

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Friday, October 14, 2022 at 9:30 a.m.

VOLUME 69

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1 Arbitration Place Virtual

2 --- Upon resuming on Friday, October 14, 2022

3 at 9:30 a.m.

4 MS. LAWRENCE: Good morning,

5 Commissioner. Good morning, Mr. McKinnon.

6 Commissioner, may I proceed?

7 JUSTICE WILTON-SIEGEL: Yes,

8 please do so.

9 RESUMED: DANIEL MCKINNON

10 CONTINUED EXAMINATION BY MS. LAWRENCE:

11 Q. Mr. McKinnon, we were
12 talking yesterday about August of 2018 and that's
13 where we're going to pick up.

14 Registrar, could you call out
15 OD 9A, page 61, please, and if you could --
16 actually, it's fine. You don't need to call
17 anything out.

18 Mr. McKinnon, can you see in
19 the bottom of this page there's a reference to --
20 the heading is Friction Data sent to Mr. Malone.
21 Mr. McGuire, on August 30, sent an e-mail to
22 Mr. Malone at CIMA enclosing, forwarding, a
23 document. I'm going to open up that document.

24 Registrar, it's CIM16163,
25 please. Registrar, can you call out the bottom

1 half of this page, the e-mail from Dr. Uzarowski.

2 Mr. McKinnon, you're not

3 copied on this particular e-mail. This is an

4 e-mail from January 24, 2014. Is this document

5 familiar to you?

6 A. I don't believe so.

7 Q. Okay. This is an e-mail

8 from Dr. Uzarowski to Gary Moore and it is, again,

9 January 2014 and it is a table that has some

10 reference to average friction numbers and then

11 some additional information right under that table

12 that says:

13 "In 2013, the friction

14 numbers were measured on

15 the RHVP in both

16 directions by Tradewind

17 Scientific and the

18 average FN numbers are as

19 follows."

20 And then it has a list of

21 lanes and numbers.

22 Registrar, can you close that

23 down.

24 Now, Mr. McKinnon, apart from

25 preparation for the inquiry, you don't believe

1 you've seen that January 24, 2014 e-mail?

2 A. Correct.

3 Q. Okay. Registrar, can you
4 go to the top half of this e-mail, please. Thank
5 you.

6 So, what I was referencing
7 from the OD is that on August 30 at 7:11 p.m.
8 Mr. McGuire sent or forwarded that e-mail with
9 attachments, including MTO testing spreadsheets,
10 to Mr. Malone and he says:

11 "Hi Brian. This is a
12 study of the RHVP prior
13 to opening. FN of around
14 mid-30s."

15 Can you close that down. Did
16 Mr. Malone tell you on August 30 that he had
17 located a document in respect of friction testing
18 and sent it to Mr. Malone?

19 A. Yeah. You said
20 Mr. Malone. I think you meant Mr. McGuire, but
21 not that I recall. Not in August, no.

22 Q. Thank you. Yes, I did
23 mean Mr. McGuire. Did he tell you, that is
24 Mr. McGuire, at some later date that back in
25 August of 2018 he had sent friction information to

1 Mr. Malone?

2 A. Mr. Malone? I don't
3 recall him saying that. He may have but I don't
4 recall it.

5 Q. Okay. Registrar, could
6 you go back to the OD 9A, page 62 and 63, please,
7 and if you could pull out the top half of 63, the
8 screenshot, and then paragraph 149 at the same
9 time, please, Registrar.

10 Mr. McKinnon, the inquiry has
11 also obtained a document that is a different
12 e-mail from Dr. Uzarowski to Mr. Moore, and you'll
13 see in the right-hand side of the screenshot that
14 it has the date of 2015/12/17. Do you see that?

15 A. Mm-hmm.

16 Q. And the body of this
17 says:

18 "Hey, Gary. Find the
19 attached November 2013
20 report from Tradewind
21 Scientific on friction
22 testing. I will look at
23 some standards or
24 anticipated values and
25 call you."

1 This document was saved in a
2 ProjectWise folder. And, in between Mr. Moore's
3 name at the top and the attachment, do you see the
4 banner? It says:

5 "You forwarded this
6 message on 2018/08/30,
7 7:13 p.m."

8 Do you see that?

9 A. I see that, yeah.

10 Q. So, is this document
11 familiar to you, this e-mail from Dr. Uzarowski?

12 A. No.

13 Q. The inquiry has no
14 further information about who forwarded this
15 document or to whom. Did you forward this
16 document to anyone on August 30 at 7:13 p.m.?

17 A. No, I don't believe so.
18 Did you say this document came out of ProjectWise?

19 Q. Yes, I did.

20 A. Yeah. I don't recall
21 ever having the rights in ProjectWise. I think I
22 would be hard-pressed to, if you put it in front
23 of me now, I'm not sure I would even know how to
24 log in.

25 Q. Okay. Did you receive

1 this e-mail on August 30 immediately after
2 7:13 p.m.?

3 A. I don't believe so. I
4 don't recognize it.

5 Q. Thank you. You can close
6 this down.

7 Did you have any discussions
8 with Mr. McGuire on the evening of August 30 about
9 friction testing on the Red Hill and the LINC?

10 A. I don't believe so.

11 Q. Registrar, can you go to
12 the same document, page 57, please. Could you
13 bring up 58 as well, please.

14 A few days prior to the
15 e-mails we were just looking at, at the bottom of
16 57 you'll see Dr. Uzarowski e-mailed Mr. Becke,
17 that's Michael Becke, from engineering services a
18 copy of the Tradewind report. Were you aware on
19 August 27 that Dr. Uzarowski had done this?

20 A. No.

21 Q. Registrar, you can close
22 this and if you can go to page 70, please.

23 So, Mr. McKinnon, I wanted to
24 show you those e-mails between Mr. McGuire and
25 Mr. Malone, the e-mail that does not have a known

1 sender or recipient, and the e-mails from
2 Dr. Uzarowski to Mr. Becke, because on August 30
3 you have an e-mail exchange with Mr. McGuire.

4 Registrar, can you pull out
5 167 and 168.

6 Mr. McGuire e-mails you and
7 says, under the subject line "Spec Article," and
8 he wrote:

9 "Here's the link and some
10 quotes."

11 And then there's a link of the
12 July 17, 2017 Spec article, "Why are there so many
13 crashes on the Red Hill?", the one that we looked
14 at yesterday. And then there is two paragraphs
15 which, I think, are direct quotes, reference to
16 the quotes. Do you recall having a discussion
17 with Mr. McGuire before he sent this e-mail to
18 you?

19 A. I don't recall a
20 discussion before he sent the e-mail. We may have
21 had one but I don't recall it.

22 Q. Okay. Saying "here is
23 the link," it does seem like that is a followup to
24 something else rather than an e-mail that he sent
25 cold, but you can't remember either way if he

1 raised either this article or anything else about
2 the Red Hill on the 31st with you?

3 A. Correct.

4 Q. Given that Mr. McGuire
5 had found an e-mail that contained a table and
6 average friction values the night before, do you
7 recall having any discussions with him on the 31st
8 about that discovery?

9 A. I do not.

10 Q. Are you confident that
11 you did not receive information from Mr. McGuire
12 at the end of August about the e-mail that we were
13 just looking at?

14 A. No, I'm not confident
15 either way. You know, when Gord eventually met me
16 in the hallway at the beginning of October and
17 showed me the Tradewind report, I have a very
18 clear memory of that. I don't have any memory of
19 Gord talking to me about friction testing or
20 friction results during this time period.

21 Q. Okay. And we will come
22 to that hallway discussion, but just because we're
23 talking about this now, is part of your
24 recollection about that hallway discussion that
25 you had with him that this was the first time that

1 Mr. McGuire had raised that issue?

2 A. The issue of having a
3 test with friction results and then having a
4 report, that's my first memory of the Tradewind
5 report. I do have a vague memory of Gord
6 forwarding the newspaper article on this. I think
7 there was a few different issues that he had sent
8 me newspaper articles on. That wasn't uncommon
9 for directors to do that if something was emerging
10 in the media, so this certainly feels familiar.
11 But when it comes to, you know, the Tradewind
12 report with all the information and the results
13 and that, that August 1, in or around that
14 timeframe is the first time I have any kind of
15 vivid memory of that.

16 Q. Thank you. I think you
17 just said August 1 but I think you meant
18 October 1 --

19 A. October 1. Sorry. Yes.

20 Q. The hallway discussion?
21 Okay.

22 A. Yes.

23 Q. I just want to make sure
24 the evidence is clear.

25 Registrar, you can close this

1 down and can you go to page 71, please, and can
2 you pull out 171.

3 Mr. McKinnon, this is on a
4 different topic. In August and then again in
5 September audit is reaching out to engineering
6 services about a value-for-money audit on roads,
7 and on September 4 Mr. Pellegrini from audit
8 services e-mailed you and said:

9 "As per our telephone
10 discussion, here is the
11 scope of the roads review
12 started by audit
13 services."

14 And, just for your context,
15 Mr. Pellegrini had already been in touch with
16 people in engineering services. Do you know why
17 Mr. Pellegrini or do you recall why he was having
18 a conversation with you and then forwarding you
19 this e-mail?

20 A. I don't. I think it's
21 standard practice for audit services, if they're
22 going to be doing an audit in one of the
23 departments, they would generally let the general
24 manager know about it. I don't know if this was
25 the beginning of it and that was the purpose of

1 this, but it kind of feels like it.

2 Q. Okay. Thanks.

3 Registrar, you can close this down and go to
4 page 79 and 80, please, and can you pull out 197
5 and, from the other page, if you can pull out 199.
6 If you can go down to 199. Apologies, Registrar.
7 If you can pull out the entirety from the top to
8 the bottom of 199. Thank you.

9 On September 11 you forwarded
10 an e-mail that you received from Councillor
11 Merulla regarding a public complaint and a member
12 of the public is talking about having a scary
13 moment on the Red Hill and that they had a good
14 cry when they got home. And then at the bottom,
15 this member of the public says:

16 "The City knows about
17 this troublesome paving.
18 Why aren't they informing
19 us? Why are there no
20 warning signs? Why isn't
21 the road closed when it
22 rains? What kind of
23 tragedy needs to unfold
24 before the City is held
25 accountable?"

1 And then it goes on to say:
2 "I'll be contacting the
3 local media as I believe
4 action needs to be taken
5 ASAP. Despite
6 'inconclusive' asphalt
7 testing, the realty is
8 staring us in the face
9 this road is unsafe."

10 And Councillor Merulla
11 replies:

12 "There's absolutely no
13 truth to that."

14 And forwards it to
15 professional staff, including you, and you forward
16 it to Mr. Soldo and Mr. McGuire and say:

17 "Gents, how do we want to
18 review?"

19 So, just stopping there, you
20 gave some evidence yesterday that you tried to let
21 your professional technical staff field e-mails.
22 Is this an example of you trying to ensure that
23 your staff are dealing with it instead of you?

24 A. Correct. I may include
25 myself in wanting to hear that discussion because

1 I believe I mentioned earlier that, as the GM of
2 public works, if I happen to be in City Hall and
3 somebody catches me in the foyer and asks me a
4 question, I might want to hear the discussion
5 between Gord and Ed with respect to how we're
6 going to move forward with that so that I could
7 share that if Councillor Merulla asked me a
8 followup if we happened to bump into each other,
9 but the actions coming out of this would fall to
10 Gord and Edward.

11 Q. When you receive this
12 e-mail, do you take note about the reference to
13 inconclusive asphalt testing that was at the end
14 of this e-mail?

15 A. I don't recall that kind
16 of sticking with me, no.

17 Q. Registrar, you can close
18 this down.

19 A. Ms. Lawrence, if I could
20 just say, too, you know, I don't want to be
21 disrespectful and I'm sure the person who wrote
22 that e-mail believes they were doing 40 kilometres
23 an hour, but it's not unusual for the City to get
24 information from the public that's not entirely
25 accurate. And not I'm suggesting anybody is lying

1 or anything like that, but it's been my experience
2 throughout my entire career when you get
3 information from the public often there's, you
4 know, information in there that's not entirely
5 accurate for one reason or another.

6 So, you know, that's part of
7 the process that Edward and Gord would have to go
8 through, is to try to really dig through that and,
9 you know, part of that might be following up with
10 the resident to just kind of really dig into the
11 statements that they have made. But it's not --
12 staff can't take what they're hearing on the
13 surface as fact. And so, that's just another bit
14 of nuance that, as representatives of the City, we
15 always have to, kind of, work our way through that
16 to validate what is the information we're getting
17 and was it indeed dry that day and that kind of
18 stuff.

19 So, I'm not trying to dismiss
20 the concern from the resident, but I'm just trying
21 to articulate that as staff we have to validate
22 what it is that happened, what were the
23 conditions, that kind of thing.

24 Q. Thank you. I won't pull
25 it up, but in paragraph 200 Mr. Soldo responds

1 that Gord is dealing with it, and we'll come back
2 to this chain as we go through the chronology.

3 Registrar, can you go to
4 page 81, please, and can you pull out the top of
5 page 81, which is the prior paragraph, 202.

6 So, this is Mr. McGuire and
7 his assistant exchanging e-mails about a response,
8 but at that top just between Mr. McGuire and his
9 assistant, he says:

10 "Can you add the Red Hill
11 resurfacing as an H
12 priority sheet?"

13 Do you know what an H priority
14 sheet is or is that something specific to
15 Mr. McGuire?

16 A. What is an H priority?
17 Yeah, I can't think of what the H means.

18 Q. Okay. Registrar, can you
19 close this down and can you go to page 84 and pull
20 out 209 and 210.

21 So, again, asking this
22 question because it also relates to priorities.
23 Mr. Olszewski and Mr. Ferguson are discussing
24 repaving issues and the scope that traffic
25 operations and engineering wants to put into it.

1 And Mr. Ferguson responds -- you are not copied on
2 this e-mail:

3 "Yes, but this is one of
4 our GM's top priorities."

5 So, again, relating to
6 resurfacing and in the context of this discussion
7 around scope:

8 "We'll let management
9 handle to the budget."

10 Was repaving one of your top
11 priorities by September of 2018?

12 A. I don't think so.

13 Q. Okay.

14 A. By September of 2018, I
15 can -- you know, and at some point maybe I should
16 tell you about all the other things that were
17 going on in public works that were a priority for
18 me. Any capital project in the future was not
19 likely a priority for me at that time, and I think
20 this is likely that, you know, to the little kind
21 of lament that I gave at the end of the day
22 yesterday, sometimes in an effort to be supportive
23 of staff, they, kind of, transfer what they think
24 that the priority is in their life that it is in
25 your life. So, I was trying to be supportive on

1 this issue, but I can't say honestly this was a
2 priority in September 2018, the resurfacing, no.

3 Q. Understood. Registrar,
4 you can close this down and can you go to page 89,
5 please, and can you pull out 226, which extends on
6 to the next page.

7 The inquiry has a document
8 that is a OneNote document and it has a document
9 embedded within it, which is Gord McGuire agenda,
10 September 21, and then it has four points on that
11 agenda: Digital billboards, RHVP friction
12 testing, road program data, AMMGR, which I think
13 is asset management manager.

14 Registrar, you can close that
15 down, close the call out.

16 The inquiry has received a
17 copy of your calendar for various times and you
18 had a QT with Mr. McGuire scheduled for
19 September 21. Do you recall speaking to
20 Mr. McGuire during a QT on September 21 about RHVP
21 friction testing?

22 A. I don't believe so.

23 Q. Would it be helpful for
24 me to go into the calendar so that you can look at
25 the appointment?

1 A. Sure.

2 Q. It's HAM61530, image 3,
3 and if you can call out the box under
4 September 21. Thank you.

5 Do you see it up at the top?

6 A. Yes, yes.

7 Q. Does that help at all
8 with your recollection about the content of the QT
9 on September 21?

10 A. Looking at that calendar,
11 I suspect by the end of the day I didn't remember
12 what I talked to Gord about that day, but no.

13 Q. Fair enough.

14 A. I'm not trying to be
15 funny. I don't recall.

16 Q. Registrar, you can close
17 this down. This document is not marked as an
18 exhibit and my suggestion is that we mark this
19 page of this calendar as an exhibit rather than
20 the entirety of the document. It's 179.

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

23 EXHIBIT NO. 179: Image 3
24 of the calender of
25 Mr. McKinnon, HAM61530.

1 BY MS. LAWRENCE:

2 Q. You can close this down.
3 If you can go back into the OD 9A and to page 79,
4 please. Sorry, I'm lacking a reference. I think
5 I can ask you this question without it.

6 I've just gone back to the
7 September 11, 2018 e-mail from that member of the
8 public and we went through that Mr. Soldo
9 confirmed that Mr. McGuire would be dealing with
10 this. Mr. McGuire didn't respond until
11 September 28. Did he tell you why he was delaying
12 his response from September 11 to September 28,
13 during that period of time?

14 A. He may have but I don't
15 recall, no.

16 Q. Okay. Registrar, you can
17 close this down. Thank you.

18 The inquiry has received
19 information and anticipates that Mr. McGuire will
20 testify that he opened an attachment containing an
21 e-mail with an attachment containing the Tradewind
22 report on September 27. We talked just a few
23 moments ago about this hallway discussion. Your
24 evidence was that was the first time that you had
25 heard about it. Can you narrow the date range for

1 when this hallway discussion occurred?

2 A. To the best of my memory,
3 I was away at a conference the last week of
4 September. And I don't have a calendar in front
5 of me, but whatever the Monday would have been
6 after that last week of September, so probably the
7 first Monday in October, whatever that date was,
8 it would have been in that week when I returned to
9 the office because I have a fairly strong memory
10 of just returning back from the transit
11 conference.

12 MS. CONTRACTOR: Apologies for
13 interrupting. It may not be material, but the
14 evidence and documents suggest that Mr. McGuire
15 found the report on September 26, not
16 September 27.

17 MS. LAWRENCE: Apologies. I
18 think I must have misspoke. Thank you very much,
19 Ms. Contractor, for that clarity and I do think
20 that you're correct.

21 BY MS. LAWRENCE:

22 Q. So, then let's turn to
23 that hallway conversation that was in the first
24 week of October. Was it in the hallway in your
25 office?

1 A. Yeah, at the suite 300 or
2 320 at City Centre.

3 Q. What do you recall about
4 that hallway discussion?

5 A. I just -- I would
6 describe it as it sticks in my memory pretty
7 vividly because Gord seemed kind of rattled. And
8 I can't remember if I was heading somewhere and he
9 just stopped me. We didn't spend a ton of time
10 there. I don't think we were in the hallway for
11 any more than five or ten minutes. I don't recall
12 if he gave me a copy of the report. I seem to
13 remember that he had it in his hand.

14 But it became evident then
15 that, you know, he had found this and he was very,
16 very concerned about it and I think his primary
17 concern was that the information, as you read it,
18 seemed to be inconsistent with the public
19 statements that Gary had made in that newspaper
20 article that he had sent me the link to. I feel
21 like Gord had maybe sent me links to more than one
22 article on that, but it may have just been the
23 one, but I think the basis of Gord's concern was
24 this report doesn't seem to line up with the
25 comments that Gary's been making publicly.

1 Q. Do you mean the comments
2 that there was just an informal chart?

3 A. Yeah. I can't remember
4 exactly what was said in the moment. I think
5 possibly the informal chart, but just, kind of,
6 this idea that the asphalt is performing above
7 expectations and it's, kind of, perfect and that
8 kind of thing.

9 Q. Was Mr. McGuire's concern
10 about that inconsistency specifically and not
11 about -- maybe I'll put it differently.

12 Did Mr. McGuire have a concern
13 about the conclusions from the Tradewind report in
14 terms of looking at the actual friction?

15 A. Right. He may have. If
16 we discussed that at that point, I'm not sure. I
17 don't have a vivid memory of that.

18 Q. Did he express concerns
19 about the safety of the parkway?

20 A. He may have but I don't
21 recall.

22 Q. You said, "I seem to
23 remember he had it in his hand." Are you talking
24 about some kind of report?

25 A. I think he had a physical

1 copy of the Tradewind report, but I can't say with
2 certainty.

3 Q. Okay. Did he tell you
4 where he had found the report that he had in his
5 hand?

6 A. He likely did. Again, I
7 can't say with certainty, but I suspect he did.

8 Q. Did he tell you when he
9 had found the report?

10 A. Again, he may have. I
11 don't have a precise memory of that.

12 Q. Did he tell you that
13 Ms. O'Reilly had contacted him about subsequent
14 testing that had happened in 2017 during your
15 hallway meeting?

16 A. I have a memory of Gord
17 telling me that Ms. O'Reilly had contacted him.
18 Whether or not it was in that moment in the
19 hallway or subsequent to that, I can't say for
20 sure.

21 Q. I ask because she reached
22 out on October 3, so I'm just trying to see if
23 maybe that would help us narrow the range.

24 Did he provide you with a hard
25 copy of the report that he was holding in his

1 hand? Did he actually hand it over to you?

2 A. I can't remember if he
3 handed it to me or if he made another copy for me,
4 but eventually I got a copy of it, yes.

5 Q. And do you recall, was it
6 a copy of the Tradewind report? I can bring up
7 the front page if you want. Or was it a copy of
8 the larger Golder report?

9 A. My memory is that it was
10 just the Tradewind report.

11 Q. Do you recall if the copy
12 he gave you had a draft stamp on it, like
13 horizontally across each page?

14 A. I don't know. I can't
15 recall.

16 Q. During that hallway
17 discussion, what advice, if any, did you give him
18 about what to do next?

19 A. Again, not a precise
20 memory, but, you know, like any emerging issue,
21 when you discover something, you're turning your
22 mind to, okay, what do we need to do with this? I
23 think my first thing that I said to him was, okay,
24 well, did you talk to Gary? And at that point he
25 had not and I think I asked, have you talked to

1 anybody else about the report? Like, you know,
2 anybody in the office here know anything about it?

3 And I think at that point it
4 was -- I had the sense that he had just found it,
5 so he didn't have an opportunity to do anything
6 with it, other than read it. But, again, those
7 aren't precise memories, but I believe that's what
8 I had said to him at the time.

9 Q. Did you ask him to do a
10 briefing note for you?

11 A. I believe I asked him to
12 do a briefing note for me at some point. I don't
13 believe it was in the hallway where I asked him to
14 do it, but I may have.

15 Q. Registrar, could you
16 bring up HAM63092.

17 So, this is a multipage
18 document that Mr. McGuire put together and there
19 are iterations of it over time. This one is from
20 October and at the very top it says "Draft Review"
21 and then it says "Dan" and then it says "In
22 Summary." Do you recall receiving this document
23 from Mr. McGuire?

24 A. It looks very familiar
25 and doing this type of briefing note or summary

1 was a practice of Gord's. He was very good at
2 doing these kind of briefing notes.

3 Q. Do you recall when, how
4 soon after that hallway discussion, he provided
5 you with a briefing note like this one?

6 A. I don't recall. I don't
7 think it was terribly long after the hallway
8 discussions. I suspect I got this relatively
9 quickly, probably within days, but I don't recall
10 precisely.

11 Q. Thank you. You can close
12 this down.

13 During the hallway discussion,
14 did you suggest getting advice from legal
15 services?

16 A. I don't think I would
17 have said anything in the hallway because I just,
18 you know, was probably letting this sink in, but I
19 suspect at some point, if he hadn't told me he was
20 already touching base with legal, I would probably
21 have said, yeah, you need to show this to legal so
22 you can get their reaction to it. My sense is it
23 probably wouldn't have been that first day, but it
24 probably wouldn't have been terribly long after.

