

RED HILL VALLEY PARKWAY INQUIRY

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

VOLUME 34

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INDEX

	PAGE
DR. LUDOMIR UZAROWSKI; PREVIOUSLY AFFIRMED	6013
EXAMINATION BY MR. LEWIS (CONT'D)	6013
EXAMINATION BY MS. CONTRACTOR	6028
EXAMINATION BY MR. BUCK	6117
EXAMINATION BY MS. MCIVOR	6128

LIST OF EXHIBITS

NO.	DESCRIPTION	PAGE
86	GOL7497; Compilation of Dr. Usarowski's notebooks with entries dating 2005 to 2019	6012
87	GOL7407; Dr. Uzarowski's notebook with entries dated March 28, 2018 To April 23, 2019	6013
88	GOL7453; paper entitled "Experimental Study on Wet Skid Resistance of Asphalt Pavements in Icy Conditions"	6027
89	Practice Guidelines of the Professional Engineers of Ontario; HAM64291	6041

1 Arbitration Place Virtual

2 --- Upon resuming on Tuesday, June 21, 2022,
3 at 9:30 a.m.

4 MR. LEWIS: Good morning,
5 Commissioner, Counsel, Dr. Uzarowski. May I
6 proceed?

7 JUSTICE WILTON-SIEGEL: Yes,
8 please proceed.

9 MR. LEWIS: Thank you. Just
10 to start off, a couple of cleanup matters from
11 yesterday. There were two sets of Dr. Uzarowski's
12 handwritten notes which we asked him about and
13 those were not part of the overview document, and
14 so I would like to make those exhibits. The
15 first, which would be Exhibit 86, is GOL7497,
16 which compiled Dr. Uzarowski notebooks with
17 entries dating 2005 to 2019.

18 THE REGISTRAR: Noted,
19 Counsel, thank you.

20 EXHIBIT NO. 86: Compilation
21 of Dr. Uzarowski's notebooks
22 with entries dating 2005 to
23 2019; GOL7497

24 MR. LEWIS: The second one,
25 which would be Exhibit 87, is GOL7404, which again

1 is Dr. Uzarowski's notebook, March 28, 2018 to
2 April 23, 2019.

3 EXHIBIT NO. 87: Dr.
4 Uzarowski's notebook entries
5 dated March 28, 2018 to April
6 23, 2019; GOL7407

7 THE REGISTRAR: Thank you,
8 counsel. Noted.

9 LUDOMIR UZAROWSKI; PREVIOUSLY AFFIRMED
10 EXAMINATION BY MR. LEWIS (CONT'D):

11 Q. Dr. Uzarowski, just one
12 last matter I would like to cover and then go back
13 to a couple of things that we discussed in the
14 preceding days.

15 So I want to talk about just
16 your contact with audit services of the City in
17 February 2019. You recall having communications
18 with the City audit services?

19 A. Yes, I do.

20 Q. If we could go to
21 overview document 10, image 33 and 34. Thank you.

22 At paragraph 68 on
23 February 8th, 2019, Mr. Pelligrini from audit
24 services, he e-mailed you and copying the City
25 auditor, Mr. Brown, and asked some questions,

1 indicated that they had reviewed the Golder
2 report, and they set out three areas that they
3 would like to explore with you arising out of that
4 and requested a meeting. Then if we go to
5 following page, 34, on February 11th you replied.
6 And if you could highlight paragraph 71 or call
7 out 71, please, Registrar. You replied with
8 highlighting on your answer.

9 The three areas that they
10 indicated they wanted to discuss with you are in
11 the numbered paragraphs and then your answers are
12 the highlighted ones. Do you recall this
13 response?

14 A. Yes, I do.

15 Q. The answer to question 1,
16 I mean, it's around the grip tester, and the
17 standard, and you provide an answer that it's
18 probably the most commonly used skid resistance
19 tester in Ontario. And I guess the first thing,
20 that's primarily at airports, though, correct?

21 A. Correct.

22 Q. The second one is about
23 the follow-up to the Golder report and the
24 Tradewind report in 2014, and you provide some
25 summary answer which appears to be generally

1 consistent with what you've been describing for
2 the last couple of days. But it's paragraph 3
3 that I want to focus on, and in that one the
4 question is about the reference in the Golder
5 report to the 2007 friction numbers. So those
6 are, as we know, the MTO results, but they weren't
7 referred to as the MTO results in the Golder
8 report. So they asked -- the audit department
9 asks:

10 "The report refers to friction
11 numbers measured in 2007. Was
12 this same test performed in
13 2007 by the same contractor?"

14 And you respond:

15 "The friction testing in 2007
16 was done by the MTO. The MTO
17 was interested in skid
18 numbers, SN, on the SMA
19 surface just after
20 construction. It is our
21 understanding that the MTO
22 undertook the testing
23 themselves, but we do not know
24 this for certain or what
25 equipment was used."

1 So certainly it's correct that
2 the friction testing in 2007 was done by the MTO.
3 To start with the second sentence, it says the MTO
4 was interested in skid numbers on the SMA surface
5 just after construction.

6 That's correct but that that's
7 not why they did the testing, right? It was at
8 your -- it followed your concerns about skid
9 resistance and your call with Chris Raymond on
10 July 31st, 2007, correct?

11 A. Correct.

12 Q. Would you agree with me
13 that this answer seems to suggest that the MTO
14 was -- had instigated the testing?

15 A. Yes, this is maybe not
16 very fortunate statement, but the interest was as
17 you said just a moment ago.

18 Q. And then the third
19 sentence states:

20 "It is our understanding that
21 the MTO undertook the testing
22 themselves, but we do not know
23 this for certain or what
24 equipment was used."

25 Would you agree with me that

1 that's not accurate?

2 A. I agree.

3 Q. Because you did know for
4 certain that the MTO undertook the testing itself,
5 correct? You knew that the MTO itself did the
6 testing in 2007?

7 A. I knew that MTO did the
8 test, yes.

9 Q. And then the second part,
10 and "we don't know this for certain or what
11 equipment was used," but did you know what
12 equipment was used, right?

13 A. Yes, I do.

14 Q. So can you explain why
15 this answer was written as it was, given that it's
16 inaccurate?

17 A. I think it's just
18 inaccurate. I -- I don't recall why I put it this
19 way. I knew what equipment was used.

20 Q. Were you intentionally
21 being inaccurate?

22 A. No. No, I was not.

23 Q. Was it your wording or
24 someone else's at Golder?

25 A. It was reviewed by a

1 number of people.

2 Q. Right, but you were the
3 one with the personal knowledge of it, though?

4 A. Yes, I was.

5 Q. Did you appreciate at the
6 time that it was inaccurate?

7 A. I do remember when --
8 during this inquiry when I look at this, I
9 realized that it was inaccurate.

10 Q. But are you saying you
11 did not realize it was inaccurate at the time that
12 you wrote and sent it to City audit services?

13 A. At that time -- I don't
14 recall what I saw. It is like -- in my opinion,
15 yes, it is inaccurate. Right now I see it's
16 inaccurate, and I realized during the inquiry that
17 it was inaccurate.

18 Q. And then you had a
19 meeting -- or, rather, a phone call, a conference
20 call with audit services on February 12th. You
21 recall that?

22 A. I don't remember the
23 exact date, but I know I had a relatively lengthy
24 call and I took a lot of notes.

25 Q. Right, okay. If we go

1 to -- you can take that down, Registrar. If you
2 go to images 35 and 36. Sorry, image 37.

3 On February 12th at 1:14 p.m.,
4 this is paragraph 84, Mr. Brown, audit services,
5 e-mailed you and Mr. Pelligrini, copying a number
6 of others, and he attached the MTO friction
7 testing results from 2007 to his e-mail and in his
8 e-mail indicated that he was doing so at the time.
9 And then he also attached some additional
10 information. Do you recall if at the meeting you
11 discussed the attachments?

12 A. I don't recall a meeting.
13 I think it was just an e-mail. I know that there
14 were attachments, but I don't recall a meeting or
15 phone call --

16 Q. Telephone call?

17 A. I think the telephone
18 call was with Mr. Pelligrini.

19 Q. We have your notes at
20 RHV933. If we could go to that, Registrar. It's
21 at images 878 and 879.

22 So you'll see it refers on the
23 left to Tuesday, February 12th, '19, and then it
24 says "Hamilton conference call with Domenic
25 Pelligring" (sic), that means Pelligrini, auditor

1 at the City of Hamilton, and then there's a
2 reference to Charles Brown further down, and
3 there's -- and your notes go onto the next page.

4 So at a certain point you said
5 earlier you recall that there was a -- that you
6 had a call, you just didn't recall the specifics
7 of it; is that right?

8 A. You mean the previous
9 one? I remember this with Mr. Pelligrini, but the
10 previous one, I think I only had an e-mail from
11 Mr. Brown that I consulted our management and our
12 legal counsel. But this one I think -- I only
13 recall this call.

14 Q. Right. Sorry, this is
15 the one I was referring to. Sorry if I confused
16 things.

17 With the aid of your notes, do
18 you recall anything other than as is disclosed in
19 your notes from the call?

20 A. No, I think -- no. No, I
21 don't.

22 Q. Was Mr. Brown also on the
23 call at some point?

24 A. No, I don't -- I don't
25 recall. I think it was only Mr. Pelligrini.

1 Q. There's references to
2 various things. Did that indicate that you spoke
3 about the grip tester, about the ASTM E274, locked
4 wheel tester, Gary Moore, grip tester versus
5 friction number? Those sorts of speed -- the
6 speed of the testing, all those sorts of things?

7 A. Yes, that's what we
8 talked about.

9 Q. The last on the right,
10 number 8, says "other than Gary." Do you know
11 what that means?

12 A. There were other people
13 than Mr. Gary Moore involved in this.

14 Q. Oh, I see. Okay. What
15 did you tell them?

16 A. Again, I don't have
17 detailed recollection. Probably my notes says
18 more than I am, but I think at that point of time
19 in testing the -- arranging the testing, that was
20 mainly Mr. Moore involved.

21 Q. Do you recall having any
22 subsequent contact with City's audit services
23 after February 12th?

24 A. I don't -- I don't recall
25 any call, telephone calls with them. It's

1 possible that there was some e-mails that I would
2 pass to our team, but I -- I don't recall any. I
3 have to double check my notes, but I -- no, I
4 don't recall any.

5 Q. Thank you. You can take
6 that down, please, Registrar.

7 Just now to deal with a couple
8 of things you referred to in the preceding days.

9 On a number of occasions you
10 referred to a John Emery presentation called "Get
11 a Grip" in relation to, generally speaking, how
12 skid resistance is one of just many factors that
13 contribute to road safety. Do you recall that
14 evidence in this presentation by Mr. Emery?

15 A. Yes, I do.

16 Q. I think what you said in
17 one occasion was that skid resistance was one
18 piece or one line of what John Emery shows as a
19 number of factors that impact safety of the
20 pavement.

21 And if we go to the "Get a
22 Grip" presentation; it's at GOL7392. This is the
23 first slide or first page of this presentation
24 called "Get a Grip" from November 2007. Is this
25 the presentation to which you were referring?

1 A. Yes, it is.

2 Q. And then I think it has
3 about 30 pages, but if we could go to image 6.

4 Is this the particular slide
5 that you were speaking of when you were talking
6 about it being one of many items?

7 A. Yes, it is.

8 Q. It shows a whole whack of
9 factors influencing highway safety which feed into
10 that box on the far left, "highway safety."
11 You're referring to skid resistance, and I'm
12 wondering what specifically you were referring to,
13 just because that term itself isn't used on this
14 slide. I'm just wondering, so we can close this
15 off, what you're referring to?

16 A. So this is in the second
17 column from the right, under "Pavement" -- sorry,
18 pavement, surface texture, macrotexture,
19 microtexture. So just basically we're
20 microtexture, macrotexture, they impact friction
21 numbers.

22 Q. And then those other
23 things in there also go to it, but the, for
24 example, aggregate type is something that
25 influences macrotexture and microtexture, right?

1 A. Yes, roughness, rutting,
2 all of them have some impact on this, yes.

3 Q. Thank you. I just wanted
4 to make sure we understood what you were talking
5 about. You can take that down, Registrar.

6 Another thing you referred to
7 is in the discussion we were having around the
8 British pendulum testing that Golder did in
9 December 6th and 7th, the night of 6th and 7th of
10 December, 2017, and the reference in your
11 February 28th, 2019 pavement evaluation report of
12 British pendulum values under 30 being low.

13 You indicated that there was a
14 paper that you were relying on in relation to
15 those conclusions, and I think you said you
16 couldn't locate the original paper that you were
17 talking about, but you did locate a more recent
18 one that was similar in nature; is that right?

19 A. Correct.

20 Q. And then if we could go
21 to GOL7453. This is a paper from 2019, title
22 "Experimental Study on Wet Skid Resistance of
23 Asphalt Pavements in Icy Conditions." Is this the
24 paper you were referring to?

25 A. Yes, this is the second

1 paper, the one that I talk about, yes, it is.

2 Q. The more recent one?

3 A. Yes.

4 Q. All right. And as I
5 understand it from reading this paper that it's --
6 really primarily what it's about is British
7 pendulum testing conducted on melting ice, right?

8 A. I understand it was in
9 winter conditions, so it was -- or it did consider
10 those factors that I mention, temperature, snow
11 and the ices.

12 Q. Right, but it's -- like,
13 if we go to image 3, the first full paragraph at
14 the top, if you could expand that. I'm just
15 trying to understand what the source of it is
16 because it says:

17 "Accordingly, this paper
18 reports on the durability of
19 skid resistance in very low
20 temperature conditions,
21 especially in an ice melting
22 condition lower than zero
23 degrees Celsius."

24 And then:

25 "BPN values under ice melting

1 conditions were measured to
2 examine the skid performance
3 of anti-skid surfaces under
4 winter road conditions."

5 If we go to images 6 and 7,
6 there's some figures here. Figure 5 sets out BPN
7 value and skid resistance, and on the right
8 there's figure 7 has -- 6 and 7 have some graphs
9 as well. Are these things that you were relying
10 on, these pages specifically?

11 A. Yes. And the table, yes.

12 Q. As I understand it again
13 from reading this that the tables -- or figures 6
14 and 7, that those indicate testing again was done
15 under ice melting conditions; is that right?

16 A. So in my -- when I look
17 at this, it was just when you have the temperature
18 below zero, you can anticipate some ice. Even
19 when you drive you see the note in your car icy.
20 So this is -- I assume that it was relevant, and
21 also I know from my airport experience how they
22 approach this thing. Assume that you may have ice
23 and, you know, some de-ices are applied. I didn't
24 know whether they did, the City did, but I assume
25 that it could have some impact.

1 Q. Okay, and what about the
2 reference to the low -- under 30 being low? Is
3 that dealt with in here? I mean, I see under
4 figure 5 it refers to low at 27 to 32.

5 A. Yes. You know, this is
6 -- yes, it's similar to watch in this table. It
7 wasn't exactly this paper. I think I couldn't
8 find the original one, so this is something
9 similar to what I used.

10 Q. Just give me one moment,
11 please. Registrar, Commissioner, if we could mark
12 that paper as an Exhibit 88.

13 THE REGISTRAR: Noted. Thank
14 you, Counsel.

15 EXHIBIT NO. 88: GOL7453;
16 paper entitled "Experimental
17 Study on Wet Skid Resistance
18 of Asphalt Pavements in Icy
19 Conditions:

20 MR. LEWIS: Thank you.
21 Commissioner, I don't have any further questions
22 at this time. Just in terms of discussions with
23 counsel, we have -- we're aware that counsel for
24 the City has requested a fair amount of time with
25 Dr. Uzarowski which will take up today, and we

1 have arranged the schedule so that Dr. Uzarowski
2 can re-attend on Thursday for examinations by MTO
3 counsel, Dufferin counsel and Golder counsel for
4 part of the day on Thursday. I'm not sure about
5 the order of MTO and Dufferin, we can sort that
6 out, but the City would be going -- the City would
7 be going first today, to finish today.

