were safety
17 concerns.

18 So my role was to provide that
19 -- all the relevant information to Mr. Boghosian
20 to do his assessment, and I understood him to --
21 not at this exact point but once I had to spoken
22 to him, that he had provided the information to
23 Mr. Malone in terms of providing -- to get
24 whatever assistance he needed in providing the
25 liability piece. So whether or not they had seen

1 -- whether or not Tradewind had seen the report
2 was -- on a safety perspective was, in my find,
3 the purview of public works.

4 Q. You said Tradewind, but I
5 take it you meant CIMA? Whether or not CIMA had
6 seen --

7 A. Yes, of course. My
8 apologies.

9 Q. No, that's okay. But
10 wouldn't the work that CIMA had done been relevant
11 to the potential liability assessment?

12 A. So the work that CIMA had
13 done in 2015 and subsequently, once I had been
14 made aware of it and was provided to
15 Mr. Boghosian, so he had conversations with Mr.
16 Malone regarding his understanding of the reports
17 and the Tradewind information. So from my
18 perspective, that information was being -- on the
19 liability component, which again was my role and
20 my involvement, was being reviewed by the
21 appropriate individuals, and if there were any
22 concerns or work done on the safety side, that was
23 being conducted -- or was being conducted by
24 public works as far as I understood.

25 Q. I guess I'm just

1 struggling with this division between liability
2 and safety. If -- CIMA was the safety consultant,
3 so wouldn't CIMA's work on the safety side have
4 been relevant to the liability assessment?

5 MS. CONTRACTOR: Mr.
6 Commissioner, I think she's answered this question
7 twice now about whether or not that would be
8 relevant from a liability perspective.

9 JUSTICE WILTON-SIEGEL: Right.
10 I'm a little unclear about what the answer is
11 either, and I'm going to allow the question to be
12 put one more time.

13 MS. LIE: Thank you.

14 MS. CONTRACTOR: Thank you.

15 THE WITNESS: Sorry, could you
16 please repeat the question.

17 BY MS. LIE:

18 Q. I was just saying that I
19 was struggling with this division between
20 liability and safety, and so I wanted to
21 understand -- let me put it this way. Wouldn't
22 CIMA's work on the safety side have been relevant
23 to the liability assessment?

24 A. So the information that I
25 had, which was the 2015 CIMA report, was relevant

1 to the discussion that I had with Mr. Boghosian as
2 we reviewed that as it pertained to the potential
3 for the City's position to be improved from a
4 liability perspective as those would be reviewed
5 as potential mitigation measures.

6 So yes, there's certainly some
7 relationship between the review that CIMA had done
8 and the mitigation measures, but if there were --
9 so this distinction that I'm trying to make, the
10 clarity that I'm trying to offer is that my role
11 was to take the relevant information that I had,
12 the Tradewind report, the previous work that CIMA
13 had done, and ultimately the 2018 review was also
14 provide to Mr. Boghosian by Mr. Malone himself
15 later on.

16 So I was coordinating all of
17 that information. Mr. Boghosian had the CIMA
18 review, he had the opportunity to speak with
19 Mr. Malone from CIMA directly to understand the
20 assessment that he was going to be providing on
21 the general liability of the -- that may come from
22 the release of the Tradewind report. So I believe
23 that all of that information was provided to Mr.
24 Boghosian, and subsequently he had the opportunity
25 to speak to CIMA about that.

1 The work that CIMA was doing
2 on the safety review from a safety perspective was
3 being conducted and overseen by public works.
4 They are the technical experts. They are the
5 engineers who are responsible for the safety of
6 the roadway. So they were conducting that work,
7 they were undertaking that review, and they were
8 responsible for that information. And so I used
9 it in my review, as relevant as it was, and I had
10 those conversations on that basis.

11 I hope that answers your
12 question. I'm certainly happy to attempt to
13 clarify it further, if the Commissioner is needing
14 that.

15 Q. Wasn't it important to
16 find out if CIMA had the Tradewind report when it
17 completed its prior safety reports?

18 A. At this point in time, I
19 provided Mr. Boghosian with all of the information
20 that I had. Certainly the Tradewind report was
21 provided to him, and I understood based on
22 comments in his draft opinion that he had
23 discussed that with Mr. Malone. So certainly the
24 discussion around the Tradewind report, the
25 information was referenced in the draft opinion

1 that he provided. It was certainly my expectation
2 that Mr. Boghosian would have that discussion and
3 have that information available to Mr. Malone to
4 further his purpose, which was to provide the City
5 with an overall general liability assessment.

6 So yes, I do believe that that
7 information was relevant and was discussed with
8 Mr. Malone as part of Mr. Boghosian's review of
9 the matter.

10 Q. And you never asked
11 public works if CIMA had the Tradewind report
12 previously?

13 A. I don't recall having
14 that specific discussion with them, but again, on
15 the basis that -- what information they had to do
16 their work for public works was public works'
17 responsibility to deal with. So I didn't have
18 that conversation because it wasn't part of my
19 role or responsibility.

20 Q. The Tradewind report is
21 the report that kicked off all of this, so in all
22 of your discussions with public works staff, you
23 never had a discussion about whether CIMA had the
24 Tradewind report at the time it completed its
25 prior reports?

1 A. I don't recall having
2 that discussion. I do recall that that
3 information was provided to -- that we had that
4 conversation with Mr. Boghosian on -- as far as it
5 pertained to my review and my liability
6 assessment, that I was responsible for obtaining
7 for council.

8 Q. Were you relying on Mr.
9 Boghosian to find out if CIMA had seen the
10 Tradewind previously?

11 A. It was my expectation
12 that Mr. Boghosian would have the necessary
13 conversations to provide the City with a liability
14 assessment of the impacts of the Tradewind report.
15 So Mr. Boghosian had the copy of the Tradewind
16 report, and he was to provide us with a review of
17 his assessment of liability as a result. So I
18 don't know how else I can answer that question.

19 Q. Was there any
20 consideration given to ensuring that CIMA had the
21 Tradewind in order to determine if its prior
22 safety recommendations would be changed or would
23 be different?

24 A. So I had -- based on my
25 conversations with Mr. Boghosian, it was my

1 understanding that he had had conversations with
2 Mr. Malone regarding the Tradewind report and its
3 impact on the information that CIMA had previously
4 provided and that they had made no changes in
5 their recommendation as a result, and that
6 information is contained in my notes and also in
7 the opinion from Mr. Boghosian where he identified
8 that he had discussed the Tradewind information
9 with Mr. Malone. And that's indicated by a
10 sentence in his draft opinion to me, so from my
11 perspective, he had the necessary information to
12 provide the City with the opinion that he was
13 providing, and that was my focus and that was my
14 role.

15 Q. You were leaving it to
16 Mr. Boghosian to determine what CIMA needed to
17 know?

18 A. I provided Mr. Boghosian
19 with all the information that he needed to provide
20 the City with an opinion on liability. He had the
21 Tradewind report, he had the CIMA report, and it
22 was his request and his suggestion that he speak
23 to Mr. Malone to make sure that he understood the
24 technical nature of all of those reports. So yes,
25 I was relying on Mr. Boghosian to inform himself

1 and provide the City with an opinion based on that
2 information.

3 Q. Did you have discussions
4 with public works staff about what Mr. Boghosian
5 would be doing with CIMA?

6 A. I don't know that I would
7 have discussed the details of the retainer with
8 them. I know that I shared his assessment of
9 liability and the importance of completing all of
10 the measures that were identified by CIMA in their
11 2015 report at 9.2, and I conveyed that
12 information to them on December 14th when we met.

13 Q. Do you recall knowing at
14 this point, this is early December of 2018, that
15 the 2015 CIMA report had identified a
16 disproportionate number of wet weather collisions
17 on the RHVP?

18 A. I do recall being aware
19 of that by the time I spoke to Mr. Boghosian, yes,
20 because we discussed that.

21 Q. Who gave you that
22 information, or did you just read the report
23 yourself?

24 A. I can't recall
25 specifically. I believe it was a combination of

1 both of those things, of my reviewing the
2 documents and discussing it with both members of
3 my staff and members of public works staff. I
4 can't pinpoint the specific source.

5 Q. When you say members of
6 public works staff, is that Mr. McGuire?

7 A. That would have been Mr.
8 McGuire primarily, yes.

9 Q. And also Mr. McKinnon?

10 A. Potentially, yes, I did
11 discuss it generally with him, so that may have
12 also come from him.

13 Q. Your own staff, you're
14 referring to Ms. MacNeil?

15 A. Ms. MacNeil, Mr. Sabo,
16 Mr. McLennan, whoever had had an opportunity to
17 review it. Certainly Mr. Sabo.

18 Q. Registrar, could you go
19 to image 201. At paragraph 463 there's an e-mail
20 from Mr. McGuire to Mr. Soldo. This is on
21 December 5th, 2018. Where Mr. McGuire says:

22 "There's a meeting
23 tomorrow with the city
24 manager. Legal and risk
25 will advise of next

1 steps. I will let you
2 know asap."

3 I think we had looked at an
4 e-mail that suggested that you had had a
5 conversation with Mr. McGuire on December 4th,
6 2018. Do you recall talking to Mr. McGuire about
7 having legal and risk advise as to next steps?

8 A. No, I don't.

9 Q. So what was the
10 interaction between legal and public works staff
11 at that time?

12 A. By this point -- sorry,
13 go ahead, please finish your question.

14 Q. No, go ahead.

15 A. Sorry, I'm going to have
16 to ask you to repeat the question. I apologize.

17 Q. At this time was public
18 works staff looking to legal for advice on next
19 steps?

20 A. Not that I was aware of.

21 Q. So public works was not
22 looking to legal for advice?

23 A. They look to us for
24 advice on a number of things, but as to next
25 steps, I don't know what that refers to. I think

1 you would need to ask Mr. Soldo or Mr. McGuire.

2 Q. What were the things that
3 they were looking to legal's advice on?

4 A. Ms. MacNeil was assisting
5 them in reviewing the FOI materials, and I was
6 conducting a review on the general liability and
7 working on a legal opinion. So we were each
8 working on our individual matters and we're
9 working towards bringing a collective report to
10 council. So I can't say what steps in particular
11 they were looking to us to advise, as we were
12 working collaboratively and any discussion on next
13 steps was one that would happen in a collaborative
14 way.

15 Q. So there were discussions
16 between legal and public works at this time about
17 next steps?

18 A. No, not until we had
19 discussions as a group. No, I don't know what
20 he's referring to. Ultimately that's what he did,
21 we discussed it in December, the various
22 components of the pieces that each area was
23 working on, but not at this particular moment. I
24 don't know what he's referring to.

25 Q. You have no idea why Mr.

1 McGuire would have the impression that legal and
2 risk would advise of next steps?

3 A. No.

4 Q. Is it possible that in
5 your meeting with Mr. McGuire the day prior that
6 you or Ms. MacNeil told him that legal would be
7 advising on next steps?

8 A. No, certainly that wasn't
9 my understanding. So we were all individually --
10 like I said, we were working on legal's components
11 to the assessment. I knew that public works was
12 also doing their own reports and had been working
13 on a number things, and then we were ultimately
14 going to bring that together to review and to
15 determine an approach for how to bring that
16 information forward. So certainly legal was not
17 responsible for making any determinations about
18 next steps. That was ultimately the decision of
19 the City manager, which we discussed in December
20 and had collaborative input towards. So legal was
21 not making that determination.

22 Q. Right, but you were
23 advising on?

24 A. We were providing advice
25 to the various departments on particular issues,

1 and I was reviewing whether there were -- like,
2 the liability and risk assessment component, but
3 those were pieces and parts of a whole ultimate
4 report that would go to council.

5 Q. I think you mentioned
6 that -- so Mr. Zegarac was looking to legal and
7 also to public works for advice and support on
8 next steps?

9 A. Yes.

10 Q. And legal was advising on
11 what next steps should be taken?

12 A. Yes, but not to public
13 works. We were providing our contribution to that
14 report ultimately to Mr. Zegarac. So I'm not sure
15 what the reference there was to....

16 Q. I think the distinction
17 you're drawing is that legal was not providing
18 advice to public works staff, but legal was
19 providing advice to Mr. Zegarac on next steps?

20 A. We were contributing to
21 that decision-making, yes, as we would in other
22 reports.

23 Q. So if we could go to
24 page 196 of the same overview document,
25 paragraph 446. You'll see here that there's a

1 calendar invite sent by Mr. Zegarac to Mr.
2 McKinnon, Mr. McGuire, Ms. MacNeil, Mr. McLennan,
3 and to you for a meeting on December 6th, 2018.
4 Do you recall having a meeting on December 6th,
5 2018?

6 A. I don't. I don't recall
7 if I have any notes that would assist you with a
8 meeting on December 6th.

9 Q. No, we don't have any of
10 your notes.

11 A. Then I don't recall any
12 specifics of that discussion.

13 Q. Registrar, could you go
14 to image 202. Here at paragraph 467. This is on
15 December 6th, 2018, the day of the meeting.
16 There's an e-mail from you saying:

17 "Rosanna, could you
18 please let me know when
19 the GIC meeting is over
20 so I can come over for
21 this meeting."

22 And then you also ask:

23 "Mike, should I make my
24 way over now?"

25 Did that assist your

1 recollection of the December 6, 2018 meeting?

2 A. No, I recall that the
3 meeting happened and I remember waiting for GIC to
4 be over to go and join the meeting from my office,
5 but I don't recall the specifics of the
6 conversation.

7 Q. So tell me about your
8 general recollection, then, if you can't recall
9 the specifics.

10 A. I don't have -- sorry, I
11 should be more clear. I don't have any
12 recollection of that meeting.

13 Q. Do you recall having a
14 discussion with Mr. Zegarac and Mr. McKinnon about
15 next steps?

16 A. I recall that we had a
17 meeting and I recall that I would have -- I
18 believe I would have advised them that I was in
19 the process of retaining outside legal counsel,
20 and as far as that, I don't have any information
21 or belief around what else we would have discussed
22 there.

23 Q. Do you recall having a
24 discussion about potentially having outside legal
25 counsel contact CIMA?

1 A. No.

2 Q. So you don't recall
3 having that discussion?

4 A. I don't recall having the
5 discussion. I believe I would have advised them
6 that I was having a preliminary conversation with
7 Mr. Boghosian, but I don't recall anything beyond
8 that, unfortunately.

9 Q. Do you recall having any
10 discussions with Mr. McKinnon and Mr. Zegarac
11 about CIMA and whether or not CIMA had the
12 Tradewind report?

13 A. I don't recall anything
14 else from that meeting.

15 Q. Is it possible that you
16 had those discussions, you just don't remember
17 them?

18 A. Certainly it's possible,
19 but I don't have that recollection.

20 Q. But you're not denying
21 that you spoke with them about potentially CIMA
22 and ensuring that CIMA had the Tradewind report?

23 A. So I've indicated that I
24 don't recall, so I can't say that I did and I
25 can't say that I didn't. I don't remember.

1 Q. I think you had mentioned
2 that you became aware at some point that public
3 works had retained CIMA to do a roadside safety
4 assessment?

5 A. Yes.

6 Q. Do you recall how you
7 became aware of that?

8 A. No. I know that I was by
9 the time we met on December 14, as I made a note
10 of wanting see a copy of the report 18 -- I can't
11 remember all the numbers, but the 18008 I believe,
12 which was I believe, as I understood at the time,
13 a follow-up to that 2015 CIMA report. So they
14 were doing further assessment of the roadway, if
15 I'm remembering correctly.

16 Q. Do you recall if you had
17 a discussion about a potential report to council
18 at this meeting on December 6th?

19 A. Not in specifics. I know
20 we would have discussed -- we may have discussed
21 the timing of that, but I would have advised in
22 terms of the draft report -- or the retainer of
23 Mr. Boghosian that that was ongoing, or
24 forthcoming I think is a better way of saying it.

25 Q. Registrar, if you could

1 go to image 208. At paragraph 490, you'll see
2 here on December 7th, 2018, you e-mailed
3 Mr. McLennan and Ms. MacNeil under the subject
4 line "RHVE." You wrote:

5 "I'm in the office today.
6 Let me know when you are
7 available to follow up on
8 yesterday's discussion."

9 Sorry, Registrar, I just need
10 the image 209 as well. Then it says a meeting was
11 arranged for 9:30 a.m. the same day.

12 In terms of the follow-up on
13 yesterday's discussion, do you recall if that
14 would have been the same meeting that we had just
15 talked about on December 6th, 2018 with
16 Mr. Zegarac and Mr. McKinnon?

17 A. It certainly makes sense
18 that that's what I was referring to, but I don't
19 recall specifically.

20 Q. Do you recall what the
21 follow-up would have been from the December 6th,
22 2018 meeting? (Speaker overlap). Ms. MacNeil and
23 Mr. McLennan?