25 And maybe just as a postscript

1 to that, it was rare that I had to tell a director
2 to do that. You're, kind of, on the same
3 wavelength when you have something in front of you
4 whether or not you need to notify legal or
5 procurement or HR or something like that. Any
6 engaging with the support services at the City of
7 Hamilton was generally something directors knew
8 what to do, when to do it, so...

9 Q. Okay. So, you said you
10 were just turning your mind to, sort of, what do
11 we need to do with this. That was, sort of, your
12 first thought. Did you give him any advice in the
13 hallway about what his next steps should be?

14 A. I think the conversation
15 was more along the lines of, well, have you talked
16 to Gary? I think the answer was no. Have you
17 talked to anybody else about this? The answer, I
18 think, was still no, because it was so fresh. So,
19 I think what I said there was, okay, see if some
20 somebody else knows about this. See if there was
21 any followup done on it. I'm not sure I can
22 entirely explain why, but I said, you know, what?
23 Let me go talk to Gary. I think it was because
24 Gord was new in his position. You know, I did
25 have history with Gary that, you know, sometimes

1 when you questioned him on things, you might get a
2 certain reaction, so I think I felt like I wanted
3 to kind of keep Gord out of that. And Gary's
4 office was just down the hall, so in the next
5 several days or a week when I happened to see Gary
6 in there, I dropped into his office to ask him
7 about it.

8 Q. Did you review the copy
9 of the report that Mr. McGuire provided to you?

10 A. I did.

11 Q. And do you recall when
12 you read it, how soon after the hallway
13 discussion?

14 A. It would have been within
15 that week, I believe.

16 Q. Did you have any sense
17 that there was urgency in you attending to -- sort
18 of, following up on that hallway discussion with
19 Mr. McGuire?

20 A. I think there was a sense
21 of urgency in the sense that these statements had
22 been made in the public that were, in my view and
23 I think in Gord's view, seemed to be inconsistent
24 with what the report was saying, and so I think
25 there was an urgency in my mind about, like, okay,

1 let's figure out like who else knows about this?
2 Has there been any action taken since the report
3 was completed?

4 But there was some
5 extraordinary amount of fires burning across
6 public works that was competing for our time, so,
7 you know, when you get something like this and
8 you're working an issue, and forgive me for, kind
9 of, the way my brain works, but you kind of have
10 swim lanes of things that you're doing. So, you
11 know, this started off in its own swim lane. We
12 need to find out what's going on and find out
13 whether or not there's been other activities taken
14 in response to the findings of this report because
15 it does feel like it's inconsistent with these
16 public statements. But we had a heck of a lot of
17 other distractions at that time, so both Gord and
18 myself.

19 Q. When you say the
20 conclusions were inconsistent with what -- I just
21 want to get your language exactly right. You said
22 we need to find out what's going on, whether or
23 not there's been other activities taken in
24 response, because it does feel like it's
25 inconsistent with public statements?

1 A. Right.

2 Q. I'm just, again, trying
3 to understand. Was it you didn't think the
4 conclusions of the Tradewind report were
5 inconclusive? Is that the public statement that
6 you were focused on?

7 A. No. I didn't have an
8 opinion about whether or not the results from the
9 tests were inconclusive. I think what was on my
10 mind was, you know, and I can't recall with
11 precision, but I think Gary's comments were the
12 highway was performing, kind of, above
13 expectations. The way I interpreted the Tradewind
14 report, it wasn't saying that.

15 And so, you know, I can't get
16 into specifics because it's not necessarily my
17 expertise and my memory isn't that good, but it
18 seemed to be there was a pretty decent disparity
19 between the comments that Gary made publicly
20 versus what the report was suggesting.

21 Q. Registrar, can you go to
22 HAM61795, image 13, please.

23 So, this is the very last page
24 of the Tradewind report.

25 Registrar, just for ease of

1 font size, could you call out those three
2 paragraphs, please.

3 So, the Tradewind report says
4 in the second paragraph:

5 "The overall friction
6 values as measured by the
7 grip tester on the
8 designated lanes and
9 section of the RHVP were
10 below or well below the
11 same UK investigatory
12 standard, level 2.
13 Overall low levels in the
14 variability of friction
15 values along the LINC
16 indicate a need for
17 further examination of
18 the pavement surface,
19 composition, wear and
20 performance."

21 And then it's noted that
22 there's some localized quite low friction values.
23 And then Tradewind says:

24 "We recommend that a more
25 detailed investigation be

1 you know, when being questioned like that, Gary
2 sometimes could be dismissive or intolerant with
3 it.

4 Q. So, you did go and find
5 Gary, I think was your evidence?

6 A. I did and I can't tell
7 you when. Gary was working out of an office down
8 the hall from us. I do recall that I passed by
9 his office a number of times before I caught him
10 in it, because he was working back and forth
11 between the Hunter Street office and I was in and
12 out all the time, so eventually I popped into his
13 office. It was a short conversation that I don't
14 think lasted much more than five, ten minutes and
15 it was just, I think the primary focus of my
16 question was we got this report. In the
17 intervening period of time, I'm just curious, you
18 know, was anything done?

19 And he indicated that, to the
20 best of my recollection, he had done no further
21 investigations. I vaguely remember him saying
22 something to the effect that he had asked Golder
23 for something or there was some kind of
24 interaction with Golder, but I didn't take from
25 that conversation that any other further

1 investigation had been done.

2 Q. Before going and speaking
3 with Mr. Moore, had you had a chance to read the
4 Golder report to which the Tradewind report was
5 appended?

6 A. I don't believe so. I
7 think it was quite some time after when I actually
8 got around to reading the Golder report. So, not
9 a precise memory, but I don't believe so.

10 Q. And had you read the
11 briefing note or a briefing note from Mr. McGuire
12 that provided any more context before you met with
13 Mr. Moore?

14 A. I don't believe I read
15 the briefing note from Gord prior to my first
16 conversation with Gary, only because I'm not sure
17 Gord had the briefing note done that fast. But,
18 again, I can't be precise.

19 Q. Okay. So, when you went
20 and met with Mr. Moore, you had the Tradewind
21 report, which you had reviewed, you had some of
22 that media that Mr. McGuire had sent you. Were
23 you otherwise going in pretty uninformed? And I
24 don't mean that in a disparaging way, but you
25 didn't have information apart from those pieces

1 that I just mentioned?

2 A. Yeah. No. That's a fair
3 characterization.

4 Q. Did you experience
5 Mr. Moore in the way you had experienced him
6 before? In other words, perhaps I'll put it
7 differently. Did Mr. Moore react dismissively or
8 defensively in that conversation?

9 A. No, I don't believe so.
10 I think Gary, you know, he didn't do that a lot
11 with me, but -- so, in that particular
12 interaction, I don't recall any tension.

13 Q. Did you ask him if
14 Mr. Moore had shared the report with anyone else?

15 A. I can't remember the
16 specific questions that I asked him, to be honest.
17 I left there thinking that beyond a further
18 interaction with Golders, that I got the
19 impression that he hadn't shared it, but I can't
20 remember if he precisely said that.

21 Q. Did you raise with him
22 that he had made statements to the media, amongst
23 other places, about friction test results that
24 appeared to be inconsistent to you and
25 Mr. McGuire?

1 A. I don't believe I talked
2 about the media article in my short meeting with
3 Gary, no.

4 Q. Okay. Coming out of that
5 meeting with Mr. Moore, what were the next steps
6 from your perspective?

7 A. Well, again, like, you
8 know, like, when you get an emerging issue like
9 this, there's, kind of, this expansion and
10 contraction, if you will. I can't remember how
11 soon after I ran into Gord again and I said, hey,
12 you know, I talked to Gary, and shared with him
13 what Gary had said to me. And I think I had asked
14 him at the time, you know, have you had a chance
15 to talk to anybody else to find out if anybody
16 else knows about this? I don't know if he had an
17 opportunity to talk to anybody else to determine
18 who else knew about it, but I do know at some
19 point Gord came back to me and said, yeah, nobody
20 else knows about the tests.

21 And the point I want to make
22 on this is the message that I thought I got from
23 Gord was that nobody else knew the testing was
24 done. Weeks and weeks later, it became obvious to
25 me that many people knew the tests were done, but

1 they hadn't seen the results. So, I don't know if
2 I misheard Gord in that earlier conversation or if
3 he maybe misspoke, but I just remember weeks and
4 weeks later when I heard that, no, no, there were
5 several people within public works who knew that
6 the tests had been done, I remember I thought
7 that's different than what I thought had happened.
8 That's just an example of when you're working an
9 issue like this, sometimes it's a bit foggy in the
10 early days and you're trying to gather
11 information.

12 Q. On that point, you said
13 much later you learned that other people did know?

14 A. Yeah.

15 Q. Are you referencing that,
16 recall yesterday I took you to the e-mail where
17 Mr. Soldo is asking Mr. White and Mr. Ferguson and
18 Mr. White references a meeting with you that you
19 don't recall. Do you remember that e-mail that I
20 took you to yesterday?

21 A. Sorry. Vaguely.

22 Q. Okay. I'll put this
23 question a bit simpler. When you learned that
24 other people knew later on, was that primarily
25 people in traffic operations and engineering?

1 A. When I became aware that
2 other people knew, my sense was that there was
3 some in engineering services and some over in
4 traffic?

5 Q. Okay.

6 A. Because I have a memory
7 that I think traffic may have helped arrange the
8 traffic control when they were doing -- like, they
9 would have had to make traffic aware that
10 something was going on on the highway or they
11 should have anyway. That was traffic, that was
12 kind of their bailiwick, was to know especially on
13 the parkways, they should know if something is
14 scheduled to be taking place out there, so...

15 Q. For engineering services,
16 did you come to later learn that, apart from
17 Mr. Becke, who we'll get back to, the other people
18 in engineering services knew?

19 A. I have a vague memory
20 that I think I learned that Mr. Andoga knew,
21 Mr. Sidawi knew, possibly Marco, but I do have a
22 memory that, and I don't know if I saw anything,
23 but I'm pretty sure Rick and Sam knew that the
24 tests had been done. But again, what I was
25 operating on was that they hadn't seen the

1 results.

2 Q. Okay. And that's what's
3 you were hearing both from Mr. McGuire in December
4 but also later?

5 A. Correct.

6 Q. We can take this down,
7 Registrar.

8 After you learned about the
9 Tradewind report in October and through that month
10 of October, did you view the Tradewind report as a
11 matter that you were going to have to
12 stick-handle?

13 A. Not that I was going to
14 have to stick-handle, but it was something that
15 was clearly going to require a lot of my
16 attention.

17 Q. Were you trying to figure
18 out what possible negative outcomes could flow
19 from the discovery of its existence?

20 A. Absolutely. You know, as
21 time went on, it became evident that we probably
22 have some kind of communications situation that
23 might need cleaning up at some point, just because
24 of the disparity of, I think, what conclusion any
25 person would make from reading the report versus

1 the public statements. They don't feel, you know,
2 one thing is not like the other kind of thing,
3 so --

4 Q. Sure, so a communications
5 situation. Were you also considering the
6 potential that there would be legal liability that
7 might be connected to the Tradewind report; not
8 the lack of its disclosure, but just the fact that
9 it existed and it could be used in litigation?

10 A. I'm sure that crossed my
11 mind at some point, yeah.

12 Q. And what about the safety
13 of the Red Hill? This report in 2014 says low
14 friction values. Did you view that as a possible
15 negative outcome or a negative circumstance?

16 A. Well, I -- the report
17 said further investigation should be done. The
18 report made a recommendation about, I believe it
19 was about microsurfacing of some kind. By the
20 time I was in possession of this report, the
21 scheduling of the resurfacing was already well
22 underway. In a perfect world, it would have
23 already happened in 2018, so I think I was -- that
24 brought me some confidence that the report says do
25 something, we're doing something. And because of

1 my involvement with Dave Ferguson and those
2 discussions about that, kind of, omnibus council
3 report, I think it's 008 if I remember from
4 yesterday --

5 Q. Yes.

6 A. -- you know, I had the
7 sense that there was a variety of countermeasures
8 that had been employed over a number of years,
9 both from direction from council and I think some
10 of those were as a result of staff just deciding
11 to do it anyways. So, I thought we were in a
12 pretty good spot.

13 Q. The Tradewind report at
14 that point was four years old. Were you concerned
15 or did you even think that the friction values
16 could be worse than they were in 2014? Did that
17 cross your mind?

18 A. Probably. It probably
19 crossed my mind. But, again, I'll go back to my
20 previous statement. With the countermeasures that
21 had been employed over the last two, three, four
22 years and the fact that the resurfacing was
23 scheduled and it was, by this time, only months
24 away before we were going to go resurfacing and I
25 thought we were in a decent position.

1 Q. Okay. Did you have a
2 date or a month in your mind when you understood
3 resurfacing was going to happen?

4 A. When the actual
5 resurfacing would start?

6 Q. Yeah.

7 A. It was supposed to be
8 early spring.

9 Q. Okay.

10 A. Yeah.

11 Q. Did you suggest to
12 Mr. McGuire that he go get another friction test
13 to see the current status of the friction values
14 on the parkway?

15 A. I don't recall a
16 conversation like that, no.

17 Q. Registrar, could you
18 bring up OD 9A, page 112, please.

19 A. And maybe if I could just
20 add to that. I don't recall a conversation like
21 that. I suspect I wouldn't have a conversation
22 like that. You know, between Gord and the
23 engineers in his design department, division, and
24 Edward and his team, if something had to be done,
25 you know, by way of an example, if I found this

1 report in my desk, my priority is to make sure
2 Gord and Edward have it. Once they've got it,
3 then I'm kind of in the back seat and I would be,
4 you know, following their lead as far as whatever
5 they thought they needed to do.

6 Q. So, if they thought that
7 there was additional investigation that needed to
8 be undertaken or additional immediate remediation
9 that needed to be completed, you would expect that
10 they would raise that with you?

11 A. Yeah.

12 Q. You wouldn't have to
13 probe them to see if they were considering that?

14 A. Gosh, I hope not. And I
15 don't believe so. I have a lot of faith in both
16 those men, so...

17 Q. Okay. Speaking of
18 Mr. Soldo, on October 10, we have, the inquiry, a
19 set of minutes from an RHV working group.

20 Registrar, could you pull out
21 just the table. Yeah, exactly. Right there.

22 So, your calendar shows that
23 this actually might have been on the 9th, but in
24 any event the 9th or the 10th, it appears that you
25 met with Mr. Soldo, Mr. Ferguson, Mr. White and

1 Mr. Ferguson. It's a working group. Was this
2 related to the group that eventually became the
3 parkway management committee?

4 A. I can't say for certain,
5 but when I look at the attendees, that's my
6 belief, yeah.

7 Q. Okay. So, under the
8 agenda, proposed resurfacing, there's some
9 letters, M? R? And then under Public Works it
10 says:

11 "Action, Martin White to
12 add street lighting, OBL
13 item to safety report,
14 and Gord and Edward to
15 cowrite a safety audit
16 report."

17 So, as of October 10, was the
18 plan forming to pull together some of the items
19 that engineering services and traffic were working
20 on, much like the way that had been done the year
21 before with PW18008?

22 A. I don't recall.

23 Q. Okay. And you wouldn't
24 have had much of a guiding hand on exactly how to
25 communicate up to council?

1 A. I might have been
2 involved in the strategy of when are we going to
3 council, how are we going to council, but as far
4 as the details here, I wouldn't have got into the
5 details, no.

6 Q. Okay. Did you provide a
7 copy of the Tradewind report or the Golder report
8 to Mr. Soldo at or before this meeting?

9 A. I don't believe so. I
10 have a memory of a conversation with Gord, and I
11 don't know when it was, if it was the same day or
12 the next day. My memory is I said to Gord, does
13 Edward have a copy of this? And by the time I
14 asked the question, Gord had already provided
15 Edward a copy of it. Gord wasn't waiting for me.
16 So, I don't know when that happened, but I do
17 recall when the thought crossed my mind, Gord had
18 already done it, so...

19 Q. Okay. By October 10,
20 Mr. Soldo and Mr. McGuire had already started the
21 process to retain CIMA to conduct the roadside
22 safety assessment. That's not referenced here,
23 but do you recall, or maybe it is, CIMA safety
24 audit, ramp, geometric, inventories, durables,
25 identified in the same way the report is

1 eventually titled, but do you recall receiving
2 information around this time that Mr. Soldo was
3 working to get a roadside safety assessment about
4 the parkway, not the pavement but sort of
5 everything else, signage and that sort of thing?

6 A. Yeah. That's familiar to
7 me. I can't tell you when it started, but I do
8 recall Edward talking about a roadside safety
9 assessment that he was having completed by CIMA,
10 yes.

11 Q. Okay. And did you
12 anticipate that Mr. Soldo would expand that to
13 have CIMA review the Tradewind report?

14 A. I don't know.

15 Q. Okay. Registrar, you can
16 close this down and can you go to page 115 and
17 116, please.

18 On November 5, by November 5,
19 CIMA had sent a copy of its lighting study, which
20 is that study that started earlier in 2018, to
21 assess the EA and to assess what next steps would
22 be on the path to assess whether the parkway
23 should be further illuminated. And so, it comes
24 back and Mr. Field sends to Mr. McGuire a draft of
25 that report.

1 Registrar, can you pull out
2 the excerpt at 289, please.

3 This report also contained a
4 collision analysis by CIMA, which is here, which
5 includes that wet surface collisions were found to
6 represent approximately 57 percent of all
7 collisions in the study area.

8 Did Mr. McGuire convey to you
9 that wet weather collisions from this recently
10 completed study were still significantly higher
11 compared to typical proportions?

12 A. He may have. It's not
13 a -- it's not something I remember, but he may
14 have.

15 Q. Okay. Registrar, can you
16 close this down.

17 Recognizing you don't remember
18 if he did or not, would you rely on Mr. McGuire to
19 take that information and take whatever steps you
20 viewed necessary as it related to the Tradewind
21 report?

22 A. Correct.

23 Q. Registrar, can you go to
24 page 125, please, and can you call out the
25 excerpted text under 310, please.

1 So, these are some notes taken
2 by Brian Malone at CIMA about a call he had with
3 Mr. McGuire on November 7 and, in the third
4 paragraph down, this is about the lighting study,
5 he says:

6 "He's concluded it makes
7 no sense to proceed with
8 recommending an EA for
9 only lighting because
10 Hamilton is also
11 examining a number of
12 other major improvements
13 on the roads."

14 Had Gord conveyed to you his
15 view that it did not make sense to recommend an EA
16 in respect of lighting at this time?

17 A. I don't recall. He may
18 have.

19 Q. If you go down to the
20 last paragraph, Mr. McGuire also is reported by
21 Mr. Malone in these notes as saying:

22 "Gord and Edward are
23 going to complete the
24 report."

25 Which, referenced above, is a

1 joint report to council to discuss the lighting
2 and roadside safety. And he says:

3 "Gord said the intent is
4 that they will conclude
5 the report with a
6 recommendation for
7 funding to undertake a
8 comprehensive review of
9 the RHVP and LINC asset
10 and complete a, quote,
11 unquote, functional
12 evaluation for action
13 going forward."

14 Do you recall having
15 discussions with Mr. McGuire in or around November
16 about this plan to seek a functional evaluation?

17 A. It sounds familiar. I
18 don't have a precise memory of it, but it sounds
19 familiar.

20 Q. Okay. And do you have a
21 clear view about what a functional evaluation
22 would be?

23 A. Not my strength. I would
24 interpret that to be a review of the right-of-way
25 all the way through to determine, you know, look

1 at things like if you're going to -- if you should
2 and if you would either widen it, probably look at
3 lighting, probably look at sound, probably look at
4 the use of a centre barrier. I expect that's
5 probably what it would look at.

6 Q. Registrar, you can close
7 this down.

8 In November the City receives
9 an FOI request specifically in respect of friction
10 testing. We'll get to that in a moment. But in
11 advance of the FOI request, did you anticipate
12 that public works, the department generally, would
13 disclose the existence of the Tradewind report to
14 council?

15 A. Oh, yeah. At some point,
16 yeah. I think it was a matter of, you know, if I
17 can refer back to that analogy I gave you, as we
18 worked through putting those puzzle pieces
19 together, it certainly -- you know, it felt like
20 something that was probably going to have to
21 elevated, for sure.

22 Q. Why was that?

23 A. Just because of the
24 amount of public statements and, you know, I was
25 learning more. I think Gord may have been sharing

1 more information with me and just the -- was
2 getting a lot attention politically and from the
3 community. There had been these public statements
4 made about the safety and the condition of the
5 asphalt and that. And then we have this report
6 that seems to diverge from what staff had been
7 saying publicly. You know, would we be going to
8 council? I mean, I don't know. My sense is,
9 okay, we're going to have to stick with this and
10 figure this out and at some point talk to Mike and
11 figure out whether or not this needs to go
12 further. But there's certain things that, as you
13 start to put a puzzle together, if you will, you
14 just get a sense of, okay, this is growing legs
15 and we're going to have to do something about
16 this.

17 Q. There was paving coming
18 up, though, which was going to deal with the
19 pavement surface. It was going to change the
20 pavement surface?

21 A. Right.

22 Q. So, why in that expected
23 scenario did you think that this would have legs?

24 A. Well, I'm not sure if it
25 would grow legs, but no different than when Dave

1 Ferguson is doing something that he starts to feel
2 that he needs to elevate, this was starting to
3 feel like at some point I was going to have to
4 have a conversation with Mike about this. I
5 needed to put in the work first, though. I wasn't
6 going to bring Mike something that was only, you
7 know, two pieces of a 100-piece puzzle. I was
8 going to try to continue in that swim lane working
9 away at trying to figure out, okay, what other
10 information do we have some who else knew about
11 it? Were there any other studies done? All that
12 kind of thing before I bring it to Mike.

13 Q. Registrar, can you go
14 into the OD at page 9A. Pardon me, that's not
15 what I meant to say. Can you go into OD 9A at
16 page 130 and can you call out 314 and 315, please.

17 So, this is the FOI that I was
18 referencing earlier. It's on November 8 and
19 you'll see in 113 it's:

20 "Access to memos,
21 reports, drafts,
22 correspondence about
23 friction testing over the
24 last five years. Any
25 reports, memos, including

1 drafts, correspondence,
2 about asphalt or pavement
3 testing assessments,
4 plans, the last two
5 years."

6 And the information sheet is
7 due to be returned to the access and privacy
8 office by November 15, so a week later.

9 Typically, do you personally
10 deal with FOIs that come into the office if they
11 aren't about you and documents in your custody?

12 A. No. I would have no role
13 unless I had been involved in the particular file.
14 And I've dealt with FOIs throughout my career and
15 I would say what I observed is when I was, kind
16 of, at the manager level is typically where I had
17 most involvement with FOIs, not that I had a ton,
18 but, kind of, below and above the manager level I
19 think most of the work for FOIs usually ends up
20 falling to managers, but not a tonne --

21 Q. Sorry to interrupt you.
22 Registrar, you can close this down. But as
23 general manager, you did not have the time to
24 actually follow through on FOI requests and how
25 they were being handled by the public works

1 department?

2 A. No. It wasn't unusual
3 for the FOI request, for it to come through the
4 manager's office or for us to be CC'd on it. What
5 I would do is talk to my administrative
6 coordinator and make sure she was forwarding it
7 on. Nancy, she knew what to do. By the time I
8 asked her, she already had it in the department or
9 the division that needed to work on it and it was
10 already underway.

11 Q. Okay. Registrar, can you
12 go to the next page, please.

13 So, you'll see right up at the
14 top in the first paragraph Mr. McGuire forwards
15 this note to you very quickly, and he also
16 forwards it to Ms. Edwards and Ms. Graham,
17 Ms. Edwards in legal and Ms. Graham in
18 communications.

19 Did the prospect of having to
20 disclose the Tradewind report in response to this
21 FOI alter your thinking about what the next steps
22 would be to try to put your puzzle together?

