

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Friday, October 7, 2022 at 9:32 a.m.

VOLUME 65

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1 Arbitration Place Virtual

2 --- Upon resuming on Friday, October 7, 2022

3 at 9:32 a.m.

4 MS. BRUCKNER: Good morning,
5 Commissioner, may I proceed?

6 JUSTICE WILTON-SIEGEL: Yes, I
7 would be grateful if you would proceed.

8 MS. BRUCKNER: Today we have
9 two witnesses, Mr. Pellegrini from the office of
10 the City auditor, and Ms. Edwards. We're
11 beginning today with Mr. Pellegrini's evidence and
12 he has not yet been affirmed.

13 AFFIRMED: DOMENIC PELLEGRINI

14 EXAMINATION BY MS. BRUCKNER:

15 Q. Good morning,
16 Mr. Pellegrini. Thank you very much for joining
17 us today.

18 A. Good morning.

19 Q. I would like to start off
20 with a bit of background. Are you able to tell me
21 a little bit about your education and professional
22 qualifications.

23 A. Yes. I'm a professional
24 accountant. I got a BSC in biochemistry in 1980
25 from McMaster, an MBA from McMaster in 1984. I

1 got my CMA in 1995 from the Society of Management
2 Accountants. I got my certification -- or my
3 certification in internal audit in 2005, and then
4 I got my CPA in 2014 when the accounting
5 association's went -- so that's my education
6 background.

7 In terms of my professional
8 background, I started with the City in 1989 as a
9 revenue analyst. I was there for about eight
10 years, and then I was doing budgets for two years
11 as a budgets analyst. I was a financial analyst
12 in budgets. And then I moved over into audit in
13 late 1999, early 2000, and I've been at it ever
14 since.

15 Q. What is your current role
16 with the office of the City auditor?

17 A. Actually I'm retired but
18 I've come back as a senior auditor.

19 Q. When did you start in
20 that role as a senior auditor?

21 A. 2010.

22 Q. When did you retire?

23 A. In 2021, September
24 of 2021.

25 Q. When did you return to

1 the City as a city auditor?

2 A. Late February of 2022.

3 Q. Is your current role on
4 contract?

5 A. Yes.

6 Q. So just to make sure that
7 I have the dates right, you were senior auditor
8 with the office of the City auditor from 2010 to
9 September 2021, and then you returned on contract
10 in February 2022?

11 A. Yes.

12 Q. And before that it's my
13 understanding that you were an intermediate
14 auditor from about 2002 to 2009?

15 A. Yes.

16 Q. And a staff auditor
17 before that from 1999 to 2002?

18 A. Correct.

19 Q. Are you able to give me a
20 high level description of your role as a senior
21 auditor with the office of the OCA?

22 A. Basically I'm responsible
23 for -- like, I'm given an assignment, I'm given an
24 audit to look at, and basically what I do is I
25 look at -- I gather as much information as I can,

1 put together scope and objectives, and then I
2 proceed with doing the work.

3 So I will look at risks and I
4 will look at any mitigations that people, controls
5 that have been implemented to guard against those
6 risks. And then what I do is I evaluate the --
7 what's been done -- I evaluate while people
8 have -- that their controls are working. So I'm
9 looking at all kinds of information, I gather -- I
10 need all kinds of data and I get it from various
11 sources. Sometimes I get it from people directly,
12 other times I get it from systems themselves other
13 times just reading and understanding, trying --
14 understanding about the processes are like.

15 Q. Who did you report to as
16 senior auditor?

17 A. I report to Charles Brown
18 and also to Bridget Minard who is the deputy City
19 auditor. And Charles Brown is the City auditor.

20 Q. What was your role in the
21 value for money audit of city roads in 2018?

22 A. I was basically the lead
23 auditor in that case. It was a comprehensive,
24 very in-deputy audit, and my role was to basically
25 find out as much as I could about road -- how

1 roads are deteriorating, how roads are maintained,
2 how roads are evaluated by staff, how they
3 determine which roads to repair first and which
4 ones they think they can get away with, letting
5 them deteriorate a bit further before getting to
6 them.

7 The City had about 6,000 lane
8 kilometres of roads so it's a very large network,
9 and the staff is small, small-ish, and so they had
10 to prioritize their work. And so my role was to
11 evaluate whether or not the money that was being
12 spent on roads was giving us good value in terms
13 of how well the roads were preserved and how well
14 they were maintained and how well they were
15 repaired.

16 Q. What triggered the value
17 for money audit?

18 A. Basically we started out
19 in 2017 with an idea that perhaps there was bid
20 rigging (ph) going on in construction. We've gone
21 a number of road construction audits, but those
22 were smaller and that was before Charles came in.
23 The prior auditor, the prior audit manager,
24 director would look at various narrow scopes in
25 terms of construction audits, and when Charles

1 came in he had an idea that maybe there was some
2 bid reading going on in terms of contractors and
3 we looked at that at a level. We determined that
4 it was very -- well, it was -- it may have
5 happened, but we were able to determine that it
6 was actually occurring. And then Charles said
7 well, we could actually look at how roads are
8 deteriorating and whether or not we are getting
9 good value for the way we maintain the roads and
10 that's basically how it worked. So it was a long
11 process and things moved gradually into that.

12 Q. Registrar, could you
13 please take us to overview document 9A, image 63
14 to 64, paragraph 150.

15 So this is the paragraph that
16 you'll see, 150 goes over onto the next page. So
17 on August 24th, 2018, you e-mailed Mr. McGuire and
18 Mr. Andoga under the subject line "Value For Money
19 Questions on Roads," and you say in the first
20 paragraph there, still on page 63, value for
21 money -- sorry:

22 "In the past couple of
23 weeks I've had a couple
24 of meetings with your
25 staff. The objective of

1 these meetings was to
2 look at how pavement
3 performance is tracked
4 and managed, both
5 holistically and for each
6 segment."

7 Do you recall if this was the
8 first exchange with Mr. McGuire that you had about
9 the value for money audit?

10 A. That was the first formal
11 exchange that I had with him. Like as I said
12 before, what I try to do is just get an idea of
13 how things are progressing or how things are done
14 and so I would talk to people and talk to various
15 staff. This is the first time that I actually put
16 something in writing and said this is the kind of
17 thing that we're looking at.

18 Q. So you said this was the
19 first formal communication. Had you spoken to
20 Mr. McGuire about meetings with his staff or the
21 value for money audit on a less formal basis
22 before you sent this e-mail?

23 A. I'm sure that I spoke
24 with his staff. I'm pretty sure I spoke with him
25 as well, but it was not -- it wasn't -- like it

1 was verbal, it wasn't a formal written
2 presentation in terms of what I wanted to do, what
3 I was thinking of doing.

4 Q. Do you recall which
5 members of Mr. McGuire's staff you met with prior
6 to sending this e-mail?

7 A. I spoke with Alan Jasbach
8 (ph) back and I spoke with Richard Andoga. I may
9 have spoken with Erica Waite. I don't remember
10 exactly. But I know the other two I did speak
11 with.

12 Q. Is that then focus (ph)
13 and asset management?

14 A. Yes.

15 Q. Registrar -- actually no,
16 you can leave this up. So the next line is:

17 "A literature review
18 indicated that MTO and
19 the municipalities have
20 reported problems with
21 underperforming pavements
22 so audit services is
23 interested in knowing
24 whether the City has such
25 a problem either on

1 specific roads or
2 systemically. More
3 importantly, audit
4 services would like to
5 determine whether the
6 City has a performance
7 management system in
8 place that would reveal
9 such problems."

10 What literature review are you
11 referencing there?

12 A. Well, basically I did all
13 kinds of searches, internet searches, I looked at
14 the association of -- I forgot the industry
15 association that they are called, but they
16 basically are responsible for producing asphalt.
17 So it was all kinds of searches, like I said. I
18 also looked at what other cities have done, city
19 of Toronto, city of Ottawa, cities out west. So I
20 looked at the audits that they had done and I
21 looked at some of the information that they had
22 provided. So it was a varied search, quite
23 extensive.

24 Q. So you go on to say:

25 "Audit services realizes

1 that asset management has
2 a system of track being
3 pavement conditions at
4 different points in time
5 and reporting these and
6 this is very good.

7 However, we're wanting to
8 also examine whether the
9 performance of existing
10 pavement infrastructure
11 is being tracked against
12 how is it expected to
13 perform."

14 At this point in time did you
15 have a reason to believe that asset management was
16 not tracking the performance of existing pavements
17 against their expected performance?

18 A. I thought that that may
19 have been the case because our roads, as you
20 probably know, are pretty bad at the city of
21 Hamilton. So there are some major thoroughfare
22 that there is a lot cracking, there is a lot of
23 rutting, so my perception was that, yeah, the
24 roads were not in as good a shape as they could
25 have been. And you hear oftentimes the CAA puts

1 out the worst roads in Ontario and Hamilton
2 sometimes -- Hamilton roads are sometimes featured
3 on that list.

4 Q. Registrar, you take this
5 down, and if you can take us over on to page 64
6 and call out -- call out the first two paragraphs
7 so the context is there.

8 So you'll see that you use the
9 Red Hill Valley Parkway and LINC as examples when
10 you're asking about whether pavement segments are
11 tracking predicted cycles of treatment, and you
12 reference the Stantec report.

13 A. Yes.

14 Q. And I can call this up
15 for you if you want to confirm eyes on the
16 document, but is that the LINC and Red Hill
17 project sustainability plan from 2007 that you're
18 referencing?

19 A. Yes. That's one of the
20 literature searches that I did.

21 Q. And that came up in your
22 literature review?

23 A. Yes.

24 Q. When you were doing the
25 literature review was there a system or an archive

1 of documents within the City that you were looking
2 at?

3 A. Not within the City. I
4 looked at anything that I could have. I tried to
5 get any information from various sources that I
6 could have.

7 Q. Do you recall where you
8 found the Stantec report?

9 A. Not off the top of my
10 head. I think it may have been just -- it may
11 have been just a Google search that I did. I
12 could be wrong, but I think that's how I found it.

13 Q. Thank you.

14 Registrar, you can take this
15 down and if you can take us to overview
16 document 9A, image 66, paragraph 153, please.

17 So this is later the same day,
18 August 24th, that you had sent your e-mail.

19 Mr. McGuire forwards your e-mail to managers in
20 engineering service, copying his resistant Diana
21 Cameron. You are not copied on this e-mail. And
22 you'll see paragraphs 3 to 5 in this e-mail he
23 says:

24 "My main concern is that
25 the auditor was on this

1 floor, and talking with
2 staff about our programs
3 without my office having
4 any knowledge of this
5 inquiry. I've had a
6 conversation with some
7 managers and this is
8 meant to send the same
9 message to all teams.
10 When anyone approaches
11 staff regarding
12 compliance, risk,
13 regulatory or audit
14 functions then staff need
15 to be aware they must
16 escalate the inquiry to
17 the manager level at a
18 minimum. We will comply
19 with all requests but we
20 need to be aware of the
21 message we are sending.
22 The manager will decide
23 if this requires higher
24 level attention and
25 engage me as required."

1 I know you're not copied on
2 this e-mail, but did Mr. McGuire approach you to
3 express concerns that you had spoken to his staff
4 without his knowledge?

5 A. No, actually when I read
6 this I was a bit surprised.

7 Q. Do you recall if you had
8 any discussions with Mr. McGuire about this e-mail
9 or the value for money audit in late August 2018?

10 A. Not about this e-mail.
11 I'm sure I spoke with him about the value for
12 money audit, probably on an informal basis like
13 without -- in person or by phone. In terms of --
14 yeah, that's basically all I did.

15 Q. Was it your practice to
16 do an introductory meeting of some kind with
17 directors when you initiated an audit?

18 A. Yes, it's our practice.
19 It's our practice also to basically when we start
20 an audit we inform the general manager of the
21 department that we're doing an audit, and we go
22 down to the director level and inform them that
23 we're doing an audit.

24 Sometime -- usually it's a
25 formal like e-mail that goes out. Sometimes it's

1 just more informal -- usually with the general
2 manager it's very formal. With a director it may
3 be more informal because we assume I guess that
4 the general manager will have talked to his
5 directors and said audit is going to be doing
6 something in your area, looking at something in
7 your area.

8 Q. Do you recall if you did
9 a meeting of that nature with Mr. McGuire?

10 A. I don't recall if it was
11 a formal meeting, but I'm sure I would have spoken
12 with him.

13 Q. Do you recall when that
14 would have been?

15 A. No, I don't.

16 Q. Registrar, can you take
17 us over onto the next page to paragraph 154.

18 So Mr. Andoga forwards your
19 e-mail to City staff and he says:

20 "Everyone, please refrain
21 from dealing with and/or
22 talking to anyone from
23 audit services. If you
24 are contacted please
25 refer them to upper

1 management."

2 Were you aware that staff in
3 engineering services were directed to refrain from
4 dealing with and/or talking to audit services
5 staff?

6 A. Not -- I was aware after,
7 like, basically I was introduced shortly after --
8 probably around August, late August, I was
9 introduced to Mr. Sharma, Dipankar Sharma, and
10 basically I was told that he was my main point of
11 contact. And I was told basically the same kind
12 of thing that we want to be able to get all the
13 information that you need, please go through
14 Dipankar so that we have one main point of contact
15 and you're not basically disturbing other people
16 that are doing work that is very -- that they need
17 to concentrate on. And they don't need to be
18 distracted is what I was told and so I should
19 speak with Dipankar. Again this was more
20 informal. I didn't receive an e-mail; I just was
21 told.

22 Q. Is it a standard practice
23 for public works department divisions to appoint a
24 main point of contact for an audit?

25 A. No, because like I said,

1 I did a number of like construction audits, road
2 construction audits with them before, and
3 basically at that time the scope was more limited.
4 They were not value for money audit. They were
5 simple compliance audits, whether or not the rules
6 had been followed in terms of the contracts, the
7 road contracts, how they were assigned. And we
8 looked at very specific, very limited scope.

9 In those audits basically we
10 would send out an e-mail to the general manager.
11 The general manager would forward to the director.
12 We would have an introductory meeting and we would
13 proceed and they would last maybe be three months,
14 three and a half months and that was it.

15 This was a more comprehensive,
16 wider scope audit, and I guess Mr. McGuire thought
17 that it was too wide and he wanted to limit the
18 amount of distraction or what he felt was
19 distraction to something that he could manage
20 better.

21 Q. Were you dealing with
22 other public works groups beyond engineering
23 services with respect to the value for money
24 audit?

25 A. Not with respect to this

1 one. It was mostly with engineering services. So
2 I looked at Susan Jacobs and Gord McGuire and then
3 his staff.

4 Q. After August 2018 in your
5 view did you have more difficulty getting answers
6 from engineering services staff with respect to
7 value for money audit?

8 A. Yes, I did.

9 Q. Were you provided with an
10 explanation for that?

11 A. No.

12 Q. So you said a little
13 while ago that it was your understanding that
14 Mr. Sharma had been appointed as the contact
15 person or point person for the value for money
16 audit?

17 A. Yes.

18 Q. What, if anything, were
19 you told about why Mr. Sharma had been assigned as
20 the engineering services point person for the
21 audit?

22 A. I was told that he was
23 basically doing -- like he was basically the main
24 point of contact. He was looking at things from
25 their perspective, and that they were trying to do

1 some work in that area themselves and that we
2 could kind of work together. He would be able to
3 provide me with all kinds of information, and that
4 he would know who to speak with and it would be
5 more efficient and more effective to go through
6 Mr. Sharma.