24 A. No, I don't recall
25 specifically what their -- if there was any

1 particular follow-up, but I believe that it may
2 have been to finalize our conversation and have
3 Mr. Boghosian retained.

4 Q. So was Mr. McLennan
5 involved in those discussions?

6 A. No, not specifically. Or
7 not directly I should say.

8 Q. So this says that you
9 asking for a meeting with Mr. McLennan and Ms.
10 MacNeil. So you recall that that would have been
11 about the retainer of Mr. Boghosian?

12 A. I certainly would have
13 discussed that with Ms. MacNeil. In terms of what
14 Mr. McLennan's follow-up would be, it may have
15 been to further review the outstanding claims or
16 provide any additional information on that.
17 Mr. McLennan was not involved in further
18 discussions with Mr. Boghosian, so I can't say
19 that for sure.

20 Q. You may have been wanting
21 to get some update from Mr. McLennan on the
22 ongoing claims for the purposes of your
23 conversation with Mr. Boghosian?

24 A. Yes, I believe that's
25 possible.

1 Q. Do you recall having any
2 discussions with Ms. MacNeil about updating the
3 CIMA with the Tradewind results?

4 A. No. I mean, we were
5 focussed on providing and getting Mr. Boghosian
6 retained in order to be able to provide his
7 liability assessment. The specifics of the
8 particular reports. Again, as far as they are
9 relevant to Mr. Boghosian's assessment, we were
10 providing them to him with the Tradewind report,
11 but beyond that, no, I don't recall having any
12 specific discussions like you suggest.

13 Q. Do you recall having any
14 discussions with Ms. MacNeil about contacting CIMA
15 to ensure that CIMA had the Tradewind report?

16 A. No.

17 Q. Do you recall in late
18 November and December -- early December 2018 audit
19 services was conducting an audit and was asking
20 questions of Mr. McGuire?

21 A. I have a general
22 recollection of that, yes.

23 Q. What is your general
24 recollection?

25 A. I'm aware that it took

1 place. I believe I was provided with an e-mail by
2 Ms. MacNeil following certain events that had
3 taken place.

4 Q. Who from legal services
5 was involved with Mr. McGuire on this?

6 A. It was -- I believe it
7 was Ms. MacNeil. It was she who forwarded me an
8 e-mail on the -- related to that matter.

9 Q. Registrar, could we go to
10 HAM62485. Here's an e-mail from Ms. MacNeil on
11 December 3rd, 2018 to you and copied to Mr. Sabo?

12 A. Yes.

13 Q. Is this the e-mail that
14 you're referring to when you said that you were
15 forwarded an e-mail?

16 A. Yes, she forwarded me
17 that e-mail following the events that had taken
18 place.

19 Q. You'll see in the e-mail
20 that she's forwarding, this is from Mr. McGuire to
21 Mr. Pellegrini, on December 23rd, 2018, and in the
22 second paragraph, it says:

23 "The data we have
24 withheld at legal
25 service's advice is

1 related to friction
2 testing and subject to an
3 FOI/MFIPPA request on
4 that subject. There is
5 ongoing and pending
6 litigation on this
7 matter, and we're
8 following your advice."

9 And then it goes on to say:

10 "We've redacted the
11 paragraphs and there's
12 one appendix of 13 pages
13 related to the friction
14 characteristics that we
15 discussed, and, as noted,
16 are available here for
17 your review."

18 Do you recall having
19 discussions with Ms. MacNeil about this approach
20 of providing a redacted copy of the Tradewind
21 report to audit services?

22 A. No, I did not have any
23 discussions with her about it. I became aware of
24 the incident and the conversations when this
25 e-mail was forwarded to me.

1 Q. So this is the first
2 you're learning of the entire audit services
3 issue; is that fair?

4 A. Yes.

5 Q. So did you have any
6 discussions with Ms. MacNeil about this after?

7 A. So no, I don't recall
8 having any specific discussions with her after the
9 fact except beyond that Mr. McGuire was concerned
10 about Mr. Pellegrini having attended, but I
11 believe that came from -- that may have also come
12 from Mr. McKinnon, so I'm not sure where that came
13 from.

14 Q. So we had kind of gone
15 through a chronology of meetings earlier. It
16 looks like you had had a meeting with Ms. MacNeil
17 on December 3rd, 2018, and also on December 4th,
18 2018. Is it possible that the audit services came
19 up in those meetings as well?

20 A. It's possible on the
21 meeting on the 4th, as I may have had this
22 e-mailed at that point as it was late in the day
23 on the 3rd, but I can't say for sure. I don't
24 recall.

25 Q. Did you have a view on

1 this approach of providing a redacted copy of the
2 report to audit services?

3 A. At the time I remember
4 that she was providing it to me for my
5 information. At this moment had -- certainly I
6 can understand -- like, I think I can maybe put my
7 mind around where she may have been coming from,
8 which is wanting to ensure that the information
9 that was released publicly, whether through the
10 FOI or potentially through an audit, was
11 consistent.

12 However, had this been raised
13 with me my response would have been to provide
14 that information to audit unredacted as they have
15 powers to request that information that are
16 separate and distinct from the FOI process.

17 Q. Did you share that view
18 with Ms. MacNeil?

19 A. Not at the time. It had
20 already transpired. So at this point in time
21 audit services already had a copy of the report
22 unredacted.

23 Q. I see. Because what
24 happened was audit services went to Mr. McGuire's
25 office and took a copy of it; is that your

1 recollection?

2 A. That's what I understand
3 from the e-mails, yes.

4 Q. Registrar, could we go
5 back to the overview document 9A, image 196.
6 Paragraph 47. This is December 4th, 2018, Mr.
7 McKinnon forwards an e-mail from earlier that day
8 to Mr. Zegarac and to you, and he says:

9 "Gord was in my office
10 not long ago and was very
11 frustrated about this.
12 He felt he was clear with
13 Domenic and felt a little
14 betrayed with what
15 happened. This is new
16 water for me and I'm not
17 sure if anything needs to
18 be said to Charles, but
19 if so, I'm not sure it
20 should be me. Any
21 advice?"

22 So Charles is Charles Brown;
23 is that your understanding?

24 A. That would be my
25 understanding, yes.

1 Q. Okay. And did you have
2 any discussions with Mr. McKinnon or Mr. Zegarac
3 about this issue?

4 A. Not that I recall. Any
5 conversations around how to address audit and
6 whether that was appropriate would be one I would
7 expect Mr. Zegarac to have with Mr. McKinnon. I
8 don't recall being involved in that discussion.

9 Q. Here we have Mr. McKinnon
10 sending you a message asking for advice. So you
11 don't recall providing any?

12 A. I had seen that the
13 message was to myself and to Mr. Zegarac. I don't
14 recall it being me that provided any advice.

15 Q. So you don't recall
16 having any discussions about this?

17 A. No, I don't.

18 Q. Our understanding is that
19 Mr. Pellegrini actually came to Mr. McGuire --
20 took the unredacted copy of the report on December
21 4th, 2018. So in terms of the previous e-mail we
22 were looking at on December 3rd, 2018, where
23 Ms. MacNeil sends the FYI to you, the report
24 hadn't yet been taken by audit? Does that accord
25 with your recollection?

1 A. My understanding was that
2 he -- that Mr. Pellegrini had the report at that
3 point, but I base that on the information in the
4 e-mails that I have. I don't have any specific
5 recollection. Whether I received on the 3rd or
6 4th, I understood that Mr. Pellegrini had a copy
7 of the report.

8 Q. But by the time
9 Ms. MacNeil sends the FYI to you on the December
10 3rd about the fact that a redacted copy was
11 provided to audit, Mr. Pellegrini hadn't yet taken
12 the unredacted copy?

13 A. That's different from my
14 understanding at the time. I can't speak to that
15 any further.

16 Q. Okay. And your evidence
17 is just you didn't end up -- even though your view
18 was that it should never have been provided
19 unredacted, you didn't actually tell Ms. MacNeil
20 that?

21 A. I don't recall having
22 that discussion with her on the basis because at
23 the time I understood the report had been obtained
24 by audit services, so the issue was not a live one
25 any further. So whether that was at the December

1 3rd or by the time December 4th came about, that
2 was my understanding that they had it.

3 Q. By the time -- certainly
4 by December 4th the ship had sailed from your
5 perspective?

6 A. Yes, in that audit had
7 the information that they ought to have.

8 Q. Registrar, could we pull
9 up HAM62486. Here there's another FYI e-mail to
10 you at the top and to Mr. Sabo on December 4th,
11 2018, and in the e-mail from Mr. McGuire that's
12 being forwarded which is December 4th, 2018,
13 you'll see the last paragraph on the page, it
14 says:

15 "However, today the
16 auditor visited my office
17 while I was in a meeting
18 and made copies of the
19 report."

20 I just wanted to confirm the
21 timing with you.

22 A. Okay, yep, that's -- if
23 that's the information in the e-mails, yep.

24 Q. And so you'll see in Ms.
25 MacNeil's e-mail to you, at the top she says:

1 "In my discussion with
2 Gord today, I asked
3 whether there was a
4 possibility that the
5 audit department could
6 inadvertently release
7 information about the
8 friction testing reports
9 that could end up being
10 discovered by any
11 Councillors before there
12 has been a chance by PW
13 and/or legal services to
14 report on the issue to
15 council. We have no
16 answer between us, so I'm
17 raising it with you."

18 Do you recall having a
19 discussion with Ms. MacNeil about this concern?

20 A. Not beyond what's
21 contained in the e-mail, no, I don't.

22 Q. Did you share the concern
23 that the report could be shared with councillors
24 before the report had ultimately been made to
25 council?

1 A. I appreciated that that
2 could be a concern, in that the purpose -- one of
3 the purposes, certainly, of providing the
4 information to council was to have the opportunity
5 to provide that context with the report, but I
6 certainly wasn't involved in any of the dealings
7 with audit, so I can't speak to that any further.

8 Q. Did the fact that audit
9 now had an unredacted copy of the report affect
10 the timing of the report to council?

11 A. Not as far as I was
12 concerned, no.

13 Q. Do you recall having any
14 discussions with Mr. Sabo about this issue?

15 A. No, I don't.

16 Q. Registrar, can we pull up
17 HAM61859.

18 THE REGISTRAR: Sorry,
19 Counsel, I think I just missed the last couple
20 digits on that. HAM61?

21 MS. LIE: 859.

22 BY MS. LIE:

23 Q. So this again is an FYI
24 e-mail from Ms. MacNeil to you, with a copy to Mr.
25 Sabo, on December 6th, 2018, and it says:

1 "Just FYI, questions
2 being asked by audit, see
3 attachment."

4 Do you recall seeing this
5 e-mail with the lines of inquiry document?

6 A. I do, I remember seeing
7 the e-mail.

8 Q. Did you have any
9 discussions with Ms. MacNeil or with anyone else
10 about how to approach the lines of inquiry that
11 were received?

12 A. No. No, I don't.

13 Q. Was Ms. MacNeil
14 responsible for assisting Mr. McGuire in terms of
15 the response to audit?

16 A. So I don't -- I don't
17 know what particular advice she was providing on
18 this. At this point she was advising me just what
19 was happening, so as an FYI, and I believe
20 similarly Gord was -- Mr. McGuire was also
21 advising Byrdena just of what was going on. I
22 don't recall there being any request for advice or
23 assistance.

24 Q. Do you recall if there
25 was -- had you formed a view on whether or not

1 legal services should be advising Mr. McGuire on
2 this issue?

3 A. I don't recall
4 specifically. I would have advised that they
5 should cooperate fully with the audit
6 investigation as they are and have separate powers
7 in terms of speaking and requesting information.
8 I don't recall specifically, but I believe that's
9 what I would have advised at the time.

10 Q. Who would you have
11 advised that?

12 A. Whoever has asked. I
13 don't recall being asked specifically, but had I
14 been asked, that's what I would have advised.

15 Q. So you don't have any
16 recollection of actually giving that advice; it's
17 just in your mind sitting here today, you believe
18 that's the advice you would have given?

19 A. Yes.

20 Q. You didn't have any
21 discussions with Ms. MacNeil or Mr. McGuire about
22 this issue?

23 A. Not that I recall.

24 Q. Registrar, could you pull
25 up HAM61879. Just before we get to this document,

1 Ms. Auty, does legal services typically get
2 involved when there's inquiries from audit
3 services of various departments?

4 A. No.

5 Q. So it's unusual that
6 Ms. MacNeil was talking to Mr. McGuire about the
7 request from audit services in this case?

8 A. I can't speak to whether
9 it was unusual or not. We didn't get involved
10 necessarily in audit requests, but in this
11 instance Ms. MacNeil was working with Mr. McGuire
12 on other matters, so I don't think it's unusual
13 that he would have raised it with her or at least
14 identified to her that it was happening. I don't
15 find that unusual.

16 Q. What was your
17 understanding of why Ms. MacNeil was sending you
18 these FYIs?

19 A. I understood it to be
20 because this was a matter that I was involved with
21 at the level that I was dealing with it, so she
22 wanted to make sure that I was aware of all of the
23 various components and things that were also
24 happening. As well, it was for information so
25 that I was aware.

1 Q. Was it also for input to
2 get your advice on whether or not she was doing
3 the right thing -- or I should say giving the
4 right advice?

5 A. I didn't ever understand
6 that to be something that she was requesting of
7 me. I understood she was providing information to
8 me so that I had a fulsome situational awareness
9 of the file that I was dealing with in council.

10 Q. But certainly if you
11 disagreed with any of the advice she gave, you
12 would tell her that?

13 A. I would have had an
14 opportunity if there was a need at the particular
15 moment, but at no point in time did she say, is
16 this the right thing to do, what do you think.
17 The information that I was provided was after the
18 fact and for my information, and as I indicated,
19 there was no opportunity or need to adjust that
20 given at the moments where the particular
21 information was provided to me.

22 Q. Just turning to this
23 document, Registrar, if you could go to image 2.
24 I want to just give you a bit of context. At the
25 bottom of this page, you'll see an e-mail from Mr.

1 McGuire to Mr. Pellegrini, December 7th. If you
2 could go to the next page. Could I get images 2
3 and 3. There it is. Okay.

4 So you'll see Mr. McGuire
5 sending an mail to Mr. Pellegrini where you'll see
6 that he talks about what he's been up to, and then
7 in the fourth paragraph on image 3, he says:

8 "After I get through the
9 budget in MFIPPA, I will
10 be able to turn my
11 attention to this
12 request. I suggest we
13 defer until January 2019
14 and reconnect."

15 That is just for context. So
16 you'll then Mr. Pellegrini sends an e-mail. This
17 is at image 2. This is in response. He says:

18 "I know that you're very
19 busy, but I'm only
20 requesting half an hour
21 of your time to clarify
22 some concerns."

23 And then if we could go back
24 to image 1. So here Mr. McGuire sends that e-mail
25 chain to Ms. MacNeil as an FYI on December 7th,

1 and then Ms. MacNeil responds, this is on
2 December 7th, and she says:

3 "I think your proposed
4 response to Domenic below
5 is fine."

6 And then she says:

7 "I was speaking with
8 Nicole and mentioned to
9 her about Domenic asking
10 again, insisting on
11 meeting with you on
12 Monday. She's of the
13 same mind as me. You
14 should bump the request
15 up to Dan McKinnon and/or
16 Mike Zegarac for them to
17 respond as they feel
18 appropriate. After this
19 last go-around, you will
20 clearly just be/are
21 repeating yourself with
22 Domenic. You were given
23 clear direction at
24 yesterday's meeting as to
25 the priorities you are

1 being asked to focus on."

2 So do you recall having a
3 discussion with Ms. MacNeil about this issue?

4 A. No, not specifically, not
5 beyond what is contained in the e-mail.

6 Q. Do you recall being on
7 the same page with Ms. MacNeil about bumping the
8 request up to Mr. McKinnon and/or Mr. Zegarac?

9 A. So what I would have
10 advised was that had Mr. McGuire had any concerns
11 about his timing and ability to respond to a
12 particular request, that that was not a matter for
13 legal services to advise him on, rather that that
14 was a matter that he should raise with his direct
15 supervisor and ultimately the City manager.

16 Q. You said you would have
17 advised. Do you recall advising that?

18 A. That's what I understood
19 Ms. MacNeil to be referring to there. That's my
20 understanding.

21 Q. So your understanding is
22 that if Mr. McGuire had concerns about --

23 A. His ability time-wise to
24 respond and if he needed additional time or had
25 any such constraints, that that was not a matter

1 for legal services to provide him advice on, that
2 his timing and his priorities were a matter for
3 his direct supervisor, his general manager, and
4 ultimately the City manager to provide him
5 direction on, not legal services.

6 Q. In the last sentence she
7 says:

8 "You were given clear
9 direction at yesterday's
10 meeting as top the
11 priorities you are being
12 asked to focus on."