23 A. Sorry, put what?

24 Q. Your puzzle. You've been
25 saying you were trying to put your pieces of your

1 puzzle together.

2 A. Yeah. Fair enough. I
3 think what it did was it changed the time scale on
4 it. You know, at the risk of being unable to
5 characterize this in a more eloquent way, I've got
6 this Tradewind issue over in this swim lane over
7 here that we're slowly poking away at, I'm playing
8 Whac-A-Mole with all the other issues that are
9 happening in public works. This comes in and I
10 look at that and I'm like, okay, this looks like a
11 media request for that information or for that
12 Tradewind report that's, kind of, slowly grinding
13 through our analysis over here. I think what, you
14 know, I concluded was, okay, we got to hurry that
15 up now, and so that ended up becoming more of a
16 priority so that we could, kind of, put that
17 puzzle together faster because clearly we needed
18 to understand it because I think very early on it
19 became evident it was going to become a responsive
20 document to this Freedom of Information request
21 and from my experience this Freedom of Information
22 request, the way it was written, kind of, the
23 comprehensiveness of it, I felt like it was the
24 media asking for it, so...

25 Q. In other words, you move

1 it from what was something in the slower lane of
2 your swimming pool --

3 A. Yeah.

4 Q. -- into something that
5 took much higher priority?

6 A. Yes, correct.

7 Q. And was part of that --
8 you said earlier you thought there might be a
9 communications situation. Did the prospect of
10 having an FOI response to the media accelerate --
11 not accelerate. Did it enhance your view that
12 this was going to be a communications situation?

13 A. So, this became evident
14 pretty quickly that there was going to have to be
15 a communications person on this file with us, yes.

16 Q. And we know as we go
17 through the chronology that eventually this matter
18 is disclosed to council. Was it your view as soon
19 as you received the FOI that this was going to
20 have to go to council?

21 A. Yeah. Again, you know,
22 sometimes when you put an issue in the middle of
23 the table, everybody knows just by looking at it
24 where it's going. So, my priority was to make
25 Mike aware of it. Had I had to guess what Mike's

1 reaction would be as far as bringing it to
2 council, I think I knew what the answer was there
3 and I think I would have done the same thing.
4 Mike and I have similar approaches and similar
5 values, so I was expecting that once I gave it to
6 Mike and once we were able to put as much of the
7 puzzle together as we could and get it in front of
8 Mike, I suspect this was going to council for
9 sure.

10 Q. Okay. And I like the way
11 you say sometimes you put something in the middle
12 of the table and it's very obvious some of the
13 steps that need to happen. If the FOI request had
14 not been received, there wasn't an FOI, how
15 confident are you that this report would have been
16 provided to council?

17 A. I would say that
18 eventually we would have assembled the body of
19 information and facts or most of what we know now
20 I think we would have been able to assemble that
21 and I think we probably would have ended up in
22 front of council anyway. It might have been much
23 later because assembling those facts was, kind of,
24 you know, further over on the swim lane. It
25 wasn't the priority at first, so I think the FOI

1 certainly advanced the schedule of that. But I
2 think we probably would have got to a point where
3 there was enough of the puzzle put together that
4 we would have absolutely, you know, sent it to
5 council.

6 Q. Yeah, it does seem like
7 there was an extraordinary amount of work done in
8 December and January to pull those pieces of your
9 puzzle together. And is it fair to say that that
10 work was done in that compressed period of time
11 because of the timing around the FOI?

12 A. I think that's fair. I
13 think with everything else that was going on, we
14 probably wouldn't have -- this wouldn't have been
15 in the centre lane, it would have been out close
16 to the edge, but the FOI forced us to get on with
17 it.

18 Q. Right. Okay. Do you
19 think if it wasn't for the FOI request that it
20 would have taken, sort of, months to pull all of
21 these pieces of information together?

22 A. That's hard to know. It
23 would just depend on how fast the information was
24 coming in and what else was distracting us. You
25 know, we were -- one of the big distractions for

1 Gord at the time was trying to get the capital
2 budget in front of new council. That happens in
3 early December. Once that's done and once, you
4 know, Gord and his team were working on setting up
5 a process to try to continue to get information
6 over to the auditor for his audit, I suspect that,
7 kind of, by there holidays and after the holidays,
8 Gord probably would have had more capacity to
9 chase this up and to put time into it. So, it
10 might have delayed it, you know, the timing might
11 have been a month or two different. But again,
12 it's hard to speculate because you don't know how
13 fast you're going to assemble this.

14 I do recall being struck by
15 the fact that once we started meeting with Mike
16 and legal and that, it was kind of surprising to
17 me how much new information I was finding out and
18 I was, kind of, at the centre of this, but as I
19 said earlier, when you start working an issue like
20 this and you, kind of, separate and you try to go
21 get information, you keep coming back and those
22 first two or three meetings a lot of information
23 came into those meetings that I went even aware
24 of, so...

25 Q. So, you mentioned

1 Mr. Zegarac earlier and that you could see that
2 you had to raise this to him?

3 A. Yeah.

4 Q. Just before we get there,
5 one last question before you spoke to Mr. Zegarac.

6 Were you aware at this point,
7 that is when you received the FOI, oh, okay, I see
8 the Tradewind report is going to be likely
9 responsive, were you aware from Mr. McGuire that
10 audit was also conducting the value-for-money?
11 And I know you had that e-mail exchange with
12 Mr. Pellegrini, but had you connected those two
13 things in your mind?

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

16 Q. Okay. So, you can close
17 this down, Registrar.

18 How did you get in touch with
19 Mr. Zegarac?

20 A. I think the first
21 communication I had with Mike is I called him.

22 Q. When was that?

23 A. It was, I want to say,
24 November 7, 8, 9, something like that. I think it
25 was the beginning of the second week of November,

1 if I recall correctly.

2 Q. Okay. So, the FOI comes
3 in on the 8th and is flipped to you that same day.
4 Do you think it was the same day you received the
5 FOI?

6 A. Probably the same day or
7 the next day, yeah.

8 Q. Okay. And by this point,
9 had you read the Golder report?

10 A. I can't say for sure.

11 Q. Okay. And what did you
12 tell Mr. Zegarac?

13 A. I don't recall what I
14 said to him on the phone that day, other than I'm
15 chasing up an issue here that has emerged and the
16 issue appears to be part of the scope of a Freedom
17 of Information request that we just received, so
18 we need to get together so we can start to walk
19 you through what we've got and that kind of thing.
20 I do recall Mike was actually in his car at the
21 time, so I don't think it was a long phone call,
22 but I think it was something to the effect of we
23 probably need to get together in the next couple
24 days so I can walk you through this.

25 Q. Okay. And you felt there

1 was some urgency in getting together in the next
2 couple of days. I'm sure that's a difficult
3 prospect for both you and the city manager, but
4 you thought that was necessary?

5 A. So, I'm careful with kind
6 of language here. In the public works world, an
7 emergency is usually a car has gone into a
8 sinkhole. I don't think I characterized this as
9 an emergency, but it was urgent.

10 Q. I think I said urgency,
11 not emergency.

12 A. Sorry, I thought you said
13 emergency. It was definitely I'm sure Mike was
14 hearing a sense of urgency in my voice for sure.

15 Q. Okay. Registrar, can you
16 pull up OD 9A, page 149.

17 So, you see at the bottom of
18 this page, 153, Mr. Zegarac wrote to his assistant
19 and said:

20 "Urgent meeting. Can you
21 set up a meeting with
22 myself, Dan McKinnon,
23 Mr. Sabo -- "

24 Registrar, could you pull up
25 150, please:

1 " -- subject, MFIPPA
2 expressway, preferably
3 tomorrow or Wednesday.
4 Thanks."

5 Do you recall discussing with
6 Mr. Zegarac bringing in Mr. Sabo from legal
7 services?

8 A. Do I recall discussing
9 with Mr. Zegarac about bringing in Mr. Sabo?

10 Q. Yeah. Did you suggest we
11 should have legal there?

12 A. I don't recall. I don't
13 know if that was a suggestion from me or if Mike
14 just made that decision. I don't recall.

15 Q. Did you find it atypical
16 to have legal services involved in FOI requests?

17 A. It was not uncommon.

18 Q. Okay. Do you recall
19 meeting with Mr. Zegarac and Mr. Sabo? It looks
20 like a meeting set for November 13, you'll see at
21 351.

22 A. Yeah. You know, I don't
23 recall anything unusual about the meeting.
24 Clearly we met, but I don't recall it with precise
25 memory, no.

1 Q. Okay. It looks like
2 Ms. MacNeil, Byrdena MacNeil, also attended. Do
3 you remember her there?

4 A. I feel like that's the
5 first time I met Byrdena, so that memory sticks
6 out in my mind.

7 Q. Okay. Did the attendees
8 of this meeting receive a copy of the Tradewind
9 report or the Golder report before or at the
10 meeting?

11 A. I don't recall. This may
12 have been -- you know, it's a pretty hastily
13 organized meeting. This may have been me just
14 going in and, sort of, walking them through
15 verbally. I don't know if we brought any
16 supporting material.

17 Q. So, coming out of this,
18 and you'll see at the bottom of page 150 there's a
19 reference to Ms. MacNeil seeking an expenses of
20 time on the FOI, do you remember during your
21 meeting with Mr. Zegarac and others that the
22 suggestion that getting a bit of breathing room
23 from the deadline would be helpful?

24 A. I remember having a
25 discussion about getting some breathing room.

1 Whether or not it happened in that meeting or how
2 it went down, I don't remember the details, no. I
3 think the idea of getting an extension was
4 discussed probably more than once for a variety of
5 reasons.

6 Q. Do you remember anything
7 else about this meeting with Mr. Zegarac and
8 others and, sort of, what the next steps were
9 going to be coming out of that meeting?

10 A. We would have established
11 next steps probably just verbally at this point,
12 but no, no precise memory.

13 Q. What do you understand
14 the next steps would be?

15 A. If I hadn't provided
16 paper copies of it, I would have went back to Gord
17 and said, okay, listen, we need to get copies to
18 Ron, Mike, Byrdena. Give them an opportunity to
19 review it, give them an opportunity to review the
20 Freedom of Information request. Gord was very
21 good at assembling information, so if his briefing
22 note was prepared by then, which I think it likely
23 was, he probably would have sent that over. He
24 probably would have sent over links from the
25 articles. And so, I'm speculating, probably

1 shouldn't do that, but this would have been
2 customary for this type of emerging issue for us
3 to assemble whatever information we had to try to
4 help inform everybody who was now going to go on
5 the team responding to it.

6 Q. So, that sounds like what
7 you would have to do for the FOI. Were there
8 discussions particularly about reporting to
9 council?

10 A. In that first meeting?

11 Q. Yeah.

12 A. I don't recall.

13 Q. Again, to use your
14 earlier analogy, was it one of the circumstances
15 where it was so obvious that this was going to
16 have to be reported to council if the Tradewind
17 report was responsive?

18 A. That was my impression.
19 Whether or not we, kind of, had an overt
20 conversation about it, I don't recall.

21 Q. Okay. Registrar, can you
22 go to 9A, page 161, please. Can you bring up 162
23 as well, please. Thank you.

24 So, I'm going to walk you
25 through some documents so we can get to where we

1 need to be. At the bottom of 386, Dr. Salek, who
2 is at CIMA, sent a draft of the roadside safety
3 assessment report to Mr. Ferguson, Mr. White,
4 Ms. Jacob, Mr. Vala, Dr. Hadayeghi, who is at
5 CIMA, Mr. Malone and Mr. Bottesini, who are also
6 at CIMA. There's a fair bit of information here
7 about that draft. You're not copied on this
8 e-mail.

9 Registrar, can you now bring
10 up 162 and 163 and can you pull out the bottom of
11 162, 387, please. Thank you.

12 The section of the draft
13 report said:

14 "Wet weather collisions
15 were found to represent
16 64 percent of mainline
17 collisions and 73 percent
18 of ramp collisions. The
19 proportion of the wet
20 surface collisions on the
21 mainline presented an
22 increase compared to the
23 2015 study."

24 Did anyone tell you that in or
25 around when CIMA sent this report, which was

1 November 23?

2 A. Sorry, is your question
3 did anybody share this with me?

4 Q. Share that the collision
5 patterns that are set out in these three bullet
6 points or, pardon me, the first bullet point.

7 A. They may have. I don't
8 recall.

9 Q. Do you recall learning at
10 some point in November or December that CIMA's
11 more recent studies around collisions showed that
12 collisions in wet weather conditions were getting
13 worse since their earlier reports, not better?

14 A. Again, you know, I don't
15 recall anybody coming to me and saying, you know,
16 based on this, we need to do something. I may
17 have seen this information. I don't recall.

18 Q. Okay. I ask because
19 earlier in your evidence you said that you'd
20 received information that countermeasures had been
21 done following CIMA's 2015 study, and so did you
22 receive any information that caused you to
23 question whether those countermeasures were as
24 effective as -- were effective?

25 A. I didn't ask that

1 question and I don't recall anybody saying
2 anything to me. I would have been relying on
3 Edward and his team to interpret this information,
4 make the appropriate recommendations and then
5 follow up on them. But I don't recall anybody
6 coming to me requiring my involvement in it.

7 Q. Registrar, can you go to
8 page 157, please. I think that's page 157.
9 Page 156, please. Thank you.

10 You'll see at the top of this
11 page, on November 20 Kim Goral sent a calendar
12 invitation to Ms. Auty, Mr. Sabo, Mr. McLennan,
13 you and I think a boardroom location. It was a
14 meeting scheduled for November 26 and the title
15 was "Next steps on RVH." To your recollection, is
16 this the meeting that follows your meeting on
17 November 13? Or perhaps I'll put it differently.

18 Do you remember having
19 discussions between November 13 and November 26
20 with legal services or Mr. McGuire about the Red
21 Hill issue?

22 A. I don't, no. I don't
23 imagine there was a meeting about this issue that
24 I did not attend. I suspect I was at every one,
25 but I don't remember the specific dialogue in any

1 particular one.

2 Q. I understand. I was more
3 questioning there's a November 13 meeting with
4 Mr. Zegarac and then there's some next steps that
5 you're trying to figure out. This looks like the
6 next scheduled meeting with a calendar invitation,
7 but do you recall having other discussions with
8 legal services or Mr. McGuire before this meeting?

9 A. I don't. I don't recall,
10 no.

11 Q. Okay. Ms. Auty is at
12 this meeting and you later ask her, and you'll see
13 this is at the bottom of this page at 371 --
14 Registrar, can you pull that out. So, she sends
15 an e-mail to her colleagues in legal and risk, but
16 show says:

17 "Further to our
18 discussions last week, do
19 you have any concerns
20 with Dan McKinnon
21 speaking to Gary Moore on
22 the issue of the report
23 and get more
24 information?"

25 So, I think I misspoke just a

1 moment ago when I suggested that you asked her
2 that. And my question is in fact: Did you ask
3 her advice about whether you should contact
4 Mr. Moore?

5 A. I may have. I don't
6 recall precisely that I asked her if I could talk
7 to Gary. I think by the time I had already spoken
8 to him once.

9 Q. Yeah.

10 A. So, I don't recall.

11 Q. You did, but that was a
12 quick, sort of, drop in to his office?

13 A. Yeah.

14 Q. Were you of the view in
15 mid-November that you needed to have a meeting
16 with him where you planned out your questions,
17 where you were able to put things to him,
18 something much more formal and prepared than the
19 one you had with him before?

20 A. I did. I didn't have a
21 belief that we needed to try to get more
22 information out of Gary and -- just as you
23 described it. And, I mean, to the extent where
24 eventually I wanted somebody else to do it because
25 I was starting to feel a little self-conscious

1 that I wasn't asking the right questions and
2 if/or, you know, I wasn't making good enough
3 notes, I wanted to make sure somebody else had a
4 opportunity to speak to him, but I think this was
5 eventually the impetus for Gord and I meeting with
6 Gary in my office.

7 Q. Thank you. Can you close
8 this call out.

9 Did you have -- actually, I'm
10 going to stop there. I'm just looking at the
11 time. It's 11:00 and that's the time that we've
12 started to take our break. So, Commissioner, I
13 would suggest before I move on to a slightly
14 related but different topic, that we take our
15 break. I think you're on mute, Commissioner.

16 JUSTICE WILTON-SIEGEL: Sorry.
17 I thought I had unmuted. My apologies. Let's
18 take the usual break and we'll return at 11:15.
19 --- Recess taken at 11:01 a.m.

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

21 MS. LAWRENCE: Commissioner,
22 may I proceed?

23 JUSTICE WILTON-SIEGEL: Please
24 do.

25 MS. LAWRENCE: Thank you.

1 BY MS. LAWRENCE:

2 Q. So, we were just talking
3 about events at the end of November and a meeting
4 that was scheduled with legal services.

5 Registrar, can you go into OD,
6 page 156, please. And just going back to the
7 paragraph we were looking at about that calendar
8 invitation at 369, if you could call that out.

9 So, this calendar invitation
10 is to Ms. Auty and Mr. Sabo in legal and
11 Mr. McLennan is on this e-mail as well and he's
12 from risk. Did you know him?

13 A. Yes.

14 Q. And did you have an
15 understanding about why he would be involved in
16 this meeting in respect of the Red Hill?

17 A. No. It did not seem
18 unusual to see him in the room, but I do not know
19 specifically the purpose for him being there.

20 Q. Okay. Registrar, can you
21 close this down and go to 159, please, and if you
22 could call out 377.

23 So, this is an e-mail that you
24 were not copied on. It's between Diana Swaby from
25 risk and Terry Shillington, who is a partner at a

1 law firm, Shillingtons LLP, who works for the
2 City. Did you know Ms. Swaby?

3 A. I've met Diana. I don't
4 know her well, but yeah.

5 Q. Do you recall was she at
6 this meeting on November 26?

7 A. I don't recall her being
8 at any of those Red Hill meetings, but I can't say
9 for certain.

10 Q. I ask because you'll see
11 she e-mails Mr. Shillington and says:

12 "I'm meeting with the GM
13 of public works as well
14 as the director of legal
15 services and John
16 McLennan in our office
17 concerning an FOI request
18 to release this report.

19 I take it they do not
20 want to release this
21 report. Do you have a
22 moment to discuss the
23 implications of the
24 release and how this
25 report affects the

1 related to pieces of litigation?

2 A. I don't think I knew
3 that.

4 Q. Did you assume the
5 opposite or did you know the opposite?

6 A. I don't think I thought
7 about it. I don't think I had had the discussion
8 with anybody about it. It wasn't a thing I was
9 thinking about.

10 Q. I think you said earlier
11 in your evidence that when you spoke to Mr. Moore,
12 you didn't ask him about if he had given the
13 Tradewind report to anybody?

14 A. Yeah. I'm not sure if I
15 asked him the question that way. I think it was,
16 you know, my focus was, like, who in engineering
17 did you work with on this kind of thing? Not
18 outside the department.

19 Q. Okay. Registrar, you can
20 close that down.

21 So, given the involvement or
22 the attendance of individuals from risk and from
23 legal at this meeting, what do you recall the
24 purpose of that November 26 meeting to be?

25 A. I don't have a precise

1 memory.

2 Q. Okay. Was it the first
3 time that you met with Ms. Auty about this?

4 A. Again, it's likely, but I
5 can't say with certainty.

6 Q. Okay. Registrar, can you
7 go to OD 9A, page 166, please, and can you pull up
8 167 as well, please. Thank you.

9 So, you'll see at the bottom
10 of 166 you and Mr. McGuire and Mr. Moore met on
11 November 27 and you took some handwritten notes of
12 that meeting. Do you recall that meeting with
13 Mr. McGuire and Mr. Moore?

14 A. I do.

15 Q. Registrar, can you call
16 out the text at the top of page 167.

17 So, Mr. McKinnon, these are a
18 transcript of your notes that the inquiry has
19 obtained. You say your handwriting is atrocious
20 and you asked someone to transcribe these, so I
21 thought we would go with the transcription rather
22 than your handwritten notes. But you were taking
23 handwritten notes during the meeting. Is that
24 right?

25 A. Correct.

1 Q. What was the purpose of
2 this meeting?

3 A. This was, so the end of
4 November, this was getting to be two months after
5 Gord found the report. It's three or four weeks
6 after I had made Mike aware. I think Gary's voice
7 was absent from the process, other than the five
8 or ten-minute conversation I had had with him when
9 I dropped into his office, and I felt we needed to
10 hear from Gary. We needed to get his, kind of,
11 quote, unquote, side of the story. So, that was
12 the impetus for having the meeting and ultimately
13 it produced these notes.

14 Q. Why did you bring
15 Mr. McGuire to this meeting?

16 A. I'm humble enough to
17 appreciate I might not think of all the right
18 questions to ask. One of the things that I find
19 difficult is to actually make notes while I'm in a
20 meeting because then I can't pay attention to the
21 meeting and make notes, so I thought Gord seems to
22 have a real skill in that regard, so having us
23 both make notes, one might catch something the
24 other didn't catch, that kind of thing. And, you
25 know, with Gord in the position he is in now, he

1 might think of some questions I hadn't thought of,
2 so I think we had a few questions prepared ahead
3 of time, but I think some of this was organic when
4 we were in the room as well.

5 Q. Okay. What do you recall
6 about the tone of the meeting?

7 A. I don't have any
8 recollection of it being acrimonious or anything
9 like that. You know, I think it was a typical --
10 I don't want to say a typical Gary meeting. Gary
11 has a certain communication style, but it was --
12 there was nothing in the meeting that upset me as
13 far as tone or his behaviour.

14 Q. So, given what you've
15 said about how you find taking notes, are these
16 the notes that reference the things that you found
17 to be most important rather than, you know, a
18 comprehensive set of everything that was said back
19 and forth?

20 A. It's probably a blend of
21 both. You know, this would be -- I was trying for
22 as much -- as comprehensive as I could possibly be
23 while at the same time listening and thinking.
24 You know, a lot of times when you hear an answer,
25 it prompts you to ask a different question or

1 another question, that kind of thing, so I didn't
2 want to get so distracted taking notes that I
3 didn't ask all the questions, but I didn't want to
4 rely on my memory after the fact, so I was trying
5 hard to take as many notes as I could. I think
6 the meeting only lasted about 40 minutes.

7 Q. Okay. So, the first
8 thing that you have in your notes is:

9 "Golders - subconsultant
10 Tradewind only received
11 in draft."

12 At this point, you had a copy
13 of the Tradewind report?

14 A. I'm certain I would have
15 by this time, yeah.

16 Q. And do you recall did it
17 have a draft stamp on it?

18 A. I don't recall that, but
19 it's evident that I was aware of that.

20 Q. And the Golder report,
21 had you reviewed the Golder report that appended
22 the Tradewind report by this point?

23 A. I suspect I did. I
24 probably didn't spend a ton of time reading it
25 line by line, but I'm sure I had done a cursory

1 review of it.

2 Q. Okay. Why were you
3 interested -- I'm going to take from the back and
4 forth where there's reference to being paid for
5 it, why were you interested in whether Golder was
6 paid for it?

7 A. That would have been
8 related to the previous line, that it was in
9 draft. Did something happen during this process
10 where, you know, you cut the assignment off short
11 and that's why it stayed in draft and you didn't
12 end up paying the full pop? Like, just help me
13 understand that.

14 Q. What did Mr. Moore say
15 about why the report or reports were only in draft
16 and not final?

17 A. I don't recall precisely.

18 Q. Do you recall generally
19 or you just don't have a recollection?

20 A. I don't have a
21 recollection.

22 Q. A couple of lines down it
23 says:

24 "This was undertaken in
25 response to anecdotal

1 stories that it was
2 slippery."