7 Q. I think you said that
8 they were going to try to do some work in that
9 area themselves as well. Are you able to expand a
10 bit on what you meant by that? What area?

11 A. Well, they were doing --
12 like I was told that Mr. Sharma was -- I forget
13 the title was that he was given. I'm sure -- he
14 was a project manager in that area and that he was
15 going to be looking at basically streamlining some
16 of the processes that they were doing. That was
17 basically what I recall.

18 Q. And he was a project
19 manager of continuous improvement?

20 A. Yeah. And that
21 continuous improvement was what they were looking
22 at. Okay, we want to continually improve, we want
23 to improve this section, so this kind of fits in
24 with that your audit is and this dovetails nicely
25 together and this is probably why you should work

1 with him. That's basically what I was told.

2 Q. Was it your understanding
3 that he was looking at ways to streamline
4 responses to audit processes?

5 A. No, I don't think so.

6 Q. What then was he trying
7 to streamline in your view?

8 A. Basically some of the
9 processes that they were working on. Not
10 necessarily the response to me, but the processes
11 that they -- the internal processes that they were
12 to follow.

13 Q. Okay.

14 Registrar, can we please pull
15 up HAM11266 at image 1 and split screen with
16 HAM11268 at image 1 as well.

17 So I'm just pulling up the
18 e-mail and then the attachment to the e-mail
19 side by side so that you can see both of them.

20 You sent Mr. Sharma the draft
21 scope for the value for money audit on
22 September 20th, 2018, and he then forwards it to
23 Mr. McGuire and Ms. Cameron. To your knowledge
24 did Mr. McGuire know what the scope of the value
25 for money audit was around this time, so

1 September 20th, 2018?

2 A. I submitted this to
3 Dipankar, I believe, or Mr. Sharma, and I assumed
4 that he would have provided a copy of this to
5 Mr. McGuire.

6 Q. So in understanding his
7 role as the point person, it was your
8 understanding not just that he would provide
9 information to you, but that that information you
10 provided to him with would then be advanced to
11 Mr. McGuire?

12 A. Exactly. He was the
13 conduit between us.

14 Q. Registrar, you can take
15 down covering e-mail and if you can take us --
16 pull up image 2 of the draft scope as well.

17 This is your draft scope. And
18 at the bottom of the first page and on to the top
19 of the second page there's a list of objectives,
20 and there's general objectives but there's also
21 specific references to the Red Hill Valley Parkway
22 and LINC at the very top of the second page.

23 Registrar, if you don't mind
24 calling out that specific reference there.

25 In the objectives for the

1 value for money audit why were there specific
2 objectives that signalled out the Red Hill Valley
3 Parkway and LINC?

4 A. Those are the two main
5 roads, the two main construction projects that
6 were done within the past 15, 20 years, 10,
7 15 years, and when I was putting the scope of the
8 audit together my feeling was that these were
9 roads that were old enough -- been around long
10 enough that we could look at how they deteriorated
11 and whether or not they were -- whether or not
12 their life cycle was what was intended. They were
13 also major thoroughfares so that the City put a
14 lot -- spent a lot of money on these roads and I
15 felt that this was two examples of roads that had
16 been around that had -- we should have a good
17 history. They were relatively -- they were old
18 enough that they had endured a lot of -- been
19 driven on a lot and at the same time they were new
20 enough and high -- that people were familiar
21 enough with these roads that we would get -- it
22 would be very useful to examine these roads and
23 see how they had performed over their history.

24 Q. At the point when you
25 were preparing the draft scope were you aware of

1 any complaints or experience about the Red Hill
2 Valley Parkway?

3 A. No, I wasn't aware of any
4 complaints. I mean, I had known about accidents
5 that had occurred on that road but I didn't know
6 anything more about that. I just knew that they
7 were roads that were very major thoroughfares in
8 the City. Like I said, we spent a lot of money on
9 those roads and I wanted to know how well they
10 were performing, not just me but my director as
11 well.

12 Q. I know you said that you
13 had done a literature review. At this point in
14 time, in the course of that review or otherwise,
15 had you come across any safety reports for the Red
16 Hill Valley Parkway?

17 A. Not at this point in
18 time. Like I said, I looked at that Stantec study
19 in 2007 and what I liked about that was it said
20 okay, this is what -- these is when these roads
21 were built, this is when they should be -- this is
22 the kind of repairs that we should be doing, this
23 is the way we should be maintaining the roads.
24 This is the expenditure expected to spend on these
25 roads. And my feeling was okay, I've got this

1 information. I've got an expectation of what the
2 City should be doing with these roads. Are we
3 doing what we said we were going to do. Are we
4 meeting this expectation. We have paid a
5 consultant this money to develop the study. Did
6 we take advantage of it. Did we use it.

7 Q. Registrar, you can take
8 this down. If you could please take us to
9 overview document 9A image 169 paragraph 401.

10 On November 27th, 2018,
11 Mr. Sharma e-mailed you copying Mr. McGuire under
12 the subject line "re Red Hill report" and he
13 writes:

14 "The Red Hill report that
15 redacted as advised by
16 legal. Engineering
17 services received an FOI
18 on Red Hill; the complete
19 report and other related
20 documents are currently
21 being reviewed by legal.
22 Once this review is
23 complete, we will provide
24 the complete/non-redacted
25 package for your review.

1 Should you have any
2 questions please feel
3 free to give me a call."

4 So the subject line of this
5 e-mail starts with RE, but we don't have a record
6 of an earlier e-mail in this exchange. Did
7 Mr. Sharma send this e-mail in response to an
8 e-mail from you or someone else?

9 A. No, he sent this e-mail
10 in response to I believe it was a telephone call
11 that I had with him. I received a package from --
12 I thought it was from Mr. Sharma. It could have
13 been from Diana Cameron. But it was from someone
14 in engineering services that sent me this
15 information. And it was six year study. I think
16 we're probably talking about that. And it had all
17 kinds of information on there, but two paragraphs
18 in that report had been redacted and so -- like he
19 was my main point of contact. I called him up and
20 said Dipankar, can you tell me what's what
21 happened. And basically he tried to provide some
22 information for me but he wasn't able to do too
23 much. He basically said you're going to have to
24 speak with Diana Cameron or with Gord McGuire
25 about that.

1 Q. So I'm going to circle
2 back a little bit on some of that information you
3 just provided. So you said that you understood
4 that the package that you received had come from
5 Mr. Sharma, and can you tell me a little bit about
6 the discussions or exchanges that you had had with
7 Mr. Sharma that led you to that impression or led
8 you to think he had sent you a document?

9 A. Well, like I think it
10 was -- yeah, on November 9th I received all
11 kinds of -- like I had asked for -- as you have
12 seen from my e-mails I had asked for all kinds of
13 information, and I got -- on November 9 I started
14 to get a lot of that information.

15 So I got what they call the
16 state of the infrastructure reports for a number
17 of years, four or five of them. I got basically a
18 spreadsheet -- a lot of spreadsheet information
19 that showed the deterioration of certain city
20 roads that I requested. It was a lot of
21 information like I said, and I also got this
22 report on this -- I can't remember the title but
23 it's the --

24 Q. I think I can take you to
25 the e-mail exchange that you're referencing which

1 may assist.

2 Registrar, can you take us to
3 overview document 9A image 133 to 134, and
4 paragraph 2 -- 325.

5 So I think the top paragraph
6 there is the exchange on November 9th, 2018, from
7 Mr. Sharma which references the state of the
8 infrastructure reports. Is that the e-mail that
9 you were just referencing?

10 A. Yes.

11 Q. Registrar, you can take
12 down the call out just so that Mr. Pellegrini can
13 see the rest of that chain?

14 So you will see that's there
15 also a bit of back and forth between you and
16 Mr. Sharma on October 12th at well. So it looks
17 like you had originally asked about potentially
18 doing a call and he responds that he's thinking
19 about setting up a meeting. So that goes over
20 onto 328 on the top there. Does that help to
21 orient you a bit?

22 A. Yes, exactly. This is
23 what I was thinking about.

24 Q. So on receiving this
25 e-mail did you take steps to reach out to

1 Mr. Pellegrini as you had indicated?

2 A. Mr. Sharma. Yes, I did.

3 Q. Sorry.

4 A. Yes, I did reach out to
5 him.

6 Q. And so I think you had
7 said that you were looking for something more
8 detailed than the state of the infrastructure
9 reports?

10 A. Yes, exactly. Like the
11 state of infrastructure reports gave good
12 information but it's very high level, very
13 general. They go into the state of the roads but
14 like they are basically talking about overall. I
15 was more interested in specific information that I
16 could basically like what I had said in my draft
17 scope, let's take a look at the Red Hill and LINC
18 because those are major roads and let's see how
19 they deteriorated over time.

20 So that's the kind of
21 information that I was looking for. And I got
22 that information when I got that report, the six
23 year -- the RHVP performance review after six
24 years of service report. The Golder report.

25 Q. So that's the 2014 Golder

1 report. And I can pull it up just so that we can
2 confirm.

3 Registrar, can you pull up
4 RHV2010.

5 And that's the report that you
6 are referencing that you received.

7 A. Exactly.

8 Q. So when you reviewed the
9 state of the infrastructure reports and wanted
10 more information on them did you phone Mr. Sharma
11 to make that request?

12 A. I did, yes. I believe --
13 I'm pretty sure. It's a long time ago. I can't
14 really recall that in my mind. But that's what I
15 could have done, would have called him and said,
16 Dipankar, can you give me some more information,
17 can you provide me more detail.

18 Q. Do you recall how
19 Mr. Sharma responded when you asked him for more
20 detailed information?

21 A. He said he would see what
22 he could do. He would try to get me a lot more
23 stuff he says, but again I might not be able to
24 get it for you right away. You might have to wait
25 a little bit. I might not be able to get it

1 directly myself, I might have to ask other people
2 so you would have to wait.

3 Q. When you spoke to him on
4 the phone do you recall him referencing any
5 specific reports?

6 A. No, he just talked in
7 general.

8 Q. And he didn't reference
9 this report?

10 A. No.

11 Q. So circling back, I think
12 you said that you had received the redacted
13 version of the 2014 Golder report. Do you recall
14 how you received it?

15 A. I believe it was a hard
16 copy.

17 Q. Did you receive it by
18 mail? Did someone give it to you in person?

19 A. It came through
20 interoffice mail.

21 Q. When something comes
22 through interoffice mail is there any indication
23 of who has sent it over to you?

24 A. Sometimes there is,
25 sometimes there isn't. Sometimes it's just in an

1 envelope that's got our address on it on the
2 interoffice and it just shows up on my desk. This
3 is I think what happened with this one.

4 Q. So there was no covering
5 letter or indication of who had specifically sent
6 this over?

7 A. No.

8 Q. And I think you said you
9 that you had assumed that the report had come from
10 Mr. Sharma but you weren't able to confirm that?

11 A. Exactly.

12 Q. So Mr. Pellegrini's [sic]
13 e-mail to you about the redacted report is sent on
14 November 27th. Do you recall when you actually
15 received the hard copy of the 2014 Golder report?

16 A. I think I received it
17 around November 12th, something like that. I
18 don't think I received it on November 9th because
19 November 9th was the Friday and I got all kind --
20 like that was an e-mail with the state of the
21 infrastructure reports. I probably received it
22 either on November 12th or thereabouts, day or two
23 after.

24 Q. Did you review the report
25 immediately on receipt?

1 A. I had so many documents
2 on my desk that I didn't review it immediately. I
3 know that when I got it I thought it was
4 interesting. I looked at it very quickly, and
5 then I put it away and then I looked at it -- I
6 was doing other work and then I came back to it.

7 I can't tell you exactly the
8 date that I came back to it and did a thorough
9 read of it, but when I did do a thorough read I
10 did realize that there were two redacted
11 paragraphs.

12 Q. So I'm going to take you
13 through -- I believe the document that we have up
14 on the screen is the redacted version that you
15 received but I'm going to do a comparison between
16 the unredacted version so that we can just confirm
17 that that's the case.

18 Registrar, can you leave this
19 up but split screen with GOL2981, please. So the
20 two versions of the report. Registrar, could you
21 please take us to image 10 of both of these
22 documents.

23 So you'll see on the version
24 that is redacted there's a redaction right under
25 5.0 friction testing and the redacted content

1 shown up in the other version of the document

2 GOL2981. And the redacted content says:

3 "Friction testing was
4 carried out on the Red
5 Hill Valley Parkway in
6 November 2013 by
7 Tradewind Scientific
8 using a grip tester. The
9 test was complete in both
10 the northbound and
11 southbound through lanes.
12 Complete results of the
13 friction testing are
14 provided in Tradewind
15 Scientific's report in
16 appendix E. This report
17 also covers the results
18 of friction testing on
19 the LINC. Table 6
20 provides a summary of the
21 average results on the
22 Red Hill Valley Parkway
23 testing."

24 And then, Registrar, if you
25 can take us to the next page over, so image 11 of

1 both documents. So that's -- this is in section
2 6.0 analysis and recommendations, and you'll see
3 that there's another redaction towards the bottom
4 of image 6 on the redacted version and the
5 redacted content is the paragraph which says:

6 "On the remaining portion
7 of the Red Hill Valley
8 Parkway the existing
9 cracks in the surface
10 course should be routed
11 and sealed to prevent the
12 ingress of water and
13 incompressible material
14 into the pavement
15 structure. Following the
16 routing and sealing it is
17 recommended that a single
18 layer of microsurfacing
19 be applied. By carrying
20 out the mill and overlay
21 where required and
22 applying microsurfacing
23 the issue of relatively
24 low FN on the Red Hill
25 Valley Parkway would also

1 be addressed. The new
2 surface course mix to be
3 used on the Red Hill
4 Valley Parkway should
5 incorporate aggregates
6 that have good polished
7 stone value. It is
8 recommended that the PSV
9 of potential aggregate
10 sources be tested in the
11 laboratory."

12 And then, Registrar, can you
13 please take us to image 100 of both documents.

14 So in the redacted version of
15 the report this image 100 is the last page.

16 Registrar, can you take us to
17 image 100 and 102 and just scroll through each of
18 them of the unredacted version, so Golder 2981.

19 So you'll see that in the
20 unredacted version there's an appendix E which is
21 the Tradewind Scientific report. Were these the
22 redactions that you identified in the 2014 Golder
23 report that was provided to the office of the City
24 auditor?

25 A. Yeah, I had no idea about

1 the appendix E. I just knew there was two
2 paragraphs that were redacted in that report.

3 Q. But you did later become
4 aware that the Tradewind Scientific report had
5 also been omitted from the version provided to
6 you?

7 A. Yes.

8 Q. Do you know who redacted
9 the 2014 Golder report that was provided you to?

10 A. No.

11 Q. What did you do on
12 reviewing the redacted 2014 Golder report and
13 recognizing that there were two paragraphs that
14 you didn't have access to?

15 A. That's what I said,
16 that's when I contacted Mr. Sharma. And I asked
17 him, I said, you know, I can't -- I would really
18 like to see the report that does not have the
19 redactions. I can't work with this. This isn't
20 right.

21 Q. And then I think that you
22 had said that Mr. Sharma indicated that you should
23 contact Diana Cameron. Why did he think you
24 should contact Ms. Cameron?