13 Do you recall Mr. McGuire
14 being given a direction?

15 A. So if any direction was
16 given it was not by legal services; that, if any,
17 they would have been provided by the general
18 manager or the City manager.

19 Q. So this is a reference to
20 yesterday's meeting, so that would have been the
21 meeting on December 6th, 2018. We looked at the
22 calendar invitation for that earlier. Do you
23 recall being at a meeting where there was a
24 direction given by Mr. Zegarac or Mr. McKinnon?

25 A. No, I don't, but I

1 believe that that's what was being referred to
2 there.

3 Q. Registrar, you can take
4 down this document, thank you. I understand that
5 you retained Mr. Boghosian on behalf of the City
6 on December 7th, 2018. Does that date sound
7 familiar to you?

8 A. Yes, it does.

9 Q. You recall that we had
10 looked at some e-mails earlier today where it
11 showed that by November 20th, 2018 you had already
12 made the decision to retain Mr. Boghosian?

13 A. That was certainly on our
14 radar, yes.

15 Q. Right. You recall that
16 on November 21st, 2018, Mr. Sabo had confirmed
17 that there were no conflicts for Mr. Boghosian to
18 act?

19 A. Yes, that's correct.

20 Q. What steps had you taken
21 between November 21st and December 7th, 2018 with
22 respect to the retainer of Mr. Boghosian?

23 A. So during that period of
24 time while there were -- this was a particular
25 file that I was working on, there were a number of

1 other matters that I was working on as well, so
2 balancing that and the other meetings and various
3 things that were happening, my first
4 opportunity -- following some further discussions
5 with staff in early December and following the
6 meeting with Mr. Zegarac and team on December 3rd
7 and 4th, reached out to Mr. Boghosian at my next
8 available opportunity.

9 Q. Did you consider the
10 retainer of Mr. Boghosian to be an urgent matter?

11 A. I considered it to be a
12 priority. There were other matters that I was
13 also dealing with at the time, but it was
14 certainly a priority, and I took steps to speak
15 with him as soon as I had had further
16 conversations with senior leadership and other
17 staff on December 3rd and December 4th, and spoke
18 to him -- reached out to him I believe on the 6th,
19 and then ultimately end up speaking to him on the
20 7th.

21 I believe there may have also
22 been committee meetings around that time, but
23 certainly at my first available opportunity I
24 spoke with him.

25 Q. So on the call on

1 December 7th, 2018 I understand that you spoke
2 with him together with Ms. MacNeil?

3 A. Yes, that's correct.

4 Q. What did you discuss on
5 that call?

6 A. On the first initial
7 discussion, I believe I have notes that I took
8 during that call.

9 Q. I don't believe we have
10 your notes. We have notes for Mr. Boghosian.
11 We'll pull those up.

12 A. Sure.

13 Q. Registrar, that's
14 HAM64359.

15 A. Yeah, so this was a
16 preliminary discussion, an opportunity to speak to
17 Mr. Boghosian generally about the information that
18 we had, the genesis for the opinion, and provide
19 him with some high level information of what we
20 would ultimately be sending him to seek his
21 opinion on.

22 Q. So you'll see in the
23 fourth row, it says FOI (indiscernible). Do you
24 recall talking to Mr. Boghosian about the FOI
25 request?

1 A. Yeah, generally we wanted
2 to just have his -- basically to have him confirm
3 that -- what we had already determined, that the
4 FOI -- that this document, the Tradewind report,
5 would be responsive to the FOI request without
6 exemption. So we just -- that was almost a
7 preliminary matter where he did believe that that
8 would ultimately be the case.

9 Q. Sorry, did he tell you on
10 the call that he believed that it would have to be
11 released?

12 A. I can't remember if it
13 was on this call or the subsequent conversation,
14 but yes, very early on he did identify that he
15 didn't disagree with our approach and assessment.

16 Q. And then it says:
17 "Gord McGuire, director
18 of public works, FOI
19 request is for friction
20 testing results and
21 general testing. Said
22 testing was inconclusive.
23 The draft report re
24 friction testing is part
25 of another Golder

1 report."

2 What do you recall from the
3 discussion about this?

4 A. I remember -- I don't
5 have any sort of specific recollection beyond
6 what's in the notes. I know we discussed how Mr.
7 Moore had found the report, the general concerns
8 around what the report may indicate, wanted to
9 provide him with a bit of context on CIMA's
10 earlier information in terms of their assessments
11 from 2015 and that there were reports that we
12 would provide him with, and we summarized those
13 later at the end of the call.

14 Q. So just in terms of CIMA,
15 so there's a note that says:

16 "(Indiscernible) to CIMA
17 2015. Additional safety
18 performance review of Red
19 Hill Valley. More
20 accidents on Red Hill
21 than on the LINC, 65
22 percent more in wet
23 whether, and which was
24 far more skewed than the
25 LINC toward wet weather

1 recommended friction
2 testing."

3 Is that something that you and
4 Ms. MacNeil conveyed to Mr. Boghosian?

5 A. I don't recall
6 specifically. I believe that we have would had
7 discussions around what the earlier CIMA report
8 indicated. I don't recall the specific details.

9 Q. Had you read the 2015
10 CIMA report by this time?

11 A. I believe I would have
12 had an opportunity to take a high level review of
13 it, and certainly was aware of the -- I believe
14 they call them countermeasures in a particular
15 section. I believe that had been either brought
16 to my attention or had been reviewed previously.

17 Q. And you were also aware
18 of the inordinate number of wet weather collisions
19 that CIMA had identified?

20 A. I was aware that there
21 was a higher number of wet weather collisions,
22 yes.

23 Q. Where it says
24 "recommended friction testing," do you recall
25 talking to Mr. Boghosian about CIMA's

1 recommendation for friction testing?

2 A. Not specifically.

3 Q. By this time I think your
4 evidence was that you didn't know if CIMA had the
5 Tradewind results; is that fair?

6 A. I don't recall whether or
7 not that particular piece of information had come
8 to my attention. I know that I provided the
9 information to Mr. Boghosian, but I don't know
10 that whether they had -- I don't know that I knew
11 whether or not CIMA had an actual copy of the
12 report or not, but they had been -- but I was
13 aware that they had been conducting safety
14 assessments at the time.

15 Q. Do you recall discussing
16 with Mr. Boghosian and wanting to ensure that CIMA
17 had a copy of the Tradewind report?

18 A. This was a preliminary
19 conversation. It was to provide a basic
20 understanding of the issues in which we followed
21 up on and provided Mr. Boghosian with a copy of
22 the Tradewind report, and it was during this
23 conversation that he indicated that he had a
24 relationship with Mr. Malone and wanted to confirm
25 that we were comfortable with him reaching out to

1 him to assess and to make sure that he had an
2 accurate understanding of what work CIMA had been
3 doing but in order to be able to provide us with
4 his opinion on the matter.

5 Q. As part of that
6 discussion, did you talk to him about ensuring
7 that CIMA had the Tradewind report?

8 A. Not at this point in
9 time. The discussion in this call was to provide
10 him with that basic information that he would need
11 and to see if there was anything in particular
12 that he wanted to have. We followed up with --
13 this was the before the retainer letter, so to
14 have that initial discussion, followed up with
15 retainer and e-mails, and then ultimately had
16 further conversations with him.

17 Q. But Mr. Boghosian was
18 being retained to provide liability assessment
19 on --

20 A. The release of the
21 Tradewind report, yes.

22 Q. Right. So the Tradewind
23 report is at the heart of his retainer?

24 A. Yes, and was provided to
25 him.

1 Q. Yes, but wouldn't it have
2 been really important for him to determine -- for
3 you to talk about whether or not CIMA also had the
4 Tradewind report at this time?

5 A. I can't answer that. At
6 this point, no, I think it was important for Mr.
7 Boghosian to understand the issues that we were
8 asking him to provide an opinion on, and we were
9 having that initial discussion prior to his
10 retainer.

11 Q. Did you talk to him on
12 this call about possibly getting an opinion from
13 CIMA on potential interim safety measures pending
14 the resurfacing of the road?

15 A. This initial conversation
16 was we did discuss the CIMA report. I don't
17 recall if it was at this point or a subsequent
18 conversation where we discussed that those safety
19 measures and countermeasures that were identified
20 by CIMA would ultimately be reflective of the
21 mitigation measures that the City would be able to
22 look to in terms of reducing or improving the
23 City's position from a liability point of view. I
24 don't recall if that was on this call or one of
25 our next ones, but that was the context of that

1 discussion, was in the context of mitigation.

2 Q. Right, but in the context
3 of mitigation, wouldn't it be important for the
4 City to know if CIMA had the Tradewind results
5 when it provided its prior safety recommendations?

6 A. At this point -- so I
7 believe that the information that we provided to
8 Mr. Boghosian was sufficient for him to provide
9 his opinion to us. This very early call, we were
10 wanting to provide him with a general
11 understanding of the issues.

12 We had subsequent further
13 follow-up discussions where I understood that he
14 had had conversations with Mr. Malone regarding
15 the nature of the trademark report and information
16 provided, so I was under the understanding that
17 both Mr. Boghosian and Mr. Malone had the
18 information that they needed to provide the City
19 with the opinion that they were asked -- that
20 Mr. Boghosian was asked to provide.

21 Q. Coming out of this call
22 did you have an understanding of whether or not
23 Mr. Boghosian would be speaking with CIMA or Mr.
24 Malone specifically about the Tradewind results?

25 A. I had the understanding

1 that Mr. Boghosian was going to speak to Mr.
2 Malone to understand the technical aspects of the
3 implications of the Tradewind report on the
4 liability assessment, so he was going to use
5 Mr. Malone to help him understand the technical
6 aspects of his opinion. And yes, that he was
7 provided with the Tradewind report to be able to
8 have that discussion.

9 Q. Your understanding was
10 that Mr. Boghosian would then share the Tradewind
11 results with Mr. Malone?

12 A. As he felt necessary to
13 provide the City with that opinion, yes.

14 Q. Was it your understanding
15 that he considered it necessary to provide the
16 Tradewind results to CIMA?

17 A. I would have anticipated,
18 yes, that that would be something that he provided
19 and then discussed with him. And I believe that
20 was reflected in his opinion letter as well, that
21 he did have that conversation with Mr. Malone.

22 Q. Let me just go back to
23 the notes for a moment. In the sixth row --
24 seventh row. It says:

25 "Based on a UK

1 methodology, no stance
2 for it in Ontario." (As
3 read)

4 Do you recall conveying that
5 to Mr. Malone -- I'm sorry, Mr. Boghosian on the
6 call?

7 A. I remember there being a
8 question as to whether or not the standards that
9 were used in the Tradewind report were applicable
10 in either Ontario, Canada or North America. Yes,
11 I do remember that. I don't recall the specifics,
12 but I do recall that that issue was identified.

13 Q. I think you had said
14 previously that you couldn't recall if it was Ms.
15 MacNeil or somebody in public works who told you
16 that? Do I have that right?

17 A. Yeah, I don't recall
18 specifically whether that's what from reviewing
19 the document or whether that was from discussions
20 with either one of those two individuals.

21 Q. And the notes then says,
22 "Moore decided to do testing."

23 Do you have any information
24 about what that's referring to?

25 A. No.

1 Q. Do you recall talking to
2 Mr. Boghosian about Mr. Moore?

3 A. I do recall that we would
4 have identified that he would have been the
5 director that was in the position at the time that
6 the report was requested.

7 Q. And then it says:
8 "LINC testing on R," and
9 then, "Red Hill Valley
10 testing quite a bit
11 worse, especially when
12 wet and at higher
13 speeds."

14 Do you recall talking to Mr.
15 Boghosian about the LINC and Red Hill Valley
16 testing?

17 A. Not specifically, no.

18 Q. The reference to "quite a
19 bit worse, especially when wet and at higher
20 speeds," is that information from the 2015 CIMA
21 report?

22 A. I believe so, but I can't
23 speak to the details particularly. These are
24 David's notes.

25 Q. I appreciate that. I'm

1 just trying to get your recollection.

2 A. Fair enough. Yeah, I
3 don't recall.

4 Q. Then the fourth row from
5 the bottom, it says:

6 "2017, another CIMA rep
7 recommended safety
8 measures."

9 Do you recall talking about a
10 2017 CIMA report?

11 A. Not specifically. I know
12 I became aware that CIMA had been doing additional
13 work and that ultimately that there was an
14 additional CIMA report that was provided to Mr.
15 Boghosian directly by Mr. Malone, but I don't
16 recall discussing that at this point.

17 MS. LIE: Commissioner, I
18 appreciate it's 12:59. I just have a few more
19 minutes to cover off. I would like to finish off
20 this note before we break for lunch. Is that
21 okay?

22 JUSTICE WILTON-SIEGEL: That's
23 fine.

24 MS. LIE: Thank you.

25 BY MS. LIE:

1 Q. So then the third row
2 from the bottom, it says:

3 "Gord decided to do a
4 complete resurface in
5 spring 2019."

6 I take it you knew by this
7 time that there was going to be a resurfacing of
8 the road?

9 A. Yes.

10 Q. And who had conveyed that
11 to you?

12 A. I believe that would have
13 been Mr. McGuire.

14 Q. Four current files on the
15 Red Hill, 250 million. What discussions did you
16 have with Mr. Boghosian about the current matters
17 involving the Red Hill?

18 A. I recall identifying to
19 him that we had ongoing litigation matters and the
20 number four of them. The \$250 million, I'm not
21 sure where that number comes from. I don't recall
22 advising of a particular sum.

23 Q. Did you give Mr.
24 Boghosian any other information about the four
25 current files, apart from potentially the sum?

1 A. No, I don't recall the
2 specific details of what we -- I think I
3 identified that there were some. I'm not sure
4 that I would have provided him with a particular
5 level of detail on them at this point, because we
6 were looking for a general liability assessment
7 rather than a specific one on the particular
8 matters.

9 Q. When you say "general
10 liability assessment," I just want to make sure I
11 understand. Is it just liability generally? What
12 does that mean?

13 A. My concern was that there
14 were a number of inconsistent statements made
15 by -- in terms of what's the existence of the
16 reporting, how the road was performing, and as
17 they were identified to me by public works and by
18 members of my team. So that was related to the
19 issue of potential discoverability of an issue.

20 The other component was if
21 there were particular -- if there was any
22 particular risk that arose from the release of the
23 Tradewind information and how that might impact
24 the either future claims or additional claims, and
25 if any particular impact on our individual

1 matters, that would be more addressed at a later
2 date. This was really to do with the release of
3 the Tradewind report and what, if any, impacts
4 that might have on the City's liability.

5 Q. Did you provide Mr.
6 Boghosian with information about the inconsistent
7 statements that were made previously?

8 A. No, I don't believe I did
9 provide any particular detail on that, but the
10 fact that there had been previous statements and
11 various other concerns was conveyed to him.

12 Q. If we could just pull up
13 a second page. You'll see at the bottom it says
14 "issues MFIPPA/FOI request," and then it says "no
15 grounds" -- I think it's "grds" -- "grounds, to
16 refuse rel of documents." So I think you had said
17 that Mr. Boghosian agreed with your assessment
18 that there was no grounds; is that fair?

19 A. Yes.

20 Q. When I say no grounds to
21 refuse --

22 A. To refuse to release,
23 yeah.

24 Q. And then it says:
25 "Impact of liability.

1 What prompted studies?

2 High number of accidents,

3 474 accidents."

4 Do you have any recollection
5 of what that notes might be referring to?

6 A. No, I don't.

7 Q. Do you recall talking to
8 Mr. Boghosian about what prompted the 2015 CIMA
9 report, for example?

10 A. No, but I think that that
11 might have been contained in the report itself,
12 but I can't speak to that. I don't recall.

13 Q. And then you'll see
14 there's a note that says "signage, slippery in
15 winter plus."

16 A. Yeah.

17 Q. Then there's actually
18 another note third from the bottom, it says "told
19 them signage should." Do you recall having a
20 discussion with Mr. Boghosian about signage?

21 A. I recall discussing
22 slippery when wet signs rather than slippery in
23 winter signs, but if those were recommendations
24 made by CIMA, had they not been completed, that
25 that would be an appropriate thing to follow up on

1 and make sure that those recommendations in the
2 2015 CIMA report had been completed.

3 Q. So on this --

4 A. From the perspective of,
5 like, mitigating the City's liability, that was
6 his recommendation.

7 Q. So you recall having a
8 discussion in this preliminary call about
9 potential safety measures?

10 A. Not from a safety
11 perspective, but from a liability mitigation
12 perspective. And the reference, though, what was
13 appropriate -- what we would use to determine what
14 was appropriate mitigation measures were the
15 interim -- were the countermeasures in CIMA's
16 report. So I recall having a very general
17 discussion about that.