8 JUSTICE WILTON-SIEGEL: Okay,
9 thank you. Is it Mr. Lederman or Ms. Contractor
10 who is asking the questions on behalf of the City
11 today?

12 MS. CONTRACTOR: Good morning,
13 Commissioner, I will be asking questions.

14 JUSTICE WILTON-SIEGEL: Thank
15 you, Ms. Contractor. Why don't you proceed. You
16 have the rest of the day.

17 MS. CONTRACTOR: Thank you
18 very much.

19 JUSTICE WILTON-SIEGEL: Which
20 is to 3:30.

21 MS. CONTRACTOR: Understand.

22 EXAMINATION BY MS. CONTRACTOR:

23 Q. Good morning,
24 Dr. Uzarowski.

25 A. Good morning.

1 Q. During your first
2 attendance at the inquiry in May you were asked
3 about your educational and professional
4 background, and I just wanted to ask you a few
5 questions about that.

6 I understand that you've been
7 a licensed professional engineer in Ontario since
8 about 1996. Does that sound right.

9 A. Correct.

10 Q. And as a licensed
11 professional engineer, you have certain
12 obligations and guidelines that you have to comply
13 with?

14 A. Correct.

15 Q. Mr. Registrar, if you
16 could please go to HAM64291.

17 MS. JENNIFER ROBERTS:
18 Commissioner, if I might, this is a document that
19 was provided yesterday to us.

20 JUSTICE WILTON-SIEGEL: Yes.

21 MS. JENNIFER ROBERTS: The
22 witness hasn't read it. I'm not sure where this
23 questioning will go, but certainly it would be my
24 view as to compliance with professional
25 obligations will be the subject matter of argument

1 and potentially expert evidence at some later
2 point.

3 JUSTICE WILTON-SIEGEL: Yes,
4 well, I understand your question. Let's hear the
5 questions first and then we can deal with any
6 concerns that you might have.

7 MS. JENNIFER ROBERTS: Thank
8 you.

9 BY MS. CONTRACTOR:

10 Q. So, Dr. Uzarowski, this
11 is the guidelines for professional engineer
12 practice issued by the Professional Engineers of
13 Ontario. And, Mr. Registrar, if we could please
14 go to image 4. Thank you.

15 Of course, the Professional
16 Engineers of Ontario is the licensing and
17 regulatory body for professional engineers in
18 Ontario; is that correct?

19 A. Correct.

20 Q. If we could please, Mr.
21 Registrar, call out the first section. Actually,
22 sorry, I meant the first paragraph, but that's
23 fine, as long as Dr. Uzarowski can read it. Thank
24 you.

25 So this states that the PEO

1 prepares these guidelines for the purposes of
2 educating professional engineers, the licensees
3 and the public about the standards of practice.

4 Do you see that?

5 A. Yes, I can.

6 Q. As a professional
7 engineer, you agree that these standards apply to
8 you?

9 A. Yes, I do.

10 Q. Thank you. If we could
11 please, Mr. Registrar, go to image 9 of the
12 document. If we could call out the first three
13 paragraphs under section 9. Sorry, the first
14 three paragraphs under section 9. So right before
15 the item 1 there. You got it. Thanks.

16 So this section talks about
17 the engineer's duty to report, and you'll see the
18 first line of the first paragraph states:

19 "The duty to report is an
20 essential component of an
21 engineer's commitment to
22 professionalism."

23 And we go to the second
24 paragraph. You'll see that it states:

25 "Professional engineers should

1 know that their duty to report
2 is limited, relating only to
3 situations where they apply
4 judgment based on their
5 professional training,
6 experience and competence."
7 And goes on to state that:
8 "Engineers are expected to
9 report only on those issues
10 that come to their attention
11 during the course of their
12 professional practice."

13 Do you see that?

14 A. Yes, I do.

15 Q. And the last paragraph,
16 the last sentence of the last paragraph, excuse
17 me, it details the steps that engineers should
18 take if they identify any issues that engage
19 either the safety or the public welfare while
20 providing client services. That's the duty to
21 report, is to report on any issues that endanger
22 safety or the public welfare. Is that consistent
23 with your understanding?

24 A. Yes, it is.

25 Q. Thank you. And, Mr.

1 Registrar, if you could now call out item 1.

2 So the first step according to
3 the guidelines is for the engineer to assure
4 themselves that there is a problem, that the
5 problem is real, and that they have correctly
6 assessed the potential harm that might result.

7 And, Dr. Uzarowski, you understand that of course
8 it's important for an engineer to accurately
9 identify any issues and any potential harm that
10 might arise when providing advice to a client?

11 A. If there is immediate
12 danger, it is, yes.

13 Q. Right. And it's not just
14 immediate danger, right, if there's potential
15 harm?

16 A. Yeah, I can see this, but
17 I don't know which way you are going. But in my
18 opinion, I didn't see any red flags when I
19 prepared the report. There were no red flags.
20 The results were very similar to what was observe
21 for other roads, so there was no immediate danger,
22 areas of concern. I didn't consider this to be a
23 potential harm. It was just very similar to what
24 was observed on other roads.

25 Q. Thank you. And I'm going

1 to ask you about -- I think when you say potential
2 harm, red flags, you're talking about your
3 interpretation of the friction testing results
4 from 2013, correct?

5 A. Correct.

6 Q. And we're going to talk
7 about that, but I do want to take you through the
8 rest of these steps for now, okay.

9 A. Okay.

10 Q. That's the first step, is
11 to identify any potential harm. If we can call
12 out items 2 and 3, Mr. Registrar.

13 This states that after an
14 engineer assures themselves or confirms that they
15 have assessed that there is potential harm, the
16 next steps are to advise the client of that issue
17 and take all reasonable steps to ensure that the
18 client is aware of any danger that the engineer
19 believes might result from a failure to deal with
20 that situation.

21 Dr. Uzarowski, you understand
22 that this is important because in order for the
23 client to make a decision about whether to pursue
24 remedial action, they need to understand the
25 potential dangers that could arise if remedial

1 action is not taken.

2 A. I understand, but I
3 didn't see any potential harm. I informed -- I
4 think the recommendation that I passed to the
5 client, they were very clear.

6 JUSTICE WILTON-SIEGEL: I'm
7 just going to interject for a moment because I
8 want to make sure that the questions on which Ms.
9 Roberts may or may not have any objections are
10 absolutely clear.

11 So, Dr. Uzarowski, at this
12 point, all you're being asked is were you aware of
13 these particular steps that are contemplated by
14 section 9 of the guidelines, and I think Ms.
15 Contractor will ask you about how you saw your
16 actions in light of these later on, and that will
17 be an opportunity for you to respond to those
18 questions. But for the moment she's not asking
19 you to respond in terms of how you saw your
20 actions in light of these provisions, merely
21 whether or not you were aware of them. Would that
22 be fair, Ms. Contractor?

23 MS. CONTRACTOR: Absolutely.
24 Thank you, Mr. Commissioner.

25 JUSTICE WILTON-SIEGEL: Okay.

1 BY MS. CONTRACTOR:

2 Q. So looking at items 2 and
3 3 again, Dr. Uzarowski, you understand that it's
4 important to advise the client clearly of any
5 potential danger, because in order for the client
6 to make a decision about what to do and whether to
7 pursue remedial action, they of course need to
8 understand that what that potential danger may be
9 if remedial action is not taken. Agreed?

10 A. Correct.

11 Q. And you would agree with
12 me that that advice as to what would happen if the
13 client does not pursue remedial action is
14 important so that the client can again make an
15 informed decision about what it is that they need
16 to do?

17 A. Correct.

18 MS. JENNIFER ROBERTS: I'm not
19 sure I understood that question, Counsel.

20 MS. CONTRACTOR: Sure. The
21 question was whether Dr. Uzarowski would agree
22 with me that the engineer's advice about the
23 potential harm that would arise if remedial action
24 is not taken, that that advice is important for
25 the client so that they can assess and make an

1 informed decision about whether or not remedial
2 action should be taken.

3 BY MS. CONTRACTOR:

4 Q. Dr. Uzarowski, you agree
5 with me that based on that -- or do you agree with
6 that?

7 A. Generally this is my
8 interpretation of item 3.

9 Q. Sorry, could you repeat
10 that? Sorry, I think Ms. Roberts --

11 MS. JENNIFER ROBERTS:

12 Counsel, Commissioner, these are the guidelines,
13 and nobody is questioning that these guidelines
14 are applicable. They are guidelines. There are
15 also regulations and provisions within the Act,
16 all of which, you know, may or may not have
17 specific application to the facts at hand. I'm
18 not sure how helpful it is to go through the PEO
19 guidelines here. I mean, they are as they are.

20 JUSTICE WILTON-SIEGEL: Yeah.

21 Well, Ms. Contractor, are you proposing to take us
22 through each of these and ask whether
23 Dr. Uzarowski is aware of them and understands
24 them and agrees with them, agrees they are
25 significant?

1 MS. CONTRACTOR: Well,
2 Mr. Commissioner, this section provides
3 step-by-step guidelines on what an engineer should
4 do if they identify a safety concern, and so I
5 want to go through those steps and make sure that
6 Dr. Uzarowski understands them and agrees that
7 they are important before proceeding with the
8 subject matter that he dealt with in 13 and
9 onwards.

10 JUSTICE WILTON-SIEGEL: I
11 mean, I wonder if we can short circuit that by
12 saying -- Ms. Roberts I think takes it that it --
13 would be prepared to agree that Dr. Uzarowski is
14 aware of these, understands them, and recognizes
15 that they are important. Would that be correct,
16 Ms. Roberts?

17 MS. JENNIFER ROBERTS: It is.
18 And may I add that Golder itself has significant
19 internal processes. So these guidelines are
20 issued by the PEO Ontario, but Golder's internal
21 guidelines are designed to comply with what's here
22 in Ontario as well as other jurisdictions, so
23 these then -- these then are subject to an
24 internal process and any -- there's a whole
25 process in here for what happens if there is a --

1 JUSTICE WILTON-SIEGEL: That I
2 think is another question.

3 MS. JENNIFER ROBERTS: It is.

4 JUSTICE WILTON-SIEGEL: That
5 we can deal later, perhaps with your questioning,
6 I don't know. But in any event, we're just
7 dealing with the Professional Engineers of Ontario
8 guidelines, but if we take it that Dr. Uzarowski
9 has read these -- if you want to give him an extra
10 minute to re-read them, we can do that -- that he
11 understands them and he accepts that they are
12 important. Can we proceed from that, Ms.
13 Contractor?

14 MS. CONTRACTOR: Certainly,
15 Mr. Commissioner. If I could add, actually I
16 don't intend to go through the rest of them. I
17 just wanted to go from items 2 to 4. So if we can
18 bring up paragraph 4 as well, Mr. Registrar, or
19 number 4 there, and if you'd permit me, I would
20 just like to go through number 4 with him and then
21 I'm happy to move on.

22 JUSTICE WILTON-SIEGEL: Okay.
23 Well, let's hear your questions on number 4.

24 MS. CONTRACTOR: Thank you.

25 BY MS. CONTRACTOR:

1 Q. So, Dr. Uzarowski, item 4
2 states that if after a reasonable length of time,
3 the client has -- sorry, let me take a step back.

4 If an engineer identifies a
5 potential safety issue, and once it identifies
6 that safety issue for the client, the next step
7 outlined in item 4 is after a reasonable length of
8 time, the engineer should follow up with the
9 client to see if appropriate action has been
10 taken.

11 My question is, Dr. Uzarowski,
12 you understand that where an engineer identifies a
13 potential safety issue while providing services to
14 a client, it's important that the engineer follow
15 up with the client to see if appropriate action
16 has been taken?

17 A. What is your question,
18 sorry?

19 Q. Sure. My question is,
20 based on item 4 and what we've looked at, you
21 understand that where an engineer identifies a
22 potential safety issue while providing services to
23 a client, it's important that the engineer follow
24 up with the client to see if appropriate action
25 has been taken?

1 A. Yes, I understand it.

2 Q. Okay. Thank you, Mr.

3 Registrar, you can take that down. My colleague

4 tells me that I should mark it as an exhibit.

5 Exhibit 89, Mr. Commissioner.

6 JUSTICE WILTON-SIEGEL: Okay.

7 THE REGISTRAR: Noted. Thank

8 you, counsel.

9 EXHIBIT NO. 89: Practice

10 Guidelines of the Professional

11 Engineers of Ontario; HAM64291

12 BY MS. CONTRACTOR:

13 Q. Again, just circling back

14 to some of your educational and employment

15 experiences. During your first attendance in May

16 you advised that you have two masters degrees in

17 highway engineering, and I take it that those

18 degrees include highway design and performance

19 evaluation?

20 A. So this is my background,

21 but I'm professional pavement and materials

22 engineer, and that was my -- that's been my

23 involvement.

24 Q. That's the role that you

25 held at Golder since 2003, I think, it was senior

1 pavement and materials engineer?

2 A. Yes, I do.

3 Q. When Golder is engaged by
4 clients to provide advice, you would agree with
5 me, sir, that the clients expect that Golder has
6 expertise on the issues that it's engaged to
7 advise on?

8 A. Experience and knowledge
9 on my particular area of competence. So in this
10 case would be pavement -- pavement and materials.

11 Q. Right. But you wouldn't
12 provide advice on issues that you don't have
13 experience -- expertise or knowledge on?

14 A. No, I wouldn't.

15 Q. You understand that
16 clients rely on the advice that Golder is engaged
17 to provide?

18 A. Oh, I advise the client,
19 but I cannot police or force the client to follow
20 my advice. I advise the client.

21 Q. I understand that, but my
22 question was whether you understand that clients
23 rely on the advice that's provided?

24 A. Yes, I do.

25 Q. As part of that, you

1 would agree with me that clients would expect that
2 Golder would inform the client of any potentially
3 unsafe situation that Golder may learn of during
4 its engagement. Is that fair to say?

5 A. If I consider situation
6 to be unsafe, then I would convey it to the
7 client, but as I mentioned -- I don't know whether
8 this is relevant, but at that point of time, I
9 didn't see any red flag.

10 Q. So your practice is to
11 clearly identify any potential safety issues for
12 the clients that you're engaged to provide advice
13 to?

14 A. I don't know what you
15 mean by "potential safety issue." I'm not a
16 safety consultant, not a -- I only focus on my
17 area.

18 Q. And as you're focusing on
19 your area, if you in your view based on your
20 experience determined that there was a safety
21 issue, you would clearly identify that?

22 A. I think you extend the
23 area. I'm not a safety consultant. I look at the
24 numbers, the friction numbers, and what is -- in
25 my opinion, what those numbers mean. I compare

1 them with other agencies, other roads, and this is
2 my recommendation. I cannot -- you know,
3 safety -- road safety is a huge subject. I'm not
4 trained or educated in this area, so this is --
5 this is not my expertise. I can provide advice in
6 my area.

7 Q. I appreciate that.
8 You're not a safety expert, but if while providing
9 advice to a client in your opinion there was a
10 safety concern, you would of course clearly
11 identify that concern to the client, correct?