3 Did you know at the time that
4 Golder had another contract with the City?

5 A. I don't believe I knew
6 one way or the other. It wouldn't surprise me.
7 Gord did a fair bit of work with the City, so...

8 Q. Were you aware that
9 Golder had been involved in the construction
10 phase of the Red Hill?

11 A. When it was originally
12 built?

13 Q. Yeah.

14 A. I think I probably knew
15 that, but, again, I'm not confident in that
16 memory, but that sounds familiar.

17 Q. Your notes say:
18 "Ultimately Gary felt it
19 was inconclusive but
20 recommended we should do
21 more testing."

22 The "it" in that sentence, is
23 that the Tradewind report?

24 A. I believe so, yes.

25 Q. Did Mr. Moore give you

1 detail about what aspects of the report he found
2 to be inconclusive?

3 A. To the best of my
4 recollection, it was he mentioned that it was a UK
5 standard and although there was no kind of
6 generally accepted standard here, because it was a
7 UK standard and his interpretation of it, that's
8 the only thing that I can recall him mentioning as
9 it related to why he felt it was inconclusive.

10 Q. Did you understand at
11 this point that Mr. Moore had expertise in order
12 to assess the conclusiveness of this report?

13 A. I was aware that Gary had
14 a history of being a materials guy. I, in a
15 general sense, knew that him and Ludomir had
16 authored papers and that kind of thing and that he
17 had done a fair bit of -- I'm not sure what word
18 to use here -- experimenting with different mix
19 designs over the years on different roads in
20 Hamilton. So, I know Gary was very interested and
21 motivated and, you know, skilled at the materials
22 part of road construction, in particular, the
23 asphalt mixes, you know, that he was often talking
24 about it, so I certainly had a sense that that was
25 his mojo. So...

1 Q. And from your
2 non-technical perspective, you saw friction
3 testing as being part of his area of expertise?

4 A. Friction testing on its
5 own? I'm not sure I would have considered Gary an
6 expert at friction testing, but I had an
7 expectation that Gary would understand how the
8 friction tests were done, the results that come
9 from them, that kind of thing. Whether or not he
10 was an expert on friction, I'm not sure, but I
11 thought he was certainly familiar and aware and
12 informed and had an understanding of how it
13 worked.

14 Q. In the next line there's
15 a reference to a CTAA, which I believe is a
16 conference in Hamilton, November 2017:

17 "Came home and then
18 programmed the RHVP
19 resurfacing in 2018. Met
20 with HIP contractors in
21 Halifax."

22 Did you ask Mr. Moore why he
23 waited between early 2014 to November 2017 to
24 program the RHVP resurfacing?

25 A. I believe I did. I think

1 that conference was actually in Halifax, but I do
2 recall asking him that and the only answer that I
3 recall, and I don't think I've actually documented
4 it here, I can't remember if I asked him in this
5 meeting, was that he had gone back -- I think he
6 was working with Golders and he had gone back for,
7 I can't recall if it's further interpretation on
8 the results or to ask them, you know, what further
9 investigation should they do. It had something to
10 do with Golders, but it feels like it, kind of,
11 went one way and then never ever came back and
12 then time passed, so...

13 Q. Okay. And do you think
14 that that was at this meeting or a later meeting?

15 A. I feel he made reference
16 to it in the five-minute meeting and I feel like
17 he made reference to it here, but it doesn't
18 appear on any notes on it, so I'm fuzzy.

19 Q. Okay. Did you ask him if
20 his decision to program the RHVP resurfacing in
21 2018 was connected to the friction values set out
22 in the Tradewind report?

23 A. I don't think I asked him
24 that question outright.

25 Q. Your notes report that

1 Mr. Moore indicated:

2 "MTO was having problems
3 with their mixes, but
4 didn't tell anyone."

5 This is under the line 2007.

6 Do you recall knowing before this meeting with
7 Mr. Moore that there had been discussion in the
8 industry about early age friction issues with
9 stone mastic asphalt?

10 A. I became aware of that
11 issue through this process. I don't know if it
12 was before this meeting or after. It was late in
13 the year when I think I learned that, about that
14 issue.

15 Q. Okay. Your notes say:
16 "February 2018 - Gary
17 indicated we sat on it
18 for a while."

19 Was that Gary's language, "we
20 sat on it"?

21 A. I wasn't transcribing
22 word for word, so I can't say for certain if that
23 was the exact language that he used.

24 Q. Okay. And the "it" here,
25 is that the Tradewind report or is that something

1 else?

2 A. I think it's either the
3 report or the issue that it was identifying.

4 Q. Okay. And he said, your
5 notes reflect:

6 "Ultimately decided to do
7 polished stone value
8 analysis."

9 Did you understand polished
10 stone value analysis was a test for frictional
11 qualities from this meeting?

12 A. I don't recall. I mean,
13 in a general sense that makes sense to me, but I
14 don't know that I made the connection or anybody
15 else made the connection directly to friction,
16 that that's the primary reason for doing that
17 analysis. I can't remember when I learned that.

18 Q. Okay. That was really my
19 question. Did you have a sense that there was a
20 connection between or that was the purpose of PSV
21 testing or did you understand coming out of this
22 meeting that it was related to the hot in-place
23 assessment?

24 A. I don't think I knew
25 either way.

1 Q. Okay. At this point in
2 the meeting with Mr. Moore, did you know whether
3 the City had results of that testing that had been
4 done in Ireland?

5 A. By the end of November?

6 Q. Yeah.

7 A. I don't know.

8 Q. Okay. Did you later come
9 to learn about the results of the PSV testing?

10 A. I don't know if they were
11 shared with me or not. They may have been. I
12 don't recall.

13 Q. Okay. Your last line in
14 your notes is:

15 "Gary suggested having
16 legal reach out to MTO
17 about their protocol
18 around FOI for such
19 request."

20 What does that relate to?

21 A. I think it's just -- I
22 think that was just offered up by Gary. It
23 appears to be near the end of the meeting.

24 Q. I understand and I can
25 read the words, but what was the suggestion

1 particularly? Maybe I'll start with this. Was it
2 the suggestion that City legal reach out to the
3 MTO?

4 A. That's what I think he's
5 suggesting there, is to have City legal reach out
6 to the MTO. You know, I concluded that Gary's
7 comment in the interview that he had done with the
8 Spectator was something to the effect of, you
9 know, City's never released this information for
10 legal reasons, and so, you know, that thought is
11 in his head and he's sharing it with me, that we
12 should have legal confirm whether or not the
13 information needs to be shared.

14 Q. Okay. Did he say that
15 thought that you now think that was in his head,
16 that no one ever shares this kind of information,
17 did he give that context to this suggestion?

18 A. I believe he did, yeah.

19 Q. Registrar, you can close
20 this down and if you can go to 171, please.

21 You have the notes transcribed
22 and then it looks forward, your notes, to --
23 pardon me. You take your notes, I think you have
24 them scanned, and then you forward them in
25 paragraph 111 to Ms. Auty. Why did you want

1 Ms. Auty to have a copy of your notes of the call
2 with Mr. Moore?

3 A. I recall that, you know,
4 in the meetings that, whether it was with Nicole
5 or Mike or both, that, like I mentioned earlier, I
6 wanted Gary's voice to be heard in this. I wanted
7 to be fair to Gary through this process. And, you
8 know, because I'm not great at transcription and I
9 might not have asked the questions that they
10 wanted, I didn't want to bring that information to
11 her verbally. I wanted her to have it in writing
12 right away so I didn't lose any detail, so that
13 they understood what I asked Gary and what his
14 answers were, because I thought that was likely
15 going to be important for the next time we got
16 together and met.

17 Q. Thank you. Had you had
18 any discussions with Ms. Auty about Mr. Moore's
19 working relationship with the City at this point?

20 A. The subject came up at
21 some point. I don't recall if it was here or
22 later, but there was a conversation about it at
23 some point. I just can't remember when.

24 Q. Thank you. Registrar, if
25 you could go to page 169, please, and if you can

1 call out 401.

2 So, I'm going to ask you some
3 questions now about the audit. In November, end
4 of November 2018, Mr. Sharma, who is in
5 engineering services, e-mailed Mr. Pellegrini
6 under the subject line "Re: Red Hill Valley
7 report," and he says:

8 "The Red Hill report that
9 redacted as advised by
10 legal, engineering
11 services received an FOI
12 on the Red Hill, the
13 complete report and other
14 documents are currently
15 being reviewed by legal.
16 Once the review is
17 complete, we will provide
18 a complete/non-redacted
19 package for your review."

20 Were you aware that
21 engineering services was providing a redacted copy
22 of a report to auditor services before Mr. Sharma
23 sent this e-mail?

24 A. I don't believe I became
25 aware of that until after the fact.

1 Q. So, Mr. McGuire is away
2 for a period of time in mid-November. Do you
3 recall having any discussions with Mr. Sharma or
4 Ms. MacNeil in legal services or anyone about
5 whether or not to redact?

6 A. I don't believe I did,
7 no.

8 Q. So, when you say you
9 became aware of that after the fact, no one
10 discussed the possibility of redaction with you
11 beforehand?

12 A. I don't believe so, no.

13 Q. And this eventually does
14 get, sort of, escalated to you.

15 Registrar, can you go to
16 page 191 and 192 and if you can call out the top
17 of 191 down to 433. Thanks.

18 So, Mr. Pellegrini wrote in
19 response, and I think the date is cut off but I
20 believe it's December 4. Pardon me, it's
21 December 3. He wrote -- he copied in -- I can go
22 to it. It's on the earlier page, but he copied in
23 Mr. McGuire and Mr. Brown and then you'll see here
24 at the top of the page, Ms. Minard, and he says:

25 "Audit needs an

1 unredacted version of the
2 report."

3 And this, he references as a
4 report from Golder Associates:

5 "We can't wait until
6 legal has completed its
7 review. That process
8 might take months and
9 will have an impact."

10 Mr. McGuire responded the same
11 day and said:

12 "We're happy for you to
13 review the file. We have
14 a copy here and you can
15 arrange with Diana to
16 come and see a copy."

17 And then he CC'd in
18 Byrdena MacNeil and he gives some summary that the
19 data withheld relates to friction testing and
20 subject to an FOI on that subject.

21 Registrar, you can close that
22 down.

23 And separately he e-mailed a
24 copy of that e-mail to Mr. Sabo and then Ms. Auty
25 and Ms. MacNeil the following day and he says to

1 Ms. MacNeil -- Registrar, if you can pull out 192.
2 So, this is the following -- this December 4. At
3 the third to last paragraph:

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

15 He says:

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

1 level understanding. As
2 such, I've copied
3 Dan McKinnon. Can you
4 advise of our possible
5 next steps?

6 So, this is flipping to
7 Ms. Auty and Ms. MacNeil and copied to you. Do
8 you recall also having a conversation with
9 Mr. McGuire about this, the circumstance where the
10 auditor came to his office and made copies of the
11 report?

12 A. Yeah. Gord made me aware
13 of that.

14 Q. And when he made you
15 aware of that, was that the first time you learned
16 that the redacted copies had been provided to the
17 auditor?

18 A. I don't know if that's
19 the first time or if I knew before that. I'm
20 fairly certain I didn't know about the redacted
21 copies going to the auditor until after it
22 happened. I'm very confident about that. But
23 whether or not it was before Domenic came and made
24 these copies or not, I can't recall.

25 Q. Okay. Mr. McGuire says

1 he was concerned about a timing issue, that the
2 auditor now has records that may be released prior
3 to our MFIPPA response. Did you share that
4 concern that Mr. McGuire had?

5 A. I don't think so. You
6 know, these types of back and forth happen
7 sometimes. I think at the time I had a sense that
8 the audit was going to go for a long time, so I
9 didn't think anything was imminent coming out of
10 the audit, but eventually we would get the right
11 people in the room and we would have a discussion
12 about it. So, you know, this wasn't sausage
13 making, but it was one of those things that, like,
14 I just knew it would get worked out over time.

15 Q. Okay. Registrar, can you
16 close this down and go to 196 and pull out 447.

17 So, in an e-mail following up
18 on this, again, still December 4, you say he was
19 in your office and he was very frustrated and he
20 felt a little betrayed about what happened, and
21 you're sending this to Mr. Zegarac and Ms. Auty.
22 You said:

23 "This is new water for
24 me."

25 So, recognizing it's not

1 sausage making but you think it can get resolved,
2 at this time did you see the issue between the
3 auditor and engineering staff as one that really
4 did require thoughtful consideration and
5 escalation up to Mr. Zegarac?

6 A. Yeah. I mean, that was
7 the impetus for the e-mail there. I'll just add a
8 bit of context. I can't think of an example in my
9 career at the City of Hamilton where documents
10 requested by the auditors were ever redacted. I
11 never heard of that before. The idea of Domenic
12 coming to Gord's office and getting a hold of them
13 the way he did, that wasn't cool. That just
14 didn't feel right. But he had them now and it was
15 after the fact, so -- but I did feel like I needed
16 to connect with Mike on it and, out of respect for
17 the fact that Gord was acting on legal advice,
18 that's likely why I CC'd Ms. Auty.

19 Q. Okay. Do you recall
20 getting advice from Mr. Zegarac in response to
21 this e-mail?

22 A. I don't recall precisely.
23 To my earlier comment, the deal was done then.
24 They had the document, so it was a bit of a moot
25 point at that point. Nobody was going to be --

1 once Charles had the documents, nobody was going
2 to tell him what to do with it. He works
3 independently, so...

4 Q. Registrar, you can close
5 this down and if you can go to 222 and 223,
6 please. Registrar, could you call out the bottom
7 of 527 on 222 and also the top of 223, please.

8 So, Mr. Brown e-mailed
9 Mr. Zegarac and relayed, sort of, what happened
10 and that, from Mr. Brown's view, Mr. McGuire was
11 originally --

12 --- (TECHNICAL INTERRUPTION)

13 THE STENOGRAPHER: I'm sorry
14 to interrupt. I have a frozen screen. Is it just
15 me?

16 MS. CONTRACTOR: We have that
17 on our end as well.

18 THE WITNESS: Yes.

19 THE REGISTRAR: Hi, everyone.
20 Sorry, it looks like we just lost both commission
21 counsel and the Commissioner, so I'm just going to
22 move everyone into the breakout rooms and
23 hopefully we can get them back soon.

24 MS. CONTRACTOR: Thank you
25 very much.

1 --- (OFF-RECORD DISCUSSION)

2 --- Luncheon recess taken at 11:51 a.m.

3 --- Upon resuming at 1:15 p.m.

4 MS. LAWRENCE: Commissioner,
5 may I proceed?

6 JUSTICE WILTON-SIEGEL: Yes,
7 please do so.

8 MS. LAWRENCE: Thank you.

9 BY MS. LAWRENCE:

10 Q. Apologies, Mr. McKinnon,
11 for our abrupt lunch break. Our internet is back
12 and seems to be fine.

13 Just before we get into the
14 evidence, given our early lunch break,
15 Commissioner and Mr. McKinnon, I suggest that we
16 take a lunch break around 2:45 and then come back
17 and proceed for the rest of the day. Does that
18 make sense, Commissioner?

19 JUSTICE WILTON-SIEGEL: An
20 afternoon break rather than a lunch break.

21 MS. LAWRENCE: Yes, I'm sorry.
22 I don't need another lunch break.

23 JUSTICE WILTON-SIEGEL: Okay.

24 MS. LAWRENCE: Thank you.

25 BY MS. LAWRENCE:

1 Q. Mr. McKinnon, I think we
2 were just about to start talking about the
3 auditor. I may have been talking into the void
4 for some time, so why don't we pick up where I
5 think we left off.

6 Registrar, can you bring up
7 OD 9, page 222 and 223 and can you call out 527
8 and can you also call out the top of 223. Thank
9 you.

10 So, I think this is where we
11 were before our lunch break. So, on December 10
12 Mr. Brown e-mailed Mr. Zegarac and he raised some
13 concerns about Mr. McGuire refusing to meet with
14 Mr. Pellegrini to provide or -- pardon me. He met
15 with him during a meeting, refused to provide
16 information or discuss the matter. This is
17 following Mr. Pellegrini's obtaining the
18 unredacted Golder report. And then there's some
19 excerpts from the Municipal Act, which is below.

20 Registrar, you can close this
21 down and if you can call out 528 and 529, please.

22 So, Mr. Zegarac responds the
23 next day and says:

24 "As Dan is -- "

25 Which I think is reference to

1 you, Mr. McKinnon:

2 " -- Gord's direct
3 supervisor, have you
4 raised this with him?"

5 And then he also says:

6 "I have asked Dan, Gord
7 and Edward to undertake
8 an immediate external
9 independent assessment of
10 traffic operations on the
11 RHVP and possible next
12 steps to deter public
13 safety prior to a
14 briefing with the mayor
15 and council."

16 So, just stopping there, had
17 Mr. Zegarac asked you or, to your knowledge,
18 Mr. McGuire or Mr. Soldo, to undertake an
19 immediate external independent assessment of
20 traffic operations on the Red Hill?

21 A. I don't recall a request
22 using that kind of language, no.

23 Q. Thank you. So, just back
24 into following the train with the auditor on the
25 issue of the redacted Golder report, so

1 Mr. Zegarac says:

2 "Have you raised this
3 with Mr. McKinnon as
4 Mr. McGuire's direct
5 supervisor?"

6 Registrar, you can close this
7 down and if you can go to the next page, please,
8 and call up 531.

9 So, Mr. Brown, it looks like,
10 goes back to Mr. McGuire and now is copying you,
11 asking for or advising that he had opened an
12 investigation specific to friction management on
13 the Red Hill and asked for a number of documents
14 to be provided and preserved. Do you remember
15 this series of exchanges arising out of
16 Mr. Pellegrini obtaining a copy of the unredacted
17 Golder report?

18 A. I do.

19 Q. Registrar, can you close
20 this down and if you can call out the next
21 paragraph, please.

22 You take audit services off
23 the chain of e-mail, Mr. Zegarac, copying
24 Mr. McGuire, and note your time pressures. You
25 said:

1 "With the capital budget
2 at a critical time, the
3 FOI request and the work
4 stemming from that and
5 the shenanigans from Ward
6 1, it's getting crazy."

7 And you note that there is no
8 manager of asset management and you ask for
9 some -- you say:

10 "We just need some
11 breathing room."

12 So, just stopping there, you
13 have mentioned earlier in your evidence it was a
14 very busy time. There's a number of things going
15 on for you and for Mr. McGuire. Does this e-mail,
16 the points in this e-mail from Mr. Zegarac, cover
17 off some of those things that you were dealing
18 with within public works?

19 A. Correct. These are all
20 related just to engineering services, nothing to
21 do with the other seven divisions.

22 Q. There were significant
23 issues in the other seven divisions or at least
24 some of them. Is that fair?

25 A. Oh, yeah. We had

1 significant -- not to go on a literary tangent
2 here, but in the months of from June to October in
3 2018, we had more unprecedented issues emerge like
4 I've never seen in my career almost in every
5 division. It was extraordinary.

6 Q. Registrar, you can close
7 this down and if you can go to the next page,
8 please.

9 A. And maybe just while
10 you're changing pages there, I don't think I've
11 mentioned this. I believe it was in and around
12 this time, too, specifically for Gord, if I recall
13 correctly, council had found a significant amount
14 of additional money to have a bunch of road work
15 done, and so I think Gord may have had an extra
16 \$20 million or \$30 million worth of road work that
17 council wanted to have either done in 2018 or
18 2019, if memory serves me right, so it was a very
19 unusual time.

20 Q. Registrar, could you also
21 bring up 226, please, and if you could call out
22 534 and I think it would be helpful to call out
23 really all of 226 on the other page, if you can,
24 or we can start with 534.

25 So, Mr. McKinnon, it looks

1 like you start to take over in some discussions
2 with Mr. Brown at this point. Why was it that you
3 became the point person for audit services?

4 A. I think I was reacting to
5 the posture that Charles was creating with his,
6 you know, under authority of auditor, blah, blah,
7 blah. It was clear that he was in a different
8 place then. I don't recall having spoken to
9 Charles by that point, which is unfortunate
10 because I think I had a very good relationship
11 with Charles, but it was clear he was at the end
12 of his rope and I was like, okay, I need to get
13 involved here and talk to Charles directly. More
14 than anything, what I was trying to help him
15 understand was the constraints and the pressure
16 that Gord was under. There was nothing in the
17 work that Charles was doing that I didn't believe
18 could wait a few weeks. And so, that was the
19 motivation for me becoming involved.

20 Q. Thank you. So, I won't
21 take you into this because I think you fairly
22 summarized that Mr. Brown was expressing for
23 frustration.

24 Registrar, you can close that
25 down and if you can bring up 335 to 337, please.

1 Thank you.

2 The inquiry doesn't have
3 confirmation about whether you spoke to Mr. Brown
4 or not, if it was by phone, but I certainly can
5 direct you to your e-mail at 535 where you say:

6 "I'm happy to discuss
7 this."

8 And you try to explain some of
9 the resource pressures and you ask for a phone
10 call and he responds:

11 "That would be fine. Can
12 Domenic and I come and
13 speak to you? Just
14 yourself before we have a
15 meeting. I need to speak
16 with some candour."

17 Do you recall meeting with
18 Mr. Brown?

19 A. I do and I feel like I've
20 seen in the evidence here, and it would be
21 correct, I think he actually came to see me over
22 at City Hall one day when we were in committee, if
23 I'm not mixing two things together, but I think he
24 came and I stepped out of committee and we met for
25 a bit.

1 Q. I think that is exactly
2 right. So, were you in a boardroom there or did
3 you just stand in the hall? How did you have that
4 conversation?

5 A. So, there's, I'll call it
6 a staff room, called the anteroom beside council
7 chambers where staff would assemble before
8 committee meetings. It might have been in there,
9 but I have a sense we might have moved to the city
10 manager boardroom, if I'm not mistaken, so it was
11 one or the other than.

12 Q. Thank you. And did you
13 have a discussion where Mr. Brown spoke with
14 candour?

15 A. Yeah. Charles and I had
16 a relationship. We always spoke with candour to
17 each other.

18 Q. What concerns, if any,
19 did Mr. Brown and Mr. Pellegrini express to you
20 about the value-for-money roads audit?

21 A. I don't really remember
22 with any precision, but I think he was frustrated
23 with what he thought was Gord just not being
24 responsive to the work that they were doing, and
25 that, you know, under his authority he would, kind

1 of -- I'll probably get this wrong the way I'm
2 describing it, but he could take it from an audit
3 to an investigation and he's already done that or
4 he's contemplating doing it, so that would
5 certainly elevate the issue and probably give him
6 other powers if he needed them. And I didn't
7 think any of that was necessary. We just needed a
8 bit of time to get a bit of breathing room, so I
9 wanted him to hear that from me.

10 Q. Okay. And I assume you
11 expressed that. What was his response?

12 A. I don't recall exactly
13 what his response was. I think he started to
14 understand, you know, where we were coming from.
15 And if I recall correctly, I think he -- he did
16 agree to give us some time to just get through the
17 issues we were dealing with, and then we could
18 focus on his work.

19 Q. Thank you. Registrar,
20 you can close this down and if you can go to
21 page 195, please, and if you can call up 443.

22 On December 4, Ms. Auty
23 e-mailed you and Mr. Zegarac with the subject line
24 "Meeting on the RHVE" and she says:

25 "Based on my

1 conversations with Gord
2 and Byrdena today, I
3 think we need to get
4 everyone together at the
5 same time to discuss the
6 totality of reports and
7 information on this issue
8 and review options for
9 next steps."

10 And she references the people
11 she wants there and anyone else you think should
12 be there. By December 4, what do you recall was
13 the plan to deal with the disclosure of the
14 Tradewind report but also all the other totality
15 of reports, as Ms. Auty explains it or identifies
16 it?

