

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Tuesday, October 4, 2022 at 9:34 a.m.

VOLUME 62

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1 Arbitration Place Virtual

2 --- Upon resuming on Tuesday, October 4, 2022,

3 at 9:34 a.m.

4 PREVIOUSLY AFFIRMED: NICOLE AUTY

5 EXAMINATION BY MS. LIE (Cont'd):

6 Q. Good morning, Ms. Auty.

7 Could we pull up HAM64356.

8 Here we have a copy of the
9 draft opinion letter from Mr. Boghosian and I
10 understand these are your handwritten notes?

11 A. Yes, they are.

12 Q. Do you recall when you
13 made these notes?

14 A. No, I don't. I don't
15 recall exactly when I made them.

16 Q. What was the purpose for
17 making the notes?

18 A. They were my thoughts and
19 issues that I had wanted to discuss with
20 Mr. Boghosian regarding his letter.

21 Q. Did you have a discussion
22 with Mr. Boghosian?

23 A. Yes, I did.

24 Q. When was that?

25 A. That was January 8th.

1 Q. Oh, I see. Okay. But so
2 you made these notes sometime between December
3 13th and January 8th?

4 A. Yes.

5 Q. Okay. You didn't have
6 any discussions with Mr. Boghosian before
7 January 8th?

8 A. Not that I recall
9 specifically.

10 Q. So here there's a note
11 that says "more testing before rip up road?"

12 A. Yes.

13 Q. What is that note
14 referring to?

15 A. That was a question in my
16 mind in terms of whether we were going to conduct
17 any further testing of the road, of the Red Hill,
18 in advance of the work that was scheduled to be
19 done in terms of the repaving later that year.

20 Q. Do you recall --

21 A. In 2019.

22 Q. Do you recall talking to
23 Mr. Boghosian about that issue?

24 A. I don't recall
25 specifically discussing that with him at that

1 moment but I know that I did at some point.

2 Q. Possibly at the
3 January 9th meeting?

4 A. It's possible, yeah.

5 Q. Do you recall what his
6 advice was and where you landed on that issue?

7 A. No, I don't recall
8 specifically, but I do believe we were looking to
9 do that at some point, but we had thought perhaps
10 better to wait until later as -- to see where
11 ultimately the litigation went following the
12 release of the document. It was put -- put
13 forward in terms of waiting to see what would
14 happen.

15 Q. So the decision was made
16 not to retain -- to get more testing before
17 ripping up the road and you were going to wait and
18 see what would happen in the litigation?

19 A. I believe that was my
20 understanding of where we were on that. I don't
21 recall the specifics of the conversation or when,
22 but that was my understanding at this point.
23 Ultimately we did look to that later.

24 Q. And there's a note that
25 says "add summary of more info needed." Were you

1 asking Mr. Boghosian to add summary of more info?

2 A. I believe that's what
3 that was referring to.

4 Q. What was the more info
5 that was needed?

6 A. I was just -- I thought
7 it might be beneficial or I believe I was
8 referring to it might be helpful to have
9 additional information in a summary if there was
10 anything else that he needed or things that we
11 hadn't received yet.

12 Q. So you weren't -- did you
13 have a discussion with Mr. Boghosian about what
14 additional information would be needed?

15 A. I don't recall
16 specifically having that, but I made the note so I
17 imagine that we did.

18 Q. You don't recall if
19 Mr. Boghosian had any additional information to
20 provide?

21 A. I believe was -- so my
22 understanding from reading that now is that I was
23 looking to confirm that if he had anything else
24 that he needed that he would identify that.

25 Q. Registrar, could you pull

1 up images 3 and 4.

2 Here you see this is a section
3 of Mr. Boghosian's notes, or sorry, his opinion
4 letter or draft opinion letter, that summarizes
5 the 2015 CIMA report?

6 A. Yes.

7 Q. And had you reviewed the
8 report itself?

9 A. I believe I had at this
10 point at a high level.

11 Q. So we see in his summary
12 at the top of page 4 he indicates that the
13 potential causes of the higher than expected
14 proportion of wet surface condition accidents
15 might be the following and inadequate skid
16 resistance is included there?

17 A. Yes, I see that.

18 Q. And then you'll see in
19 the middle of the page following there's some
20 recommendations to reduce the accident frequency
21 on the RHVP?

22 A. Yes.

23 Q. That list is the
24 section 9.2 list that you had discussed with him
25 on December 11th?

1 A. I believe so. I haven't
2 gone back to check that, but yes, I believe so.

3 Q. And then, Registrar, if
4 you could go to the next image as well, image 5.

5 And then there is a summary
6 of -- and you'll see at point number 5 on image 5
7 there's a summary of the collision countermeasures
8 and there's a reference to appendix A to report
9 PW18008?

10 A. Yes.

11 Q. Do you recall what that
12 document was?

13 A. I believe that that was
14 the report that public works were working on that
15 contained the updated CIMA information from their
16 ongoing safety audit -- safety assessment, sorry.

17 Q. Do you recall that the
18 appendix A listed whether or not the safety
19 recommendations had in fact been implemented?

20 A. I don't recall. I know I
21 believe that David had that information from
22 Mr. Malone.

23 Q. But I had understood from
24 you that on December 11th one of the action items
25 was that you were going to get public works to

1 confirm if the safety recommendations from CIMA
2 had been implemented?

3 A. Yes, and I do -- I recall
4 providing that in a chart to Mr. Boghosian. I
5 don't recall exactly when that happened.

6 Q. Okay. And that chart I
7 believe was appendix A to PW18008?

8 A. Yes, okay.

9 Q. Is that consistent with
10 your recollection?

11 A. That is, yes.

12 Q. So there's a reference in
13 the bottom of the page to the slippery when wet
14 signs. While it indicates that it is completed,
15 it is not noted whether rain activated flashing
16 beacons were installed in high collision areas.
17 And so there's a reference there to that aspect of
18 the countermeasures.

19 Registrar, if you could go to
20 page 6 as well.

21 So at the top of image 6 it
22 says:

23 "The report also notes
24 that pavement friction
25 testing was carried out,

1 however, we are unaware
2 of any pavement friction
3 testing since 2013."

4 And so what was your
5 understanding of what Mr. Boghosian is referring
6 to in that paragraph?

7 A. My understanding was that
8 he was referring to the Tradewind report and that
9 he was unaware that any further testing had been
10 done since that time I believe.

11 Q. But the appendix A had
12 indicated that pavement friction testing was
13 carried out. Did you have -- did you have any
14 discussions with public works staff about that
15 part of appendix A where it said pavement friction
16 testing had been done?

17 A. I don't recall having any
18 discussions about that. But I may -- I need to
19 see if it was referred to in any of my notes in
20 the future. I believe we had a further meeting on
21 the 14th.

22 Q. We're going to get to
23 your notes of the 14th. So on image 6 you'll also
24 see that there's a summary of the draft roadside
25 safety assessment. Had you gotten a copy of the

1 draft roadside safety assessment?

2 A. I don't recall whether
3 that was provided to me directly but I do recall
4 that Mr. Boghosian had it for Mr. Malone.

5 Q. And up until this point
6 had you had any discussions with the public works
7 staff about what the roadside safety assessment
8 was covering?

9 A. No. I knew -- I was
10 generally aware that the work was being undertaken
11 and that they were working with CIMA directly on
12 that issue. I believe at the discussion on
13 December 14th we had a further conversation about
14 that report.