12 A. To the extent that I
13 understand, I would let the client know what to do
14 to improve the numbers.

15 Q. So --

16 A. And that's what I did,
17 yes.

18 Q. I take it that you agree
19 that if in your opinion you learn of a safety
20 concern, your practice is to let the client know
21 about the concern?

22 A. I think, you know, for me
23 it's like my area is here, the friction, friction
24 numbers and what it is, and safety is much
25 higher -- much higher subject, much higher level.

1 Like, safety incorporate everything. But, you
2 know, if I had concerns with the numbers and if I
3 could see a practical way of improving, I would
4 definitely bring it to the owner's or client's
5 attention.

6 Q. And if those concerns
7 were about the safety of the roadway, you would
8 clearly state that, right? It would be important
9 to state that your concerns relate to the safety?
10 I again appreciate that you're not a safety
11 expert, but if in your view you thought, you know,
12 this might have some implications for safety, you
13 would clearly state that to the client?

14 A. You know, because it's
15 like you explain this -- I would definitely say,
16 you know, if I had concerns with the numbers, I
17 would tell them, and I would provide practical
18 application, but for me it's like safety is way,
19 way above, you know, my expertise. But, you know,
20 if I had concerns with the numbers, I would
21 definitely tell them, and then always, you know,
22 that would be a part of safety evaluation, that
23 should be done, but I -- I cannot comment on this
24 big subject. I can focus on my area and what I
25 was comfortable with providing recommendation for.

1 Q. I understand that, but I
2 just want to be really clear that if you yourself
3 had a concern not just about the numbers, as you
4 say, but particularly that the numbers would
5 impact the safety of the roadway in this example
6 that you've provided, you would clearly identify
7 that it was a safety concern, you would identify
8 the nature of your concern?

9 A. Again, of course, you
10 know, I'm an engineer, I'm a human being, so I'm
11 concerned about safety, but I would focus on my
12 area, okay, I would focus on my area. Because,
13 you know, safety is such a -- it's such a huge
14 subject. I'm not qualified to provide this. I
15 would say, okay, this numbers may be, you know --
16 I didn't see red flags over time. I just could
17 see method of quick and cheap improvement, and
18 this is what I would -- this is what I would
19 advise. For me, safety is too big of a subject.
20 I'm not -- because it's everything. It's speed
21 and as you know probably -- I was concerned about
22 speed and, you know, other aspect. So I'm not
23 qualified to comment on this. I can focus, yes,
24 I'm concerned with the numbers, this numbers have
25 negative impact on friction or characteristics of

1 the pavement, here is what you can do. I even did
2 more because I provided contacts, contractors,
3 even the price and, you know, number of times and
4 this is what I could do.

5 Q. Thank you. You're still
6 not quite answering my question, so let me try
7 to --

8 JUSTICE WILTON-SIEGEL: Ms.
9 Contractor, I'm not going to allow that. I think
10 you've put the question three or four times and
11 you've got the answer.

12 MS. CONTRACTOR: Okay. Thank
13 you, Mr. Commissioner.

14 JUSTICE WILTON-SIEGEL: You
15 may be trying for a different answer, but this is
16 the answer you are going to have to live with.

17 MS. CONTRACTOR: Mr.
18 Commissioner, I'm going to ask a follow-up
19 question and certainly if you think I should move
20 on, I certainly will.

21 BY MS. CONTRACTOR:

22 Q. Dr. Uzarowski, if you had
23 safety concerns that arise while you're providing
24 advice to a client, I take it that your practice
25 was not to withhold that information from the

1 client.

2 A. I think -- sorry.

3 MS. JENNIFER ROBERTS: Isn't
4 that the same question, just put in the negative?

5 JUSTICE WILTON-SIEGEL: I do
6 think it's the same question, Ms. Contractor.

7 MS. CONTRACTOR: I'll move on.

8 JUSTICE WILTON-SIEGEL: And
9 unfortunately what it's doing is it's confusing
10 not just Dr. Uzarowski but the rest of us, turning
11 things upside-down. I think you've asked the
12 question directly a number of times. You should
13 move on.

14 MS. CONTRACTOR: Okay, I'll do
15 that.

16 BY MS. CONTRACTOR:

17 Q. Mr. Registrar, could we
18 go to GOL2642 and GOL2641. So, Dr. Uzarowski,
19 commission counsel took you to these e-mails from
20 September 2013. One is the e-mail from Mr. Moore
21 inquiring about friction testing on the parkways,
22 and the second e-mail is the longer e-mail chain
23 that was sent to you including comments from City
24 staff. You recall these discussions?

25 A. Yes, I do.

1 Q. And your evidence last
2 week was that you specifically recall reviewing
3 the longer e-mail chain, I believe, because it was
4 the first time you received an e-mail from
5 Mr. Moore which contained a chain of e-mails from
6 other City staff?

7 A. I don't know what you
8 mean by "specifically," but I know that I look at
9 that chain of e-mails.

10 Q. If we could go to image 4
11 of GOL2641, and this is the start of that e-mail
12 chain where Mr. Capostango states that in his view
13 the Red Hill is slippery when it rains and that he
14 feels that it's a pavement and speed problem. He
15 also notes that the police called the City saying
16 that the ramps and the roads were slippery, and
17 just stopping there for a moment.

18 Am I correct that SMA was not
19 used on the ramps of the Red Hill?

20 A. It's almost correct.
21 There was one ramp where the SMA test strip was
22 done, but the rest of the ramps did not
23 incorporate SMA.

24 Q. Thank you. During your
25 evidence last week, I believe you stated that what

1 the police were saying about the pavement being
2 slippery stayed in your mind; is that correct?

3 A. Yeah, I considered their
4 opinions seriously.

5 Q. If we go to image 2 of
6 that e-mail chain, Mr. Registrar.

7 You also referred in your
8 evidence to Mr. McLennan's comment that there was
9 no significant claims history for slippery
10 conditions on the Red Hill. So you've reviewed
11 Mr. McLennan's e-mail as well?

12 A. Yes, I did.

13 Q. If we scroll down to
14 image 3, and if we could call out Mr. White's
15 e-mail. So here Mr. White states that:

16 "In order to determine the
17 severity and magnitude of the
18 problem and to move this from
19 subjective opinion to fact,
20 I've asked traffic engineering
21 to analyze the collision
22 history on the entire LINC and
23 Red Hill to determine if
24 there's a proven recorded
25 collision history to the

1 impacts of wet weather and
2 road surface on the collision
3 rate and to determine the
4 higher incident locations."

5 (As read)

6 So I take it that you
7 understood from that that the City intended to
8 conduct an analysis on the -- a collision analysis
9 on the impact of weather and road surface on
10 collisions.

11 A. I think in your -- you go
12 too far. I think it wasn't my business. I was
13 asked to do friction testing, and, you know, this
14 is -- there is traffic safety department in the
15 City, so it was their subject. My -- the request
16 from the City was to test friction, friction
17 number -- test friction, provide friction numbers.

18 Q. I understand that. I'm
19 just asking whether you understood from this
20 e-mail that the City -- not you, not Golder --
21 that the City was going to conduct a collision
22 analysis on the impact of weather and road surface
23 on collisions?

24 A. I don't recall me
25 thinking about this collision analysis. It wasn't

1 directed to me. It was -- in my opinion it was
2 sent to me by accident, so it was not my subject.
3 I just focus on what I was asked to do.

4 Q. But you did know that Mr.
5 McLennan had stated that there was no significant
6 claims history, right? If we could call that
7 e-mail up again, Mr. Registrar, on image 2.

8 So you did recall that. My
9 question is whether you also looked at Mr. White's
10 e-mail that follows before this and understood
11 that the City -- not Golder, but the City would be
12 conducting that collision analysis?

13 A. No, I didn't think about
14 this. I just focus on that one sentence.
15 Obviously it was just under Mr. Moore's e-mail.
16 And that was my -- my thought. No, I didn't put
17 any particular focus on what the City was going to
18 do. It wasn't -- this e-mail was not directed to
19 me. I think it was sent by accident, so I just
20 only look at this item to identify, yes, the
21 police opinion, and it was -- there were no
22 significant claims. I didn't know about any
23 collision analysis. I don't recall any thought
24 like this.

25 Q. But you did receive this

1 e-mail?

2 A. Yes, I did.

3 Q. If we could call that
4 down, Mr. Registrar, and call out Mr. Moore's
5 e-mail at 2642 and Mr. Uzarowski's response. I'm
6 sorry, on the other document. Yes, that's the
7 one.

8 So last week commission
9 counsel asked you what you understood about
10 purpose of friction testing, and you stated the
11 purpose of testing was to provide friction
12 numbers, and that while you're not a safety
13 expert, you understood that the slipperiness of
14 pavement is related to a large number factors and
15 friction is just one of those, but that this is
16 what the City wanted to test. You further stated
17 that you understood what the police were saying
18 about the road and that the City was responding to
19 that by conducting friction testing; is that
20 correct?

21 A. Correct.

22 Q. Last week we also heard
23 evidence from you on your understanding of how
24 well Mr. (sic) understood the role of pavement in
25 roadway design and performance and how well he

1 understood friction issues specifically. I just
2 want to confirm a couple of points on that topic.

3 You stated that in your view
4 Mr. Moore was intelligent and a good engineer and
5 that he may have had some general understanding
6 regarding friction, but he wasn't a friction
7 expert, correct?

8 A. Correct.

9 Q. And that was your
10 understanding in 2013?

11 A. Correct.

12 Q. You also stated that you
13 didn't think that Mr. Moore understood that there
14 were different pieces of friction testing
15 equipment -- sorry, that he did understand that
16 there were different pieces of friction testing
17 equipment but -- I'm sorry, let me rephrase.

18 You stated that you did not
19 think that Mr. Moore understood that there were
20 different pieces of friction testing equipment,
21 but you expected that he understood that there
22 were different methods of testing; is that
23 correct?

24 A. I would have to review
25 exactly -- I think he was aware of this different

1 methods of testing, you know, for -- different
2 methods of testing -- for different methods of
3 testing, different pieces of equipment I use.

4 Q. Right. So you understood
5 that he was aware of different methods of testing,
6 but not that he was -- he didn't understand the
7 differences between the different types of
8 friction testing equipment in 2013; is that fair?

9 A. In my opinion he
10 understood that there were different methods and
11 different pieces of equipment were useful, but I
12 think that the meaning of this -- he wasn't an
13 expert of, you know, interpreting the meaning of
14 this.

15 Q. And he certainly did not
16 understand how to compare results from different
17 testing devices in 2013. That was your
18 understanding at that point?

19 MS. JENNIFER ROBERTS:
20 Commissioner, I think we might have a problem with
21 the feed again. Are you back?

22 THE WITNESS: I'm sorry but --
23 it was the picture was frozen and we couldn't
24 hear -- I couldn't hear the question.

25 MS. CONTRACTOR: That's not a

1 problem. I'm happy to repeat my question.

2 THE WITNESS: Thank you.

3 BY MS. CONTRACTOR:

4 Q. It was your understanding
5 in 2013 that Mr. Moore did not have an
6 understanding of how to compare the results from
7 different friction testing devices?

8 A. I think, yeah, that's
9 correct.

10 Q. Mr. Registrar, if we
11 could please go to GOL2657 and OD6, image 87,
12 page 230.

13 JUSTICE WILTON-SIEGEL: I
14 think you mean paragraph 230.

15 MS. CONTRACTOR: I did. Thank
16 you very much, Mr. Commissioner.

17 BY MS. CONTRACTOR:

18 Q. And looking at
19 paragraph 231. Last week you were taken to these
20 e-mails from January 2014 regarding the friction
21 testing data, and you confirmed that the client at
22 paragraph 231 referred to Mr. Moore, and you'll
23 see you state here that my client, Mr. Moore,
24 needs a comparison of friction numbers on the Red
25 Hill in Hamilton from 2007 and 2013. So you

1 understood that Mr. Moore was looking for a
2 comparison of the friction testing results from
3 2007 and 2013?

4 A. Correct.

5 Q. Of course by comparison,
6 you understood that he wanted to understand
7 whether the friction testing values increased or
8 decreased from 2007?

9 A. Correct.

10 Q. And the e-mail that you
11 sent to Mr. Moore on the left side of the screen,
12 you sent that in response to his request for a
13 comparison?

14 A. Correct.

15 Q. In fact, we heard from
16 you that you contacted Tradewind to get the
17 testing results so you could send Mr. Moore the
18 information he needed to make the comparison?

19 A. I don't know what you
20 mean. Like, I sent an e-mail? I think Mr. Rowan
21 Taylor called -- or he called me, I called him. I
22 got those numbers over the phone.

23 Q. Right, but you called him
24 to get the information so that you could send it
25 to Mr. Moore for the comparison, correct?

1 A. I would rather think that
2 he would call me. I think he would rather call
3 me, and then I -- he sended the numbers and sent
4 it to Mr. Moore.

5 Q. That's fine. And
6 yesterday we -- or not yesterday. I think it was
7 last week -- commission counsel asked you about
8 your understanding at that time, in 2014, about
9 the ability to correlate between grip tester
10 results and locked wheel skid trailer results, and
11 you initially stated at that point you were aware
12 that they were similar, with locked wheel slightly
13 higher.

14 After some back and forth,
15 once commission counsel advised that we -- we've
16 all heard a fair amount of evidence that generally
17 speaking the grip tester, all other things being
18 equal, will return higher grip numbers than a
19 locked wheel testing. I think you ultimately
20 agreed that the grip tester would result in
21 slightly higher units.

22 But quite apart from what you
23 might have thought in 2014 about whether the grip
24 tester or the locked wheel tester would result in
25 higher values, what you were clear about in your

1 evidence is that in 2014, you understood that
2 those values were quite similar, correct?

3 A. Yes, correct. I think I
4 corrected myself during the examination that, you
5 know -- I made an error during examination because
6 right from the start I knew that the grip tester
7 numbers would be slightly higher, I think I
8 estimate it was about 2.5, than the locked wheel
9 tester. Only during examination I confuse it, but
10 it was -- to me, it was right from the start that
11 they -- I would anticipate. Then if the locked
12 wheel is done in 90 and grip tester at 50, then
13 the grip tester would be slightly higher.

14 Q. That's not included in
15 your e-mail to Mr. Moore from January 24th,
16 correct?

17 A. Correct.

18 Q. Fair to say,
19 Dr. Uzarowski, if you thought that it was
20 important for Mr. Moore to know that, you would
21 have included it in the e-mail?

22 A. You know, I don't want to
23 speculate. I know that I was under pressure
24 because Mr. Moore ask me about this by noon and
25 it -- I think I said it at 11:45 or something, so

1 there was a pressure to send the numbers to him.
2 So it was just, you know, a pressure, send it to
3 Mr. Moore because he wants it by noon, yes.

4 Q. I understand that, but it
5 would have only required adding one line, right,
6 that the 2013 testing results would -- you would
7 expect them to be higher. That would take a
8 couple of minutes at most, right? That's all you
9 would have had to add?

10 A. Obviously, you know, this
11 statement is not here, but I was aware of the
12 difference.

13 Q. Right, but you didn't
14 include it in the e-mail because you didn't think
15 it was important for Mr. Moore to understand that
16 to compare the results. Fair to say?

17 A. No, you go too far. No,
18 I think I was -- whether it was important, no, I
19 think I was -- I didn't -- first of all, I didn't
20 know what numbers I could get, so I think I was
21 under a lot of stress and pressure because the
22 client asked has -- as you probably know, I
23 thought that the client had a meeting with the
24 management, so there was a lot of pressure and
25 stress on me to deliver the numbers to him. So I

1 didn't -- I didn't provide this. Later on I
2 looked at, did some more analysis, but at that
3 point of time, no, I didn't.

