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Families of those killed on slippery Red Hill parkway considering class-action lawsuit: A long-buried friction-testing report - which mysteriously emerged last fall - concluded poor results on the parkway warranted 'further examination of the pavement surface, composition and wear performance.'

O'Reilly, Nicole; Matthew Van Dongen. **The Spectator**; Hamilton, Ont. [Hamilton, Ont]08 Feb 2019: A.1.



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Abstract

None available.

Full Text

A class-action lawsuit on behalf of Red Hill Valley Parkway crash victims is being considered after the shocking revelation that a study showing poor friction on parts of the roadway had been buried in the city's public works department for five years.

The unearthed November 2013 report found the collision-prone Red Hill had overall lower friction compared to the Lincoln M. Alexander Parkway, with vast differences between how slippery the road is from area to area. Some spots were measured to have "quite low friction values," the report said.

The author of the 2013 report told The Spectator he expected his recommendation for "remedial action" and more investigation should have spurred a closer look at the makeup of the asphalt itself.

Yet, that testing never happened - and the report never went to council until Wednesday night. The discovery led acting city manager Mike Zegarac to issue an unprecedented apology. The city has ordered an auditor's report into what happened and to expedite a \$15-million resurfacing to this spring.

Council also voted to cut the Red Hill's speed limit to 80 km/h between Greenhill Avenue and the QEW as a precaution.

For Tandra Henderson, the mother of 19-year-old Jordyn Hastings who died with her best friend Olivia Smosarski when their car crossed the grassy median on the RHVP May 5, 2015, news of this report is upsetting, said her lawyer Rob Hooper. Henderson and Smosarski's mom Belinda Marazzato were featured in an award-winning Spectator investigation that examined why the RHVP had twice as many crashes than the connecting Lincoln Alexander Parkway, despite lower traffic volumes.

Henderson is considering a lawsuit, he said.

Hooper said he is speaking with another lawyer about forming a class-action suit.

"She's happy the truth is starting to come out and hopes they continue to fix the road," Hooper said, adding that Henderson is too shaken to speak Thursday.

The family doesn't want another to face what they have faced.

Missie Sholer, whose brother Michael died in a crossover crash on the Red Hill in January 2017, said she is interested in the class action suit.

"I'm pretty sure all the kids are smiling down happy that something is finally happening," she said, adding that she's happy the truth about the road is finally coming to light.

"Everyone has been saying for years the road is slippery and there's something wrong with it ... (the city) shouldn't be hiding reports."

Public works head Dan McKinnon said the report was uncovered by Gord McGuire, the city's new director of engineering, in September. He was familiarizing himself with the road's file in anticipation of the resurfacing work.

Around this time the Spectator also filed a freedom of information request asking for friction and other testing results on the Red Hill Valley Parkway. The Spectator has not yet received any documents.

It's unclear exactly who would have seen the report when it was first received in January 2014, and how widely it was circulated, but McKinnon said he believes it would likely have gone to previous engineering director Gary Moore.

The 18-page report was found "on our network, not in an area that a lot of people had access to ... my sense is it was not widely known," McKinnon said Thursday.

Moore left his position as engineering director last year to join Hamilton's light rail transit team. He was not at Wednesday's meeting, but will be interviewed as part of the audit.

Moore has not returned messages from the Spectator.

McKinnon said the audit is estimated to take about two months.

Moore previously told the Spectator that friction testing was inconclusive. When the Spectator asked for the report - he said a formal report didn't exist, but rather it was only an email with figures in a chart.

"All we got was an indication that we should do further work," Moore said in 2017. "It was moot when we decided to go ahead with (repaving)."

He refused to share that chart with The Spectator.

"No one ever releases (that type of) information ... because it's the first thing anybody (would use in a) lawsuit," Moore said at the time.

When McGuire found the hidden report he notified McKinnon, Zegarac and Edward Soldo, director of transportation operations and maintenance, McKinnon said. Soldo recommended the city go back to CIMA+, an engineering company that has studied the RHVP in the past, to do a road safety audit.

