

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Friday, October 21, 2022 at 9:30 a.m.

VOLUME 73

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1 Arbitration Place Virtual

2 --- Upon resuming on Friday, October 21, 2022

3 at 9:31 a.m.

4 MS. LAWRENCE: Continuing our
5 evidence of Mr. McGuire.

6 Before we return to that we
7 have two affidavits that have been sworn and
8 circulated amongst counsel and I would like to
9 file them as the next exhibits. I can confirm
10 that no counsel intend to examine the affiants.
11 The first is an affidavit of Charlie Lauricella,
12 and it is RVH1012, which the Registrar should
13 have. And the second is the affidavit of Peter
14 McNeill, and that's RVH1013. And those, for the
15 Registrar's confirmation, are Exhibits 194 and
16 195.

17 THE REGISTRAR: Noted,
18 counsel. Thank you.

19 EXHIBIT NO. 194: Affidavit of
20 Charlie Lauricella; RVH1012
21 EXHIBIT NO. 195: Affidavit of
22 Peter McNeill; RVH1013

23 MS. LAWRENCE: Commissioner,
24 may I proceed?

25 JUSTICE WILTON-SIEGEL: Yes,

1 we're all on the line. Let's go.

2 GORDON MCGUIRE: previously affirmed

3 EXAMINATION BY MS. LAWRENCE (CONT'D):

4 Q. Mr. McGuire, we spoke
5 during your evidence yesterday about ProjectWise
6 and audit trails. Do you remember the discussions
7 we had yesterday?

8 A. I do.

9 Q. Thank you. Registrar,
10 can you bring up RVH1013, please.

11 Mr. McGuire, this is one of
12 the two affidavits which we just filed and it is
13 Charlie Lauricella. Am I saying his last name
14 correctly?

15 A. That's correct.

16 Q. Right. You know him?
17 He's a senior project manager of technical
18 services and engineering services?

19 A. Yep, correct.

20 Q. And he is also one of the
21 internal users of ProjectWise with particular
22 expertise in ProjectWise; is that fair?

23 A. Correct.

24 Q. Registrar, could you go
25 to page 8, please, and if you could call out

1 paragraph 34.

2 So he affirms that there are
3 three ways that a document in ProjectWise can be
4 opened without appearing in the document's audit
5 trail within ProjectWise; view, read only and
6 photo preview. And all three options allow an
7 e-mail to be opened and forwarded or replied to
8 without it appearing in the audit trail. In
9 addition, he affirms that certain files, such as
10 PDFs and Word documents, can be opened with photo
11 preview within the application and when an e-mail
12 is opened in photo preview it creates a message
13 file in a temporary folder.

14 We spoke yesterday about the
15 audit trails for several documents which you found
16 within the director's office folder in ProjectWise
17 which have audit trails that appear inconsistent
18 with the times that you forwarded them; for
19 example, the e-mail that you forwarded to
20 Mr. Malone on August 30.

21 Do you have a practice of
22 viewing documents within ProjectWise as view, read
23 only or photo preview?

24 A. Well, so I do know that
25 those functions are available. As a practice,

1 whether, you know, you went in and double clicked
2 on a file or if it was up in a photo preview or
3 view function, there's a variety of different ways
4 to get at them so I wouldn't say there's one
5 consistent methodology of looking at files.

6 Q. And sitting here today,
7 does this information about the way that
8 ProjectWise works as it relates to audit trails
9 assist you in the question I asked you yesterday
10 which is, if you had an explanation for why the
11 audit trails don't seem to line up with what we
12 know about the documents?

13 A. So no, I don't have an
14 explanation for why the audit trail and the other
15 elements, you know, appear inconsistent. What I
16 can tell you is from my recollection within
17 ProjectWise when you right click a document there
18 is, you know, 20 or 30 activities that you can do
19 to it, including changing state or making final
20 status or versioning, and I thought that all of
21 that -- all those things were captured in the
22 audit trail. Maybe there's elements that aren't.
23 So that's what I understand about this.

24 Q. Thank you. Registrar,
25 you can close this down, you can close this

1 document down. If you can go to OD9A page 147,
2 please. If you can call out 344.

3 So Mr. McGuire, we're back in
4 the time period of 2018 and the inquiry has
5 received a note from Debbie Edwards dated
6 November 12, 2018. These are the transcriptions
7 of that note which she made in handwriting. And
8 she testified that she believes you called her
9 after the call that you had with her on November 8
10 or 9 and that you told her that you spoke to
11 Mr. Moore, and then you relayed information that
12 you had received from Mr. Moore. You said
13 yesterday that you don't recall speaking to
14 Mr. Moore during this timeframe. Does this
15 refresh your memory about speaking to Mr. Moore?

16 A. No, it doesn't, and I
17 don't recall speaking to Gary as noted until that
18 meeting with Dan.

19 Q. Have you had an
20 opportunity look at these notes in your
21 preparation for today?

22 A. Yeah, I've seen them.

23 Q. There's a reference to
24 Diana about two years ago report -- sorry, info
25 over to Diana about two years ago. Do you recall

1 learning from Mr. Moore at any point that he had
2 sent info over to Diana, who I'm going to suggest
3 is Diana Swaby for the purposes of refreshing your
4 memory, about two years prior to 2018?

5 A. No, it doesn't. And I
6 don't know Diana Swaby. I don't believe we ever
7 connected.

8 Q. Okay. Mr. Moore had
9 provided the Tradewind report to the City's
10 external legal counsel Shillingtons after a
11 meeting with them in August 2017. Did you ever
12 become aware of that?

13 A. I did become aware of it
14 through this process but not before that.

15 Q. Ms. Edwards references
16 look at a UK standard, there is no standard in
17 Ontario, report is a bit misleading since not
18 binding. And again Ms. Edwards testified that she
19 understood you were conveying Mr. Moore's
20 comments, but just so that I can confirm, did you
21 in mid-November of 2018 hold the view that there
22 was no standard in Ontario and the report was
23 therefore misleading?

24 A. I hold the view that
25 there was no standard in Ontario. I'm not sure

1 that -- these are Debbie's notes, so I'm not sure
2 what she took from that.

3 Q. Okay. And you don't
4 remember a conversation with Mr. Moore in which he
5 conveyed this before you met with him at the end
6 of November?

7 A. Yeah, correct.

8 Q. Do you recall raising
9 with Mr. Moore before your meeting that you have
10 at the end of November with him about why the
11 Golder report was only in draft?

12 A. No, I don't.

13 Q. And do you recall any
14 discussions with Mr. Moore about John McLennan
15 being aware?

16 A. No, I do not.

17 Q. Registrar, you can close
18 this down and go to page 135, please. Could you
19 go to 136 as well.

20 So it looks from this point
21 like you move from dealing with Ms. Edwards
22 primarily in legal services to Ms. Byrdena MacNeil
23 being your primary contact within legal. Is that
24 your recollection as well?

25 A. With respect to the FOI?

1 Q. With respect to sort of
2 going forward with this process. In November
3 there seems to be a shift from Ms. Edwards to
4 Ms. MacNeil?

5 A. Yeah, that's correct.

6 Q. Did you understand that
7 Ms. MacNeil had particular expertise in dealing
8 with FOIs?

9 A. No, not in a -- not in
10 any specific manner.

11 Q. On November 11 you
12 e-mailed Ms. MacNeil a number of documents which
13 is set out in 332, and those attachments are
14 summarized over the following pages in the
15 overview document. You'll see the first one is
16 summarized at 336 which is an e-mail from
17 Dr. Uzarowski to Mr. Moore and Mr. Oddi on
18 October 18, 2007, and it is the MTO friction
19 testing that later -- those spreadsheets come to
20 be in later documents as well.

21 But where did you find the MTO
22 friction data e-mail that you send as that first
23 attachment to Ms. MacNeil?

24 A. The source of most of
25 this would have been in those ProjectWise folders.

1 Q. Okay. You also send an
2 attachment from Mr. Moore to Tom Dziedziejko which
3 we spoke about briefly.

4 Registrar, could you go to the
5 next page, please.

6 You send a copy of the
7 standalone Tradewind report and you send the
8 December 17th, 2015 e-mail that enclosed a
9 Tradewind report that we looked at yesterday. To
10 your recollection when did you first view that
11 last document, the December 17, 2015 e-mail? This
12 is the one that had the forwarded banner on
13 August 30.

14 A. So this is -- is this the
15 only e-mail that contains the Tradewind report?
16 If that's case then, you know, my understanding is
17 it was late September.

18 Q. Okay. Registrar, could
19 you go to the next page.

20 You enclose some Red Hill
21 counts in an e-mail from Mr. Shebib that you had
22 received in an e-mail from him. Why were you
23 asking Mr. Shebib for traffic counts, volume data?

24 A. I don't know.

25 Q. And the last is a Red

1 Hill summary that appears to be an updated version
2 from the briefing that you sent to Dan. Is that a
3 fair sort of summary of that document?

4 A. Yeah.

5 Q. Registrar, could you go
6 to page 146, 147, please. Registrar, could you go
7 to 145 and 146 first. Registrar, could you go 144
8 and 145, please. Apologies. I forgot how long
9 this chronology of events is.

10 You'll see at the top,
11 Mr. McGuire, of 144 at 342 Ms. Jacob e-mailed you
12 a chronology of events. Did you direct her to
13 prepare this chronology?

14 A. I don't recall directly
15 asking her, but I know, and I can't tell you
16 exactly when, that we were trying to resolve some
17 of the issues and timing around this. So I don't
18 recall directly but I mean I think there were a
19 number of chronologies being developed, at least
20 one or two.

21 Q. Ms. Jacob copied
22 Mr. Vala. To your knowledge did Mr. Vala have a
23 copy of the Golder or Tradewind reports?

24 A. I don't know.

25 Q. Did you have any direct

1 conversations with Mr. Vala which left you with
2 the impression that he understood the contents of
3 the Tradewind report? I mean, had read the
4 contents of the Tradewind report?

5 A. No, I don't believe that
6 I talked to Sarath about this.

7 Q. Registrar, can you now go
8 to 146 and 147, please.

9 So four lines down on 146
10 there's a reference to August 30th, "how about
11 regular shave and pave, (Gord to Susan)." And
12 then it says "decision to revert to shave and pave
13 rather than HIP." And then that same morning
14 after you received this chronology from Ms. Jacob
15 you say "when did we decide absolutely to
16 eliminate HIP, October?" And she says "end of
17 August I would say."

18 And so looking back now,
19 recognizing it was not entirely clear to you in
20 November, is it your evidence that you made
21 the decision to move away from hot in-place on the
22 Red Hill at the end of August?

23 A. No, I mean, I think -- I
24 don't know when the date of this exchange is, but
25 that's pretty close in time and I'm not sure then

1 when the decision was made. And Susan and I
2 appear to have a slightly different view of it.

3 But no -- if your question is,
4 you know, am I certain we said it was the end of
5 August, I would say no because I think we're still
6 in my mind reviewing it but....

7 Q. Is there something you
8 can pinpoint in October that would have -- that
9 led you to suggest October as your impression or,
10 you know, inkling that that was when it was --
11 that's when the decision was made?

12 A. No.

13 Q. Registrar, could you go
14 to page 149, please, and can you call out 350.

15 So you arrange a meeting with
16 Ms. MacNeil that ultimately goes forward. There's
17 a bit of back and forth, but it looks like it is
18 November 12. She suggests the 13TH. You say how
19 about today. Was this the first time that you had
20 met with Ms. MacNeil about Red Hill-related
21 matters?

22 A. To my understanding yes.

23 Q. Going into this meeting
24 did you think that the Tradewind report would have
25 to be disclosed as part of the FOI?

1 A. I don't -- I don't
2 believe I had the opinion that it wouldn't but --
3 I think your question was did I think it would be
4 released?

5 Q. Yes?

6 A. My understanding is that
7 it was responsive, yes.

8 Q. And was Ms. MacNeil
9 providing advice on that very question?

10 A. Well, eventually she gets
11 to, you know, providing an entire summary and
12 spreadsheet on the FOI, but I don't know if that
13 was the question of the day. I think we were just
14 trying to get together and understand sort of the
15 framework on the review.

16 Q. Okay. Registrar, could
17 you close this and pull up 351, please.

18 Mr. Zegarac organized by
19 e-mail a meeting with -- he identifies himself,
20 Mr. McKinnon, Mr. Sabo. Were you aware as of
21 November 12th if Mr. Zegarac had been informed
22 about the Tradewind report?

23 A. I don't recall.

24 Q. Do you recall meeting
25 with Mr. Zegarac?

1 A. There were a number of
2 meetings which included Mr. Zegarac but I can't
3 recall the exact dates right now. And if you're
4 asking this date or in advance of it, I can't
5 recall.

6 Q. Okay. Registrar, you can
7 close this down and if you can go to next two
8 pages, 150 and 151, please.

9 You'll see at the bottom of
10 150 at 354 that Ms. MacNeil e-mailed you about a
11 discussion she had with Ms. Watson in the privacy
12 office and about an extension for time, and
13 Ms. MacNeil asked for estimates about how long the
14 search would take and how long would be needed to
15 compile documents that appeared to be responsive,
16 and you provided a draft response.

17 Registrar, could you go
18 HAM61983 and go to image 2, please.

19 So this is the form that,
20 initially came with the original FOI that was
21 supposed to be filled out.

22 Registrar could you call out
23 the two paragraphs under "list any concerns."

24 It says "key staff will be out
25 of the office." So just for confirmation, we have

1 received information that you are out of the
2 office on vacation from November 15 to 26. Is
3 that your recollection as well?

4 A. Yeah, that's correct.

5 Q. During that time was
6 there anyone in public works that you tasked with
7 handling this FOI?

8 A. I believe that
9 Dipankar -- is it Dipankar Sharma, maybe he was
10 working on some stuff with the audit, and I think
11 Diana was working on assembling a bunch of the
12 records as well.

13 Q. During your vacation?

14 A. Yeah, that's my
15 recollection but....

16 Q. Okay. I think they do
17 become involved after, but your recollection
18 sitting here today is they were involved during
19 your vacation?

20 A. My recollection is they
21 were involved but I don't know exactly when it
22 started or, you know, whether it was during my
23 vacation or not.

24 Q. Okay. Is there anyone
25 that you specifically tasked with dealing with the

1 FOI during your vacation?

2 A. I can't recall.

3 Q. Okay. You say the --
4 this is your response. This is the e-mail you
5 sent back to Ms. MacNeil:

6 "The testing refers to an
7 international UK standard as
8 Ontario/Canada does not have
9 an industry accepted test for
10 friction values. These
11 responses aren't recognized as
12 authoritative in Ontario and
13 may cause concern upon their
14 release."

15 What was the basis for your
16 comment these are not recognized as authoritative
17 in Ontario?

18 A. Well, I mean, I think
19 it's the second paragraph or the second section in
20 the Tradewind report that identifies there is no
21 Canadian or Ontario standard, so I believe it's
22 buried in that report, or least in the front end
23 of the report.

24 Q. I think that covers off
25 the first sentence that I just read to you. The

1 second one, these responses aren't recognized as
2 authoritative. What's the basis for that
3 statement?

4 A. Well, so what -- I guess
5 what authority in Ontario would recognize these
6 friction values.

7 Q. Did you know that
8 authorities in Ontario wouldn't recognize these
9 friction values?

10 A. By this point in time I
11 understand there is no standard, so yeah, that's
12 how -- that's the framework for that sentence.

13 Q. Registrar, could you
14 close this down and go to 9A -- pages 165 and 166,
15 please.

16 At the bottom of 165 you
17 e-mailed Mr. Malone on November 27 checking in on
18 next steps on the Red Hill, and you say "recall I
19 was creating a report that would ask permission to
20 start a functional plan on that asset," and you
21 asked to be reminded about what steps CIMA was
22 taking and asked for an update.

23 Were you expecting anything
24 from CIMA or Mr. Malone in respect of the e-mails
25 you exchanged about friction back in September?

1 A. Sorry, this exchange is I
2 believe sort of the genesis of Brian providing us
3 an executive summary or synopsis of the
4 illumination report.

5 Q. Yes. You note that
6 that -- were you providing us a synopsis of the
7 full report? My question was were you expecting
8 Mr. Malone or CIMA to provide anything to you in
9 respect of the estimates you exchanged in early
10 December about friction?

11 A. No, I'm not.

12 Q. You didn't speak to
13 Mr. Malone directly about the Tradewind report in
14 November of 2018; is that right?

15 A. To my knowledge that's
16 correct.

17 Q. You didn't speak to him
18 at all in 2018 from this point forward through
19 December; is that right? Pardon me, about the
20 Tradewind report.

21 A. So I had ongoing
22 conversations with a number of consultants across
23 2018, but with respect to Brian and the Tradewind,
24 no, I don't believe we had any conversations in
25 2018.

1 Q. Other than Golder, did
2 you have ongoing conversations with any other
3 consultant?

4 A. Not -- not that I recall,
5 no.

6 Q. Registrar, can you go
7 page 167 and 168.

8 The notes excerpted on 168 are
9 from November 27 and you'll see in the right-hand
10 side it says Dan, Gord, Gary. Do you recall
11 attending a meeting with Mr. McKinnon and
12 Mr. Moore on November 27?

13 A. I do.

14 Q. What did you understand
15 your role in this meeting to be?

16 A. You know, I wasn't
17 leading the meeting. I was just -- you know, I
18 was attending to have a conversation with Gary and
19 Dan about the Tradewind report.

20 Q. Were you looking to gain
21 further information from Gary?

22 A. Yes.

23 Q. Registrar, could you call
24 up RVH1005, 1005. That's the transcription of
25 your notes. And, Registrar, on the other image

1 can you call up OD9 page 67. Page 167. I
2 misspoke. Thank you. Now, on the other image can
3 you have up RVH1005. There we go.

4 Okay. So Mr. McKinnon, on the
5 left-hand side at the top is a transcription of
6 Mr. McKinnon's notes of this meeting, and on the
7 right-hand side is a transcription from those
8 handwritten notes that we were just looking at,
9 your handwritten notes.

10 Registrar, can you call out
11 Mr. McKinnon's notes at the top of 167 just so
12 they are a little bigger.

13 So in Mr. McKinnon's notes on
14 the left-hand side he records Mr. Moore as
15 advising that the Tradewind report received in
16 draft only, and that Golder was paid for the work
17 they did and that the Golder report also analyzed
18 cracking. At this point was any of that new
19 information to you?

20 A. I don't think so, no.

21 Q. In both of these notes I
22 will suggest it appears that you and Mr. McKinnon
23 ask Mr. Moore, and Mr. Moore answers about the
24 process to go from the Golder report and the
25 Tradewind report to reprogramming or programming

1 for the resurfacing. And there's a note about a
2 conference in Halifax in 2017 and then sending
3 materials to Ireland in February 2018. Did you
4 have concerns that the Tradewind report said to do
5 more testing and that Mr. Moore did not report any
6 testing between 2014 and 2017?

7 A. No, I didn't have a
8 concern at that moment or -- no, I didn't have any
9 concerns.

10 Q. Did you have any
11 questions about why there was a three-year gap?

12 A. Yeah, I mean, I think it
13 was just we're trying to gather some information
14 here, understand what -- you know, what had been
15 done with this report and where the process was
16 headed.

17 Q. Recognizing you're trying
18 to just gather facts and reserve judgment at this
19 point, when I say did you have concerns about that
20 three-year gap -- I'll rephrase. Did you find
21 that three-year gap to be a long time that seemed
22 unexplained?

23 A. Well, I mean, again, the
24 Tradewind report, and it's been a little while
25 since I read it in detail, but I believe it said

1 to do further testing but it didn't say -- or do
2 further review or something along those lines. It
3 didn't say do it immediately, do it in a six-month
4 window, do it in a five-year window. So I
5 don't -- I didn't see anything time bound in that
6 report.

7 Q. That wasn't my question.
8 I wasn't asking about what you interpreted the
9 report to say in terms of timing. I'm asking
10 about what you were starting to think about this.
11 Did you feel like three years was a pretty long
12 time for nothing to have happened?