4 Q. Okay. So your evidence
5 was that you did not have enough time to include
6 in this e-mail a statement or information about
7 the 2013 -- your expectation that the 2013 results
8 would have been higher than 2007?

9 A. You know, my
10 interpretation is that I had everything ready. I
11 had the e-mail ready, I had the attachment ready,
12 everything, was waiting for this, and you probably
13 know that I put some pressure on Mr. Leonard
14 Taylor. When I got the number, I passed them to
15 Mr. Moore. This is what I recall. I recall the
16 stress and the pressure that I was under and -- as
17 I said, that was ready. The e-mail was ready,
18 everything was ready, that include this full
19 number.

20 Q. You felt comfortable that
21 you gave Mr. Moore what he needed?

22 A. Okay, now your question
23 is what my feeling was that time. I knew I sent
24 him the numbers, but now I would -- now during
25 this I would -- later on I did more analysis, but

1 for me at that particular time, the objective was
2 send this to Mr. Moore because he requested this
3 thing urgently. So I was happy.

4 Q. And he asked you to send
5 it so that he could compare the results for the
6 management meeting?

7 A. Yeah, he asked for the
8 2013 numbers. That was my -- yeah, he wanted the
9 2007 and 2013 numbers.

10 Q. To compare --

11 A. That was my understanding
12 for the management. Actually, turn out I was
13 mistaken, but that was my understanding.

14 Q. As you say in
15 paragraph 231, he didn't just want the numbers, he
16 wanted the numbers to compare them?

17 A. (No response).

18 Q. I think he's frozen.

19 MR. LEWIS: I believe he's
20 back.

21 BY MS. CONTRACTOR:

22 Q. Dr. Uzarowski, I'm not
23 sure if you heard my last question.

24 THE REGISTRAR: Sorry,
25 Counsel, the connection just dropped.

1 (DISCUSSION OFF THE RECORD)

2 MS. JENNIFER ROBERTS: We've
3 been advised there's an internet loss and that
4 they are working on it.

5 JUSTICE WILTON-SIEGEL: We'll
6 take an early morning break, take our break for
7 15 minutes, and see what the -- perhaps get an
8 assessment of what Golders thinks is the
9 likelihood that they can address their internet
10 problems. I assume this is a systemic problem for
11 Golders again?

12 MS. JENNIFER ROBERTS: That's
13 what I understand. Yesterday there was a service
14 provider issue, and I don't know if that's been
15 carried over today, but I'll find out.

16 JUSTICE WILTON-SIEGEL: Why
17 don't we do that, if counsel are agreeable, and
18 we'll return at 11:00 with the report. No,
19 Dr. Uzarowski is not back. He's just on the
20 screen frozen; is that right?

21 MR. LEWIS: Appears to be.

22 JUSTICE WILTON-SIEGEL: Then
23 let's take that break. We'll return at 11.

24 --- Recess taken at 10:47 a.m.

25 --- Upon resuming at 11:01 a.m.

1 MR. LEWIS: Commissioner, as
2 you know, on the break we've been advised by Ms.
3 Roberts for Golder that they are having just a
4 systemic internet problem at their office, so
5 Dr. Uzarowski is going to continue from his home,
6 and that should be able to happen by 11:30. So I
7 would suggest we adjourn until 11:30, resume then,
8 and then, if necessary, for Ms. Contractor's
9 cross-examination, rather than finish at 3:30 as
10 we have been doing for Dr. Uzarowski, that we
11 finish at 4 o'clock.

12 JUSTICE WILTON-SIEGEL: That's
13 fine. Let's stand adjourned then until 11:30.

14 MS. JENNIFER ROBERTS: Thank
15 you.

16 --- Recess taken at 11:02 a.m.

17 --- Upon resuming at 11:30 a.m.

18 BY MS. CONTRACTOR:

19 Q. Dr. Uzarowski, I think we
20 were in the middle of discussing your e-mail to
21 Mr. Moore from January 24th. And, Mr. Registrar,
22 I wonder if you could call back up the GOL2657,
23 and OD6, image 87, paragraph 230.

24 Just to cover this off, you
25 understood that you -- at the time, that you sent

1 Dr. -- I'm sorry -- Mr. Moore the information that
2 he needed to make the comparison between the 2007,
3 2013 results?

4 A. Yes, I sent him the
5 numbers that he wanted, yes.

6 Q. Right. From your e-mail
7 at paragraph 231 -- as it states in your e-mail at
8 paragraph 31 (sic), you were aware that Mr. Moore
9 wasn't just looking for the numbers, he was
10 looking for the comparison?

11 A. This is what the e-mail
12 says, yes.

13 Q. And you understood that,
14 that that's what he was looking for? He wasn't
15 just asking you for the numbers; he wanted to
16 compare them?

17 A. Yes, he ask me for, yes.

18 Q. And you gave him the
19 information he needed to do that comparison?

20 A. Yes, I did.

21 Q. If we could, Mr.
22 Registrar, go to image 91 of the overview
23 document, paragraph 240. We can pull up -- sorry,
24 you don't need to call it out for now. Thank you.
25 On the other side of the screen, pull up GOL2981.

1 Dr. Uzarowski, you received
2 the Tradewind report on January 26th, 2014, and
3 you send it to Mr. Moore on January 30th, and your
4 evidence last week was that you didn't send it
5 right away because you wanted to review the
6 Tradewind report and incorporate it into the draft
7 Golder report. And if we could please go to image
8 10 of the draft Golder report. Sections 5 and 6
9 are -- sorry, contain Golder's analysis of the
10 Tradewind report, correct?

11 A. Correct.

12 Q. And you were satisfied
13 that these sections then summarized Golder's
14 analysis of the Tradewind report and the
15 recommendations from it?

16 A. Yes, that was my
17 interpretation of what was in Tradewind's report
18 and our recommendations, yes.

19 Q. If we could, please, Mr.
20 Registrar, call out section 5. The bottom
21 paragraph states:

22 "Although the friction
23 numbers, FN, values are higher
24 than when measured in 2007
25 immediately after

1 construction, between 30 and
2 34, they are considered to be
3 relatively low."

4 And here the friction number,
5 FN, values referred to in that sentence are the
6 results from the testing completed by Tradewind,
7 correct?

8 A. Correct.

9 Q. So here you're comparing
10 these friction numbers, FN, values that Tradewind
11 measured to the FN numbers from the 2007 testing
12 conducted by the MTO?

13 A. Yeah, here I compared
14 them, MTO 2007, with Tradewind 2013.

15 Q. And you state that the
16 2013 numbers are higher than the 2007 numbers?

17 A. Yes, it is. Yes.

18 Q. Similar to the
19 January 24th e-mail that we were just looking at,
20 this draft report does not state that the numbers
21 cannot be compared directly?

22 A. No, it doesn't. There is
23 no direct correlation, but overall those 2000
24 numbers -- 2013 numbers, in my opinion, my
25 analysis, were higher than -- somewhat higher than

1 2007.

2 Q. But you don't say
3 somewhat higher, right, you say higher?

4 A. Higher, yes.

5 Q. We can call that back
6 down, Mr. Registrar.

7 Dr. Uzarowski, you've told us
8 that you understood that the City was doing
9 friction testing in light of the concerns
10 expressed by the police that the roadway was
11 slippery, and last week and again this morning you
12 stated that the friction testing results did not
13 raise any red flags for you.

14 You would agree with me that
15 if you had any concerns that the friction testing
16 results in 2013 raised any potential safety issues
17 on the Red Hill, in your opinion, you would have
18 stated that in the draft Golder report.

19 A. Yes, they -- again,
20 safety is a different -- they didn't raise --
21 those numbers, they didn't raise red flag in my
22 opinion, but I consider them to be relatively low.

23 Q. So the Tradewind report
24 of course refers to friction standards applicable
25 in the United Kingdom, and in 2014 you understood

1 that aside from I think you called it a general
2 expected value of FN30 from the MTO, there were no
3 friction standards in Ontario or in Canada for
4 that matter, correct?

5 A. There is no friction
6 standard that would specify the requirements, yes.
7 Number 30 was like -- you know, how can I say?
8 The base of -- I think MTO called it expected
9 value.

10 Q. Right. And certainly the
11 draft Golder report does not reference any
12 Canadian or Ontario friction standard?

13 A. No, it doesn't. They
14 don't exist.

15 Q. Right. The only
16 reference to a standard in section 5 is a
17 reference to what's acceptable in the UK for
18 motorway pavement. We can --

19 A. I reference the value
20 that Mr. Leonard Taylor provided in his report.

21 Q. Right. And we've agreed
22 that the numbers in the -- I'm sorry, the draft
23 Golder states that the 2013 numbers are higher
24 than the 2007 numbers. We also know that the MTO
25 was content with the 2007 friction testing

1 results, correct?

2 A. It was like, you know,
3 two-stage question. So the second, yes, MTO
4 considered those values, 2007 values, as good.
5 I'm sorry, what was the first part of the
6 question?

7 Q. I was just reiterating
8 that the -- as noted in the draft Golder report,
9 the 2013 numbers were higher than the 2007
10 numbers?

11 A. Yes, they were high, yes.

12 Q. We know, again from your
13 evidence in May, that after you received the 2007
14 friction testing results from the MTO, you advised
15 Mr. Moore and Mr. Oddi that the 2007 results were
16 acceptable, not perfect; is that correct?

17 A. I don't remember using
18 word "perfect," but I think yes, I advised them
19 that there is -- 2007 MTO results were good.

20 Q. If we can, Mr. Registrar,
21 pull up GOL2642 and pull out Mr. Uzarowski's
22 e-mail.

23 In September 2013 when
24 Mr. Moore first approaches you to do the friction
25 testing, you reiterate that the City got good

1 numbers from friction testing in 2007 and that it
2 was better than what the MTO typically has?

3 A. Yes, is correct. That
4 was 2007 numbers before opening to traffic. They
5 were good, yes.

6 Q. Sorry, Mr. Registrar, if
7 you could pull back the Golder report again. Let
8 me know if you need the number. Thank you.

9 So we agree then that the only
10 standard -- or you have agreed with me that the
11 only standard that was applied in the draft Golder
12 report and the Tradewind report was the UK
13 standard, and that the 2013 results were higher
14 than the 2007 results, and that the 2007 results
15 were acceptable to the MTO and to Golder.

16 Based on that, you would agree
17 with me, Dr. Uzarowski, that one interpretation of
18 the friction testing analysis in the Golder report
19 provided to the City in 2014 is that the 2013
20 friction testing results, which are higher than
21 the values that the MTO found acceptable, are
22 relatively low only when compared to the UK
23 standard?

24 A. No, I don't agree.

25 Q. Why not?

1 A. The critical statement is
2 the typical -- should be at least equal to or
3 higher than 40 to be considered adequate. The UK
4 standard was 48 that I reference from Mr. Leonard
5 Taylor's report, but in my opinion was that those
6 values should be minimum 40, because as -- the
7 values in 2007 were just after construction before
8 opening to traffic. So the critical statement is
9 typically the FN value should be equal or higher
10 than 40 to be considered adequate.

11 Q. You don't provide any
12 reference for that statement. The only reference
13 in that section to a standard is the UK standard,
14 correct?

15 A. Correct, but that is a
16 separate statement.

17 Q. Right. Commission
18 counsel asked you about your call and your meeting
19 with Mr. Moore on February 3rd and 7th. If we
20 could leave this up and also pull up OD6, image
21 99. And your evidence was that the February 4th
22 call was sent to set the meeting agenda and that
23 the discussion really took place on February 7th.

24 And with respect to the
25 February 7th meeting, you told us that you recall

1 going through sections 5 and 6 of the draft Golder
2 report but that you did not go through the
3 Tradewind report, correct?

4 A. I think it would be
5 probably more than 5 and 6 because I also talk
6 about the condition of the pavement six years
7 after construction. So probably also the other
8 sections.

9 Q. Certainly, but you did go
10 through 5 and 6 but not the Tradewind report?

11 A. I don't have detail
12 recollection, but I think yes, probably -- yes.
13 It's likely, yes.

14 Q. If we just go to the next
15 page of the OD, please.

16 You stated that the meeting
17 was about an hour, but that you only spent 10 or
18 15 minutes discussing items 1 and 2 of your notes
19 at paragraph 260 there.

20 A. Correct, yeah, it was one
21 hour. But as I recall, it was just the first
22 hour -- half an hour was productive, and then
23 Mr. Moore had number of phone calls that were, you
24 know, basically very little time to discuss. So
25 yeah, roughly probably more than half an hour I

1 would say. Maybe out of the second half an hour,
2 maybe I could get about 10 minutes, so maybe the
3 total was about 40 or something.

4 Q. Commission counsel asked
5 you if you recall discussing the UK standard
6 that's referenced in the draft Golder report, and
7 you stated that you think that you did discuss
8 this but not too extensively, and that you talked
9 to Gary about what was in the draft report and
10 what he compared it to, but that you did not
11 discuss this over a long period of time. When you
12 said what he compared it to, you mean that Moore
13 was comparing the 2013 results to the 2007
14 results?

15 A. I definitely discussed
16 with him what was in the report, so, you know,
17 2007 versus 2013, and our recommendation that it
18 should be at least 40, and likely I mentioned or I
19 said that in that Tradewind report, they -- what I
20 reference, that was 40 based on UK standard.

21 Q. And the "should be 40,"
22 that was also based on the UK standard?

23 A. No, it was not.

24 Q. What was that based on?

25 A. I think I -- that was

1 discussed with commission counsel what steps I
2 used. That was based on table two seven and two
3 six in -- two six and two seven in the
4 Transportation Association of Canada guide.

5 Q. None of that is
6 referenced in your draft report?

7 A. No, it's not.

8 Q. I take it at this meeting
9 you shared your view with Mr. Moore that the
10 Tradewind results did not raise any red flags?

11 A. Yes, that's correct,
12 there were no red flags raised.

13 Q. And --

14 A. Maybe not in the
15 Tradewind report. You know, in my report I didn't
16 see any red flags.

17 Q. In the draft report, in
18 section 5 or 6 where you analyzed the Tradewind
19 report, you don't raise any red flags, and indeed
20 the results didn't raise any red flags for you?

21 A. No, they didn't.

22 Q. And you spent a bit of
23 time with commission counsel discussing the
24 recommendation to do microsurfacing.

25 If we could pull up the next

1 page of the Golder report. The draft report does
2 not discuss any timelines by which microsurfacing
3 needed to be completed, correct?

4 A. No, it doesn't.

5 Q. And you didn't discuss
6 any timelines by which microsurfacing needed to be
7 completed with Mr. Moore in your meeting?

8 A. No, I don't recall.

9 Q. And the draft report does
10 not state that failing to do microsurfacing on the
11 Red Hill could lead to potential safety concerns?

12 A. No, it doesn't. Only it
13 states that what it should be to be adequate and
14 how to get -- what to do to address the structural
15 and visual issues with relatively low friction.

16 Q. And if you thought that
17 failing to microsurface could lead to potential
18 safety concerns, you would have identified that in
19 the draft report?

20 A. Sorry, could you repeat
21 the question.

22 Q. Certainly. If you
23 thought in your view that failing to do
24 microsurfacing on the Red Hill could lead to
25 potential safety concerns, you would have

1 identified that in the draft report?