18 Q. So you recall talking to
19 Mr. Boghosian about the countermeasures that were
20 in the 2015 CIMA report?

21 A. Yes, as they related to
22 potential mitigation measures, yes.

23 Q. Do you recall talking to
24 him about whether or not those countermeasures
25 were undertaken by the City by that time?

1 A. No, I don't recall
2 whether that was known or whether that was
3 something that I think ultimately I needed to
4 follow up with public works to confirm my
5 understanding. I believe I made a note to that
6 effect later on.

7 Q. As of December 7th, you
8 don't recall if you had an understanding of
9 whether or not the safety recommendations had been
10 implemented?

11 A. I believe I had a general
12 understanding that the vast majority of them had
13 been. Certainly I was not under the impression
14 that they had been ignored or not complied with.
15 My understanding from public works is that they
16 largely had, but I didn't have a line-by-line kind
17 of understanding of each one in particular detail.

18 Q. Had you talked to public
19 works about whether or not the safety
20 recommendations had been implemented by this time?

21 A. I don't recall
22 specifically, but I do recall having a general
23 understanding that they had largely been complied
24 with at this point. I know I followed up
25 specifically with them on that point to confirm

1 that later on during the process.

2 Q. Who did you get the
3 general understanding from?

4 A. It would've been Mr.
5 McGuire or Mr. McKinnon.

6 Q. So at this point you
7 would have had discussions with Mr. McGuire and/or
8 Mr. McKinnon about the safety recommendations that
9 CIMA had made?

10 A. I believe I understood
11 that they had largely been responded to, but that
12 was the extent of the conversation. Just to be
13 clear, I don't have written confirmation of that
14 until later on.

15 Q. Right, but you had had
16 discussions with --

17 A. I believe so, yes. I
18 don't have anything that -- I believe I did at
19 this point, otherwise I'm not sure how I would
20 have had the conversations that I had with Mr.
21 Boghosian.

22 Q. Thank you. And then
23 there's a note says:

24 "Wants me to look at the
25 report and four reps."

1 Do you recall talking to Mr.
2 Boghosian about the four reports that you wanted
3 him to review?

4 A. I believe that was
5 reference to the four documents that we --
6 ultimately were sent to him by e-mail either the
7 next day or the -- I can't remember exactly.
8 Byrdena sent them to me, and I sent them to Mr.
9 Boghosian. I can't recall the date.

10 Q. And then there's a note
11 that says December 19th. Do you know what that
12 date might have been?

13 A. No, I don't recall.

14 Q. So my understanding just
15 from looking at the calendar is that there was a
16 council meeting scheduled for December 19th, 2018.
17 Is it possible that you were talking to Mr.
18 Boghosian about a potential report to council by
19 December 19th?

20 A. It's possible. I don't
21 recall but it's certainly possible.

22 Q. And then there's a note
23 that says "draft letter to CIMA." Do you recall
24 talking to Mr. Boghosian about drafting a letter
25 to CIMA?

1 A. No, I don't.

2 Q. Do you recall talking to
3 Mr. Boghosian about potentially having Mr.
4 Boghosian retain CIMA?

5 A. I know that what I do
6 recall is that Mr. Boghosian identified that he
7 knew Mr. Malone at CIMA and that he suggested that
8 he might benefit from reaching out to him to help
9 ground his understanding on the technical aspects
10 of the safety reports that had previously been
11 provided and the impact that the Tradewind report
12 would have, so I had identified that I had no
13 concerns with that particular approach, and that's
14 the -- that was the extent of the conversation
15 that I recall.

16 MS. LIE: Thank you. I
17 apologize for going a few minutes over. Why don't
18 we take our lunch break now. Thank you.

19 JUSTICE WILTON-SIEGEL: That's
20 fine. It's about 10 past. Let's return at 25
21 past 2. Thank you. We'll stand adjourned until
22 then.

23 --- Recess taken at 1:09 p.m.

24 --- Upon resuming at 2:25 p.m.

25 BY MS. LIE:

1 Q. Ms. Auty, I just want to
2 make sure I have your evidence correct. So was it
3 your understanding coming out of the December 7th
4 call with Mr. Boghosian that he would be
5 contacting CIMA to discuss CIMA's prior reports
6 and determining the impact of the Tradewind report
7 on CIMA's recommendations?

8 A. It was -- yes, it was my
9 understanding that he would be having those
10 conversations.

11 Q. So by this time, I think
12 you had said earlier that you didn't know if CIMA
13 already had the Tradewind results?

14 A. I don't believe I had any
15 understanding one way or the other. I knew that
16 they were conducting safety assessments for the
17 City and that that work was ongoing.

18 Q. And had you had a
19 conversation with anyone in public works about
20 public works sharing the Tradewind results with
21 CIMA?

22 A. No, I had not.

23 Q. Did you have any concerns
24 if public works wanted to share the Tradewind
25 results with CIMA?

1 A. No, I did not.

2 Q. Now, under December 7th
3 call with Mr. Boghosian, did you have a discussion
4 with him about how to communicate with CIMA in a
5 way that would protect the communications from
6 disclosure?

7 A. I don't recall whether we
8 specifically had that conversation on the
9 December 7th call. I know we had subsequent
10 correspondence regarding whether or not his
11 communications with Mr. Malone on the issue of
12 liability and his assessment of that liability for
13 the City, we had a discussion as to how to make
14 sure that those particular discussions would
15 remain privileged and confidential.

16 Q. When you're referring to
17 subsequent correspondence, are you referring to
18 the e-mails, or did you have another call with
19 him?

20 A. No, the e-mails that we
21 had subsequent to the call.

22 Q. Okay. We'll get to those
23 e-mails. So did you have any understanding of
24 whether or not public works would be reaching out
25 to CIMA to talk about the Tradewind results?

1 A. No, I didn't. I was
2 engaged with Mr. Boghosian in terms of doing our
3 review of the liability assessment. I also
4 understood that at the same time public works was
5 reviewing and having discussions with CIMA on
6 their various reports that they had been working
7 on independently.

8 Q. In your discussions with
9 public works, did they tell you that they were
10 going to share the Tradewind results with CIMA?

11 A. So we didn't have any
12 discussions in that regard. They were conducting
13 their review, I was doing mine, and we were
14 bringing that together once we had had further
15 discussions with our -- on our individual areas of
16 expertise.

17 Q. So I take it at this
18 point you decided you wanted to retain external
19 counsel because you were concerned about potential
20 liability for the City?

21 A. Yes, that's correct.

22 Q. And so you didn't -- did
23 you share that concern with public works staff?

24 A. So I don't recall the
25 specifics, but I do believe that I had

1 conversations with members of the public works
2 staff at various points in time that would have
3 identified that we were retaining outside counsel
4 to provide that opinion to the City, yes.

5 Q. You didn't think that it
6 was important to talk to public works about having
7 a coordinated approach with CIMA?

8 A. So I understood that our
9 roles and our areas of expertise were different in
10 that I was reviewing the liability side and
11 providing Mr. Boghosian with the necessary
12 information and providing him our understanding
13 that he could speak to Mr. Malone about that
14 issue. I also understood that public works staff
15 were addressing as their purview the issues around
16 the safety of the roadway and the ongoing work
17 that they were doing in that regard. We were
18 coordinating our approaches in terms of bringing
19 the information to council. That was ongoing and
20 collaborative, but I understood that we were each
21 conducting our own review and providing ultimately
22 council with our expertise in the two different
23 areas, mine being legal and liability review, and
24 theirs being the public safety of the roadway.

25 Q. But I take it CIMA,

1 because they are a safety consultant, they could
2 only give advice with respect to safety; is that
3 fair?

4 A. So I believe it's fair in
5 the context that that's the information they were
6 providing to public works staff. The reason that
7 Mr. Boghosian was speaking to Mr. Malone was not
8 to get a safety assessment but to have his
9 technical expertise as an expert in the area of
10 safety as to how -- so that Mr. Boghosian could
11 appreciate and understand the liability. So I
12 think those are two different aspects that
13 particular consultants can provide.

14 Q. Was it your understanding
15 that public works was getting a safety opinion
16 from CIMA having regard to the Tradewind results?

17 A. So my understanding was
18 that they were conducting their ongoing safety
19 assessment and that that was their purview, that's
20 what they were doing. It was my role to look at
21 the liability and legal implications of releasing
22 the public -- of releasing the Tradewind report.

23 Q. In those discussions with
24 public works staff, did they ever communicate to
25 you that they had provided the Tradewind results

1 to CIMA?

2 A. I don't recall that
3 specifically being addressed, no, but I do recall
4 us discussing a number of different items around
5 what CIMA and public works had been doing. So no,
6 I don't recall that, but I do recall us discussing
7 them in general.

8 Q. Do you recall discussing
9 in general who would be contacting CIMA about the
10 Tradewind results?

11 A. So I don't have specific
12 recollection of the discussion to do with that.

13 Q. Do you recall telling
14 them that Mr. Boghosian would be reaching out to
15 CIMA?

16 A. I don't recall
17 specifically providing that information. I do
18 know that we discussed that Mr. Boghosian was
19 having conversations with Mr. Malone in the
20 context of our liability review, but I don't
21 recall anything specific.

22 Q. Do you recall ever
23 telling public works that they shouldn't contact
24 CIMA?

25 A. No, I don't -- I did not

1 do that.

2 Q. I think your evidence was
3 that if they wanted to contact CIMA, you were
4 totally happy to have them do that?

5 A. Absolutely. I think it's
6 important to appreciate that my understanding was
7 that public works at all times were getting
8 whatever information and providing whatever
9 information to CIMA they felt necessary to do
10 their jobs, to provide that safety assessment and
11 to review that information with CIMA and
12 ultimately provide that to council. In no way
13 would I get in the way of that or prevent them
14 from doing that in any capacity.

15 Q. Registrar, could we pull
16 up HAM62007.

17 Ms. Auty, I understand that
18 after the December 7th call, you asked Ms. MacNeil
19 to draft the retainer letter for Mr. Boghosian.
20 Does that sound right?

21 A. I believe so. We were
22 drafting it -- yes, I believe so.

23 Q. So this is an e-mail
24 chain. You're not copied on this. At the bottom
25 of the document there's an e-mail from Ms. MacNeil

1 to Mr. McGuire, he's responding to it, where she
2 says:

3 "Hi Gord, I just tried
4 calling you but no
5 answer. Can you please
6 send to me something that
7 explains the current
8 scope of work that CIMA
9 is undertaking for which
10 we are going to be
11 adding/updating them on
12 the Tradewind friction
13 testing results. I will
14 need to reference it in
15 the retainer letter that
16 I am drafting."

17 Is your understanding that
18 this retainer letter was the retainer letter for
19 Mr. Boghosian?

20 A. As you indicated, this is
21 not my e-mail. I assume that that's what she was
22 speaking to, but ultimately that would be
23 something that Ms. MacNeil would have to address.

24 Q. To your knowledge, she
25 wasn't working on any other retainer letters at

1 the time?

2 A. She may have been. She
3 had presumably a number of other retainers, but I
4 believe that that's likely what this was about.

5 Q. And so she says here:

6 "...for which we are
7 going to be
8 adding/updating them on
9 the Tradewind friction
10 testing results."

11 So was it your understanding
12 that Mr. Boghosian would be contacting CIMA to
13 add/update them on the Tradewind friction testing
14 results.

15 A. No, that was not my
16 understanding.

17 Q. But I thought that you
18 had just testified that your understanding was
19 that Mr. Boghosian would be reaching out to CIMA
20 including to update them on the Tradewind results?

21 A. My understanding was that
22 Mr. Boghosian was going to be reaching out to
23 CIMA, to Mr. Malone specifically, to speak with
24 him about the implications of the Tradewind report
25 as it affected the City's general liability.

1 So yes, that would involve
2 discussing that with him, so to that extent, yes.
3 But to update them for any other purpose, no, it
4 was in the context of our liability assessment.

5 Q. So you don't have any
6 evidence -- or you don't know why Ms. MacNeil
7 would have framed her e-mail in this way?

8 A. No, I do not.

9 Q. Registrar, could we pull
10 up HAM64323, image 4. Ms. Auty, here we have an
11 e-mail from you to Mr. Boghosian on December 7th,
12 2018, and you say:

13 "Thank you for speaking
14 to myself and Byrdena
15 this afternoon."

16 So I take it this was after
17 the call you had with Mr. Boghosian. And then
18 you'll see in the third paragraph you say:

19 "I am looking for your
20 advice on the following:
21 One, a general
22 risk/liability assessment
23 including any thoughts on
24 the FOI request; two, how
25 to approach obtaining

1 CIMA consultant input on
2 whether interim measures
3 are needed to protect
4 safety before their
5 surfacing is completed in
6 June 15 of 2019,
7 litigation privilege;
8 three, media and council
9 information."

10 Had you had a discussion with
11 Mr. Boghosian on December 7th about how to
12 approach obtaining CIMA consultant input on
13 whether interim measures are needed to protect
14 safety?

15 A. So the discussion that
16 Mr. Boghosian and I had on December 7th was
17 firstly to deal with the issue of retaining him to
18 give a liability assessment, and secondly we
19 discussed the CIMA 2015 report and the potential
20 for the countermeasures that were identified in
21 that report to be mitigation -- mitigating factors
22 in that liability assessment, and that was the
23 context in which I had identified -- we had
24 identified, first at Mr. Boghosian's suggestion,
25 that he might benefit from speaking to Mr. Malone

1 in order to understand the technical aspects of
2 their reports and their assessments to date, and
3 that was the context in which that second item
4 there is identified.

5 Q. On the second item you
6 say "how to approach obtaining CIMA consultant
7 input." So you were asking him how to go about
8 actually obtaining the input?

9 A. That was part of our
10 conversation. We were -- we primarily were
11 dealing with how -- like, that he should have that
12 conversation. We spoke about that. We also
13 discussed the approach, the best approach to
14 ensure that that discussion that he had on his
15 liability assessment with Mr. Malone should remain
16 privileged. So we did discuss him having those
17 conversations directly and wanting to ensure that
18 that discussion on his assistance on the liability
19 matter to be remaining confidential, so that was
20 the context for that second point.

21 Q. So here you talk about
22 whether interim measures are needed to protect
23 safety before the resurfacing is completed. I
24 take it that you were trying to find out from Mr.
25 Boghosian how to -- how the City should approach

1 CIMA to obtain an opinion on whether interim
2 measures are needed to protect safety?

3 A. So I can appreciate that
4 that's how it reads. I'm trying to clarify that,
5 while that is what it says, my understanding and
6 what I was seeking from David could have been
7 framed differently and, frankly, better to clarify
8 the conversation that we had had, and the context
9 and the discussions that we did have were not
10 dealing with safety matters; they were looking at
11 how to use the discussion that CIMA had had
12 previously with staff in their 2015 report, how to
13 look at those interim countermeasures that they
14 discussed and to assess those countermeasure as
15 potentially mitigating factors had they been
16 appropriately completed, and if they were not, to
17 then use that to improve the City's position with
18 respect to liability by completing anything that
19 had not been yet completed on that matter -- on
20 that list.

21 So I do appreciate that that
22 could read better, but I hope I've been able to
23 explain what the context was and what I was
24 attempting to capture.

25 Q. But when you say how to

1 approach, I mean, contacting CIMA would be pretty
2 simple; the City could just pick up the phone and
3 call Mr. Malone. So why did you need an opinion
4 on how to approach CIMA?

5 A. So I think that was again
6 not the best way to identify that discussion. So
7 I wanted Mr. Boghosian -- he had identified that
8 he wanted to reach out to Mr. Malone to have some
9 assistance on the technical aspects of providing
10 his opinion. I had identified that that was -- we
11 had discussed that, I thought that that was a good
12 idea.

13 I also wanted him -- we had
14 also discussed that it was appropriate for him to
15 have those contact -- that discussion directly as
16 it pertains to his review of the liability
17 assessment for the City, and so that he had those
18 conversations directly would, in our view, allow
19 for that information to be privileged insofar as
20 it related to his assessment of the liability for
21 the City.

22 Q. I'm going to suggest to
23 you that what you were asking Mr. Boghosian to do
24 was to give an opinion on how the City could go
25 about getting an opinion on whether interim

1 measures are needed to protect safety before the
2 resurfacing is completed in a way that would be
3 protected from disclosure?

4 A. So I don't agree. I
5 think while it reads that way, I was having those
6 conversations in a different context. I could
7 have been clearer in how I captured that, and I
8 think ultimately the conversations that I had
9 further with Mr. Boghosian and ultimately in --
10 with a content of his final opinion is reflective
11 of ultimately what he and I understood his
12 direction to be.

13 Q. So sitting here today,
14 you don't have an explanation for why you use the
15 term "how to approach"?

16 A. I do believe I tried to
17 explain that. I'm happy to try and be clearer
18 about that, but I am trying to say that it was in
19 the context of the discussion we had around
20 mitigation and looking at the interim measures
21 that CIMA had suggested would be beneficial, and
22 then ultimately to have David have that
23 conversation with Mr. Malone directly so that
24 those conversations would be privileged. That was
25 what I was attempting to capture in that second

1 sentence.