17 A. I don't have a precise
18 memory of the plan on the 4th. You know, I think
19 I was describing earlier that this just looks like
20 another cycle of bring everybody back together,
21 okay, what's our scope, what are they telling us,
22 decide if there's any other data or information
23 that we need to go and gather. So, I think it was
24 just another one of those -- that's the way I
25 would characterize this meeting. It was another

1 coming together of the team, see what we have,
2 discuss it and then a continuing strategy
3 development about are we going to council. I
4 think it was pretty obvious to us from the get-go
5 we were going to council, but what else might we
6 need? And so, I see this is just another cycle of
7 that process.

8 Q. Okay. I hear you when
9 you say it was another cycle because, as we'll get
10 into, there's a number of meetings that you
11 attend. This is really one of the first,
12 December 6?

13 A. Right.

14 Q. And so, focusing on
15 those, sort of, early days of that rash of
16 meetings that you end up having through December
17 and January, do you remember specifically whether
18 there was a plan to report to council with the
19 Tradewind report and all of the other public works
20 reports together, or whether the plan at this very
21 early stage was to do what eventually happened,
22 which was report on the Tradewind issue at one
23 meeting and do a report on public works reports at
24 another meeting?

25 A. To borrow on my previous

1 metaphor, I think at this point there was still a
2 fair bit of fog and there was still some puzzle
3 pieces missing. So, I don't have a precise memory
4 of it, but I suspect it was too early to have a
5 firm detailed plan that would say we're going at
6 this meeting, you're going at that meeting kind of
7 thing. I don't think we were far enough down the
8 road at this point.

9 Q. Okay. Was there any
10 discussions at this meeting about legal services
11 retaining an external lawyer?

12 A. I don't recall.

13 Q. Do you recall having the
14 discussions with Ms. Auty or others in legal
15 services about them retaining an external counsel
16 at any point?

17 A. That conversation may
18 have happened with the larger group, but it's not
19 memorable to me, no.

20 Q. Okay. So, sitting here
21 today, you can't recall if you had knowledge that
22 legal services was retaining external counsel?

23 A. At some point I became
24 aware of it. I just can't tell you when.

25 Q. Okay. What did you

1 understand the scope of what external legal
2 counsel would be doing?

3 A. I don't think I asked. I
4 don't think it was shared with me. You know,
5 maybe I operate at too simplified a level. It,
6 kind of, made sense. For the previous six months,
7 public works, with all of those issues that had
8 emerged, had brought to legal services an
9 extraordinary amount of work that was never in
10 anybody's work plan.

11 And I won't, kind of, distract
12 for too long, but we had had the Chedoke Creek
13 spill, we had to shut down our organic facility.
14 Both of those events attracted charges from the
15 Ministry of Environment, which was something that
16 had happened for the first time in my career. We
17 had a reconstruction of an arena project in Dundas
18 that had gone completely off the rails. Legal had
19 to become deeply involved in that. We had a
20 situation in the spring with our waste management
21 contractors where we had to get legal to get
22 involved in that.

23 So, we had brought legal, I
24 would argue, an unprecedented body of work since
25 about June that they had no idea was coming, nor

1 did we, and so I think there was a number of
2 occasions where they had to secure the services of
3 outside legal to help them with all these
4 different files. I don't think anybody asked my
5 opinion or my approval or necessarily did I help
6 design any scope for the work that outside legal
7 was doing on this project. But it was one of
8 those things, it just made sense to me because I
9 knew they had had all this stuff dumped on their
10 lap.

11 Q. Mr. Boghosian was
12 eventually retained by legal services to provide
13 an opinion. Did you see his written opinion,
14 either in draft or final form?

15 A. I'm sure I saw the final.
16 I'm don't know if I ever saw a draft.

17 Q. Did you come to
18 understand that external legal services would be
19 conducting some fact finding and, in particular,
20 contacting CIMA?

21 A. That sounds familiar.

22 Q. But you can't nail down
23 when you knew that?

24 A. No.

25 Q. Did you understand that

1 legal services was going to be the conduit to CIMA
2 on issues around the Tradewind report?

3 A. I think I understood
4 that, yeah.

5 Q. Do you know when you
6 understood that?

7 A. No. Sorry, no. No, I
8 can't pinpoint a date. No.

9 Q. What in particular was
10 your understanding about legal services being a
11 conduit to CIMA? Did you understand that your
12 staff should be going through legal services to
13 deal with CIMA on the Tradewind report?

14 A. As it relates to the
15 focus of the work that Boghosian was doing on
16 behalf of Nicole, yeah, I think she wanted it to
17 go through her. That wouldn't surprise me.

18 Q. Did you understand, or
19 what understanding did you have, about whether
20 public works staff could communicate with CIMA
21 about the Tradewind report?

22 A. I don't recall.

23 Q. You don't recall either
24 way if there was any limitations or free access or
25 anything about any discussions about public works

1 staff contacting CIMA about the Tradewind report?

2 A. I don't have a precise
3 memory. I do recall, you know, kind of, the issue
4 that Nicole was dealing directly with Boghosian,
5 so I think she wanted to, kind of, have some
6 control over that, which is understandable to me
7 because she wanted to make sure she knew -- she
8 understood what was happening. I don't recall --
9 like, are you suggesting being prevented from
10 talking to CIMA?

11 Q. So, I'm suggesting that
12 Mr. McGuire had a project with CIMA on lighting
13 and Mr. Soldo had a project with CIMA on the
14 roadside safety assessment?

15 A. Yeah.

16 Q. And the speed limit
17 study, which had now been concluded. Did you
18 understand that not in the context of those
19 existing projects but specifically with respect to
20 talking to CIMA about the Tradewind report, that
21 there was any limitation or any limitation at all
22 on your staff contacting CIMA?

23 A. I just don't recall
24 either way.

25 Q. Okay. So, we're still at

1 this December 6 meeting. Coming out of this
2 meeting, who did you understand had responsibility
3 to lead this matter to a report to council?

4 A. Who did I understand was
5 leading?

6 Q. Yeah.

7 A. I don't think I have a
8 precise recollection of who was leading. When
9 you're working through an issue like this, I
10 think, kind of, the lead on things can change
11 depending on what the issue happens to be. There
12 was a body of work that public works had to do,
13 there was a body of work that legal had to do, in
14 this case there was a body of work that the
15 communications had to do, so by the first week of
16 December I don't have a firm memory of who was
17 actually, kind of, steering.

18 Q. Registrar, can you close
19 this down and go to page 223, please, and could
20 you call out 529.

21 On December 10 you e-mailed
22 Ms. Melatti, Ms. Auty, Mr. McGuire, Mr. Soldo,
23 Mr. Zegarac and Ms. Wunderlich under the subject
24 line "Expressway," and so this is to Rosanna:

25 "Mike asked me to connect

1 to arrange a meeting this
2 week to develop a note
3 relative to the Red Hill
4 to guide a conversation
5 with the mayor."

6 So, that looks like it's a
7 note to guide the conversation with the mayor
8 rather than a briefing note to the mayor. Do you
9 recall either way what materials were prepared in
10 advance of a meeting with the mayor?

11 A. No, I don't. Doing these
12 types of amounts to the mayor was not uncommon
13 and, on this particular one, I don't know if I
14 brought in physical notes or if it was just a
15 conversation. I can't remember.

16 Q. Okay. So, the
17 implication built into your e-mail is that there's
18 going to be a conversation with the mayor. Had
19 you and Mr. Zegarac landed on that approach, that
20 it was appropriate to go and speak to the mayor,
21 by December 10?

22 A. I assume so. It was
23 either Mike and I decided together or Mike
24 decided. It could have been one or the other.

25 Q. Registrar, can you close

1 this and go to page 242, please, and can you call
2 out 570 to 572.

3 On December 12, Mr. Zegarac
4 send a calendar invitation for December 14 and
5 that went to Mr. McGuire, Mr. Soldo, you, Ms. Auty
6 and later Mr. Sabo, and the City has produced an
7 undated note from Mr. Sabo that has a number of
8 initials, which I think the DM there is you.

9 Can you close this down,
10 Registrar, and go to the next page.

11 You didn't take notes but
12 there are other notes of this meeting, and I'm
13 going to pull out a transcription of Mr. Sabo's.

14 Registrar, can you pull out
15 the top of 243, please.

16 So, this, for context, is
17 about four days before you meet with the mayor.
18 And these are not your notes, but they may assist
19 you in your recollection of this meeting. Do you
20 recall discussions about getting info from CIMA to
21 be current on safety standards at this meeting?

22 A. I don't recall that, but
23 it certainly makes sense.

24 Q. So, we know that CIMA was
25 doing the roadside safety assessment at this

1 point. Do you recall if the reference there is to
2 CIMA doing the roadside safety assessment or if
3 there was additional work that this group had
4 concluded should be done by CIMA?

5 A. I can't say for sure. I
6 don't know if the work that CIMA was doing on the
7 roadside safety audit, if the data that was in
8 there would be applicable here or if it was a
9 different piece of work. I don't recall.

10 Q. Registrar, could you
11 close this down and can you go to the next page,
12 243. Sorry, we were on 243. Can you go to 255
13 and can you call out this just to make it a bit
14 bigger.

15 Mr. McKinnon, is that readable
16 or should we try to call out smaller portions?

17 A. No. I think I can see
18 it.

19 Q. Okay. So, these are
20 transcriptions of Ms. Auty's notes of the same
21 day. You'll see the date is at the top and you'll
22 see you're referenced as an attendee and
23 Mr. Zegarac is there. There's reference to
24 Mr. Boghosian. In particular, at the top:

25 "Boghosian CIMA

1 back/share friction
2 testing to assess
3 outstanding safety.
4 CIMA back/share friction
5 testing to assess
6 outstanding safety."

7 Do you recall whether there
8 was a discussion at this meeting on December 14
9 about Mr. Boghosian's work to date for Ms. Auty?

10 A. I don't recall.

11 Q. Do you recall if Ms. Auty
12 advised this group that Mr. Boghosian had spoken
13 to Mr. Malone and he ranked as a primary
14 contributor to collisions inadequate skid
15 resistance?

16 A. I don't recall. I don't
17 recall one way or the other.

18 Q. There's some reference
19 through these notes to reviewing a safety audit
20 and then right underneath it it says:

21 "What can we do in the
22 interim?"

23 And then if you skip down to
24 where it says "Gord," it says:

25 "Can't do anything to the

1 surface. Did
2 prelim/tender/timing."
3 And then it references Golder
4 testing. Do you recall during this meeting what
5 discussions occurred about whether there was
6 interim measures that should be considered between
7 that point and repaving?

8 A. There may have been a
9 discussion about that, but I don't have any
10 confident memory of it.

11 Q. Okay. So, I note that
12 there was many meetings and I'm sure many
13 discussions over this period of time. Do you
14 recall being involved in any discussions in
15 December or January, let's say up to about
16 mid-January, in which the attendees discussed
17 whether there were interim measures that should be
18 considered?

19 A. We may have, but I'm not
20 having any, kind of, firm recollection of it.

21 Q. Okay. At the very bottom
22 of Ms. Auty's notes, pardon me, not the very
23 bottom, close to the bottom about five, six lines
24 up, it says:

25 "Need to be confident the

1 safety issue has been
2 addressed."

3 By this point, what confidence
4 did you have that the road was safe to drive on?

5 A. The report that Tradewind
6 had done had identified that further investigation
7 needed to be done, and it's my experience, as
8 limited as it is, that when you have engineers
9 undertake some kind of an assessment of a
10 facility, whether it's a highway or bridge, a
11 water pump station, they generally offer you
12 recommendations that have -- if there's an
13 intervention that they're actually saying you
14 should do, they usually give you a timeframe for
15 that. And so, notwithstanding the actual numbers
16 that Tradewind had, the recommendation that they
17 had was further study.

18 In addition, they had talked
19 about some kind of surface treatment, but this was
20 in no way -- I never interpreted it that you need
21 to do something immediately, like, you know, for
22 example, close the highway. I am familiar with,
23 for example, if you -- this is probably the most,
24 I guess, pointed example of this, if an engineer
25 inspects a bridge, if the engineer believes that

1 the bridge should be closed, they'll be closing it
2 immediately. And so, you know, I guess from my
3 experience I just didn't see this in that
4 category, because the report didn't say that. So,
5 I guess that was, kind of, what was in the back of
6 my mind as far as safety issues. There's no
7 question something needed to be done at some
8 point, but certainly at this point there was all
9 these countermeasures that had been done over the
10 last couple of years and we had the resurfacing
11 that was scheduled for a number of months away.

12 Q. Okay. So, I'm hearing
13 from you that you did have confidence that the
14 road was safe?

15 A. So, I had confidence that
16 the -- so, I'm sure you've heard this from others.
17 The word "safe" gets -- it's an interesting word.
18 I didn't see any evidence that the road needed to
19 be shut down or that anything dramatic needed to
20 be done. There was no recommendation, no report
21 in front of me that said you need to do something
22 ASAP.

23 Q. So, the basis for your --

24 A. If I could just add to
25 that? If I could add on top of that?

1 Q. Yes.

2 A. My guys, my experts,
3 aren't coming to me saying the road needs to be
4 shut down. I'm not an expert in this. And nor
5 was anybody else who was charged with this
6 responsibility coming to me saying we need to shut
7 the road down.

8 Q. I understand. So, I want
9 to understand not you were relying on, what you
10 had in your mind. So, you had the four-year old
11 Tradewind report and you have your technical staff
12 not coming to you to say that the road was unsafe?

13 A. Correct.

14 Q. Thank you. On
15 December 18 you met with the mayor.

16 Registrar, can you close his
17 down and bring up 281. Pardon me, I misspoke.
18 261. Yes, thank you, Registrar. The first couple
19 of paragraphs would be great.

20 This is just a reference to
21 the calendar invitations and it's in the mayor's
22 boardroom, just to orient you. Do you recall the
23 meeting with the mayor?

24 A. Vaguely. As I said
25 earlier, having these types of meetings with the

1 mayor was a somewhat regular occurrence. I didn't
2 do it as often as Mike did, but I'd had many of
3 these types of meetings with the mayor.

4 Q. Okay. What was your role
5 at this meeting?

6 A. I probably did an
7 introduction from the public works part of things.
8 I can't remember if I let Gord or Edward -- they
9 would have been there in support to answer any
10 kind of technical questions, I would imagine, but
11 typically in a situation like this I would do a
12 bit of an introduction of the issue, look to my
13 staff, say have I missed anything, and then if
14 there was questions that resulted, if I didn't
15 think I could handle them, I would be looking to
16 my staff.

17 Q. Okay. Apart from making
18 sure that the mayor had knowledge of this issue
19 and escalating it to him, what was the purpose or
20 what was the outcome that this team was expecting
21 to see coming out of this meeting with the mayor?

22 A. Well, I guess it was
23 beyond -- I mean, he's the mayor. Beyond making
24 him aware of it, I think we were, not unlike many
25 conversations that we have with the heads of

1 different committees or just councillors in
2 general, was getting his reaction to it and see if
3 he had advice as to how and when we should go to
4 committee and council with the information, what
5 questions he might have so that if he's got
6 questions that we haven't acquired the information
7 to respond to those questions, then go and get it.
8 You know, this is, like I said, kind of, a typical
9 thing that we would do on emerging issues that
10 were significant.

11 Q. And what was his reaction
12 to the information provided to him at this
13 meeting?

14 A. You know, I don't recall
15 precisely, but I can imagine he was disappointed.
16 The mayor is a very bright guy. I'm sure he asked
17 us some good questions. I think he did give us
18 some thoughts on the approaches as far as getting
19 in front of council, but I don't remember
20 precisely what he said or what he asked.

21 Q. Registrar, you can close
22 this down and can you please go to 280, and if you
23 can call up 654.

24 So, we're now into 2019. This
25 is January 3, so just after the new year, and you

1 forward an e-mail, copying in Mr. Zegarac, and you
2 ask for a call and say:

3 "Like to discuss the
4 below and what is the
5 plan for updating
6 council?"

7 You've lost the thread. And
8 so, just so it's clear, that you're, sort of,
9 trying to follow up from earlier e-mails.
10 Actually, I want to be precise.

11 Registrar, can you close this
12 down for just a moment.

13 I actually think that the
14 e-mail that you're forwarding is the one that is
15 mentioned at 653 where Dr. Uzarowski asks
16 Mr. McGuire if anyone was listening in on a call
17 that or a meeting that Mr. McGuire and
18 Dr. Uzarowski had had in December, and it's that
19 that you flip.

20 So, just stopping there, did
21 you note this back and forth between Dr. Uzarowski
22 and Mr. McGuire about concerns that their
23 conversation was being overheard?

24 MS. CONTRACTOR: I wonder if
25 we could just go to the e-mail so we could see

1 what he's copied on and what he's not.

2 MS. LAWRENCE: Yes. Sure. I
3 think that would be helpful. It's HAM54197. If
4 you can go to -- it's 38 images long, but I think
5 if you go to image 2 at the top. Actually, I
6 guess start from the bottom.

7 BY MS. LAWRENCE:

8 Q. Dr. Uzarowski says:
9 "Towards the end of the
10 conversation, you reduced
11 the volume on the
12 stationary phone and he
13 asked for clarification
14 if our conversation was
15 recorded, if others were
16 listening."

17 You can close that down. And
18 then Mr. McGuire responds, and this is in
19 December, December 21:

20 "No, there was no
21 recording or anyone
22 listening."

23 And then that gets flipped to
24 Ms. Auty and to Mr. Sabo on December 31. And then
25 on January 3, Mr. McGuire, it appears, forwards

1 that entire e-mail chain to you and then you send
2 an e-mail to Ms. Auty and Mr. Zegarac. So, that's
3 the way that we get to this and you asking, I've
4 kind of, lost the thread, I would like to discuss
5 below and our plans for updating council.

6 So, I think I had a question
7 in there initially, but maybe I'll try to re-ask
8 it. On this day, January 3, why did you want to
9 speak to Ms. Auty about the e-mail exchange that
10 we've just gone through?

11 A. Again, not a precise
12 memory. I think the purpose of my e-mail was we
13 were all off over Christmas. I suspect we
14 probably spoke with each other over Christmas
15 because of the significance of this issue, but I
16 think I was just using the e-mail, it could have
17 been any e-mail to do with that file, to just say,
18 okay, I've lost the thread on this. When are we
19 going to council? I don't think there was much
20 relevance to actually Gord's, the content of the
21 e-mail. It was more about the entire issue. I
22 was likely just speaking to Gord and then he
23 forwarded it. As I mentioned, Gord was in close
24 proximity to me. On January 3, I'm guessing we
25 were both in the office. He might have mentioned

1 it and I might said, hey, flip through the e-mail.
2 I read the e-mail and thought, you know what?
3 It's been a while since I talked to Nicole. I
4 should contact her to find out where we are with
5 things.

6 To your earlier question, like
7 who is in the lead, sometimes the lead gets
8 dictated by who is most advanced in the writing of
9 the report if you have two reports that you're
10 bringing together, so sometimes the critical path,
11 if you will, gets dictated by the person who is
12 going slower or faster, depending.

13 Q. So, here you say:

14 "I've kind of lost the
15 thread on this."

16 So, by January 3, had there
17 been clarity about which reports were going to go
18 first; that is, reports about the Tradewind report
19 or reports about all of the other public works
20 matters? Did you have a sense of that by
21 January 3?

22 A. I don't have a specific
23 memory of that. The one thing I will tell you is
24 that these things are fluid, and so depending on
25 information that you're bringing to the table and,

1 kind of, discussions around strategy, sometimes
2 over a week you might change two or three times
3 depending on what you're learning or how you're
4 putting things together or if you're waiting for
5 information. So, you know, it was in the back and
6 forth of that, because it can change pretty
7 regularly, I think that's why I was looking for
8 the update.

9 The other thing is, you know,
10 my office was further away from City Hall than
11 Mike's. Nicole's office wasn't in City Hall
12 either, but it wasn't unusual for me, and this
13 isn't a criticism, it's just the way things go, is
14 sometimes conversations might happen that I might
15 not be aware of and it's not until you come back
16 together and you meet as a group where you hear,
17 sounds like things have changed. Okay, well,
18 there's a new date or new strategy. We're going
19 to go together, separately, that kind of thing.
20 So, this file was no more unique than others in
21 that regard where things change depending on the
22 information that you're getting, feedback that
23 you're getting from the mayor or councillors, that
24 kind of thing.

25 Q. You attend a number of

1 meetings in January, including some with a
2 communications specialist externally, Karen
3 Gordon. Do you remember meeting with Ms. Gordon
4 in a large group?

5 A. Yes. We used Karen on a
6 couple of different files, but I do recall her
7 being involved with this one for a short period of
8 time.

9 Q. Do you recall how many
10 meetings you attended where she was present in
11 person or on the phone?

12 A. I don't recall it being
13 very many. I would say it was two or three, but I
14 don't have a precise memory.

15 Q. Registrar, could you
16 close this and go back into OD A, 281, please, and
17 282, please.

18 On January 7, there is a
19 meeting for which Ms. Graham prepares notes and
20 one of the attendees in the meeting invitation is
21 Ms. Gordon. You're also listed as an attendee.
22 Do you recall attending a meeting with Ms. Gordon
23 on January 7 in particular?

24 A. I have memory of being in
25 meetings with Ms. Gordon on this issue. I can't

1 tell you when it was or where it was.

2 Q. Okay. Registrar, could
3 you call out the bold part on 282. I'm sorry, at
4 the bottom half. Yes, thank you.

5 So, here, this is part of
6 these minutes. It says:

7 "GIC - January 16 (goal)
8 council - January 23
9 (plan B)."

10 So, between January 3 and when
11 you had, sort of, lost the thread and wanted to
12 talk to Ms. Auty and January 7, do you recall a
13 plan coalescing around the goal of January 16 to
14 GIC and a plan B of January 23?

15 A. That feels familiar.

16 Q. You can close this down.
17 So, some of the reports that your staff were
18 preparing, including the joint report that
19 Mr. McGuire and Mr. Soldo were doing, were reports
20 that would normally go to public works committee.
21 Is that right?

22 A. That sounds reasonable.

23 Q. And had you had
24 discussions with anyone about how you were going
25 to or how or if you were going to get those

1 reports to GIC or council instead of to public
2 works?

3 A. I believe there was a
4 discussion about that. The problem with public
5 works is not all members of council are on public
6 works, and so recognizing, you know, the profile
7 of this issue, it's not unusual for us to go to a
8 GIC as opposed to a specific standing committee.

9 Q. And had you had
10 discussions about how you were actually going to
11 do that, get these reports to GIC, or was that
12 something that was really not in your purview?

13 A. Oh, no. There was likely
14 a discussion about it. You know, when you make
15 decisions like this, then you have to talk to
16 clerks as well because clerks has to look at it
17 and decide whether or not your rationale will past
18 the test. So, I suspect we probably had, you
19 know, a fair bit of conversation about that, but
20 this is not unusual. And, you know, in
21 consideration of the issue, it makes total sense
22 to me.

23 Q. Registrar, could you go
24 to 293, please. Actually, can you bring up 294 as
25 well and can you call out 682, please, at the top.

1 So, just related to that
2 question, it looks like on January 10 you e-mailed
3 Mr. Soldo and Mr. McGuire and say:

4 "Can you talk and see how
5 much we can accelerate
6 it? Legal is struggling
7 for the reason for going
8 in camera in the absence
9 of some other report. I
10 need a sense of what's
11 the absolute soonest we
12 could bring it."

13 Is that the A version of the
14 previous report? I think there you're referencing
15 PW18008 and that report became PW18008A. Is that
16 right?