25 A. Okay, this is my

1 recollection of the events. This is a phone call
2 that I had and at this time I had no idea that
3 this is going to occur. My recollection of the
4 events is that I would have contacted Mr. Sharma.
5 When I spoke with Mr. Sharma I'm pretty sure he
6 said I should either speak with Diana Cameron or
7 with Gord directly and that they would be able to
8 provide me with the unredacted version.

9 Q. Do you recall when you
10 would have spoken to Mr. Sharma?

11 A. I think it was around --
12 around the 20th, 23rd or 24th -- sorry, between
13 the 20th and 23rd of November. So the 21st --
14 20th would have been a Tuesday, the 21st would
15 have been a Wednesday, 22nd was a Thursday, the
16 24th was a Friday. So the latter part of that
17 week.

18 Q. On the call with
19 Mr. Sharma did he say anything about the substance
20 of the 2013 Golder report?

21 A. No.

22 Q. Did he say anything to
23 you about the basis for the redactions in the 2014
24 Golder report?

25 A. No. I don't think he

1 even knew that there was a redaction.

2 Q. Did you understand from
3 your call with Mr. Sharma that he had read or
4 reviewed the 2014 Golder report himself?

5 A. Like I said, I don't
6 think he knew. He said I can't help you with this
7 report. You would have to talk with Diana or with
8 Gord. I thought okay, he probably doesn't know
9 much about this report.

10 Q. Did you understand from
11 your call with him that he didn't have access to a
12 copy of the report?

13 A. I mean, I assumed that he
14 provided me with a copy so I thought he may have
15 had access to it, but I don't think it was in
16 his -- part of his duties to read through these
17 reports that he was giving to me. Like he
18 basically had a high level understanding of what
19 he was giving but I don't think he had a detailed
20 understanding.

21 Q. So you said that he
22 indicated that you should speak to Mr. McGuire or
23 Ms. Cameron about the 2014 deport. Did you take
24 him up on that suggestion?

25 A. I think I did. I think I

1 tried calling and I was told that Mr. McGuire was
2 away on holidays that week, and then I was going
3 on vacations the following week and so I'm pretty
4 sure I spoke with Ms. Cameron and I said to her,
5 could I get the unredacted version and I believe
6 she said to me you're going to have to wait until
7 Gord gets back and he's away on vacation.

8 Q. Did she provide you with
9 any further details about why she needed to wait
10 until Mr. McGuire returned from his vacation to
11 give you an unredacted copy of the report?

12 A. No, no. It what -- like
13 at the time I didn't know any of this. I didn't
14 know about the appendix E or any of that stuff.
15 All I knew is I was trying to get some information
16 and the report was redacted, and basically she was
17 telling me that she couldn't release the
18 unredacted report and I would have to wait until
19 Mr. McGuire got back.

20 Q. Do you recall if you had
21 that conversation with Ms. Cameron before or after
22 the November 27th, 2018, e-mail from Mr. Sharma
23 that we were looking at?

24 A. I would have done it
25 before November 27th because like I said, I was on

1 vacation the week of I think it was November 25th
2 or 24th -- November 25th I think it was on I would
3 have been on vacation.

4 Q. Did you understand that
5 Mr. Sharma's November 27th e-mail was a response
6 to your call to him about the Golder report?

7 A. I saw that e-mail when I
8 got back from vacation. That would have been
9 December 3rd. So I would have had all kinds of
10 e-mails. I would have looked at that one and I
11 would have said oh, he's responded. I recall when
12 I read that e-mail that I was not upset, but I was
13 kind of okay, these guys are not -- they are
14 not -- they are not being open with audit. They
15 are not releasing the information that I need or
16 they are making it more difficult for me to get
17 the information that I need. And so was I upset?
18 Not really. But I was perturbed. I was bothered
19 by fact that I had requested information and that
20 it was not provided to me.

21 Q. Registrar, can you take
22 us to HAM 61997 at images 2 and 3.

23 Mr. Pellegrini, just for your
24 reference, I'm taking you to the e-mail chain off
25 of that November 27th e-mail.

1 A. Yes.

2 Q. So you will see the
3 November 27th e-mail is at the very bottom of the
4 second page. And then on December 3rd, 2018, at
5 4:11 p.m. you respond to Mr. Sharma, you copy
6 Mr. Brown and Ms. Minard, and you say:

7 "In order to properly
8 understand the analysis
9 and recommendations made
10 by the consultant (Golder
11 Associates) on the state
12 of the Red Hill Valley
13 Expressway, audit
14 services needs to see the
15 unredacted version of the
16 report. We cannot wait
17 until legal services has
18 completed their review.
19 This process may take
20 months and will have
21 impact on audit services
22 completing its review."

23 And then you ask for some
24 details about the City solicitor that's involved.
25 Are you able to expand at just a very high level

1 on why the office of the City auditor needed the
2 unredacted 2014 Golder report?

3 A. I didn't know what was
4 being redacted. I had no idea what information
5 was being withheld. I knew -- I'm trying to
6 find -- I'm trying to determine whether these two
7 important roads, the LINC and Red Hill, are
8 deteriorating in a manner that is expected -- that
9 is normal, that is what we expected, or that may
10 be faster than what we expected, and I had no idea
11 what was redacted.

12 So if the consultant had said
13 something like -- you know, if you read that the
14 two reports you'll see that they have done some
15 core sampling and they have looked at cracks, and
16 so I thought well, I don't know, may they've got
17 something in there -- there is something in there
18 that talks about how these roads are performing,
19 how the pavement of those roads is performing,
20 whether it's deteriorating at a faster or slower
21 rate than expected. And I wanted to see that. I
22 wanted to see a full report. And that was part of
23 my job, it's part of what I'm trying to determine.
24 So I needed to see that information and that's
25 what I wrote.

1 Q. So on December 3rd, 2018,
2 at 4:26 p.m. so shortly after your e-mail,
3 Mr. McGuire responds and he adds Diana Cameron and
4 Byrdena MacNeil, who is the city solicitor, on the
5 file at that point to the e-mail chain. And so
6 his first he says:

7 "Possibly there is some
8 miscommunication here and
9 we are happy to have you
10 review the file. We have
11 a copy here and you can
12 arrange with Diana to
13 come and see the copy.
14 The solicitor on the file
15 is cc'd as well and she
16 is Byrdena MacNeil."

17 Did you understand from this
18 e-mail from Mr. McGuire that there were any terms
19 or conditions in place about your review of the
20 unredacted 2014 Golder report?

21 A. No. When I got that
22 response I was very surprised. I thought okay,
23 fine, he's accepted my demand that I can see the
24 report and I was happy to go over as quickly as I
25 could to look at the unredacted report.

1 And when he says we're happy
2 to have you looking at the file, okay, great, he's
3 changed his opinion.

4 Q. So he goes on to say in
5 the second paragraph:

6 "The data we have
7 withheld at legal
8 services' advice, is
9 related to friction
10 testing and subject to an
11 FOI/MFIPPA request on
12 that subject. There is
13 ongoing and pending
14 litigation on this matter
15 and we are following
16 their advice. The MFIPPA
17 process will be shorter
18 than months from my
19 understanding."

20 In your view was that a
21 legitimate basis to delay the City auditor's
22 receipt of the unredacted Golder report?

23 A. No. I've done audits --
24 I did a MFIPPA audit and I got to see all kinds of
25 information that was personal. I mean, that's

1 what I do. As an auditor I get -- that what I --
2 there is information that may be withheld from the
3 public or withheld from journalists and things
4 like that, but as an auditor I can see that
5 information. It's my -- it's part of my job. And
6 no, that's not an excuse.

7 Q. Prior to your view of the
8 unredacted version of the report did you have any
9 discussions or receive any correspondence from
10 Mr. McGuire about the terms or conditions of your
11 review?

12 A. This is the only thing I
13 ever received from Mr. McGuire regarding terms.
14 He basically is saying I can come in and see it.
15 And I thought okay, great, I can come in and see
16 it.

17 Q. Registrar, can you take
18 us over to image 1 of this document.

19 So this is the last e-mail in
20 this chain, and for your reference,
21 Mr. Pellegrini, you're not copied on. But this is
22 an e-mail that Mr. McGuire sends to Byrdena
23 MacNeil and Dan McKinnon on December 4th, 2018.

24 And you'll see at paragraphs 2
25 and 3 he says:

1 "The position you had
2 advised was to provide
3 the auditor our 2014
4 Golder Red Hill Valley
5 Parkway report records on
6 the Red Hill Valley
7 Parkway inclusive of the
8 condition assessment,
9 though we would redact
10 the friction testing
11 related materials such
12 until such time as the
13 MFIPPA response had been
14 finalized. Our position
15 was to offer the auditor
16 reading access to the
17 file at my office. That
18 is laid out in my e-mail
19 to Domenic. Once the
20 MFIPPA access had been
21 determined then we would
22 release the document in
23 its entirety."

24 Did anyone ever convey to you
25 that you would only have reading access to the

1 2015 Golder report when you went to review it?

2 A. No. No one said anything
3 to me about that.

4 Q. So Mr. McGuire goes on to
5 say:

6 "However, today the
7 auditor visited my office
8 when I was in a meeting
9 and made copies of the
10 report. He mentioned
11 that staff allowed it but
12 I had previously
13 discussed access to these
14 files with him and
15 thought our approach was
16 understood."

17 Did you attend engineering
18 services to review the unredacted 2014 Golder
19 report on December 4th, 2018?

20 A. The following morning,
21 yes, that was the first thing I did.

22 Q. Did you arrange a set
23 time for your review with engineering services
24 before you went to their offices?

25 A. No. What happened was I

1 came into my office. I start work at 8:30 so I
2 got to my office 8:30. The first thing I did was
3 I called Ms. Cameron, Diana Cameron, and asked if
4 I could come over and she said yeah, sure.

5 Q. Did you then walk over
6 from your office --

7 A. Yes, it's about a 10,
8 15 minute walk from office.

9 Q. When you arrived at
10 engineering services who was present in the
11 confidence?

12 A. I remember seeing Diana
13 Cameron. Dipankar Sharma may have been there but
14 I don't remember speaking with him or seeing him.
15 I don't remember that. But I do remember Diana
16 being there. And Diana's cubicle was directly
17 across from Mr. McGuire's office. Mr. McGuire's
18 office has a door and two sidelights so you can
19 see into his office. The door was open and you
20 can see from -- where I was standing in front of
21 Ms. Cameron's cubicle if I looked over I can see
22 Mr. McGuire's office.

23 Q. Was Mr. McGuire present
24 when you attended?

25 A. No.

1 Q. And so what did you then
2 upon arriving at the office?

3 A. I spoke with Ms. Cameron
4 for a few minutes or so, just some niceties about
5 the weather and things like that, and then I said
6 I'm here to see the report and she said it's on
7 Mr. McGuire's desk. Not exactly his desk.
8 There's a side table next to his desk. And the
9 report was on that table and she said you're
10 welcome to look at it.

11 Q. When you were reviewing
12 the report was it a hardcopy document?

13 A. Yes, it was a hardcopy
14 document.

15 Q. Was it -- how was it set
16 out? For example, was it in a binder, was it
17 stapled?

18 A. My recollection was that
19 it was a binder, a three-ring binder. And the
20 binder was open, and I read -- like I took the
21 sheets -- I took copies of the redacted sheets
22 with me, like, I made photocopies of them and I
23 took them with me in my bag. And basically I
24 opened it up -- I opened up my two redacted
25 copies, I put the pages that had the redacted

1 paragraphs in it. I went to the binder, the
2 binder was opened to those pages. So the pages
3 are one next to each other so I was able to
4 confirm that yes, this is the same report but
5 without the redactions. And then I looked -- I
6 think it was the first paragraph referred to an
7 appendix B (ph) which I had no idea what it was.
8 So I looked at appendix C and saw that it was --
9 it's the Tradewind report.

10 And I looked at the Tradewind
11 report and it talked about the fact that the
12 friction levels were low or below or well below
13 the standard. And when I saw that, okay, this is
14 something that's really very important. I glanced
15 at the graphs that they had and you can see the
16 plotted values were well below the standard line.
17 I thought this is really useful, this is very
18 important for what I'm doing because it talks not
19 only about the deterioration of pavement, but the
20 fact that friction on that pavement is much lower
21 than expected.

22 So I took the appendix C out
23 as well from that report. So in my hand I had the
24 pages with the two redacted paragraphs, the
25 complimentary pages without the redaction plus the

1 appendix C (ph). I picked those out of the
2 binder. I had them in my hands. I walked over to
3 Ms. Cameron, I said I would like to photocopy
4 these. And she looked at me and she said if Gord
5 let you see it I don't see why not, why you can't
6 photocopy it. Okay, great.

7 And then she asked me if I
8 knew where the photocopier was and I said I didn't
9 remember where it was in that office, and she said
10 I'll walk you over and she did.

11 Q. So I take from your
12 account then that no one from engineering services
13 suggested to you that you couldn't take copies of
14 the report when you attended on December 4th?

15 A. Nobody said anything to
16 me about not taking copies.

17 Q. The photocopier in
18 engineering services, would you have been able to
19 make those copies yourself, or was it the kind of
20 copier that would require some sort of an access
21 code?

22 A. The access code, it does
23 require an access code but the access code, like,
24 whenever I photocopied anything in any part of the
25 City my access code works on the photocopiers so I

1 keyed in my code.

2 Q. So you then made the
3 copies yourself while Ms. Cameron was present?

4 A. As I was making the
5 copies I think she went back over to her desk.

6 Q. And so just circling back
7 briefly about the version of the 2014 Golder
8 report you reviewed on December 4th, were you able
9 to tell if that document was an original or a
10 copy?

11 A. It was in colour but I
12 couldn't tell if it was an original or a copy.
13 But it was a colour document the way that you saw
14 it, to pull it up.

15 Q. So you had indicated that
16 you took copies of the redacted pages and the
17 appendix B (ph) which was the Tradewind report.
18 Did you then return to your office with those
19 documents?

20 A. What happened then was
21 once I took the copies I brought back the
22 originals back to Mr. McGuire's office. And I
23 indicated to Ms. Cameron that I was bringing back
24 the originals and she said fine. So I just put
25 them back where they belonged. And then I put the

1 photocopies in my briefcase and I walked out of
2 engineering services. On my way out I ran into
3 Mr. Andoga. We chatted for maybe two minutes,
4 just hello, how are you doing, and I walked out.

5 Q. And you went back to your
6 office?

7 A. I went back to my office.
8 When I got back -- again it's a 10, 15 minute
9 walk. When I get back to my office it's probably
10 around quarter to 10:00 at this point in time,
11 9:30, quarter to 10:00, because it didn't take
12 long. And as I got back in my office my telephone
13 was ringing. I picked up my phone and it's
14 Mr. McGuire and he is very upset. And he's
15 telling me you should never have taken the
16 photocopies. I didn't tell you that you could
17 take the copies. And I said well, no one said
18 anything. I assumed that I could do this. And he
19 said you don't understand how much trouble I'm in.
20 I'm going to lose sleep over this. This is -- I'm
21 going to have to deal with legal about this issue,
22 and he was very upset. He was -- like I almost
23 got the feeling that he was afraid.

24 Q. Was he yelling?

25 A. He wasn't yelling

1 yelling, but his voice was loud and you could tell
2 he was agitated.

3 Q. How did you respond?

4 A. I said look, Gord, we can
5 always meet and we can talk about this. There's
6 nothing -- and he says you don't understand.
7 Okay, fine, I don't understand but we can always
8 talk, right. And he just wouldn't listen to what
9 I was saying.