When that engineering company did a safety investigation of the parkway in 2015 it noted a high number of crashes on the road when it was wet and suggested friction testing, among other actions. But they did not have the 2013 friction report.

In a memo to council released Wednesday, CIMA+'s Brian Malone said they would have "urged further investigation on the friction findings" had they known.

The city asked Malone directly whether the RHVP should be closed until the resurfacing work is complete, but he said that wasn't necessary.

The November 2013 study was conducted by Tradewind Scientific, using a GripTester instrument to measure friction while the road was wet.

There are no Canadian or U.S. guidelines for continuous friction measurement equipment, so they used the UK-based "skidding resistance" standard, Tradewind president Leonard Taylor said Thursday about the long-ago tests.

They measured both the Linc and the RHVP. He said the results generally showed "acceptable risk rating and performance" on the Linc, while the Red Hill numbers were generally below the standard - in some cases "well below."

"That means you had better look into it," said Taylor, whose 2013 report suggest further investigation and possible "remedial actions." In an interview, he said he would have expected the findings to prompt "a look at the composition of the asphalt in detail."

"If it has lain dormant for that long, that's unfortunate ... But I'm glad to hear (the city is) acting on it now."

Taylor said he filed the report as a subcontractor to Golder Associates, which had been directly hired by the city, and did not hear anything back until now.

The city has taken a number of steps in recent years including enhanced speed enforcement, signage and cat's eyes reflectors, but has not tackled bigger projects, including the request by families to install centre-median barriers to prevent crossover crashes.

Mayor Fred Eisenberger said he was notified about the discovered report about a week before it came to council. He said he was "dismayed" and "quite upset" it had never been brought forward and that action wasn't taken.

"We want to get to the bottom of this, that's why we've asked the auditor general to do a full and thorough investigation," he said, adding that who did what, who didn't take action, why no follow up was taken are all "open questions."

"Council is prepared to do whatever is necessary to enhance safety on that road," Eisenberger said.

"Getting this information out there is also an opportunity for letting people know what we now know, which is that there have been some issues there, and they can be informed of that and they choose to take alternate routes as they may be uncomfortable with some of the information they've been given, they can make that choice."

Ontario NDP leader and Hamilton MPP Andrea Horwath, also a former city councillor, tweeted that "an apology was absolutely necessary to the people of (Hamilton), and especially for families devastated by the loss of loved ones on the Red Hill Valley Parkway. The fact that there was a warning report hidden all this time is shocking. Time to get this road fixed and make it safe."

Coun. Sam Merulla, who previously dismissed "myths" about a slippery Red Hill based on staff assurances, now says the friction fiasco may require a "public inquiry" depending on the results of the internal investigation by the city's auditor.

"We feel betrayed," he said. "We (councillors) are not engineers ... We relied on the expert advice, the assurances of our staff. And now we see this."

Merulla maintained he still believes speed and impairment are major factors behind the history of deadly crashes on the Red Hill. But he also said victims of families deserve an apology - from whomever buried the mystery friction report.

"They received a public apology - as did we - from city staff," he said. "But if they don't accept that apology, I can't say I blame them. I'm not sure that I can accept it, either."

There remain a number of unknowns, not just about who and how the report was buried, but what should happen now.

The city took samples of the road this summer to test whether the material could be recycled when the road is resurfaced. But once it became clear that the material couldn't be reused, the city opted not to do complete testing of the road's makeup.

Will the city opt to do those tests now, before resurfacing this spring? McKinnon said no decisions have been made.

"That's an unanswered question."

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with files from Matthew Van Dongen

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See many more historic photos of the Red Hill Valley as it was and photos of the construction of the Red Hill Valley Parkway: thespec.com

CAPTION:

Vehicles on their way up and down the Red Hill Valley Parkway Thursday afternoon. PHOTOGRAPH BY SCOTT GARDNER, THE HAMILTON SPECTATOR Heavy rains flooded the Red Hill Valley Parkway, July 9, 2010, at the King Street overpass. A hatchback which hydroplaned into the median is hit from behind by another vehicle. Families of those killed on the slippery Red Hill Parkway considering class-action lawsuit Hamilton Spectator File Photo/Metroland file photo

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