17 A. I believe so.

18 Q. And so, here, what are
19 you communicating to Mr. Soldo and Mr. McGuire
20 about the timing and forum for that report?

21 A. So, over the course of
22 the previous term of council, there had been a lot
23 of scrutiny on council about transparency and the
24 reasons for going in camera, and so it's something
25 that ten years ago would have been no problem.

1 Getting information in front of them had somehow
2 become a problem. So, the challenge was, as I
3 recall it and I'm happy to be corrected on this,
4 but my understanding was that in order to bring
5 the report in camera, they wanted to have a public
6 report to position things appropriately for
7 clerks.

8 Q. Was that with a view that
9 the public report would go to the same meeting as
10 the in-camera report?

11 A. I believe that was the
12 case, yeah. I don't think you would ever bring a
13 public report to one committee and the legal part
14 of that report to a separate committee. That
15 doesn't sound like it would fly through clerks.

16 Q. Do you recall where
17 Mr. Soldo and Mr. McGuire were in their drafting
18 and what information they provided to you about
19 the absolute soonest they could bring the report
20 to you to go to council?

21 A. I don't. The only thing
22 I recall is that they -- I think they did have to,
23 kind of, advance some of that work or advance at
24 least some of the information to put into the
25 report, because the work had been, kind of,

1 scheduled out a little further.

2 Q. Registrar, you can close
3 this down and if you could pull out 680, please,
4 on 293.

5 On the same day you were
6 e-mailing with Ms. Graham under the subject line
7 "Answers":

8 "As we prepare answers
9 for in camera and the
10 follow up, I think being
11 able to illustrate
12 context will be
13 important. What I mean
14 is we'll need to answer
15 the question of if it's
16 safe."

17 And then you suggest to
18 Ms. Graham to work with Edward so that the
19 accident data versus roadway volumes can be
20 expressed as comparison to other highway:

21 "I'm not sure if there
22 are other ways to
23 characterize highway
24 performance."

25 So, what were you thinking

1 through in terms of answers as you were writing
2 this to Ms. Graham?

3 A. Well, I think the
4 information in front of you shows you what I was
5 thinking about the -- my experience has been the
6 question of safety has always been one that, you
7 know, people want, kind of, black and white
8 answers to and I know that depending on the
9 particular situation, engineers were often --
10 often would prefer to give a different explanation
11 than a binary it's safe, it's not safe.

12 The bridge example I gave you
13 was a very easy one. Sometimes you just shut it
14 down because it's not safe. Roadways are a little
15 different because you can make them safer or they
16 can become less safe over time. And so, sometimes
17 that's not a satisfying answer for members of
18 council, so I think it was that process that I was
19 going through that.

20 Q. Okay. Did you consider
21 any other things that could be done in order to
22 provide comfort to council that the road was safe?

23 A. I don't recall. You
24 know, I think the conversation was similar to the
25 one we're having today. I don't recall anything

1 else.

2 Q. Okay. Registrar, you can
3 close this down and if you can go to page 305,
4 please. Registrar, could you pull up 712 and 713.

5 So, this is going back to the
6 FOI and then we're going to come to the audit,
7 which is related. So, on January 14 Mr. McGuire
8 sent a package to Ms. Watson in respect of the
9 FOI, she's in the access and privacy office, which
10 included an index, two bound books of
11 correspondence and, I think, a covering letter.
12 And the index that he's referring to is an index
13 identifying possible MFIPPA exceptions to the
14 bound documents.

15 Registrar, can you close that
16 down.

17 Do you recall being notified
18 that Mr. McGuire had delivered documents to the
19 access office on or around January 14?

20 A. I don't recall that, but
21 in light of the, kind of, significance of the
22 file, he likely did, but I don't recall.

23 Q. Okay. On that same day,
24 Mr. McGuire sent to Mr. Pellegrini a USB drive --
25 that's set out in 714 -- along with a letter.

1 Registrar, could you go to the
2 next page, please.

3 The same day, Mr. Pellegrini
4 e-mailed Ms. Wunderlich to arrange a meeting with
5 you and Mr. McGuire and Mr. Brown and Ms. Minard.

6 Registrar, could you go into
7 that meeting that is footnoted there, the actual
8 underlying document. It's HAM54228. Thank you.

9 So, you'll see -- sorry, just
10 give me a moment. I just want to make sure.
11 Okay.

12 So, you see at the top the
13 meeting is scheduled through an appointment that
14 is suggested by Mr. Pellegrini for January 15,
15 1:30 to 2:00, and that follows from some e-mails
16 back and forth first from Mr. McGuire saying:

17 "We're done the RHVP
18 testing processes."

19 And informing you the FOI is
20 complete. That's on the right-hand side. And
21 Mr. Brown responding:

22 "Gord, thanks very much.
23 I'm not sure why we're
24 lumped in with the FOI
25 office."

1 And suggesting that the
2 auditor's team sit down with you and Dan to
3 discuss an efficient way forward.

4 Do you recall having a meeting
5 with those from audit and Mr. McGuire on
6 January 15?

7 A. Not specifically, no.

8 Q. So, you said, I'm
9 paraphrasing your evidence here, but you had sort
10 of smoothed out some of the issues in December
11 with Mr. Brown by having a meeting with him and he
12 had given you a bit more time?

13 A. Correct.

14 Q. Do you recall anything
15 about the meeting on January 15, if it occurred,
16 and whether you were able to find an efficient way
17 forward with Mr. Brown, as he suggested?

18 A. I don't have a specific
19 memory of it. I thought once we had an
20 opportunity to -- like, by the time it was the new
21 year, I thought we were getting in a good place
22 and things started to move again. I do know that
23 at some point Gord talked to Dipankar Sharma to
24 kind of be his lead to help assemble documents and
25 go find things, and I also remember Gord telling

1 me that he had set up a website or a SharePoint so
2 that as soon as they found things, they could dump
3 it in there, send an e-mail to audit so they would
4 know where to go and get it. So, I don't know
5 when those things were happening, but those were
6 all bits of evidence that made me feel good that
7 Gord was doing what he could to try to expedite
8 this. But I can't tell you when all that
9 happened, but all that to say that I have a
10 general recollection that by the time we were into
11 January, we were all in a better place on this and
12 we were starting to move forward with it again.

13 Q. You can close this down,
14 Registrar, and if you can go back into OD 9A,
15 page 315, please. Thank you.

16 So, I'm just going to stop
17 here and ask you some questions about this meeting
18 that was scheduled for January 17 that's
19 referenced in 738.

20 But before we get there, it's
21 clear that the goal to go to GIC for January 16
22 does not happen. Do you remember why it was that
23 public works and legal moved to the plan B of
24 January 23?

25 A. I don't.

1 Q. Registrar, could you call
2 out the three paragraphs under January 17.

3 Ms. Graham sent this calendar
4 invitation. She included you, Ms. Racine,
5 Mr. Hertel, Mr. McGuire, Mr. Soldo, Ms. Auty and
6 Mr. Sabo. And so, before this Ms. Graham had been
7 somewhat involved in your meetings, but this one,
8 Ms. Racine and Mr. Hertel are also there. Do you
9 recall the role of the communications staff as the
10 matter got closer to going to council?

11 A. I don't have a specific
12 memory, but that -- this makes sense to me because
13 as you start to approach council, you're going to
14 amp up the communications effort and determining,
15 okay, you would think about what are the options
16 council is going to have coming out there and then
17 you would try to figure out a communications
18 strategy for each one of those options as you come
19 out. So, you know, Jasmine had been riding along
20 with this for quite a while, but the fact that the
21 two senior people get pulled in to the end when
22 you're getting down to the, call it, crunch time,
23 that would make sense to me.

24 Q. Do you recall if the
25 communications staff were involved in the

1 preparation of any materials that were provided to
2 council?

3 A. I don't recall
4 specifically, but it was a common practice of mine
5 where I was involved or if I was giving a
6 presentation, often Jasmine would be the one who
7 would put together the actual PowerPoint for me.
8 Jasmine was exceptional at doing that, she was
9 incredibly fast and, you know, she would be the
10 one to reach out to Gord or Edward or any other
11 person who had information that we felt that
12 needed to be in the presentation. She was also
13 very skilled at, kind of, making sure that, you
14 know, things made sense, it was readable, you
15 know, and because she had been tracking the
16 project, she would be able to identify if anything
17 material was missing from the presentation. So,
18 that was kind of her role.

19 Q. Thank you. So, I think
20 I'll borrow your term. It is the crunch period
21 before the attendance at council on January 23.
22 During that period of time, it appears that you
23 review a number of documents, including reports
24 from legal services and from Mr. Soldo and
25 Mr. McGuire. Does that strike you as accurate,

1 that you were doing a lot of review of reports?

2 A. Absolutely. Makes sense.

3 Q. And in a crunch time, did
4 you work both at the office but also at night at
5 home?

6 A. I would imagine so.

7 Q. Through the overview
8 document there's a few references you to e-mailing
9 a member of the public who shares your last name.
10 Can you explain if that is related -- if you were
11 providing draft reports and other things to
12 someone outside, to like a non-city employee?

13 A. No. That's my wife. She
14 was thrilled that her name is in here, by the way.
15 No, I didn't have a practice of taking my laptop
16 home on a regular basis. So, in the evening if I
17 was reading my e-mail on my Blackberry or my
18 iPhone, I don't know what I had at the time, if
19 there was a document that was going to require a
20 significant amount of reading, I would forward it
21 to her home e-mail so I could read it on a big
22 screen. So, you know, in hindsight, I'm
23 appreciating the optics of that, but the reality
24 was so I could read it on a larger computer
25 screen, so I would use her computer to read it.

1 Q. Registrar, could you
2 close this out and go to 324, please, and can you
3 call out 753 and 754.

4 So, this is in respect of the
5 speed limit study that CIMA had conducted for the
6 City and that Mr. Soldo had carriage over. And,
7 as far as the inquiry can tell, he and his staff
8 prepared a staff report and that he forwarded that
9 staff report to you. Do you recall reviewing the
10 speed limit study-related staff report?

11 A. I do.

12 Q. And you say here:

13 "Updated report as per
14 our conversation."

15 I can certainly go into it and
16 look at sort of the weeds of this report, but
17 generally do you recall what kind of feedback you
18 gave Mr. Soldo about his draft speed limit study
19 report? If you want me to go in, I can.

20 A. No, I don't think it's
21 necessary. My recollection of it was there had
22 been three different methodologies, industry
23 accepted methodologies, on determining what the
24 speed limit should be both on the Red Hill and the
25 LINC, as much as I can remember. If I recall

1 correctly, one methodology said you could increase
2 the speed limit, one methodology said you could
3 reduce it and one said you can keep it the same.
4 So, appreciating there was, you know, lots of
5 science behind that, it wasn't the -- the options
6 weren't dramatically different than what was there
7 now.

8 But I did end up having a
9 conversation with Edward about the Red Hill and,
10 if I recall correctly, I think one of the
11 recommendations was to lower the speed limit on
12 the Red Hill, I'm going to say, between Greenhill
13 and Barton. Edward and I had a conversation about
14 that and I can't say with certainty but my
15 recollection is that Edward had a concern about,
16 like, if you're going to be changing speed limits
17 over a short distance, that's not always the best
18 thing to do because drivers -- you know, it's just
19 not good for driver behaviour. Not only that,
20 that the curves and the proximity of the
21 interchanges on the Red Hill and then changing the
22 speed limits there, I think it was, I recall, that
23 it was Edward's thinking that if you're going to
24 change the speed limit, do it over a longer, kind
25 of, period.

1 And so, I can't remember the
2 actual back and forth, but at one point I think I
3 might have said why don't we just change it from
4 the bottom of the hill to the QEW and I think we
5 went back and forth and back and forth. But I
6 think the key takeaway from the conversation was
7 recognizing that in any circumstance, if you're
8 going to lower the speed limit, you're going to
9 draw a lot of attention from a community because
10 that's going to irritate a lot of people. But
11 particularly in this environment because of the
12 situation we were dealing with, I remember saying
13 to Edward, Edward, if you think it should be 80,
14 you got 100 percent support from me. We're going
15 to lock arms and do this kind of thing. Right?
16 This sounded, you know, at the risk of sounding
17 dramatic, but I wanted to signal Edward my support
18 for lowering the speed limit because I knew that
19 was going to come with lots of questions.

20 Q. Did you have a sense of
21 whether councillors would be supportive of
22 reducing the speed limit?

23 A. I guess my belief was
24 that some would and some would be irritated by it.
25 You know, I think generally speaking the folks who

1 have that piece of infrastructure in their ward
2 might appreciate a lower speed limit. Other folks
3 who just want to get from one end to the other
4 would probably be irritated by it. I thought we
5 were going to see criticism on both sides of it,
6 to be honest.

7 Q. In your discussions with
8 Mr. Soldo, what consideration, if any, did the
9 friction values set out in the Tradewind report
10 affect the decision to lower the speed limit?

11 A. I don't recall an overt
12 discussion about the friction values in our
13 conversation.

14 Q. Registrar, can you close
15 this down and go to 319, please.

16 Ms. Auty, in the meantime, was
17 working on a draft report to be provided at the
18 January 23 council meeting, which starts at 745.
19 Pardon me, paragraph 745.

20 Registrar, could you go to the
21 next page, please. Actually, let's just jump
22 forward. Can you go to 329, please. Thank you.

23 So, Ms. Auty's draft report
24 goes through a number of iterations, including to
25 Mr. McGuire, and then he sends -- apologies. I'll

1 do this in a different way.

2 Registrar, can you bring up
3 326 and keep 329 up. Thank you. And can you pull
4 out 762.

5 So, Ms. Auty's draft legal
6 services report goes through some revisions,
7 including to Mr. McGuire, and he, Mr. McGuire,
8 forwards his revisions to the legal services
9 report to you and says:

10 "Not sure if all of my
11 comments will get
12 included."

13 Do you recall whether you
14 reviewed Mr. McGuire's comments on the legal
15 services draft report?

16 A. I don't recall with
17 certainty, but I'm guessing I would. At this
18 point, I think I was looking at everything.

19 Q. Okay. Registrar, you can
20 close this down and on the right-hand side at the
21 bottom, at 771 and then 772, Registrar, can you
22 pull those up.

23 This is the day after
24 Mr. McGuire had sent you his draft. Mr. Sabo sent
25 you a copy of the legal services draft report and

1 you replied the next day saying that Mr. Sabo had
2 referenced a wrong report number. But other than
3 that, the inquiry doesn't see that you had any
4 changes or comments in respect of the legal
5 services report. Is that your recollection as
6 well?

7 A. I don't have a firm
8 recollection of this particular review.

9 Q. Perhaps I'll put it more
10 generally. Do you recall or would it be your
11 practice to provide review of legal services or
12 did you try to stay in your lane, for lack of a
13 better phrase?

14 A. It would depend on the
15 issue. I mean, it's not like you never reviewed
16 legal services reports. Certainly I'm sure I've
17 reviewed lots of them over the years. But I think
18 generally this is a good example of the type of
19 thing where I might add value, just they have the
20 wrong report number or if it was a kind of context
21 issue, but generally I wouldn't. You know, my
22 experience is that I didn't provide a lot of
23 comments, but I did review them from time to time.

24 Q. I also should give you
25 credit. You also found some additional

1 typographical errors in this one as well as the
2 report. So, when I said earlier you didn't have
3 any comments, I don't know if that was entirely
4 accurate.

5 Registrar, you can close this
6 down and can you go to 335, please. Can you call
7 out 336 as well.

8 So, on January 23 Ms. Minard
9 reached out to the chief technology architect in
10 IT and requested correspondence between Mr. Brown
11 and Dr. Uzarowski from October 2013 to January of
12 2014, and there's some back and forth and
13 Mr. MacNeil assists with that.

14 So, as the audit is doing the
15 process to start collecting documents, which you
16 may or may not have known about, did you take any
17 steps within public works to contact IT to collect
18 and preserve documents?

19 A. I recall a conversation.
20 I believe I spoke to Peter MacNeil, and I can't
21 tell you when, and the impression I was left with
22 is that they can go back in time and get anything.
23 Even if it's been deleted, they can keep going
24 back into their back ups to get information. So,
25 there wasn't a sense of urgency on doing it, but

1 it needed to be done, but that was the impression
2 I was left with.

3 Q. Okay. And so, did you
4 instruct Mr. MacNeil to start doing that or did
5 you leave it because it wasn't urgent?

6 A. I don't believe I asked
7 Peter to do that. I don't believe I asked Peter
8 to do that.

9 Q. Okay. Registrar, could
10 you go to the next page, please, 337.

11 So, this brings us to the
12 January 23 council meeting and the legal services
13 report, 19007, was presented to council. The
14 closed session minutes reflect that the closed
15 session was about an hour long, between 9:45 and
16 10:45 at night, and the minutes record that you
17 attended. You attended that meeting?

18 A. I'm certain I did.

19 Q. What was your role in the
20 closed session meeting on January 23?

21 A. My role would have been
22 just to answer any questions that would be of
23 public works scope, I guess.

24 Q. Okay. And do you recall
25 questions being directed to you to be answered?

1 A. I don't. Again, we had
2 an unprecedented number of in-camera meetings in
3 the fall of 2018 on a number of issues and I don't
4 recall if they asked me any specific questions in
5 this particular meeting.

6 Q. Okay. I ask because
7 Ms. Auty was the one presenting and certainly her
8 report went to council. It does not appear that
9 any other materials went to council. And so, from
10 that, one might infer that council might have some
11 questions for you. Does that assist with
12 refreshing your memory about this particular
13 council meeting?

14 A. No. What you said is
15 reasonable, but I just don't remember any
16 particular questions.

17 Q. Okay. And perhaps I
18 think I probably built an assumption into my last
19 question. Do you recall if council was presented
20 with any other materials on January or before
21 January 23 for that meeting?

22 A. Was council presented
23 with any other materials before the 23rd?

24 Q. In the usual run-up to a
25 council meeting or at the meeting, did they

1 receive anything besides the report LS19007?

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

4 Q. Do you recall whether
5 copies of the Tradewind report were circulated at
6 that meeting?

7 A. I don't believe so, but I
8 don't recall.

9 Q. Okay. Do you recall
10 discussions with anyone in legal services or
11 public works about whether or not to provide
12 additional materials to council or to councillors
13 who were at this council meeting?

14 A. Sounds like a
15 conversation we might have had, but I don't
16 remember precisely one way or the other.

17 Q. Okay. And you don't
18 remember whether there was any discussion about
19 the rationale for providing additional information
20 or for not providing information. Right?

21 A. Sorry, no. I don't
22 remember.

23 Q. Okay. Recognizing you
24 say you went to a number of closed-door sessions,
25 this one is the first time that all the

1 councillors, except for the mayor, learn about the
2 Tradewind report. What do you remember about the
3 discussions or the debate amongst the councillors
4 at that closed session?

5 A. So, I have some memories
6 about being in closed session and the reaction
7 that we were getting from some of the councillors.
8 I can't tell you if it was this one. That's my
9 difficulty. But I think in general the longer
10 serving councillors who had been around council
11 for two or three terms and, to my recollection,
12 all of them have sat on public works, they were
13 far more vocal about it. The new councillors
14 were, you know, they could -- I don't want to be
15 disrespectful, the deer in the headlights a little
16 bit because they're brand new and they're looking
17 at this information which is pretty significant.
18 But it was the longer serving councillors who were
19 having much more of a reaction and being much more
20 vocal.

21 Q. And when you say they
22 were having a reaction and being vocal, can you
23 describe their level of frustration or discontent?

24 A. Yeah. So, a couple of
25 them were really pissed off.

1 Q. Did they express why they
2 were really pissed off?

3 A. I don't know if they
4 expressed it or I, kind of, put some puzzle pieces
5 together myself, but I think some of them had,
6 over the years, been asking questions about the
7 Red Hill. A lot of the questions that they had
8 raised had generated the directions to staff to do
9 some of those countermeasures along the Red Hill.
10 And so, my sense was that a couple of them had
11 been tracking this as an issue and, you know, the
12 information they were receiving now, you know, I
13 think they saw the information as being very
14 counter to what they had been told previously.
15 That was my interpretation or my impression of
16 what was happening.

17 Q. Apologies. Just give me
18 a moment. I lost my reference.

19 Registrar, could you bring up
20 HAM62085. This is a bit small to read. Could you
21 just bring up the first page rather than both
22 pages and call out the content without the
23 comments.

24 So, I've left out the
25 comments, Mr. McKinnon, because they are the

1 comments that go into each template that say, you
2 know, the executive summary should say this or
3 insert division name, so they're the, sort of,
4 directions rather than actual true commentary.
5 There is another draft that doesn't have the
6 comments in it and I just can't locate it at the
7 moment, but to my understanding this is the final
8 draft.

9 At the bottom under Executive
10 Summary there is reference to the Freedom of
11 Information request and, in particular, the
12 purpose of this report being to advise council of
13 potential litigation arising out of the release of
14 City records through the FOI, and that it was
15 unknown at the time of the report whether the
16 information would be released to the requester in
17 advance of bringing a scheduled report to public
18 works committee on February 4.

19 So, while this report, at
20 least when it was finalized, it still references a
21 public works committee on February 4, we know
22 that's not actually what happened. Do you recall
23 going into the January 23 meeting whether the
24 intention was to do this report to council and
25 then go to public works committee with the

1 remainder of the reports?

2 A. It sounds like that was
3 the plan based on this. Again, it's not unusual
4 that when you actually go to one committee or
5 council that in that discussion they may have
6 said, well, don't bring it to public works, bring
7 it to GIC. Council may have said that or
8 something might have happened along the way with
9 clerks where clerks may have said, okay, listen
10 it's better if you go here. That decision on
11 exactly which committee where you land on, it's
12 been my experience that that can change depending
13 on what happens, whether it's feedback from
14 council or direction from clerks or some other
15 thing might change the approach.

16 Q. Registrar, you can close
17 this down.

18 And, Mr. McKinnon, I do want
19 to actually locate the proper one that doesn't
20 have the comments because I just think it will be
21 easier to see. Just give me one second.

22 JUSTICE WILTON-SIEGEL: If
23 it's helpful, I have a reference, HAM61921.

24 MS. LAWRENCE: Thank you.

25 BY MS. LAWRENCE:

1 Q. Registrar, could you call
2 up that document.

3 JUSTICE WILTON-SIEGEL:

4 Whoops. Is that the same one? No. No, I'm
5 sorry. That's not the number. I think I said
6 61921. That's 20.

7 MS. LAWRENCE: Thank you,
8 Commissioner. That's what I was looking for and,
9 when I was looking for it, I think I was making
10 the same error that the Registrar did. This is
11 the document I was looking for. It's a much
12 easier document to review in this form. Thank you
13 again, Commissioner.

14 BY MS. LAWRENCE:

15 Q. If you can go to image 2,
16 please.

17 And going down to where it
18 says Historical Background, there is reference to
19 the construction design and the traffic volumes in
20 the second paragraph under Historical Background.
21 And then there's a brief summary of Mr. McGuire
22 being appointed director of engineering services
23 and that, as he was reviewing the status of work
24 being proposed on the Red Hill in late September,
25 he became aware of the draft report that included

1 the friction testing. And, as a result, he
2 stopped exploring the opportunity for potentially
3 rehabilitating using hot in-place. So, that's
4 that, sort of, summary of the background of how
5 the Tradewind report was found.

6 Registrar, can you go to the
7 next page, please, and can you call out bottom
8 half of this page, please. Actually, can you call
9 out just before relevant consultation at the top,
10 where it says in November 2018.

11 Just for clarity, and it's in
12 the executive summary as well, but the report also
13 references the FOI request and that the Tradewind
14 report would likely be responsive to that. All
15 right.