15 Q. What was your
16 understanding of what CIMA was doing as part of
17 the roadside safety assessment?

18 A. I understood that they
19 were updating their 2015 report and providing
20 additional -- any additional information that
21 public works needed regarding the safety of the
22 road and what might be needed to make the road
23 more safe if needed.

24 Q. Did you have an
25 understanding of whether or not CIMA would be

1 looking at pavement as part of the roadside safety
2 assessment?

3 A. No, the work that public
4 works and CIMA was doing was independent from my
5 review. So I was aware that the work was being
6 undertaken, but they were leading that work and it
7 wasn't part of my review.

8 Q. So was it your
9 understanding public works was getting an opinion
10 from CIMA on whether interim safety measures would
11 be required as part of the roadside safety
12 assessment?

13 A. It was understanding that
14 they were working with CIMA to get a safety
15 assessment of the road. I don't know whether I
16 would have characterized it as interim safety
17 measures or not, but that they were getting all
18 the information, interim and otherwise, that they
19 needed regarding the safety of the road.

20 Q. Was it your understanding
21 that CIMA was provided with the Tradewind report
22 from public works staff as part of that
23 assessment?

24 A. It wouldn't have been --
25 so I don't know. I don't know whether they would

1 have provided that or not. Certainly that was
2 information that they had and information that if
3 they needed to provide to CIMA as part of that
4 review it was my expectation that they would have
5 provided that. It was their project, their
6 assessment, and that was information that if
7 needed they certainly were able to provide.

8 Q. But you didn't believe
9 that it was important to find out if CIMA was
10 getting a copy of the Tradewind report from public
11 works?

12 A. So I don't -- I believe
13 that that work was theirs. I was responsible for
14 the litigation review and that was the focus of my
15 work at the time, not in addition to the other
16 matters that I was dealing with.

17 So I had confidence, complete
18 confidence in the public works staff that they
19 would take whatever steps they felt were necessary
20 to ensure that the information that they were
21 being provided was what they needed, so that I was
22 confident in their ability to do that work. It
23 wasn't my role or responsibility to second guess
24 or to double check what they were doing.

25 Q. Your evidence is that

1 there was never any discussion with public works
2 staff about whether or not public works staff had
3 provided CIMA with the Tradewind report?

4 A. I don't recall having
5 that particular discussion.

6 Q. So you'll see on image 6
7 that there is additional recommendations that are
8 identified by Mr. Boghosian.

9 Registrar, if you could go to
10 the next page, image 7. So if you could put up
11 7 and 8 together that might be helpful.

12 So here there is a summary
13 from Mr. Boghosian of his telephone call with
14 Mr. Malone on December 11th. And you'll see that
15 he's identified what safety recommendations had
16 been fully implemented, partially implemented, not
17 implemented, and implementation unknown. And on
18 image 8 there are a couple that are not
19 implemented and under "implementation unknown" it
20 says "pavement friction testing."

21 So from this did you
22 understand that CIMA did not know if the City had
23 conducted pavement friction testing?

24 A. I don't have any
25 particular recollection about that sentence.

1 Q. Okay. But this sentence
2 indicates that Mr. Malone did not know if pavement
3 friction testing had been implemented; is that
4 fair?

5 A. That's what it says. I
6 can't -- I didn't draft that. I can't draw any
7 conclusions as to what that was saying.

8 Q. But when you saw that you
9 would have interpreted that to mean that
10 Mr. Malone did not know if pavement friction
11 testing had been implemented?

12 A. I apologize. I don't
13 recall specifically what my thoughts were at the
14 time.

15 Q. And then on image 8 it
16 says in the second full paragraph:

17 "When asked to rank in
18 order of greatest
19 contribution to the
20 inordinate number of wet
21 road crashes Mr. Malone
22 advised as follows..."

23 And the first factor is:

24 "Slipperiness of the road
25 surface, i.e., the road

1 is slipperier when wet
2 than other roads which
3 leads to greater
4 accidents than on roads
5 with similar or
6 (indiscernible) numbers
7 horizontal curves and wet
8 road conditions." (As
9 read)

10 And then there's the other
11 three factors as well.

12 And so you had testified
13 yesterday that when you had your conversation with
14 Mr. Boghosian on December 11th and Mr. Boghosian
15 conveyed to you that there were four contributing
16 factors I think you said that they were unranked.
17 Is that your recollection?

18 A. That was my
19 understanding, yes.

20 Q. So now you have an
21 opinion from Mr. Boghosian that indicates that
22 Mr. Malone has ranked slipperiness of the road
23 surface as a greatest contributing factor to wet
24 road crashes. And there's a note there, "versus
25 P4 reduces impact of driver error." What is that

1 note referring to?

2 A. So when I reviewed the
3 draft opinion from Mr. Boghosian it's -- this
4 paragraph, which identified a ranking, appeared to
5 me to be different than CIMA's earlier causes --
6 contributions that were identified on page 4.

7 So I identified that there was
8 a discrepancy and I wanted to get clarification
9 from David on that point and to make sure that --
10 and to understand what the difference was or was
11 this -- what was the difference. I wanted an
12 explanation to understand the discrepancy that I
13 identified.

14 Q. Did you have that
15 conversation with Mr. Boghosian?

16 A. Yes, I did.

17 Q. What did he say?

18 A. I understood following
19 our conversation that he had clarified that CIMA
20 did not -- had not identified particular causes or
21 had not ranked the causes. They didn't have that
22 information to determine the causes, and that the
23 contribution factors were not ranked in any
24 particular way, that they were identified as both
25 slipperiness of the road and the speed being

1 contributing factors.

2 Q. When did you have that
3 conversation with Mr. Boghosian?

4 A. I had that conversation
5 with him on January 8th.

6 Q. So your evidence is that
7 on January 8th Mr. Boghosian said, notwithstanding
8 what he set out in his opinion letter, in fact
9 Mr. Malone wasn't ranking slipperiness with the
10 road surface as the greatest contributing factor?

11 A. So I don't recall
12 specifically the conversation, but I understood
13 that that was my takeaway, that CIMA's information
14 was they didn't have causes, they hadn't come to a
15 conclusion on the particular causes of the wet
16 weather crashes, but that there were contributing
17 factors and there was not a particular ranking of
18 those factors.

19 Q. So your evidence is that
20 Mr. Boghosian told you that notwithstanding what
21 he wrote on page 8 of his opinion letter,
22 Mr. Malone did not in fact rank slipperiness of
23 the road surface as the greatest contributing
24 factor to the inordinate number of wet road
25 crashes?

1 A. So I don't recall the
2 specific whether that was said, but that was
3 certainly my understanding from having that
4 clarification discussion with Mr. Boghosian.

5 Q. So you don't recall what
6 was said; you just have this impression that
7 actually Mr. Boghosian was mistaken when he wrote
8 what he wrote on page 8?

9 A. So I had the conversation
10 with David, I had identified these two issues, and
11 I left the conversation with the understanding
12 that there was no particular ranking in the
13 contributing causes. We had a discussion between
14 the difference between contributing factors and
15 causes and ultimately I was left with the
16 understanding that there was not a particular
17 ranking, that slipperiness of the road and
18 speeding and the other factors were all
19 contributing.

20 Q. So your evidence is that
21 January 8th you and Mr. Boghosian had a
22 conversation where you were discussing the
23 difference between cause and contributing factor?