10 Q. Okay. Was he making
11 discussions about what you should do given that
12 you had made copies of the redacted information at
13 this point?

14 A. No. He basically said he
15 had to talk to legal.

16 Q. And you said that you
17 were under the impression that he was afraid.
18 What did you think he was afraid about?

19 A. I don't know. Just the
20 tone of his voice was he was agitated, and usually
21 when a person is agitated they are afraid of
22 something.

23 Q. Did you have any
24 discussions with him on that call about the
25 information that had been redacted from the

1 version of the 2014 Golder report originally
2 provided to you?

3 A. No, because like I said,
4 he was very upset and basically he was just
5 telling me I shouldn't have done what I did.

6 Q. How did the two of you
7 end the call?

8 A. I don't recall, but I
9 think it was something like Gord, I'll talk to you
10 about this later, or he said I have to talk to
11 legal, and I said okay, we'll talk later, and that
12 was it.

13 Q. So in this e-mail that we
14 have up, and again you're not copied on this,
15 Mr. McGuire goes on to say at the end in the last
16 paragraph there:

17 "I'm concerned that the
18 audit now has records
19 that may be released
20 prior to our MFIPPA
21 response. This may
22 influence our position on
23 this file, I may be
24 overreacting but feel
25 this is an element that

1 requires some higher
2 level understanding. As
3 such I've copied Dan
4 McKinnon."

5 Did Mr. McGuire ever express
6 concerns about audit releasing the 2014 Golder
7 report prior to the FOI response to you?

8 A. I'm surprised that he
9 wrote that actually. I said we can meet about
10 this, and he didn't say yes or no when I suggested
11 that to him that morning.

12 Q. Registrar, can you please
13 take us to overview document 9A, image 192
14 paragraph 436.

15 So this is just a continuation
16 of that e-mail chain that we were looking at.
17 Ms. MacNeil forwards this e-mail to Ms. Auty and
18 Mr. Sabo who are also with legal. And she writes:

19 "FYI. In my discussions
20 with Gord, today, I asked
21 whether there was a
22 possibility that the
23 audit department could
24 inadvertently release
25 information about the

1 friction testing reports
2 that could end up being
3 discovered by any
4 councillors before there
5 has been a chance by
6 public works and/or legal
7 services to report on the
8 issue to council. We had
9 no answer between us so
10 I'm raising it with you."

11 Did Mr. McGuire or anyone else
12 at the City ever express concern to you about the
13 office of the City auditor inadvertently releasing
14 information about friction testing reports that
15 could have been discovered by councillors before
16 public works or legal had an ability to report?

17 A. No, no, not at all. Like
18 I said before, I've worked in audit for 22 years.
19 There's been many, many, many confidential reports
20 and papers and things that I've seen, many papers
21 with personal information, many papers with all
22 kinds of classified information, if you want to
23 call it that. No, no one talks about that. No
24 one says something like that ever.

25 Q. So then the office of the

1 City auditor has a process for confidential or in
2 camera reporting to council if necessary?

3 A. Exactly.

4 Q. In your view were there
5 steps that Mr. McGuire could have taken to address
6 these concerns about the release of the
7 information with the office of the City auditor?

8 A. He could have contacted
9 my director or the City auditor and said look,
10 Charles, let's sit down and talk about this. But
11 he didn't.

12 MS. BRUCKNER: Thank you very
13 much, Mr. Pellegrini. Those are all of my
14 questions for you today.

15 Commissioner, I understand
16 that counsel for Golder and counsel for the MTO do
17 not have questions for Mr. Pellegrini, although I
18 would ask them to confirm that.

19 MS. JENNIFER ROBERTS: So I
20 confirm that we don't have questions, thank you.

21 MR. BOURRIER: I confirm the
22 MTO doesn't have questions as well.

23 MS. BRUCKNER: It's my
24 understanding that counsel for the City may have
25 some questions for Mr. Pellegrini.

1 EXAMINATION BY MS. TALEBI:

2 Q. Thank you.

3 Good morning, Mr. Pellegrini.

4 My name is Sahar Talebi. I'm counsel for the City
5 of Hamilton. I just have a handful of questions
6 for you this morning.

7 A. Sure.

8 Q. In discussions earlier
9 today with commission counsel you discuss as part
10 of your literature review and Google ranges
11 various information that you reviewed the Stantec
12 report, the Lincoln Alexander Parkway and Red Hill
13 Valley Parkway project sustainability plan. Do
14 you recall having that --

15 A. Yes.

16 Q. So Mr. Andoga's evidence
17 in this hearing was that council ultimately did
18 not approve the funds to implement the Stantec
19 report. Were you aware of that?

20 A. No.

21 Q. Okay. And earlier in
22 your discussions about sort of your conversations
23 with Mr. McGuire you mentioned that you had
24 various conversations with him where he mentioned
25 to you that he was directed by legal services to

1 -- he had instructions effectively by Ms. MacNeil
2 to provide a redacted copy of the report to you.

3 And so my question is that you
4 understood that he was actually acting on the
5 direction of legal counsel to do that; is that
6 right?

7 A. Can you repeat your
8 question again, please.

9 Q. So you understood that
10 Mr. McGuire believed he had instructions --

11 A. Okay. You're saying I
12 understood what?

13 Q. Did you understand that
14 Mr. McGuire believed that he had instructions from
15 Ms. MacNeil to provide a redacted document to you?

16 A. No.

17 Q. So you weren't aware and
18 you didn't understand that he was acting on the
19 direction of legal to provide a redacted document
20 even though he mentioned that to you in an e-mail?

21 A. He mentioned -- okay, he
22 mentioned that in an e-mail, but when I looked at
23 that e-mail it wasn't my impression that he was
24 acting -- he was acting under the directions of
25 legal, no.

1 Q. So you understood that
2 that was the reason why he provided you with a
3 redacted document but you didn't have an
4 understanding of whether he was directed to do
5 that --

6 A. Exactly.

7 Q. -- by legal services; is
8 that right?

9 A. Exactly.

10 MS. TALEBI: Great. Those are
11 all my questions for you. Thank you so much.

12 JUSTICE WILTON-SIEGEL:

13 Ms. Bruckner, any follow up?

14 MS. BRUCKNER: I have no
15 follow up.

16 JUSTICE WILTON-SIEGEL:

17 Mr. Pellegrini, we appreciate your attending today
18 and providing your evidence. You're excused.

19 THE WITNESS: Thank you.

20 JUSTICE WILTON-SIEGEL: And
21 the rest of us, I think we're waiting for the next
22 witness, Ms. Edwards, who is on board for what
23 time, Ms. Bruckner?

24 MS. BRUCKNER: I believe that
25 Ms. Edwards is available to begin her evidence is

1 noon today, so my suggestion would be that we take
2 an early lunch so that we can proceed through to
3 the end of her evidence when she's able to begin.

4 JUSTICE WILTON-SIEGEL: I
5 think that's a good suggestion. So we'll take our
6 lunch break now and we'll stand adjourned till
7 noon.

8 MR. UUKKIVI:
9 Mr. Commissioner, I obviously will not be
10 returning after lunch either.

11 JUSTICE WILTON-SIEGEL: I
12 understand that. And for what it's worth, you're
13 also excused, Mr. Uukkivi.

14 MR. UUKKIVI: Thank you very
15 much.

16 --- Recess taken at 10:38 a.m.

17 --- Upon resuming at 12:00 p.m.

18 MS. LIE: Good afternoon,
19 Commissioner. The commission's next witness is
20 Debbie Edwards. Perhaps we could have Ms. Edwards
21 affirmed.

22 DEBBIE EDWARDS; affirmed

23 EXAMINATION BY MS. LIE:

24 Q. Good afternoon, Ms.
25 Edwards.

1 A. Good afternoon.

2 Q. I understand that you
3 worked for the City of Hamilton or its predecessor
4 from 1988 to 2019; is that right?

5 A. That's correct.

6 Q. When you first joined in
7 1998, I take it it was the Regional Municipality
8 of Hamilton-Wentworth?

9 A. The Regional Municipality
10 of Hamilton-Wentworth, correct.

11 Q. And from June 2013 until
12 April 2019, you were the deputy city solicitor,
13 commercial development and policy?

14 A. Yes.

15 Q. What roles did you hold
16 before you became deputy city solicitor of the
17 commercial development and policy group?

18 A. Going back to the
19 Regional Municipality of Hamilton-Wentworth?

20 Q. Yes.

21 A. I'm trying to remember
22 all the titles, but I think we were assistant city
23 solicitor -- no, that's not right. Assistant
24 corporate counsel for the Regional Municipality of
25 Hamilton-Wentworth. I believe that's what we

1 started off with, and then when we moved over to
2 the City of Hamilton, there were a few different
3 titles, but in all cases I was working as a
4 lawyer. I wasn't in a managerial -- I was a
5 senior solicitor at one point with the
6 nomenclature in the City of Hamilton, but I was
7 not in a managerial position until the deputy city
8 solicitor position in 2013.

9 Q. Thank you. I understand
10 that you retired in April of 2019?

11 A. Correct.

12 Q. And did you fully retire
13 or did you take another role after leaving the
14 City?

15 A. No, I'm fully retired.

16 Q. Can you describe the role
17 of the commercial development and policy, or we
18 call it the CDP group?

19 A. Right. The CDP section
20 was -- it mainly was solicitor's type work,
21 although there was planning and development work,
22 real estate, opinions, contracts, by-laws,
23 covering most of the departments at the City of
24 Hamilton, and there was also some litigation with
25 administrative tribunals, particularly in the

1 planning area, and in a couple of other related
2 boards as well.

3 Q. Describe your role and
4 responsibilities as deputy city solicitor, CDP?

5 A. I supervised
6 approximately 13 lawyers, it was either 12 or 13
7 lawyers at any given time in the CDP section who
8 all had full file loads or carried full workloads
9 for various departments at the City. I also
10 carried some files myself, and then I had a
11 managerial role dealing with issues that arose
12 with the lawyers who were in my section and doing
13 administrative -- administrative tasks, filling in
14 for Nicole if she was not -- sorry, Nicole Auty,
15 the city solicitor, if she was not available to
16 attend a particular administrative or committee or
17 council meeting, that kind of thing.

18 Q. I take it you reported to
19 Nicole Auty, the city solicitor?

20 A. Yes, I did.

21 Q. How did you involve
22 Ms. Auty in your work, or how much involved did
23 she have in what the CDP group was doing?

24 A. She was not involved in
25 the day-to-day operations of our group, but I

1 would go see -- I had meetings with Ms. Auty to
2 discuss matters that needed to be brought to her
3 attention, usually matters that were urgent, or it
4 might be something where I wasn't sure of how to
5 proceed or needed some guidance as whether as I
6 was on the right track, and as well we were -- I
7 would see her when we had reports coming out of
8 our section that would be going committee in
9 council because she would have to sign off on
10 those, and I would talk to her as well about
11 matters that -- matters that needed to -- she
12 needed to be aware of because she was going to be
13 at a committee or council meeting and that we may
14 have provided some advice on so she needed to be
15 up to speed for that if she wasn't already. Those
16 are examples.

17 Q. I understand that there
18 was another deputy City solicitor, Ron Sabo, who
19 was in charge of the dispute resolution group?

20 A. Correct.

21 Q. What overlap or
22 interaction did you have with Mr. Sabo's group?

23 A. Most of our overlap would
24 be if a file had started off in your group. I use
25 the example of a construction lien where if it

1 wasn't perceived if it could be resolved before
2 litigation, it might get resolved in the CDP
3 section, but then if went to actual -- when it
4 went to litigation, then often a dispute
5 resolution lawyer would handle it. Similarly, if
6 there was a contract that we had worked on and
7 there was a dispute that was going along, then
8 they might -- and it looked like it might be going
9 to litigation or there was a potential for that,
10 we might have some overlap in that respect.

11 Q. Did your group have any
12 involvement in any litigation involving the Red
13 Hill Valley Parkway?

14 A. Not to my knowledge, no.

15 Q. How much contact did you
16 and your group have with the public works
17 department?

18 A. Well, public works was
19 and still is a very large client group within the
20 City. It covers a wide range of operational
21 issues -- a wide range of operations. So we had
22 lawyers within our CDP section who did -- who
23 worked for various groups within public works, and
24 I had some files that would have been with public
25 works as well because I had dealt with them before

1 I became deputy solicitor and did some groups
2 within public works. That would be basically our
3 involvement.

4 I also had involvement with
5 them with the -- when we were -- if somebody was
6 contacting our office and needed to know which
7 lawyer to deal with, because there are so many
8 sections to public works that needed to know which
9 lawyer would be able to help them with their
10 particular issue.

11 Q. How much interaction did
12 you have with Mr. McGuire in public works?

13 A. During what time period?

14 Q. Leading up to October
15 of 2018.

16 A. Oh, well, I had worked
17 off and on with Mr. McGuire over the years. He
18 was a longer-term employee with the City of
19 Hamilton and he -- I forget his exact title -- was
20 manager of -- was a managerial position, I think
21 it was geomatics or something like that. But we
22 had -- I had worked with him on a number of
23 different matters in the past, or we've had -- or
24 had worked with him and another lawyer in our
25 section in the past. So I knew him -- I had known

1 him for several years and had worked with him for
2 several years, yes.

3 Q. I understand that
4 Mr. McGuire was manager of geomatics and quarter
5 management. Does that sound about right?

6 A. There it is.

7 Q. There it is.

8 A. That's the title. Thank
9 you.

10 Q. Were you and your group
11 involved in contracts relating to the RHVP?

12 A. So with the -- I mean
13 over the years I think the equivalent of that
14 group -- that group only got established in about
15 the -- the CDP section was only established in
16 around 2005 I think, but the -- but certainly
17 lawyers in the office had dealt with various
18 contracts over the years with the project, that
19 was part of it, construction contracts, and I'm
20 assuming there would have been consultant
21 contracts over the years.

22 Q. What involvement did the
23 CDP group have, if any, in Freedom of information
24 requests that are received by the City?

25 A. So formal Freedom of

1 Information requests would come into our office
2 either asking our office to supply documents or to
3 respond to an FOI request that -- and documents
4 that were within legal services or within the CDP
5 section, so that would be one option, one way that
6 the requests would come in. The second way it
7 would come in is either through the client group
8 or the FOI office itself asking for assistance.

9 Q. Registrar, could we pull
10 up HAM52704. Could image 2 up as well. Thank
11 you. Ms. Edwards, here we have a Hamilton
12 Spectator article dated July 15th, 2017, called:
13 "Highway traffic tragedies: Why are there so many
14 crashes on the Red Hill?"

15 Were you aware of this article
16 when it was published?

17 A. I don't specifically
18 recall the article. I do -- I would look at the
19 Spectator most days because of looking to see if
20 there were issues with respect to my -- what was
21 going to be happening within our office, what
22 issues that might be coming up, but I don't
23 specifically recall reading that article. It's
24 quite possible, but I don't specifically recall.

25 Q. Do you recall any

1 discussions within the City about this issue of
2 why there were so many crashes on the Red Hill
3 coming up around the time of this article?

4 A. Not in my work capacity,
5 no.

6 Q. When you say your work
7 capacity, what do you mean by that?

8 A. Like, not as working for
9 the City. You're asking about whether I had
10 discussions at the City. I don't recall those in
11 particular.