13 A. I don't -- no, I didn't
14 think that that timeframe, based on what I
15 understood in the Tradewind report, was, you know,
16 completely inconsistent. I was trying to
17 understand still this is information gathering,
18 and whether he had done any further follow-up.

19 Q. But he told you that he
20 didn't until 2017, right?

21 A. Yeah, correct.

22 MS. LAWRENCE: Registrar, you
23 can close both of these documents, and if you go
24 back to OD9, page 168 and 169.

25 Before you move on, the

1 transcription, RVH1005, needs to be marked as the
2 next exhibit, please.

3 THE REGISTRAR: Noted,
4 Counsel. Thank you. That's Exhibit 196.

5 MS. LAWRENCE: Thank you.

6 EXHIBIT NO. 196: Transcription
7 of handwritten notes; RVH1005

8 BY MS. LAWRENCE:

9 Q. Registrar, can you call
10 out 402, please.

11 On November 28 you told
12 Mr. Becke that you had spoken to Ludomir last
13 night and he's bringing that PSV report along
14 today. So at this point, this is November 28, did
15 you understand that Golder had not sent to the
16 City a report in respect of the testing that they
17 had done in 2017?

18 A. So at this point in time
19 I don't believe I have seen a report. I think I
20 have -- I understand that about the testing
21 obviously with the conversation with Gary, but no,
22 I'm not -- I don't think I'm aware that there
23 isn't a fulsome report.

24 Q. Had Gary communicated to
25 you even at a high level what the results of the

1 testing from 2017 were as far as he understood
2 them?

3 A. No, I don't recall.

4 Q. Okay. Had you received
5 information from other staff that they had a sense
6 of at least at a high level what the 2017 results
7 look like?

8 A. No, I don't believe I
9 have.

10 Q. So you have -- you know
11 the tests have been done. You know what tests
12 were done, at least that it was -- there was a PSV
13 test, but you have no idea about the outcome and
14 the results of those tests?

15 A. No, I don't think I've
16 seen any results at this point.

17 Q. Okay. And is that why
18 you called Dr. Uzarowski, in order to get that?

19 A. Yeah, I would have to say
20 yes.

21 Q. Did you speak to
22 Dr. Uzarowski on -- about the Golder report or the
23 Tradewind report when you called him on
24 November 27th?

25 A. I don't recall.

1 Q. Did you advise him that
2 you had found the Golder report or the Tradewind
3 report?

4 A. No, I don't recall.

5 Q. You don't have any
6 recollection either way?

7 A. No, I don't have any
8 recollection either way.

9 Q. Registrar, you can close
10 this down and go to page 170 at paragraph 404,
11 please.

12 So here's an e-mail from
13 Dr. Uzarowski with a high level summary of the
14 reports. You were also expecting a proper written
15 report; is that right?

16 A. Sorry, what day is this?

17 Q. Oh. Yeah, the OD
18 sometimes doesn't make that clear. This is
19 November 28.

20 A. So I would assume -- I'm
21 still not aware if there's a full report or not
22 connected with Golders and he's sent me this
23 response.

24 Q. And you're aware that the
25 City doesn't have a report; you're just not sure

1 if Golder has drafted it and not sent it; is that
2 right?

3 A. I don't know if I'm aware
4 either way.

5 Q. But you were expecting
6 one, that was what you were asking for?

7 A. Again, if I back up, and
8 I can't remember exactly when, but during that FOI
9 we've uncovered the proposal and the assignment
10 so yeah, I'm expecting that at the end of that
11 there will be a consultant's report.

12 Q. Number 4 in this list of
13 comments is:

14 "We attempted to run a British
15 pendulum test, however, due to
16 light snow and negative
17 temperatures the test was
18 considered meaningless."

19 Were you aware before you
20 received this e-mail from Dr. Uzarowski of
21 Golder's view about the British pendulum test
22 results?

23 A. I think -- I believe this
24 is the first time I'm seeing or understanding it.

25 Q. And just so that I'm

1 not -- so I'm fair to you and to the evidence,
2 this e-mail also has some laboratory results and
3 some measured depth results attached. And so when
4 I asked you earlier were you expecting a written
5 report, you still expect something more than this
6 e-mail and some attachments that have laboratory
7 and other types of data testing; is that right?

8 A. That is correct.

9 Q. I didn't want to leave
10 the impression it was just this e-mail.

11 Registrar, you can close this
12 down.

13 You forwarded this to Mr.
14 Bentley who, as you said earlier, was involved in
15 compiling things for audit services. Why did you
16 send this to Mr. Bentley?

17 A. Are we looking at
18 paragraph 450?

19 Q. Yes.

20 A. Well, he was part of the
21 asphalt audit group as well as I thought he was
22 involved in sort of the correlation of the
23 information that he had on the audit, so together
24 with the information that was being requested from
25 the FOI.

1 Q. Thank you. So you
2 weren't looking to him for any technical input
3 into Dr. Uzarowski's -- the content of
4 Dr. Uzarowski's e-mail?

5 A. No, I was not.

6 Q. And did you anticipate
7 that the results from the 2017 Golder pavement
8 evaluation would also be responsive in the FOI?

9 A. I would say my
10 understanding was yes, it had done testing and I
11 believe the scope of work referred to -- I can't
12 remember the exact terminology, but yeah, testing
13 of the material characteristics of the Red Hill so
14 it seemed to fit into either that two- or
15 four-year window, I can't remember exactly those
16 time boundaries.

17 Q. Registrar, could you go
18 page 169, please. Call up 401.

19 So you're back in the office
20 on November 27 from your vacation and on that day
21 Mr. Bentley e-mailed Mr. Pellegrini under the
22 subject line re Red Hill Valley report, and he
23 says:

24 "The report that redacted as
25 advised by legal. Engineering

1 service received an FOI on Red
2 Hill; the complete report and
3 other related documents are
4 currently being reviewed by
5 legal. Once complete we will
6 provide a
7 complete/non-redacted package
8 for your review." (As read)

9 The inquiry has received
10 evidence that Mr. Bentley sent Mr. Pellegrini a
11 copy of the Golder report that had redactions on
12 the Golder report summary of friction testing and
13 that the Tradewind report was not included as an
14 appendix to the Golder report.

15 Did you discuss providing a
16 redacted copy to audit services with Ms. MacNeil
17 before it was provided to audit services?

18 A. I don't recall that, and
19 if -- you know, if you look at the calendar I'm
20 away for a couple weeks so I'm not sure what is
21 exactly taking place here. But no, I don't recall
22 having that conversation with Byrdena in advance
23 of this, or Ms. MacNeil.

24 Q. Did you discuss what
25 would be redacted and what would not?

1 A. No.

2 Q. Who did?

3 A. Legal would provide that
4 information.

5 Q. Do you know who actually
6 did the redactions?

7 A. No, I don't.

8 Q. Did you direct Mr.
9 Bentley to provide a redacted copy to audit
10 services once it was ready?

11 A. I don't recall. And I
12 think he was working together with the folks at
13 legal but yeah, that's my recollection.

14 Q. Is it possible that in
15 fact you were more involved than you have a
16 recollection of right now?

17 A. Well, I don't -- I mean,
18 considering the volume of material that came out
19 in the FOI, I think it was 40 or 50 tabs of
20 information, I know that we compiled it. I
21 don't -- I don't -- well, I know that I didn't go
22 through each document with an eye to reviewing
23 what may or may not be responsive because I don't
24 have that skill set.

25 Q. Were you aware before the

1 redacted copy was sent to audit services that it
2 was going to be sent to audit services?

3 A. I don't believe I was,
4 but there was a lot of data being exchanged with
5 audit and it might have just been part of that
6 process.

7 Q. And you'll agree with me
8 that the Tradewind report was, in your mind,
9 potentially the most sensitive of the documents
10 that went into the FOI; that was the one that you
11 were actually most concerned about being released
12 publicly, right?

13 A. Yeah, definitely.

14 Q. And when you say there's
15 40 documents, you didn't look at all of them. You
16 would have been particularly focused on the
17 Tradewind report and how it was being disclosed or
18 used by City staff or anyone else, right?

19 A. Correct.

20 Q. Registrar, you can close
21 this down. Can you go to page 190 and 191,
22 please. You will see on the bottom of 190 on
23 December 23rd Mr. Pellegrini e-mailed you and
24 Mr. Sharma.

25 Registrar, can you call out

1 his e-mail at the top of 191, please. Actually
2 can you call out -- keep going down and call out
3 from there and then 433 as well. Great.

4 So he says we need an
5 unredacted version. We can't wait till legal
6 services has completed their review. It may take
7 months. Please tell me the name of the solicitor.
8 And you respond possibly there is some
9 miscommunication. We're happy to have you review
10 the file. We have a copy here and you can arrange
11 with Diana to come and see a copy. And you copied
12 Ms. MacNeil into this e-mail with Mr. Pellegrini.
13 And then you reference the data that was withheld
14 at legal services' advice was related to friction
15 testing and subject to an FOI. And then you
16 confirm some things were redacted and there's one
17 appendix that had not been included.

18 When you offered or invited
19 Mr. Pellegrini to come and review the file -- to
20 come and see the copy, it's what you say, did you
21 understand that the auditor would come and review
22 it but was not going to take a copy for its files?

23 A. That was my
24 understanding.

25 Q. Registrar, could you

1 close this down and call out 191 and 192, please.
2 The inquiry has heard evidence that while you were
3 in a meeting the following day Mr. Pellegrini did
4 come, he did review, and then he took a photocopy
5 of the Golder report unredacted and Tradewind
6 report; is that right?

7 A. Yes.

8 Q. How did you react on
9 learning this?

10 A. You know, it was -- it
11 was a concern or -- it was a bit of a surprise. I
12 thought -- I thought that we were positioned in
13 such a way that the legal was working with the FOI
14 and audit would get the information as that came
15 forward, but audit demonstrated that they wanted
16 that copy and he took it so....

17 Q. Mr. McKinnon described
18 you as feeling a little betrayed. Is that
19 accurate from your perspective?

20 A. I wouldn't characterize
21 it as confused. I mean, I was getting
22 instructions from legal and then trying to ensure
23 that I was complying with audit, and it felt like
24 they were different tracks and it was difficult
25 to -- difficult to align them.

1 Q. Registrar, could you call
2 out the text at the top of 192, please.

3 This is e-mail to Ms. Auty and
4 Ms. MacNeil. To this point had you had any
5 discussions with Ms. Auty about Red Hill-related
6 matters?

7 A. With Nicole, toward end
8 of November.

9 Q. This is beginning of
10 December?

11 A. Yeah. I mean, I don't
12 directly recall when we started having
13 conversations with legal, but I'm -- I know we did
14 have conversations with Ms. Auty but I'm not sure
15 when they start.

16 Q. This is an e-mail to
17 them, and you say in the second paragraph we
18 "discussed the concerns about the sensitivity of
19 our materials." And then you go to say in the
20 next paragraph the position you had advised was to
21 provide the auditor the 2014 Golder report but
22 with redactions, and then you say Mr. Pellegrini
23 came in and made copies.

24 And so you'll agree at least
25 you were aware at some point that Ms. MacNeil had

1 provided advice to provide a redacted copy of the
2 Golder report, right?

3 A. Yeah, correct.

4 Q. The last full paragraph:
5 "I am concerned that the audit
6 now has records that may be
7 released prior to our MFIPPA
8 response. This may influence
9 or position on the file."

10 What exactly was your concern
11 and what was influencing the position on this
12 file?

13 A. Well, I mean, you know,
14 here we are in early December. I think I'm trying
15 to sort out what's -- who is leading on this. We
16 have an MFIPPA request and it's elevated now to
17 the general manager, the City solicitor, I'm
18 getting advice from them. I'm also getting
19 requests from audit. It's a confusing time.
20 There's a lot going on, and I'm not necessarily
21 sure about the phrase "our position," but I mean
22 I'm trying to figure out who has data and when
23 it's moving forward and if I've made a mistake or
24 overstepped here or not followed instructions
25 correctly.

1 Q. In other words, are you
2 worried that the audit could actually release this
3 material and that you had facilitated that
4 happening for a (ph) miscommunication? Were you
5 worried about that?

6 A. Yeah, I mean, I'm worried
7 about the sensitivity of the material at this time
8 and the fact that we haven't informed counsel.
9 And I don't know audit's process well enough to
10 know about whether their materials are released or
11 not. So I mean, I'm experiencing this, this set
12 of meetings.

13 Q. You are experiencing them
14 with fairly significant stress, is that fair to
15 say?

16 A. Um, it's a series of
17 events that I don't have a playbook for and it's
18 very difficult to try and maneuver through, still
19 trying to ensure that -- you know, I'm not new in
20 the job, but still less than a year in and trying
21 to figure out how to respond to appears to be a
22 pretty complex and nuanced scenario.

23 Q. That's right. You're not
24 new in the job but you're still finding your feet
25 in the director role and you don't have the same

1 materials background that Ms. Jacob or Mr. Moore
2 have and that's what this is about. And did that
3 add sort of a layer of stress for you, the
4 technical piece?

5 A. The technical piece I
6 was -- I mean at this point I was, you know, not
7 super comfortable with it, but I understood enough
8 now though -- in particular the audit at the front
9 end of the year brought a lot of that technical
10 component into the role early.

11 But the elements around
12 friction were still not well understood and even
13 within the consultants and within our own staff.
14 But yeah, so that's the answer on that one.

15 Q. Registrar, you can close
16 this and go to 172 and 173, please. I'm going
17 back a few days in time. Registrar, can you call
18 out the notes at 173.

19 So don't feel that you have to
20 decipher these. These are Mr. Malone's notes of a
21 call with Mr. Soldo from November 30. You weren't
22 on that call.

23 Mr. Soldo testified that he
24 told Malone about the Tradewind report on this
25 call. Mr. Malone did not recall this and

1 testified he wasn't aware of the Tradewind report
2 until much later.

3 Prior to November 30th had you
4 had any discussions with Mr. Soldo or others about
5 Mr. Soldo providing CIMA with a copy of the
6 Tradewind report?

7 A. We had had conversations
8 about bringing all the data forward with CIMA but
9 I can't remember exactly when those started
10 because -- now in retrospect I know that CIMA
11 writes a letter but that's much later on.

12 Q. So you said we had a
13 conversation, that is you and Mr. Soldo?

14 A. Correct.

15 Q. Do you recall the outcome
16 of those conversations in which you were
17 discussing whether to provide all this information
18 to CIMA?

19 A. Not directly, no.

20 Q. You can't remember if you
21 landed, you and Mr. Soldo, on actually providing
22 this information to CIMA or not?

23 A. Yes. I don't remember
24 exactly how that landed.

25 Q. Okay. And to the extent

1 that these discussions were happening, was that a
2 joint decision between you and Mr. Soldo? Did you
3 involve anybody else in that decision-making?

4 A. I mean, at this point I
5 think Dan and Mr. McKinnon and Ms. Auty would have
6 been involved in any of those conversations, but
7 we are headed towards this sort of roadside safety
8 report together with the illumination report and
9 the resurfacing is really kind of the focus that I
10 recall.

11 Q. So sitting here today you
12 don't recall whether City staff, the ones you've
13 just mentioned, decided to provide CIMA with a
14 copy of the Tradewind report before November 30th?

15 A. Again, I recall having
16 conversations. I don't recall exactly when. And
17 if Edward provided Brian on that date, you know, I
18 mean, we're right in that timeframe for all that
19 information being understood and compiled, but if
20 it was later then I wouldn't have to -- I wouldn't
21 be able to give you any more insight.

22 Q. Okay. So recognizing you
23 may not have the insight, I just want to -- sorry
24 to repeat myself. I will move on.

25 You don't recall the City

1 making a final decision about whether or not to
2 engage CIMA in November of 2018?

3 A. No, I don't recall that.

4 Q. Registrar, you can close
5 this down.

6 Do you recall what the
7 discussions were about what CIMA would be asked to
8 do if the decision was to send the information
9 over to CIMA?

10 A. At that time no, I don't
11 believe -- no, I don't recall.

12 Q. In your view who was
13 responsible for ensuring that the Red Hill was
14 safe to drive on in light of the Tradewind report?

15 A. I mean, most of that
16 would flow through to the operations group and how
17 they were watching the safety and the statistics.

18 Q. And when you say the
19 operations group, there's been so many changes in
20 titles over time, you mean roads and operations
21 under Mr. Soldo?

22 A. Yeah, correct.

23 Q. You said most of that
24 would flow through the operations group. What
25 about the parts that didn't flow to the operations

1 group?

2 A. I would have to say the
3 majority of it, so -- yeah, the safe operation of
4 the road would lie with operations.

5 Q. Registrar, can you go
6 page 77. I misspoke. Page 177. Can you bring up
7 178 as well, please.

8 You met with Ms. MacNeil and
9 Ms. Cameron December 23rd. So just because we've
10 jumped around a little in time, this is before
11 Mr. Pellegrini came to your office and copied --
12 made a copy of the Tradewind report. We received
13 an agenda, notes, and a partial recording of this
14 meeting. It looks like you may have prepared an
15 agenda for the meeting and then notes were
16 inputted into the agenda. Is that how you recall
17 this note-taking process for this meeting?

18 A. Yes, that's my
19 recollection.

20 Q. Were you aware that this
21 meeting was recorded?

22 A. Yeah, I mean, obviously
23 I -- (indiscernible) yeah, I must have been aware
24 of it or....

25 Q. Was Ms. MacNeil aware?

1 A. I don't know that.

2 Q. Did you record it or did
3 Diana?

4 A. To my understanding Diana
5 recorded it.

6 Q. With your knowledge?

7 A. I believe so, yes.

8 Q. At your direction?

9 A. I don't recall. But, I
10 mean, yeah, I don't recall directing it to be
11 recorded but it was so....

12 Q. Okay. So there are a few
13 sets of notes. There is this set of notes
14 which -- in fact, maybe, Registrar, could you
15 bring up 178 and 179, please. There's reference
16 to 1, 2, 3, 4, 5, 6, 7, 8 over these two pages.
17 That was your initial agenda; is that right?

18 A. I believe so, yes.

19 Q. Under number 6 it says if
20 there is a need to inform counsel of this matter,
21 and the bullet point says legal, city manager, GM
22 PW will decide on the strategic direction with
23 Gord's input. Am I correct in inferring that the
24 first line is your question and then the second is
25 Ms. MacNeil's response during the meeting?

1 A. That's my understanding.

2 Q. At this point did you
3 have a clear view about whether there was a need
4 to inform counsel or was that still a question in
5 your mind?

6 A. I wasn't sure of what the
7 record or reporting process would be, but I don't
8 know if I can turn my mind to whether there was an
9 absolute sort of binary yes/no on it.

10 MS. LAWRENCE: Registrar, can
11 you go to RVH1011, please. So this is a
12 transcription from -- of the partial recording.

13 Registrar, could you make this
14 the next exhibit please. 197 I believe.

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

17 EXHIBIT NO. 197: Transcript
18 of a meeting held December 3,
19 2018; RVH1011

20 BY MS. LAWRENCE:

21 Q. Mr. McGuire, have you had
22 a chance to review this prior to your evidence
23 today?

24 A. Yes, I believe I have.

25 Q. I'm going to try not to

1 dive too deeply into it but I'm happy to go to
2 places in it if you need.

3 You discuss microsurfacing at
4 various points through the recording. At this
5 point had you considered whether it would be
6 possible to microsurface ahead of the resurfacing?

7 A. I mean, at this point
8 understanding of the resurfacing process was that
9 it would probably require us to be in a warmer
10 sort of temperature window. I don't think I have
11 a lot of information on it at this point but that
12 was my understanding of it at that time.

13 Q. Registrar, can you go to
14 image 12 and 13, please.

15 If you look at your comments
16 at the bottom of page 12 and then into page 13, at
17 the bottom of page 13, you say "a strange offering
18 that happened here is that we've known about this
19 friction issue for a while," and you go on to say
20 there's an action item -- this is on 13, somebody
21 injected resurfacing capital into the RVH and
22 LINC. That is an action item for me to go back
23 and find out what happened.

24 And then boy, you say this is
25 an odd maneuver, and you're talking through the

1 timing of the Golder report and then the testing
2 that you do in 2017.