2 A. I think I would. At that
3 time I didn't have any red flag so I didn't, yes,
4 correct.

5 Q. And we talked about
6 Mr. White's e-mail in that long chain of e-mails
7 from staff in which he talked about reviewing
8 collision data to assess the number of wet weather
9 collisions, and I take it at the February 7th
10 meeting you didn't ask Mr. Moore about whether
11 that collision review was completed?

12 A. No, I didn't know about
13 any collision analysis.

14 Q. At that meeting on
15 February 7th you didn't draw any connection
16 between the accidents in wet weather collisions
17 and friction values?

18 A. I think you go too far.
19 I didn't know about wet accidents, you know. It
20 was -- I think that chain of e-mails was sent by
21 accident, so I think it was -- then it wasn't
22 discussed with me; it was Gary. So no, I didn't
23 know about the analysis. I didn't discuss
24 anything with Mr. Moore, and he didn't bring any
25 subject for discussion with me.

1 Q. But, Dr. Uzarowski, you
2 were aware that the purpose for the friction
3 testing were concerns from the police that when it
4 rained the pavement became slippery and that that
5 was contributing to accidents?

6 A. I knew that yeah,
7 Mr. Moore was concerned that after rains, the
8 pavement was considered to be slippery. This is
9 the only thing that I....

10 Q. Your recommendation to
11 complete microsurfacing; that was for the entire
12 main line of the Red Hill?

13 A. No, not really. I
14 recommended that a piece of the main line should
15 be mill and overlay. This is where I observed the
16 lamination, roughly about 2.5 kilometres in both
17 direction. We were slightly above 1 kilometre in
18 each direction. So that was one subject.

19 And on the remaining part,
20 after the required repairs, like the dips and the
21 cracks, then microsurfacing for the remaining part
22 of the main line.

23 Q. The 2.5 was not
24 continuous?

25 A. No, no, it was a piece of

1 one side and another piece on the other side of
2 the parkway.

3 Q. So other than that, the
4 recommendation was to microsurface the entire main
5 line of the Red Hill?

6 A. Correct.

7 Q. You didn't recommend only
8 microsurfacing the parts of the Red Hill that were
9 identified as having friction values of below 30
10 on the Tradewind report?

11 A. No, I didn't, because
12 there were -- the treatment would have to be
13 applied over this like almost entire length
14 established, 2.5, because of, one, friction, and
15 two, other structural and visual concerns that
16 were covered in the report.

17 Q. Am I correct that
18 microsurfacing the Red Hill at that time would
19 have stripped the roadway of the benefits of SMA?

20 A. No, I don't agree,
21 because, you know, we would not remove the SMA.
22 SMA would be still there, so the benefits that we
23 had from SMA, like enhance rutting resistance or
24 cracking endurance, that would still remain. That
25 would be only the surface. So SMA would address

1 the friction, this relatively low friction aspect,
2 and at the same time it would feel -- seal the
3 surface and address the micro cracking aspect. I
4 definitely was not only concerned with the cracks
5 that were observed, but also with micro cracking.
6 So I didn't see any negative impact of applying
7 microsurfacing, no.

8 Q. Am I correct that the
9 benefits of SMA include a durable rut-resistant
10 surface course?

11 A. That's correct.

12 Q. And microsurfacing would
13 apply a different surface course on the parts that
14 are microsurfaced?

15 A. Different, but
16 microsurfacing offers excellent rutting
17 resistance. It's actually used to address
18 rutting.

19 Q. Right, but it would strip
20 the roadway of the other benefits that SMA would
21 provide?

22 A. I don't think what other
23 benefits because that would not strip SMA of any
24 benefits because SMA -- I don't want to repeat
25 myself, but SMA mainly offers excellent rutting

1 resistance and fatigue endurance. This would not
2 change. Only just the very top would change that
3 would seal the micro cracking and provide better
4 friction characteristics.

5 Q. Would it impact the noise
6 level benefits that SMA offers?

7 A. You know, the SMA
8 benefits in terms of noise mitigation is -- I know
9 it's considered significant, but actually it's --
10 I don't -- I would not consider this thing as
11 compromising the benefits of SMA.

12 Q. I take it that in your
13 February 7th meeting there was no discussion about
14 whether microsurfacing would impact the benefits
15 of SMA?

16 A. No, I don't recall this
17 discussion.

18 Q. Commission counsel also
19 asked you about the difference in the friction
20 testing results between the LINC and the Red Hill.
21 In 2014 were you aware that the LINC was
22 resurfaced in the summer of 2011?

23 A. Of course I was.

24 Q. And so Tradewind tested
25 friction levels about two years before the

1 resurfacing was completed?

2 A. Correct.

3 Q. And the Red Hill opened
4 in 2007, and so for the Red Hill, Tradewind tested
5 friction levels nearly seven years after it
6 opened?

7 A. Yes, this is correct.

8 Six and something, yes.

9 Q. Would you expect the LINC
10 to have higher friction levels than the Red Hill
11 given that they were -- it was recently resurfaced
12 prior to the 2013 testing?

13 A. This is correct.

14 Q. Commission counsel asked
15 you about whether Mr. Moore had any comments
16 regarding your e-mail to him with the draft Golder
17 report, and you indicated that in the February 7th
18 meeting after you e-mailed him the report, he told
19 you that he wasn't happy with you sending the
20 e-mail.

21 When asked about what his
22 concern was, you stated that you understood that
23 the report was too bulky and he was too busy. You
24 don't recall any other reason that Mr. Moore gave
25 you for not wanting to report -- sorry, not

1 wanting to receive reports by e-mail.

2 A. This is correct.

3 Q. In fact, you continue to
4 send e-mails to Mr. Moore about friction testing
5 on the Red Hill in 2016 and onwards?

6 A. Correct.

7 Q. Certainly you didn't
8 understand Mr. Moore in 2014 to mean that he
9 didn't want you to send him reports or information
10 about friction testing by e-mail to avoid a paper
11 trail?

12 A. No, he didn't tell me.
13 He just wasn't happy with me sending the e-mail,
14 and it was just a short statement, this is it.

15 Q. Could we please go to
16 OD7, image 80.

17 We know that in December 2015
18 there were e-mails between you and Mr. Moore
19 regarding friction testing, and your evidence was
20 that you had no discussions with Mr. Moore after
21 your meeting in February of 2014 and before your
22 e-mails with him in December 2015 with respect to
23 the Tradewind report or the draft Golder report,
24 correct?

25 A. This is correct.

1 Q. He did not contact you to
2 arrange for microsurfacing?

3 A. To arrange for
4 microsurfacing between this -- you mean whether he
5 called me to arrange for microsurfacing between
6 2014 and the end of 2015?

7 Q. That's correct.

8 A. I don't recall. I know
9 that I was in touch with (indiscernible), but I
10 don't recall any particular request for this
11 between --

12 Q. Right.

13 A. We know we were in touch
14 about microsurfacing, but no, I don't recall
15 anything between.

16 Q. Certainly you were not
17 aware of any microsurfacing that was completed on
18 the Red Hill between 2014 and December 2015 on the
19 Red Hill?

20 A. No, I was not -- this is
21 the first time I hear this. No, I was not aware.

22 Q. I take it as well that
23 you didn't follow up with Mr. Moore on whether the
24 Red Hill was microsurfaced or whether Mr. Moore
25 took any steps to increase the friction values on

1 the Red Hill between February 2014 and
2 December 2015?

3 A. No, I don't -- if there
4 are no notes in my notebook and -- so I don't
5 recall any. I know that after that time we talk
6 about nothing. I don't recall anything between.

7 Q. Certainly if Mr. Moore
8 had not followed up with you in December 2015
9 regarding the Tradewind report, you didn't have
10 any intention to follow up with him years later to
11 see if the microsurfacing was completed?

12 A. No, we didn't talk about
13 this, no. We saw each other often, but we
14 didn't -- no, we didn't talk about it.

15 Q. If we could go to Golder
16 7409, image 25. These are your notes from the
17 March 4th, 2016 meeting that you discussed with
18 commission counsel, and your evidence was that you
19 don't recall the meeting in detail, but you recall
20 that Mr. Moore was concerned with the police
21 comments that the roadway was slippery.

22 When asked about whether you
23 recall Mr. Moore stating as such or whether you
24 inferred that, you stated that City employees are
25 savvy bureaucrats and so they word things

1 carefully, but you think Mr. Moore said it in a
2 careful way, that the police were expressing an
3 opinion that the pavement was slippery.

4 So I take from that,
5 Dr. Uzarowski, that you don't recall Mr. Moore
6 expressly stating that he was concerned with the
7 police comments that the roadway was slippery?

8 A. Well, I agree with what
9 you said before, what I told the commission
10 counsel.

11 Q. And you agree that you
12 don't have a recollection of Mr. Moore stating
13 that, but that was based on your inference of his
14 discussions with you?

15 A. I know he was -- he was
16 concerned. This is why we talk about this. This
17 is why I took the action. So he was concerned and
18 he talked to me about this. Of course first of
19 all was the profile, but also the friction and
20 friction results, and this is why I took immediate
21 action after the meeting.

22 Q. Fair to say that if you
23 understood Mr. Moore to have significant concerns,
24 you would have made a note of that?

25 A. I think -- I believe they

1 prepared before, so just, you know, for me to have
2 a short meeting with Moore and what to discuss.
3 But no, as I said, I know he had some concerns.
4 This is why I -- I took that immediate action,
5 just after the meeting.

6 Q. So I take that you don't
7 have any notes documenting that Mr. Moore had a
8 significant concern at this time?

9 A. No, nothing -- I don't
10 even remember whether those notes are during or
11 after. No, I don't have any notes. Only what's
12 here on the screen.

13 Q. If we could go to page or
14 image 117 of that OD chapter, Mr. Registrar. If
15 we could pull up the next page as well so that we
16 can see both 117 and 118.

17 Commission counsel asked you
18 about this exchange with Mr. Moore in March of the
19 2016 regarding skidabrading and shot blasting on
20 the Red Hill, and your evidence last week was that
21 it's likely that Mr. Moore was responding to a
22 quotation that you provided of 300,000 at
23 paragraph 376 there.

24 A. That's correct.

25 Q. Can we pull up

1 paragraph 376, Mr. Registrar.

2 Here Mr. Moore is stating that
3 he does not need the full road tested, just four
4 to six spots that would be representative, or
5 worst case.

6 A. That's correct, this is
7 what the e-mail says.

8 Q. And he also seems to be
9 under the impression that the 300,000 is for
10 testing, and you clarify that in your e-mail at
11 paragraph 377, that the quote was for skid
12 abrasion and not skid testing.

13 At then at paragraph 378. If
14 you could call that down so we can see
15 paragraph 378. Thank you.

16 Mr. Moore states that he's not
17 interested in your recommendation because it does
18 not address cracking and the City needs to address
19 the surface distress and deformations. And your
20 evidence was that you were surprised that
21 Mr. Moore was not interested in pursuing your
22 recommendations.

23 We don't see any e-mails from
24 you in response to Mr. Moore where you express any
25 concern that failing to pursue skid abrasion or

1 shot blasting or microsurfacing could lead to
2 potential safety issues on the Red Hill.

3 A. No, for me the subject
4 was closed. Mr. Moore raised this concern during
5 the meeting. I offered a solution and a
6 contractor and cost estimate, and Mr. Moore says,
7 thank you, we're not interested. That was it for
8 me. The subject was closed.

9 Q. Right, and you didn't
10 have any concerns about the safety of the roadway
11 or whether the decision not to pursue these
12 recommendations could lead to potential safety
13 concerns on the roadway at that time?

14 A. No, I understood that
15 Mr. Moore as the owner, he had no interest and no
16 concerns, so no, I didn't follow up. This is the
17 end of the -- of this subject at this point of
18 time.

19 Q. Right, I understand that,
20 but at this time, you, in your view, did not have
21 any concerns about the safety of the roadway or
22 potential safety issues that could arise if
23 Mr. Moore did not pursue your recommendations of
24 shot blasting, microsurfacing or skid abrasion?
25 At this time you didn't have any of those

1 concerns?

2 A. My recommendations were
3 in response to Mr. Moore's concerns expressed
4 during the meeting.

5 Q. Right. That's not my
6 question, Dr. Uzarowski. At this time, you in
7 your view did not have any concerns about the
8 safety of the roadway or potential safety issues
9 that could arise from the decision not to pursue
10 shot blasting, microsurfacing or skid abrasion?

11 A. I think at that time, as
12 you know, I didn't consider this to be red flag,
13 so I only -- I only responded to what Mr. Moore
14 ask me, but I didn't -- I -- as I said before --
15 as I said, I didn't see any red flag, and here now
16 I responded to what Mr. Moore ask me about, so
17 that was my recommendation in the response to his
18 concern. That's it.

19 Q. So in March 2016 there
20 were still no red flags for you with respect to
21 potential safety issues on the Red Hill?

22 A. Like, I didn't know what
23 change, why Mr. Moore ask me about -- two years
24 after about this, so I provided the
25 recommendations and -- to respond to his concerns.

1 I didn't know. He didn't tell me anything about
2 any accidents or anything. He just expressed
3 concerns, so I respond to his concerns that he
4 expressed during the meeting.

5 Q. Right, but he told you
6 that those concerns, according to your
7 recollection, those concerns were that the police
8 continued to view slippery pavement as a factor
9 that's contributing to collisions. So you knew
10 that that was the concern?

11 A. So that was repeat what
12 was in 2013, yes. He repeated -- he repeated what
13 his concerns were, and then I provided my -- I
14 provided a solution.

15 Q. Right. And at that time
16 you did not have any concerns that not pursuing
17 those recommendations could lead to potential
18 safety issues on the Red Hill?

19 MS. JENNIFER ROBERTS:
20 Commissioner, this is the fourth time -- this is
21 the fourth time that this question has been asked.

22 JUSTICE WILTON-SIEGEL: I
23 agree. We've had this asked three times already,
24 Ms. Contractor. The answer has been given.

25 THE WITNESS: I didn't do any

1 additional testing. Thank you. Sorry.

2 MS. CONTRACTOR:

3 Mr. Commissioner, the witness isn't responding to
4 the question. Sorry, the witness isn't responding
5 to the question and so --

6 JUSTICE WILTON-SIEGEL: The
7 problem is that I think I fully understand his
8 perspective, which he says is limited to
9 responding to the concerns of his client as he
10 understands them by way of providing
11 recommendations, and that's his answer.

12 MS. CONTRACTOR: I understand
13 that but --

14 JUSTICE WILTON-SIEGEL:
15 You're -- I understand that you're trying for a
16 different answer, but that presupposes a different
17 outlook from the one that he says he brought to
18 the situation, and he's answered that question
19 from his perspective.

20 Now, if you want to ask why he
21 didn't have another perspective, you may proceed
22 along those lines, but not by simply asking again
23 and again the same question.

24 MS. CONTRACTOR: Thank you,
25 Mr. Commissioner. My question is about whether or

1 not he had a view about any potential safety
2 issues on the Red Hill, quite apart from what he
3 understood his assignment to be based on the
4 client's request.

5 JUSTICE WILTON-SIEGEL: You
6 can ask that question, but that is not the same
7 question as the one that you were asking
8 previously.

9 MS. CONTRACTOR: I'll rephrase
10 it then. Thank you.

11 BY MS. CONTRACTOR:

12 Q. Dr. Uzarowski, I take it
13 that you did not have any safety concerns about
14 the Red Hill in light of Mr. Moore's decision not
15 to pursue your recommendation in March of 2016 to
16 shot blast, skidabrade or microsurface the Red
17 Hill, correct?