24 A. I was trying -- all of
25 that was part of the fact identified that these

1 were two different areas where they identified
2 contributing factors, causes. We had a discussion
3 around that, and I understood following that
4 conversation that the slipperiness of the road and
5 the speeding and driver behaviours were all
6 contributing factors and that CIMA hadn't come to
7 a particular conclusion as to what those -- like
8 how those accidents were caused.

9 Q. Did Mr. Boghosian explain
10 why he said on page 8 of his opinion letter that
11 slipperiness of the road surface was ranked as the
12 greatest contribution?

13 A. I don't recall the
14 specifics of his explanation.

15 Q. I take it the reason you
16 were having this conversation with Mr. Boghosian
17 and that you raised it as an issue is because it
18 was concerning to you that slipperiness of the
19 road surface was the highest contributing factor
20 to wet road -- the inordinate number of wet road
21 crashes?

22 A. I identified it as a
23 difference between what I understood CIMA's
24 previous comments to be. If there had been a
25 particular issue I would have wanted to clarify

1 and understand that and important -- more
2 importantly, how that -- not more importantly --
3 and how that identified or -- influenced
4 Mr. Boghosian's opinion.

5 Q. So I take it that it was
6 concerning to you that you saw that Mr. Malone had
7 ranked slipperiness of the road surface as the
8 greatest contribution and you wanted to clarify
9 that?

10 A. I was concerned that
11 there was a difference in the opinion and I wanted
12 to understand what that -- or what that -- if
13 there was a difference. So maybe I was
14 misunderstanding how that was going so I wanted
15 that clarification from David. So I identified it
16 as (skipped audio) about it, and my understanding
17 was that there were no particular ranked causes --
18 or contributing factors to the wet weather
19 collisions.

20 Q. But why would it have
21 mattered if there was a difference or not?

22 A. So I wanted to make sure
23 that my understanding and the information that was
24 being provided was consistent. It was a
25 difference, and that's part of -- when I'm

1 reviewing things that's one of the things I'm
2 looking for, which is making sure that my
3 understanding and how things have been presented
4 to me are consistent with what's written. I
5 identified that as a difference and I sought
6 clarification.

7 Q. Registrar, could you put
8 up image 4 next to image 8, please. I think it
9 might help. So image 4 at the very top where it
10 just says:

11 "CIMA concludes that the
12 potential causes of the
13 higher than expected
14 proportion of wet surface
15 conditions accidents
16 might be the following,
17 inadequate skid
18 resistance," and then
19 there's a couple others.

20 The two are not actually
21 inconsistent with one another, what's on image 4
22 and what's on image 8.

23 A. So they were inconsistent
24 in that -- in my first reading before I talked to
25 David it appeared to be putting higher emphasis on

1 slipperiness rather than the impact of driver
2 error, and in my mind that included speeding, so
3 the driving component, the individual component of
4 driving on the road versus the skid resistance or
5 the slipperiness of the road.

6 Q. But one of them, on image
7 4, CIMA is listing some causes, potential causes,
8 and on image 8 there's Mr. Malone saying oh,
9 actually I think the most -- that the highest
10 contributing factor is the slipperiness of the
11 road surface. The two aren't actually
12 inconsistent with one another.

13 A. In my mind, and the note
14 that I wrote when I first read it it did identify
15 as different and that these were potential causes
16 unranked. I had had conversations up until this
17 point and discussions with staff where I
18 understood that these were causes or contributing
19 factors and that they weren't -- they hadn't
20 identified a particular rank of those causes.

21 So when there was identified
22 as a ranking I wanted to clarify that, and whether
23 that was in fact the case or whether there were
24 other -- whether they were still maintaining that
25 it was -- that all the factors contributed and it

1 hadn't landed on whether they were causes or not
2 in a particular order. So I wanted to understand
3 the difference.

4 Q. And it was important to
5 know if impact of driver error was an important
6 contributing factor or not versus slipperiness of
7 the road surface; is that fair?

8 A. Sorry, can you repeat
9 that.

10 Q. It was important for you
11 to understand if the impact of driver error was an
12 important contributing factor or not to the wet
13 road collisions versus the slipperiness of the
14 road surface.

15 A. So I wanted to understand
16 whether there were -- whether CIMA had had a
17 different discussion with David than he had had
18 presented -- whether they had presented in their
19 other reports. I wanted to understand that. So
20 it was a matter of clarification and I wanted to
21 ensure that I understood what was being presented.

22 Q. Did you talk to public
23 works staff about this ranking that's set out on
24 page 8 of Mr. Boghosian's draft opinion?

25 A. So I don't recall having

1 a specific discussion with them on the ranking for
2 the reason that by the time I had spoken to
3 Mr. Boghosian and clarified my understanding that
4 in fact there were no ranked contributing factors,
5 that CIMA hadn't drawn that kind of a conclusion
6 on those causes, it didn't -- to me there was
7 nothing to clarify or to discuss with them.

8 The information that they were
9 being provided, as far as I understood, was the
10 same as what I had seen. I also was confident, as
11 I indicated earlier, that they were having that
12 discussion with CIMA directly. So if there were
13 any of those changes or if there was anything
14 different that had come from conversations, then
15 they would be getting that information directly.

16 Q. You didn't think that it
17 was important to tell public works staff that
18 Mr. Malone had ranked slipperiness of the road
19 surface as the greatest contributing factor to the
20 inordinate number of wet weather crashes?

21 A. By the next opportunity
22 that I had to speak with public works staff
23 following my conversation with David I didn't
24 believe that there was a difference or a ranking.
25 My understanding was that they were equal

1 contributing factors and that CIMA hadn't come to
2 that particular conclusion on cause.

3 Q. So you read this draft
4 report on December 13th. You identified that
5 there was this potential inconsistency that you
6 wanted to talk to Mr. Boghosian about, but you
7 don't actually speak with Mr. Boghosian until
8 January 8th; is that fair?

9 MS. CONTRACTOR: I'm sorry,
10 Mr. Commissioner, I don't think we established
11 that she read the report on the 13th.

12 BY MS. LIE:

13 Q. Okay. Did you read the
14 report on December 13th?

15 A. I don't actually recall
16 when I read the report. I believe I would have
17 given it a quick review to make sure that it -- to
18 see what David had concluded on the liability
19 piece, but ultimately my conversation on the 14th
20 with staff was based on the notes and the
21 discussion that I had had with David earlier. I
22 don't believe I had read and made these notes
23 until closer to the time that I actually spoke to
24 David, which was in the new year.

25 Q. So you're now saying that

1 on December 14th when you met with public works
2 staff you hadn't yet read Mr. Boghosian's draft
3 opinion?

4 A. No, I'm saying I had
5 reviewed it but I don't know that I had made these
6 notes and identified this discrepancy. I can't
7 say when that happened. I did speak to
8 Mr. Boghosian and I had his preliminary assessment
9 which was what we discussed on the December 11th
10 call.

11 Q. So you're saying that by
12 December 14th when you meet public works staff you
13 have read the draft opinion, correct?

14 A. I would have received it
15 and I don't know whether I would have had an
16 opportunity to read it fully. I would have had an
17 opportunity to -- I may have had an opportunity to
18 give it a high level review but I can't say
19 sitting here today what exactly that was.