3 And again I'm just trying to
4 summarize a fair bit of information in a short
5 period of time.

6 You seem candid in this
7 discussion with Ms. MacNeil that you had concerns
8 about the fact that friction testing had been
9 done, microsurfacing had been recommended but not
10 done, and then there was a three-year period where
11 nothing happens, and then PSV testing was done but
12 not rerun when it was inconclusive. I know I
13 summarized a number of things, but is that fair
14 that you were trying to convey that information
15 and your concerns about that information to
16 Ms. MacNeil?

17 A. Yeah, correct. I mean,
18 we've got, you know, this -- this is in sort of in
19 context to the media and they have identified an
20 expedited resurfacing. They've also noted that
21 the road is quote/unquote slippery, that we've
22 done further testing, so I'm trying to give her
23 some background as to what has been done over
24 time.

25 Q. You're also finding it a

1 bit bizarre that there was this quick move to
2 resurface but then it's drawn out by trying to
3 assess whether to recycle this asphalt that is the
4 subject of a Tradewind report. Was that also part
5 of the information that you're trying to convey,
6 that chronology is frozen that way?

7 A. That's correct.

8 Q. Registrar, can you turn
9 to image 22, please.

10 And so on this page and really
11 on the second half of this page from "so why don't
12 we follow-up an agenda on the 14th," and
13 Ms. Cameron said "we're doing the FOI at the same
14 time, all these OBL items are just going about
15 safety." And Ms. MacNeil says "oh."

16 At this period of time did you
17 have a view about going to council with the
18 lighting, speed and roadside safety reports
19 without raising the Tradewind report with council
20 first?

21 A. So to my -- at this point
22 in time to my knowledge we don't have a decision
23 to bring the Tradewind report forward yet. That's
24 my understanding of it.

25 Q. And so does that cause

1 you some concern that you would bring the
2 safety-related reports on lighting and speed and
3 the roadside safety assessment to public works and
4 to council and do that without them having
5 knowledge of the Tradewind report?

6 A. Yeah, correct.

7 Q. And you provided all this
8 information to Ms. MacNeil. And I've skipped
9 over, but she's providing sort of advice and
10 guidance to you about the FOI responsiveness. Why
11 did you want Ms. MacNeil to have a full sense of
12 the things that were rattling around in your
13 brain, I will say? It sounds like you have a lot
14 of things you're trying to convey to Ms. MacNeil
15 in this conversation. Why was that and was it you
16 were concerned about this issue sort of broadly?

17 A. Yeah, I mean, definitely
18 there's -- I mean, there's broad concerns
19 obviously. We've got legal involved at a fairly
20 high level. We've got a significant amount of
21 material that we're compiling and reviewing for
22 Freedom of Information request. We have this
23 report and this history of, you know, the
24 perceived performance on the road and it's all
25 getting ready to move forward in an FOI in sort of

1 a very short window. So I'm trying to read her
2 into what I knew at the time and what information
3 was available to me at that time.

4 Q. It appears that your
5 focus at this time is really on how to get through
6 one, figuring out what happened under Mr. Moore's
7 watch, and then two, the best way to deal with a
8 potential reputational fallout when the Tradewind
9 report is disclosed. Reputational to the City.

10 What thinking did you do, if
11 any, about the current safety of the road at this
12 time in December of 2018?

13 A. So I mean again all of
14 the -- you know, all of the understanding about
15 the potential for performance of the road, the wet
16 weather issues, the information that we had to
17 that point in time is obviously questions and
18 concerns about the safety of the road. But my
19 mind is turned to, you know, we have a major
20 resurfacing coming and that's where -- that's
21 where our focus is.

22 Q. I understand, but that's
23 at least six months away, maybe five months away
24 if you move quickly. What about that period of
25 time?

1 A. Well, in the interim I
2 know that since 2014 when this report was done,
3 there's been the 2015 I believe the CIMA roadside
4 safety review. I know that operations has tasked
5 a number of the items, and I can't remember, I
6 think there was a three-page chart of short and
7 medium and sort of long term countermeasures. So
8 I'm aware that there is a lot of activity taking
9 place around the safety of the road. But yeah, I
10 mean, in the immediate term that was my focus.

11 Q. Registrar, you can close
12 this down and go back to OD9, page 97 and 98,
13 please. And if you can call out 452 and 453.
14 Thank you, Registrar. In fact you can close
15 down -- thank you, Registrar.

16 On December 4 you followed up
17 with Dr. Uzarowski on your e-mail asking for the
18 final written report, and you ask as well why did
19 the pendulum testing not get performed during more
20 favourable conditions at another time. And we
21 will go through -- you have many conversations or
22 e-mail exchanges with Dr. Uzarowski about -- to
23 finalize the report, but particularly on this
24 question that you ask, why the pendulum testing
25 did not get performed during more favourable

1 conditions, did you receive an answer from
2 Dr. Uzarowski on that point?

3 A. I'm trying to recall all
4 the exchanges and I don't -- I don't recall
5 getting an answer on this. And maybe the record
6 will reflect that there was one, but I don't
7 recall at this time.

8 Q. Did you consider having
9 British pendulum testing arranged to be completed
10 again once weather conditions were more
11 favourable?

12 A. No, I don't think I
13 considered that at this moment. If you're asking
14 at the moment am I considering that, I don't think
15 I am.

16 Q. I am. Having learned
17 that the British pendulum testing was meaningless,
18 Dr. Uzarowski's words, as a result of the weather
19 conditions under which they were performed, were
20 you considering or did you consider rerunning
21 them?

22 A. Well, I mean, the e-mail
23 that I sent him was in December of 2018, and
24 apparently he tested in December of 2017 and the
25 conditions weren't favourable so at that point I

1 don't think I'm turning my mind to having him
2 rerun the tests like immediately, given that he
3 didn't get favourable results in the same season
4 last year.

5 Q. Registrar, could you
6 close this down and go to page 199, please. If
7 you can call out 455.

8 You'll see the underlined
9 portion of this e-mail that you sent to some of
10 your staff is all communications with the -- go
11 through my office via Dipankar, so Mr. Sharma. In
12 your past experience did you typically assign a
13 main contact person to deal with audit?

14 A. So --

15 Q. Sorry, when you had to do
16 with audits.

17 A. Yeah, I mean, in general
18 if we were dealing with audit it would usually be
19 through the project manager or SPM or something
20 specific to a project.

21 In this instance the auditor
22 is auditing a program, so sort of the entirety of
23 the condition assessments, the material designs
24 and the construction techniques. So to my
25 knowledge we haven't had a program audit before so

1 it would -- it made sense to assign a single key
2 person.

3 Q. Registrar, could you
4 close this down.

5 Mr. McGuire, we have received
6 evidence in the inquiry that Mr. Sharma created
7 spreadsheets of documents that were going to be
8 sent to the auditor. Did you have any direction
9 about whether to include the Golder or the
10 Tradewind reports on those spreadsheets?

11 A. No, I don't recall.

12 Q. We know that Mr. Sharma
13 sent the redacted version of the Golder report to
14 Mr. Pellegrini. To your knowledge did he,
15 Mr. Sharma, otherwise have a copy of the
16 unredacted version?

17 A. I don't recall that. I
18 mean, if he sent a redacted version I'm assuming
19 there was an unredacted version in our --
20 obviously in our system, but I don't know if he
21 had access to them.

22 Q. To your knowledge did
23 Mr. Sharma know of the existence of the Tradewind
24 report and what some context about its contents
25 were?

1 A. So Dipankar, or
2 Mr. Sharma, probably had an understanding about
3 all of the files that were in sort of the bucket
4 to deliver to audit, but I don't think he -- or
5 read or had a contextual understanding of each and
6 every one of them.

7 Q. He was not alive to the
8 sensitivities around the Tradewind report?

9 A. I don't -- I don't
10 recall. You know, Dipankar was assembling records
11 on the audit and then this came in, so I don't
12 think -- I don't know if we had that conversation
13 or if he was aware of it.

14 Q. Registrar, could you go
15 page 196 of OD9A. Paragraph 445, please.
16 Actually can you close this down, go to the page
17 before and call out 443, please.

18 So on December 4 Ms. Auty
19 e-mailed Mr. Zegarac and Mr. McKinnon saying based
20 on my conversations with Gord and Byrdena,
21 Ms. MacNeil, today, I think we need to get
22 everyone together on the same page to discuss the
23 totality of reports and information on this issue
24 and review next options. She proposes next
25 Thursday afternoon and sets out who should be

1 there, which includes you.

2 Do you remember attending the
3 meeting that was subsequently scheduled for
4 December 6?

5 A. If I remember correctly I
6 think December 6 was also like a rates budget and
7 then we had a conversation right after that.

8 Q. And do you recall that
9 Mr. Zegarac, Mr. McKinnon, Ms. Auty, Mr. McLennan
10 and Ms. MacNeil were among the attendees?

11 A. I recall -- and so again
12 I recall having a number of meetings on the Red
13 Hill.

14 Q. This would have been
15 first big one?

16 A. Yeah, so I do recall
17 having these meetings. I don't recall that
18 meeting in detail, but I do know that it was -- we
19 were overlapping with some of the other stuff that
20 was going on.

21 Q. Okay. Registrar, can you
22 close this down and can you go to page 201.

23 You'll see at 462 and 463 you
24 have a back and forth with Mr. Soldo in which you
25 say there's a meeting tomorrow with the City

1 manager. Legal and risk will advise of next
2 steps. I'll let you know ASAP. Mr. Soldo didn't
3 attend the meeting on December 6 to your
4 recollection?

5 A. No, not that I recall.

6 Q. Registrar, could you call
7 out the next page, please.

8 At the bottom of 201 and top
9 of 202 your binder contains an entry for
10 December 6, 2018, and it's been transcribed here.
11 Meet with Anne and Debbie Ann is what's on 201,
12 and then on 202 is the information on 202.

13 Registrar, could you pull out
14 202 at the top. There's no reference to attendees
15 or that this is a meeting; it's just dated. Are
16 those notes to yourself, the two items are things
17 you're thinking through, or are these notes of a
18 meeting?

19 A. You know, I don't recall
20 and these notes appear to be kind of a, like, back
21 of an envelope sort of set of notes. That was a
22 busy day. I believe we were -- like I mentioned,
23 I believe we were either in capital rates budgets.
24 I must have been over at city hall and meeting
25 with the freedom of information office and then

1 with the City manager. So I'm not sure if these
2 were notes or references to what's coming forward.

3 Q. Okay. So one of the
4 things that you note is is this roadway unsafe,
5 talk to Edward. At this time what discussions
6 were you having with Mr. Soldo about how to
7 determine whether or not the roadway was safe or
8 less safe or unsafe?

9 A. So my -- you know, again
10 my understanding at this point in time is that
11 CIMA is working on the roadside safety audit
12 that's going to be pulled into the report that
13 comes forward, and that looks like a flag for a
14 question that people will probably ask at a
15 meeting, so going to have that conversation with
16 Edward.

17 Q. You also say no friction
18 issue and then there's an arrow to CIMA and then
19 reference to MTO. What steps were you taking to
20 determine whether there were current friction
21 issues on the Red Hill?

22 A. At that moment in
23 December we weren't -- I was not -- sorry, are you
24 asking if I'm doing anything actively or if I'm
25 looking at what else is taking place?

1 Q. My question was what
2 steps are you taking to determine whether there's
3 a current friction issues on the Red Hill?

4 A. So at this point -- I
5 mean, at this point in time we've got the -- or I
6 have information from Golder, the 2017 Golder's
7 testing and review, which again I'm paraphrasing
8 from the proposal was a materials review of the
9 Red Hill or something along those lines, so
10 looking at that.

11 Q. The note also says
12 interim measures. What discussions or thinking
13 were you having or doing about interim measures,
14 that is, between that period of time and repaving?

15 A. I think -- I'm not sure
16 what the note reflects. If you're asking what
17 considerations am I thinking, those would be --
18 you know, recalling the role, I mean, we're not an
19 operational division. That would be over in
20 operations with Edward Soldo and his team. So --

21 Q. As it related to the
22 pavement surface you were not thinking about any
23 interim measures?

24 A. At this moment I am
25 focusing on the resurfacing.

1 Q. Okay. So for the period
2 of time from this moment, which is December 6th,
3 to going to council on January 23rd, did you focus
4 on resurfacing or did you think turning your mind
5 to any interim measures related to the pavement
6 surface?

7 A. No, I wasn't turning my
8 mind to interim measures at this point in time.

9 Q. Registrar, you can close
10 this and if you can go to 205 and 206, please.

11 Mr. Pellegrini asked you for a
12 meeting on December 10th and he sent you a
13 document called lines of inquiry which included
14 some items that we've excerpted in the overview
15 document.

16 Registrar, just for ease of
17 review, can you go to 206 and 207 now.

18 So you'll see the list of
19 questions that Mr. Pellegrini has. I'll give you
20 a moment to review them, but they are fairly
21 reasonable questions, kind of the same questions
22 that you were trying to get answers to; is that
23 fair?

24 A. Yeah. I mean, he's got a
25 series of questions there.

1 Q. You forwarded these --
2 the e-mail to Mr. McKinnon and said "FYI, the
3 audit and my ability to respond." That's in 484
4 on 207. I take it you had a lot of your plate at
5 this time and did not feel you had enough time to
6 respond to these questions; is that right?

7 A. Correct. I mean, you
8 know, if I was to -- I can't remember when he sent
9 me this e-mail that he wanted a meeting --

10 Q. December 10th he wanted
11 the meeting?

12 A. Yeah. When was this
13 e-mail sent?

14 Q. December 6th.

15 A. And I believe there's a
16 weekend in between there, or close to it.

17 Q. Well, more generally,
18 just during this period of time, the documents the
19 inquiry has received suggest that you, and with
20 Mr. McKinnon's support, are really asking for
21 breathing room into January to respond to the
22 audit. Is that your correction?

23 A. Yes, correct.

24 Q. So not just the weekend,
25 not just this particular discussion, but just

1 generally you don't feel you have time to actually
2 engage on this in addition to the other things on
3 your plate?

4 A. Correct.

5 Q. And Mr. McKinnon supports
6 you in that?

7 A. Yeah, I believe he does.

8 Q. Were you also concerned
9 that if the audit moved quickly that there was a
10 risk that audit would disclose the existence of
11 the Tradewind report before the City had a chance
12 to prepare for disclosure through a PWC or a
13 council process?

14 A. I don't think I've got
15 the concern that audit is to -- yeah, no, I'm not
16 sure. I don't believe audit is going to be done
17 or maybe have more information -- get the
18 information out before us. I'm just not ready to
19 get into the discussion with Dipankar -- or
20 Mr. Pellegrini at this time.

21 Q. Registrar, could you go
22 page 221 and 222, please. Apologies, can you go
23 to 214, please. At the top at 498 and 499,
24 Registrar, could you pull those out.

25 Ms. MacNeil e-mailed you

1 regarding CIMA's work on December 7th. She said:
2 "Can you please send me
3 something that explains the
4 current scope of work that
5 CIMA is undertaking for which
6 we're going to be
7 adding/updating them on the
8 Tradewind friction test
9 results. I need to reference
10 it in the retainer letter that
11 I am drafting."

12 So here Ms. MacNeil says --
13 conveys we are going to be adding, updating them,
14 that is CIMA, on the Tradewind friction test
15 results. Was that your understanding as of
16 December 7th, that CIMA would be updated on the --
17 and advised of the Tradewind friction test
18 results?

19 A. Yes.

20 Q. Who did you understand
21 was being retained in the reference to retainer
22 letter here?

23 A. Well, I mean, CIMA. Are
24 you asking who specifically at CIMA or --

25 Q. No, I'm asking if you

1 understood this to be that Ms. MacNeil is doing a
2 retainer letter to retain CIMA?

3 A. Yeah, correct.

4 Q. Did you know that
5 Ms. MacNeil was -- well, legal services was
6 considering retaining an external lawyer?

7 A. Yes, I am aware of that,
8 but I'm not certain where in time this sits and my
9 understanding of that other, or that overall
10 process.

11 Q. Okay. So as of
12 December 7th and this e-mail from Ms. MacNeil, who
13 did you understand would be the point -- the
14 contact from the City in dealing with CIMA on
15 issues relating to updating them about the
16 Tradewind friction testing results?

17 A. So at this point I think
18 that we've got a couple of assignments going with
19 CIMA on the roadside safety and the illumination,
20 and my understanding of the assignments from legal
21 were the liability or potential risk discussions
22 around it. That was what I sort of understood at
23 the time.

24 Q. I think I need some
25 clarification about that answer. So you say the

1 assignments from legal were the liability of
2 potential risks around it. What do you mean in
3 terms of the liability and potential risk? Do you
4 mean -- you understood CIMA was going to be asked
5 about that or to provide an opinion about that
6 part?

7 A. My understanding was
8 there was going to be a retainer for external
9 counsel in that external counsel, either through
10 us or through CIMA, would be providing some
11 technical advice on the -- sort of the liability
12 aspect of the Tradewind friction.

13 Q. Okay. And what did you
14 understand about an engagement of CIMA in respect
15 of the Tradewind friction testing results that
16 would relate (indiscernible) to liability but just
17 for the technical aspects, for example,
18 interpreting the friction values set out in the
19 Tradewind report?

20 A. I don't think we've got
21 an assignment with them yet for reviewing the
22 technical aspects of it.

23 Q. Was there a plan to?

24 A. Not yet. I mean, not to
25 my mind, no, I don't think we've had that

1 conversation quite yet about it, but we're
2 still --

3 Q. I'm sorry to interrupt.

4 So just to be clear, there is a conversation that
5 you attend on January 3 about that. Is that the
6 conversation that you're thinking about?

7 A. I believe so, yes.

8 Q. So there's no
9 conversations between -- or there is no intent in
10 your mind to retain CIMA to interpret the friction
11 test results for your benefit on the materials
12 side between -- in December of 2018?

13 A. I haven't had that
14 conversation. And again, you know, I've got
15 Golders now that I think we have a review underway
16 on the materials on that side, so I hadn't turned
17 my mind to that. I believe we turned our mind to
18 having CIMA review the 2014 results.

19 MS. LAWRENCE: I see.

20 Commissioner, I see I've gone
21 a little past 11. It's 11:04 now.

22 JUSTICE WILTON-SIEGEL: That's
23 fine. I was aware of that. I assumed that you
24 would find a suitable break. Let's take a break
25 until 11:20.

1 --- Recess taken at 11:04 a.m.

2 --- Upon resuming at 11:24 a.m.

3 BY MS. LAWRENCE:

4 Q. Mr. McGuire, just before
5 the break we were talking about your understanding
6 of CIMA's engagement to be provided with a copy of
7 the Tradewind report. I think your evidence was,
8 but I would like to confirm, that at this point
9 you were working with Golder on the 2017 Golder
10 pavement evaluation results and so you did not see
11 the need to engage CIMA to interpret Tradewind --
12 the Tradewind results for you from a perspective
13 of assessing the pavement surface; is that right?

14 A. That's correct.

15 Q. Did you understand that
16 CIMA would be provided with a copy of the
17 Tradewind report in respect of its work on the
18 roadside safety assessment?

19 A. No, I'm not certain if
20 they were or they weren't, but I understand that
21 they were getting a copy of the report through
22 legal but I'm not sure if it was simultaneous
23 or -- I wasn't aware of the data being provided
24 through the roadside safety.

25 Q. Fair enough. My question

1 is really whether you were aware at that time
2 that -- not of what information was going to them,
3 but whether Mr. Soldo and you understood that CIMA
4 would be provided with a copy of the Tradewind
5 report for the purposes of providing advice back
6 to Mr. Soldo on the roadside safety report?

7 A. No, I don't have an
8 understanding of that, of that data exchange and a
9 recollection of it.

10 Q. So you don't know either
11 way?

12 A. No, I don't.

13 Q. And at the time you
14 didn't know either way?

15 A. Recall, I mean, there's a
16 significant confluence of activity taking place
17 with the Freedom of Information report, the audit
18 and the other things going on, so I don't recall
19 exactly who was being supplied data for what
20 purpose at what time.