16 Thank you, Registrar. Can you
17 close that out and open up the bottom half,
18 please.

19 In the second paragraph it
20 says:

21 "The concern is that
22 Tradewind report is not
23 shared with other city
24 staff at the time. And,
25 as a result, subsequent

1 reports and analysis of
2 the condition of the Red
3 Hill did not reference
4 this report."

5 In addition, under the
6 redacted section:

7 "The Tradewind report and
8 its contents had not been
9 consistently addressed in
10 the media and now that
11 staff are aware there
12 could be a reputational
13 impact."

14 So, recognizing this is the
15 legal services document, I note that there is not
16 information about work on the Red Hill over time,
17 about the steps coming. It seems quite divorced
18 from the work that your staff are doing. Did the
19 councillors have specific questions about the work
20 of public works since the Tradewind report had
21 been completed; that is, in 2014?

22 A. I can't recall with any
23 confidence any specific questions that they had.
24 They likely did because that's a natural thing to
25 ask, but I don't remember with any confidence.

1 Q. Okay. Do you recall
2 council providing direction to staff in this
3 meeting about information that they wanted staff
4 to collect?

5 A. I don't. I don't think I
6 recall from four years ago, but I think I recall
7 from preparing for the inquiry that they did give
8 us direction to ask CIMA for an opinion, if
9 that's --

10 Q. If there's anything else
11 that you can recall --

12 A. No. That's the only
13 thing. And I don't know if it's because I
14 remembered that or if it's because I saw it again
15 in preparing for this.

16 Q. Okay. Going into the
17 January 23 meeting, were you aware as to whether
18 Mr. Malone and CIMA had a copy of the Tradewind
19 report?

20 A. I don't recall.

21 Q. Okay. Do you recall
22 having any discussions with Mr. McGuire or
23 Mr. Soldo that they had provided a copy of the
24 CIMA report -- pardon me, the Tradewind report to
25 CIMA?

1 A. I know we had discussions
2 about providing it to them, but I just can't
3 remember when.

4 Q. Okay. Well, certainly
5 coming out of this council meeting there was a
6 direction to determine if they have a copy and to
7 ask them if anything else needs to be done or if
8 the recommendations would change, just to give you
9 some context. Can you recall whether those
10 discussion about whether to give CIMA a copy
11 happened before the January 23 meeting or after?

12 A. No. I'm sorry, I don't
13 recall.

14 Q. Okay. If you had had
15 discussions before January 23, can you think of
16 any reason why Mr. Soldo and Mr. McGuire wouldn't
17 have provided a copy to CIMA?

18 A. I can't think of a good
19 reason not to give it to CIMA, no.

20 Q. Did council express
21 concerns about the slipperiness on the Red Hill
22 during the January 23 meeting?

23 A. It was a pretty short
24 meeting. I don't have any specific memory, but I
25 have to believe they did. But I don't have any

1 specific memory of, you know, beside kind of the
2 visceral reaction that some of them were having, I
3 don't remember the content of specific questions
4 or issues that they raised.

5 Q. Okay. Thank you. I'm
6 noting the time. It's 2:46 and I think maybe we
7 should take our afternoon break.

8 JUSTICE WILTON-SIEGEL: That's
9 fine. 2:46, let's return at 3:00.

10 --- Recess taken at 2:46 p.m.

11 --- Upon resuming at 3:01 p.m.

12 MS. LAWRENCE: Commissioner,
13 may I proceed?

14 JUSTICE WILTON-SIEGEL: Yes,
15 please do.

16 MS. LAWRENCE: Thank you.

17 BY MS. LAWRENCE:

18 Q. Mr. McKinnon, we were
19 just talking about the January 23 council meeting
20 and I understand that you don't have a clear
21 recollection between that meeting and I think the
22 February 6 meeting. Is that right?

23 A. That's correct.

24 Q. Registrar, could you go
25 into OD 9, page 358, please.

1 THE REGISTRAR: Sorry,
2 counsel. 9 or 9A?

3 MS. LAWRENCE: 9A.

4 THE REGISTRAR: Okay. Thank
5 you.

6 BY MS. LAWRENCE:

7 Q. And can you call out the
8 table at the top, please.

9 So, Mr. McKinnon, these are
10 notes prepared by Mr. Boghosian on January 30.
11 They're not your notes and you were not on the
12 call for which these notes were taken, but they
13 are a summary, according to Mr. Boghosian, of
14 information that Ms. Auty and Mr. Sabo provided to
15 him about the January 23 council meeting.

16 And so, he has recorded a few
17 things:

18 "Council - quite
19 concerned about the
20 situation."

21 And I think your evidence
22 before the break was consistent with that. Is
23 that fair?

24 A. That's fair.

25 Q. There's reference to:

1 "Haven't given the
2 Tradewind report. "

3 And I think your evidence was
4 that you weren't sure either way whether council
5 had a copy of the Tradewind report. Is that
6 right?

7 A. That's correct.

8 Q. The next is:

9 "Council wants to
10 know -- "

11 And then there's two things
12 listed here, and I summarized them earlier, but
13 just to attempt to refresh your memory a little:

14 "1. If Brian Malone/CIMA
15 had the Tradewind
16 report."

17 Do you remember council as a
18 whole or individual councillors asking staff to
19 clarify whether CIMA had a copy of the Tradewind
20 report?

21 A. No, I don't recall if
22 they asked.

23 Q. Okay. You don't recall
24 them having any enquiries about whether CIMA had a
25 copy of the Tradewind report?

1 A. They may have. I just
2 can't remember specifically.

3 Q. Okay. And then the
4 second thing that Mr. Boghosian records that
5 council wanted to know is:

6 "Is there anything else
7 CIMA thinks needs to be
8 done to address safety
9 (slipperiness) as an
10 interim measure pending
11 repaving?"

12 Do you remember councillors
13 conveying a request for this information at the
14 January 23 meeting?

15 A. The request sounds
16 familiar. When they made it, I can't remember.

17 Q. Okay. When councillors
18 asked for confirmation about whether CIMA would
19 provide their recommendation for anything else to
20 occur or confirm they had no such recommendation,
21 did that strike you as a reasonable request that
22 would be helpful for council to know?

23 A. Would that be helpful for
24 council?

25 Q. Yeah.

1 A. Yeah, I think so. I
2 think in that moment confidence in staff was
3 probably not at its high point, so they probably
4 wanted to hear it from a third party, I'm
5 assuming.

6 Q. They also asked
7 specifically if whether there are interim measures
8 pending repaving. That's the request that
9 Mr. Boghosian at least has set out here. Do you
10 recall council asking specifically about what
11 interim measures, if any, needed to be considered?

12 A. I remember a discussion
13 like that. I can't attest to it being in this
14 meeting, but I suspect it was in this meeting.

15 Q. Do you recall if you or
16 anybody in public works was able to provide
17 council with further information to attempt to
18 answer that question of whether interim measures
19 needed to be considered?

20 A. We were sitting there.
21 I'm assuming we would have tried to answer to the
22 best we could, but I don't have a precise memory
23 of it.

24 Q. Okay. Coming out of this
25 meeting and with these questions from council, did

1 you or your staff consider engaging an independent
2 expert, other than CIMA, to enquire and answer
3 these questions or at least the second question
4 about interim measures?

5 A. I don't believe so. I
6 don't recall with certainty, but I don't believe
7 so. CIMA, one of the benefits of CIMA, is they
8 know our system, they know us. That type of
9 request, you know, reflexively we would probably
10 always send to CIMA because of their tremendous
11 knowledge of the City and our facilities.

12 Q. Why had you and your
13 staff not asked CIMA for confirmation about
14 whether the Tradewind report would change the
15 recommendations that they gave before you went to
16 council on the 23rd?

17 A. I don't know that I kind
18 of thought that deeply about it, to be honest with
19 you. I don't know if Gord and I talked about it.
20 I can't remember.

21 Q. Before going to
22 January 23, did you or your staff consider
23 engaging an independent expert, other than CIMA,
24 to answer any issue around safety on the Red Hill?

25 A. I don't believe so.

1 Q. The last point that
2 Mr. Boghosian has here is:

3 "Council concerned about
4 Gary Moore's judgment,
5 honesty, trustworthiness
6 with them in the past."

7 Do you recall at the
8 January 23 if councillors raised concerns about
9 Mr. Moore's judgment, honesty, trustworthiness or
10 conduct?

11 A. I may have missed a part
12 of that question. Was it on the 23rd or prior to
13 the 23rd?

14 Q. Sorry, I think I said at
15 the 23rd. At the meeting on the 23rd.

16 A. It was either on the 23rd
17 or the subsequent meeting or both. Yeah, they
18 absolutely raised those concerns. I think that
19 would be a natural reaction to the information
20 they were getting.

21 Q. I think you said earlier
22 that some of the councillors were very vocal about
23 this and that they were councillors who had been
24 councillors for some time. Who in particular was
25 concerned about Mr. Moore's judgment, honesty or

1 trustworthiness?

2 A. I can't recall with
3 certainty which ones raised that, but I do -- you
4 know, my best recollection was just around the
5 emotion, the emotional response that was
6 happening, on the part of certain councillors, but
7 I can't recall with any confidence who raised the
8 issue of honesty, trustworthiness and judgment.

9 Q. Did the councillors'
10 concerns about Mr. Moore's judgment, honesty,
11 trustworthiness or conduct result in any action
12 items for you coming out of the January 23
13 meeting?

14 A. I don't believe so. I
15 don't recall any.

16 Q. Okay. In terms of
17 council wanting to know about Tradewind and CIMA's
18 potential recommendations for interim measures,
19 did those enquiries from council result in any
20 action items to you?

21 A. Did questions from
22 council result in any action items for me? So,
23 CIMA needed to be engaged based on the direction
24 from council. I don't recall if Edward or Gord
25 reached out or if that was being undertaken by

1 legal. I just can't remember.

2 Q. Okay. Either way, it was
3 either legal or staff underneath you. You didn't
4 personally have any action?

5 A. No. I didn't personally
6 get involved in that.

7 Q. But you can't recall if,
8 amongst staff, there was a view about who was
9 going to take the lead on dealing with CIMA?

10 A. I don't recall. My sense
11 is that it would probably be legal. I mean, this
12 was their report and they were kind of steering
13 the meeting, that particular meeting, but I don't
14 recall.

15 Q. Okay. Registrar, you can
16 close this down and go to page 356, please, and if
17 you could pull out 850.

18 So, this is part of an e-mail
19 exchange between Mr. Zegarac, the mayor and one of
20 the clerks and it is, in some part, related to
21 where information is going to be presented, to
22 which committee, but this part of the e-mail
23 exchange, I think, references you. So, this is
24 January 30 and Mr. Zegarac writes:

25 "Yesterday Dan and I had

1 a follow-up discussion
2 with the councillors that
3 we met with yesterday
4 proposing a reporting
5 process."

6 So, I find that e-mail
7 confusing, but it looks like you and Mr. Zegarac
8 had a meeting with councillors on January 29.
9 Does that accord with your recollection?

10 A. It doesn't. I saw this
11 in preparing for this and I don't have a good
12 memory of it. There was occasions where in other
13 years or it might have been this year in terms of
14 budgets process where we would meet in small
15 groups of councillors and I feel like I'm kind of
16 blending those types of meetings together, so I
17 don't have a precise memory of this. I have no
18 doubt I was there, but I don't recall the specific
19 discussion.

20 Q. Okay. Mr. Zegarac has a
21 proposal out here, which is going into camera,
22 February 6 GIC, to further previous in-camera
23 discussions and it would be comprised of a serious
24 of in-camera presentations, technical,
25 chronological and summary of consultant reports,

1 and you're listed as one of the speakers for that,
2 along with Gord and Edward, Mr. Brown, speaking
3 about an internal audit review, Ms. Auty, on
4 outside legal counsel, on legal recommendations,
5 and then Mr. Hertel on communication strategy.

6 Do you recall having
7 discussions with Mr. Zegarac about the
8 presentations that were going to proceed at the
9 next presentation to council?

10 A. Certain we had the
11 conversation, but I don't remember it with any
12 precision.

13 Q. Okay. And do you
14 remember raising that with councillors, that this
15 was the plan for the next meeting?

16 A. I don't recall the
17 meeting, so I don't recall the conversation.

18 Q. Okay. Before we leave
19 this topic, can you provide any insight into why
20 you and Mr. Zegarac would meet with certain
21 councillors as a followup to the January 23
22 council meeting?

23 A. So, I think we talked
24 about it earlier that, you know, meeting with
25 councillors on a particular issue as it relates to

1 something that might be coming to council was not
2 unprecedented and, in my view, was often helpful.
3 You know, in this particular case, I don't know if
4 I've seen it in the evidence or if it's just my
5 imagination, I suspect I know who the councillors
6 were, so I think it was just trying to make sure
7 that we could get some perspective from the
8 council side of the equation here to make sure
9 that we were going to have a good strategy to
10 bring it to them in a way that would be
11 appropriate and in a way that -- and in a format
12 so that it would be digestible for them.

13 Hearing ahead of time the
14 types of questions that you might get, what to
15 expect in a particular council meeting, sometimes
16 as staff that's very difficult for us to
17 anticipate and having that feedback from
18 councillors is very helpful. So, you know, as a
19 practice, we would do this. I know that some
20 folks may view it as not ideal, but my experience
21 has been that it could be very helpful for staff
22 sometimes and ultimately it's helpful for council.

23 Q. Registrar, can you close
24 this down and can you go to page 347.

25 And recognizing you don't have

1 a recollection of this meeting, you said you think
2 that you can speculate or you have an idea of who
3 these councillors might be. In this case, coming
4 out of the January 23 meeting where there were
5 some councillors who had quite an emotional
6 reaction or a significant reaction, were those the
7 councillors that you and Mr. Zegarac wanted to
8 identify in order to ensure that they knew what
9 the next steps would look like?

10 A. I don't know what went
11 into the selection of the councillors because I
12 just -- I don't remember.

13 Q. Okay. Can you call out
14 paragraph 820, please.

15 Coming out of the January 23
16 meeting, it appears that you are working with
17 Mr. Zegarac and individuals in HR to develop a
18 series of questions. Do you recall e-mails over
19 time in which you developed a series of questions
20 about the sort of -- like these that are up on the
21 screen right now, quite specific?

22 A. This looks familiar, yes.

23 Q. And these questions, as I
24 interpret them, appear to be questions of fact
25 that go back to matters that Mr. Moore would have

1 knowledge of. Were these done in preparation for
2 a meeting with Mr. Moore?

3 A. I believe they were, yes.

4 Q. And you said earlier that
5 you didn't have any actions coming out of council
6 in respect of his conduct. Was the meeting with
7 Mr. Moore for some other purpose?

8 A. I had been advocating for
9 an additional meeting with Mr. Moore because, to
10 this point, I had had a five-minute conversation
11 with him in the 40-minute meeting with Gord and I
12 was -- you know, I wanted us to have an abundance
13 of fairness to Gary because of the nature of this
14 issue and give him as much opportunity as possible
15 to answer questions. I was feeling a little
16 self-conscious that maybe I hadn't asked the right
17 questions, because that's just what was in my
18 mind, so I had suggested to Mike that Mike and
19 Lora and I should have a sit down with Gary and go
20 through a list of questions, so this appears to be
21 the preparation for that.

22 Q. To your knowledge, was
23 Mr. Moore informed of the substance of the
24 January 23 council meeting before it occurred?

25 A. Before it occurred? I

1 don't recall. I suspect he wouldn't have been
2 notified before. I don't know that that's
3 something we would have done. We might have
4 notified him the night of or something like that,
5 but I don't recall.

6 Q. Okay. Registrar, can you
7 close this down. We'll come to that meeting. Can
8 you go to 359, please, Registrar.

9 Before we go to that meeting
10 with Mr. Moore, I believe that you attended a call
11 or calls on January 23 -- pardon me, January 30.

12 Registrar, could you pull out
13 856.

14 Ms. Graham organized a meeting
15 for January 23 at 3:00 p.m. called Roads Issue
16 Update and you're one of the listed attendees.
17 Ms. Gordon is one of the listed attendees,
18 individuals from legal and Ms. Fontana, and it was
19 a check-in and update on the current roads issue.

20 Do you have any memory about
21 the content of this meeting?

22 A. I don't. The only thing
23 I know that's curious is Ms. Fontana's presence
24 there, so I suspect on the agenda we must have had
25 something that we wanted to talk about from an HR

1 perspective. Otherwise, Lora wouldn't be there.

2 Q. Okay. Registrar, you can
3 close this down and you can go to the next page,
4 please.

5 These are transcribed notes
6 from Mr. Malone at CIMA and they have a number of
7 people who are included and these are notes of a
8 meeting on January 30 at 4:00. Mr. Soldo is
9 listed, Ms. Auty, Gord, Edward, and then Gord
10 again, Dan M., which I think is you, Jen, which I
11 think is Ms. Racine, Mr. Sabo, Mr. Zegarac, I
12 believe, and Jasmine Graham and then Edward is
13 referenced again, John, I think that might be
14 John Hertel, but I'm not sure. I list all of
15 those people along with Mr. Boghosian, who is
16 listed a little further down, who it appears
17 attended a meeting with Mr. Malone.

18 Do you recall attending a
19 meeting with a number of city staff, including
20 Mr. Boghosian and Mr. Malone?

21 A. I believe I was there,
22 yes.

23 Q. I won't go through all of
24 these notes, but does it accord with your
25 recollection that this was a meeting to convey

1 those questions that council had to Mr. Malone?

2 A. I believe it was.

3 Q. What do you recall, if
4 anything, about Mr. Malone's response to the
5 council's question of whether interim measures
6 needed to be done prior to repaving?

7 A. Just generally that he
8 didn't think there was anything that we needed to
9 do immediately. I know there was a discussion
10 about, kind of, the idea of closing the road and
11 he was of the same opinion that we were, that
12 closing the road wasn't necessary and closing the
13 road causes all kinds of further unintended
14 consequences. But as far as the detailed
15 conversation, I don't have a confident memory of.

16 Q. Registrar, you can close
17 this and if you could go to page 386 and if you
18 could pull out the last paragraph, please.

19 So, this is just another
20 followup, I think, on this chain that we spoke
21 about before, developing questions for the
22 discussion with Mr. Moore and conversation with
23 Gary. Do you recall that there was actually a
24 fair bit of hands working on the issue of what
25 questions to ask Mr. Moore?

1 A. That sounds familiar.

2 Q. Okay. Registrar, you can
3 close this down and if you can go to 395, please.

4 The meeting with Mr. Moore
5 with you, Mr. Zegarac and Ms. Fontana occurred on
6 January 31. Do you have a distinct memory of that
7 meeting with Mr. Moore?

8 A. To a certain extent,
9 yeah. I can picture us in the room together.

10 Q. Did you have any
11 discussions or e-mails or conversations with
12 Mr. Moore before this meeting took place?

13 A. I don't believe so.

14 Q. Did you provide him with
15 any information about what this meeting was going
16 to be about, you personally?

17 A. I don't believe so, no.
18 I don't think I was involved in setting the
19 meeting up.

20 Q. Registrar, could you
21 bring up 396 as well.

22 So, Ms. Fontana's notes are
23 set out from the bottom of 395 on to 396. Were
24 you taking notes in that meeting?

25 A. I was.

1 Q. I'm going to start with
2 Ms. Fontana's notes and if we need to go to yours,
3 we will. Why was Ms. Fontana there?

4 A. I think there was
5 certainly an HR element to this and I think by
6 virtue of having Lora there, she was there to
7 ensure that Gary's interests were protected.
8 That's the way I viewed it and I think Lora may
9 have said it was out of a sense of fairness and
10 that Gary's interest was protected.

11 Q. She's the director of HR,
12 so her loyalty is to the City of Hamilton, so I
13 don't really understand what you mean about his
14 rights being protected. Can you elaborate?

15 A. Well, he was a contract
16 employee, so I think she was there to just, kind
17 of, monitor for fairness. I may have
18 misinterpreted that, but that was my understanding
19 at the time.

20 Q. Okay. Who took the
21 lead in asking questions of Mr. Moore?

22 A. My recollection, which is
23 not -- I'm not confident in it. I thought we were
24 going to take turns asking questions, but I have a
25 recollection that Mike asked most of the

1 questions. I know that Lora and I were busy
2 taking notes. I think things kind of morphed as
3 we went along. I think Lora and I each asked some
4 questions, but my memory is that Mike asked the
5 majority of the questions and Lora and I did the
6 majority of the note taking.

7 Q. Okay. How did you find
8 Mr. Moore's tone throughout this meeting?

9 A. It was clear Gary wasn't
10 comfortable, but he also -- he wasn't bombastic or
11 anything like that. You know, periodically you
12 would sense a tone of defensiveness, but I think
13 that was understandable considering the
14 conversation we were having. But there was no
15 pounding the desk, there was no throwing papers,
16 there was no -- I don't remember any coarse
17 language, so I would say generally it was okay.

18 Q. Do you recall learning
19 anything in this meeting that you didn't already
20 know either from Mr. Moore or from the enquiries
21 that Mr. McGuire and others had made to compile
22 documents and information?

23 A. No, I don't remember any
24 new nuggets of wisdom that were revealed in this
25 meeting, as far as I remember.

1 Q. Did you take handwritten
2 notes or notes on the computer?

3 A. I believe I did
4 handwritten notes, but I may have done it on the
5 computer. I don't recall.

6 Q. Okay. Registrar, can you
7 bring up HAM35944.

8 Do you recall the preparation
9 of these notes after the meeting?

10 A. Yeah. I suspect I was
11 handwriting my notes, but just can't remember.
12 So, no, I don't remember sitting there doing this,
13 but they're clearly my notes.

14 Q. I don't think I'm going
15 to ask you about your notes. I think we do have a
16 handwritten copy, but I think I can move on.

17 A. Okay.

18 Q. Registrar, could you
19 bring up 54375. Thank you.

20 So, this is a memo that
21 Mr. Malone at CIMA put together. This copy is
22 addressed to Mr. Boghosian. You received a copy
23 of it in advance of the February 6 meeting. Is
24 that right?

25 A. I don't recall. The

1 document looks familiar, but I don't recall when I
2 received it.

3 Q. Okay. I think it was on
4 February 4 and I think Ms. Auty e-mailed it to
5 you.

6 A. Okay.

7 Q. Do you recall reviewing
8 it when you received it from Ms. Auty?

9 A. No doubt I reviewed it,
10 but I don't remember reviewing it.

11 Q. Okay. Do you recall
12 having any additional questions or concerns
13 arising out of this memo?

14 A. I don't recall any. I
15 don't recall any. Unless there's some in the
16 evidence, I don't recall any.

17 Q. There's not. I'm just
18 asking if when you read it, was it -- maybe I'll
19 put it this way.

20 Did you think that it was
21 going to satisfy the councillors and the questions
22 that they had asked at the last meeting?

23 A. If this is a final
24 response from CIMA, then the answer would be yeah,
25 but it's been a long time since I read this, so...

1 Q. Okay. Registrar, you can
2 close this down. Registrar, if you can go to
3 OD 9A, 398, please, and if you can call out 905.

4 So, on January 23, Mr. Zegarac
5 sent an invitation for another large group of
6 people for February 4 and it's entitled "GIC
7 Debrief," but GIC is going to be on February 6, so
8 I actually think it's a preparation meeting. Do
9 you recall attending a meeting on February 4 with
10 this group of people?

11 A. I'm certain I was there,
12 but I don't remember the meeting.

13 Q. Okay. So, between the
14 January 23 meeting, apart from your meeting with
15 Mr. Moore, what were your steps to prepare for the
16 February 6 GIC meeting?

17 A. I don't remember with any
18 precision, but I believe that I would have been
19 spending time with Jasmine and Gord and Edward to
20 build the PowerPoint presentation that I was going
21 to deliver on the 4th.