20 Q. Registrar, can you pull
21 up overview document 9A, page 245.

22 You'll see at paragraph 582 --
23 paragraph 580 there's the e-mail from
24 Mr. Boghosian to you on December 13th attaching
25 his draft, unsigned opinion letter.

1 A. Yes.

2 Q. And then you reply that
3 you would respond to him the following morning.
4 You see that at paragraph 581?

5 And at paragraph 582, this is
6 the same day, December 13th, 2018, you forward the
7 e-mail to Mr. Sabo and you write:

8 "Please let me know if
9 you have any comments and
10 I will get back to David
11 tomorrow morning."

12 So it's certainly your
13 intention as of December 13th was that you were
14 going to review the opinion and get back to
15 Mr. Boghosian by the 14th.

16 A. That's what I said. I
17 can't say whether that actually happened, and
18 certainly I would have wanted to have Mr. Sabo's
19 comments and thoughts prior to speaking to David
20 and we may or may not have had an opportunity
21 connect.

22 Moreover, we did ultimately
23 speak with staff on the 14th and have a
24 conversation on a number of items, and then
25 ultimately we proceeded to have the -- like,

1 working towards the timing of the report and we
2 ultimately spoke to the mayor and had that report
3 confirmed as being provided to counsel in the new
4 year, at which point we would have had an
5 opportunity to speak to David in the new year
6 about his opinion.

7 Q. So all of this stuff
8 happens I understand from --

9 A. Very quickly.

10 Q. I get it. Yeah, sure,
11 there's a lot going on December 14th all the way
12 to January 8th. But during that time -- sorry?
13 Ms. Contractor, is something --

14 MS. CONTRACTOR: Sorry,
15 Counsel, I can't hear you and so I don't know if
16 you're able to hear her.

17 MS. LIE: Can you hear me?

18 MS. CONTRACTOR: I can hear
19 you now.

20 BY MS. LIE:

21 Q. So for that period, from
22 December 13th or 14th all the way to January 8th,
23 you have information that indicates that
24 Mr. Malone ranked slipperiness of the road surface
25 as the greatest contributing factor to the

1 inordinate number of wet road crashes and you
2 didn't talk to any public works staff about that.

3 MS. CONTRACTOR: I'm sorry to
4 interrupt again, Mr. Commissioner, but that's not
5 what the witness's evidence was, and just to be
6 fair to her I think we should accurately restate
7 what she said, which is that she had a high level
8 review of the draft and that she doesn't think
9 that she looked at the draft in detail and made
10 those comments until closer to the January 8th
11 call.

12 BY MS. LIE:

13 Q. Okay. So why don't I
14 rephrase the question.

15 So your evidence, Ms. Auty, is
16 that -- well, let me ask you this. At any point
17 did you tell any public works staff that
18 Mr. Malone had ranked slipperiness of the road
19 surface as the greatest contributing factor to the
20 inordinate number of wet road crashes?

21 A. So no, because I had been
22 provided that information in a draft opinion and
23 it was my practice to make sure that I understood
24 the information in the opinion that I was being
25 provided before it was passed on to anyone else.

1 So I did identify that
2 discrepancy. I had a conversation and understood
3 from Mr. Boghosian that there were -- there was no
4 particular ranking of the causes. Also,
5 throughout this period of time I'm working on the
6 liability assessment for council and ensuring that
7 they have the information that they need from me,
8 which is a liability assessment.

9 Public works staff are working
10 with CIMA and Mr. Malone directly to make sure
11 that they have the information that they need to
12 assess the safety of the road. And had that been
13 Mr. Malone's opinion or thoughts on the matter, I
14 would have expected and anticipated that that
15 would have been in the report that CIMA was
16 providing for public works and for council.

17 So I didn't -- that was my
18 role was, to conduct the information and to
19 provide the information that I had to council on
20 liability. At no point in time did I think that I
21 had information that others who needed it should
22 have had.

23 Q. So you don't believe it
24 was important to ensure that public works had that
25 information?

1 A. I believed that I didn't
2 have any information that was new or different to
3 then what they would have had. It was my
4 understanding that they had exactly all the
5 information that they needed to have to do their
6 work through those conversations directly.

7 Q. What did they say -- who
8 told you that -- to do this work?

9 A. So we met on
10 December 14th with staff. They identified to me
11 that they were working on a safety assessment with
12 CIMA, and on that basis I understood that they
13 were doing their work on the safety assessment and
14 the review of the road and that all of the
15 information that they would need they were going
16 to be getting from CIMA directly.

17 I wasn't in the way -- I
18 wasn't a conduit for that information. They were
19 getting that directly. I think that's really
20 important to understand. CIMA and public works
21 were working directly. I wasn't getting in the
22 way or responsible for sharing information between
23 the two parties.

24 Q. So somebody at that
25 meeting on December 14th told you that they were

1 working directly with CIMA and they were giving
2 CIMA whatever CIMA needed for the purposes of
3 providing an opinion on public safety?

4 A. We can go to my notes. I
5 don't have them in front of me. I think at some
6 point I presume we will review those, but I do
7 make note and I do have a recollection that public
8 works identified that they were working on report
9 18008, I can't recall the specifics, which was an
10 updated assessment from CIMA which Mr. Malone
11 referred to in his -- sorry, Mr. Boghosian
12 referred to in his draft opinion.

13 So I understood from both
14 parties, from Mr. Boghosian and from public works
15 staff, that they were getting that information.
16 They were discussing the road safety assessment
17 work that CIMA was doing directly. So yes, that
18 was my understanding.

19 Q. You can't tell me who you
20 got that understanding from?

21 A. It would have been
22 from --

23 MS. CONTRACTOR: Perhaps you
24 can to go the notes if you are going to be asking
25 her about the December 14th call.

1 JUSTICE WILTON-SIEGEL: I'll
2 allow the question. I think Ms. Auty was in the
3 process of answering it anyway.

4 THE WITNESS: It would be
5 beneficial if I could see the notes, but my
6 recollection is that it was either Mr. McKinnon or
7 Mr. McGuire, but also Mr. Soldo was speaking of
8 the work that was being done on the road. So it
9 would have been any one of those three individuals
10 as they were leading that work.

11 BY MS. LIE:

12 Q. Registrar, could you go
13 to page 249 of the overview document.

14 At paragraph 588 you'll see
15 that Mr. Sabo replies to your e-mail which is
16 attaching the draft opinion. He says:

17 "I haven't cracked the
18 attachment open but am
19 about to. I know John
20 would like David to help
21 with the approach to
22 giving notice to the
23 City's current and former
24 insurers for one."

25 And then you reply:

1 "Let's you and I speak
2 about it tomorrow once
3 you've had a chance to
4 read it and then see
5 where it needs to go."

6 A. Yes. As I indicated, I
7 did want Mr. Sabo to have an opportunity to review
8 it because I relied on his expertise in reviewing
9 it. So that's what I was speaking about.

10 Q. Did you speak with
11 Mr. Sabo the next day?

12 A. I can't recall, to be
13 honest. The day was -- there was always lots of
14 things going on so I can't say whether
15 particularly we spoke at that point in time or
16 closer to January when we spoke to Mr. Boghosian.

17 Q. When the draft opinion
18 came in I take it that it was important for you to
19 read it quickly -- well, to not sit on the report,
20 let me put it that way.