2 Q. Did you want to ensure
3 that public works was not having those discussions
4 with CIMA because then those discussions would not
5 be protected by privilege?

6 A. No, I did not. My only
7 goal was to look at getting a liability and a
8 legal opinion on this. It was not my position to
9 prevent or to restrict any access between public
10 works staff, particularly the directors or the
11 general managers or frankly anyone, from speaking
12 to their consultants in a way that would permit
13 them to conduct safety -- review of any kind. And
14 frankly I would not do that. I believe that's
15 their responsibility. And had I engaged in any
16 discussions or attempts to restrict that
17 information, I firmly believe that any of those
18 directors or general managers would have
19 identified that as a concern and would have
20 documented and escalated that to the appropriate
21 individuals. That is not consistent with my
22 recollection or any of the documents that I have
23 reviewed that would suggest that that was in fact
24 the case.

25 JUSTICE WILTON-SIEGEL: We

1 seem to have lost some individuals; is that right?

2 THE WITNESS: Can you still
3 see and hear me, Mr. Commissioner?

4 JUSTICE WILTON-SIEGEL: I can
5 still see and hear you, Ms. Auty. I think perhaps
6 we've lost Ms. Lie.

7 MS. LIE: I'm here.

8 JUSTICE WILTON-SIEGEL: Okay.
9 That's fine.

10 THE WITNESS: I see and hear
11 Ms. Lie.

12 BY MS. LIE:

13 Q. In the last paragraph you
14 say that you'll be forwarding Mr. Boghosian the
15 reports the City has to date on this issue and the
16 FOI requests. "I look forward to speaking to you
17 on Tuesday." So that's just a few days away. Was
18 there a sense of urgency that you conveyed to Mr.
19 Boghosian about getting this assessment?

20 A. At this point in time, I
21 was hoping that Mr. Boghosian would have the
22 opportunity to take a look at this issue as a
23 priority or at least as something that was on his
24 list of things to do. Certainly we were
25 attempting to get as much information as quickly

1 as possible to be able to contribute to the
2 discussion and ultimately the framing of the
3 council report that was going to go to council.
4 So it wasn't a request that I would have expected
5 him to take slowly, so he was -- but I don't that
6 it would have escalated to necessarily an urgent
7 request at this point, but I was expecting him to
8 spend his attention on it.

9 Q. Registrar, could we go to
10 image -- the one before this -- image 3 of this
11 document.

12 You'll see here in the bottom
13 of the page there's a response from Mr. Boghosian
14 to you, this is on December 10th, 2018. You see
15 in the second paragraph he says:

16 "I thought over the
17 weekend about the issue
18 of how to obtain an
19 opinion from CIMA
20 regarding interim safety
21 measures regarding the
22 condition of the RHVE
23 spending resurfacing in
24 June of 2019. I think
25 the only way we could

1 prevent access to any
2 correspondence they send
3 conferring their opinion
4 is if I contact them and
5 obtain their advice, then
6 communicate to you as
7 part of my opinion
8 letter. Let me know if
9 you want to proceed in
10 that fashion. I note
11 that I use CIMA in my
12 cases all the time so
13 have a good working
14 relationship with them
15 and hopefully could
16 expedite the provision of
17 their opinion."

18 And then above that you
19 respond on December 11th, this is on the Tuesday
20 morning, you say:

21 "David, I agree with your
22 approach below. I will
23 send you contact info,
24 but I believe the name
25 mentioned as our contact

1 is Dave Malone, and
2 ultimately --" that's
3 correct because it's
4 actually Brian Malone.

5 So when Mr. Boghosian says
6 that he thought over the weekend about the issue
7 of how to obtain an opinion from CIMA regarding
8 interim safety measures, he refers to finding a
9 way to prevent access to any correspondence they
10 send conferring their opinion.

11 So do you maintain that you
12 didn't have that discussion with Mr. Boghosian in
13 terms of trying to find a way to obtain CIMA
14 consultant input in a way that would be protected
15 from disclosure?

16 A. So I did discuss with Mr.
17 Boghosian how he might be able to contact CIMA to
18 have confidential discussions around the
19 information that Mr. Boghosian needed to be able
20 to assess the liability. It was not to prevent
21 access to any other safety information or any
22 other information that others might have, but
23 simply to protect the solicitor-client privilege
24 around the discussions of liability, and that is
25 all. So not related to safety matters but related

1 to his technical expertise provided to David
2 necessary to help David provide his opinion. And
3 that's the context that we were discussing that
4 in.

5 Q. Registrar, could you just
6 put up image 4 as well, just so that we have the
7 original e-mail from Ms. Auty.

8 So you're saying that you
9 never had a discussion with Mr. Boghosian about
10 how to get an opinion on interim safety measures,
11 even though that's what your e-mail says.

12 A. I've indicated that that
13 could've been more clearly and reflective of the
14 conversation that we had, which was not about
15 safety measures in the context of safety but the
16 safety measures that were identified by CIMA in
17 their 2015 report in the context of those being
18 appropriate mitigation matters.

19 So I was looking at, with Mr.
20 Boghosian, the liability and the assessment of
21 those mitigation measures, not of the safety of
22 the roadway. I understood that to be the purview
23 and the work that was being done by public works
24 staff with CIMA that was ongoing and separate from
25 my discussions and Mr. Boghosian's discussions

1 with Mr. Malone on that issue.

2 Q. Isn't the safety of the
3 roadway linked to liability and potential
4 mitigation measures from a liability perspective?

5 A. Yes, there is a
6 relationship between those two things in that
7 those safety measures would also improve the
8 safety of the road, would equally be mitigating
9 factors in the potential liability assessment.
10 But my review and my discussion was dealing with
11 the liability assessment, not the safety of the
12 road. That was the purview of the public works
13 department, and they were conducting that review
14 and that was ongoing at the time.

15 Q. Again CIMA, the safety
16 consultant, so CIMA could only provide its
17 recommendations from a safety perspective; is that
18 fair?

19 A. So had they been asked to
20 do that by public works, I would say you're
21 absolutely correct. But what the reason and the
22 rationale for Mr. Boghosian to speak to him was
23 not to provide a safety assessment in and of
24 itself but to look at what any of those
25 implications might be for the -- like, on the

1 liability and looking at the mitigation measures.
2 They are linked, they are certainly part of the
3 same conversation, but with different lenses, with
4 a different aspect of it being reviewed.
5 Litigation, legal assessment, safety assessment,
6 being that of public works.

7 Q. So in Mr. Boghosian's
8 e-mail he says "an opinion from CIMA regarding
9 interim safety measures regarding the condition of
10 the RHVP pending resurfacing." That refers to
11 interim safety measures?

12 A. It does, and I understood
13 that to be in relation to our conversation around
14 reviewing those safety measures from the
15 perspective of their appropriateness for reviewing
16 and identifying the mitigating factors that might
17 improve the City's liability perspective.

18 Q. When he says:
19 "The only way we could
20 prevent access to any
21 correspondence they send
22 conferring their opinion
23 is if I contact them and
24 obtain their advice and
25 communicate it to you as

1 part of my opinion

2 letter..."

3 Here he's saying that he's
4 trying to find a way to communicate CIMA's opinion
5 regarding interim safety measures in a way that
6 would prevent access to any correspondence.

7 A. Sorry, is there a
8 question there, commission counsel?

9 Q. Yes. Was that your
10 understanding of his e-mail?

11 A. So my understanding was
12 not that the intention was to prevent access but
13 simply to allow for that conversation, for
14 Mr. Malone to speak with a technical expert to
15 understand the nature of the reports that he was
16 reviewing in order to be able to provide an
17 assessment and an opinion to the City on the
18 liability that would come from -- potentially
19 result from the Tradewind report being released.

20 So that to me was a reflection
21 of his statement of how we would normally have
22 those conversations between lawyers, clients and
23 experts, not with any particular motive of
24 restricting access. It was simply a statement of
25 that relationship between lawyers and experts in

1 providing advice and that that is normally
2 protected by privilege.

3 Q. That's not something you
4 needed Mr. Boghosian's advice on; you would have
5 known that litigation privilege would apply, if
6 that's what the discussion was about?

7 A. I had asked him to
8 confirm that; that is his expertise as the City
9 solicitor. And looking at all of the work that I
10 do for the City, my particular area of expertise,
11 while I do have a familiarity with all areas of
12 the law I am not a litigator. I had not been
13 doing litigation for sometime. It was primarily
14 the reason why we had an external specialist. So
15 I sought to get a specialist's opinion on that and
16 simply was confirming what I did understand to be
17 the state of the law, but I had asked him to
18 confirm that for me.

19 Q. And then in your e-mail
20 you say, "I agree with your approach below," so I
21 take it that you were agreeing with Mr.
22 Boghosian's suggestion that he obtain the opinion
23 from CIMA regarding interim safety measures
24 regarding the condition of the RHVP and then
25 convey that advice to you in his opinion?

1 A. I was conferring with his
2 approach not on -- I've tried to clarify that I
3 could have said that better, so I was clarifying
4 what I understood to be my understanding, which
5 was that he was going to speak to Mr. Malone, he
6 was going to get the necessary technical expertise
7 from an expert in the field to provide the City
8 with his legal opinion on what we had asked him to
9 do.

10 I can fully acknowledge that
11 that could be addressed more clearly in my
12 e-mails, and ultimately what I had asked David to
13 do is produced in his legal opinion, and there is
14 no discussion of preventing access or trying to
15 provide a safety assessment.

16 So I appreciate that it's
17 confusing here, but ultimately I did understand
18 and I believe that Mr. Boghosian understood what I
19 was asking him to say and to do, and that
20 ultimately was provided to the City.

21 Q. You don't say in your
22 e-mail back to him that, you know, actually, no,
23 that's not what I was referring to; in fact, I
24 want you to do something else. Is that fair? I
25 mean, we have the e-mail.

1 A. Again, I could have
2 clarified that, but I was responding quickly. I
3 was attempting to keep things moving, and I was
4 responding to what I understood our understanding
5 to be.

6 Q. So did you have a further
7 clarification e-mail or conversation with Mr.
8 Boghosian to clarify what it was that you were
9 asking him to do?

10 A. Yes, so we spoke on a
11 number of -- not a number, but we spoke on
12 occasions following this where we discussed the
13 report and what he was reviewing, the mitigation
14 measures, and ultimately leading to his draft
15 opinion which was provided on December the 13th,
16 which I think identifies what he was asked to do
17 which was to provide a liability assessment, and
18 that's what was ultimately in his report.

19 Q. So before December 11th,
20 so before Mr. Mr. Boghosian speaks with Malone,
21 did you have a further conversation or
22 communication with him to clarify what it was that
23 Mr. Boghosian was to do?

24 A. No, but I understood him
25 to have an understanding of what I was looking

1 for.

2 Q. Right, and his
3 understanding is set out in his e-mail of
4 December 10th, 2018? You didn't have any further
5 clarifying discussions, conversations or e-mails
6 with Mr. Boghosian between December the 10th and
7 the 11th?

8 A. I don't believe I had any
9 further conversations with him. I can't recall
10 specifically, but again I understood his -- him
11 and I to have had a understanding based on our
12 conversation that day. I identify that that could
13 have been more clearly addressed in these e-mails,
14 but I do believe he understood what I was looking
15 for, and that is reflected in his ultimate
16 opinion.

17 Q. But his understanding as
18 of December 10th, 2018 and into December 11th,
19 2018 is what he set out in his e-mail that we're
20 looking at right now? You have no evidence to
21 suggest that he had some different understanding
22 as of December 11th when he spoke with Mr. Malone?

23 A. Not more than what I feel
24 I've already tried to convey to the Commissioner.

25 Q. Registrar, could you pull

1 up overview document 9A, image 214. You'll see at
2 paragraph 501 there's an e-mail from you to
3 Ms. MacNeil, the subject line is "retainer
4 letter," and you ask Ms. MacNeil if she has any
5 additions or comments to the attached document,
6 and the attached document is the retainer for Mr.
7 Boghosian. There's an excerpt of it in the
8 following paragraph. So, Registrar, could you
9 pull up 215.

10 So I take it that you were the
11 one who ultimately drafted Mr. Boghosian's
12 retainer letter?

13 A. Yes, I believe so.

14 Q. So you'll see at the top
15 of image 215 that the letter is to confirm his
16 retainer with respect to the representation of the
17 City in the matter relating to reports regarding
18 the friction on the Red Hill Valley Expressway,
19 and in particular, and you'll see .3:

20 "How to approach
21 obtaining CIMA consultant
22 input on whether interim
23 measures are needed to
24 protect safety before the
25 resurfacing is completed

1 in June of 2019,
2 including retaining the
3 expert if necessary."

4 So this is the same language
5 as in your previous e-mail except there's the
6 addition of "including retaining the expert if
7 necessary." So were you contemplating having Mr.
8 Boghosian retain CIMA?

9 A. I was --

10 (Speaker overlap)

11 A. Sorry, go ahead.

12 Q. I was asking if you were
13 contemplating having Mr. Boghosian retain CIMA to
14 obtain input on whether interim measures are
15 needed to protect safety before the resurfacing of
16 the road?

17 A. So I was reflecting the
18 similar discussion that we had had, which was to
19 deal with him having a conversation with
20 Mr. Malone to help understand the technical
21 aspects of the reports that he was reviewing.
22 Again, similar -- it's the same comments that I
23 had previously around this language certainly
24 could have been clearer. I added -- I believe I
25 added the discussion around retaining that expert

1 if needed to provide David with that direction if
2 he felt that a particular retainer agreement was
3 necessary to allow him to speak to Mr. Malone as
4 an expert would normally be retained to provide
5 advice on a litigation matter.

6 So that's I believe why I had
7 -- I added that language, but the same comments
8 that I had made previously apply to this statement
9 in the retainer letter.

10 Q. I take it you would have
11 wanted to ensure that Mr. Boghosian knew what he
12 was being retained to do?

13 A. I do, I did certainly
14 want to be as clear as possible. I was also
15 working quickly to try and get this information to
16 him in a way that would -- in a timely way that
17 would allow for him to have the maximum amount of
18 time to review it. Certainly I agree I could've
19 been clearer in that regard, but I was trying to
20 get it to him as quickly as possible.

21 Q. What you're telling us
22 today is that you didn't actually ask Mr.
23 Boghosian to do what you set out in number 3; is
24 that fair?

25 A. Not in that -- not framed

1 in that particular way. I did ask him to speak to
2 Mr. Malone. He was empowered to do so from our
3 conversation. For the purposes of understanding
4 what he was providing the City in terms of a
5 liability assessment. We were not looking for a
6 safety assessment from Mr. Malone through that
7 discussion; we were looking to have Mr. Malone
8 provide Mr. Boghosian with the information he
9 needed to provide the City with his opinion.

10 Q. You didn't have any
11 discussions with Mr. Boghosian to suggest to him
12 that actually you didn't mean what you said in
13 point number 3 in the retainer letter?

14 A. I believe he understood
15 that from our earlier conversation, and so I
16 didn't feel that -- I didn't feel that that
17 clarification was necessary. We spoke
18 subsequently, and he knew he was reviewing and
19 providing the information that we had requested,
20 and ultimately that was provided in his opinion,
21 and I had no concerns with the information that he
22 provided in his opinion. It was reflective of
23 what I had asked him to do.

24 Q. So I just want to make
25 sure I understand. You have the conversation with

1 Mr. Boghosian on December 7th. You then send him
2 an e-mail on December 10th and a draft -- sorry,
3 you send the draft retainer letter on
4 December 7th. You send an e-mail on December 7th.

5 So your evidence is that Mr.
6 Boghosian would have understood what he was
7 required to do based on your conversation and not
8 what was set out in writing.

9 A. Yes, I believe he
10 understood the context in which that discussion
11 took place, and ultimately that was confirmed in
12 the ultimate opinion that he provided us. My goal
13 was to get him a retainer letter and to confirm
14 his retainer as quickly as possible so that we
15 could get his -- get him working on that
16 information and that opinion to provide to
17 council.

18 Q. We have his understanding
19 of it as of December 10th, and we've looked at
20 that e-mail. We don't have to go back there for
21 now.

22 Registrar, could we go to
23 image 220. So paragraph 520. You'll see that on
24 December 8th, 2018, so this is day after you've
25 spoken with Mr. Boghosian and Ms. MacNeil, Mr.

1 McGuire e-mailed Mr. Malone under the subject line
2 "RHVP." He wrote:

3 "Hi Brian, did our legal
4 group get in touch with
5 you on the safety
6 report?"