18 A. I can say that at that
19 point of time I didn't have any new test result,
20 there was no new testing done, so I had to base my
21 opinion on what was done in 2013. One thing I
22 knew, that it would not get better, and that was
23 the level of my knowledge at that point of time,
24 and the client expressed concerns, so I offered a
25 solution. But to -- I would have to do new

1 testing to see how it change. I knew one thing,
2 it would not improve so -- so that's why, you
3 know, I -- my answer was with recommending
4 immediate action.

5 Q. Sorry --

6 A. I don't know if this
7 answers the question.

8 Q. Is there an e-mail where
9 you recommend immediate action to the City?

10 A. Yeah, so --

11 Q. Up until this point?

12 A. So the action I
13 recommended was very clear in my e-mail. I talked
14 to contractors, I arrange -- you know, I talked to
15 them; I have the contact; I got the cost estimate
16 from the two. So it was like ready for
17 implementation, and this is the -- at that point
18 of time, this is the best that I could offer to
19 Mr. Moore.

20 Q. You don't state in your
21 e-mail that the City needs to take immediate
22 action?

23 A. No, I didn't. I only
24 responded to what he told me what he ask me about.

25 Q. You don't state that the

1 friction values will continue to decrease and if
2 the City does not take immediate action it could
3 lead to potential safety concerns?

4 A. No, I didn't -- my
5 opinion about safety, this is not my subject, but
6 I only told I think in my e-mail that it would
7 immediately improve the friction numbers. I think
8 it's probably in my e-mail. Okay, sorry, I have
9 just -- yeah.

10 Q. We can pull out
11 paragraph 30 -- 377, I think is what Dr.
12 Uzarowski's referring to.

13 A. Yeah, it is. This is --
14 that's what I meant, that machine (indiscernible)
15 brings the skid numbers high. So it's extremely
16 quick, effective and cheap, not in terms of
17 quality, but in terms of low cost. So for me it
18 was --

19 Q. You're explaining what
20 the skidabrader would do here?

21 A. Yes.

22 Q. You're not saying that
23 the City needs to on an urgent basis or an
24 immediate timeline complete the -- or do
25 skidabrading on the Red Hill?

1 A. No, I don't. That was
2 Mr. Moore's decision, not mine.

3 Q. You didn't suggest to him
4 that you thought it was important that that be
5 done on an immediate timeline?

6 A. I didn't say immediate
7 timeline, but for me it was important. This is
8 what I put this effort to deliver the information
9 immediately. Not immediately. Took me about a
10 week, so as soon as I could.

11 Q. If we could go to the
12 OD7, image 194, as well as GOL7414, please.

13 August 31st, 2017,
14 Dr. Uzarowski, you attended a meeting with City
15 staff members during which you presented on a new
16 specification as a way of improving pavement
17 performance. Sorry, Mr. Registrar, that is at
18 image 44 of the GOL document. These are your
19 notes from the August 31st meeting.

20 The note here, skid
21 resistance. Your evidence was that that likely
22 references the Red Hill, and although you don't
23 recall specifically, the discussion was likely
24 about relatively low skid resistance on the Red
25 Hill and what to do on the Red Hill. You also

1 stated that you don't recall whether you brought
2 up the skid resistance on the Red Hill or whether
3 that was raised by the City.

4 So fair to state that skid
5 resistance was not the main topic of discussion at
6 the meeting but raised in passing?

7 A. Definitely was not the
8 main -- no, it was not the main topic. The main
9 topic was this presentation and that subject.

10 Q. Again, at this meeting,
11 you don't recall stating to Mr. Moore or the other
12 City staff members that were attending that if the
13 City does not pursue the recommendations that
14 Golder made regarding microsurfacing, shot
15 blasting or skidabrading, that it could lead to
16 potential safety issues on the roadway. You don't
17 state that at this meeting, correct?

18 A. I didn't say anything
19 about safety issue. I think it was very likely my
20 initiative that I talk about this relatively low
21 friction numbers of the Red Hill Valley Parkway
22 and how to improve it. And particularly that I
23 see Miller in Hamilton. So Miller was the
24 contractor who could do microsurfacing.

25 Q. Right. So no discussion

1 around safety of the roadway was raised at this
2 meeting by you or by anyone from Miller Paving?

3 A. I think safety rather
4 should come from the City, not -- I was looking at
5 skid resistance numbers that were relatively low,
6 how to improve it, and the opportunity was --
7 Miller was -- I think that time -- as far as I
8 recall, Mr. Trevor Moore was in the City, so in my
9 opinion, a perfect opportunity to talk about it.

10 Q. In your discussion about
11 relatively low friction values on the Red Hill,
12 again you don't state that those relatively low
13 values could lead to potential safety concerns?

14 A. No, I didn't, but it
15 was obvious that I would anticipate more concerns
16 and more knowledge about safety aspect and this
17 sort of aspects from the City employees. They
18 live there, they discuss this thing, they read the
19 newspaper, so it would rather be coming from them
20 if this sort of concern.

21 Q. You didn't raise it and
22 you don't recall a discussion of that nature at
23 this meeting?

24 A. No, not safety. As I
25 said, you know, these are savvy bureaucrats; they

1 avoid the subject of safety or accidents and
2 collision. So I talk about what I knew what I
3 could, and that were these relatively low numbers
4 and how you can improve them.

5 Q. Right. Last week
6 commission counsel asked you about the additional
7 testing that was completed near the end of 2017,
8 and your evidence was that the PSV testing that
9 was completed was entirely to assess the
10 feasibility of hot in-place. You also stated that
11 at the time you recall Mr. Moore asking for
12 additional friction testing, and you understood
13 that that's because he wanted macrotexture tested
14 and because he still had some concerns that maybe
15 asphalt was filled with rubber, is what you
16 stated, and that he wanted to do friction testing
17 before resurfacing, probably to know what it was.

18 And when commission counsel
19 asked whether you were speculating or not, you
20 stated that you were. But what you were clear
21 about in your evidence was that Mr. Moore was the
22 one who requested friction testing in late 2017,
23 correct?

24 A. Friction testing, yes,
25 that was requested by Mr. Moore. I think if -- do

1 you want me to cover all the three aspects? Okay?

2 Q. Sorry, can you repeat
3 that.

4 A. Because there were three
5 aspects. There was PSV, there was macrosurfacing,
6 and friction. So PSV, I think PSV, that would be
7 I think my initiative because that was related to
8 hot in-place recycling. So I would like to know
9 the PSV of the existing aggregates.

10 Microsurfacing was in response
11 to his concern that there was some -- you know, he
12 called it rubber -- asphalt filled with rubber,
13 which is we call it -- for airports we call it
14 rubber deposit, but it's not on highway. Anyway,
15 he ask, so that was the response. And then he ask
16 for friction testing. Yes, three separate
17 subjects.

18 Q. And it was your decision
19 to do British pendulum testing?

20 A. Yes, it was.

21 Q. So again, at this point
22 in 2017 you did not tell Mr. Moore that the City
23 needed to evaluate friction or to address friction
24 because of any safety or potential safety issues
25 on the roadway?

1 A. So again, you know, I
2 stay away from the word "safety," but Mr. Moore
3 wanted to resurface this thing shortly, so, you
4 know, the surface would totally change. So that
5 resurfacing, whether it's through hot in-place
6 recycling or shave and pave, it changes the
7 condition. There is no more SMA with its current
8 value.

9 Q. Right, and so the
10 resurfacing would address any concerns that you
11 may have had about the low friction values on the
12 Red Hill?

13 A. Yeah, the surface, we
14 would address the -- this is relatively low
15 friction aspect numbers that I observed, 13, but
16 at the same time would address the other concerns
17 that we had with the condition of the pavement.

18 Q. At this point in December
19 of 2017, you do not recommend that any interim
20 measures need to be taken prior to resurfacing,
21 correct?

22 A. A few months before, I
23 recommended that shot blasting -- so that was
24 before, but nothing between this particular day,
25 no. This -- no, I don't recall between this --

1 and the time of anticipated resurfacing.

2 Q. To be clear,
3 Dr. Uzarowski, at this point, you know that the
4 resurfacing is pending, you know that -- or you
5 recall Mr. Moore asking for additional friction
6 testing, and you don't recommend that any interim
7 measures needed to be put into place between
8 December 2017 and when the City intended to
9 resurface to address low friction concerns on the
10 Red Hill?

11 A. I don't recall, you know,
12 the details, but since I raised the subject of
13 skid resistance, so basically that was still, you
14 know, how can I say, refreshing the subject of
15 relatively low friction numbers on the parkway and
16 the methods available to address it quickly. So I
17 think this is why this subject was raised.

18 Q. Right. And so I take it
19 that you don't recall whether you raised any
20 interim measures. Is that your evidence?

21 A. You know, I think since
22 it is here, skid resistance, and I believe that
23 was likely my initiative to talk about it. So
24 obviously I express my concerns with this
25 relatively low -- you know, all the numbers that

1 were relatively low like, you know, a few years
2 ago and available quick solution. So that's what
3 I very likely expressed during the meeting.

4 Q. Sorry, the solution was
5 resurfacing, or are you talking about
6 microsurfacing?

7 A. Since I say Miller, that
8 would be microsurfacing. You know, because all
9 the time until final resurfacing, I saw that
10 skidabrading or shot blasting was a perfect, even
11 very short or interim solution, because it was of
12 low cost and quick, and effect.

13 Q. But you don't recall
14 telling the City that they needed to microsurface
15 in December 2017 before the resurfacing they had
16 planned in 2018, correct?

17 A. It was still in August
18 2017. I didn't know about the article and about
19 the accident.

20 Q. Sorry, December 2017,
21 Dr. Uzarowski.

22 A. Sorry?

23 Q. December 2017. Sorry,
24 why don't we take down --

25 A. Because I look at this,

1 August the 1st, 2017.

2 Q. So we are discussing the
3 additional friction testing that Mr. Moore
4 requested at the end of the 2017.

5 A. Okay.

6 Q. Why don't we, Mr.
7 Registrar, take down the two documents so
8 Dr. Uzarowski is clear about what were discussing.

9 So we're discussing the
10 exchange that you had with commission counsel
11 about that additional testing. Again, you stated
12 that Mr. Moore had requested friction testing and
13 that it was your decision or recommendation to do
14 British pendulum testing, and that the PSV testing
15 was solely for the purpose of assessing the
16 feasibility of hot in-place. And I believe your
17 evidence is that you don't recall whether you at
18 this point in December 2017 recommended any safety
19 measures on the Red Hill to address the low
20 friction concerns that you had prior to the
21 resurfacing.

22 A. First of all, I
23 apologize, but when you were talking about this
24 something else was on the screen, this
25 August 31st, 2017, so I was looking at that image.

1 So I confuse this thing a little bit.

2 In December 2017, yes, this is
3 what is said, and Mr. Moore requested friction
4 testing and I recommended British pendulum
5 testing. Yes, I -- not all recommended. Like, I
6 said this is what we can do so quickly.

7 Q. And you did not recommend
8 any interim measures to address low friction
9 concerns you had prior to resurfacing?

10 A. I don't recall at that
11 time that I repeated this thing.

12 Q. At this time you
13 continued not to have any red flags, as you have
14 said before, about the safety of the roadway?

15 A. I would say, you know, I
16 didn't have red flags in 2013. I knew it would
17 not go up, but I didn't have any new results, new
18 test results, so for me it was difficult to
19 estimate. I knew it would not get better, but all
20 concerns were coming from the City or from the
21 City employees, not from me.

22 Q. Right. You didn't
23 express any concerns?

24 A. Well, I have the same
25 concerns as previously, because that would not

1 improve. So my concerns didn't change. They were
2 even more serious, but this is it. So it's
3 like -- what I had in 2013, it would not improve,
4 but in December we were just talking about
5 friction testing before overlay -- before -- was
6 it overlay? Oh, before let's call it resurfacing.

7 Q. Sorry, you said that your
8 concerns became more serious. You didn't share
9 that with the City, correct?

10 A. It's rather the City
11 shared it with me because -- not my -- you know,
12 it's obvious what was measured in 2013 would not
13 go higher, but then the City, Mr. Moore, they --
14 this one -- the first, the second, the third
15 meeting, they talk about friction concerns, so
16 their friction -- the friction concerns was coming
17 from them, and this is why they ask me to test
18 macrotexture and then -- and the friction.

19 Q. Right. But in response
20 to those concerns, at this point you did not
21 recommend that interim measures should be put in
22 place to address low friction prior to the planned
23 resurfacing?

24 A. Yeah, because it was in
25 December 2017 and they were planning resurface in

1 2018, so it would be -- I don't recall this sort
2 of statement, because I anticipated a quick --
3 let's say resurfacing in a short period of time.

4 Q. In 2018?

5 A. 2018, yes.

6 Q. If we could please go to
7 OD8, image 30, paragraph 73.

8 Commission counsel took you to
9 this exchange between Ms. Rizvi and Ms. Rose to
10 Golder employees in December of 2017 regarding the
11 extraction of the aggregate that had to be sent to
12 Ireland, and you'll note here that Ms. Rizvi
13 states that:

14 "The client is facing an
15 urgent safety issue with their
16 road and would like an
17 answer."

18 And your evidence was that
19 nobody told you about urgent safety issues on the
20 Red Hill. You also stated that you were
21 frustrated that the City did not follow your
22 advice and that you couldn't force them to follow
23 your advice. Again, I want to be clear, the
24 advice that you're referring to is what's
25 contained in the draft Golder report and the

1 quotes you provided to Mr. Moore in your e-mail
2 exchange with him in April 2016. There are no
3 other exchanges that you're referring to; is that
4 right?

5 A. Yes. So microsurfacing
6 2014, blasting, and then we had that conversation
7 I think in August 2017. So yeah, I admit I was
8 frustrated with City's response that they raised
9 this thing a few times. I provided
10 recommendation -- I provided recommendations,
11 contractors' costs, anything that I could do, and
12 it was -- the City decided not to follow.

13 Q. Let's be clear about
14 exactly what you did. So in 2014, again, you
15 provided a draft report with your recommendation.
16 And in 2016, in response to Mr. Moore's request,
17 you provided quotations for skid abrasion and shot
18 blasting, and in August of 2017 the issue of skid
19 resistance came up again, and you -- believe
20 stated that you discussed the relatively low
21 friction values at that time again but didn't make
22 any -- didn't express any concerns about the
23 safety of the roadway.

24 Those are the three exchanges
25 that you had with the City to date in December of

1 2017 about what to do regarding friction values on
2 the Red Hill. You're not referring to anything
3 else; is that correct?

4 A. I would say I did a
5 little bit more because, you know, I also
6 contacted microsurfacing contractor, provided
7 brochure, provided cost estimate for this, so I --
8 whatever was possible on my side, I provided. I
9 provide a solution and I repeated the solution a
10 few times, and contractor, cost estimate, and this
11 is -- so my -- that time, I did whatever I could
12 in my opinion, and the City opted not to take my
13 advice.

14 Q. Whatever you could is the
15 three points in time that we've already talked
16 about, right: The draft Golder report, the
17 exchange in 2016 with Mr. Moore after you got
18 quotations from contractors, and the August 2017
19 meeting when it came up in the course of your
20 presentation or after your presentation, rather.
21 Those are the only three points in time that
22 you're referring to?

23 A. Sorry, I have some -- let
24 me see what I -- sorry. You know, I had some
25 problems with my computer. No, it's back again.

1 Sorry.

2 Q. Okay. That's all right.

3 A. Could you repeat? I'm
4 sorry, I probably clicked the wrong button. Now
5 it's back again on my screen. So I'm sorry, I
6 just clicked the wrong button.