12 Q. So you don't recall any
13 discussions with other City staff about this
14 issue?

15 A. No, I do not.

16 Q. So you'll see at the
17 bottom of the second image, in the third paragraph
18 from the bottom. Perhaps, Registrar, if you could
19 call that out, the last three paragraphs.

20 A. Okay.

21 Q. You'll see -- we'll make
22 it a bit bigger for you. You'll see it
23 references, it says:

24 "And the City did test
25 friction later that year,

1 the Spectator has
2 learned. But the results
3 were never made public.
4 There's no official
5 report, Moore said, only
6 an informal chart sent in
7 an e-mail in December of
8 2015. The friction test
9 was not fulsome and the
10 result were inconclusive,
11 he said. But instead of
12 doing further testing, as
13 was recommended, the City
14 has decided to repave."

15 Registrar, if we could just go
16 over to image 3, just to the top two paragraphs.
17 Or top three. First three paragraphs. Thank you.

18 You'll see it says, "'All we
19 got was an indication that we should do further
20 work,' Moore said. 'It was moot when we decided
21 to go ahead with repaving.' The City refused to
22 share that chart with the Spectator. 'No one ever
23 releases that type of information because it's the
24 first thing anybody would use in a lawsuit,' Moore
25 said."

1 Were you familiar with Gary
2 Moore?

3 A. Yes.

4 Q. Had you had interactions
5 with Mr. Moore over the years?

6 A. Yes, of course, yes.

7 Q. Were you aware that
8 Mr. Moore had made these comments in the Spectator
9 at the time?

10 A. I don't remember the
11 article right now, so I -- I'm sorry, I can't
12 really comment on that.

13 Q. But do you recall any
14 discussions about comments that Mr. Moore may have
15 made to the Spectator around this time?

16 A. No, I don't.

17 Q. Ms. Edwards, when did you
18 first become aware of any issues relating to a
19 friction report for the Red Hill Valley Parkway?

20 A. Are you referring to my
21 discussion with Gord McGuire in October of 2018?

22 Q. I'm just wondering what's
23 your recollection of the first time an issue was
24 raised?

25 A. It would be that -- okay,

1 sorry. It would be that telephone conversation
2 with Mr. McGuire in October 4th, 2018.

3 Q. We have notes from that
4 call, but before we pull up the notes, I'm just
5 wondering if you can recall how that conversation
6 came about?

7 A. I believe that
8 Mr. McGuire had called me, called me, and that he
9 had some concerns with information that he had
10 come across and wanted some advice.

11 Q. Did he tell you what that
12 information was?

13 A. Am I able to refer to the
14 notes?

15 Q. Sure. Why don't we pull
16 them up.

17 A. Thank you.

18 Q. Registrar, if you can
19 pull up HAM64306. Are these the notes --

20 A. Yes.

21 Q. -- of your call with Mr.
22 McGuire?

23 A. Yes. Yes. Can you
24 please ask -- re-ask the question.

25 Q. Of course. You mentioned

1 that Mr. McGuire had called you and that he had
2 some concerns with information that he had come
3 across. So what information did he come across?

4 A. So it's where my notes
5 say 2013, 2014, he said that there was a number of
6 test results from the past which shows staff were
7 aware and some of the potential contributing
8 factors dealing with the Red Hill Valley Parkway,
9 example -- for example, surface conditions and
10 composition. Was unsure about what was done with
11 the information, so he was in the process of
12 preparing a -- what I call a briefing note to Dan
13 McKinnon who was the general manager of public
14 works, and I understood that they were going to be
15 preparing a report that would go to the
16 December 10th public works committee and so he was
17 trying to get some guidance on that issue.

18 Q. Did you tell you how he
19 discovered the information?

20 A. No, I don't think so. I
21 just think he said that the -- he had found it or
22 come across it, something like that.

23 Q. The note refers to a
24 number of test results. Did he tell you what the
25 test results were?

1 A. I don't believe so,
2 because I think I would have written that down.

3 Q. So what was the concern
4 in his mind? He had come across a number of test
5 results, but why was he getting advice from you
6 about that?

7 A. He seemed -- well, he was
8 working on this briefing note for Dan McKinnon on
9 the performance because there's going to be a
10 committee meeting dealing with the performance of
11 Red Hill and it was information that he wasn't
12 sure if it was -- what had been done with it,
13 where it had been released, if someone had -- that
14 kind of thing, and so he wanted to talk about that
15 in terms of next steps of what he did with it.

16 Q. So was the concern the
17 fact that he was unsure of what had been done with
18 it? That was the concern?

19 A. He was unsure of what was
20 done with the information, yes, and so he needed
21 to -- so he was trying to figure out what he was
22 to do with the -- you know, what would be the next
23 steps.

24 Q. Did he tell you if the
25 test results were concerning to him?

1 A. I don't recall. I don't
2 recall.

3 Q. In your note, in the
4 second line, it says "wet weather crash per PT of
5 Spec. What is that referring to?

6 A. I believe it means wet
7 weather crash performance was part of Spectator.
8 I think it means part of the Spectator article. I
9 don't know whether it was an article that had been
10 previously published or was one that was going to
11 be published.

12 Q. Ms. Edwards, if it
13 assists, we understand from the documents the
14 inquiry has received that the Spectator reached
15 out to the City on October 3rd, 2018. Did
16 Mr. McGuire mention that to you?

17 A. I don't believe so. But
18 I don't recall anything more on that issue other
19 than what's written in my notes.

20 Q. So was his call to you
21 prompted by the fact -- by this wet weather crash
22 performance part of Spec? Was that what prompted
23 him to call you?

24 A. I don't know. I think
25 that it was part of the background of what he

1 was -- I just wrote it down as a background point,
2 I think, when he was talking, was what he was
3 talking about.

4 Q. And then it says -- so
5 the note in the third bullet is "a number of test
6 results from past which show staff were aware."
7 What were staff aware of?

8 A. Showed staff were aware.
9 Staff were aware of the -- of those results, staff
10 were aware of, and that dealt with the
11 contributing factors to performance of the road
12 dealing with composition and surface conditions.
13 I'm sorry, I don't have anything more than what is
14 already written there.

15 Q. So where it says "and
16 some of potential contributing factors," your
17 evidence is that that would be potential
18 contributing factors to performance of the road
19 dealing with surface conditions and composition?

20 A. I believe so.

21 Q. Were you aware or did
22 Mr. McGuire tell you that there were issues with
23 wet weather crash performance on the road?

24 A. I think what he referred
25 to when he was referring to it, he just referred

1 to wet weather crash performance as part of that
2 Spectator report. That's what I recall him
3 telling me.

4 Q. He didn't tell you that
5 there were any issues with wet weather crash
6 performance?

7 A. I'm sorry, it's four
8 years ago. I don't recall.

9 Q. And then it says "unsure
10 of what was done with info. Gary would have had
11 it"?

12 A. Right.

13 Q. Is that something that he
14 conveyed to you?

15 A. Yes, that he was unsure
16 about what was done with the test -- with those
17 test results, that information. That "Gary would
18 have had it" I believe referred to Gary Moore, who
19 would have been the director of engineering
20 services at that time.

21 Q. And the "it" is the test
22 results?

23 A. Yes. I think it meant
24 "it" for information, but yes.

25 Q. I see. And then there's

1 a note that says "have been asked to summarize
2 info for Dan McKinnon"?

3 A. Correct.

4 Q. So what is that referring
5 to?

6 A. I believe Mr. McGuire
7 said that he was asked to be putting together a
8 summary, I call it a briefing note, for Dan
9 McKinnon on performance of the Red Hill.

10 Q. Did he say who asked him
11 to provide the summary?

12 A. Dan McKinnon, I believe.

13 Q. I see.

14 A. Because they were going
15 to be having -- at that time they were going to be
16 having a meeting on December 10th dealing with
17 performance of the Red Hill and it was going to be
18 part of the public works committee meeting
19 scheduled for that day.

20 Q. Did he tell you if Mr.
21 McKinnon was aware of the test results that he had
22 discovered?

23 A. I don't recall that.

24 Q. And then there's a note
25 that says "FOI" and there's a circle around it.

1 What is that referring to?

2 A. FOI is my short form for
3 Freedom of Information. I believe that
4 Mr. McGuire thought that he might be expecting a
5 Freedom -- or he could be expecting a Freedom of
6 Information request for this information.

7 Q. Did he say why --

8 A. I don't think one had
9 happened, but I think it was just a common that he
10 had made. I don't recall anything more than that.

11 Q. Did he say why he was
12 expecting a Freedom of Information request?

13 A. If he did, I did not
14 write it down.

15 Q. Do you recall if --

16 A. I do not. No, I don't
17 recall.

18 Q. Did he express concern if
19 there was a Freedom of Information request made?

20 A. I don't believe so. I
21 think it was just a comment. That there might be
22 something that would be happening later that would
23 have to be addressed.

24 Q. Did he express any
25 concerns about having to disclose the test results

1 that he had found?

2 A. I don't believe.

3 Q. Do you recall if

4 Mr. McGuire used the term "Tradewind report" or
5 "Tradewind" on that call?

6 A. I didn't write it down
7 and I think I would have if he had referred to a
8 specific consultant, so I don't think we got to
9 that level of detail in that conversation.

10 Q. Do you recall

11 Mr. McGuire's tone on this call?

12 A. No, not really, just that
13 he had an issue and he was dealing with it. We
14 dealt with a lot of issues over the years, so it
15 was an issue that he had to do deal with, or he
16 felt he needed to deal with it.

17 Q. Did he say why he thought
18 that he needed legal advice on this issue?

19 A. I think because he was --
20 because it was information he wasn't sure what had
21 happened with it and he wanted to -- because
22 performance of the Red Hill was meant to be going
23 to committee and council, he wanted to make sure
24 that he did things correctly. We were often
25 contacted to assist with commenting on reports as

1 well.

2 Q. Did he provide you with a
3 copy of the test results that he was referring to?

4 A. I don't believe so.
5 Well, not during that phone call. No, I don't
6 believe so.

7 Q. Did you provide him with
8 any advice on the call?

9 A. I think that I did not.
10 I was more collecting information because this was
11 a new issue for me in our section, and so I just
12 was collecting the information and I was going to
13 speak with Mr. Sabo about it.

14 Q. Did you tell Mr. McGuire
15 that you would speak to Mr. Sabo?

16 A. I don't recall if I said
17 that specifically.

18 Q. Why did you want to speak
19 to Mr. Sabo about it?

20 A. Because I knew that
21 the -- because I hadn't been dealing with the
22 performance of the Red Hill issues in our section,
23 so I didn't think that that was -- so that was an
24 issue. Secondly, he was talking about information
25 that may or may not have been released, so I

1 wasn't sure whether there might be some liability
2 issue there. And I was also -- this was on a
3 Thursday, and I was going to be away on vacation
4 the following week, so if this matter was going to
5 continue to require attention from our office, I
6 wanted to make sure someone was managing the issue
7 or there to provide assistance while I was away.

8 Q. Do you recall anything
9 else about this October 4th, 2018 call that you
10 haven't already told us?

11 A. No, I don't believe so.

12 Q. So how did you leave the
13 call in terms of next steps? I think you had said
14 that you were going to speak with Mr. Sabo. Did
15 you have any understanding of what Mr. McGuire was
16 going to do?

17 A. I didn't write it down,
18 so I don't know whether -- I don't know whether he
19 told me he was going to send me an e-mail that
20 night with his draft briefing note or not, but
21 that is what he did.

22 Q. Before we get to that
23 e-mail, before this call, so the October 4th, 2018
24 call, had you had any contact with anyone in the
25 City about issues relating to the Red Hill Valley

1 Parkway?

2 A. In terms of performance?

3 Q. Yes.

4 A. I don't believe so.

5 Q. In 2018, do you recall if
6 you had any contact with anyone within the City
7 about contracts relating to the Red Hill Valley
8 Parkway?

9 A. I don't believe I did
10 personally. I don't know if any lawyer within our
11 section did, but I did not personally.

12 Q. Registrar, could we pull
13 up HAM64308, image 18. You could also put up
14 image 19. Thank you.

15 So at the bottom of the page 1
16 you'll see an e-mail from Mr. McGuire to you on
17 October 4th, 2018, 8:07 p.m., subject "as
18 discussed." And he says,.

19 "Hi Debbie: This draft
20 review outlines my review
21 of the materials in use
22 on the RHVP. Page 2
23 details the draft report
24 chronology and
25 preliminary findings.

1 Let's talk about this
2 tomorrow if possible."

3 I take it that this e-mail was
4 sent to you after you had had the call with him
5 that we just talked about?

6 A. Yes, I believe so.

7 Q. To your knowledge, why
8 was he sending you this e-mail?

9 A. I think it was explaining
10 further that this was his draft. This was his
11 draft briefing note. I saw it as like a first
12 draft of his briefing note to Mr. McKinnon, and so
13 it had more information in there about where he
14 was at so far in the process, and he thought it
15 would be helpful for our discussion on October 5th
16 to be able to determine next steps.

17 Q. He does say "let's talk
18 about this tomorrow if possible." So it sounds
19 like you and he had agreed that there would be
20 some further follow-up?

21 A. Oh, there would be
22 follow-up. I would not have left it. As I said,
23 I wouldn't have left it because it was -- for no
24 other reason -- yeah, I would not have left it.

25 Q. I think you testified --

1 why don't we go to the draft review. Registrar,
2 if you could pull image 20. Maybe 21 as well.

3 So these are the first two
4 pages of the document that was attached to
5 Mr. McGuire's e-mail. Was it your understanding
6 that this was draft briefing note to Mr. McKinnon
7 that he had described on his call with you the day
8 prior?

9 A. Yes. I saw -- I
10 understood it to be like a -- when I saw it, like
11 a first draft that he had put together.

12 Q. Did you review this at
13 the time?

14 A. Just briefly, because we
15 were going to be talking further about it on
16 Friday the 5th.

17 Q. In the --

18 A. I believe I would have,
19 but I don't specifically recall.

20 Q. In the first paragraph,
21 he says:

22 "In summary re: the RHVP,
23 Susan and I have reviewed
24 and I provide the summary
25 of activity and my

1 understanding of the
2 process around the
3 resurfacing of this
4 asset."

5 Did you have any understanding
6 of who Susan was?

7 A. If I were guessing, I
8 think it would be Susan Jacob, but that would
9 be -- I don't recall if we had a specific
10 conversation about that.

11 Q. Did he mention Susan
12 Jacob on his call with you?

13 A. I don't think so. I
14 don't think so.

15 Q. And then you'll see on
16 the second page -- Registrar, could we call out
17 the two paragraphs that start appendix E about the
18 middle of the page.

19 You'll see here he refers to:

20 "Appendix E is a 2013
21 draft friction study
22 (Tradewind Scientific for
23 Golders) for the LINC and
24 RHVP at that time that
25 indicates the LINC is

1 performing well regarding
2 friction readings,
3 however the RHVP was
4 performing below or well
5 below the acceptable
6 levels of a facility of
7 this nature based on a UK
8 model. Golders
9 recommends in their 2014
10 report (page 8) to apply
11 microsurfacing over the
12 entire facility to
13 address the relatively
14 low FN coefficient and
15 remove the frictional
16 component as an element."

17 Do you recall if he had
18 conveyed this information to you in the call the
19 day before?

20 A. I don't think that level
21 of detail was in that call. I think it was just
22 an overview of the issues. So it would be what
23 was in my notes, that's what I understood at the
24 time.