21 A. I believe I've indicated
22 there was a lot of moving parts here, and
23 certainly we were looking to get the information
24 shared amongst staff and have those conversations
25 around how we were going to bring the report to

1 council. Obviously it's important to review, I
2 felt, and it was my practice to review opinion
3 letters as quickly as possible. Whether I would
4 have waited or had waited for an opportunity to
5 have Mr. Sabo review it and then have us discuss
6 it, I imagine, as I indicated, I reviewed it at a
7 high level but did not necessarily sit down and
8 make my notes and have a conversation with
9 Mr. Sabo until later. And I apologize, I cannot
10 remember exactly when that conversation took
11 place.

12 Q. You mentioned that you
13 were looking to get information shared amongst
14 staff. What was the information that you were
15 sharing amongst staff?

16 A. How our individual work
17 was with going in terms of preparing the
18 information that we were anticipating providing to
19 council.

20 So we met a number of
21 occasions, but the most recent or the most close
22 to this time was in December 14th and that was --
23 again we were working towards a report to council
24 and the timing of that was up in the air. We got
25 together on the 14th to have a discussion around

1 what work I had been doing, the conversations I
2 had had with David up until this point. I
3 conveyed our preliminary thoughts on the liability
4 and what action items would be important to have
5 public works be aware of. Again, that was all
6 moving towards the ultimate timing and decision of
7 the report to council.

8 Q. So it wasn't important to
9 you to mention that you had reviewed in detail
10 Mr. Boghosian's draft opinion by the time you went
11 to the meeting with public works staff on
12 December 14th?

13 A. So all of the parts were
14 still in progress. I had had a very deta- -- a
15 conversation with (skipped audio) assessment from
16 Mr. Boghosian that I understood him to be putting
17 into his draft opinion, so I didn't anticipate
18 that there was going to be any different than what
19 we had discussed on the 11th.

20 I felt confident that I had
21 enough information to discuss the information in
22 terms of the mitigation measures. The takeaway
23 that I had from the call was Mr. Boghosian on the
24 11th was to have that conversation with public
25 works and to see what they had been doing, what

1 information they had, if any, that I might feed
2 back into that conversation with David going
3 forward.

4 So it was very much in
5 progress and things were happening on a number of
6 fronts and so it was important to get that
7 information together and -- with the ultimate goal
8 of providing council with the report.

9 Q. I think that yesterday
10 you had indicated that your understanding was that
11 Mr. Boghosian would share the Tradewind results
12 with Mr. Malone based on the conversation you had
13 with him?

14 A. Yes. But he had had some
15 discussions with Mr. Malone and they each had
16 enough information to have to conversations and
17 provide the preliminary thoughts that
18 Mr. Boghosian had identified.

19 Q. Sorry, I'm not sure what
20 I understand that means. So --

21 A. I understood that they
22 had spoken and that Mr. Boghosian and Mr. Malone
23 had discussed the Tradewind report results.

24 Q. Okay. And what was your
25 understanding based on? Why did you think that he

1 had done that?

2 A. The conversation that we
3 had had I can't recall specifics, but ultimately
4 that was identified and confirmed that in his
5 written opinion.

6 Q. So this is on
7 December 11th you speak with Mr. Boghosian, and
8 based on that conversation you understand
9 Mr. Boghosian had shared the Tradewind results
10 with Mr. Malone?

11 A. Yes, I understood that
12 they had discussed them.

13 Q. Is there a difference
14 between sharing the Tradewind report and
15 discussing it?

16 A. I don't -- again, that's
17 what I understood. I'm trying to clarify my
18 understanding.

19 Q. So was it your
20 understanding that Mr. Boghosian had shared the
21 Tradewind results with Mr. Malone?

22 A. Yes. I wouldn't be able
23 to have told you whether it was verbally or in
24 writing, but yes, they had shared them, they had
25 discussed them.

1 Q. Okay. Registrar, if you
2 could go back to the draft opinion. This is
3 HAM64356. Go to image 10. Before we do that can
4 we pull up images 7 and 8 again.

5 This is the section of
6 Mr. Boghosian's letter that summarizes the
7 conversation between himself and Mr. Malone. Is
8 there anything in this summary that suggested to
9 you that Mr. Boghosian had shared the Tradewind
10 results with Mr. Malone?

11 A. So my understanding is
12 that he was summarizing his discussion on the
13 mitigation measures and the information that
14 (skipped audio) discussed, that was the primary
15 focus of the conversation. That said, when I read
16 further into the report and he identified that
17 they had had a discussion on the standards as per
18 his telephone conversation, that -- I just read
19 that as part of the conversation that they had
20 discussed that -- the Tradewind report in that
21 context.

22 Q. Registrar, if you could
23 pull up image 10.

24 In the second paragraph under
25 the heading B, the City's response to the expert's

1 findings and recommendations, it says:

2 "In our opinion the
3 friction testing in 2013
4 provided no basis in and
5 of itself for any action
6 to be taken partly
7 because Golder made no
8 recommendation to the
9 City about addressing the
10 issue and also because
11 the 40 friction number
12 apparently has no basis
13 in industry standards
14 recognized in Ontario per
15 our conversation
16 (indiscernible)."

17 Is that the section of the
18 report that you're referring to -- of the opinion
19 that you're referring to?

20 A. Yes.

21 Q. So your evidence is that
22 based on this one paragraph you understood that
23 Mr. Boghosian had shared the Tradewind results
24 with Mr. Malone?

25 A. So no, I believe that

1 when -- so there was a number of pieces along the
2 way that I had understood them to have
3 conversations. I knew that when I spoke to David
4 on the 11th that he had identified that there was
5 everything that CIMA would recommend was in their
6 2015 report, that it didn't change the -- that
7 nothing was changed as a result of the Tradewind
8 report.

9 This sentence, in my mind, was
10 a written confirmation that they had had that
11 conversation and that the resulting thoughts and
12 opinions were on the basis that they had had that
13 conversation. It just made sense me, and there
14 was no indication otherwise, that they hadn't had
15 that conversation around the results of the
16 Tradewind report because that's what the purpose
17 of the report was -- or of the opinion was to
18 confirm.

19 So I didn't -- it wasn't in
20 the absence of that, it was that was the
21 understanding and here were the -- references that
22 confirmed that when I read it that I didn't have
23 any concerns that they hadn't discussed the
24 Tradewind report.

25 Q. Nowhere in

1 Mr. Boghosian's draft opinion does he say that
2 CIMA does not have any additional safety
3 recommendations in light of the Tradewind report?

4 A. So I made note of that in
5 one of my earlier conversations that everything
6 CIMA recommended was in their 2015 report -- in
7 the 2015 report. So that was my understanding,
8 that there was nothing different that they would
9 now be recommending.

10 Q. And having reviewed the
11 draft opinion letter from Mr. Boghosian we don't
12 see that conclusion anywhere. Can you point me to
13 a section of the opinion where you understood
14 Mr. Boghosian to be saying that Mr. Malone had no
15 additional safety recommendations?

16 A. No, there isn't anything
17 specifically in the opinion that I can do at the
18 moment.

19 Q. And so is that -- did you
20 discuss that with Mr. Boghosian? Did you ask him
21 why didn't you include that in the opinion?

22 A. No, I didn't.

23 Q. I think you testified
24 just now that one of the reasons you even retained
25 Mr. Boghosian was because of the Tradewind report

1 and one of the reasons Mr. Boghosian was speaking
2 with Mr. Malone was to share the Tradewind results
3 with Mr. Malone; is that fair?