21 Q. So I acknowledge that
22 there was a confluence of information. This is an
23 important part that I would really like to ensure
24 is clear. And so you understood that CIMA was
25 going to get a copy of the Tradewind report; is

1 that right?

2 A. Correct.

3 Q. And that legal was going
4 to provide them with a copy of the Tradewind
5 report?

6 A. Correct.

7 Q. And did you understand
8 the purpose for which CIMA was being provided with
9 a copy of the Tradewind report?

10 A. My understanding was it
11 was part of a retainer with I think it was a
12 Mr. Boghosian from a risk and liability
13 perspective.

14 Q. Okay.

15 A. Sorry, was that --

16 Q. I think that was just an
17 audio issue.

18 Registrar, could you go to
19 OD9A 213, please, and can you call out 497.

20 So you're not copied on this
21 e-mail, Mr. McGuire, but Ms. Auty writes to
22 Mr. Boghosian, who is an external lawyer, and she
23 sets out that she's looking for his advice on
24 three points: a general risk liability assessment
25 including any thoughts on the FOI request. I

1 think that you just said that that's what you
2 understood CIMA was going to be provided with the
3 Tradewind report to complete; is that right?

4 A. Correct.

5 Q. And the second that
6 Ms. Auty says is how to approach obtaining CIMA
7 consultant input on whether interim measures are
8 needed to protect safety before the resurfacing is
9 complete. Were you aware that Ms. Auty was
10 seeking this advice from Mr. Boghosian?

11 A. No, I was not.

12 Q. Were you aware that
13 Mr. Boghosian was going to provide advice or
14 attempt to provide advice about interim measures?

15 A. I wasn't -- you know, I
16 don't believe I had much involvement with the
17 retainer or discussion with Mr. Boghosian so I
18 didn't have a lot of detail on that.

19 Q. I understand you didn't
20 have much involvement, but in terms of your
21 knowledge did you understand that Mr. Boghosian
22 was going to be providing advice about CIMA's
23 input on interim safety measure?

24 A. No, I don't think I
25 understand that.

1 Q. Registrar, could you
2 close this and go to page 220, please. Registrar,
3 I think you might need to try again. Page 220 of
4 OD9A, please. Thank you. Can you call out 521
5 and 522. Registrar, I'm sorry, can you close this
6 callout and call out 520 to 522. Thank you.

7 Mr. McGuire, you'll see in 520
8 on December 8 that you e-mailed Mr. Malone and
9 said, "Hi Brian. Did our legal group get in touch
10 with you on the safety report?" And Mr. Malone
11 replied that he had not been contacted.

12 The reference to the safety
13 report, does that refresh your memory about what
14 you understood the legal group was getting in
15 touch with Mr. Malone to discuss?

16 A. If I -- if I recall,
17 Ms. MacNeil said that they were going to be
18 exchanging information on -- yeah, with respect to
19 the Tradewind report and with respect to the other
20 part of the retainer.

21 Q. What's the reference here
22 to the safety report?

23 A. Well, I think what I'm
24 understanding at this point is that Brian is
25 providing a fair bit of input into that joint

1 report which -- or bringing forward and that legal
2 is getting in touch with him as well on the other
3 aspect.

4 Q. Sorry, I'm not following
5 your answer. Which other aspect?

6 A. Well, so I think I'm kind
7 of joining a few things here. The safety report,
8 which is the roadside safety audit, and then legal
9 was reaching out to him on the other part, which
10 was the retention with Boghosian.

11 Q. Okay. At 521 Mr. McGuire
12 forwarded your response to Ms. MacNeil and you
13 asked if:

14 "Did you get a hold of the
15 CIMA contact via Edward? I
16 was wondering. And, if so,
17 can I talk to CIMA
18 confidentially."

19 So up to this point had you
20 received any advice from Ms. MacNeil about
21 contacting CIMA in respect of the Tradewind
22 report?

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

24 Q. Okay. So why were you
25 asking if you could speak to CIMA confidentially?

1 A. Yeah, I mean, you know, I
2 think I'm now aware of the sensitivity and what's
3 going on. Maybe the word confidentially -- yeah,
4 maybe it's -- I don't know if it's correct, but
5 I'm just trying to have a conversation with Brian
6 and I know that Ms. MacNeil told me to wait.

7 Q. So Ms. MacNeil did tell
8 you to wait to contact CIMA before December 8?

9 A. Did she -- I mean, did
10 you not show me that in a previous e-mail, that
11 she said hold on until we retain him?

12 Q. There's an e-mail at 522
13 that says I would strongly advise that you not
14 speak with CIMA about this matter, but that comes
15 in reply to your e-mail, which looks like you're
16 asking if you can speak to CIMA confidentially.
17 And I wondered if Ms. MacNeil's reply where she
18 says don't speak to CIMA, if that was not the
19 first time that she had told you that?

20 A. Well, I mean, on
21 December 8th I know that the legal group is trying
22 to get in touch with them so I'm not sure where I
23 got that information from. Maybe that was a
24 conversation with Ms. Auty but -- so I'm aware
25 that they are having communications with them so,

1 you know, in order not to step on toes I'm trying
2 to figure out if I can have a conversation.

3 Q. What did you want to
4 speak to Mr. Malone about?

5 A. Well, I'm trying to
6 understand I think at this point if he's seen
7 anything in that roadside safety review that will
8 be impactful for the budgets and anything is
9 coming forward from the capital programming for
10 the resurfacing. That was really I think the
11 intent of me trying to reach out to Brian.

12 Q. So we know that the
13 roadside safety assessment in part was to set the
14 scope from traffic's perspective about the
15 resurfacing and you want to reach out to
16 Mr. Malone to ask about what might be included in
17 the scope. Am I understanding your evidence
18 correctly?

19 A. Correct. And I think at
20 this instance I'm just trying to find out if Brian
21 is seeing anything that's going to be a
22 significant concern and just touch base with him.

23 Q. Okay. Mr. Soldo is the
24 point person with Mr. Malone on this. Why would
25 you be reaching out directly rather than going

1 through Mr. Soldo?

2 A. I still -- I mean, we
3 have a relationship with CIMA with respect to the
4 illumination. I'm just trying to find out if I
5 can have a quick chat with Brian, and Byrdena
6 indicates it's best that I don't.

7 Q. So you say can I speak to
8 CIMA confidentially, and you're just asking about
9 scope and how the roadside safety assessment is
10 going?

11 A. To my knowledge, yes. I
12 mean, I don't -- I don't have a recollection of
13 trying to get anything different to CIMA or from
14 CIMA at that time.

15 Q. Okay. I'm going to
16 suggest to you that you were wanting to reach out
17 to Mr. Malone to talk about the implications of
18 the Tradewind report.

19 A. Yeah, I -- I understand
20 what you're saying, but I think at that point kind
21 of hands off on that. I know that that's either
22 been supplied to him through legal or, you know,
23 he's going to be -- or they will retain him from
24 that perspective.

25 Q. You don't want to talk to

1 Mr. Malone about the Tradewind report and its
2 implications on the surface or on anything else?

3 A. Not -- not to my
4 recollection at this time.

5 Q. I'm going to suggest to
6 you that this is a stressful period for you, and
7 that you had already gone to Mr. Malone knowing
8 that he's a pretty --

9 A. I'm not on the --

10 Q. -- person, and that you
11 wanted to go to him because you thought he might
12 be able to provide some good background
13 information, brainstorming, something like that;
14 is that not right?

15 A. It's an interesting -- I
16 mean, it's an interesting time, that's for sure.
17 So I think if I was -- you know, I do have an
18 ongoing process with Golders, so I think I'm
19 headed down that path on where we are with the
20 existing material stuff. And I don't really
21 recall -- this is a one line or whatever e-mail,
22 and I don't recall if I followed up. So it wasn't
23 anything that was something that I pursued I
24 believe in great detail.

25 Q. Thank you. I have your

1 evidence on that point.

2 Ms. MacNeil responds I would
3 strongly advise you -- sorry, maybe I should take
4 you to the first paragraph first:

5 "We have not contacted CIMA
6 yet because we are still
7 working on how we are going to
8 put the request to them in
9 order to best move forward
10 from a legal perspective. I
11 would strongly advise you not
12 speak with CIMA about this
13 matter until you've heard back
14 from us/Nicole. We should be
15 able to update you on this
16 next week, I hope by midweek."

17 Did you understand at least
18 until you received a further communication from
19 Ms. MacNeil or Ms. Auty that you were not to speak
20 to CIMA about the Tradewind report?

21 A. Yeah, I mean, that's my
22 understanding at that point.

23 Q. Did you understand that
24 there was any limitation on speaking to CIMA --
25 that City staff speaking to CIMA about CIMA's

1 existing current projects like the roadside safety
2 assessment?

3 A. No, I didn't think there
4 was any restrictions on that, or the illumination
5 review or any conversations with Golders or
6 anything else for that matter.

7 Q. Did you convey to
8 Mr. Soldo that you understood that City staff, you
9 and Mr. Soldo were not supposed to speak to CIMA
10 about the Tradewind report while legal was trying
11 to work through the best move -- the best way to
12 move forward?

13 A. Sorry, you asked if --

14 Q. If you conveyed that to
15 Mr. Soldo?

16 A. I don't believe I
17 conveyed it to Edward, no.

18 Q. Registrar, you can close
19 this down and if you can go to 241, page (sic)
20 566.

21 You follow up with Ms. MacNeil
22 about arranging a call with Mr. Malone, "should we
23 get a call going with Brian? He's in the office."
24 And Ms. MacNeil says "I haven't received any
25 direction on this. We won't be in a position to

1 speak to Brian today."

2 From other documents we
3 understand that Mr. Malone is in the City office
4 to -- in respect of a meeting. Do you recall
5 that?

6 A. Was he in a meeting with
7 me or is he in a meeting with other folks?

8 Q. No, he's meeting with
9 other folks.

10 A. Okay. No, I don't recall
11 that.

12 Q. Why were you reaching out
13 to Ms. MacNeil to ask about getting a call going
14 with Brian?

15 A. So I think -- well, so
16 this one appears to be me seeing if she's
17 connected yet through and he's in the office, so
18 if she wants to have a conversation with him I can
19 connect them. That appears to be what I'm telling
20 her here.

21 Q. That is not what it says,
22 Mr. McGuire. It says "should we get a call going
23 with Brian." I'm going to suggest to you you
24 wanted to have a call with Mr. Malone and
25 Ms. MacNeil; isn't that right?

1 A. So what I'm saying here,
2 what I'm reading here, is he's in the office and
3 that Byrdena or Ms. MacNeil hasn't connected with
4 him yet, would she like to get a call. And if --
5 yeah, and if there was a conversation around
6 Tradewind I could provide the background on it
7 considering I've got a fair bit of -- the history
8 on it but....

9 Q. At this point you would
10 like Mr. Malone's insight into the implications of
11 the Tradewind report; is that right?

12 A. At this point I'm
13 trying to facilitate it looks like a conversation
14 with legal because I think I understand that we're
15 moving forward with a report to council on it, but
16 yeah, so that's what I'm reading with this.

17 Q. Yeah, I don't think you
18 answered my question. My question was. At this
19 point you wanted Mr. Malone's insight into the
20 implications of the Tradewind report; isn't that
21 right?

22 A. At this point we're
23 looking for some insight into it and I believe
24 that legal is taking that on so....

25 Q. So then your answer is

1 no, you personally were not looking to have -- you
2 didn't want Mr. Malone's insight? Is that your
3 answer?

4 A. I mean, at this point in
5 time I'm letting legal run with whatever their
6 assignment is and I'm trying to continue to move
7 forward with, you know, our program and the
8 resurfacing program.

9 Q. Ms. MacNeil says "I
10 haven't received any direction." Did you have any
11 discussions with Ms. MacNeil to provide some
12 context to what she means by "any direction" and
13 from whom she would be getting direction?

14 A. I don't believe I
15 responded to this e-mail. What she told me was
16 no, and fair enough, and that was it, done.

17 Q. So did you have any
18 discussions with Ms. MacNeil to provide some
19 context from whom she was getting direction?

20 A. No, I don't believe I
21 did.

22 Q. We'll come back to this
23 because it comes up again in January. Through
24 this period of time from December 12th into
25 January did you have any discussions with Ms. Auty

1 about whether or not you could contact CIMA and if
2 there's any limitations there?

3 A. I don't recall having any
4 conversations with Ms. Auty in that timeframe.
5 And I'm looking at the dates, thinking we were
6 very close to Christmas, and if I recall correctly
7 I'm off the week before Christmas so I'm not sure
8 what, if anything, happens in the next few weeks.

9 Q. Registrar, you can close
10 this down. Could you go to page 227,
11 paragraph 538. Paragraph 538. Thank you,
12 Registrar.

13 So this is December 11th and
14 Ms. Cameron, your assistant, e-mailed Ms. Watson
15 in the privacy office, copying Ms. MacNeil. She
16 advised that they -- I think that's your team --
17 expected to gather information by the first week
18 of January.

19 Apart from the documents that
20 you've already provided to Ms. MacNeil and I think
21 you said yesterday asking Mr. Becke for documents,
22 what other document collection process were you
23 using?

24 A. So with respect -- this
25 is with respect to the FOI --

1 Q. Yes.

2 A. So the document
3 collection process was -- I can't remember the
4 exact requests from the FOI, but we went back
5 through what's our roster assignments, the
6 professional services roster, and I believe that
7 Diana went through that to determine if there was
8 any roster assignments that -- professional
9 services assignments that would potentially comply
10 with that.

11 And my expectation is that
12 Diana would have contacted the managers and admins
13 in the sort of relevant sections, so the asset
14 management folks from -- and again I'm kind of
15 losing track a little bit, I'm not sure if we
16 provided the road surveys or any of the other
17 reports that may be available from them and the
18 available reports from design because they had
19 some work on there. So sorry, longwinded answer,
20 but it would have been kind of a collaborative
21 thing through a few different processes.

22 Q. Okay. And it sounds like
23 -- you said my expectation is that Diana would
24 have contacted managers and admins, so you left
25 this to Diana to coordinate?

1 A. Yeah, from a big part of
2 it, correct.

3 Q. Registrar, can you close
4 this down. Can you go HAM62512. This is a draft
5 opinion letter that Mr. Boghosian prepared dated
6 December 13 and he sent it to Ms. Auty. Were you
7 aware that Mr. Boghosian had provided a draft
8 opinion to Ms. Auty in December of 2018?

9 A. I'm aware that she's --
10 well, I'm aware that she's retained him. I'm not
11 sure if I'm aware that she has received this
12 opinion at that time.

13 Q. Well, cast your mind
14 back. So can you be more definitive about whether
15 you were aware about the existence of this opinion
16 in December of 2018?

17 A. No, I can't. I know that
18 I'm aware of the opinion. I'm not sure if I'm
19 aware in December or January or as we lead up into
20 the February report.

21 Q. In -- Mr. Boghosian does
22 finalize this report later, so I'm asking very
23 specifically about this draft report. We don't
24 have any indication that you received a copy of
25 it, at least through electronic documents. Does

1 that assist with whether you were aware of the
2 existence of this draft report in December?

3 A. I don't recall ever
4 seeing it prior to this proceeding, and no, I
5 don't recall being -- I'm aware of it. I know
6 that it's ongoing, but I'm not -- I haven't seen
7 it.

8 Q. That is to say you're
9 aware that Mr. Boghosian has been retained?

10 A. Correct.

11 Q. But are you aware he's
12 actually put something down on paper and sent it
13 back to the City?

14 A. I'm not aware of that to
15 my knowledge.

16 Q. Registrar, can you go to
17 images 7 and 8, please. Mr. Boghosian summarizes
18 a call that he had with Mr. Malone on December 11,
19 2018. Registrar, can you pull up on image 8 "when
20 asked to rank," that paragraph in the middle of
21 page 8.

22 First before we get to the
23 content of this, were you aware in December that
24 Mr. Boghosian had spoken to Mr. Malone on December
25 11th?

1 A. No, I don't -- I'm not
2 aware of that.

3 Q. You were not aware of
4 that. And Mr. Malone, as set out in this draft
5 opinion, advised when asked to rank in the order
6 of greatest contribution to the inordinate number
7 of wet road crashes, slipperiness of the road is
8 the first listed, and then speed, and then curves
9 in the road, and then close proximity of on/off
10 ramps to each other.

11 Were you aware of Mr. Malone's
12 views as expressed throughout Mr. Boghosian that
13 slipperiness of the road surface was, in terms of
14 ranking, the greatest contributor to the
15 inordinate number of wet road crashes?

16 A. No, I wasn't aware.

17 Q. Registrar, you can close
18 this down. Registrar, could you close this down
19 and open up RHV1002, please. I think there might
20 have been a typo in that. RHV1002. Thank you.

21 You were listed as an attendee
22 in a calendar invitation sent by Mr. Zegarac for a
23 meeting on December 14th, 2018. This was the
24 meeting that was four days before the meeting with
25 the mayor, if that assists. We have these notes

1 from you that are dated December 14, 2018, and say
2 Dan, Mike in the top corner.

3 Can you identify whether these
4 notes of yours were notes from the meeting that
5 Mr. Zegarac scheduled for December 14th?

6 A. Sorry, you're asking if
7 you think these are my notes, or are you asking me
8 to confirm they are my notes?

9 Q. I'm asking you to confirm
10 if these are notes of a meeting that you had with
11 Mr. Zegarac and others?

12 A. If they were dated and
13 identified, then I would have to agree that they
14 would be notes of the meeting.

15 Q. I ask in part because
16 Ms. Auty was at this meeting, she also prepared
17 notes, and her name is not referenced here. Just
18 says Dan and Mike at the top. Do you recall
19 having a meeting just with Dan and Mike, not with
20 legal, on December 14th?

21 A. No, I don't.

22 Q. So your notes here
23 reference looking at the public works staff report
24 from January 2018, the 18008, checking with (ph)
25 you on Golder I think to understand the status of

1 their -- the POs in respect of the Golder pavement
2 evaluation. Do an info report, it says --
3 January 14 is circled and then 28 is above. 2018.
4 So again that seems to be a historical document.
5 It says "staff are performing tasks, MFIPPA,
6 access to info, resurfacing functional, priority
7 road." And then it says "info update will be
8 updated. Identify issues advance of report to
9 ensure public safety."

10 I'm just going through that
11 because I'm not going to ask you specific
12 questions about this, I'm going to go into Ms.
13 Auty's notes, but I just wanted you to have a
14 sense of what your notes reflected.

15 Registrar, could you mark this
16 as the next exhibit, please.

17 THE REGISTRAR: Noted,
18 counsel. Thank you. It's Exhibit 198.

19 EXHIBIT NO. 198: Transcription
20 of handwritten notes; RVH1002

21 BY MS. LAWRENCE:

22 Q. Thank you. Registrar,
23 you can close this, and if you can go back into
24 OD9A, page 254 and 255, please.

25 So 254 notes. This is a

1 transcription of Ms. Auty's notes. Registrar, can
2 you now go to 255 and 256. Thank you. Can you
3 pull out the content of page 255, please. Thank
4 you, Registrar.

5 For some reason this
6 particular document seems --

7 A. Kind of fuzzy.

8 Q. Fuzzy, blurry. If you're
9 having trouble reviewing it, Mr. McGuire, just let
10 me know and we'll deal with it.

11 A. I can make it out.

12 Q. Good. So you see the
13 attendees include you at the top and Mr. Soldo,
14 Mr. McKinnon and Mr. Zegarac, and these are Ms.
15 Auty's notes, so she was there as well. Do you
16 recall meeting with those individuals in
17 mid-December, December 14?

18 A. No, I don't have a direct
19 recollection of it, but, you know, I know that we
20 had a series of meetings with, you know, different
21 folks in the room, but yeah.

22 Q. I think this might be the
23 first meeting that you and Mr. Soldo attend
24 together. Does that assist?

25 A. No, not really, but I

1 mean there was a series of meetings that went on
2 for a little while. But yeah, that's fine, I'll
3 take that.

4 Q. So Ms. Auty's notes
5 reflect a reference to Mr. Zegarac and then
6 referencing Mr. Boghosian. It's a bit hard to
7 make this out. Would recommendations change with
8 Golder friction testing. Boghosian, CIMA/share
9 friction testing to assess outstanding safety.
10 CIMA/share friction testing to assess outstanding
11 safety.