25 Q. Registrar, if you could

1 go back to image 18, please. In the top e-mail on
2 this page, you'll see an e-mail from you to Mr.
3 Sabo, this is the next day, October 5th, 2018, at
4 12:41 p.m. You forwarded Mr. Sabo the e-mail from
5 Mr. McGuire, and you say -- it's marked importance
6 high, sensitivity private.

7 "Hi Ron. I have to still
8 connect with Gord
9 McGuire, but if possible
10 I would appreciate having
11 a quick discussion with
12 you this afternoon as
13 there appears to be a
14 potential liability
15 issue. I'm hoping to
16 have some time between 2
17 and 3 p.m. if you're
18 available and maybe we
19 could speak with Gord
20 together, especially if
21 this might carry over
22 into next week when I'm
23 away."

24 Was there a sense of urgency
25 to address this matter from your perspective?

1 A. In the sense that if
2 anybody is bringing something to me and I haven't
3 got all the information with respect to it and I'm
4 going on vacation, I want to make sure that I get
5 it addressed, or at least I know it's in someone's
6 hands who can keep it moving, and at the point
7 that I was sending it Ron, I didn't have all the
8 information and I wanted to make sure that we
9 could keep things moving while -- because I was
10 going to be away.

11 Q. So from your perspective,
12 any urgency was driven by the fact that you were
13 planning on being away the following week?

14 A. Primarily, and also
15 because I was going to be away and we didn't have
16 all the information, so I wanted to keep things
17 moving so we could make sure we get -- and we
18 hadn't talked to Gord again yet after he had sent
19 that document to us -- or to me, sorry.

20 Q. You mentioned a potential
21 liability issue. So what was the potential
22 liability issue from your perspective?

23 A. That there were documents
24 that may not have been released that I didn't
25 quite -- yeah, there were documents that had been

1 located and they weren't sure what to do with
2 those. So wanting to see what the -- whether
3 there was going to be an issue because of that.

4 Q. When you say that there
5 were documents that may not have been released,
6 released to who? Was it released to council?
7 Released to who?

8 A. Well, there were
9 documents -- from what Gord had said to me the
10 previous day, there were documents that had not
11 yet been -- that he had located and he couldn't
12 find where that information had gone, whether it
13 had been released to anyone, whether it be council
14 or anybody else. So trying to figure out what
15 happened to those documents.

16 Q. Do you recall speaking
17 with Mr. McGuire and Mr. Sabo on October 5th,
18 2018?

19 A. On October 5th, yes.

20 Q. Do you recall if you
21 spoke with Mr. Sabo before the call with
22 Mr. McGuire?

23 A. I believe I did. I
24 believe I spoke with Mr. Sabo in his office. I
25 don't recall it being a long conversation. I

1 can't remember the details about the time, but
2 then we went on -- I believe we called Mr. McGuire
3 from Mr. Sabo's office.

4 Q. Do you recall what you
5 and Mr. Sabo talked about?

6 A. I think we talked about
7 the whole situation with Mr. McGuire, and that
8 because the documents were draft, we were not
9 clear whether there was -- whether there was more
10 information to be gathered. Because they were
11 draft, there's usually a reason why they're still
12 drafts, so we didn't know whether they had been
13 shared with anybody, whether they had been --
14 there had been discussions with the consultant to
15 try to get clarification on things. Like what had
16 happened -- it felt like it was an incomplete
17 picture, and so we had talked with Mr. McGuire
18 about speaking with Mr. Moore who was still around
19 because I believe at the time he was working for
20 the LRT office. So we said that we thought he
21 should speak with Mr. Moore to find out if he
22 could get more information, just so we would have
23 a more complete picture about whether there was
24 even an issue or not with this. In my experience
25 in the past, we would have situations where

1 sometimes people would raise an issue and it
2 turned out, you know, if you just do a little bit
3 more digging, you might find that it was -- you
4 might get the answer that you were missing. So we
5 wanted to make sure that was the case here. See
6 if that was the case here.

7 Q. What you described, that
8 was your discussion with Mr. Sabo before
9 getting --

10 A. No, no, no. That was our
11 discussion with Mr. McGuire and Mr. Sabo together.

12 Q. I see. So do you recall
13 the discussion with Mr. Sabo before Mr. McGuire
14 comes on the line?

15 A. Oh, I'm sorry, I
16 misunderstood. No, other than just -- I think
17 just a general discussion before we would then
18 talk to him, because we wanted to talk to him
19 together and ask our questions together.

20 Q. When Mr. McGuire had
21 contacted you the day prior, did he tell you that
22 it was draft test results? Where did you get the
23 idea of it being a draft from?

24 A. It's in the -- in his
25 e-mail he says this is a draft report chronology,

1 and I think it's in -- is it in the attachment?

2 Q. Yes. We can pull up it
3 up again. It's in image 20. We can maybe perhaps
4 put it next to it.

5 It does refer to appendix E
6 being a 2013 draft friction study. I'm sorry,
7 image 21. We just looked at that, yeah.

8 A. Yeah, they say draft,
9 yes.

10 Q. So that's where you
11 learned that it was a draft?

12 A. I believe so. I can't
13 remember now without going back to the notes from
14 October 4th if he said that it was draft then too,
15 but it was referred to in that document as draft.

16 Q. Okay. I think you
17 testified that you and Mr. Sabo called Mr. McGuire
18 together?

19 A. I believe so, yes.

20 Q. Registrar, if we could
21 pull up image 13 in the same document. Are these
22 your notes from the call with Mr. McGuire and Mr.
23 Sabo?

24 A. Yes.

25 Q. And the note says:

1 "Gord to speak with Gary
2 Moore before finalizing
3 note to Dan McKinnon.
4 Need more context
5 especially since Golder
6 report is draft."

7 Does it say --

8 A. That's IE, yes.

9 Q. That's what you just
10 described to us just now, that because it was a
11 draft, the three of you talked about Mr. McGuire
12 getting more information?

13 A. Yes, from Mr. Moore to
14 find out if there was anything more -- because it
15 was still draft, if there was anything more, if
16 there's any more information with respect to that
17 to explain why that was the case and what happened
18 with the report.

19 Q. Did Mr. McGuire indicate
20 if he had already done any kind of digging on that
21 front?

22 A. Well, we had presented
23 what he thought at that point in time in that
24 draft briefing note, but he had not spoken with
25 Mr. Moore. My memory is he had not spoken to Mr.

1 Moore.

2 Q. Did it indicate why he
3 was coming to legal first before reaching out to
4 Mr. Moore?

5 A. No, but I did not -- I
6 didn't find that unusual.

7 Q. Why is that?

8 A. Because we would get
9 calls from people a lot -- from clients lots of
10 times asking -- trying to ask questions, and
11 sometimes we're able to just help them -- we're
12 just able to help them think about other ways in
13 which they can get information or try to figure
14 things out, so I didn't find that unusual that he
15 was asking that. That he came to us first, I
16 should say.

17 Q. You didn't find it
18 unusual that he would call the City's legal
19 department before going and speaking with
20 Mr. Moore to see what had happened with the draft
21 report?

22 A. No.

23 Q. And then there's a note
24 that says "we should see" -- is it "revised"?

25 A. Yes, "revised draft

1 briefing note and proposed committee reports."

2 Q. What's that note
3 referring to?

4 A. Just that once he got his
5 information and he would be revising against (ph)
6 the draft briefing note and working on any
7 proposed committee reports, that he should share
8 them with our office so we could take a look at
9 them and see if there was any advice that we would
10 provide for them. We often even had a section
11 within the standard committee report document for
12 a provision of legal -- of legal -- I think it's
13 legal implications or something like that.

14 Q. So the "we" in that
15 sentence, is that the legal department?

16 A. That's correct.

17 Q. Actually in the first
18 part where you say "Gord to speak with Gary
19 Moore," was that your and Mr. Sabo's advice to
20 Mr. McGuire?

21 A. I think it was our action
22 plan as a result of our discussions.

23 Q. And then it says, "Ron
24 recalls info on surface quality of road coming up
25 before"?

1 A. Yes.

2 Q. What is that referring
3 to?

4 A. I think it was just a
5 comment that he made, I don't recall anything more
6 with respect to that.

7 Q. And then it says, "Gord
8 will gather more info and get back to us"?

9 A. Correct.

10 Q. So in terms of the more
11 info that he was gathering, what was your
12 understanding of the scope of that?

13 A. Well, he was going to get
14 the more info by talking to Mr. Moore and then
15 depending on what information Mr. Moore gave him,
16 it might take him down whatever path of having to
17 get more information there and then trying to see
18 where it all stood after that, and then he would
19 get back to us and -- with the -- at that time I
20 think I was just expecting the revised draft
21 briefing note and committee reports.

22 Q. When you refer to the
23 committee reports, that's the report to the public
24 works committee?

25 A. Yeah, the December 10th

1 committee that he had talked about at that time,
2 yes.

3 Q. Was it your understanding
4 that the Tradewind results would be disclosed to
5 the public works committee in the December 10th
6 report?

7 A. I don't know. I think it
8 would depend on what was -- I think it was going
9 to depend on what we found out throughout the
10 discussions with Mr. Moore and then what
11 information was found out because at that point I
12 didn't know if those results were the actual -- I
13 did not know enough about what those results were
14 in the draft report.

15 Q. So a decision hadn't yet
16 been made about whether or not those results would
17 go to public works committee on December 10th?

18 A. I think that's fair.

19 Q. Then it says "good news
20 is repairs are planned for 2019"?

21 A. Yes.

22 Q. What's that referring to?

23 A. I believe during the
24 course of the conversation is we talked about
25 what -- as we were talking about the matter that

1 the good news in all this was that the repairs --
2 that there were repairs planned for the parkway
3 for 2019. We were in October of 2018, and in my
4 mind that was fairly quick, quite quick, because
5 we weren't talking another five-year budget cycle
6 or anything like that; we were talking about
7 within the next year that they would be doing
8 repairs to that roadway.

9 Q. So that was considered to
10 be good news because the results indicated there
11 were issues with the road conditions on the
12 parkway?

13 A. It was regardless of all
14 that. In any event, regardless of what all
15 that -- of what there was there, the road was
16 going to be repaired. So there wasn't any --
17 yeah, so it did not seem that there was a safety
18 issue at that time.

19 Q. Was it also good news
20 because the point was that even if there were some
21 issues with this draft report, it wouldn't matter
22 because the road was going to be repaved?

23 A. I don't recall it coming
24 up in that context.

25 Q. Did you discuss whether

1 any steps would need to be taken before the
2 repaving?

3 A. I'm sorry, I don't
4 understand the question.

5 Q. Did you discuss with
6 Mr. McGuire whether any steps would need to be
7 taken by the City before the repaving?

8 A. In terms of? I'm still
9 not understanding, I'm sorry.

10 Q. Did you discuss any steps
11 that the City might have to take before the
12 repaving of the road in the context of this
13 discussion of it being good news?

14 A. I think we just had that
15 sort of -- that comment was made during our
16 discussion, and we didn't get into any other
17 discussion regarding the repaving or the repair
18 process, if that's what you're asking.

19 Q. Did Mr. McGuire raise any
20 concerns regarding the safety of the road?

21 A. Not that I recall.

22 Q. So were there any action
23 items for you or for Mr. Sabo following this call?

24 A. No, we were waiting to
25 hear back from Mr. McGuire.

1 Q. Did you and Mr. Sabo have
2 any further discussions following this call?
3 Before November of 2018?

4 A. Oh, before November of
5 2018. No, I don't believe we had any discussions
6 between then and November 2018. I should say that
7 what -- I did have one action item that I did, was
8 I did BF my file -- sorry, did a bring forward on
9 my file to the end of October of 2018 as I had
10 expected it might take Mr. McGuire a little bit of
11 time depending on what the -- what information he
12 got from Mr. Moore and where that took him. He
13 might need a bit more time in order to do that
14 work and to work on the documents and then be
15 getting back to us. So I had done -- I had
16 identified in my system that it might not be -- to
17 wait and see if I had heard from him by the end of
18 October.

19 Q. Registrar, could we pull
20 up image 1 of the same document. I think this is
21 a photocopy of sticky note.

22 A. It is.

23 Q. Is it? Okay.

24 A. With a sticky note on it,
25 yes.

1 Q. At the bottom it says:
2 "BF to end of October to
3 see if have heard
4 anything more from Gord
5 McGuire."

6 Is that what it says?

7 A. Correct.

8 Q. And that's what you're
9 referring to when you refer to bring forward?

10 A. Yes. So I believe I did
11 that after I was -- after the meeting on the --
12 the phone call with Mr. McGuire and Mr. Sabo on
13 the 5th. I believe that I put that into my system
14 for -- to hear back from him.

15 Q. Did you hear back from
16 Mr. McGuire?

17 A. I don't believe so.

18 Q. Did you follow up with
19 him after the end of October?

20 A. No, I don't know when it
21 was -- when the file was actually brought to me.
22 It would depend on a few things there, but no, I
23 don't believe so.

24

25 Q. Sorry, when you say --

1 oh, I see, because you put the sticky note to --
2 is it your assistant?

3 A. Correct. Correct.

4 Q. I see.

5 A. And we would try to space
6 out all my bring forwards to give me enough time
7 to be able to deal with them, and so some of them
8 would be -- I don't know which day I would have
9 got it kind of thing and then how that timing
10 would have worked.

11 Q. But ultimately you don't
12 recall any further discussions --

13 A. Ultimately I don't recall
14 any further discussions, that's correct.

15 Q. Did you consider raising
16 the issues that Mr. McGuire had raised with you
17 with Ms. Auty at the time?

18 A. Not at that time, because
19 I was waiting to see what additional information
20 Mr. McGuire was going to be able to obtain.

21 Q. So in your mind it hadn't
22 risen to the level of requiring the City
23 solicitor's involvement?

24 A. That's correct. I didn't
25 think I had a complete picture yet and I wanted to

1 make sure that we had a complete picture because
2 you need that complete picture for telling her or
3 for bringing any kind of report to committee and
4 council because we want to make sure that we
5 have -- that were able to answer any questions
6 that might be raised as a result of it. If we
7 just have more questions, it may or may not be
8 a -- it may not be that helpful. So trying to
9 make sure we had as complete a picture as
10 possible.

11 Q. So you had brought
12 forward this in your own file for the end of
13 October. Were there discussions with Mr. McGuire
14 as to roughly when he would be getting back to
15 you?

16 A. No. He would have his
17 own internal deadlines to deal with for getting
18 reports and such done, so he would be working
19 towards those and then reaching out to me. So I
20 knew he would have those deadlines anyway and I
21 thought that based on that I probably would hear
22 from him late October, early November kind of
23 thing.

24 Q. Was there a sense of
25 urgency in terms of Mr. McGuire gathering the

1 information?

2 A. I don't know if -- I
3 didn't have a sense of urgency overall at the
4 time, but he -- certainly the next step was to get
5 that information.

6 Q. Registrar, could we pull
7 up image 5 of the same document. If you could put
8 images 5 and 6 up on the screen.

9 So at the bottom of the first
10 page of this e-mail, you'll see an e-mail from
11 Mr. Sabo to you and to Mr. McLennan on
12 October 11th, 2018, the subject is "pavement," and
13 Mr. Sabo writes:

14 "FYI and in relation to a
15 recent discussion Debbie
16 and I had over
17 consultants or drafts of
18 reports studying the
19 surface of the red hill
20 expressway. I wonder
21 where numbers for the RHE
22 would put it in
23 comparison to the
24 international standards
25 in the link below."