4 A. Yes.

5 Q. So that is a very
6 important part of what Mr. Boghosian was retained
7 to do and he didn't address it in his opinion
8 letter?

9 A. So I understood that he
10 was. That was my understanding, is that this
11 was -- his opinion looked at those things and
12 what, if any, liability or mitigation measures the
13 City would need to take in light of that, and
14 that's what I read his opinion to be saying.

15 Q. Registrar, if you could
16 go to image 1.

17 In the first paragraph, this
18 is what Mr. Boghosian sets out he's been requested
19 to do. He said:

20 "We confirm that you
21 requested us to provide
22 you with an opinion on
23 various matters as and
24 fully set out below in
25 light of the City's

1 receipt of an FOI request
2 related to the RHVP
3 recently discovered and
4 reports in the City's
5 possession which have not
6 been disclosed in a
7 previous FOI and in the
8 interim steps to address
9 safety of users of the
10 RHVP prior to the
11 resurfacing of the
12 highway expected to
13 commence in June 2019."

14 (As read)

15 So Mr. Boghosian says here
16 that his understanding is that that's what he's
17 been asked to provide an opinion on. Having read
18 the draft opinion, did you believe that
19 Mr. Boghosian had in fact provided an opinion on
20 the interim steps to address safety of users of
21 the RHVP?

22 A. My understanding was that
23 that was in the context of him providing an
24 assessment of the mitigation measures and that he
25 had discussed that in his opinion.

1 Q. So your evidence is that
2 you believe that Mr. Boghosian did address this
3 issue, the interim steps to address safety of
4 users of the RHVP?

5 A. So not in that -- not
6 with that particular wording. As I was discussing
7 yesterday, my understanding and the use of that
8 language was to get at the issue of mitigation
9 measures. So no, I didn't feel like he was
10 doing -- I did not believe that he was doing a
11 safety assessment but that he was providing his
12 opinion on the liability and the mitigation
13 measure and that's what I was being provided.

14 Q. I think yesterday you
15 testified that the wording could have been better
16 in terms of the e-mail that you had --

17 A. It certainly could have.

18 Q. And so you maintain that
19 you didn't actually mean what you said in the
20 e-mail in terms of what you were asking
21 Mr. Boghosian to do?

22 A. I have been using that
23 terminology as it related to the discussion we had
24 from CIMA's 2015 report and the countermeasures
25 dealing with safety being reflective of the

1 appropriate mitigation measure.

2 So again we were working
3 quickly to get and to review this information. I
4 didn't capture that here, and it could have been
5 better from the beginning where that came from or
6 more clear where that came from, but that was
7 certainly our understanding.

8 Q. Right. And the language
9 that you had used actually to Mr. Boghosian in
10 your e-mail and in the retainer letter was how to
11 approach obtaining CIMA consultant input regarding
12 protecting public safety on the road?

13 A. Sorry, that was the
14 language in the initial discussion, but again it
15 was related to a conversation of privilege and
16 not -- not for the purpose of preventing access to
17 safety information.

18 Q. So your evidence is that
19 although that's what the -- that's what the
20 wording -- that's the wording you used in the
21 e-mail and the retainer letter it's not actually
22 what you meant?

23 A. Yes, that language was
24 just carried forward. There was a discussion and
25 an understanding from the outset and that language

1 was really just carried forward where it could
2 have been clarified at the beginning.

3 Q. I mean, we can turn it up
4 but -- but the retainer letter. So you send the
5 e-mail and then you actually draft the retainer
6 letter and then you added some additional language
7 in the retainer letter that said including
8 retaining the expert if necessary. So you turned
9 your mind to that paragraph of the retainer letter
10 at the time, didn't you?

11 MS. CONTRACTOR: So perhaps we
12 can go to the retainer in the absence of -- so
13 that the witness can review it. We haven't looked
14 at it today.

15 JUSTICE WILTON-SIEGEL: Sure.
16 Why don't we do that.

17 MS. CONTRACTOR: Thank you.

18 BY MS. LIE:

19 Q. Registrar, if you could
20 pull up overview document 9A, image 214.

21 So this is at paragraph 501.
22 This is the e-mail from you to Ms. MacNeil
23 attaching the draft retainer and then -- there it
24 is, on image 215 at the top under number 3.

25 So when you drafted the

1 retainer letter you turned your mind to point
2 number 3 in the retainer letter and -- because you
3 added words to it. You added the words "including
4 retaining the expert if necessary."

5 A. Yes, and again I did
6 mention when we discussed this I believe yesterday
7 that we were working very quickly to try and get
8 Mr. Boghosian retained. We had had a discussion
9 around what we understood him to be doing. I was
10 trying to capture that to the best of my ability
11 while doing that very quickly.

12 When I was sending it out the
13 second time I wanted to -- I didn't capture the
14 change in the nature of the discussion that we had
15 for that point, but it did trigger in my mind that
16 had he -- if he needed to retain the expert I
17 wanted to throw that in there. So that was what
18 caught in my mind. I could have clarified the
19 whole thing better, I don't disagree. I would
20 want to make sure that that was clearer.

21 But I did have an additional
22 thought around the retaining of the expert if he
23 needed it to have in the discussion. That's why I
24 added that little piece. Again it's -- it was
25 based on -- the ultimate opinion in our

1 discussions were based on the understanding that I
2 had.

3 Q. Did that happen often,
4 that you find yourself writing something that you
5 don't actually mean?

6 A. No, but it was --
7 certainly when I sit here looking at this now, the
8 amount of that we were doing and the quickness
9 that we were trying to bring this information,
10 it's certainly unfortunate, but my practice I
11 think is reflective of good -- good work. So it
12 was an unfortunate (garbled audio) that that
13 wasn't done but --

14 Q. (Garbled audio).

15 A. -- I don't think you'll
16 hear any comments that that's generally reflective
17 have my work.

18 Q. In reviewing the
19 materials in preparation for today did you come
20 across any other documents, e-mails, where you
21 found yourself saying something you didn't
22 actually mean?

23 A. So I indicated this was
24 something that could have been more clear. It was
25 not something that I didn't mean. I don't think

1 that's a characterization that I would agree with.

2 It does indicate the
3 connection in my mind between the interim safety
4 measures that CIMA discussed and that we discussed
5 with Mr. Boghosian in that 2015 report. The
6 connection between those measures and the
7 mitigation measures, the discussion was the exact
8 same. The wording and how it was described, I was
9 using the wording from CIMA's report. I could
10 have been clearer and said that that was
11 mitigation, but they were not apples and oranges;
12 they were different kinds of bubbles that I was
13 talking about.

14 So it wasn't that I didn't
15 mean it, it was that it could have been more
16 clearly identified and not that it was a
17 completely different thing that I was talking
18 about.

19 Q. So you're saying you
20 brought this language from the 2015 CIMA report,
21 is that your evidence?

22 A. It was related to the
23 countermeasures that CIMA had referred to as
24 interim measures that could be done to deal with
25 the issues that they had identified in that

1 report.

2 Q. So what you were
3 intending Mr. Boghosian to do was to talk to CIMA
4 about whether or not the countermeasures would be
5 any different in light of the Tradewind report?

6 A. As those related to
7 mitigation factors, yes. That was what we had
8 discussed as being appropriate and a source of
9 mitigating factors in the discussion.