12 So in this meeting did you
13 understand that CIMA had been provided with a copy
14 of the Tradewind report in order to assess
15 outstanding safety?

16 A. You know, I don't really
17 recall the meeting, and these are Nicole's notes,
18 or is this --

19 Q. These are Nicole's notes.

20 A. Yeah. And I'm not sure,
21 I mean, is this sort of action planning, or is
22 this -- this has occurred? I don't -- I'm not
23 sure.

24 Q. Just moving aside from
25 the notes for a minute and just back to my

1 question. Recognizing you don't really recall the
2 meeting, do you recall at this point understanding
3 that CIMA had been provided with a copy of the
4 Tradewind report in order to assess outstanding
5 safety?

6 A. I'm not sure when I
7 understood that to happen, if it was at this
8 meeting or potentially in January. I know that we
9 end up eventually having like a follow-up meeting
10 and Brian prepares a letter, so I'm not sure at
11 this point if I know they have got it or not.

12 Q. So I think that the
13 meeting that you're thinking of is January 30th,
14 so that's some time away and it's after staff go
15 to council on the 23rd. So if you can cast your
16 mind back to understand whether in December you
17 understood that CIMA had been provided with a copy
18 of the Tradewind report to assess outstanding
19 safety?

20 A. Again that would be, you
21 know, with legal, and I don't recall exactly what
22 they may or may not have, A, retained, or B,
23 supplied.

24 Q. Okay. I'll put the
25 question differently. In January, on January

1 30th, and we'll get there, did you understand that
2 CIMA had already -- so CIMA -- there's a call, and
3 then CIMA prepares a letter, the February 4th
4 memo. Did you understand that prior to that time
5 CIMA had had a copy of the Tradewind report to
6 assess outstanding safety?

7 A. Sorry, we fast forwarded
8 into the end of January?

9 Q. We have. I'm just trying
10 to narrow --

11 (Speaker overlap)

12 A. Somewhere in that
13 timeframe, yes. I understand that they have
14 retained -- been provided a copy.

15 Q. Did you understand that
16 prior to that discussion in January of 20 --
17 January 30th, that they had been retained and
18 provided with a copy of the Tradewind report?

19 A. Prior to the 30th?

20 Q. Yeah.

21 A. Yes, I would have.

22 Q. Yes, that's what you
23 understood?

24 A. Yeah, correct.

25 Q. Registrar, could you

1 close this and call out the bottom half of this
2 page starting from "ES enforcement/speed." Just a
3 little bit above. Yeah.

4 I infer from these notes that
5 Mr. Soldo gave some information about enforcement
6 speed, including curb and cats eyes. Does that
7 refresh your memory about this meeting, the first
8 one on which Mr. Soldo appears to have attended?

9 A. No, not really.

10 Q. You are referenced here
11 by Ms. Auty as saying "can't do anything to the
12 surface, did prelim review/tender/timing," and
13 then there's a reference to the Golder 2017
14 testing that they did. It says here "can't do
15 anything to the surface."

16 Was that your opinion in
17 December of 2018, that in December of 2018 there
18 was nothing that you could do to the surface
19 pending resurfacing?

20 A. Yeah, at this point in
21 time it's the winter, so there's little that we
22 could do. You know, paving operations have
23 stopped, mainline paving operations would have
24 stopped, and there's limited things that we could
25 do to the surface. So just in case anyone is

1 asking that question until, you know, we get out
2 into in warmer weather.

3 Q. It says "did prelim
4 review." What preliminary reviews had you done in
5 December of 2018?

6 MS. CONTRACTOR: Sorry, I'm
7 not sure I understand the question. Could you be
8 a bit more specific.

9 BY MS. LAWRENCE:

10 Q. Sure. There's a
11 reference to prelim review. I'm asking for
12 insight about what that term means and what prelim
13 reviews you had done in December of 2018.

14 MS. CONTRACTOR: Right. So
15 these aren't Mr. McGuire's notes, so he can't
16 interpret them. If you want to know generally in
17 December what preliminary review he completed,
18 then I'm just asking that you be a bit more
19 specific about what type of preliminary review
20 you're referring to.

21 BY MS. LAWRENCE:

22 Q. Mr. McGuire, had you
23 completed any preliminary review about whether
24 there could be anything done to the surface in
25 December of 2018?

1 A. When I read that, I see
2 the tender and timing really relating in my mind
3 to the resurfacing project. So maybe, yeah, and
4 that's trying to read through Nicole's notes.

5 Q. Would you have
6 characterized the process to go through the hot
7 in-place recycling and assess an appropriate mix
8 that was not recycled, would that be -- would you
9 characterize all of that as a preliminary review
10 leading to the resurfacing project?

11 A. Again, I don't recall the
12 meeting in detail. These aren't my notes. You
13 know, I know we've had conversations around what
14 could or could not be done to the surface, you
15 know, during a winter. What I'm taking from the
16 next set is that that sort of transitions into how
17 we're going to get the resurfacing project out
18 from a tender and timing perspective. What we
19 mean by preliminary review, I'm unsure.

20 Q. Registrar, could you go
21 HAM55560, please, and image 8. If you could call
22 out the first half of this page, please. Thank
23 you.

24 At the very top entry,
25 December 13, it says:

1 "Soldo reached out to second
2 safety consultant for
3 independent review of the
4 work/issues - just to see if
5 available (Auty says not
6 required to do this)."

7 And then it says "INTUS Road
8 Safety Engineering."

9 Did you ever discuss with
10 Mr. Soldo reaching out to another safety
11 consultant for the potential of an independent
12 review?

13 A. You know, Dan -- there
14 was quite a lot going on at that time. I don't
15 recall -- there's a number of consultants and
16 folks being, you know, either talked about or
17 retained. So no, I don't recall directly having a
18 conversation about an independent review.

19 Q. So I know that there's a
20 lot going on during this period of time. I know
21 that you're working with Golder. CIMA is in the
22 mix as well. Were there other consultants being
23 discussed?

24 A. Well, I mean, there's
25 legal retaining or having a conversation with

1 Mr. Boghosian I believe.

2 Q. Okay.

3 A. And -- so had we retained
4 AME yet for a mix design or is that coming up?

5 Q. I think that's much later
6 in 2019.

7 A. Is it? Okay. Yeah,
8 maybe we're considering that.

9 Q. So I think your evidence
10 was, I don't recall directly having a conversation
11 about -- with Mr. Soldo about an independent
12 review; is that right?

13 A. Correct.

14 Q. Did you consider
15 obtaining another consultant to review the safety
16 of the Red Hill, including friction levels, with
17 fresh eyes, someone who hadn't been involved
18 before?

19 A. So, I mean, at this point
20 in time I've got an assignment or the beginnings
21 of assignment or trying to understand the
22 assignment with Golder. So no, I don't think I've
23 considered, you know, yet another body to bring
24 into this and try and understand where we are.

25 Q. Do you recall being

1 present during discussions in which Ms. Auty and
2 Mr. Soldo talked about whether to reach out to
3 another consultant and Ms. Auty saying not
4 required to do this?

5 A. No, I don't recall that.

6 Q. Do you remember being
7 present at any discussions in which Ms. Auty gave
8 any advice or recommendations about consultants'
9 retainers?

10 A. No, I don't.

11 Q. Registrar, you can close
12 this down, and if you can go to 258, please.
13 Could you bring up 259 as well, please. Thank
14 you.

15 Mr. McGuire, between 609 and
16 610. This is a back and forth between
17 Ms. MacNeil, you, Ms. Auty, Mr. Sabo and
18 Mr. McLennan, and it is Ms. MacNeil providing a
19 copy of the 2013 CIMA report and her views about
20 whether this record is responsive to the FOI,
21 which she recommends that it is, and you respond
22 at the top of 259 that you attach two reports on
23 the LINC, 2015 and 2018, and these were both staff
24 reports. Do you remember this back and forth?

25 A. No, I don't.

1 Q. Prior to receipt of Ms.
2 MacNeil's e-mail enclosing the 2013 CIMA report,
3 were you aware of the existence of that report?

4 A. The 2013?

5 Q. CIMA report.

6 A. I mean, to my knowledge,
7 I think I am.

8 Q. I don't mean to send you
9 down the wrong path. The 2013 CIMA report is the
10 one which flows from the first illumination --
11 first motion to seek information and guidance
12 about safety including illumination. I don't know
13 if that assists.

14 A. Yeah. So yeah, I believe
15 I'm aware.

16 Q. Were you previously aware
17 that in the 2013 CIMA report, CIMA recommended
18 friction testing on the Red Hill?

19 A. I don't believe I was
20 aware of that.

21 Q. You get this document
22 from Ms. MacNeil, and then in response you attach
23 two staff reports, December 7, 2015 and
24 January 15, 2018. Had you already reviewed those
25 staff reports before you sent them to Ms. MacNeil?

1 I mean like in the weeks before you sent them to
2 Ms. MacNeil, was this something that you already
3 had in your possession?

4 A. I can't recall.

5 Q. You note that in these --
6 in appendix A, that friction testing is listed as
7 a medium-term measure that has been performed and
8 marked as complete. Did you -- had you reached
9 out to anyone to learn what friction testing had
10 been complete as being identified on appendix A?

11 A. No. I mean your -- I've
12 been given the 2013 CIMA report, which I think we
13 understood from an illumination perspective. I
14 send back the staff reports on the Red Hill and
15 the LINC countermeasures and identify that
16 friction testing has been marked as complete.

17 Q. Yes.

18 A. Yes.

19 Q. So did you ask anybody
20 about how that friction testing complete (ph) came
21 to be on appendix A?

22 A. If I recall correctly,
23 I -- I don't know if I asked at this exact time,
24 but potentially I had a conversation with -- it
25 might have been Martin White or someone in

1 operations. I believe they were the authors of
2 that report.

3 Q. Are you sure if you had a
4 conversation with them? You said I potentially
5 had a conversation.

6 A. No, I'm not. I'm just
7 trying to cast my mind back. I don't have a
8 direct recollection, no, of who I reached out to,
9 but -- yeah, I noted that it was identified as
10 complete.

11 Q. So if you were going to
12 reach out to someone, sitting here today, you
13 think you probably would've reached out to
14 Mr. White, but you don't recall if you actually
15 reached out to him or not?

16 A. Yeah, that's correct.

17 Q. Registrar, can you go to
18 page 261. Just before you do, just the last
19 question on the last topic. Didn't you find it
20 confusing that a friction test was marked as
21 having been complete when you understood that
22 staff didn't know about the 2014 Tradewind report?

23 A. So I think my -- my
24 understanding was that the 2018 report was
25 referring to the 2017 Golder's assignment, but

1 yeah, that was the connection that I made.

2 Q. So by December of 2018,
3 you viewed the 2017 Golder pavement evaluation to
4 be friction testing?

5 A. I believe so, yes.

6 Q. And thought that it was
7 marked as complete friction testing even though
8 you now know in December that Golder has not ever
9 provided a written report on that?

10 A. So I identified to
11 Byrdena that -- or Ms. MacNeil that it had been
12 flagged as complete. I don't believe I followed
13 up with any other commentary.

14 Q. Yes, and my questions was
15 weren't you curious? Wasn't it confusing?

16 A. I mean, yes, there's a
17 lot of different things going on and now we have a
18 report that identifies that we've got a
19 countermeasure that's complete, and so to the best
20 of my understanding, I'm still trying to resolve
21 where we are with the 2017 assignment.

22 Q. Registrar, could you call
23 out 614 and 615.

24 The calendar invitations that
25 the inquiry has show that there was a meeting with

1 the mayor and Mr. McKinnon, you, Ms. Auty, the
2 mayor's chief of staff and Mr. Soldo on
3 December 18. Do you recall that meeting?

4 A. Yes, I do.

5 Q. You don't meet with the
6 mayor all that often, do you?

7 A. No, I don't.

8 Q. Do you recall -- what do
9 you recall about the focus of that meeting to be
10 in terms of what information staff is providing to
11 the mayor?

12 A. We're providing -- I mean
13 staff -- so number one, it was not my meeting.

14 Q. I'm just asking about
15 your recollection.

16 A. Yeah, so my recollection
17 was we were trying to give the mayor some
18 information that, you know, the report that had
19 been deemed inconclusive, or, you know, an
20 informal chart in fact existed and that we had it,
21 and that was sort of -- that was the thrust of the
22 information.

23 Q. Do you recall any
24 discussion with the mayor about the current safety
25 of the Red Hill?

1 A. No, I don't recall like a
2 specific discussion. I mean, I recall the tone of
3 the meeting but not the specifics.

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

6 A. You know, it's a
7 difficult meeting. You're bringing the mayor an
8 issue, and so the tone of the meeting was here,
9 there's some information, and the mayor's response
10 was -- he seemed to just be processing it, trying
11 to understand what it actually meant, and so,
12 yeah, that was what I recall from that meeting.

13 Q. Registrar, could you
14 close this down and go to 263. Can you call out
15 260. Pardon me, 620.

16 This is a letter from legal.
17 You're not copied on this, but this is in
18 reference to the examination for discovery of Mr.
19 Oddi, project manager for the Red Hill, on a piece
20 of litigation which occurred on December 7th.
21 Recognizing you're not copied on this, I'm just
22 raising it just so that you can sort of see that
23 there's reference to Mr. Oddi's examination.

24 Registrar, you can close this.

25 Do you recall knowing before

1 December 7th that Mr. Oddi was going to be
2 examined in respect of litigation involving Red
3 Hill?

4 A. No, I don't have a direct
5 recollection of that.

6 Q. Is that typical or
7 atypical that you would not be advised when one of
8 your staff was going to do an examination for
9 discovery?

10 A. I think we talked about
11 this earlier.

12 Q. We did. We talked
13 generally.

14 A. Yeah, I mean, in general
15 we would -- staff would be potentially in
16 discovery for construction projects or things like
17 that, so there was no set formula for advising me
18 of whether or not we were -- staff were in or not
19 in conversations with legal.

20 Q. Thank you. Registrar,
21 can you bring up 264, please, along with 263.
22 Thank you.

23 Turning to the bottom of page
24 263, at 621 there is some notes from
25 Dr. Uzarowski's notebook about a meeting with you

1 on December 18th. Do you remember reaching out to
2 Dr. Uzarowski to arrange a meeting and that you
3 wanted to meet with him?

4 A. I recall that we --
5 either myself or Hanna tried to set up some time
6 with Golders on that 2017 assignment, yes.

7 Q. Was it for the purpose of
8 obtaining the written report that you had been
9 asking for?

10 A. I believe so, yes.

11 Q. Do you recall meeting
12 with Dr. Uzarowski on December 18? You've made
13 some notes that this definitely happened. I'm
14 just asking about your recollection.

15 A. I do recall the meeting.

16 Q. Did you ask legal
17 services for advice about holding a meeting with
18 Golder or not?

19 A. No, I did not.

20 Q. Your view was that you
21 didn't need to, you were going to -- there was no
22 need for legal on that point?

23 A. So my recollection is
24 that legal was aware that we're having
25 conversations with Golders. I think that was in

1 one of the earlier discussions, that they know
2 about this polished stone value and the measured
3 texture depth and the British pendulum test. No,
4 I didn't ask them if I needed to, you know, have
5 any sort of special permissions to have a
6 conversation with Golder.

7 Q. Dr. Uzarowski later
8 raised a concern with you -- well, he later asked
9 you whether the meeting had been recorded or
10 listened in on by someone. Was it either recorded
11 or listened in on?

12 A. It was not.

13 Q. Did Dr. Uzarowski bring a
14 hard copy of the 2017 friction test report to this
15 meeting?

16 A. I believe he did.

17 Q. Did he provide it to you
18 in advance? There's no documents to suggest he
19 did, but you receive it at the meeting --

20 A. Yeah, that's my
21 recollection. I don't think he sent me a draft,
22 you know, via e-mail.

23 Q. Thank you. So you'll see
24 in Dr. Uzarowski's notes that -- the inquiry has
25 heard evidence that he often creates a bit of a

1 agenda or speaking road map for his speaking in
2 advance, and that's the A, D, C, E, F in his. You
3 recall him providing you with some background
4 about Golders working in respect of the Red Hill
5 over time?

6 A. Yes, I do.

7 Q. Do you recall him telling
8 you that in March of 2018 Golder had recommended
9 microsurfacing or shot blasting, skidabrading, one
10 of those terms, for the Red Hill?

11 A. Yeah, I believe I recall
12 he mentioned or he brought that up.

13 Q. Registrar, can you go to
14 265, so that 264 and 265 are up. Just looking at
15 your notes, at the bottom of your notes on 265, it
16 says -- Registrar, actually can you pull them out
17 where it says "2018 March" and below that.

18 "Met about HIP, talked about
19 BRIN results deemed inconclusive. Notes: Speed
20 is an issue," and then I think "AADT and ESAL" --
21 those are both traffic-related acronyms --
22 "accelerates deterioration." And then it says
23 "forced to say this. Was told the City wouldn't
24 want to admit there is an issue to address."

25 What do you remember about the

1 discussion that led to you making these notes?

2 A. So if I recall -- I mean,
3 you know, my recollection is that Dr. Uzarowski
4 came to the meeting. He had, to your point, some
5 speaking notes that he wanted to go over with me.
6 These are my notes of his conversation. He
7 indicated that -- I don't know what "forced to say
8 this" actually means, but, you know, he was told
9 that the City didn't want to admit there was an
10 issue. He was trying to bring that forward, that
11 he's identified that he thinks there's a concern,
12 and that, you know, he's telling me that the
13 City -- and I believe he never brought up a
14 specific name -- said that we didn't want to admit
15 it.

16 Q. Was the Tradewind report
17 itself discussed between you two? It seems like
18 there's some talk around testing. Were you
19 actually discussing the Tradewind report in
20 particular? It's referenced in your notes. I'm
21 just trying to understand how much of the
22 conversation was about that.

23 A. So my hopes for the
24 meeting were a conversation around the 2017
25 discussion, but Dr. Uzarowski brought a bunch of

1 information forward, you know, some history and
2 his knowledge of how it went. We did discuss
3 Tradewind, but I don't think it was a detailed
4 discussion.

5 Q. Did you ask him about the
6 implications of the Tradewind on -- and the
7 friction values found in the Tradewind report on
8 the safety of the Red Hill?

9 A. No, I don't think I asked
10 him, you know, directly if the Tradewind and
11 safety -- there's always a conversation around the
12 friction levels and values and what's -- you know,
13 what's within or not within specifications.

14 Q. Registrar, could you
15 close this callout, please. If you look at 264 at
16 the top, there's a blank line in Dr. Uzarowski's
17 notes, and just before that it says "the skid
18 hazard is still there."

19 Registrar, I'm hoping that you
20 can at least, yeah, direct your arrow there.
21 Exactly.

22 Do you recall Dr. Uzarowski
23 conveying to you that the low friction values
24 found in the Tradewind report represented an
25 existing skid hazard?

1 A. Yeah, I believe he
2 conveyed that he was concerned about, you know,
3 the friction or the performance characteristics of
4 the Red Hill.

5 Q. Did he convey to you in
6 this meeting that his recommendation was to
7 complete mitigation options or remediation as
8 Golder had recommended in 2014?

9 A. So my notes indicate that
10 he has identified that he's proposed
11 microsurfacing or something along those lines, so
12 yes, he must've brought that forward.

13 Q. Did you have any
14 discussion about the upcoming resurfacing?

15 A. Yeah, I don't know if we
16 turned our mind to the actual -- that project
17 because the concept of hot in-place was sort of no
18 longer a conversation that we were going to, you
19 know, require Golders on on that project, so I
20 don't think -- I don't recall having a
21 conversation with him about the proposed 2019
22 resurfacing.

23 Q. I'm asking because I was
24 wondering if you asked him -- given the Golders'
25 recommendations in 2014 which he says they are

1 still applicable now -- did you ask him, well, we
2 have this resurfacing coming up in five months; is
3 there anything else you think we should be doing
4 between now and then?

5 A. No, I don't think I
6 asked him that.

7 Q. Did you ask him to
8 provide any more information about the friction
9 standards that apply in Ontario given what you
10 knew about Gary's views about that issue?