22 Q. And did Ms. Graham take
23 the first cut at your PowerPoint presentation?

24 A. She probably took every
25 cut on it. Our practice was that Jasmine would

1 build the PowerPoint presentations for me. There
2 would be a series of reviews as she was collecting
3 information and I would, kind of, consult with
4 Jasmine to make sure it was in a format that made
5 sense for my natural delivery, so that would have
6 been just an ongoing process.

7 Q. The February 4 briefing
8 meeting that Mr. Zegarac scheduled, to your
9 recollection did that include a dry run or, you
10 know, a practice session for the upcoming GIC
11 meeting?

12 A. I don't remember, but it
13 quite possibly did.

14 Q. Was that a practice that
15 you had engaged in before?

16 A. I had for sure. You
17 know, I'm not sure about others, but it would not
18 be a surprise to me if we did a dry run.

19 Q. Okay. Registrar, can you
20 go to OD 9A, page 436 and 437.

21 On February 5 Ms. Minard sent
22 Mr. Zegarac an audit service report for the
23 meeting the following day, which is sent as a
24 courtesy. You're not copied on that. Did you
25 have any discussions or involvement in the

1 preparation of this report or in audit services'
2 presentation to council?

3 A. No. I don't suspect I
4 would have been invited to do that.

5 Q. All right. Let's turn to
6 the February 6 meeting.

7 Registrar, can you close this
8 and go into OD 10A, page 8.

9 So, the session on February 6
10 was in the morning. Do you recall -- pardon me.
11 The GIC met in the morning. The closed session
12 was quite lengthy in the later of the day. Do you
13 have a specific recollection of attending this
14 meeting and making a presentation?

15 A. Yeah. Certainly I was
16 there. I remember being at the meeting. I don't
17 remember in detail the presentation, but I was
18 definitely there for sure.

19 Q. Okay. Do you remember
20 getting any questions from councillors as you went
21 through your portion of the slide deck?

22 A. There were a number of
23 questions. I can't tell you which question or
24 from who. Honestly, I can't remember what format
25 we chose. Sometimes we will ask councillors --

1 there were four of us presenting, I believe, four
2 our five of us presenting. Sometimes we'll ask
3 them to ask their questions at the end of each
4 session or sometimes we'll ask them to leave them
5 right until the end. I was reflecting on that
6 this morning. I can't remember which method we
7 chose, but there was lots of questions.

8 Q. Okay. Registrar, could
9 you go to HAM61920, please, and image 44.

10 So, this was the communication
11 strategy that was recommended in the slide deck
12 that had all the presentations in it, which would
13 be a media release after the February 13 council
14 meeting, which was the council meeting following
15 this GIC meeting. And then from there, responses
16 would flow, and so the communications plan was set
17 to start from that period of time.

18 Does that accord with your
19 recollection?

20 A. That looks familiar.

21 Q. At the February 6
22 meeting, GIC elected instead to disclose the
23 Tradewind report immediately. Do you recall that?

24 A. I do.

25 Q. Okay. And do you recall

1 around the communications whether councillors had
2 concerns about waiting to February 13?

3 A. I believe they did.

4 Q. What were those concerns?

5 A. I think -- I can't
6 remember specifically what any individual said,
7 but my sense and my belief is that they didn't --
8 they wanted very little time between when they got
9 the information and the community got it. They
10 didn't want to wait a week.

11 Q. Okay. So, you had said
12 you don't have -- before you didn't have a
13 distinct recollection between the January 23 and
14 February 6 meetings. In terms of to provide that
15 context of not wanting to wait, do you recall
16 councillors feeling, expressing, that decision
17 strongly? Is that a strongly held view?

18 A. Strongly held view to get
19 it out right away?

20 Q. Yeah.

21 A. Yes, I do.

22 Q. You had said in your
23 earlier evidence that you recall the meeting being
24 quite tense and some councillors being quite
25 emotional. Recognizing you can't distinguish

1 between the two meetings, specifically at this GIC
2 meeting, what do you recall about the councillors'
3 reaction, not just on this communication plan, but
4 just generally to the information that they
5 received?

6 A. You know, to the extent I
7 think the councillors take most of the work that
8 happens at council very seriously, but there was a
9 very serious mood in the room and, you know, I
10 think there was still some lingering emotion in
11 this meeting beyond the last one. Both meetings,
12 I think, were pretty -- blood pressure was
13 elevated. But beyond that, I'm not sure I have a
14 specific memory.

15 Q. Were you involved in the
16 preparation for the materials that led to the
17 immediate release of the Tradewind report?

18 A. Yeah. I was kind of on
19 the fringes of it. I'm sensitive to the fact that
20 especially when you're creating a communications
21 piece in a very short period of time there's no
22 end to the opinions that people might have about
23 how to say things and what to say, so I would say
24 I was on the edges of that. I was watching and
25 listening to the discussion and I'm sure I offered

1 my opinion about things, but, you know, I
2 didn't -- if there's nothing that I feel really
3 passionate about, I'm probably just going to keep
4 my mouth shut. But we did it as a team. So, if I
5 recall correctly, I think we retired to the
6 anteroom, had a break, put together the report or
7 the media release, came back, had a discussion and
8 then shortly after it was released.

9 Q. Thank you. Registrar,
10 can you bring up HAM12841. Actually, you don't
11 need to bring up the next page. If you can just
12 call out the bottom half of the press release,
13 please.

14 Mr. McKinnon, the very first
15 line of this press release was:

16 "On behalf of the City of
17 Hamilton, staff
18 apologized to council and
19 the general public for
20 how this matter has come
21 to their attention."

22 Do you recall, was that
23 apology sought by council?

24 A. Well, it emerged from a
25 discussion in camera. I don't think staff

1 proposed that, so without having a precise memory
2 of it, I think it was, yeah.

3 Q. Thank you. Registrar,
4 can you close this down and go back into OD 10A,
5 page 101, please, and if you could call out 247 to
6 249.

7 Do you recall after the GIC
8 meeting that Mr. Van Dongen from the Spec
9 forwarded you MTO friction results from 2007 to
10 2014?

11 A. No, I don't remember
12 that.

13 Q. You don't remember that?
14 Okay.

15 A. No.

16 Q. So, do you recall sitting
17 here today that at some point the City received
18 MTO friction results from 2007 to 2014 that the
19 City had not previously had?

20 A. I do recall that, yeah.

21 Q. Okay. So, it was just
22 the source of the information?

23 A. Yeah. I can't remember
24 the first time. I'm sure I saw them a few times.
25 I just can't remember where it originated.

1 Q. Okay. And I think I may
2 have built in an answer to my question, but before
3 the February 6 GIC meeting, had you had personally
4 had any knowledge that the MTO had conducted
5 friction testing between 2008 and 2014?

6 A. No, I did not.

7 Q. Okay. And did you have
8 any discussions at the technical level about
9 whether you could compare the MTO friction testing
10 to the Tradewind friction testing?

11 A. I do recall once we
12 became aware of that that having conversations
13 with Edward, probably with Gord, but I can't
14 remember exactly what we said in those
15 conversations, but it was quite the discovery.

16 Q. Yes. Registrar, can you
17 close this and go to page 108, please, and call
18 out 266.

19 So, you're copied on this
20 e-mail from Mr. Soldo and he says to Ms. Auty:

21 "I would like to contact
22 CIMA regarding the new
23 friction data we have
24 from MTO in order to have
25 them review in the same

1 context and extrapolate a
2 degradation curve."

3 You had said you couldn't
4 remember the specifics. Does that refresh your
5 memory about the discussions around the potential
6 use of the MTO friction data?

7 A. That does sound familiar,
8 yes.

9 Q. From there going forward,
10 were you involved in the retainer of CIMA to
11 provide additional assistance in respect of the
12 friction data?

13 A. No. Edward likely would
14 be just running with that.

15 Q. Thank you. Registrar,
16 you can close that down. Can you go to page 67 of
17 OD 10, please.

18 So, this is on February 7 and
19 I took you out of chronology a little, so you have
20 not received the MTO friction data at this point.
21 On February 7, you gave an interview with Scott
22 Thompson?

23 JUSTICE WILTON-SIEGEL: Sorry,
24 Ms. Lawrence. I just want to interject for a
25 second.

1 MS. LAWRENCE: Sure.

2 JUSTICE WILTON-SIEGEL: Should
3 we be in OD 10 or OD 10A?

4 MS. LAWRENCE: 10A. I'm
5 sorry, 10A. This is where I want to be. Thank
6 you.

7 BY MS. LAWRENCE:

8 Q. On February 7,
9 Mr. McKinnon, you gave an interview to the Scott
10 Thompson Show on CHML. Do you remember giving
11 that media interview?

12 A. That sounds familiar.

13 Q. And were you one of the
14 handful of representatives for media purposes on
15 the issue of the Tradewind report disclosure?

16 A. What was the front end of
17 that question? Was I one of the which? Sorry.

18 Q. Were you one of a handful
19 of the City's representatives for media
20 purposes --

21 A. Yes.

22 Q. -- in respect of this
23 issue?

24 A. Yes.

25 Q. Ms. Racine drafted a

1 transcript of this interview, and so I would like
2 to pull it out.

3 Registrar, can you pull out
4 157, please. Sorry, I'm just having a technical
5 issue.

6 Apologies, Commissioner. Just
7 give me a moment.

8 Registrar, can you highlight
9 for me -- it's a bit of a block of text -- five
10 lines down. You're reported as saying:

11 "We have already been
12 undertaking a number of
13 safety audits and work on
14 the Red Hill and the LINC
15 to a certain extent over
16 the last number of years,
17 so that work continues."

18 Thank you. So, here,
19 recognizing that that's a little bit, sort of,
20 general, we have already been undertaking a number
21 of safety audits and work on the Red Hill over a
22 number of years and that work continues, on that,
23 did you have specific treatments or remediation
24 that you were referring to here?

25 A. I think I was referring

1 to the countermeasures that were identified as
2 being undertaken through report 008. You know,
3 the one I mean?

4 Q. Thank you. Registrar,
5 could you if you had can skip down about a line or
6 two. You say:

7 "So, a lot of things that
8 you might have done in
9 response to low friction
10 numbers have been done as
11 a result of the
12 directions we were
13 continuing to receive
14 from council."

15 So, what particularly are you
16 referencing as measures that would be in response
17 to low friction numbers?

18 A. So, countermeasures that
19 you might take, from my understanding, is you
20 would install slippery when wet signs, other
21 positive guidance features in the road, those
22 types of things. Some of them were identified in
23 008, I believe. Oversized signs.

24 Q. Okay. Skidabrading and
25 microsurfacing and shot blasting are all pavement

1 treatments that can be taken in response to low
2 friction numbers. Were you referencing any of
3 those treatments?

4 A. I was not.

5 Q. And I asked you earlier,
6 perhaps it was yesterday, about your knowledge
7 about pavement treatment options?

8 A. Right.

9 Q. Do you recall ever
10 learning from anybody at the City that there was
11 any consideration of doing skidabrading,
12 microsurfacing or shot blasting on the Red Hill?

13 A. Was I ever aware that
14 anybody was intending to do that?

15 Q. Was considering doing
16 that.

17 A. I don't know.

18 Q. Okay. You said earlier
19 sometimes you had QTs with Gary where he was very
20 passionate about things that were going on. Did
21 he ever explain or suggest to you that he was
22 considering skidabrading, microsurfacing or shot
23 blasting?

24 A. I don't believe so.

25 Q. Okay. Registrar, could

1 you close this down and go to page 77, please, and
2 78 as well, please.

3 At the bottom of page 77
4 there's reference to a motion for a policy or
5 protocol to guarantee the sharing of consultants'
6 reports with council where there is a risk to
7 human health and safety. And Councillor Clark
8 brought that and a motion eventually passed that
9 required staff to develop a policy.

10 Were you involved in the
11 development of a policy in respect of the sharing
12 of consultant reports?

13 A. I was.

14 Q. Registrar, could you
15 close this and go to 134 and call out 334 and 335.

16 So, we're into March now and
17 this is in relation to thinking through reports
18 and responding to, I think, the issue of
19 disclosure. And Mr. McGuire says:

20 "Would it be possible to
21 summarize assignments and
22 their potential impacts,
23 kind of like roster
24 reporting?"

25 And that's in response to your

1 question:

2 "Could you estimate how
3 many reports this would
4 represent annually?
5 Could be dozens."

6 I'm not actually interested in
7 the details of how many reports for the context of
8 this question, but can you describe what
9 considerations went into how to approach a policy
10 that would balance what the councillors were
11 looking for with the resources within the City?

12 A. Yeah. Respectfully to
13 council, I don't think they appreciated what they
14 were asking for. It was going to and is likely to
15 result in reports going to council that council
16 now will see, likely won't understand much of it,
17 and, you know, my experience is that when you
18 don't understand what you're looking at, then
19 you're way too cautious and then that translates
20 into spending money.

21 So, that was part of my
22 concern, was I wanted to try to inform council
23 about, kind of, careful what you ask for because
24 you're going to start seeing a heck of a lot of
25 reports. And you hire professional staff to

1 analyze risk and to manage risk and this was going
2 to force them to drive in our lane, for lack of a
3 better way to say it. But at the end of the day
4 if they want them, we'll give them to them, but I
5 was hoping to be able to quantify it for them so
6 at least they knew what they were getting into.

7 Q. Thank you. Registrar,
8 could you close this and open up RHV890, please.

9 Mr. McKinnon, this is an
10 anonymous letter that was received by the City
11 auditor in March of 2019 and it is, amongst other
12 things, a request of the auditor to conduct
13 investigation. You are listed as a staff who
14 should be on an interview list.

15 Registrar, can you call out
16 the second bullet from the bottom, please.

17 The anonymous letter asserts
18 that you were in water and the current general
19 manager and part of department management team
20 meetings where the topic, which is, I believe,
21 about the friction quality, was raised at DMT
22 meetings.

23 Prior to late 2018, do you
24 recall having any discussions with senior
25 management about the issue of friction testing?

1 A. I do not. And, you know,
2 my experience and my desire from the department
3 leadership team meetings when I was the general
4 manager, we wouldn't get into the level of detail
5 of any particular file. That wasn't the point of
6 the meeting.

7 Q. Do you know who drafted
8 this letter?

9 A. I do not.

10 Q. Did you draft it?

11 A. I did not.

12 Q. I should have asked that
13 question first. Thank you, Mr. McKinnon. Those
14 are my questions for you.

15 Commissioner, I canvassed with
16 counsel yesterday but did not have a chance to
17 follow up to determine if others have questions.
18 My understanding was that the MTO and Golder, if
19 they had questions, would be limited, but perhaps
20 we should call on them first. Apologies for not
21 having it in hand.

22 JUSTICE WILTON-SIEGEL: Let's
23 call on Ms. Roberts first.

24 MS. JENNIFER ROBERTS: Thank
25 you, Commissioner. We have no questions.

1 JUSTICE WILTON-SIEGEL: Okay.

2 And Ms. McIvor?

3 MS. MCIVOR: We also have no
4 questions. Thank you, Mr. Commissioner.

5 JUSTICE WILTON-SIEGEL: Okay.
6 So, then we're over to Ms. Contractor.

7 MS. CONTRACTOR: Thank you,
8 Mr. Commissioner. I do have a handful of
9 questions, but I don't expect to be long.

10 JUSTICE WILTON-SIEGEL: Okay.
11 Why don't you proceed?

12 MS. CONTRACTOR: Thank you.

13 EXAMINATION BY MS. CONTRACTOR:

14 Q. Good afternoon,
15 Mr. McKinnon. Commission counsel asked you if you
16 considered the safety of the Red Hill following
17 your initial hallway meeting, as you described it,
18 with Mr. McGuire regarding the Tradewind report,
19 and I believe your evidence was that the report
20 stated further investigation should be done and by
21 the time that you were in possession of the
22 report, the scheduling of the resurfacing was
23 already well underway. And I believe you also
24 stated that because of your involvement with
25 Mr. Ferguson, you had a sense that there were a

1 variety of countermeasures that had been employed
2 for a number of years both from council and staff,
3 and also that you would have expected Mr. McGuire
4 or Mr. Soldo to raise with you any concerns that
5 they had in terms of needing a further
6 investigation. Do I have that right?

7 A. That's correct.

8 Q. Okay. Mr. Registrar, can
9 we please go to HAM64308 to image 20, please.
10 Thank you.

11 Mr. McKinnon, this is the
12 briefing note that Mr. McGuire prepared for you.
13 Do you recall when you would have reviewed the
14 briefing note and particularly whether it would
15 have been before your meeting with Mr. Zegarac?

16 A. I don't recall with
17 certainty, but I suspect I had this before I met
18 with Mike. If you're talking about the November
19 8, 9 meeting with Mike, yeah, I believe I had it
20 before then.

21 Q. That is what I was
22 referring to. Thank you.

23 So, in this note Mr. McGuire
24 provides you with a summary of the various reports
25 related to the Red Hill. So, we can see on this

1 page it provides a summary of, kind of, the
2 background of the Red Hill and, if we go to the
3 next page, please, Mr. Registrar, thank you, it
4 provides a summary of the 2014 draft Golder
5 report, the Tradewind report, a brief summary of
6 the 2015 CIMA report and it talks about some
7 Spectator articles that reference the Red Hill. I
8 don't intend to take you through that.

9 And if we can go to the
10 following page, please, Mr. Registrar.

11 On this page, the report
12 references a comprehensive analysis of accidents
13 on the Red Hill conducted by traffic and their
14 observations regarding wet weather collisions on
15 the Red Hill.

16 Mr. Registrar, can you please
17 call out the last paragraph on this page.

18 So, this paragraph states:

19 "The result is this
20 facility needs a
21 resurfacing and we have a
22 budget for this in 2019
23 up to \$15.5 million.

24 That will address the
25 need to rehab this

1 facility and we will
2 select an asphalt mix
3 that has suitable
4 friction attributes to
5 ensure we're meeting or
6 exceeding current
7 guidelines."

8 Mr. McKinnon, what did you
9 take from this last paragraph in Gord's briefing
10 note to you?

11 A. Generally that the path
12 we were on was the right path for moving forward
13 with the facility.

14 Q. And can you be a bit more
15 specific about the path that you're referring to?

16 A. We were months away from
17 rehabilitating it, and that was going to be a
18 suitable resolution to the findings of the
19 Tradewind report.

20 Q. Thank you. Thank you,
21 Mr. Registrar, we can take that down.

22 Commission counsel also asked
23 you on a related matter what confidence did you
24 have that the road was safe to drive on by
25 December 14, and you indicated that it was based

1 on your review of the report and because your
2 staff, who had the necessary expertise, did not
3 advise you that the road needed to be shut down.

4 I just wanted to clarify this
5 response. Did you have discussions with Mr. Soldo
6 and/or Mr. McGuire during which they advised you
7 of this prior to December 14?

8 A. I believe so, yes.

9 Q. And I'm going to ask
10 about your meeting with the mayor on December 18.
11 You indicated that you believe you would have
12 asked a number of good questions, I think is what
13 you said. Do you recall if the mayor asked staff
14 to advise on their views about the safety of the
15 Red Hill in light of the report at that meeting?

16 A. I don't recall
17 specifically. That sounds like a reasonable
18 question the mayor might ask.

19 Q. Okay. And you can take
20 that down, Mr. Registrar. Thanks.

21 Mr. McKinnon, commission
22 counsel asked you whether you had an understanding
23 that legal directed Mr. McGuire or Mr. Soldo not
24 to speak with CIMA about the Tradewind report, and
25 I believe your response was that you did not

1 recall either way and I just want to ask you a few
2 follow-up questions about that.

3 At any point, did Gord or
4 Edward tell you that they were being prevented
5 from discussing the Tradewind report by legal
6 services or Ms. Auty specifically?

7 A. That does not sound
8 familiar to me.

9 Q. Okay. And what steps
10 would you have taken if they advised that legal or
11 Ms. Auty specifically prevented them from doing
12 their job, which is to ensure the safety of the
13 roadway? What steps would you have taken?

14 A. If Gord or Edward needed
15 to speak to CIMA in relation to the safety of the
16 road, I'd have called up CIMA myself and
17 facilitated the phone call. I wouldn't be
18 allowing anybody to prevent that. And not to
19 inject nuance into that, but if Ms. Auty was
20 trying to manage her consultant, I understand the
21 flow of information and her wanting to be in
22 control, but I would never interpret that to mean
23 that we couldn't talk to CIMA if we had a safety
24 concern. Absolutely not.

25 Q. Thank you. And last

1 question.

2 Commission counsel asked you
3 if at the May 2017 meeting, that big meeting with
4 a lot of public works leadership that John Mater
5 organized with that lengthy PowerPoint
6 presentation containing all the OBL items -- do
7 you recall that?

8 A. I do.

9 Q. Okay. If at that meeting
10 you recall anyone in public works telling you
11 about trying to obtain friction testing results
12 from engineering services and particularly from
13 Mr. Moore and not being able to receive them and,
14 again, your response was, "Not that I recall."

15 Again, what steps would you
16 have taken if, in that meeting or frankly at any
17 point, your staff told you that they were trying
18 to obtain friction testing results from other
19 staff members in the department but were not
20 receiving a response or a copy?

21 A. Yeah. If they were
22 escalating it to me for a resolution, I would have
23 likely had a meeting and brought them all in
24 together and worked through it and said, what's
25 going on here? Because that doesn't sound very

1 professional. It doesn't sound like a team, so I
2 would have followed up on it in some manner, I'm
3 sure.

4 Q. And do you recall having
5 to do that specifically with respect to friction
6 testing on the Red Hill or the Tradewind report?

7 A. I do not.

8 Q. Thank you, Mr. McKinnon.
9 Those are my questions.

10 Thank you, Mr. Commissioner.

11 JUSTICE WILTON-SIEGEL: Okay.

12 Ms. Lawrence?

13 MS. LAWRENCE: I have just one
14 question in reply.

15 FURTHER EXAMINATION BY MS. LAWRENCE:

16 Q. Mr. McKinnon, you were
17 just asked about December 14 and Ms. Contractor
18 wanted to clarify did you have discussions with
19 Mr. Soldo or Mr. McGuire during which they advised
20 you that the road didn't need to be shut down
21 prior to December 14. I've tried to summarize the
22 back and forth you just had. And you said, "I
23 believe so, yes."

24 Can you describe with
25 precision what those discussions were with

1 Mr. Soldo and/or Mr. McGuire?

2 A. Unfortunately I can't. I
3 can't. I don't have a precise memory of that. I
4 just know that I had a belief that the road didn't
5 need to be shut down and it was based on the
6 conversations that we were having.

7 Q. But sitting here today
8 you can't recall the content of those discussions?

9 A. Not specifically, no.

10 Q. Thank you. Commissioner,
11 I have no further questions.

12 JUSTICE WILTON-SIEGEL: Okay.

13 So, first of all, Mr. McKinnon, thank you very
14 much for attending today and for yesterday and
15 today. You're excused.

16 And I think the schedule also
17 contemplated that it might be necessary to reserve
18 time for you tomorrow -- Monday. There are limits
19 to your availability, I appreciate. Monday, we're
20 not going to require that, so you're excused and
21 thank you again for attending at the inquiry.

22 For the rest of us, I think
23 that now means that we're now adjourned, unless
24 Ms. Lawrence tells me otherwise, until Tuesday
25 morning at 9:30.

1 MS. LAWRENCE: That's correct.

2 JUSTICE WILTON-SIEGEL: Okay,

3 so thank you very much and have a good weekend,

4 everyone.

5 --- Whereupon the proceedings adjourned

6 4:09 p.m. until Tuesday, October 18, 2022 at

7 9:30 a.m.

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