7 Mr. Malone replied the same
8 day advising that he had not been contacted.

9 Did you have any discussions
10 with Mr. McGuire that would suggest to Mr. McGuire
11 that the legal group would be contacting
12 Mr. Malone about the safety report?

13 A. No, I don't know the
14 basis for that comment.

15 Q. By this time -- just to
16 situate in time, by this time we know that you met
17 with Mr. McGuire at least on December 4th and on
18 December 6th. Is it possible that during those
19 meetings you had talked to Mr. McGuire about
20 having someone from the legal group reach out to
21 Mr. Malone on the safety report?

22 A. No, that was not my
23 understanding of my objective, so I'm not sure
24 where that would have come from.

25 Q. So you have no idea why

1 Mr. McGuire would be under this impression?

2 A. That's correct. You
3 would need to honestly speak to him about that. I
4 can't say.

5 Q. Then at paragraph 521,
6 you see Mr. McGuire forwards Mr. Malone's response
7 to Ms. MacNeil, and he writes:

8 "Did you get a hold of
9 the CIMA contact via
10 Edward? I was wondering,
11 if so, could I talk to
12 CIMA confidentially?"

13 And then Ms. MacNeil replies
14 on December 10th, 2018:

15 "Thanks for your e-mail.
16 No, we have not contacted
17 CIMA yet because we are
18 still working on how we
19 are going to put the
20 request to them in order
21 to best move forward from
22 a legal perspective. I
23 would strongly advise
24 that you not speak with
25 CIMA about this matter

1 until you have heard back
2 from us/Nicole. We
3 should be able to update
4 you this week, I hope by
5 midweek."

6 Had you had any discussions
7 with Ms. MacNeil about or Mr. McGuire about how to
8 best move forward from a legal perspective?

9 A. No, I did not.

10 Q. There's a reference to
11 "hearing back from us/Nicole." Did you have any
12 discussions with Mr. McGuire about having to
13 update him on where things stood from a legal
14 perspective?

15 A. I don't recall having a
16 specific discussion with Mr. McGuire outside of
17 the meetings that we had -- the meeting that we
18 had on December 14th. I don't recall if there
19 were other opportunities for me to speak with him
20 between that e-mail and the meeting on the 14th,
21 but I do know at that meeting I conveyed my
22 understanding of David's preliminary thoughts on
23 the litigation and liability and that we discussed
24 CIMA's other work and the other reports that were
25 ongoing at that discussion. So we shared, each of

1 us, our work to date on the file and in
2 preparation for bringing the report to council.

3 Q. So in the second
4 paragraph, do you have -- of Ms. MacNeil's e-mail,
5 do you have any understanding of why Ms. MacNeil
6 would be strongly advising Mr. McGuire against
7 speaking with CIMA --

8 A. No.

9 Q. -- until he's heard back
10 from us/Nicole?

11 A. No, I don't.

12 Q. Is it possible that you
13 had a discussion with Ms. MacNeil which suggested
14 that you wanted to communicate with CIMA through
15 Mr. Boghosian during this time rather than through
16 public works?

17 A. No, I did not have any
18 discussions with her about that.

19 Q. Do you know at this time
20 that Mr. McGuire was asking to contact CIMA
21 confidentially?

22 A. No, I did not. I don't
23 know what a confidential discussion -- what kind
24 of confidential discussion he would have wanted to
25 have. Certainly had it been related to safety or

1 his need to get any advice from CIMA on the work
2 he was doing otherwise, I would certainly have
3 expected him to have no barriers to having that
4 conversation with CIMA directly. So I don't
5 believe that it would have been related to
6 anything to do with safety. The confidential
7 nature of the discussion he wanted to have, I
8 don't know what that would have been about.

9 Q. So Ms. MacNeil, when she
10 says -- she refers to hearing back from either
11 her -- she says "us/Nicole." I take it she wasn't
12 one to refer to you without authority to do so?

13 A. I'm not sure what -- I'm
14 not sure how to answer that question. I believe
15 that Ms. MacNeil was writing an e-mail. I don't
16 know what the basis of that was. I do know that
17 we were providing updates and having opportunities
18 to speak with public works at various points in
19 time, and I suspect it may have been related to
20 the meeting that we had on December 14th where we
21 were bringing all of our collective work to date
22 together to share that information.

23 So that may have been what she
24 was referring to, but again without having an
25 opportunity to speak to her or to have her to

1 provide you with that information, I can't say for
2 certain what that is, what she's referring to.

3 Q. So, sorry, you're saying
4 now that it's possible she was referring to
5 holding off until you had the meeting on
6 December 14th?

7 A. Sorry, no. I apologize.
8 What I was referring to is the opportunity to
9 update later in the week may have been referring
10 to the meeting that was undertaken. What she was
11 referring to in terms of not speaking to CIMA, I
12 do not know what that was about. That was not
13 direction that came from me.

14 Q. But you were in frequent
15 communication with Ms. MacNeil around this time
16 about the RHVP; is that fair?

17 A. We were speaking on it
18 from time to time. I wouldn't say it was
19 frequent. We were having conversations as she
20 felt necessary to update me on the work that she
21 was doing, and I was endeavoring through Ron, if
22 she happened to stop in my office, to give her an
23 update on what I was doing and the work that was
24 being undertaken. So those were very high level
25 discussions. I don't recall having any

1 particularly detailed conversations with her
2 regarding strategies or next steps that would have
3 generated that comment.

4 Q. But she was checking in
5 with you on the work that she was doing?

6 A. She did report back to me
7 following her meeting on the 3rd. I don't recall
8 having any further in-depth discussions about her
9 work. I understood her to be providing the
10 necessary advice to public works on the FOI
11 process, but I didn't get -- I don't recall having
12 any particular updates from her following the 3rd.

13 Q. Registrar, could we pull
14 up HAM62509. Go to image 2, please. You can
15 maybe put them side by side, image 1 and image 2.
16 On image 2, it starts with an e-mail from you, Ms.
17 Auty, to Mr. Soldo, this is on December 11th,
18 2018. And you say:

19 "Hi Edward, tried call
20 you back. Sorry, today
21 got away from me. Was
22 the contact Brian Malone?
23 Let me know when you have
24 a moment to discuss."

25 Do you recall why you were

1 calling Mr. Soldo as of December 11th, 2018?

2 A. No, I don't.

3 Q. Do you recall talking to
4 Mr. Soldo about CIMA and the contact being Brian
5 Malone?

6 A. I recall getting that
7 information from him at some point that it was
8 Brian Malone that he had been dealing with, but I
9 don't recall having that conversation with him at
10 that time.

11 Q. Well, this e-mail seems
12 suggest that you had at least a discussion or
13 something that prompted your e-mail to Mr. Soldo
14 about contacting Brian Malone. Does that refresh
15 your memory at all?

16 A. No, sorry.

17 Q. In the response, Mr.
18 Soldo writes -- this on December 12th, 2018, at
19 8:06 a.m. He says, "Yes, he is expecting your
20 call."

21 Do you have any understanding
22 of why Mr. Soldo would have conveyed to Mr. Malone
23 that he should expect a call from you or from
24 someone in legal?

25 A. No, I don't.

1 Q. You have no idea why Mr.
2 Soldo would respond this way?

3 A. I don't have any
4 particular understanding. I believe it may be
5 that he was -- I can't remember if it was Mr.
6 Soldo that provided us the name of Mr. Malone just
7 to confirm that Brian -- Mr. Boghosian was
8 speaking to the same person they were dealing
9 with.

10 So it may have been related to
11 confirming that that was the same person that Mr.
12 Boghosian was going to be speaking to, but other
13 than that I don't have any recollection of that
14 discussion. But that's my best understanding of
15 what that could have been about.

16 Q. So you may have had a
17 discussion with Mr. Soldo in which you mentioned
18 that Mr. Boghosian would be reaching out to
19 Mr. Malone; is that fair?

20 A. I can't -- sorry, I can't
21 go to that level of detail. I certainly believe
22 that I -- we confirmed, "we" being myself or
23 somebody else in the City, that that was the same
24 individual. So Mr. Boghosian had identified a
25 contact at CIMA. We were confirming, I believe,

1 that that was the same contact in order to make
2 sure that, you know, we were all talking about the
3 same person, and that was what was being confirmed
4 as far as I can understand there.

5 Q. Why was it important that
6 it be the same person? I'm just curious.

7 A. I don't know that it was
8 important. I think it was just confirming a fact.
9 I was speaking at one point that it was David
10 Malone. I think we were just making sure that we
11 were all talking about the same person. Not that
12 it was important but just to confirm accuracy of
13 information.

14 Q. Registrar, could you pull
15 up HAM62010. Images 2 and 3. So at the bottom of
16 image 2 there's an e-mail from Ms. MacNeil on
17 December 10th, 2018, and then the e-mail is at
18 image 3. You'll see in the first paragraph
19 there's an update about Mr. McGuire's meeting with
20 Domenic Pellegrini from audit. You'll see that
21 she says:

22 "Mr. McGuire is concerned
23 about answering any of
24 Domenic's questions, but
25 also doesn't want to be

1 criticized for
2 obstructing the audit
3 office in their job. I
4 advised him that it was
5 far better for Domenic to
6 be upset about not
7 getting any answers today
8 than it would be for Gord
9 to try and provide even
10 limited information. I
11 advised Gord that he
12 should cancel the
13 meeting, but if he
14 doesn't cancel the
15 meeting, he should simply
16 listen to Domenic's
17 concerns and questions,
18 but his answer to all the
19 pertinent questions needs
20 to be, I'm not in a
21 position today to provide
22 you with any answers to
23 those questions."

24 Did you have any discussions
25 with Ms. MacNeil about this approach that's set

1 out in her e-mail?

2 A. No, I did not.

3 Q. Did you agree with the
4 advice that was given in that paragraph?

5 A. So I wasn't consulted on
6 that approach in advance of her providing that
7 opinion.

8 Q. Did you come to a view on
9 whether or not that advice was good advice after
10 you got the e-mail?

11 A. At that point in time I
12 don't believe I looked to change or to comment on
13 her advice. I believe I was being provided with
14 that as an update.

15 Q. And you certainly didn't
16 indicate any disagreement with the advice that was
17 given?

18 A. No, but as I've indicated
19 previously, had I been asked, I can appreciate
20 where Ms. MacNeil was coming from, but -- and so
21 to better understand her advice, you need to speak
22 with her, but from my perspective, the role of
23 audit and staff's responsibility to deal with that
24 is important and I would not have advised -- I
25 wouldn't have approached it in the same way.

1 Q. You didn't think that it
2 was important for you to convey that to
3 Ms. MacNeil?

4 A. I believe that most -- my
5 understanding when this was coming to me is that
6 it had largely already been provided, and I didn't
7 feel it was appropriate to contradict her, and I
8 was not being asked to provide that confirmation
9 of approach.

10 Q. So because Ms. MacNeil
11 didn't ask for confirmation, you didn't think that
12 you should share with her your views on the advice
13 that was given?

14 A. At the time I wasn't
15 reviewing it for that purpose. Looking at it now,
16 I can appreciate that where she was coming from,
17 but I would have approached it in a different way
18 myself.

19 Q. But you didn't
20 communicate to Ms. MacNeil that you --

21 A. No, not at the time. No,
22 I did not.

23 Q. In the second paragraph
24 she says:

25 "Of note, Gord mentioned

1 that the new report indicated that wet weather
2 performance had worsened since CIMA's 2015 report?

3 A. So I understood that
4 those types of considerations were the purview
5 of -- in terms of safety and their implications,
6 were the responsibility of public works. It was
7 all information that was being provided both to
8 them and to Mr. Boghosian in order to provide his
9 assessment, so I was under the impression that all
10 the parties who needed to have that information
11 had it.

12 Q. And then in the third
13 paragraph you'll see in the third sentence, she
14 says:

15 "I spoke with Dana Lezau
16 this past Friday about
17 litigation she's handling
18 on behalf of the City.
19 She reviewed the
20 affidavit of documents."

21 And then in the last sentence
22 of that paragraph she says:

23 "I did not tell Dana any
24 details about the FOI
25 access request or the

1 documents discovered
2 therein as I think that
3 is best coming from Ron
4 and/or Nicole."

5 What was your understanding
6 why she was speaking with Ms. Lezau in reviewing
7 the affidavit of documents in that matter?

8 A. I don't know why she was
9 doing that or having that conversation. I can't
10 say that, I can't speak to that.

11 Q. Do you have a
12 understanding why the issue was best coming from
13 Ron and/or Nicole with respect to updating Ms.
14 Lezau?

15 A. No, I don't, except that
16 we were dealing with it at the level of the
17 council report and preparing that documentation,
18 but I'm not clear why she would have said that.

19 Q. In image 2, you'll see a
20 response from Mr. Sabo on December 10th, 2018 and
21 you'll see he says -- in the second line he says:

22 "I don't like the optics
23 if Gord goes away saying
24 legal said to cancel, but
25 I agree he should respond

1 if he's not actually able
2 to answer and give that
3 as his reason. Audit
4 here is internal and just
5 doing their work." (As
6 read).

7 And he goes on. So did you
8 share Mr. Sabo's concerns with optics?

9 A. I wouldn't have framed it
10 in that way but it was more reflective of my
11 understanding, which was that that Gord should
12 attempt to address the concerns of audit as best
13 he could. If he wasn't in a position to do so I
14 would have suggested similarly that he have that
15 discussion with them directly and that that should
16 be between him and his superiors rather than
17 relying on some advice that may or may not have
18 come from -- from legal on that aspect.

19 So I wouldn't have called it
20 optics. I would have said that's -- it's the same
21 idea, and that we shouldn't have been providing
22 that advice in terms of not complying with audit's
23 request. But again, I don't know, I didn't see
24 that as what Byrdena was doing.

25 Q. Registrar, could you go

1 to image 1. At the bottom of this page there's a
2 response from Ms. MacNeil December 10th, 2018.

3 In the second paragraph she
4 refers to Edward Soldo perhaps questioning using
5 CIMA for further matters relating to RHVP, given
6 the relationship between Brian CIMA and the fact
7 his wife, Betty Matthews-Malone, was the former
8 director operations at City of Hamilton during the
9 years we're now reviewing as it relates to
10 friction testing on the RHVP.

11 Do you recall any issue about
12 potential conflict of interest coming up?

13 A. I recall it being raised,
14 yes, through this e-mail.

15 Q. Did you form a view on
16 whether or not there was a conflict of interest?

17 A. So I recall not being
18 concerned that there was one. I understood she
19 was not involved in the procurement or the
20 direction of that work, but again I didn't frame
21 -- I didn't put my mind to it particularly but I
22 didn't understand it to be a concern.

23 Q. When you say "she" you're
24 referring to Mr. Malone's wife?

25 A. Yes, Ms. Matthews-Malone.

1 Q. Do you recall any
2 discussions beyond this one e-mail chain about
3 this potential conflict of interest issue?

4 A. I recall having other
5 conversations around it generally, but I can't
6 recall anything in particular about them other
7 than I don't recall having a particular concern.

8 Q. Who were those
9 conversations with?

10 A. Again, I don't recall
11 specifically. I believe it may have been with Mr.
12 McKinnon but I don't -- or Mr. Soldo, but I don't
13 recall.

14 Q. Registrar, could we go to
15 HAM61884, put up images 3 and 4. I just wanted to
16 show you the originating e-mail. You're
17 ultimately copied on this. Sorry, maybe it's 2
18 and 3. Okay.

19 So at the very bottom of image
20 2 you'll see on December 11th, 2018 there's an
21 e-mail from Charles Brown to Dan McKinnon about
22 the situation with the audit. I want to give you
23 an opportunity review it. You'll see at the top
24 of the image 2 that Mr. McGuire forwards this to
25 you and to Ms. MacNeil.

1 A. I see that.

2 Q. Then if we go to image 1,
3 Registrar, there's a response from Mr. Sabo on
4 December 12th discussing some possible
5 coordination with audit, FOI office and clerks on
6 the upcoming council report.

7 Did you have any discussions
8 with Ms. MacNeil, Mr. Sabo or Mr. McGuire or Mr.
9 McKinnon about the issue that was raised by Mr.
10 Brown in his e-mail to Mr. McKinnon?

11 A. No, I did not.

12 Q. Do you recall a
13 discussion with Mr. Sabo about possible
14 coordination?

15 A. No, I don't.

16 Q. At this time who from
17 legal was providing advice, if anyone I guess, to
18 the public works staff about how to deal with the
19 audit issue?

20 A. I don't know whether we
21 were requested to provide any particular advice so
22 I can't really speak to that. I wasn't aware of
23 anything certainly coming to my attention beyond
24 the e-mails that I was provided for information
25 here.