1 an actual -- I don't recall having an in-person
2 discussion with him.

3 Q. Right. Where it says
4 "recent discussion," that's referring to the
5 October 5th, 2018 --

6 A. Yes, I believe so,
7 because this was now the following week when I was
8 away.

9 Q. Okay. Right. So you
10 were on vacation the week of October 8th to the
11 12th, 2018?

12 A. Correct.

13 Q. Do you recall talking
14 to -- on October 5th, do you recall talking to Mr.
15 Sabo about involving Mr. McLennan in any way?

16 A. No, I don't. I do not.

17 Q. What Mr. Sabo says in the
18 second paragraph about plaintiff's counsel in
19 recent years being aware of or requesting
20 information, was that information that he conveyed
21 to you and to Mr. McGuire as well on October 5th?

22 A. No, I don't recall that
23 coming up. It wasn't in my notes as well, so I
24 don't think it....

25 Q. Do you recall if you

1 reviewed the document in a link? We can Quebec
2 pull it up. Registrar, maybe you can put it up
3 next to image 1. It's RHV897.

4 A. I think that I saw this
5 e-mail as being a -- just for my information more
6 than anything else and that most of it was geared
7 towards Mr. McLennan. I did not -- I don't
8 specifically recall reviewing that attachment.

9 Q. Did you discuss what Mr.
10 Sabo had given to you with Mr. McGuire?

11 A. No, I don't believe I
12 did.

13 Q. To your knowledge did Mr.
14 Sabo --

15 A. I don't know.

16 Q. -- have any more
17 follow-up with Mr. McGuire?

18 A. I don't know.

19 Q. Okay. So between this
20 e-mail and let's say November 8, 2018, did you
21 have any further discussions with Mr. Sabo about
22 this issue?

23 A. Not that I can recall,
24 no.

25 Q. Registrar, you can take

1 down these documents. If we could put up
2 HAM53973. Images 1 and 2, please.

3 Ms. Edwards, at the bottom of
4 image 1, you'll see an e-mail from Mr. McGuire to
5 you and to Jasmine Graham on November 8th, 2018,
6 11:04 a.m. He says:

7 "Hi ladies: See the
8 attached for testing
9 results on the RHVP. I
10 have the last two years
11 data. Can we discuss
12 this today if possible?"

13 And then there's an e-mail
14 chain that's forwarded regarding the Freedom of
15 Information request 18-189?

16 A. Yes.

17 Q. I take it that between
18 October 5th and this e-mail, you hadn't had any
19 further communications with Mr. McGuire about the
20 issues that he had raised previously?

21 A. I believe that's correct.

22 Q. Was this your first time
23 learning about the Freedom of Information request?

24 A. Yes, I believe so.

25 Q. Did you speak with Mr.

1 Sabo or anyone else in the legal department on
2 November 8th when you received this e-mail?

3 A. I don't believe I spoke
4 with anybody on November 8th.

5 Q. About this issue?

6 A. About this issue. I
7 don't believe so. I think it was the next day.

8 Q. Do you recall your
9 reaction when you got this e-mail?

10 A. No, other than it was
11 a -- that it was a Freedom of Information request
12 and that the turnaround time was within a week
13 and -- yes, I think that's about it at that point.

14 Q. Registrar, could we pull
15 up RHV1015. We actually have a voice mail message
16 that was sent you to on November 8th, 2018, at
17 11:44 a.m., and here we have the transcription.
18 It says:

19 "Hi Debbie, it's Gord.
20 It's quarter to 12. I'm
21 just on my way to a
22 meeting for budget. I'm
23 kind of in a bunch of
24 stuff going for the rest
25 of the day. I would like

1 to touch base with you.
2 I sent you an e-mail and
3 it's regarding our
4 conversation we had
5 before about the Red Hill
6 Valley, so when you get a
7 chance just shoot me an
8 e-mail and we can set up
9 a time or something to
10 have a quick
11 conversation."

12 Do you recall getting that
13 voice mail?

14 A. Yes, I didn't recall the
15 details of it, but I know that there was a voice
16 mail, yes.

17 MS. LAWRENCE: Registrar, this
18 document is not I don't think in any of the
19 overview documents, so could we mark it as
20 Exhibit 167?

21 THE REGISTRAR: Noted,
22 counsel, thank you.

23 EXHIBIT NO. 167:
24 Transcription of voice
25 message; HAM0064387_0001

1 BY MS. LIE:

2 Q. Thank you. If we could
3 now pull up RHV1016. Here is another
4 transcription of another voice mail message. This
5 one is November 8th, 2018, at 6:02 p.m., and it
6 says:

7 "Debbie. Hi, it's Gord
8 McGuire. I'm still
9 trying to connect with
10 you. You can try my cell
11 if you want." He gives
12 his phone number. "I
13 would like to touch base
14 with you on that matter
15 we talked about before
16 regarding the Red Hill.
17 Give me a shout. Thanks
18 a lot. Bye."

19 I take it that you didn't
20 speak with Mr. McGuire between the first voice
21 mail and the second one?

22 A. Apparently not.

23 MS. LIE: Registrar, could we
24 mark this document as Exhibit 168.

25 THE REGISTRAR: Noted,

1 counsel. Thank you.

2 EXHIBIT NO. 168:
3 Transcription of voice
4 message; HAM0064389_0001

5 BY MS. LIE:

6 Q. Ms. Edwards, did you call
7 Mr. McGuire back?

8 A. Yes, I did.

9 Q. Do you recall when you
10 called him back?

11 A. I believe it was either
12 after this second voice mail message or the
13 following day. I believe it would have been
14 before I sent the FOI request to Mr. Sabo.

15 Q. So it would be --

16 A. Sorry, I was just going
17 to say, I don't know what my schedule was like on
18 the 8th, so I can't really comment about what I
19 was doing that day or otherwise.

20 Q. But your best
21 recollection is that it would either have been the
22 evening of the 8th or the morning of the 9th; is
23 that fair?

24 A. That's what I believe,
25 yes.

1 Q. What do you recall about
2 your call with Mr. McGuire on the evening of the
3 8th or the morning of the 9th?

4 A. That he was -- you've got
5 my note as well there for that, my written notes,
6 or do you want me to speak without that first?

7 Q. Tell me if you have a
8 recollection.

9 A. I just know that I spoke
10 with him about the fact there was the FOI, and I
11 know that it was only a one-week turnaround for a
12 response, for responsive documents, and that that
13 was normal for the FOI office.

14 And that he also had some
15 concerns about timing because he was going to be
16 away on vacation starting on the 15th of November,
17 and I believe that the -- and I believe that the
18 FOI office wanted the information by the 15th, so
19 there was some time sensitivity, and he wanted to
20 get some advice with respect to the documents.

21 Q. Did he tell if he had
22 done -- taken any steps about this issue between
23 the October 5th call that he had with you and this
24 call?

25 A. So he did tell me he had

1 not yet spoken with Mr. Moore, and that -- because
2 we had that conversation. And I understood that
3 he was going to then speak with Mr. Moore and I
4 was going to take a closer look at the FOI
5 request.

6 Q. Did he say why he hadn't
7 talked to Mr. Moore yet?

8 A. I don't have any -- I
9 don't recall, and I don't believe I have any notes
10 to that effect. The only thing I will say is he
11 is in his first six months in a new role, and so
12 I'm sure there were things flying all over. Not
13 trying to minimize anything, but he was -- I'm
14 sure he was pretty busy.

15 Q. Do you recall
16 Mr. McGuire's tone during this call?

17 A. I would say that I
18 thought he was anxious to be able to deal with
19 this issue because there was -- and there was now
20 this time sensitivity. He wanted to make sure
21 that he was responding to it.

22 Q. So your understanding is
23 that the anxiety or him being anxious was related
24 to the timing?

25 A. Well, the timing and

1 making sure that he did what he was supposed to be
2 doing.

3 Q. Registrar, could you pull
4 HAM 64308, image 8. Ms. Edwards, you had
5 mentioned a note of this call. This note here is
6 undated, but is this a note from the call you had
7 with Mr. McGuire either late on November 8th or
8 early on November 9th?

9 A. Yes. Yes, I believe --
10 yes, I believe that to be it.

11 Q. Where it says "friction
12 test done for Golder, referred to in Golder
13 report," what's that receiving to?

14 A. I think it's just about
15 the -- that was part of the documents that
16 Mr. McGuire was going to be speaking with
17 Mr. Moore about and the question was whether those
18 documents would end up being subject to that FOI
19 request. I think that was part of -- would be
20 responsive to that FOI request.

21 Q. I see. Okay. Did he
22 express concern that it would be responsive to the
23 FOI request?

24 A. I think he just wanted to
25 figure out whether it was or not. And then we had

1 the conversation that he had not yet talked to
2 Gary, so I couldn't -- so I didn't feel that we
3 were in any position to make comment yet because
4 we needed to get the information that we had
5 talked about before.

6 Q. Is that what you conveyed
7 to him, that -- what did you convey to him about
8 his question about whether or not this friction
9 test would be responsive?

10 A. I believe I said to him
11 that -- I asked him if he had spoken with
12 Mr. Moore, and we needed to get that information
13 so we would know where to go from here.

14 Q. Where it says "advice re
15 next steps, and then it says "why hot-in-place,"
16 what that's referring to?

17 A. Advice re next steps, I
18 think he just wanting to know what would happen
19 next. He wanted to get advice about what he
20 should be doing, but the hot-in-place, I don't
21 specifically recall.

22 Q. Do you recall him
23 mentioning -- why was he mentioning hot-in-place
24 with you on this call?

25 A. I just don't recall.

1 Q. Did you have a
2 understanding of what hot-in-place meant?

3 A. I don't think so. I
4 don't believe so.

5 Q. So where did you leave
6 things on this call in terms of the advice that
7 you were giving to --

8 A. He was going to speak
9 with Mr. Moore, and then I was going to take a
10 closer look at the FOI request and speak with Mr.
11 Sabo, because we had both been dealing with
12 Mr. McGuire previously.

13 Q. Do you recall anything
14 else from this conversation with Mr. McGuire?

15 A. No, I don't think so.

16 Q. Registrar, if we could
17 pull up image 10 and image 11 in the same
18 document. Thank you.

19 You'll see at the bottom of
20 page 2 of this e-mail chain, there's an e-mail
21 from you to Mr. Sabo on November 9th, 2018, at
22 9:08 a.m., and you say:

23 "Ron, Gord McGuire has
24 received this FOI request
25 and is very anxious about

1 it. He would appreciate
2 some advice, so I am
3 hoping that you and I can
4 discuss, perhaps on
5 Monday? His deadline is
6 the 15th and he is
7 scheduled to be out of
8 the country from the 15th
9 to the 26th. Thanks Ron.
10 Debbie."

11 I take it that the
12 conversation we just talked about happened at some
13 point before November 9th, 2018, at 9:08 a.m.?

14 A. Yes, I believe so.

15 Q. And you say that
16 Mr. McGuire is very anxious about the FOI request.

17 A. Mhm-hm.

18 Q. You had mentioned that he
19 was going away. Was that the extent of his
20 anxiety?

21 A. Well, I think he was
22 going and he was -- he wanted to make sure that he
23 was responsive to dealing with this issue before
24 he went away, and he wanted to make sure that he
25 was connecting with me and that we were going to

1 be addressing it and -- because he had left a
2 couple of voice mail messages for me. So he
3 was -- yes, I think that he was anxious about it,
4 about making sure everything was addressed.

5 Q. Why did you send this to
6 Mr. Sabo?

7 A. Because we had been --
8 because Mr. Sabo and I had been dealing with
9 Mr. McGuire previously when it came to this issue
10 of the -- with respect to the surface quality
11 issue back in October, and I wanted to discuss
12 with him how we would handle the -- who had been
13 providing the advice on -- with respect to the FOI
14 request.

15 Q. We see an e-mail response
16 from Mr. Sabo at 2:44 p.m. on the same day where
17 he says:

18 "I've asked Byrdena to
19 touch base with Gord.
20 Ultimately the advice
21 here if any would be for
22 the office as they are
23 making the decision on
24 the FOI response."

25 Did you have a discussion with

1 Mr. Sabo?

2 A. I don't think so. I
3 think I just got the e-mail response from him.

4 Q. Are you familiar with
5 Byrdena?

6 A. Byrdena MacNeil, yes, I
7 was. She was a lawyer in the dispute resolution
8 section at the time.

9 Q. Did you have any further
10 discussions with Mr. Sabo about this issue that
11 had been raised?

12 A. I don't believe so.
13 Although I think there's -- actually I say that.
14 I think there's a note which says I had a
15 discussion with him on the 13th, but I don't
16 recall what that was about.

17 Q. Registrar, if you could
18 pull up images 9 and 10. On the first page of
19 this e-mail chain, there's an e-mail from you to
20 Byrdena MacNeil, November 11th, 2018, at 3:43
21 p.m., and you say:

22 "Hi Byrdena, given the
23 e-mail from Ron below,
24 I'm happy to have you
25 reach out to Gord but

1 want to make sure that
2 you're aware of his
3 sensitivity and context.
4 Please let me know if you
5 have a few minutes to
6 chat on Monday, tomorrow.
7 Thanks, Byrdena.
8 Debbie."

9 And then Ms. MacNeil responds,
10 "Hi Debbie -- yes, whenever you are free today to
11 chat."

12 So November 12th is a Monday,
13 right?

14 A. November 12th is a
15 Monday, yeah.

16 Q. What were you referring
17 to when you said that you wanted Ms. MacNeil to be
18 aware of his sensitivity in context?

19 A. So I wasn't sure as to
20 what conversation Ms. MacNeil had had with
21 Mr. Sabo, and so I wanted to - my recollection is
22 that I wanted to just update her or give her some
23 context of the discussions that Mr. Sabo and I had
24 had with Mr. McGuire, and I believe was -- I
25 believe I was telling her about the -- explaining

1 that Mr. McGuire was new to the position, had come
2 across this document, or documents, and he was
3 dealing with that, he's going to be away, he's
4 got -- and he wants to make sure that he gets it's
5 addressed before he's gone. So just to give her
6 that complete timing and sensitivity and context
7 for her.

8 Q. Did you give that
9 sensitivity and context to --

10 A. I believe I did, yes.

11 Q. So what did you say to
12 Ms. MacNeil? Was this on November 12th, 2018?

13 A. Yes. I think from the
14 e-mails and notes that there are, I believe that I
15 spoke with her in the afternoon of the 12th, but
16 I -- and I have a recollection that I spoke to her
17 in her office, but I don't specifically recall the
18 details of that discussion. Other than, I should
19 say, I think that from the notes, she did ask me
20 if I had a copy of the reports that were -- there
21 was a -- the reports from -- the Tradewind or
22 Gorder report. I should say Golder report. So I
23 went to look and see if I had that or not, if I
24 had a copy of that report.

25 Q. I see. Okay. Registrar,

1 if we could pull up image 5. So at the top of
2 this page you see an e-mail from you to
3 Ms. MacNeil on November 12th, 2018, at 2:03 p.m.?

4 A. Yes.

5 Q. "Hey Byrdena, just to
6 close the loop on our
7 discussion this
8 afternoon, I can't find
9 an e-mail with any of the
10 reports, draft or
11 otherwise, so Gord will
12 have to provide the draft
13 Golder report to you.
14 However, I did see the
15 e-mail below from Ron to
16 John McLennan which I
17 thought I would share
18 with you. Note that I
19 can't find the response
20 from John. Good luck on
21 your discussion with Gord
22 this afternoon and many
23 thanks for your
24 assistance with this."