10 Q. So what you meant was you
11 wanted Mr. Boghosian to provide the Tradewind
12 results to CIMA to find out if any of the
13 countermeasures or what you call the mitigating
14 measures would be different in light of the
15 Tradewind report?

16 MS. CONTRACTOR:
17 Mr. Commissioner, we've spent a lot of time on
18 this topic and I feel the witness has been very
19 clear both yesterday and today as to what she
20 meant when she used that language and her
21 discussions with Mr. Boghosian on that point.

22 JUSTICE WILTON-SIEGEL:
23 Ms. Lie, I'm inclined to agree with that. I think
24 we understand the evidence and we can take it from
25 there.

1 MS. LIE: I'm happy to move
2 on.

3 BY MS. LIE:

4 Q. Registrar, if we could
5 turn up -- we're already at the overview document.
6 So if we could go to page 249.

7 So we looked at this already,
8 but paragraph 588 you'll see that Mr. Sabo refers
9 to -- he says:

10 "I know John would like
11 David to help with the
12 approach to giving notice
13 to the City's current and
14 former insurers."

15 Do you recall any discussions
16 about having Mr. Boghosian be involved in the
17 notice that he provided to insurers?

18 A. No, I don't.

19 Q. And we know that you sent
20 the draft opinion to Mr. Sabo once you received
21 it. Did you send it to anyone else?

22 A. Not that I recall.

23 Q. Did you share it with
24 Ms. MacNeil?

25 A. No, I don't believe I

1 did.

2 Q. Why wouldn't you have
3 shared it with Ms. MacNeil?

4 A. Because she was not
5 involved on the litigation and opinion side. She
6 was conducting her work on the FOI approach and
7 assisting with that. It wouldn't have been
8 something that I would have sought her expertise
9 on. That's what I was dealing with Mr. Sabo for.

10 Q. I think you testified
11 Ms. MacNeil was dealing with the FOI request;
12 Mr. Sabo was dealing with the liability?

13 A. Yes. And we were having
14 general conversations around what was happening,
15 but that was her area of expertise. And Mr. Sabo
16 as the deputy city solicitor was -- had a great
17 deal of expertise in the area of litigation.

18 Q. Was it your
19 understanding -- did you know if Ms. MacNeil was
20 giving any advice to public works on the liability
21 assessment side of things?

22 A. That would not have been
23 my understanding.

24 Q. Your understanding is
25 that she was giving legal advice directly to

1 public works but only on the FOI request stuff?

2 A. Yes.

3 Q. And possibly on the audit
4 services. I think we covered that yesterday.

5 A. I believe again she was
6 really focused on the FOI. The occasional -- I
7 think identified (sic) I didn't believe that she
8 was necessarily giving advice on that but though
9 she was speaking with them. So that may not be a
10 distinction.

11 Q. And so your understanding
12 is that public works would have been looking for
13 advice on the litigation side from you and
14 Mr. Sabo?

15 A. Yes.

16 Q. Not Ms. MacNeil?

17 A. I don't believe so, but
18 again they had various relationships and would
19 have conversations about things that they needed
20 to. I don't know that there would have been a
21 bright line drawn there, but that was my
22 understanding is that that was the work she was
23 doing. What individual people called her or
24 discussed with her I wouldn't be able to say.

25 Q. Registrar, if we could

1 pull up HAM64355, and we'll go to image 3.

2 These are the notes of the
3 December 14th, 2018 meeting that has come up a few
4 times yesterday and this morning. So where it
5 says "topics to discuss PW18008 get appendices,"
6 is that something that you would have written down
7 going into the meeting or would you have taken
8 that during the meeting?

9 A. So it can be both -- it
10 could have been both, but I believe that this was
11 in advance of the meeting.

12 Q. Before I get into the
13 notes of the meeting, so in terms of the attendees
14 we have Mr. McGuire, Mr. Soldo, Mr. McKinnon and I
15 take it Mike Z is Mr. Zegarac?

16 A. Yes.

17 Q. Was Mr. Sabo at this
18 meeting?

19 A. I don't recall. If I
20 didn't identify him there it may be because he
21 wasn't there or it could be because I was
22 capturing the others. I can't say for sure.

23 Q. When you make notes do
24 you --

25 A. I usually capture

1 everybody who is in the room.

2 Q. Okay. But possible

3 Mr. Sabo wasn't here?

4 A. I believe that's the most
5 likely possibility but....

6 Q. And so under questions to
7 ask where it says "short term measures, CIMA to
8 confirm," so under those few bullets under
9 "questions asked" again would you have made those
10 notes before going into the meeting?

11 A. I believe so. They may
12 have been things that came up but usually those
13 were where I was asking -- things I wanted to ask
14 through the meeting.

15 Q. So where it says "short
16 term measures, CIMA to confirm," what is that
17 referring to?

18 A. That was asking public
19 works to confirm the work that they had done that
20 CIMA recommended.

21 Q. That's the work -- and
22 that's the recommendations coming out of the 2015
23 CIMA report?

24 A. Yes, or any others that
25 they were working on. But yes, in general.

1 Q. So you wanted public
2 works to confirm --

3 A. -- what of the CIMA
4 recommendations they had completed.

5 Q. Did you have that
6 discussion with them at this meeting?

7 A. Yes.

8 Q. What did they tell you?

9 A. I believe that they had
10 said that they had done the majority of it and
11 there may be a few items that they were continuing
12 to work on. And those I believe I identified in
13 the report as the cat eyes or the friction -- not
14 friction, but the enforcement and the signs.

15 Q. Is that under the note
16 ES, is that what you're referring to?

17 A. That was part of it. I
18 believe it is later --

19 Q. Registrar, if you could
20 pull up the next image as well and we'll have the
21 complete note. There it is.

22 A. Yes. So I raised the
23 question with them and I believe that they were
24 going to either provide me with something
25 ultimately that would identify those and that

1 there wasn't anything of substance that they
2 hadn't undertaken.

3 Q. Which note are you
4 looking at? I just want to make sure I understand
5 what you're looking at.

6 A. So in general I raise
7 that question. It's on the second page under
8 number 1 that says "confirm CIMA recommendations."

9 Yeah. And then I note that in
10 the earlier page at the beginning of the meeting
11 Mr. Soldo was identifying the enforcement and
12 speeding, like, to deal with the speeding issue
13 and looking at whether they were going to install
14 cat eyes or -- I'm not sure if that was something
15 they had already done or not. But those were some
16 notes that I was taking on that conversation.

17 Q. So this is Mr. Soldo was
18 telling you what safety recommendations they were
19 going to be implementing?

20 A. I can't recall if it was
21 things that they were going to be doing or things
22 that they had already done, but we were discussing
23 them and they were going to confirm that with me
24 which I believe they did in a chart that I had
25 later.

1 Q. What was the chart you
2 had later? Was that appendix A?

3 A. Yes, the appendix, yes.
4 Which is what I was asking them to get to me at
5 the beginning of the meeting.

6 Q. I see. So you were
7 asking them to confirm what recommendations from
8 the 2015 CIMA report had already been implemented?

9 A. Yeah. And then what, if
10 anything, from the 2018 report as well because
11 that's the appendix to that report. Which is
12 both, right, I believe.

13 Q. And why were you asking
14 for that information?

15 A. Because that was the
16 takeaway that I had from Mr. Boghosian's
17 conversation, which was in order to put the City
18 in the best position with respect to liability,
19 the number of mitigation matters or mitigation
20 things that we could do, the more that we could
21 complete the better the City's position would be.