7 Q. That's fine. Your
8 evidence was that you did everything that you
9 could to get the City to follow your
10 recommendations, and I again want to be clear that
11 all you're referring to there is the draft report
12 that you submitted in 2014, the exchanges that you
13 had with Mr. Moore in 2016, and the meeting in
14 August 2017. You're not referring to any other
15 exchanges with the City regarding addressing
16 relatively low friction values on the Red Hill?

17 A. Yes, this is correct. So
18 whenever the City raise this subject and talk to
19 me after the report, I provided the solution, and
20 no -- there was no interest or no response -- no
21 interest from the City.

22 Q. If we could go, please,
23 to OD8, image 62.

24 Commission counsel asked you
25 here about your e-mail exchange with Mr. Hein in

1 January of 2018. And Mr. Hein sends you a link to
2 an article from the Spectator which is excerpted
3 on the next page, Mr. Registrar. You reviewed
4 this article when Mr. Hein sent it to you?

5 A. Yes, I did.

6 Q. And you note that the
7 article states in the first few paragraphs that
8 the City hired a consultant to test the asphalt on
9 the Red Hill, that the parkway has been the
10 subject of complaints regarding slippery pavement
11 since it opened in the 2007, that friction testing
12 was done in December 2015 and was inconclusive,
13 and that a consultant recommended further testing
14 and that the City opted to repave ahead of
15 schedule.

16 Mr. Moore is also quoted as
17 saying:

18 "We don't know why they feel
19 it's slippery. That's all
20 part of why the City is doing
21 the testing."

22 A. Seriously, you know, can
23 you -- I have a black PC on part of this -- I
24 don't know how I can do this thing.

25 MS. JENNIFER ROBERTS: Could

1 we make it larger?

2 THE WITNESS: If you can make
3 it larger, and that would be easier for me too.
4 Sorry about that.

5 MS. CONTRACTOR: That's okay.
6 Do you have a black --

7 THE WITNESS: Oh, yeah, now
8 it's much better. Thank you very much. Thank
9 you.

10 BY MS. CONTRACTOR:

11 Q. No problem. So why don't
12 take a few moments to review the first three
13 paragraphs.

14 A. (Witness reviews
15 document).

16 Q. I'm sorry, have you
17 finished reviewing?

18 A. Yes, I read relatively
19 slowly, but this is like my habit, like always
20 carefully.

21 Q. That's okay. Let me know
22 when you're done.

23 A. Yeah, I'm done.

24 Q. After reviewing this
25 article, Dr. Uzarowski, and before the meeting in

1 February that we'll discuss, I take it you did not
2 send any e-mails to Mr. Moore or anyone at the
3 City expressing concerns about the contents of the
4 article?

5 A. No, I didn't.

6 Q. And certainly you did not
7 have any discussions with anyone at the City,
8 including Mr. Moore, again between reading this
9 article and the meeting in February where you
10 express concerns about the contents of the
11 article?

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

13 Q. And you were aware from
14 your discussions with Mr. Moore that concerns
15 about the slipperiness of the pavement had been
16 expressed previously to the City by the police,
17 based on your recollection of your discussions
18 with Mr. Moore?

19 A. Yes, and this is what was
20 in his -- also in his e-mail, yes.

21 Q. Right. And so there was
22 nothing in this e-mail that provided you with any
23 additional information than what you already had?
24 This article, sorry?

25 A. There was some

1 information that I had no clue about, like
2 friction testing in December 2015 or -- we don't
3 know why -- you know, with the response I -- I
4 didn't know about any additional testing done
5 in -- any friction testing done in 2015. I never
6 heard about this, unless somebody else did it, and
7 the response was -- I'm not to comment on this,
8 but there were things that I was surprised.

9 Q. You didn't send any
10 e-mails or have any discussions with the folks at
11 the City to ask for follow-up or to express any
12 concerns, right? You told me that?

13 A. No, nothing until -- I
14 don't recall until February 2018.

15 MS. CONTRACTOR: And,
16 Mr. Commissioner, I'm about to move on to a new
17 subject that I think will be lengthy. I wonder if
18 now is a good time to take a break?

19 JUSTICE WILTON-SIEGEL: Given
20 the absence of a voice, it certainly will be.
21 Let's take our break. We'll return at 5 past 2.

22 MS. CONTRACTOR: Thank you.

23 --- Recess taken at 12:53 p.m.

24 --- Upon resuming at 2:05 p.m.

25 MR. LEWIS: Commissioner,

1 Ms. Contractor just a minute before we were going
2 on-line contacted me with an issue which I think
3 she should address before we get going.

4 JUSTICE WILTON-SIEGEL: Go
5 ahead, Ms. Contractor.

6 MS. CONTRACTOR: Thank you,
7 commission counsel.

8 Mr. Commissioner, near the end
9 of our session unfortunately we had a bit of an
10 unfortunate tech issue that has deleted
11 essentially the rest of my outline, which is, as
12 Ms. Roberts' reaction indicates, very troubling.

13 JUSTICE WILTON-SIEGEL: Right.
14 I --

15 MS. CONTRACTOR: So I can -- I
16 tried to recreate some of that this afternoon
17 and -- but I would hate to not have the benefit of
18 our prep work to examine the witness, and so, you
19 know, I'm in your hands as to how to proceed but,
20 I --

21 JUSTICE WILTON-SIEGEL: Yeah,
22 I understand your problem. Well, can I ask
23 whether counsel for the MTO and counsel for
24 Dufferin would be in a position to begin their
25 examination this afternoon?

1 MS. MCIVOR: Good afternoon,
2 Mr. Commissioner. Perhaps with a further break I
3 can get some notes in order and continue. I just
4 was preparing to proceed on Thursday as we
5 discussed this morning, so there are a few things
6 that I would need to get in order, but I would be
7 happy to do as much as I can if everyone would be
8 inclined to take a short break.

9 JUSTICE WILTON-SIEGEL: Okay.
10 Let me ask about counsel for Dufferin as well.

11 MR. BUCK: Yeah, I believe I
12 could proceed today.

13 JUSTICE WILTON-SIEGEL: You
14 can proceed today. And how long do you anticipate
15 you'll require?

16 MR. BUCK: Less than
17 30 minutes.

18 JUSTICE WILTON-SIEGEL: Less
19 than 30 minutes? Okay. Ms. McIvor, is 15 minutes
20 sufficient for your purposes?

21 MS. MCIVOR: That is, thank
22 you, Commissioner.

23 JUSTICE WILTON-SIEGEL: Okay.
24 Let's adjourn, then, until 2:25 I guess, and then
25 we'll pick up with your cross-examination.

1 MS. CONTRACTOR: Thank you
2 very much and thank you to counsel for agreeing to
3 step in.

4 --- Recess taken at 2:09 p.m.

5 --- Upon resuming at 2:25 p.m.

6 MR. BUCK: Good morning,
7 continue, proceed.

8 JUSTICE WILTON-SIEGEL: Please
9 proceed, Mr. Buck.

10 EXAMINATION BY MR. BUCK:

11 Q. Dr. Uzarowski, my name is
12 Christopher Buck and I'm counsel for Dufferin. I
13 just want to ask you a few questions this
14 afternoon principally concerning where the Red
15 Hill Valley Parkway begins and ends.

16 I believe that there's a --
17 there's some differences of opinion when you look
18 at some of the documents, but I think it's very
19 clear when we look at the construction documents
20 exactly where the Red Hill Parkway was constructed
21 and where the LINC begins and ends.

22 So what I'm going to refer to
23 are the original tender construction drawings.

24 Mr. Registrar, could you bring
25 up Dufferin 2534. Thank you.

1 And what we can see from this
2 first page is this is the overview. This is
3 part A, so this is the Mud Street interchange to
4 are broadly south of Greenhill Avenue, and this
5 represents the southernmost portion of the Red
6 Hill Valley Parkway. You can see it proceeds
7 largely in a north-south direction from the QEW up
8 near the top of the image and proceeds southwards
9 down past Mud Street. And I think --

10 Could you just call out the
11 image there, the plan, please, Mr. Registrar.

12 And I don't know whether you
13 can read right at the bottom of that image, we can
14 see -- coming from the left, we can see Dartnall
15 Road, we can see Pritchard Road and we can see
16 Upper Mount Albion Road, I believe. Can you make
17 those out, Dr. Uzarowski?

18 A. Yes, I can see it
19 finally.

20 Q. And the dark shading
21 represents the new -- I believe represents the new
22 construction. Does that accord with your
23 understanding of what this is showing?

24 A. Yes, it is.

25 Q. And even at this high

1 level you can see that the new paving or the new
2 construction ends at around Pritchard Road, but
3 what we'll do is we'll get to a drawing with a bit
4 more detail.

5 So, Mr. Registrar, if you can
6 go to image 3. And if you can call out the middle
7 column, please.

8 And what this is showing is
9 all of the different elements of this rather large
10 collection of drawings. And what we're interested
11 in is the new construction. So about just over a
12 third of the way down it says, "NC index, sheet
13 index, new construction," and that identifies all
14 of the sheets that have new construction.

15 So if we can turn to that, and
16 I believe that is image number 14.

17 So we're going to reorient
18 ourselves a little because on this particular
19 sheet north is to the right. You see the north
20 arrow in the upper right corner. If we follow the
21 road from right to left, we're moving in a
22 southwards direction until we get past the
23 Mud Street interchange which is that rather
24 complex series of ramps towards the left, and then
25 we get -- you can again see Pritchard Road. And

1 the drawing that is at the southernmost edge of
2 the Red Hill Valley Parkway for the purposes of
3 these construction drawings is NC number 1. Does
4 that make sense to you, Dr. Uzarowski?

5 A. Yes, yes, it does.

6 Q. Okay. So what I'm going
7 to do is, Mr. Registrar, can you turn up image
8 number 15, which should be new construction
9 drawing number 1, and I think we're going to have
10 to zoom in on this a little.

11 But what we can see without
12 zooming in is we can see, again, Pritchard Road is
13 crossing the main line in a roughly north-south
14 direction. We can see the north arrow at the
15 upper right, and we can see the main line curving
16 underneath that overpass.

17 So what I would like to do is
18 could you, Mr. Registrar, zoom in on the bottom
19 right quarter of this image. That's perfect. A
20 little further down. That's great. Thank you.

21 So what we can see here, at
22 the bottom there's some text which says "Limit of
23 EBL paving."

24 Dr. Uzarowski, could you tell
25 me what EBL stands for?

1 A. EBL is eastbound lane.

2 Q. So that's identifying --

3 I put it to you that's identifying the limit of
4 the eastbound paving for this (garbled audio)
5 which I think, as we all know, is constructed out
6 of SMA; is that correct?

7 A. Yes, this is correct.

8 Q. And to the west of that
9 that would be existing asphalt constructed
10 sometime earlier as part of the LINC or the LINC
11 extension projects which happened -- many is
12 prior; is that correct?

13 A. This is correct. I don't
14 know the history of -- to the left of this, but to
15 the right, it's correct; you are correct.

16 Q. But to the west or to the
17 left is not part of that 2007 paving contract that
18 was -- 2006 paving contract that was completed in
19 2007?

20 A. No, as far as I remember
21 no, it's not. It's where the limit is shown on
22 this drawing.

23 Q. And if we look to the
24 left of this callout, it says -- it states:

25 "Plane off existing --" I

1 think "-- asphalt, 600
2 millimetres wide by
3 40 millimetres deep, replaced
4 with surface course." (As
5 read)

6 So I think that clearly
7 suggests that there was already asphalt there, and
8 we're constructing some sort of interface with the
9 existing asphalt and planing off some of what is
10 there and making it join. Is that -- in my
11 layman's terms; is that correct?

12 A. Yes, that was the
13 transition from existing pavement to the new one,
14 yes.

15 Q. Perfect. Mr. Registrar,
16 you can drop that callout, and we'll have another
17 look for the equivalent on the westbound lane
18 side. So if you can zoom in -- can you see at the
19 top where it says "limit of westbound paving." If
20 you kind of zoom in a little bit further left --
21 that's right -- and then zoom in on a chunk of
22 that down to cover towards the main line. That's
23 perfect.

24 And, Dr. Uzarowski, again, we
25 can see at the top here the limit of westbound

1 lane paving, and underneath that there's a similar
2 notation that says:

3 "Plane off existing asphalt
4 600 millimetres wide by
5 40 millimetres, replaced with
6 surface course." (As read)

7 And there's actually a -- if
8 you follow those lines down, you can actually see
9 a kind of -- almost like two Ls stuck together, a
10 the zigzag shape. Can you see that?

11 A. Yes, I can.

12 Q. And that, again, is -- am
13 I right in thinking that's the transition from the
14 SMA to the east of here, and whatever the existing
15 asphalt is on the existing road to the west or to
16 the left of here.

17 A. Yes, this is correct.
18 This is westbound lanes and, you know, transition
19 from the existing pavement on the LINC to the new
20 pavement, including SMA on the Red Hill Valley
21 Parkway. You are correct.

22 Q. And to your knowledge the
23 LINC was not constructed out of SMA?

24 A. No, the LINC was not.

25 Q. Thank you.

1 Mr. Registrar, you can take that call out down.

2 And I just want to take us to
3 one further document to kind of illustrate some of
4 the discrepancies when we talk about the Red Hill
5 Valley Parkway and the LINC.

6 So, Mr. Registrar, can you
7 call up Hamilton 41871.

8 So, Dr. Uzarowski, you were
9 taken to this a few days ago by Mr. Lewis. This
10 is the CIMA 2013 report. This is the version from
11 October 2013.

12 And if we can have a look at
13 image 3, please, Mr. Registrar. And this is
14 figure 1. If you can just call out figure 1
15 there.

16 So this is the study area
17 taken from the CIMA 2013 report. We can see that
18 familiar shape coming down from the north curving
19 past Mud Street, going under -- you can't actually
20 make out that. It says Pritchard Road on that
21 road that crosses, but that's Pritchard Road which
22 then curves around, and as we've just seen flows
23 into the Lincoln Alexander Parkway even before or
24 after Pritchard Road depending on whether it's in
25 the eastbound or westbound lanes. But actually

1 the CIMA report refers to the RHVP as extending
2 beyond Pritchard Road and, in fact, even beyond
3 Dartnall Street, and that doesn't accord with your
4 understanding of the construction limits of the
5 Red Hill Valley Parkway.

6 A. So my understanding is
7 that officially Red Hill Valley Parkway starts
8 where it's shown on the drawing, but the Dufferin
9 section and our involvement started from just very
10 close to Pritchard Road and going north on this
11 drawing.

12 Q. But in terms of where the
13 SMA and the perpetual pavement begins and ends,
14 that is either side of Pritchard Road depending on
15 eastbound and westbound lanes?

16 A. That's correct, from
17 Pritchard Road going north.

18 Q. And I think that's where
19 some of the confusion, certainly in my mind,
20 arises, that I believe the City may refer to the
21 Red Hill as extending beyond the original
22 construction limits.

23 A. Yeah, and this is what
24 was in the report. But I know actually, even the
25 photographs show that it start -- SMA started from

1 just little bit west of Pritchard Road going
2 westbound and little bit east from Pritchard Road
3 going eastbound.

4 Q. I think that's -- if I
5 can -- are you aware of the alignment issue that
6 was identified in this 2013 CIMA report? I'm not
7 sure how familiar you are with the 2013 CIMA
8 report. I know that you've seen it. I don't
9 imagine that you looked at every aspect of it.
10 Are you familiar with the issue that is sometimes
11 referred to as "the kink" in the alignment?