11 A. I don't recall asking him
12 at this meeting, and, you know, I see that our
13 notes are reasonably parallel. I know there was a
14 conversation around the standard or national
15 standard or what does or doesn't create the sort
16 of threshold. But no, I don't think I got into
17 the specific details on what standard would be
18 useful in Ontario. I know we'll probably get
19 there as we had some e-mail exchanges that went on
20 for a little while after this meeting.

21 Q. That's right, but you
22 recall as part of this conversation that there was
23 a discussion about the standard or national
24 standard of what does or does not create
25 thresholds, or are you saying that in the coming

1 e-mails that you had e-mail conversations?

2 A. So my understanding of
3 the meeting was we sort of walked through the
4 historic and chronological timeline of Golder's
5 role in the material side of the Red Hill, and,
6 you know, he indicates that he did the testing for
7 Tradewind. Looks like my notes indicate, you
8 know, there was that dips and bumps work done, but
9 then we've got microsurfacing and then deemed
10 inconclusive, no national standard. The dips and
11 bumps wouldn't be inconclusive and microsurfacing
12 isn't inconclusive or our national standard, so
13 I'm assuming my notes there refer to the
14 Tradewind.

15 Q. Thank you. Registrar,
16 you can go to, if you would, 271 and 272, please.
17 So I'm going to plot the discussions you have with
18 Dr. Uzarowski that are going to go into January.
19 So at 635 -- Registrar, could you pull that up but
20 just page 271.

21 So you send an e-mail, which
22 is the part in black, and then Dr. Uzarowski
23 responds on December 21 with the part in red. And
24 you ask about the difference -- what standard
25 would be considered in Ontario in respect of

1 friction. And he responds:

2 "There's no recent, clear
3 standard for FN requirements
4 on highways in Ontario.
5 Golder would be pleased to
6 discuss with the City how it
7 can assist in that aspect."

8 We'll go through, and I know
9 that you don't take Golder up on that offer to
10 provide some advice about how one can interpret
11 friction values within standards. Is that right?
12 You didn't take him up on that invitation?

13 A. No, we had -- I mean,
14 we're fast forwarding quite a ways here, but we
15 had a review with CIMA that gets done I believe
16 sort of pre and post resurfacing that gives us
17 that information.

18 Q. So you go that way
19 instead of going to Golder; is that right?

20 A. Correct.

21 Q. Second, you ask about the
22 British pendulum test and you had already asked
23 about why it was done in unfavourable weather
24 conditions, and here you're asking about your
25 reference. As you indicate, your test -- "our

1 test results were reasonable given the weather
2 conditions." And he responds that the BPN numbers
3 were not reliable because of the weather
4 conditions.

5 And then lastly you ask about
6 shot blasting method to address skid resistance,
7 and ask about Ontario references, and
8 Dr. Uzarowski says the concern is still -- about
9 skid potential is still there, and gives you some
10 names of companies.

11 Just on that third point, when
12 you ask can you supply Ontario references, Ontario
13 references the use of method, what are you looking
14 for there? What do you mean by references? I'm
15 just a bit confused about what you're asking for.

16 A. So what I'm hoping is
17 he'd connect me to a contractor or municipality or
18 provincial agencies that's supplying it locally
19 and using it to try and get a better understanding
20 of what they are using it for or how they apply
21 it.

22 Q. Okay. Thank you. I just
23 wasn't sure if you were looking for, like,
24 academic references or, you know, sort of research
25 references. That's helpful.

1 You go on to say:
2 "I do note that both the
3 Tradewind and the BPT results
4 were considered inconclusive
5 and ask for further
6 understanding of the
7 proposal."

8 On what basis did you at this
9 point conclude that the Tradewind results were
10 inconclusive?

11 A. So, I mean, the Tradewind
12 results again were referencing that UK standard.
13 They -- I think they determined that, you know,
14 there was a requirement -- or not a requirement,
15 but they were within an investigatory level.

16 Here I believe Dr. Uzarowski
17 is indicating there's a skidding or a skid issue,
18 and he's suggesting that we go ahead with the shot
19 blasting and skidabrading which, I mean, to your
20 earlier point, he said he's brought forward to
21 staff previously. And I guess -- I think, and I'm
22 not sure if we've looked at this yet, but I know
23 there was a couple proposals for this project. I
24 believe that one of them said -- or the one that I
25 read said, you know, and again I'm paraphrasing,

1 to review the materials on the Red Hill to see if
2 such an issue exists, or something like that. I'm
3 not sure if we've got that proposal.

4 Q. We're certainly going to
5 walk through some, and I invite you to tell me if
6 we land on what you're thinking about right now.

7 Just on this point, you have
8 said, and you've said a few times in your
9 evidence, that there was no standard in Ontario
10 that the Tradewind report said that. Was there
11 any other basis for you to conclude and use the
12 word "inconclusive" in respect of the Tradewind
13 report?

14 A. So I guess again I'm
15 referring to the language that's been, you know,
16 brought forward through the media and sort of
17 previously characterized.

18 Q. You mean Gary's language?

19 A. Fair.

20 Q. So you were accepting
21 Gary's interpretation that the Tradewind report
22 was inconclusive?

23 A. I'm not -- so I -- I
24 guess we're debating the term "inconclusive." It
25 did arrive at -- I mean, it does have conclusions.

1 It says to do further testing and potential
2 remedial work, right.

3 Q. Yes.

4 A. But I'm not sure it
5 arrived at a conclusion about the absolute skid
6 resistance.

7 Q. Please go on and explain
8 that answer. I don't understand that answer.
9 Could you explain what you mean by "I'm not sure
10 it arrived at a conclusion about absolute skid
11 resistance"?

12 A. Yeah, I mean, the
13 Tradewind report told -- indicated to do further
14 studies and to do potential remedial work. But
15 those were -- so that is what I took from it.
16 That's what I got from it.

17 Q. Did you have any basis to
18 conclude that the friction values that were set
19 out in the Tradewind report were inconclusive in
20 any way?

21 A. Well, we're trying to
22 draw a line here between the friction measurements
23 and concluding, you know, that they are the --
24 they are a major factor or something like that.
25 So I didn't see that conclusion.

1 Q. Registrar, you can close
2 this down. Can you go to page 324, please. So
3 we're into January now, and we're really sort of
4 jumping forward again just to follow this thread
5 that you have with Dr. Uzarowski. And if you
6 could call out, Registrar, 752 at the top.

7 So here you're updating
8 Ms. Auty, copying Mr. Sabo, and going sort of back
9 and forth in the e-mail exchanges.

10 You ask -- or you advise
11 Ms. Auty and Mr. Sabo that Golder's reply is that
12 the work is out of scope and that there's this
13 attached letter of proposal to provide data in
14 respect of some of the questions that you had
15 previously asked.

16 At the end of the four
17 paragraphs, you say:

18 "We had a call this week and
19 Ludomir advised me that he
20 would provide these frameworks
21 for reference, otherwise his
22 work would be meaningless, as
23 are his recommendations."

24 So I'm just trying to
25 understand that particular line. Was

1 Dr. Uzarowski saying that he would provide
2 frameworks of reference acknowledging that
3 otherwise his work would be meaningless, or are
4 you saying you need those, otherwise to you his
5 work is meaningless.

6 A. So what I'm saying in
7 this is that, you know, I've got a series of
8 measurements, I think, coming back from Golders
9 and I need to have goalposts to put those
10 measurements within, otherwise I just have
11 measurements.

12 Q. Yes. And so I'm trying
13 to understand, did Dr. Uzarowski agree that just
14 having measurements was not that useful to you, or
15 are you saying I don't find it to be useful just
16 having that? I'm sorry to sort of be so nit-picky
17 on the language. Do you understand my question?

18 A. So I think what you're
19 asking is in my conversation with Golders, you
20 know, regarding the draft report, which I can't
21 remember exactly all of the elements that were in
22 there. So I got some measurements, but it didn't
23 tell me this average medium or the measured
24 texture depth or the British pendulum test. What
25 frameworks was he referring to, that's what I was

1 asking for, otherwise again I just have
2 measurements. So my understanding was that
3 Golders was going to go back and provide me those
4 frames of reference.

5 Q. Okay. I'll move on.
6 Actually one sort of final question there.

7 Recognizing the frame of
8 reference is useful, if a consultant was providing
9 a recommendation for action, sort of next steps,
10 does that in and of itself carry weight with you,
11 or did you feel like you really could not assess
12 what Dr. Uzarowski was proposing as a result of
13 not having those frames of reference?

14 A. I'm not sure at this
15 point what the recommendations were. I'm not sure
16 if we're in a first or second version of the
17 report so....

18 Q. Fair enough, and I'm
19 sorry I've taken you through time in a way that
20 it's not as chronological so it's not as clear,
21 and I am trying to sort of jump through and be
22 quite targeted on this, but I can certainly go to
23 the particular -- in the attached letter of
24 proposal in which Golder is saying, you know,
25 we're pleased to provide you with additional work,

1 what you're asking for is out of scope.

2 Do you remember the back and
3 forth where you viewed it to be part of the scope
4 to provide the framework for analysis and Golders
5 viewed it to be a new aspect of work that you were
6 asking for?

7 A. Yeah. I remember going
8 back and forth on trying to determine, A, the
9 original scope and measurements and requirements
10 of that assignment, and then, B, you know, the
11 references by which those measurements would get
12 placed and evaluated. In my mind, that was in
13 scope, and potentially at the time Golder's maybe
14 viewed it out of scope. I think we arrived at a
15 final report, maybe late February or early March
16 or something like that, which in my understanding
17 had the references in it.

18 Q. I think that's right, and
19 I don't want to have you try to do this by memory
20 without the documents, so I'm just going to take
21 you to a few.

22 Registrar, can you go to
23 page 299, paragraph 694. Thank you. This
24 actually goes on to the next page.

25 This is just before -- the

1 week before you speak to -- or you e-mail
2 Ms. Auty, the one we were just looking at, and
3 this is really just to make sure that we're all
4 following the same chronology. This is the back
5 and forth where you're saying I need the
6 references, please provide me with the references,
7 otherwise it's not -- you know, I don't feel like
8 you fulfilled your -- the scope of your work. Am
9 I fairly paraphrasing where you were in
10 January 13, 2019?

11 A. Yeah, correct.

12 Q. You also say in this
13 e-mail at the bottom of what's up on the screen
14 here that there are traffic volumes and speed
15 considerations, and you asked them to be removed
16 from the report. This comes up again, and I think
17 maybe I'll just jump you to that before I ask
18 questions about that particular issue.

19 Registrar, can you keep this
20 up on one side but call up page 321, please. I'm
21 sorry, I misspoke, 327, please.

22 You'll see at the bottom you
23 write to Dr. Uzarowski, this is on the 18th, and
24 you're again talking about the range and wanting
25 to know whether the range is good. At the bottom,

1 this is in respect of PSV, you say:

2 "The recommendations have no
3 weight or meaning as they have
4 no supporting framework."

5 I think what I'm hearing from
6 your evidence is that's actually your general
7 view, is the recommendations or the information
8 doesn't -- the numerical values don't have weight
9 remaining if not they're not supported by a
10 framework; is that right?

11 A. Yeah, correct.

12 Q. Registrar, on the
13 right-hand side, could you go to 328. In the
14 third paragraph down, you say:

15 "Your inclusion of speed and
16 traffic volume data is
17 outdated, and does not refer
18 to the most current studies
19 done via another consultant."

20 And you say the assignment --
21 there's no mention of reporting requirements about
22 contributing factors, such as speed volumes or
23 other influences. I know I haven't taken you to
24 this, but part of the Golder report was
25 referencing traffic volumes over time and issues

1 around speeding on the Red Hill. So you ask again
2 for that information be taken out.

3 Why did you ask Golder to
4 remove reference to speed and traffic volumes if
5 they viewed those to be relevant to issues around
6 friction?

7 A. So I'm not aware that
8 Golders has sort of current data or have been
9 connected with either the -- you know, our folks
10 in operations or the folks I think at CIMA who
11 have up-to-date -- the up-to-date data. I
12 appreciate that, you know, Golders has identified
13 that the volumes are higher and impacting the --
14 you know, impacting the pavement lifecycle. I'm
15 just in this -- you know, I'm indicating that I
16 don't think it's part of the scope and I'm not
17 sure where they got the data and why they picked
18 those two items, but I think we go back and forth
19 a little bit on this, and to my knowledge they end
20 up keeping it in the report, and that's fine, it's
21 their consideration for some background.

22 Q. Just to follow through on
23 the rest of this, because you've already said you
24 got to the end of February, they did ultimately
25 provide a final report, and they did it to

1 actually March 1st. And you accepted that report
2 and were content to rely on that report?

3 A. I believe so. I mean, we
4 didn't have any other exchanges.

5 Q. So you did not have a
6 final draft of that report when you were preparing
7 PW18008A; is that right?

8 A. I had -- yeah, I'm not
9 sure where the drafts were, but that's -- that's
10 the order of operations.

11 Q. So you certainly have a
12 draft, we've just been going through the drafts
13 that you had, but you didn't have a final
14 version --

15 A. No.

16 Q. -- for February 6th when
17 that report was presented; is that right?

18 A. Correct.

19 Q. Registrar, you can close
20 this down, and can you go page 278 and 279,
21 please. On January 2nd Mr. Malone e-mailed you to
22 check in about whether his attendance was required
23 at a PWC meeting on January 14 th. By this point
24 you know that the reports that you're responsible
25 for, particularly PW18008A, are not going to PWC

1 on January 14th, right?

2 A. Yeah, correct.

3 Q. On January 3rd you

4 e-mailed Ms. Auty and Ms. Sabo, you'll see, at

5 6:49. Registrar, can you pull that out and also

6 650. You say:

7 "Did either of you connect

8 with Brian Malone on this

9 matter? I'm meeting today on

10 this and wanted to understand

11 next steps."

12 What did you understand

13 Ms. Auty or Mr. Sabo to be connecting with Brian

14 Malone on?

15 A. My understanding was they

16 were connecting with him, you know, through I

17 guess the Boghosian retainer and trying to connect

18 all of that, and what I'm seeing or what I'm

19 understanding is that potentially we thought Brian

20 would be in attendance, but maybe with respect to

21 the road safety.

22 Q. Okay. I asked you

23 earlier about the December 13th draft opinion

24 letter from Mr. Boghosian. Does this assist with

25 whether you were aware of its existence in

1 December, just by the way you're asking this
2 question in January?

3 A. It appears that I didn't
4 know it existed but....

5 Q. That's just your
6 inference sitting here today?

7 A. Yeah, correct.

8 Q. Do you recall what
9 meeting you were attending on January 3rd for
10 which you wanted to know or understand next steps?

11 A. No, I don't.

12 Q. Next paragraph, 650, says
13 Mr. Sabo replied advising you he was in the office
14 if you wanted to discuss. Do you recall if you
15 reached out to Mr. Sabo?

16 A. No, I don't.

17 Q. Do you remember receiving
18 any information from Mr. Sabo or Ms. Auty about
19 whether they had connected with Mr. Malone?

20 A. No, I don't.

21 Q. At this point do you
22 recall whether you were given any further
23 direction about whether you could contact
24 Mr. Malone about the Tradewind report if you
25 wanted to?

1 A. No, not at this point, I
2 don't recall that.

3 Q. You don't recall that
4 either way, or you're confident that that didn't
5 happen?

6 A. I don't recall it either
7 way.

8 Q. Registrar, you can close
9 this, and if you can go to 281 and 282, please.
10 Just before I call out anything, through
11 January -- maybe we'll just go through the
12 chronology just so you have it front of mind.

13 On January 23rd Ms. Auty
14 submits a legal report to council and attends a
15 closed session on January 23rd, and then on
16 February 6th there is a GIC meeting and a number
17 of reports are provided, including PW18008A of
18 which you're a co-author, right?

19 A. Correct.

20 Q. So in advance of
21 January 23rd, it appears from the records to me,
22 that there is a fair bit of meetings and
23 discussion between Mr. Soldo's group, you, Mr.
24 McKinnon, legal services, and communications. Is
25 that, at a high level, a fair statement?

1 A. Yeah, I would agree with
2 that.

3 Q. Through January, how much
4 time was this taking up for you?

5 A. Without referring to my
6 calendar I can't tell you, but it was, yeah, a
7 large part of the -- certainly a large part of the
8 work that was underway.

9 Q. I can see there's
10 certainly a number of meetings. You would have to
11 attend those. There's the PW18008A. Were you the
12 first drafter, were you starting from a blank
13 page, or did Mr. Soldo do that and you reviewed
14 it?

15 A. I don't recall the --
16 sort of the administrative lead. I believe I
17 authored, you know, a couple of paragraphs or some
18 of the chunks that referred to the illumination
19 and the friction testing and the proposed
20 resurfacing, but I don't recall if Diana or
21 Edwards admin at the time created the original
22 report.

23 Q. But I mean the
24 substantial content. You put in some paragraphs
25 and then Mr. Soldo put in the other paragraphs; is

1 that right?

2 A. Yeah, correct.

3 Q. In terms of the FOI, I
4 don't see many documents that demonstrate what
5 work you are doing personally on collecting
6 documents on the FOI. Were you doing any?

7 A. That's not really my
8 role, the gathering documents, so no.

9 Q. Are you being updated by
10 anyone who is gathering documents?

11 A. Sorry, what, I thought
12 we -- had we not -- oh, no, we haven't submitted
13 this, the FOI yet, have we?

14 Q. No, that happens in
15 January.

16 A. Okay. I believe that
17 there's a list or an ongoing either spreadsheet or
18 folder or something that, you know, folks are
19 adding the data to. But no, I don't know if I'm
20 getting like a daily update or weekly or wherever
21 it sits.

22 Q. Who specifically do you
23 understand is gathering documents?

24 A. So I think it's being
25 gathered through Diana and through to Dipankar.

1 Q. Dipankar is dealing with
2 the audit.

3 A. Correct.

4 Q. Who is dealing with the
5 FOI?

6 A. Yeah, maybe I'm not
7 remembering correctly. Potentially Jasmine, but
8 again I'm gapping a little bit here.

9 Q. Communications, Jasmine
10 and others, they are certainly actively involved
11 creating a communications plan for the eventual
12 disclosure. Is that fair to say that you, at
13 least at the high level, know that they are
14 actively engaged in trying to sort out how this is
15 going to unfold publicly?

16 A. Hm-hmm.

17 Q. And you reviewed some
18 communication plans and had meetings with external
19 communications consultants as well?

20 A. I was in meetings where
21 the external communication folks were there, yes,
22 that's correct.

23 Q. And the documents suggest
24 that you also reviewed the legal services reports
25 that were eventually submitted to council, and

1 I'll come to that, but just generally do you
2 remember doing that?

3 A. So the legal -- the legal
4 services report that went in camera or the one
5 in --

6 Q. Yes.

7 A. Yeah. I think I review a
8 version of it to provide some sort of technical
9 background on it, but I'm not sure if I see the
10 entire report.

11 Q. I'm just really at this
12 point taking you through what tasks were on your
13 plate in January. Besides the things that we've
14 just gone through, were you doing anything else --
15 oh, sorry, and you're dealing with the audit; is
16 that right?

17 A. Correct.

18 Q. So is that -- the tasks
19 that we've just gone through, are those the things
20 that are related to the Red Hill that are on your
21 plate?

22 A. Well, I mean, the
23 resurfacing, ensuring that, you know, all of the
24 components for that are together, the review with
25 Golders, the ongoing audit which was kind of a

1 citywide audit which then either changed in scope
2 or gathered up the Red Hill, and the Freedom of
3 Information report, and then assembling a report
4 for council to inform them of most, if not all, of
5 that sort of subject matter.

6 Q. That last bit, can you
7 provide a bit more detail about what you mean by
8 that? Do you mean PW18008A?

9 A. Yeah, correct.

10 Q. The one that you provided
11 some of the paragraphs for and worked with Edward
12 to complete?

13 A. Correct.

14 MS. LAWRENCE: Commissioner,
15 it is just about 1 o'clock, which I think is time
16 for lunch.

17 JUSTICE WILTON-SIEGEL:
18 Certainly think so. We'll stand adjourned until
19 2:15.

20 --- Recess taken at 1:00 p.m.