25 This is what you were

1 referring when you referred to a note?

2 A. Yes. Yes, sorry, the
3 e-mail, yes.

4 Q. Okay. This tells you
5 that you spoke with Ms. MacNeil at some point
6 before 2:03 p.m.?

7 A. Yes.

8 Q. Did you ever get a copy
9 of the Tradewind report?

10 A. I don't think I ever got
11 one. At this point in time, I don't believe I had
12 ever received a copy of it. I believe I received
13 one a few months later as part of a press release
14 that was issued, a media release that was issued
15 by the City.

16 Q. The first time you recall
17 seeing the Tradewind report is -- was as part of
18 the press release that went out when the Tradewind
19 Report was released to the public?

20 A. Yes, I believe that's
21 correct.

22 Q. Do you recall ever seeing
23 the 2014 Golder report?

24 A. No, I don't believe I saw
25 that either.

1 Q. Did you tell Ms. MacNeil
2 about your discussions with Mr. McGuire back in
3 October of 2018?

4 A. I believe I would have.
5 I can't recall specifically, but I believe I would
6 have.

7 Q. Did you provide
8 Ms. MacNeil with the draft review that Mr. McGuire
9 had sent to you in October?

10 A. I don't know. I don't
11 have a -- I don't have a -- I don't think there's
12 an e-mail of me doing so.

13 Q. Did you provide
14 Ms. MacNeil with your notes of your calls with
15 Mr. McGuire?

16 A. No, I don't believe so.

17 Q. Registrar, if we could
18 pull up image 7, the same document. Do you recall
19 speaking with Mr. McGuire on November 12th, 2018,
20 so that's the Monday?

21 A. Yes.

22 Q. How was that call
23 initiated?

24 A. I believe Mr. McGuire
25 called me back. So he and I had had the

1 conversation on either the evening of the 8th or
2 the morning of the 9th, and so that was Thursday
3 night or Friday morning. And then on Monday he
4 called me back to say that he had spoken with Mr.
5 Moore, and this is basically a brief summary of
6 what he had said to me.

7 Q. Do you recall if he had
8 called you back before you spoke with Ms. MacNeil?

9 A. I don't recall that part.

10 Q. What did he say about his
11 discussion with Mr. Moore?

12 A. He said that Mr. Moore
13 had said that he had sent the information, which I
14 took as being the test results or the Golder
15 report or -- over to Diana, who I understood to be
16 the -- to be Diana Swaby in risk management, and
17 that he had sent the information over about two
18 years ago. That the report had looked at a UK
19 standard, and there was no standard in Ontario,
20 and so he felt that the report was a bit
21 misleading since it was not binding. And that
22 Mr. Moore doesn't recall receiving any response to
23 the provision of the report and -- but John
24 McLennan, who is the manager of risk management
25 services, is aware.

1 Q. Just so I understand,
2 when you say that Mr. Moore doesn't recall
3 receiving any response, that's response from risk
4 management or a risk response from who?

5 A. Well, you know, I'm
6 trying to remember. I can't remember if it was
7 risk management or if it was a response from the
8 consultant.

9 Q. Which consultant?

10 A. I don't know if it would
11 be Golder or Tradewind.

12 Q. Why would Mr. Moore have
13 been expecting a response from Golder or
14 Tradewind?

15 A. So this is again whether
16 there were any changes to be made to any report --
17 like, you remember my comment earlier about
18 finding out whether Mr. Moore -- whether he had
19 tried to have any conversations about the report
20 with -- about the draft report with the
21 consultants, that Mr. McGuire was going to try
22 find that sort of information out. So I can't
23 recall whether that line is about doesn't recall
24 receiving any response from the consultant or
25 whether it was from risk management.

1 Q. I see. So did
2 Mr. McGuire say that Mr. Moore had gone back and
3 talked to the consultants?

4 A. That's the part I'm not
5 remembering. I'm sorry.

6 Q. Did he say when he spoke
7 with Mr. Moore?

8 A. No. I did not write it
9 down, so I do not know.

10 Q. Presumably it was
11 sometime between the November 8th or 9th call with
12 you and November 12th?

13 A. Correct.

14 Q. Where it says "John
15 McLennan is aware," what was your discussion
16 around Mr. McLennan's awareness?

17 A. I think it was just that
18 Mr. McLennan was aware of the information that had
19 been sent over to risk management two years
20 previously.

21 Q. That's what Mr. McGuire
22 was conveying to you?

23 A. That Mr. Moore had said
24 to him.

25 Q. Okay. Not that

1 Mr. McGuire had spoken with Mr. McLennan to your
2 understanding?

3 A. Yes. That's correct.

4 This was -- sorry, this was all what I understood
5 Mr. Moore had said to Mr. McGuire.

6 Q. Everything in that note
7 that we just went over is Mr. McGuire conveying to
8 you what Mr. Moore had said to him?

9 A. Correct.

10 Q. And then in the bottom it
11 says "Golder report," I think it says "spec
12 October 26, 2018"?

13 A. That's right.

14 Q. What is that note
15 referring to?

16 A. I don't recall.

17 Q. Do you recall having any
18 discussion about the Spectator?

19 A. No, I don't.

20 Q. Do you recall anything
21 else from this conversation with Mr. McGuire
22 beyond what you've told us just now?

23 A. No, I do not.

24 Q. Did you convey -- what,
25 if anything, did you do with this information that

1 Mr. McGuire had given to you?

2 A. I can't recall if I
3 conveyed this information to Ms. MacNeil. If I
4 had that information before I spoke with Ms.
5 MacNeil or not. I can't recall that. I also knew
6 Mr. McGuire was going to be speaking with
7 Ms. MacNeil.

8 Q. Do you recall speaking
9 with Ms. MacNeil about this matter after that call
10 we just talked about on November 12th, 2018?

11 A. I can't remember the
12 timing on that. I'm assuming so, but I cannot
13 recall specifically.

14 Q. You mean -- do you recall
15 a further discussion with Ms. MacNeil after the
16 file gets passed to her?

17 A. After the file goes to
18 Ms. MacNeil. I don't believe I had any further
19 discussions with her after the file -- after she
20 started to take carriage of it after that.

21 Q. That would have been
22 November 12th, 2018?

23 A. Correct.

24 Q. Registrar, could you pull
25 up image 3, that same document. So here in the

1 bottom right-hand corner, we have a handwritten
2 note that says, I think it says:

3 "Subsequent discussions
4 with D. McKinnon, M.
5 Zegarac, Ron and Nicole
6 re FOI request. Next
7 steps. November 13th,
8 2018."

9 Is that your note?

10 A. It's my handwriting.

11 Q. What is that note

12 reflecting?

13 A. It's reflecting as of
14 that date I said that I had discussions with those
15 individuals about the FOI request and next steps.
16 But I don't recall whether I was in a meeting or
17 if I had -- or if it was separate discussions.

18 Q. Do you recall having
19 division Mr. Zegarac?

20 A. On this issue, I don't.

21 Q. Do you recall --

22 A. I've got a note there,
23 but honestly I just don't remember.

24 Q. Do you recall having any
25 discussions with Mr. McKinnon ever about this

1 issue?

2 A. I'm sure I must have, but
3 I don't recall.

4 Q. Why do you say you must
5 have? Because of this note?

6 A. Because of that note.

7 Q. I see. Okay. Apart from
8 this note, you don't have any other --

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

10 Q. What about Ms. Auty? Do
11 you recall ever speaking about this issue with
12 Ms. Auty?

13 A. No, not apart from the
14 note.

15 Q. And I think that you
16 testified that after Mr. Sabo passed the file off
17 to Ms. MacNeil, you didn't recall any discussions
18 with Mr. Sabo as well; is that fair?

19 A. Correct.

20 Q. Registrar, could you pull
21 up HAM61981. Ms. Edwards, here we have a calendar
22 appointment addressed to Mr. Zegarac, Mr.
23 McKinnon, Mr. Sabo, and copied to Ms. MacNeil, for
24 November 13th, 2018. You're not identified as a
25 participant, but we're just wondering if this

1 might assist your recollection in terms of whether
2 or not you met with any of these individuals?

3 A. I'm sorry, I don't
4 recall.

5 Q. So you don't recall
6 attending a meeting in the City manager's office
7 for this?

8 A. No. I've seen a lot of
9 these in the City manager's office over the years.
10 I just don't specifically recall this one
11 unfortunately.

12 Q. So after November 13th,
13 2018, did you have any further involvement on this
14 matter relating to friction and the RHVP?

15 A. No, other than I was
16 forwarded a copy of the media release in February
17 of -- February 2019.

18 Q. Registrar, could we pull
19 up HAM64340. Is this the forwarding of the media
20 release you're referring to?

21 A. Yes.

22 Q. So this is coming from
23 Jen Recene on February 7th, 2019?

24 A. Correct.

25 Q. Do you recall why this

1 was being forwarded to you?

2 A. No. I think it was
3 probably forwarded to me for just information
4 purposes, but I don't recall anything further than
5 that.

6 MS. LIE: Registrar, could we
7 mark this document as the next exhibit, which I
8 believe is 169.

9 THE REGISTRAR: Noted,
10 counsel. Thank you.

11 EXHIBIT NO. 169: E-mail
12 dated 2/7/2019, 3 pages;
13 HAM64390

14 BY MS. LIE:

15 Q. Thank you. Did you have
16 any insight into what your colleagues were doing
17 on this matter with Mr. Sabo and Ms. Auty and Ms.
18 MacNeil from November 13th, 2018, through to
19 February of 2019?

20 A. I knew they were working
21 on it, but I was not directly involved with it,
22 with the matter.

23 Q. Did you have any indirect
24 involvement?

25 A. Not that I can recall.

1 Q. So you weren't getting
2 any updates or anything like that from your
3 colleagues?

4 A. No. No, I don't believe
5 so. Anything that I might have seen would be in
6 the newspaper.

7 Q. Registrar, if you could
8 pull up HAM64308, image 2. Here we have an e-mail
9 from you to Ms. Auty, April 12th, 2019, for your
10 sending her the miscellaneous -- you say that you
11 found the miscellaneous physical file for this
12 matter. "There isn't a lot but I was first
13 contacted by Gord McGuire on October 4th, 2018,"
14 and then you describe I think the evidence that
15 we've now gone over.

16 A. Yes, yes.

17 Q. And then you say:
18 "I will have Anita flag
19 in my file system that
20 this miscellaneous file
21 is going to you for
22 future reference," and
23 then you include a
24 reference to the
25 electronic file." (As

1 read)

2 Why were you sending this to
3 Ms. Auty at the time?

4 A. My recollection was --
5 well, it was April 12th, and you'll see by the
6 note at the very bottom I was retiring at the end
7 of April, and so I was trying to make sure that I
8 was addressing as much as I could before I left of
9 things that might come up, and I knew at that time
10 I think the -- I can't remember if the decision
11 had been made that there was going to be the
12 public inquiry or whether the -- there was still a
13 decision being made as to what was going to be --
14 what action council was going to have made. And
15 so I wanted she and I to discuss that I get the
16 materials ready for her in case they were needed
17 for any reason during the course of whatever
18 proceeding took place. So I found my
19 miscellaneous -- the miscellaneous file.

20 Q. Apart from --

21 A. And prepared this note
22 for her, yes.

23 Q. Thank you. Apart from
24 what you've -- all of the evidence you've given to
25 us today, do you recall any further information or

1 have any other information about this matter
2 beyond what you've already described?

3 A. No. The only thing that
4 I'm reflecting on as you're talking about is that
5 November 12th conversation with Mr. McGuire about
6 what Gary Moore had said to him. Based on my
7 normal practice, I can't imagine that I would not
8 have shared that information with Ms. MacNeil as
9 part of updating her. But that is -- but I did
10 not write a note to that effect.

11 Q. Okay. And just while
12 we're looking at this document, to HAM 64308, this
13 April 12th, 2019 e-mail, had you ever shared --
14 apart from this e-mail, had you ever shared any
15 additional information with Ms. Auty about this
16 matter before a disclosure was made to the council
17 and to the public on February 6th, 2019?

18 A. I think this was the
19 first e-mail I had specifically sent to her. I
20 don't believe that I had given any -- I think that
21 from the time that it went from -- we got the FOI
22 request, it then went to Ms. MacNeil. I don't
23 think I had given any update to Ms. Auty on the
24 matter.

25 Q. I think your evidence was

1 that you don't recall having any discussions with
2 Ms. Auty on this matter?

3 A. For what time period,
4 sorry?

5 Q. Before disclosure, before
6 February 6th, 2019?

7 A. No, I don't believe so.

8 Q. Thank you, Ms. Edwards,
9 those are my questions.

10 JUSTICE WILTON-SIEGEL: I
11 think we have a caucus with counsel. I'll go
12 through participants. Does anyone for Golders
13 appear here? They're not on my screen.

14 Ms. Ramaswamy, does Golder
15 have any questions?

16 MS. RAMASWAMY: Good morning,
17 Mr. Commissioner, I can confirm that Golder does
18 not have any questions.

19 JUSTICE WILTON-SIEGEL: And
20 counsel for the MTO? Mr. Bourrier.

21 MR. BOURRIER: We don't have
22 any questions either for Ms. Edwards.

23 JUSTICE WILTON-SIEGEL: Thank
24 you. Ms. Hale for the City?

25 MS. HALE: We have a couple

1 questions for Ms. Edwards.

2 EXAMINATION BY MS. HALE:

3 Q. Ms. Edwards, commission
4 counsel asked if Mr. McGuire had raised any safety
5 concerns to you and Mr. Sabo on October 5th, 2018,
6 and your response was not that you recall. If we
7 could please bring up your notes of that October
8 5th call.

9 Mr. Registrar, if you could
10 please up HAM64308, image 13. Perfect. Thank
11 you.

12 Ms. Edwards, are there any
13 notes which indicate to you that Mr. McGuire
14 expressed safety concerns at this meeting?

15 A. No, there are not.

16 Q. If Mr. McGuire did
17 express such concerns, what steps would you have
18 taken?

19 A. If he had expressed those
20 concerns, then the focus would have been on trying
21 to figure out what -- discussing him what next
22 steps would have to take place. We would have to
23 have a discussion around that.

24 Q. Would you take any steps
25 if Mr. McGuire expressed such concerns?

1 A. We would be talking to
2 him about what steps they were going to be taking
3 to address them.

4 Q. Would you have made a
5 note of that?

6 A. I certainly believe I
7 would have.

8 Q. Thank you, Ms. Edwards.
9 Mr. Commissioner, those are my questions.

10 JUSTICE WILTON-SIEGEL: Okay
11 Ms. Edwards, thank you very much for appearing
12 today.

13 THE WITNESS: Thank you, Mr.
14 Commissioner.

15 JUSTICE WILTON-SIEGEL: We
16 appreciate your time and you're excused. The rest
17 of us as well, I think we stand adjourned now
18 until Monday morning at 9:30.

19 MS. HALE: Tuesday. Monday is
20 a holiday, Commissioner.

21 JUSTICE WILTON-SIEGEL:
22 Tuesday morning at 9:30. Thank you, MS. LAWRENCE.
23 And that's the occasion for me to wish everyone a
24 happy Thanksgiving. Thank you. Have a good
25 weekend.

1 --- Whereupon at 1:40 p.m. the proceedings were
2 adjourned until Monday, October 11, 2022
3 at 9:30 a.m.

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