1 Q. So your understanding is
2 you were just receiving this as an FYI without any
3 action on your part?

4 A. Yes. Certainly that was
5 the language in the e-mail.

6 Q. You see at the top of the
7 page Mr. Sabo says in this second paragraph:

8 "Maybe we can discuss
9 that further. I'm
10 thinking we share
11 documents with audit --
12 FOI that we have already.
13 It's clear though that
14 audits requested a much
15 wider scope. We may need
16 to interview current or
17 former staff to get full
18 info." (As read)

19 Do you have any discussions
20 about sharing documents with audit and FOI that
21 were already available at this time?

22 A. I don't recall having any
23 discussion around this issue.

24 Q. Do you recall if you
25 agreed with Mr. Sabo's proposal?

1 A. I don't recall having
2 provide given consideration to that. I understood
3 from this e-mail that Mr. Sabo was dealing with it
4 and that I don't recall having any further
5 discussion.

6 MS. LIE: Commissioner, we can
7 take our afternoon break now if you would like.

8 JUSTICE WILTON-SIEGEL: Okay.
9 It's just about 3:30 so we'll return at quarter to
10 4.

11 --- Recess taken at 3:29 p.m.

12 --- Upon resuming at 3:45 p.m.

13 BY MS. LIE:

14 Q. Ms. Auty, I want to turn
15 quickly to the four reports that you provided to
16 Mr. Boghosian. Registrar, if you can turn up
17 HAM61863. So here we have an e-mail from
18 Ms. MacNeil to you on December 7th, 2018 attaching
19 three of the four main reports. There's the
20 Tradewind report, the CIMA -- sorry, November 2015
21 report and the RHVP pavement testing results. She
22 says she'll have to send the fourth report, which
23 is the Golder report, separately.

24 Are these the four reports
25 that you ultimately provided to Mr. Boghosian?

1 A. Yes, they are.

2 Q. And so we saw that you
3 had previously received the Tradewind report and
4 the 2015 CIMA report from Ms. MacNeil on
5 December 4th, 2018 which we went to that e-mail
6 earlier today.

7 Was this the first time you
8 received any of the pavement testing results from
9 Golder, the one dated November 28, 2018?

10 A. Yes, I believe so.

11 Q. What discussions did you
12 have about the 2017 Golder pavement evaluation?

13 A. I don't recall having any
14 particular discussions about that document.

15 Q. Were you aware of the
16 results of the pavement evaluation?

17 A. I believe I would have
18 reviewed it but I don't recall having any
19 particular discussions about it.

20 Q. How did you decide that
21 these were the reports that should go to Mr.
22 Boghosian?

23 A. I believe that those were
24 the reports that were recommended by Ms. MacNeil
25 as being the most appropriate.

1 (Speaker overlap)

2 Q. -- advice in that
3 respect?

4 A. Yes, I understood those
5 to be the primary reports that were the nature of
6 the FOI, that were responsive to the FOI and that
7 had come up as a result of that review.

8 Q. She refers to sending the
9 fourth report in parts. Was this the first time
10 you received the Golder report?

11 A. I believe so.

12 Q. Did you review the 2014
13 Golder report?

14 A. I believe I would have
15 given it a preliminary review but primarily
16 provided to David for his assessment.

17 Q. I want to turn to the
18 call that you had with Mr. Boghosian and Mr. Sabo
19 on December 11th, 2018. We do have some notes.
20 So, Registrar, if you could pull up HAM64355.
21 These are notes from the call with Mr. Boghosian?

22 A. Yes, they are.

23 Q. I see that Ms. MacNeil is
24 not listed as an attendee. Do you recall if she
25 was on the call?

1 A. I don't believe that she
2 was.

3 Q. Do you have any
4 recollection of why she wouldn't have been on this
5 call. She was on the call with you on December 7?

6 A. Yes. No, I don't, except
7 that we were transitioning into the liability
8 assessment and I don't believe she has involved in
9 that aspect of the file. She was there with the
10 FOI component.

11 Q. So from your perspective
12 Ms. MacNeil was dealing with the FOI component and
13 Mr. Sabo was dealing with the liability?

14 A. Yes, as the deputy city
15 solicitor on this level of a file yes, I was
16 working with him.

17 Q. I should have asked you
18 this sooner. Apart from that initial conversation
19 that you mentioned with Ms. Edwards, was
20 Ms. Edwards involved at all in this matter?

21 A. No, she was not.

22 Q. So do you have a general
23 recollection of this call on December 11th?

24 A. I do as captured by my
25 notes.

1 Q. So did you have any
2 recollection apart from what you're able to
3 recreate through your notes?

4 A. Not specifically, I don't
5 think so. Why (indiscernible) I'll let you know.

6 Q. So under point number 1,
7 "discussion with CIMA Brian Malone all the
8 reports/ongoing." And then a note that says:

9 "Everything they would
10 recommend is in 2015
11 report" and it says
12 "chart section 9.2
13 slippery when wet
14 flashing beacons when wet
15 and
16 implemented/partial/not
17 reviewed with David will
18 go to insulation to
19 liability. Friction
20 testing?" (As read)

21 What does that refer to?

22 A. I don't recall what that
23 specific note was relating to.

24 Q. Do you recall talking to
25 Mr. Boghosian about his discussion with

1 Mr. Malone?

2 A. Yes, I do. That was
3 captured at the beginning of that note. He was
4 relaying to us that he had spoken to Mr. Malone
5 and that he had confirmed with Mr. Malone that
6 CIMA's recommendations regarding the safety of --
7 surrounding that report were everything that they
8 would recommend were contained in that report, and
9 that we then continued our discussion of the 942
10 chart in the context of providing it as a --
11 discussing that in the context of mitigation
12 against liability.

13 Q. And so just so I'm clear,
14 the chart and that section 9.2, that's the chart
15 from the 2015 CIMA report that lists CIMA's
16 recommendations?

17 A. Yes, I think they refer
18 to them as countermeasures. Yes.

19 Q. Do you recall if Mr.
20 Boghosian told you if he had talked to Mr. Malone
21 about the Tradewind report or its results?

22 A. I don't recall
23 specifically whether that was discussed, but I do
24 believe that he would have had conversations with
25 him around the nature of that report, as that was

1 important to his opinion, and ultimately he refers
2 to that in his final -- or his draft and his final
3 opinion letter that he did have that conversation
4 with Mr. Malone.

5 Q. But you don't recall if
6 on the December 11th call he conveyed to you that
7 he had talked to Mr. Malone about the Tradewind
8 results?

9 A. No, but I understood that
10 would be the basis for him saying that they --
11 everything that they would recommend is in the
12 2015 report, so I understood that to on the basis
13 he had had a conversation with them regarding the
14 information in the Tradewind report.

15 Q. Do you have a
16 recollection of that or are you recreating that
17 based on your notes?

18 A. So that's my belief about
19 what -- I don't have a specific recollection but I
20 believe that is the basis of that conversation and
21 that note.

22 Q. What's the basis of your
23 belief?

24 A. That that would have been
25 necessary for him to be able to identify that to

1 us, that he would have needed to have spoken to
2 him and I -- and he did identify that in his final
3 report that he had had that conversation. And I
4 understood it have happened at point because
5 that's the information I had going into further
6 conversations.

7 Q. So when you say at this
8 point, are you referring to December 11th or
9 December 13th after you received the draft
10 opinion?

11 A. No, that was what I
12 understood to have been the case here.

13 Q. So you don't have a
14 specific recollection but you believe based on the
15 notes and the circumstances that Mr. Boghosian
16 would have told you that he had conveyed the
17 Tradewind results to Mr. Malone?

18 A. Yes.

19 Q. So there's a reference to
20 slippery when wet and flashing beacons when wet.
21 What are those referring to?

22 A. That I believe those were
23 referring to items in chart 9.2, that it was
24 unclear whether had been completed at the time we
25 spoke on the matter. That's what I understood

1 that to be, that there may be components of that
2 chart that we needed to confirm whether they had
3 undertaken that work.

4 Q. "They" being public
5 works?

6 A. They being public works
7 yes. That's the note that I had, "need PW to
8 confirm," and I transferred that into the action
9 items as well.

10 Q. So do you recall Mr.
11 Boghosian going through the list of safety
12 recommendations from CIMA and talking about
13 whether or not they would be implemented,
14 partially implemented, or not implemented?

15 A. I don't recall that
16 specifically but I do see it's captured in my
17 notes there.

18 Q. When it says "will go to
19 insulation" I think it says "for" or "to
20 liability"?

21 A. Yes.

22 Q. What is that referring
23 to?

24 A. So I understood that --
25 as I've indicated earlier the countermeasure and

1 whether or not they had been completed would go to
2 mitigation of any potential liability that the
3 City may have from the results -- resulting from
4 the Tradewind report being released.

5 Q. So if the City had
6 implemented all of the safety recommendations that
7 would help insulate the City from liability?

8 A. (Indiscernible), so each
9 factor was a contributing piece to the ultimate
10 mitigation. So however much we had would -- go
11 further so the more things we had done on that the
12 further we would go towards improving the City's
13 position with respect to mitigation and the
14 liability.

15 Q. And ensuring that CIMA
16 had the Tradewind report in terms of whether or
17 not that report affected those safety
18 recommendations, that would have been important
19 from a liability perspective?

20 A. Yes, and that was
21 ultimately what we were asking Brian to confirm in
22 terms of that assessment, right, so to bring those
23 two things together.

24 Q. Did Mr. Boghosian say if
25 he had sent the Tradewind report to Mr. Malone?

1 A. I don't recall him
2 identifying that as a particular action that he
3 had taken. He had indicated that he spoke to
4 Mr. Malone and had discussed those issues with
5 him.

6 Q. Did you have a discussion
7 with Mr. Boghosian about whether or not you or
8 someone else from the City should be sending the
9 actual Tradewind report to CIMA?

10 A. No. I just did (sic)
11 that Mr. Boghosian had the report, so I understood
12 he was having the necessary discussions to
13 understand the technical aspects of it and that he
14 was going to be in a position to provide us with a
15 draft opinion as soon as possible so we were
16 looking quickly to bring that information
17 together.

18 Q. So you would have relied
19 to on Mr. Boghosian to decide whether or not to
20 send the Tradewind report to Mr. Malone?

21 A. I would have relied -- I
22 did rely on Mr. Boghosian to provide the City with
23 the information and the legal opinion regarding
24 the liability impacts. He had the Tradewind
25 report, he had the information that CIMA -- all

1 the reports that he was provided, and he had my
2 authority to have those conversations with
3 Mr. Malone to help him assess and provide that
4 opinion. So yes, I relied on him to take the
5 necessary steps he felt were needed to provide the
6 City with his opinion. I understood he had done
7 that based on the conversations he had relayed to
8 us.

9 Q. Did he have your
10 authority to provide an actual copy of the
11 Tradewind report to CIMA?

12 A. He wouldn't have needed
13 that authority. He would have had -- by me
14 providing it to him, had he felt that that was
15 necessary I would have understood him to have
16 provided that if he felt it was necessary.

17 Q. So you left it to him to
18 decide whether or not Mr. Malone should receive an
19 actual copy of the Tradewind report?

20 A. I left it to him to
21 decide yes, whatever he needed to do to provide us
22 with the opinion, he was the expert in providing
23 that information to the City on that basis.

24 Q. And there's a note that
25 says, "friction testing ?? done." What is that

1 referring to?

2 A. I don't recall.

3 Q. Do you recall the 2015

4 CIMA report had recommended friction testing?

5 A. Yes, I did recall -- I do
6 recall that that was a component there.

7 Q. Where it says "done" do
8 you recall telling Mr. Boghosian or having a
9 discussion about whether or not that was actually
10 done?

11 A. I remember the issue
12 coming up. The fact that it's mentioned in my
13 notes, but I don't recall the specifics of the
14 discussion that we had around that.

15 Q. And then there's a note
16 that says "need PW to confirm." What is that
17 referring to?

18 A. That line and the arrow
19 is coming down from the chart discussion around
20 whether they were implemented, partial or not so
21 that note is then to confirm which aspects of the
22 chart 9.2 public works had either completed,
23 whether partially or not. So to confirm the
24 status of that work.

25 Q. Under "action items"

1 there's a note that says "PW to confirm 9.2 chart
2 implementation."

3 A. Yes.

4 Q. Whose action item was
5 that for?

6 A. Me.

7 Q. So the action item was
8 for you to have public works confirm the
9 implementation of the safety recommendations?

10 A. Yes. I wanted to -- I
11 understood, as I mentioned earlier, that they had
12 largely completed those items. I didn't know for
13 certain whether each and every item had been
14 completed and whether there were any outstanding.

15 My takeaway from this
16 conversation with Brian -- sorry, with Mr.
17 Boghosian was that in order to best situate the
18 City's -- the City from a liability perspective
19 that if there were any outstanding items from that
20 chart in 9.2 that it was his advice that those
21 items be completed as quickly as possible and that
22 was my takeaway from that meeting and that
23 discussion, that in order to best protect the
24 City's interest we should complete all of those
25 items as soon as possible if they weren't already

1 done, and that was the action item. My takeaway
2 was to seek that confirmation and to pass that
3 information on to public works.

4 Q. So you've referred to
5 potential litigation measures to mitigate against
6 the risk of liability. You've talked about
7 getting a general liability assessment from Mr.
8 Boghosian. What was the liability you were trying
9 to protect against?

10 A. So two components were
11 the potential for there being arguments of
12 discoverability of if there were any issues
13 related to the friction of the road. At least
14 that was my partial understanding at the time.
15 And then if there were any -- if Mr. Boghosian had
16 any other thoughts or opinions to offer certainly
17 then that was what I was seeking of him. To
18 advise what, if anything, he thought was potential
19 exposure or potential sources of liability
20 resulting from the release of the Tradewind
21 report.

22 And I understood him to say at
23 this point in time that the primary -- that his
24 advice was to best position the City was to make
25 sure those items in chart 9.2 were completed as

1 quickly as possible.

2 Q. When you say that there
3 were potential for arguments of discoverability,
4 are you referring to concerns about previous
5 matters -- what do you mean by that?

6 A. So my understanding was
7 that there may be potentially an issue with the
8 report being released and the fact it was produced
9 or created prior to the time that it was released,
10 and so there may be claims that might try and
11 assert that they would otherwise have brought that
12 as an issue or a potential in a claim, but they
13 didn't know about it until it was released. So
14 that was my general understanding and what I was
15 asking David to -- part of what I was asking David
16 to provide his assessment on.

17 Q. The concern was
18 collisions that may have happened on the Red Hill
19 Valley Parkway previously and potentially
20 plaintiffs coming forward now that the Tradewind
21 report was released; is that fair?

22 A. I think that summarizes
23 it.

24 Q. So, Registrar could you
25 put up image 1 and 2 together so we could have the

1 full note.

2 So at the bottom of image 1 it

3 says:

4 "Road surface MSA not
5 common in NA longer life
6 less noisy, larger
7 aggregate pieces" I think
8 it says, "don't condense
9 micro ponding reduced
10 down are arrow
11 coefficient friction."

12 What is this note reflecting?

13 A. Just -- so you're at the
14 bottom with number 2?

15 Q. Yes, we have a
16 transcription too if you prefer to look at that.

17 A. Sure. I think we were
18 just discussing the nature of the road surface at
19 that point, the type of asphalt that was used and
20 some of the concerns or other aspects of its
21 nature. I don't really have any other
22 recollection on that.

23 Q. Is that Mr. Boghosian
24 conveying to you what he's learned from
25 Mr. Malone?

1 A. I don't believe so. I
2 believe that's him digesting the information that
3 he had been provided and identifying that, but I
4 can't be certain. I don't recall specifically.

5 Q. This is information
6 coming from Mr. Boghosian though --

7 A. Yes.

8 Q. -- from you.

9 A. No, this is me making
10 notes of what Mr. Boghosian is speaking about.

11 Q. And so you don't recall
12 if Mr. Boghosian is speaking from his own
13 knowledge or based on a conversation with
14 Mr. Malone?

15 A. Yeah, that's my
16 understanding. I believe that the first point
17 speak to his discussion with Mr. Malone, but again
18 I can't recall specifically.

19 Q. You say the first point,
20 you mean not common in inate (ph). Is that what
21 you're referring to?

22 A. No, the number 1. So the
23 information that follows the number 1 in the
24 margin. This was then as the next issue, so
25 something else he was talking about.

1 Q. Do you recall -- there
2 was a discussion with Mr. Boghosian about reduced
3 coefficient of friction arising from the road
4 surface?

5 A. If it's captured in my
6 notes I don't recall anything beyond that on this
7 issue.

8 Q. And then on the second
9 page it says "recourse/review choice for MSA."
10 What is that referring to?

11 A. So I believe that is
12 referring to Mr. Boghosian's thoughts around the
13 potential for there to be a concern around the
14 choice of using MSA at the beginning, but I don't
15 recall specifically.