21 --- Upon resuming at 2:15 p.m.

22 BY MS. LAWRENCE:

23 Q. Mr. McGuire, before the
24 lunch break we were talking about some
25 interactions that you had with Golder. Not

1 immediately before the lunch break but before
2 lunch. I want to go back to one point on that.

3 Registrar, could you bring up
4 OD9A, page 327 and 328. You'll see at the bottom
5 of 327 at 768, you send Dr. Uzarowski a fairly
6 lengthy e-mail, and this again is in the period of
7 time where you were asking for the range or the
8 frameworks for the analysis, not just the
9 numerical values.

10 Registrar if you can pull up
11 the last full paragraph on 328 "lastly your
12 comments." So one of the things that you say in
13 your e-mail to Dr. Uzarowski is:

14 "The City asked for clarity as
15 Golders stated that 'friction
16 concerns are still valid', yet
17 on the other hand Golder
18 states 'if there is a concern
19 with frictional
20 characteristics.'"

21 And that is taken from the
22 report and I think from your discussions with
23 Dr. Uzarowski.

24 "These statements don't fully
25 align as the first implies

1 there is a concern and the
2 second suggests there may be a
3 concern."

4 So as we go forward, as you
5 testified this morning, Golders does finalize a
6 final report and does provide additional
7 information about the frameworks or the ranges
8 that would apply to these tests.

9 Did you ever receive clarity
10 on whether Golder had conclusively concluded that
11 there was a concern about friction as a result of
12 the testing that they did for this report?

13 A. Sorry, I don't believe
14 Golders put that in the report, that there was a
15 concern around the friction.

16 Q. I can pull out the report
17 if you would like. I'm quoting you, your quotes
18 here. That's what -- you quoted these things.
19 I'm sorry, maybe I don't understand what your --

20 A. I think your question was
21 did I ever get sort of an absolute yes or no from
22 Golders, and what I'm presenting in this paragraph
23 and this commentary is we're looking for some
24 frameworks, and I believe the comment around is
25 there a concern or if there is a concern is from

1 the proposal, but then -- I'm not sure where that
2 -- the friction concerns are still valid comment
3 comes from. I'm trying to align them and make
4 sure that I understand. Probably didn't answer
5 your question.

6 Q. That's all right. The
7 second quote there, "if there is a concern with
8 frictional characteristics," that's from the
9 report. So -- and again, I recognize this is a
10 little disjointed because we're trying to go
11 through it sort of not chronologically, but
12 eventually you do get a report in March of 2019
13 and it does set out the ranges of -- that are
14 relevant to the various tests. And I'm trying to
15 understand from you, did you glean from your
16 final -- from the final report whether or not
17 Golder was identifying for you that there was a
18 friction concern?

19 MS. CONTRACTOR: I wonder if
20 we could go to the report, the final version or
21 the draft, but particularly the final version if
22 you're asking for his view on that.

23 BY MS. LAWRENCE:

24 Q. Sure. The draft is
25 HAM54182. I believe it's image 2 and 3 that we

1 should be looking at. Thank you. So it's at the
2 bottom, Mr. McGuire, of image 2 which is on the
3 left-hand side:

4 "As discussed with the City,
5 if there is a concern with
6 frictional characteristics of
7 the SMA surface course on the
8 RHVP an immediate, effective
9 solution would be to carry out
10 shot blasting/skid abrading of
11 areas of concern on the
12 existing pavement. This
13 treatment is relatively quick
14 and low cost."

15 So that's the draft, and then
16 the final is GOL6612. It looks quite different
17 now. Can you go to image 2 and image 3. So now
18 you have a range.

19 My question was, having
20 received this final report, did you understand --
21 maybe I'll just actually refer you to the change
22 in language that most closely reflects from the
23 draft is underneath the table. It says:

24 "As was brought to the City's
25 attention a number of times

1 previously, an immediate and
2 effective treatment to address
3 a concern with frictional
4 characteristics on the SMA
5 surface course would be to
6 carry out shot blasting."

7 Do you see that?

8 A. Fair. I'm just -- sorry,
9 I'm rereading the analysis, interpretation section
10 and then just catching up with you now.

11 Q. Sure. I was directing
12 you to the paragraph underneath the table.

13 A. Okay.

14 Q. So my question is, having
15 received this report and all the back and forth
16 that went into this -- getting to this final
17 report, did you understand, having received this
18 report, whether or not Golder had conclusively
19 determined that there was an issue with friction
20 on the Red Hill?

21 A. No, I don't think I
22 understand at this point that they have got a -- I
23 understand that Dr. Uzarowski's identified that he
24 considers there to be some concerns, but from what
25 I'm getting from the results, and I was just

1 trying to read back to the SN40 and everything
2 else like that, he's suggesting treatments if we
3 think there are concerns. I'm sort of
4 paraphrasing.

5 Q. That's what he said in
6 the draft.

7 A. Right.

8 Q. So now we have this which
9 has different language in it, and I'm trying to
10 understand as of March of 2019 what you took from
11 this report in terms of the friction values on the
12 Red Hill.

13 A. Well, so I think what I
14 took, and I think I probably knew this already,
15 there wasn't a correlation between skid number,
16 grip number, British pendulum value. I think
17 again you pointed out that there wasn't a standard
18 by which to kind of benchmark those. I'm still
19 not certain that I fully appreciate sort of the
20 issues or his concerns around the frictional
21 characteristics. I do note that he identifies
22 that good weather conditions are required for --
23 is that microsurfacing and I'm assuming shot
24 blasting as well.

25 Q. Thank you. Registrar,

1 you can close this document. Can you go back in
2 OD9A, page 281 to 282.

3 You received a calendar
4 invitation from John Hertel for a meeting entitled
5 "Confidential Agenda," along with Ms. Graham,
6 Mr. Zegarac, Mr. McKinnon, and Karen Gordon. The
7 notes that are up on the screen right now are
8 Ms. Graham's minutes of that meeting.

9 Do you recall attending that
10 meeting with Ms. Gordon? Would that have been a
11 new addition to the group of people who you had
12 been meeting with on the Red Hill before this
13 point?

14 A. My recollection is that I
15 don't think I ever met Ms. Gordon. I believe she
16 was on the phone.

17 Q. Okay. Registrar, could
18 you go page 284, please. If you can pull out
19 paragraph 660.

20 So these are Mr. Boghosian's
21 notes of a call that he had on January 8 with
22 Ms. Auty. You're not on this call and these are
23 not your notes, but you'll see in the third row in
24 his notes, it says:

25 "January 28, 2018 staff rep

1 summarizing various previous
2 reports. Further testing
3 listed had been done but no
4 one knew about it. GIC
5 January 16. Her and Gord will
6 speak." (As read)

7 So in terms of timing, we're
8 at January 8th now, was January 16th the target
9 date to disclose the Tradewind report to GIC?
10 There was a GIC meeting previously schedule on
11 that day.

12 A. So to my knowledge --
13 look, I wasn't involved in the higher level of
14 conversation around when this was moving forward.
15 I knew that we were bringing a report forward. I
16 wasn't aware of the dates or the times.

17 Q. Or the form? I mean GIC.

18 A. Sorry, are you asking for
19 GIC or PW?

20 Q. Or council.

21 A. I don't think staff
22 presents to council, but I think we can go to the
23 general issues committee and then they deliberate
24 at council. But anyways, so the GIC and/or PW. I
25 thought we were going to PW, but that sort of

1 changed course and we went to GIC.

2 Q. Okay. So the reason that
3 I raise this here is in part because of timing,
4 but also because Mr. Boghosian has said "her and
5 Gord to speak," and I think the "her" there is
6 Ms. Auty.

7 By early January, did you
8 understand that the plan that was forming to
9 disclose the Tradewind report was that you and
10 Ms. Auty would present to the appropriate group of
11 councillors, whichever form it was in.

12 A. I didn't understand my
13 role to be at that level.

14 Q. You didn't understand
15 that you would be presenting?

16 A. No, correct.

17 Q. In the end you didn't
18 actually present when the Tradewind report was
19 disclosed, right?

20 A. Correct.

21 Q. Registrar, you can close
22 this down. Can you go to 287, please. Can you
23 pull up 665. This may not be enough context for
24 you to answer this question actually. Why don't
25 we pull up 286 and 287 together. Thank you.

1 So just to give you a little
2 bit of context to the question I'm going to ask.

3 On January 7th Mr. Ferguson
4 e-mailed Mr. Becke, Ms. Jacob, Mr. Olszewski,
5 copying Mr. Soldo, Mr. White and you, regarding
6 the RHVP roadside safety assessment, a draft of
7 which had been received by Mr. Ferguson and had
8 been circulated for comment. You see that at 664?

9 A. Yes, I do.

10 Q. Ms. Jacob replied later
11 that day with some comments. Do you recall
12 talking to her about her comments before she sent
13 them to this group?

14 A. No, I don't.

15 Q. One of the comments --
16 and, Registrar, perhaps you can pull this out --
17 is the fourth comment down. A little bit further.
18 Yeah, that's perfect. Thank you.

19 So she makes a comment that in
20 respect of CIMA's language, so what's quoted there
21 is CIMA's language:

22 "Immediately after the
23 resurfacing is complete and
24 provided that adequate wet
25 weather skid resistance is

1 achieved, remove all Slippery
2 When Wet signs and monitor
3 collisions."

4 And her comment is:

5 "This seems to be rather
6 vague. How do we determine
7 what is adequate skid
8 resistance and how long should
9 this be monitored? Who will
10 be doing this monitoring?
11 Also when and who is
12 installing the Slippery When
13 Wet signs?"

14 Leaving aside the last point
15 about the installation of slippery when wet signs
16 and focussing on the two questions that she has,
17 did you at this point in January have an intention
18 to put in place a skid resistance monitoring
19 program?

20 A. Sorry, are you asking if
21 I am going to or the public works is considering
22 developing a skid resistance monitoring process?

23 Q. Yes. Once the
24 resurfacing is done.

25 A. Well, I mean, I know that

1 there's -- there was conversations around what
2 that -- what might look like, but the question,
3 and I think she frames it, is how do we determine
4 what's adequate, and then how do we -- you know,
5 we're back to the standards issue and how does
6 that go forward.

7 Q. So certainly the
8 development of a program would have to have some
9 thresholds about what that program was going to
10 actually monitor, certainly?

11 A. Yeah, correct.

12 Q. You said there were some
13 discussions, and I know that it has been a very
14 long day, but that is a bit of a vague comment,
15 there are some discussions. Do you recall being
16 involved in discussions and do you recall the
17 content of those discussions?

18 A. Correct. And, I mean,
19 between October and January there were discussions
20 around friction. I mean, I think that's a fairly
21 safe statement to make.

22 Q. Yes.

23 A. Then conversations about
24 what is it, who has standards, how do you measure
25 it, what does it look like. That's evolving as we

1 work through this, and having conversations with
2 Golders about a set of materials tests that, you
3 know, are also looking at material property. So
4 yes, it was an ongoing conversation, but I can't
5 tell you, you know, it was on a Thursday and it
6 took place with these four people, but yeah,
7 obviously we were talking about friction.

8 Q. So my initial question
9 was did you have an intention to put in place a
10 skid resistance monitoring program to start after
11 resurfacing?

12 A. I don't know if we turned
13 our mind to that fully yet, and I think, you know,
14 the challenge there would be, I think you
15 mentioned it earlier, developing the thresholds by
16 which, you know, you would determine what's
17 adequate, would take a fair bit of effort for us
18 to figure out, you know, which material and which
19 type of -- which type of testing process and all
20 of that.

21 So I know we've been talking
22 about friction and friction testing, but without
23 those sorts of frameworks it's difficult to say
24 that we were going to measure specifically.

25 Q. So what I think I'm

1 hearing from your evidence is that you had not
2 turned your mind to thinking through how a program
3 to monitor friction would be designed or
4 implemented; is that fair?

5 A. I think we turned our
6 minds to what a program would look like, but we
7 didn't have a template or a standard to follow.
8 So that's probably the way I would phrase it.

9 Q. I'm hearing you turn your
10 mind to obstacles that -- would be and the hurdles
11 you would have to meet to be able to put something
12 in place, but did you actually turn your mind to,
13 okay, once we have this new resurfaced road, we
14 are going to develop a program to monitor skid
15 resistance going forward? Did you turn your mind
16 to that between December and resurfacing?

17 A. So, I mean, we did test
18 the facility pre and post, I think we've
19 mentioned. But how to monitor it going forward, I
20 don't know if we turned our mind fully to what
21 that looks like and, in particular, in detail.

22 Q. Thank you. Registrar,
23 you can close this down, and if you could now go
24 to 665.

25 So you respond, "Thanks Susan:

1 Do we have enough details to tender and if so
2 when?"

3 So that's January 8. It looks
4 like you do not have your head in the details of
5 where the tendering process is in the resurfacing
6 in early January; is that fair?

7 A. Yeah, I mean, I'm asking
8 Susan for some details here, so just trying to get
9 an update.

10 Q. You left the process to
11 sort of get to tender and then the process to
12 unfold tender primarily to Ms. Jacob and
13 Mr. Becke; is that fair?

14 A. Yeah, correct.

15 Q. Registrar, you can close
16 this down. Can you go to page 294, please. Can
17 you call out 682 and 683, please. So this is
18 January 10.

19 Mr. McKinnon wrote to you and
20 Mr. Soldo asking if you could accelerate the
21 report, accelerate the finalization of PW18008A.
22 Legal is struggling for a reason to go in camera
23 in the absence of some other report. So by this
24 point where were you in the drafting of PW18008A?

25 A. I'm not sure. Based on

1 Dan's e-mail, it looks like it was still in
2 process.

3 Q. Did you understand that
4 legal -- from this e-mail, that legal's preference
5 was to try to combine its report at the same time
6 as another report? I mean in time, not in
7 substance. Combine and bring forward at the same
8 time a legal report and then a non-legal public
9 report?

10 A. I don't think that's what
11 I understand because it says below that it looks
12 like we're headed to PW. I don't know if legal
13 would go to public works, but that's what I'm
14 reading and I think I understand at that time.

15 Q. But you're not really
16 involved in the process, and your boss is asking
17 you to accelerate, and I presume that you tried to
18 get that report finalized as soon as you could; is
19 that fair?

20 A. Yeah, correct.

21 Q. Registrar, you can close
22 this down. Registrar, can you bring up 297,
23 page 297, please.

24 You'll see at 688 Mr. Ferguson
25 e-mailed Mr. Malone and Mr. Hadayeghi at CIMA

1 asking for an update to the 2018 collision memo,
2 and Mr. Malone sent Mr. Ferguson and others at
3 CIMA an update that they initiated the request,
4 and there's some discussion about what would be
5 included in that in terms of date ranges.

6 Registrar, can you now go to
7 page 311. Can you call out 726. So this goes on
8 to the next page, but we'll just start here.

9 On January 15th CIMA did
10 complete the 2019 CIMA collision memorandum. Do
11 you recall reviewing this memorandum once it was
12 circulated internally within the City?

13 A. No, I don't.

14 Q. Do you recall that this
15 memorandum showed that there had actually been
16 some disconnect in the memorandum that had been
17 completed the year before back in August and that
18 in fact the data sets had been different and this
19 resulted in the RHVP having higher collision rates
20 compared to provincial averages than previously
21 thought in 2018? Do you remember that sort of
22 back and forth, that there was some change in
23 these collision memorandums?

24 A. Not specifically. This
25 is an operational conversation and I'm probably

1 engaged in it, but I don't recall specifically.

2 Q. You say it's operational.

3 You mean it's under traffic operations and

4 engineering?

5 A. Yeah, correct.

6 Q. So -- but you do not

7 recall learning that in fact the RHVP collision

8 rates were less favourable than had been thought

9 the year before?

10 A. I don't recall that.

11 Q. Okay. Registrar, you can

12 close this, and if you can go to 305, please. If

13 you can pull out 712.

14 On January 14 you sent a

15 letter to the privacy officer and you copied

16 Ms. Auty enclosing the two bound books of

17 correspondence related to the above index. Who

18 prepared the index between December when we last

19 looked at this and January 14th? Was it Diana who

20 was responsible for collating and collecting these

21 documents? Or was it legal?

22 A. If I remember correctly,

23 we had an index of the documents, and I believe we

24 received something back from legal that indicated

25 fully or partially responsive or something along

1 those lines. I'm not sure if it was an update of
2 our index or a -- pardon me, a completely separate
3 one.

4 Q. So Ms. MacNeil went off
5 on a leave in mid-December and just before she
6 went off, she did provide you with sort of a
7 summary of her advice and recommendations about
8 what was responsive and what wasn't. Is that what
9 you're talking about?

10 A. Yeah, I believe so.

11 Q. So -- but between that
12 period of time, which was I think December 18th
13 and January 14th, do you know what additional
14 work, if any, was done to prepare the response to
15 the FOI office?

16 A. I'm not sure. It says
17 there was a couple of bound books, so I'm not sure
18 if we were printing and providing in hard copy,
19 but -- yeah, that's the best I can recall.

20 Q. But you weren't directly
21 involved in the finalization of this index or the
22 preparation of the printing of the documents; is
23 that right?

24 A. Yeah, that's correct.

25 Q. Registrar, you can close

1 this down and go to 302, please. And can you
2 bring up 303 as well actually, please. And if you
3 can call out 700 and 701 and on the other side
4 702. And 703, please, actually. Sorry,
5 Registrar. Just to try to have everything so you
6 don't have to keep opening things.

7 So this is in mid-January,
8 Mr. Soldo e-mailed Mr. White and Mr. Ferguson
9 under the subject line "Report," and says:

10 "I need your written
11 confirmation that the
12 Tradewind report was not
13 shared with either of you or
14 any of your staff regarding
15 friction testing." (As read)

16 And then Mr. Soldo says that
17 staff report -- there's a table that -- you know,
18 the appendix A that we were looking at before the
19 lunch break, and he says "how do you know it was
20 completed." And Mr. Ferguson responds:

21 "I have never seen the report,
22 I asked Gary previously but
23 never received a response. It
24 is listed as completed because
25 Gary verbally stated it was

1 completed on numerous
2 occasions."

3 And then Mr. White responds:

4 "I can confirm I've never seen
5 the report. I did ask for it
6 several times."

7 And he goes on to reference a
8 meeting with Mr. Mater, Mr. McKinnon,
9 Mr. Ferguson, where Mr. Moore spoke about an
10 English test or standard, and he declined to share
11 the results with Dan and John Mater:

12 "I never saw the test results
13 or any reports from anybody."

14 And then Mr. Soldo forwards
15 these responses to you. You also at the same time
16 are asking Ms. Jacob and Mr. Oddi and Mr. Renaud.

17 So just focusing on these for
18 a moment. Was this the first time, when you
19 received these statements, that you were aware
20 that traffic operations and engineering staff had
21 prior knowledge of the fact of friction testing
22 but had not received a copy of the results?

23 A. So you're asking -- yes,
24 I'm aware that staff knew that there was friction
25 testing done, but I -- yeah, and I think I

1 canvassed with staff if they had ever seen the
2 report before. I'm not sure if it was prior to
3 this or after.

4 Q. So I know from these
5 e-mails you're aware. I just want to understand
6 your answer.

7 Were you aware before you
8 received these e-mails that traffic operations and
9 engineering staff had reached out to Mr. Moore,
10 asked for results, knew the fact that Gary had
11 said there were results, but didn't have copies of
12 the results? Did you know all of those things
13 before January 14th?

14 A. Probably. I'm just
15 trying to recall back in time, you know, when we
16 first had the conversations with operations staff,
17 you know, traffic operations and engineering. So
18 yeah, I'm aware that the operations and
19 engineering staff have knowledge that there was
20 friction testing, and I'm also aware that they
21 have never seen it, but I'm not sure if this is
22 the first time or this is the first time in
23 writing.

24 Q. Okay. You said, "we
25 first had conversations with operations staff."

1 Who is the "we" and who are the "operations
2 staff"?

3 A. So "we" would be probably
4 myself and Dan, if we were getting -- going early.
5 And then it would be Edward, and I can't recall if
6 Dave and/or Martin were in any of those
7 conversations, you know, at the outset.