12 A. Kink is --

13 Q. I can --

14 A. Yeah, I know it's in the
15 report, but I -- I would have to refresh my
16 memory, but I understand that kink is on the --
17 it's not on Dufferin section.

18 Q. Yeah, I think that's
19 correct. And I can take you to an image which
20 will explain exactly where the kink is.

21 So if we can go to image 54.

22 And this is the section that's
23 talking about the -- changing the alignment, and
24 this is a very helpful aerial or satellite
25 photograph in the middle.

1 Mr. Registrar, could you blow
2 that image up.

3 And what we can see at the
4 right-most edge of this image is the Pritchard
5 Road overpass, and what we can see that curve of
6 the alignment curving underneath and stretching
7 out towards where the LINC would be on the
8 left-hand side, on the west, and the adjustment
9 that they have marked here, the kink, is where
10 those hatched lines. There's a figure saying 1.6,
11 and then there's some hatched lines which is
12 showing the correction of that kink. Does that
13 make sense to you, Dr. Uzarowski?

14 A. Yes, it is, and actually
15 you can see this darker colour on the pavement.
16 This is SMA. So it's right of that point where
17 this 1.6 or 1.8 number is. This darker surface on
18 westbound lane, this is SMA, yes. Slightly
19 westbound of Pritchard Road.

20 Q. And that darker shaded
21 portion of asphalt, that's the SMA, and that's
22 actually a very similar shape to what we just saw
23 on the construction drawings?

24 A. Exactly.

25 Q. Perfect. And obviously

1 what you can see here is that the kink is outside
2 of the construction that was taking place in 2007?

3 A. Correct.

4 MR. BUCK: And that's -- I
5 have no further questions. Thank you for your
6 time, Dr. Uzarowski.

7 THE WITNESS: Thank you.

8 JUSTICE WILTON-SIEGEL: Okay.

9 MS. MCIVOR: Good afternoon.

10 Mr. Commissioner, may I proceed?

11 JUSTICE WILTON-SIEGEL: Yes,
12 please proceed, Ms. McIvor.

13 EXAMINATION BY MS. MCIVOR:

14 Q. Dr. Uzarowski, it's nice
15 to see you again. I just have a few questions for
16 you this afternoon.

17 And, Registrar, I would like
18 to start off by calling out overview document 6,
19 image 59, please. Thank you, Registrar. I'm
20 sorry. I may be at the wrong section. Registrar,
21 if you could go to image 60, that would be
22 appreciated. Thank you very much. And if you
23 could please pull out the top exchange, that would
24 be great. Thank you very much.

25 And so, Dr. Uzarowski,

1 Mr. Lewis, commission counsel, asked you various
2 questions about this exchange with Mr. Moore of
3 the City, and in this exchange Mr. Moore flagged a
4 potential slipperiness problem and asked you
5 whether there was any skid resistance testing that
6 was completed on your last outing.

7 You responded that you did
8 very limited, a few locations only, skid testing
9 on the Red Hill Valley Parkway after construction.
10 And I don't believe that we canvassed what you
11 meant by "very limited," and so could you explain
12 why you considered the 2007 testing to be limited
13 in nature.

14 A. Maybe it was very
15 precise. It was only in one direction and roughly
16 half of the lane. So it is roughly about
17 3 kilometres only in the southbound direction.

18 Q. Okay. Thank you,
19 Dr. Uzarowski. So it sounds likes there are two
20 factors there: The kilometres that were tested
21 and also the number of lanes that were tested; Is
22 that fair?

23 A. That's right.

24 Q. Okay. Thank you. And so
25 then at this time in 2013 after this potential

1 slipperiness issue was raised, is it fair to say
2 that you felt more extensive testing, testing on
3 the entirety of the main line rather than a sample
4 section, would be required?

5 A. Of course. I think the
6 intention was to do the testing of the -- on the
7 entire length of the main line which was about
8 4.4 or -- sorry, 7.4 kilometres.

9 Q. And I noted as well in
10 Dr. Henderson's subsequent e-mail to Mr. Lee of
11 the MTO that there was a request for a few ramps
12 to be tested. Is that something as well that you
13 felt would fall within the scope of this friction
14 testing?

15 A. Yes, that's correct. A
16 few ramps, I think that was two ramps on Greenhill
17 and one on Mud Street.

18 Q. Thank you. And I take it
19 that that was to fully assess the areas that may
20 require remedial treatments if any were required
21 at that time because of this potential
22 slipperiness; is that fair?

23 A. Yeah. That was to
24 evaluate the friction numbers on those particular
25 locations, on main street and the few ramps, yes.

1 Q. Okay. Registrar, you
2 could take this document down. Thanks.

3 Dr. Uzarowski, I noted that
4 you responded to Mr. Moore saying that you would
5 like him know (ph) details, price and schedule
6 soon thereafter. And so knowing that MTO didn't
7 charge for testing, fair to say that at that point
8 you knew that MTO may not have been able to
9 accommodate the friction testing; is that right?

10 A. Yes. I was not surprised
11 when Dr. Henderson told me that MTO was busy doing
12 friction on the network and could not do friction
13 on the Red Hill Valley Parkway.

14 Q. And you mentioned that
15 you were surprised. Is that what you said?

16 A. No, no. I said I was not
17 surprised.

18 Q. Oh, was not surprised.
19 Okay. Thank you.

20 And so from how I perceive
21 that then, it would be convenient if this could be
22 accommodated by the MTO, but if not, we'll move on
23 to other options, and that is in fact what
24 happened; is that correct?

25 A. Correct.

1 Q. Okay. Thank you. Now,
2 we also saw that Dr. Henderson contacted Mr. Lee
3 at the MTO and made the request, and I believe
4 that you testified that you didn't specifically
5 direct her to Mr. Lee. She likely sought out his
6 contact on her own. Did you know Stephen Lee at
7 that time?

8 A. Oh, definitely, yes, I
9 knew Mr. Stephen Lee very well.

10 Q. Okay. And you knew
11 that -- you knew of his position at that time? I
12 know that there was various movement within the
13 MTO that we heard about when the MTO witnesses
14 provided evidence. But did you know the position
15 that he held at that time?

16 A. This is a very good
17 question. I knew he was with MTO, but exactly
18 what position? I knew that, you know, he was
19 changing his position. I didn't -- I don't recall
20 exactly what his position at that time was.

21 Q. Okay. Fair enough. You
22 also -- you stated that Dr. Henderson would have
23 kept you informed of her efforts to coordinate the
24 testing, and so I take it that at some point after
25 she reached out to Mr. Lee, she informed you that

1 the MTO would not be conducting the testing; is
2 that right?

3 A. Very likely. I don't --
4 I'm not sure if we have any record, but definitely
5 she would let me know.

6 Q. Okay. And just in terms
7 of clarifying the communications on this issue to
8 personnel at the MTO, I take it that you didn't
9 follow up with any other MTO contacts about the
10 matter of the testing when you learned that it
11 couldn't be accommodated?

12 A. No, I didn't. For me it
13 was clear. MTO was busy and so we had to look for
14 other option.

15 Q. Okay. Okay. And,
16 Dr. Uzarowski, you told us you became aware of the
17 Varennes quarry aggregate inclusion on MTO's DSM
18 list likely shortly after its inclusion, 2009 or
19 2010, sometime in that range; is that accurate?

20 A. You know, this is like --
21 I don't know how shortly after. I knew that
22 before I met with Mr. Moore in 2014 or during
23 this -- or, let's say, during the 2013
24 investigation, I checked -- I knew that the Demix
25 aggregate was on the DSM list.

1 Q. Okay. And is that --
2 when you refer to the 2013 investigation, is that
3 the exchange or the investigation initiated by
4 Mr. Moore's e-mail that we just viewed?

5 A. No. The 2013
6 investigation was to evaluate structural condition
7 of -- of the entire pavement on the Red Hill
8 Valley Parkway, actually entire pavement.
9 Actually we focused on the main line --

10 Q. Okay. Okay.

11 A. -- not the ramps, on the
12 main line.

13 Q. Right. Okay. And so I
14 don't know if the specific -- the specific date
15 that Mr. Moore reached out to you and asked you
16 about friction testing was September 30th, 2013.
17 So that would have been at some time before that
18 request was made, if I am piecing this together
19 correctly.

20 A. Yes. That was, you know,
21 a significant time before -- again, I would have
22 to check the date, but it was -- yeah, it was, you
23 know, sometime before that date when we asked me
24 for friction testing.

25 Q. Okay. Thank you. And I

1 don't believe this has been discussed, but how did
2 you become aware of that? For instance, do you
3 check the DSM list from time to time, or it sounds
4 like from what you just explained you may have --
5 you may have checked to see whether it had been
6 included because of this new assignment with the
7 City? Do you recall how you became aware of its
8 inclusion on the DSM list?

9 A. That's a very good
10 question. I don't recall -- like, I visit that
11 list from time to time not only for Red Hill
12 Valley Parkway, but I deal with -- I work on other
13 projects. I work on airports, and the same
14 requirement for airports as the aggregate has to
15 be 50, but we look at if it's on the DSM, then we
16 are satisfied.

17 So it was -- I knew that --
18 you know, I cannot tell you exactly when and how,
19 but, you know, it was just, you know, from time to
20 time I go through the list. I check who is on the
21 list, who is appeared, who disappeared. So
22 somewhere that time I noticed that it was on
23 the --

24 Q. Okay. Fair enough.
25 Thank you. And so further to that in terms of the

1 PSV threshold of 50, there was some discussion
2 about that throughout the last few days of your
3 testimony, and you explained that because this
4 aggregate was on the MTO's DSM list, you knew that
5 the PSV tests for the aggregate would have come
6 back with a value of over 50. And I take it that
7 that is due to your familiarity with the DSM list
8 requirements; is that right?

9 A. Yes, that's correct.

10 Q. Okay. And so just to
11 close that off in terms of communications back to
12 the MTO, you're not saying that you reached out to
13 anyone to collect those results. It was just you
14 knew it was on the DSM list and therefore you knew
15 it would have met those requirements?

16 A. Exactly. I knew -- if it
17 was on the DSM, it must have been at least 50.

18 Q. Okay. And then you
19 stated as well that Mr. Moore decided not to
20 pursue additional PSV testing based at least in
21 part on the fact that it had met the MTO's
22 requirement previously. Did you discuss with
23 Mr. Moore the parameters for DSM inclusion?

24 A. I don't recall, you know,
25 discussion. It was like, okay, if it's on DSM, it

1 is at least 50. And I didn't, you know, discuss,
2 you know, the procedure what would be included.
3 You know, just from the PSV point of view must be
4 at least 50.

5 Q. Okay. So fair to say,
6 then, he either knew of them or he didn't, but the
7 end result of that decision was not to PSV test
8 because it had previously met the MTO threshold
9 for DSM list inclusion?

10 A. Yes, it was. In 2009
11 appeared on the DSM, and this was 2013, so --

12 Q. Right.

13 A. -- I think, no, we
14 didn't -- I think it was -- the decision for me
15 made common sense.

16 Q. Okay. And did Mr. Moore
17 ever instruct you to reach out to the Ministry of
18 Transportation to retrieve the exact results or to
19 see what they had on file in terms of the DSM list
20 approvals?

21 A. No, he didn't.

22 Q. And, now, further to
23 that, do you recall whether you discussed with
24 Mr. Moore that friction tests on an aggregate test
25 strip would typically be conducted by the MTO as

1 part of the approvals process as well?

2 A. No, I don't recall, and I
3 don't think so.

4 Q. Okay. But you were -- I
5 believe you've testified you were aware that there
6 were some friction tests or test strips typically
7 involved in the approvals process; is that right?

8 A. This is right. It was
9 stated in a CTAA paper I think in 2001, MTO CTAA
10 paper. I think 2001 or 2002.

11 Q. Okay. And then just
12 again, just in terms of clarifying any
13 communications with MTO, did you ever reach out to
14 your contacts at MTO to request any of the other
15 DSM-related friction results for this aggregate?

16 A. No, I didn't.

17 Q. Okay. And in terms of
18 the DSM test results we've heard, we've seen that
19 there was friction testing between 2008 and 2012
20 conducted for the purposes of including this
21 quarry on MTO's DSM list, and those only pertained
22 to a representative portion of the Red Hill Valley
23 Parkway. You know, so much that MTO could make
24 assessments about the in-field performance of the
25 aggregate.

1 So in 2013 when you were
2 looking at additional testing and what may be
3 required, would it be fair to say that even if you
4 had those test results in hand at the time, there
5 would still be additional testing that needed to
6 be completed so that you could report back to the
7 City on the issue that they tasked you with.

8 A. If I understand your
9 question, so obviously that was only, you know --
10 say, roughly a quarter or less, so it would be
11 much more required. But I didn't know where the
12 test strip was. I didn't know about any testing
13 done by MTO after 2007.

14 Q. Right. Okay. I
15 understand and -- I guess in -- just to rephrase
16 slightly. There's been this slipperiness issue
17 that's been raised, and we've seen the request
18 that was for sort of the entirety of the Red Hill.
19 And so would you agree that testing on a
20 representative partial section wouldn't be
21 sufficient to make conclusions at that time?

22 A. Oh, I agree. You know,
23 my intention -- I thought that the entire section
24 would have to be -- the entire 7.5 kilometres or
25 7.4 would have to be tested.

1 Q. I just have one last --
2 or a couple of questions for you, Dr. Uzarowski.
3 Mr. Lewis, commission counsel,
4 asked you about the media request that was
5 forwarded to you by Ms. Becca Lane, and that was
6 January 22nd, 2016. We established that you
7 followed up with Gary Moore and responded to Ms.
8 Lane informing her that you had and to -- with
9 information about potential cracking. Did you
10 have any other -- any further discussions with Ms.
11 Lane as a result of that exchange? Did you ever
12 get back to her flagging any issues with the Red
13 Hill Valley Parkway at that time?

14 A. No, no, I didn't. Like,
15 Ms. Becca Lane was involved with me in the -- what
16 they -- the OHMPA asphalt pavement quality group.
17 So, you know, we -- Ms. Becca Lane, Pamela Marks,
18 any number people, so I understood that that was
19 related to this subject because that was the hot,
20 very hot subject of pavement premature cracking
21 because of the additional engine oil residual (ph)
22 or recycle engine oil. So that was my
23 understanding, and also Ms. Becca Lane shared the
24 likely -- whether it was likely cracking because
25 of that.

1 Q. Okay. Thank you very
2 much, Dr. Uzarowski, those are my questions.

3 A. Thank you.

4 JUSTICE WILTON-SIEGEL: Okay.
5 I think we should ask Ms. Contractor if there's
6 anything she can do at this point or whether she
7 wants to remit the rest of her examination to
8 Thursday morning.

9 MS. CONTRACTOR: Thank you,
10 Mr. Commissioner. Unfortunately, we haven't been
11 able to rectify the issue on our end, so it may
12 make sense to start on Thursday, and certainly
13 we'll be brief with the remaining questions that
14 we have.

15 JUSTICE WILTON-SIEGEL: Okay.
16 Well, thank you. I will leave you to work out
17 with Ms. Roberts and Mr. Lewis how the time is
18 going to proceed on Thursday morning.

19 In the meantime,
20 Dr. Uzarowski, you're excused for the day. Thank
21 you very much for attending, and we apologize for
22 the rather disjointed day we've all experienced.
23 And if there's nothing further we have to deal
24 with this afternoon, then we'll stand adjourned
25 until 9:30 tomorrow morning. Thank you.

1 --- Whereupon at 3:03 p.m. the proceedings were
2 adjourned.

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