16 Q. But that was probably a
17 comment from Mr. Boghosian?

18 A. I believe so.

19 Q. And then where it says
20 "liability extend to which City implemented
21 recommendation will determine." (As read)

22 A. Yes. So that again was
23 my takeaway from the conversation which was the
24 extent to the City's potential exposure would be
25 mitigated by the extent to which they had

1 undertaken the measures that were identified in
2 9.2.

3 Q. Where it says
4 "? Enhanced police enforcement," and then there's
5 a star that says "concerns." Was there about
6 discussion about potential enhanced police
7 enforcement?

8 A. Yes. So I understood
9 that both the friction of the roadway and the
10 speeding that was - the drivers would engage in on
11 that road were factors in that that contributed to
12 the wet weather collisions, and this was a further
13 suggestion on how to potentially reduce that
14 factor by having enhanced police enforcement to
15 address the concerns around speeding.

16 Q. Was that a comment that
17 Mr. Boghosian was conveying to you that came from
18 Mr. Malone?

19 A. I believe so, but that
20 may have been his suggestion based on his
21 conversations with Mr. Malone or based on his own
22 review. I can't remember for certain which one.
23 That was certainly Mr. Boghosian identifying that
24 as a potential.

25 Q. So this would have been a

1 potential of interim measure?

2 A. Yes, it was one of the
3 considerations that were -- that was put forward
4 by him.

5 Q. I take it Mr. Boghosian
6 is not a safety expert so he wouldn't be giving
7 advice on public safety measures?

8 A. So Mr. Boghosian is an
9 expert in municipal liability surrounding
10 roadways, so I'm not sure whether that would have
11 been something that he would've felt comfortable
12 providing advice on. So I can't speak to that.
13 But you're right, he's not a safety expert but he
14 does have expertise in this particular area of
15 liability, so that would be something that he
16 would need to answer.

17 Q. There's a little star and
18 it says "concerns." Do you know if there were
19 concerns about enhanced police enforcement?

20 A. No, I don't think there
21 were concerns about enhanced police enforcement.
22 I do think there were concerns about speeding that
23 what taking place on the road.

24 Q. I see. Just before I go
25 to the next note, where there's reference to MSA,

1 I take it you're actually referring to SMA?

2 A. Likely, yeah, sometimes
3 -- switch letters around.

4 Q. So then you'll see a
5 little circle that says "BM contribution to wet
6 road collision." It says "speed," I think it's
7 "curves," and then "close proximity/spacing of
8 exists/onramps"?

9 A. Sure, that could be
10 curves.

11 Q. So do you recall -- what
12 is this note referring to?

13 A. This note is referring to
14 Mr. Boghosian relaying to me, Brian Malone, as the
15 note there for BM is for Brian Malone, relaying
16 the contributions to wet weather collisions then
17 Mr. Malone conveyed to him.

18 Q. So you understood on
19 December 11 that Mr. Malone had done road surface
20 as a contribution to wet road collisions?

21 A. Yes, I understood that
22 those were the contributing factors in no
23 particular order.

24 Q. So Mr. Boghosian didn't
25 tell you there was a ranking?

1 A. That was not my
2 understanding from the note that I took here.

3 Q. Do you recall if Mr.
4 Boghosian gave you a ranking?

5 A. I don't recall that he
6 did.

7 Q. So you don't recall
8 either way if this -- if he had conveyed to you a
9 ranking or if this was just a list of --

10 A. My understanding was this
11 was not a ranked list, that this was a list of
12 contributing factors. So I did not have the
13 understanding that that was a ranked list.

14 Q. There's a note that says,
15 "despite implementing collisions haven't improved
16 have" and there's a down arrow. Is that Mr.
17 Boghosian conveying that information to you?

18 A. Yes, I believe so.

19 Q. Did that cause you any
20 concern, that despite implementing the measures
21 that were set out in -- whatever measures were set
22 out in the CIMA report that collisions hadn't
23 improved and they had gotten worse?

24 A. So again, this was
25 information that was being provided to me. I

1 didn't understand that to be a factor or a
2 contributing element to Mr. Boghosian's liability
3 assessment. We were continuing to have a further
4 discussion around the particular items in section
5 9.2, and that we would have further discussions at
6 that point. It wasn't conveyed to me in the
7 context of being an issue with respect to his
8 opinion.

9 Q. You're saying -- I just
10 want to make sure I understand. So when Mr.
11 Boghosian conveyed to you that this --
12 implementing some or all of the CIMA safety
13 recommendations, collisions hadn't improved, you
14 didn't see that as being relevant to the liability
15 assessment. Is that what you're saying?

16 A. I didn't -- he didn't
17 present it to me in that context. He was
18 providing that information but not in -- it didn't
19 come in the context of his liability of
20 assessment.

21 Q. What does that mean in
22 terms of (indiscernible)?

23 A. I don't --

24 Q. Liability assessment and
25 not?

1 A. No, I don't know what
2 particular relevance that statement had with
3 respect to his liability assessment. I was
4 writing down the things he was discussing but I
5 don't recall how that fit into his liability
6 assessment.

7 Q. Was it concerning to you
8 to hear that collisions hadn't improved despite
9 implementing the safety recommendations -- some or
10 all of the safety recommendations?

11 A. I'm not sure what you
12 mean by concerning. In what regard?

13 Q. Did it cause you concern?

14 A. I don't think I had any
15 particular concern about it. It was information
16 that I understood had been provided and was being
17 addressed by public works staff. My concerns were
18 relating to providing a legal opinion and I didn't
19 understand from David's discussion that this was a
20 particular factor in his assessment.

21 Q. And then there's a note,
22 there's "flashing/beacon, cat eyes, flashback
23 speed sign," and on the right side it says "all of
24 section 9 detail section 45." What is that
25 referring to?

1 A. That's going back to the
2 discussion of the countermeasures that were
3 identified in the CIMA report as potential
4 mitigation factors and looking at what the
5 specifics of that recommendation -- those
6 recommendations were.

7 Q. So this is again going
8 back to the action item you had?

9 A. Yes, that's my
10 understanding.

11 Q. Then it says "Thursday,
12 12/1 p.m." Do you recall discussing another call
13 with him?

14 A. I don't. I suspect that
15 that was what that was referring to but I don't
16 recall specifically. I know we had identified an
17 opportunity to hopefully speak again.

18 Q. So we had looked at the
19 e-mail from December 10th that Mr. Boghosian sent
20 to you about suggesting that he get CIMA
21 consultant input about interim safety measures and
22 conveying the opinion to you. Was your
23 understanding that that's what he did when he
24 spoke with Mr. Malone?

25 A. Yes. So that's what I

1 understood him to convey to us in this call, that
2 he had those conversations with Mr. Malone, he had
3 discussed with him what he needed to be able to
4 provide preliminary viability assessment based on
5 this conversation, and the takeaway from that was
6 in order -- the extent to which the City was able
7 to implement those recommendations and that those
8 recommendations constituted everything that CIMA
9 would recommend so that if we implemented those
10 that we would be putting the City in the best
11 position with respect to liability and mitigating
12 any potential additional risk.

13 Q. Did you have any
14 understanding of whether or not CIMA had an
15 opinion on whether interim safety measures would
16 be needed?

17 A. Again, I understood that
18 what I had asked Brian to do, which was to use
19 Mr. Malone to help him understand the liability
20 position of the City, to have those conversations
21 in the context of the Tradewind report, I
22 understood him to have done that and to have
23 conveyed that at least in the preliminary form
24 verbally to us in this call.

25 Q. I think your evidence was

1 that any potential interim safety measures that
2 was in the purview of the public works staff?

3 A. Yes, and that we were
4 having these conversations around the relationship
5 between those measures that were recommended and
6 their impact on the City's liability, and that's
7 the conversation that is noted here.

8 Q. Registrar, could we pull
9 up HAM62510. Here at the bottom of the page we
10 have an e-mail from Mr. McGuire. This is on
11 December 12, 2018, so the day after you spoken
12 with Mr. Boghosian and Mr. Sabo, and he says --
13 the subject is:

14 "CIMA is in the office
15 now. Should we get a
16 call going with Brian.
17 He's in office."

18 He sends this to you and Ms.
19 MacNeil. Then we have a response from Ms. MacNeil
20 on December 12, 2018 that says:

21 "I haven't received any
22 direction on this yet so
23 we won't be in a position
24 to speak with Brian
25 today. Thanks for the

1 heads up though."

2 Did you have any understanding
3 why Mr. McGuire was asking you and Ms. MacNeil
4 about getting a call going with Brian?

5 A. No, I did not.

6 Q. When Ms. MacNeil responds
7 that she hasn't received any direction on this yet
8 so we won't be in a position to speak with Brian
9 today, do you have any understanding why
10 Ms. MacNeil responded that way?

11 A. No, I don't.

12 Q. Were you aware of any
13 direction that may have been given to public works
14 about speaking with CIMA?

15 A. No, I don't. I don't
16 have any -- I did not provide any direction that
17 they couldn't speak to them so I don't know what
18 that was about.

19 Q. Who was Ms. MacNeil
20 receiving direction from at the time on this
21 issue. When I say "this issue" the Tradewind
22 report matters.

23 A. So had there been
24 direction it would have come from myself or Mr.
25 Sabo, that I don't recall providing her any

1 direction that Gord could not speak to CIMA
2 particularly relating to any safety concerns that
3 he may have.

4 Q. So you're copied on Ms.
5 MacNeil's response. Were you surprised to see
6 Ms. MacNeil respond in this way?

7 A. So at the time I don't
8 recall having a particular reaction to the e-mail.
9 I was reviewing -- speaking to David dealing with
10 other matters and moving towards having a
11 conversation with staff on the 14th. So I don't
12 recall having a particular reaction to that
13 e-mail.

14 Q. You certainly didn't --
15 did you at any point tell Mr. McGuire it's okay,
16 you should go and speak with CIMA if you need to?

17 A. No, but I also did not
18 say anything to the contrary. So at no point in
19 time did I say that he could not speak to CIMA if
20 he had wanted to. Frankly, it's my expectation
21 that he would have had those conversations and had
22 I provided that kind a direction he would have --
23 either if he hadn't been in agreement with it or
24 had any concerns with it he would have clearly
25 stated those concerns and taken that to either his

1 general manager or the City manager had he had
2 concerns about such a direction.

3 Q. But you would have seen
4 this response from Ms. MacNeil at the time?

5 A. I believe I would have
6 seen it. I also receive a great number of e-mails
7 in a day. I don't recall having any particular
8 reaction but I do know we were working towards
9 having this information and having a conversation
10 which Gord was a party to on December 14th where I
11 conveyed all of my -- the work I had been doing,
12 and similarly had discussions with public works
13 staff around the information that they had been
14 gathering from CIMA directly and having those
15 conversations around the safety audit and the work
16 that was ongoing.

17 So I was working towards
18 that meeting and having that discussion. So I
19 don't recall having a particular reaction or
20 review of this e-mail.

21 Q. Is it possible there were
22 some discussions which suggested that legal would
23 be talking to public works about this on December
24 14th so let's just hold off for now?

25 A. I don't recall having

1 those discussions. I believe that was what I was
2 operating under, but I can't speak to what was in
3 Ms. MacNeil's mind or what we -- I don't recall
4 having any particular discussions with her about
5 that.

6 Q. But you're saying in your
7 mind you were thinking, you were planning on
8 updating public works on where things stood from a
9 legal perspective on December 14th and so --

10 A. Yes, I believe we had one
11 meeting scheduled, if it hasn't been scheduled
12 already.

13 Q. So in your mind you were
14 planning on having this meeting so it's possible
15 that you would just want public works to hold off
16 until you have that meeting and then you can go
17 from there. Is that a fair way of characterizing
18 it?

19 A. No, because at no point
20 in time was it a consideration of mine that Mr.
21 McGuire couldn't speak to CIMA. That is not
22 something that I considered at any point in time.
23 So I don't know where that comes from. I don't
24 know what information or -- that's certainly not
25 consistent with my recollection or any of the

1 documents that I have that suggest that they had
2 direction that they could not speak to CIMA about
3 a safety issue or anything that they needed to
4 speak to CIMA about. So I don't have any other
5 information on that point.

6 Q. But the e-mails that you
7 had exchanged with Mr. Boghosian in which Mr.
8 Boghosian suggests that he obtained an opinion
9 from CIMA and communicated it to you through his
10 opinion letter as a way to prevent disclosure or
11 to prevent access to the correspondence, that
12 would suggest that there was some consideration
13 given to how CIMA should be approached and by who.

14 A. That was Mr. Boghosian's
15 thoughts, and that is I think fairly common when
16 you're having conversations with an expert between
17 the lawyer and an expert, that those conversations
18 would be privileged as a matter of course. I'm
19 not really sure I understand the question.
20 Certainly no direction was given to anybody else
21 about whether they could or couldn't speak to CIMA
22 about the normal courses of their work. So I
23 think those two things are separate.

24 Q. We have here some e-mails
25 that suggests that Ms. MacNeil is under the

1 impression that she needs to get a direction
2 before public works can go off and talk to CIMA.

3 We also have e-mails between
4 you and Mr. Boghosian in which you're discussing
5 how to approach CIMA, how to obtain -- how to
6 approach obtaining CIMA consultant input on
7 interim safety measures. These are happening at
8 the same time.

9 So your evidence is that you
10 were totally fine with public works to go off and
11 talk to CIMA on their own and you have no idea why
12 Ms. MacNeil would respond in this way?

13 A. That's correct.

14 Q. Registrar, could we go to
15 HAM55560, image 8. So this is an internal
16 timeline that was prepared by City staff, and the
17 very top it says under the December 13, 2018 it
18 says:

19 "Solder (sic) reaches out
20 the second safety
21 consultant for
22 independent review of the
23 work/issues just to see
24 if available (Auty say
25 not required to do this.

1 (indiscernible) road
2 safety engineering." (As
3 read)

4 A. Who did you say drafted
5 this document?

6 Q. This timeline came from
7 -- Registrar, if could you pull up HAM55559, next
8 to this. Here -- this is -- for your reference,
9 this timeline is an attachment to an e-mail from
10 Dinah Cameron dated May 22nd, 2019.

11 A. Sorry, that was sent to
12 Ms. Racine.

13 Q. To Ms. Racine copied to
14 Ms. Graham, yes.

15 A. I didn't -- I wasn't
16 provided with this at that time.

17 Q. But I just wanted to
18 understand if you recall having any discussions
19 with Mr. Soldo about reaching out to a second
20 safety consultant?

21 A. No, I wasn't asked to
22 review this document or provide any comments on
23 it. I can't comment on the accuracy or --
24 certainly I don't recall having any discussion to
25 that effect as identified there. I don't recall

1 -- I did not have that discussion.

2 Q. So you're saying you did
3 not have any discussion with Mr. Soldo about
4 reaching out to a second safety consultant just to
5 see if they're available?

6 A. No.

7 Q. And so you also -- your
8 evidence is also you did not tell Mr. Soldo that
9 this wasn't required?

10 A. That's correct.

11 Q. You have no idea why this
12 entry would be in this timeline?

13 A. That is also correct. I
14 don't recall being asked to review this for any
15 purpose.

16 Q. Well, you did for the
17 purposes of this inquiry.

18 A. Yes, but not prior to
19 this.

20 Q. Right, okay.

21 If it helps, our understanding
22 is that Dinah Cameron and Jasmine Graham were the
23 ones who were involved in preparing this timeline,
24 if that helps you at all.

25 A. No, I don't have any

1 recollection or any input into that document.

2 Q. Would you have expected
3 Mr. Soldo to talk to you about retaining a
4 potential safety consultant?

5 A. I would have expected
6 that if Mr. Soldo had thought he needed to consult
7 a safety expert that he would have done so. He
8 did not need to seek my approval to get the
9 information he needed to do his job, had he felt
10 that that was necessary.

11 Q. Because you don't recall
12 any discussions with public works staff about who
13 should be contacting safety consultants around
14 this time?

15 A. That's correct. It was
16 my understanding, frankly, the opposite, that they
17 were having conversations with CIMA and they were
18 having -- doing that review with CIMA following up
19 on their 2015 review, I understood that to be
20 taking place at the time, and certainly by the
21 meeting on the 14th I was made aware of that.

22 MS. LIE: Commissioner, I'm
23 going to be moving on to another topic so I wonder
24 if we should just break for the day.

25 JUSTICE WILTON-SIEGEL: Okay.

1 That's fine. We'll stand adjourned for the
2 evening and will return tomorrow at 9:30. Are you
3 proposing a breakout room for counsel?

4 MS. LIE: Yes, if we could do
5 that, Registrar, that would be great.

6 JUSTICE WILTON-SIEGEL: So
7 otherwise we'll stand adjourned until 9:30
8 tomorrow morning. Thank you. Have a good evening
9 all.

10 --- Whereupon at 4:29 p.m. the proceedings were
11 adjourned until Tuesday, October 4, 2022 at
12 9:30 a.m.

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