8 Q. So you think that you and
9 Dan or Edward, so Mr. McKinnon and Mr. Soldo, had
10 conversations with traffic operations and
11 engineering staff, but you're not sure if Dave or
12 Martin were in any of those conversations?

13 A. Yeah, correct.

14 Q. Who besides Dave and
15 Martin would have been in those conversations?

16 A. Right now, I mean, to my
17 recollection, it would have been myself and Dan
18 and Edward.

19 Q. I understand. So you're
20 having conversations amongst yourself. I had
21 understood from your evidence that you had gone
22 and sought information from traffic engineering
23 and operations staff. Did you do that?

24 A. No, I sought information
25 from my staff.

1 Q. Okay, sorry, I
2 misunderstood.

3 A. Yeah, maybe I misstated
4 that.

5 Q. That's okay. I'm glad
6 we're clarifying. So before this e-mail, did you
7 understand that Mr. Ferguson and Mr. White had --
8 knew that friction testing had been done because
9 Mr. Moore had told them, but that they had never
10 seen a copy of the report before? Did you know
11 that?

12 A. I can't definitively tell
13 you if I knew it prior to this or this was the
14 very first moment, but, you know, I am aware that
15 staff had knowledge that friction testing was
16 taking place, but I don't know that they'd asked
17 for it and it had been not provided. That I'm not
18 100 percent sure.

19 Q. And so you said you were
20 aware that staff had knowledge of friction testing
21 taking place. Besides Mr. Ferguson and Mr. White,
22 which staff in particular were you aware knew
23 about the fact that friction testing had taken
24 place?

25 A. So I think if I recall

1 correctly some of the conversations I had, and I
2 think Mr. Rick Andoga mentioned that he might have
3 known about it, and I'm not sure who else inside
4 our section or the division. Yes, I'm aware that
5 there was a knowledge of friction testing, but not
6 100 percent who had that knowledge.

7 Q. Page 310, please. You
8 can close all these callouts. If you can call out
9 723 and the table, please.

10 Mr. Cameron -- I mean
11 Ms. Cameron e-mailed someone in the -- a financial
12 assistant to get information about Golder's POs
13 and the status of them over time, and it was at
14 your request. Why were you looking into Golder's
15 POs and projects?

16 A. I can't recall directly.
17 I think I'm trying to sort out potentially where
18 we are with the 2017 assignment, but that's --
19 sorry, is this also in context of the audit?
20 Because I know that sort of the pavement
21 management technology review started back a ways
22 and then there was some iterations on them.

23 And I apologize, I'm wandering
24 around a little bit there.

25 Q. That's all right. I

1 don't know. That's why I'm asking. This is
2 January 15th, 2019 and you ask for the status of
3 various Golder project requisitions. It looks
4 like you want a sense particularly not just of
5 open ones, not just of closed ones, but sort of
6 everything back -- these ones go back to 2013.

7 Can you give any insight into
8 why you were looking back at the history of
9 Golder's interactions and projects with the City?

10 A. I think it's probably a
11 due diligence exercise to make sure that I
12 understood what assignments had been done and
13 where we were with them.

14 Q. Okay. Registrar, could
15 you close this and go to page 320, please. Can
16 you pull out 748.

17 Mr. Sabo forwarded an e-mail
18 from Ms. Auty, and that e-mail was -- actually
19 maybe I'll just have it up just really for
20 context. Registrar, I'm sorry, can you close this
21 callout and call out both 747 and 748.

22 So Ms. Auty asked Ms. Graham
23 for a media history, and Ms. Auty is asking
24 specifically for pavement and safety, but we're
25 looking for comments by staff that you have

1 mentioned. And then Mr. Sabo forwards that
2 e-mail, I believe it's that e-mail, to -- I'm
3 sorry, I'm realizing that's not the e-mail. It
4 was the e-mail from the day before. You know
5 what, let's go into the actual document just so
6 that I'm not misstating anything.

7 Registrar, can you go into
8 HAM62052. No, I misspoke. HAM62050. Sorry about
9 that confusion, Mr. McGuire.

10 This is the e-mail that's
11 forwarded to you. I want to make sure that you
12 were looking at the full e-mail. You'll see
13 Ms. Auty sends to Mr. Sabo a draft of the
14 preliminary report to council. This is on
15 January 17th. And she asks that Mr. Sabo
16 circulate it to Mr. Boghosian and to you for
17 comment, and then it would go to Mr. McKinnon and
18 Mr. Zegarac. And Mr. Sabo does send it to you,
19 and he copies Mr. Boghosian, and asks for it with
20 respect to time frame. And for you he says:

21 "Gord, please pay particular
22 attention to accuracy of the
23 factual background."

24 So just stopping there. At
25 this point were you aware that Mr. Boghosian had

1 been retained, that he was the external lawyer who
2 had been retained to assist the City with this
3 issue?

4 A. I believe I am.

5 Q. Thank you. Registrar,
6 you can close this down. If you bring up
7 HAM62057.

8 So this is the attached
9 report. At this point did you understand, this is
10 by January 17th, that there was going to be a
11 report that legal made to councillors and then
12 that would be followed on a different day by your
13 report about PW18008A?

14 A. I believe I'm aware.
15 It's kind a two-step process at this point.

16 Q. Registrar, could you
17 bring up the next image, please. I just want to
18 give you a sense. I think, and it's a little hard
19 to see here, but if you go to image 2 and call
20 out, Registrar, the above solicitor-client
21 privileged flag. Thank you.

22 So you do make some comments
23 on it. You send it back. And you see this is
24 just a typo, but I think that this is you, I just
25 want to confirm. You'll see:

1 "There are financial impacts
2 associated with the potential
3 increase in the City's
4 liability and potentially an
5 increase in insurance claim
6 related costs. The exact
7 amount is not know." (As read)

8 And then there's a comment
9 that says "known" and it says "MG6," I think. Is
10 that you? Can you identify that just from the
11 initials that are being used?

12 A. Not really, but are there
13 other comments from, like, the MG --

14 Q. There are more
15 substantive comments which might be --

16 (Speaker overlap)

17 A. Does it not sort of
18 reverse your -- so the WU, is that like Windows
19 user? Anyways, yeah, are there any other
20 comments?

21 Q. There are. I'm going
22 take you to some of more substance. Registrar,
23 could you close this and go to image 3 and 4. If
24 you can pull out the top half of image 3, please.
25 Thank you.

1 I think this is your addition
2 and then also your comment, and you're referencing
3 you, which is why I think that you are clearly
4 doing that. And then you say, "I would like to be
5 clear on my actions on this point." So I'm pretty
6 sure that "MG" is you. Maybe you can take a
7 minute to review this and confirm. See that?

8 A. Yeah, I do.

9 Q. So can you confirm MG is
10 your comments?

11 A. Yes, I would confirm
12 that, yes.

13 Q. Why did you think it was
14 important to put into this, the legal report, the
15 references that you've included here in this
16 paragraph that is added?

17 A. So, you know, I want to
18 make sure that at this point in time it's
19 understood when the pivot took place. I'm not
20 sure if -- like, is that my -- is that my comment
21 and the inserted paragraph, or am I just
22 commenting on the inserted paragraph?

23 Q. I believe it's all yours
24 with because Mr. Sabo says I haven't made any
25 comments. I don't think he's made any edits in

1 it. I don't want to do it right this moment, but
2 I can pull out the native and confirm, and if it's
3 not your insert, then I will advise. But I do
4 think it's yours and I think you answered that
5 question.

6 Registrar, could you close the
7 callout and call out the second part, the bottom
8 part of image 3.

9 There's also reference to the
10 second -- the paragraph -- second paragraph, which
11 is the one before "solicitor-client privileged":

12 "The concern is that the
13 Tradewind report was not
14 shared with other City staff
15 at the time and was not
16 released during earlier FOI
17 requests."

18 And you say "as above," which
19 I think is actually an earlier comment about
20 confirming whether there was earlier FOI results.

21 Just on that, did you
22 subsequently learn that there was not any FOI
23 results -- or pardon me -- FOI requests before the
24 one that we've been looking at?

25 A. Yeah, I did learn that

1 there were not previous FOI requests, but I'm not
2 certain when.

3 Q. The other comment that is
4 left there, number 15:

5 "The concern also includes the
6 fact that the UK standard is
7 an investigatory standard,
8 i.e., do more investigation on
9 the facility. There are no
10 records of any further
11 actions."

12 That was a comment. Did you
13 want that to be included in the substance, that
14 there had been a period of time where there was no
15 records of any further investigation?

16 A. I think that was just my
17 comments to the draft. In reflection, it looks
18 like there was some further work through the
19 Golder's assignment, but yeah, I didn't seem to
20 connect that dot then.

21 Q. Registrar, you can close
22 this, and if you can back into OD9, page 326 and
23 327, please.

24 At 326, at paragraph 764,
25 there was another calendar invitation for a

1 meeting, one of many. I've jumped through past
2 some of them. This one is Mr. Zegarac sending it,
3 and it's Ms. Auty, you, Mr. Soldo and Mr.
4 McKinnon, and Ms. Graham prepared a note which
5 appears to be from this meeting, and it says
6 "council in camera on Wednesday."

7 So you understood by the 21st
8 that council was going to be meeting to get a
9 heads up about the Tradewind report on the 23rd?

10 A. Yes, I did.

11 Q. There's some reference to
12 the speed limit report which is -- that was under
13 Mr. Soldo, right?

14 A. Yeah, that's correct.

15 Q. And you understood that
16 was arising from a study that CIMA had done?

17 A. Yeah, correct.

18 Q. And then at the top,
19 PW18008A, it references end-to-end illumination
20 and friction testing. Registrar, could you pull
21 those two bullets out.

22 So here you reference 2017
23 assignment:

24 "We have a consultant, answers
25 are vague, not much action in

1 that, but we did previously
2 report that there was friction
3 testing." (As read)

4 Is that last line, is that in
5 reference to the appendix A where friction testing
6 was marked as complete?

7 A. Sorry, remind me again,
8 these are Jasmine's notes?

9 Q. Jasmine's notes.

10 A. Yeah, I would have to say
11 yes.

12 Q. At this point -- we
13 talked a little bit about this earlier -- did you
14 view the 2017 assignment to be the type of testing
15 that would be characterized as friction testing?

16 A. I'm casting my mind back
17 to the proposal, which I think was looking at
18 the -- maybe we had that conversation before the
19 lunch break -- looking at the frictional
20 characteristics or the material on the Red Hill.
21 Yes, I would have characterized it as that.

22 Q. Thank you. Registrar you
23 can close that down, can you go to page 33,
24 please. Can you pull out 780. Actually, I'm
25 sorry you can close down. Pull out 781, please.

1 There's one last line that's
2 on page 333, could you add that to the call out.
3 Thank you Registrar.

4 Mr. McGuire, this is the back
5 and forth excerpted from text messages. You're
6 the custodian and the contact name is not listed
7 but it's a continuation of your text messages with
8 Mr. Moore.

9 So just stopping there. I
10 don't think I asked you this earlier when we were
11 talking about text messages with Mr. Moore. Apart
12 from the messages that we've looked at, you didn't
13 message -- text message with Mr. Moore in the
14 usual course?

15 A. No, I did not.

16 Q. That was not your
17 professional or personal relationship with him?

18 A. Correct.

19 Q. The message that starts
20 on January 21 is Mr. Moore saying:

21 "If you want to redo every
22 road once every 25 years you
23 need to spend 4 percent of
24 capital value every year," and
25 he goes on and you say,

1 "Thanks, not trying to muddy
2 the waters as finance has put
3 other numbers out there."

4 This seems to be picking up at
5 an odd starting place for a conversation. Did you
6 and Mr. Moore have some discussion before you
7 moved to test?

8 A. No. So I think I'm
9 sitting in a capital budget meeting and we are --
10 looks like we're presenting the roads program and
11 -- so casting your mind back to the beginning of
12 my transition role and how to keep the roads from
13 quote/unquote crumbling what you need to invest.
14 So this is not related to the Red Hill. This is
15 related to the road program citywide, and Gary
16 apparently must have been watching -- and this is
17 my recollection, that we were either in committee
18 or council and his comment, this is kind of high
19 asset value comment, just reinvest X percent of
20 your overall and that's your cycle.

21 Q. So he's just giving you
22 unsolicited advice while you're in a meeting?

23 A. Correct.

24 Q. Registrar, can you close
25 this down and go to page 334 and 335, please. Can

1 you pull 788 and 789.

2 So the day before the GIC
3 meeting you're going through -- I should say it
4 differently -- staff are working to finalize the
5 various reports which are going to be provided,
6 including 18008A, and this is an e-mail exchange
7 that Mr. Sabo reprised from an e-mail you sent
8 before about your report. There's a reference in
9 your -- several references to the fact that Golder
10 has done pavement evaluation, and we'll get to
11 that. But you'll see Mr. Sabo says:

12 "As the Golder report
13 indicates Golder is studying
14 hot in-place. You may want to
15 address that in a presentation
16 or add to your written report
17 that HIR is no longer being
18 considered so it's not being
19 pursued."

20 And Ms. Cameron responds and
21 says:

22 "On behalf of Gord I want to
23 confirm that the Golder letter
24 that was provided for your
25 information will not be part

1 of the record to committee."

2 So what was your plan in terms
3 of dealing with the underlying report that you
4 hoped to receive from Golder for the 2017 pavement
5 evaluation? You recall at this point it's still
6 in draft, you're still having discussions with
7 Dr. Uzarowski, but had it been finalized were you
8 intending to append it to PW18008A or were you
9 only ever intending to summarize it?

10 A. I'm only ever intending
11 to summarize it.

12 Q. Why is that? Is it not
13 your practice to append consultant reports to
14 staff reports?

15 A. I think -- I'm not sure
16 we went down this discussion before, but if I did
17 that I would then have to attach the illumination
18 report which I think in its entirety is 50 or 60
19 pages. If I remember correctly, Edwards' reports
20 were lengthy as well. So in general yes, to
21 summarize, and then if someone was looking for
22 more follow-up we could undertake to deliver what
23 was required.

24 Q. Thank you. Registrar you
25 can close this down and go to 336 and 337.

1 At the bottom of 336 you'll
2 see Mr. Malone e-mailed you about his attendance
3 at PWC on February 4 confirming it, and at this
4 point you say, "we'll pay for that time."

5 So I'm just stopping. I'm
6 trying to really follow what you knew when. On
7 January 23rd you understood you would be going to
8 PWC on February 4th and that Mr. Malone would be
9 attending with you; is that right?

10 A. That's what it appears,
11 and so yes.

12 Q. Presumably you would have
13 told Mr. Malone if the date had changed?

14 A. Yeah, I wouldn't send him
15 to the wrong meeting at the wrong time.

16 Q. So on January 23rd the
17 same day that you're having these division
18 Mr. Malone, a closed session of council occurs in
19 the evening, 9:43 to 10:45. It's at that meeting
20 that Ms. Auty's report LS19007 is presented.
21 You're not listed in the closed session minutes
22 for that council meeting. Did you attend?

23 A. No, I did not.

24 Q. Did anyone debrief you
25 about this meeting at any point before

1 January 30th?

2 A. I don't have a direct
3 recollection of sitting down and having a debrief,
4 but I do understand that the meeting took place
5 and that we were following up in February. I
6 didn't get meeting specifics or details, if that's
7 what you're asking.

8 Q. That is what I was
9 asking.

10 Registrar, can you go to
11 page 345 and 346, please.

12 You see at the bottom of 345
13 an e-mail account named Joanne Taylor McKinnon
14 sent Mr. McKinnon some -- a whole set of
15 questions, which are set out at 346. Mr. McKinnon
16 has provided evidence that that was just him using
17 his home address to send to his work address.

18 So at 346 there's a whole
19 number of questions that all relate to factual
20 issues that are now before the inquiry and that
21 relate to Mr. Moore's role and other things. You
22 see those?

23 A. I do, yes.

24 Q. We have at a document --
25 Registrar, can you go to the next page. We have a

1 document that identifies you with similar
2 questions as a custodian of that list, you will
3 see at 820. It looks like there's some back and
4 forth between you and Mr. McKinnon to prepare a
5 whole series of questions. Do you recall that
6 back and forth with Mr. McKinnon?

7 A. I recall getting this set
8 of questions and I know that we went back and
9 forth a little bit on it so I guess the answer is
10 yes.

11 Q. Did you understand that
12 this list was in preparation for an upcoming
13 meeting with Mr. Moore?

14 A. No, I wasn't sure of the
15 purpose of the list. I might have been aware.
16 When I'm reading this now it looks like I thought
17 -- looks like we were in preparation for us going
18 to committee.

19 Q. So I'm looking at just at
20 your -- the questions that are in 820. Are you
21 aware that the MTO halted use of SMA due the
22 friction concerns in 2007. Who made the decision
23 to place the original SMA. Why was the Spectator
24 told there was no friction results.

25 So are you thinking these are

1 requests that council may ask of you? Because
2 these seem to be questions that could be directed
3 factually to Mr. Moore.

4 A. Yes, I'm aware of this
5 list and I think my response was well, that's
6 quite an understanding, or something like that.

7 Q. 817 you say, "sure that's
8 quite a list."

9 A. Yeah, I wasn't aware that
10 it was -- or maybe I was aware that it was in
11 order to have a conversation with Gary but we're
12 lining up trying to get all our information in
13 advance of February 6th and here it is, what, late
14 January now. Yeah.

15 Q. So do you want to just
16 take a minute and just look at them. In fact, it
17 might they go over to the next page. You can read
18 them and see if you can identify if you have a
19 sense of what your questions and Mr. McKinnon's
20 questions, if you can refresh your memory about
21 what you thought the purpose of them was?

22 A. Sorry, I'm reading the
23 questions. Did we provide answers or?

24 Q. These are just questions.

25 A. I'm not sure what you're

1 asking me again.

2 Q. My question was, as you
3 were preparing these questions did you understand
4 that they were going to be used in the meeting
5 with Mr. Moore?

6 A. Did I prepare these
7 questions?

8 Q. You're listed as the
9 custodian of the document, so Mr. McKinnon
10 prepares a bunch of questions, flips it to you and
11 then there's this document that has some
12 additional questions from -- in addition to those
13 in Mr. McKinnon's e-mail. So, I'm sorry if I
14 identified them as yours, maybe that's a
15 presumption. But you are the custodian of the
16 document. Maybe I'll start with that. Did you
17 prepare these questions?

18 A. That's a good question.
19 If I read it it looks like -- you know, like a
20 compilation of what I've learned to date about SMA
21 and MTO's involvement or MTO's decisions, and then
22 a few other things. And I'm not sure -- again,
23 sorry, I've lost context. If this was in order to
24 be ready for council or in order to have a
25 conversation with Gary.

1 MS. LAWRENCE: It is 20 after
2 3:00, which is five minutes after our regular
3 break time, and I think it would make sense to
4 take a break now, Commissioner, even just for five
5 minutes so counsel can talk about next steps.

6 JUSTICE WILTON-SIEGEL: That
7 will be fine. Let's adjourn for five minutes,
8 we'll return at 3:25.

9 --- Recess taken at 3:20 p.m.

10 --- Upon resuming at 3:26 p.m.

11 MS. LAWRENCE: Commissioner,
12 Counsel have discussed the process going forward
13 including our estimates on time and we agree,
14 along with Mr. McGuire, that it makes sense to
15 break for today. We have a free day on Monday
16 that we don't have witnesses scheduled and Mr.
17 McGuire has made himself available to attend to
18 finish my examination and further examination
19 starting at 9:00 a.m. on Monday.

20 JUSTICE WILTON-SIEGEL: I
21 think that makes sense. And, Mr. McGuire, thank
22 you for making yourself available on Monday
23 morning.

24 If there is nothing else we
25 have to do this afternoon, we'll stand adjourned

1 till 9 a.m. Monday morning. Have a good weekend.

2 --- Whereupon at 3:28 p.m. the proceedings were

3 adjourned until Monday, October 24th, 2022 at

4 9:00 a.m.

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