22 Q. So there was -- okay, you
23 were having this conversation about trying to --
24 determining what safety measure have been
25 implemented?

1 A. My part of the
2 conversation was passing on that conversation.
3 Public works was sharing what they had been doing
4 with the -- up until this point. In terms of the
5 review, we discussed the reports that they were
6 working on and then this was my addition to that.

7 So Mr. McGuire had some
8 conversations -- some discussion around the
9 friction as well, and then we -- my comments and
10 my input was that the mitigation and the liability
11 conversation that David and I had, I was passing
12 that on, and that was my kind of contribution to
13 the discussion.

14 Q. When you said that
15 Mr. McGuire had discussion around the friction,
16 what did Mr. McGuire say?

17 A. So I tried my best to
18 make notes of that conversation. It's a little --
19 it was a little technical in terms of what -- but
20 I did my best to make notes around what he was
21 discussing there.

22 Q. What did he discuss?

23 A. I can't recall the
24 specifics. Like I said, I tried to identify it as
25 best as possible in my notes.

1 Q. So tell me, with the
2 benefit of your notes, what is your best
3 recollection of what Mr. McGuire said about the
4 friction?

5 A. That there wasn't
6 anything to be done to the surface in advance of
7 the -- the work being done that was scheduled for
8 2019. There wasn't anything that was needed to be
9 done prior to that work being completed.

10 Q. Did he say why he came to
11 that conclusion?

12 A. He may have. I don't
13 recall.

14 Q. And this is -- you're
15 referring to the "Gord can't do anything" surface
16 note? Is that --

17 A. Yes.

18 Q. There's a note that says
19 did "prelim review tender timing" I think?

20 A. Timing I believe so. I
21 tried to transcribe it. I don't know if we have
22 those, but yeah.

23 Q. So what is that referring
24 to?

25 A. I believe that was

1 referring to the fact that they had -- they were
2 tendering the work to redo the pavement but I
3 can't be certain.

4 Q. Was there a discussion of
5 the Golder pavement evaluation from 2017?

6 A. I believe so. I made the
7 note of the November 2017 Golder information
8 there.

9 Q. What did Mr. McGuire or
10 anybody else say about that pavement evaluation?

11 A. I don't recall. Again I
12 tried to make the notes but I can't recall what we
13 discussed.

14 Q. Do you recall them
15 telling you that the third pendulum test was not
16 completed by Golder?

17 A. That's what I wrote down,
18 but yes, again I don't recall the specifics of
19 that discussion.

20 Q. It says "meet with
21 consultant should go ahead." Did Mr. McGuire say
22 they were going to go ahead with the further
23 friction testing?

24 A. I don't know what that
25 was referring to.

1 Q. So just looking at the
2 first page, under "questions to ask" in the second
3 bullet it says "CIMA question." So the questions
4 to ask, those bullets, do you recall if you had
5 made those going into the meeting?

6 A. I think so. Again I
7 don't remember.

8 Q. What was the CIMA
9 question that you had?

10 A. I don't recall.

11 Q. And then it says "Golder
12 meeting. Questions to ask." What's that?

13 A. I'm sorry, I don't
14 remember.

15 Q. I understand that
16 Mr. McGuire actually met with Golder on
17 December 18th. Is it possible that's what you're
18 talking about?

19 A. It's possible.

20 Q. Was there any discussion
21 of the upcoming meeting between Mr. McGuire and
22 Golder?

23 A. Not that I recall. I
24 didn't make a note of it.

25 Q. Well, where it says "meet

1 with consultant should go ahead," could that be
2 what you were talking about?

3 A. I don't remember.

4 Q. So under on the first
5 page where it says "notes" it says "Mr. Zegarac"
6 and then there's an arrow, it has Boghosian. And
7 then it says "would recommendation change with
8 Golder friction testing," and then there's a note
9 that says "CIMA/share friction testing to assess
10 outstanding/safety."

11 So did Mr. McGuire say --
12 sorry, Mr. Zegarac say that Mr. Boghosian should
13 share the friction testing with CIMA to assess
14 outstanding safety?

15 A. I don't remember what
16 that part of the discussion -- that doesn't bring
17 back any memories for me.

18 Q. But when you're taking
19 notes I take it you're trying to report to the
20 best of your ability what is being said at the
21 meeting?

22 A. Yeah, although I don't --
23 I don't know what that would have been.

24 Q. You don't know what that
25 would have been?

1 A. I don't know what part of
2 the conversation I was trying to capture there.
3 It doesn't ring any bells for me.

4 Q. So where it says
5 "Mr. Zegarac," do you usually write down who is
6 speaking?

7 A. I do.

8 Q. So could it be
9 Mr. Zegarac was saying that we should -- that you
10 should have Mr. Boghosian share the friction
11 testing with CIMA to assess outstanding safety?

12 A. I do not remember -- I
13 can't answer that. I don't know what that refers
14 to.

15 Q. And the note that says
16 "would recommendations change with Golder friction
17 testing," do you recall having a discussion with
18 public works staff about whether or not CIMA's
19 recommendations would change with the friction
20 testing?

21 A. I don't have a specific
22 recollection about that.

23 Q. So earlier today you
24 testified that your understanding coming out of
25 this meeting was that CIMA and public works were

1 dealing with each other directly and that they
2 were sharing information and they were getting
3 whatever -- and CIMA was getting whatever
4 information it needed. Is that a fair
5 characterization of your evidence about this
6 meeting?

7 A. Yes, that public works
8 and CIMA were working on those issues and having
9 that conversation through their reports.

10 Q. So now that we have the
11 notes of the meeting, who told you that?

12 A. I don't recall. I know
13 that I was -- that was my understanding from
14 leaving the meeting but I don't recall that
15 specific statement being made.

16 Q. Your general
17 understanding is that public works was dealing
18 with CIMA and that might have included sharing the
19 Tradewind report with CIMA?

20 A. Again, I understood that
21 they had the -- they all had the information that
22 they needed and if they needed to share that, then
23 that is what they would have been doing.

24 Q. Right. But here we have
25 a note that says -- Zegarac saying "CIMA/share

1 friction testing to assess outstanding safety."
2 And there's a note that specifically refers to
3 Boghosian.

4 A. So again I do not
5 remember what -- the context or what I was
6 capturing in that discussion. I can't answer
7 that.

8 Q. So at the time of this
9 meeting you had information from Mr. Boghosian
10 that CIMA would not be -- would not have any
11 additional safety recommendations in light of the
12 Tradewind report?

13 A. That was my understanding
14 from the conversation that I made a note of, yes.

15 Q. Right. And did you share
16 that information with the public works staff on
17 this call?

18 A. So in the context that we
19 wanted to ensure that we had done everything in
20 CIMA's recommendations from that, yes, that was
21 the nature of the discussion.

22 Q. Did you tell the public
23 works staff that Mr. Boghosian had talked to CIMA
24 about the Tradewind results?

25 A. I don't know for sure. I

1 don't recall. I believe I would have had that as
2 part of the discussion but I don't recall
3 specifically.

4 Q. Right. It would have
5 been an important thing to raise as part of this
6 discussion that Mr. Boghosian had talked to CIMA
7 about the Tradewind results?

8 A. Yes, and I believe that I
9 would have had that conversation with them as I
10 was discussing the liability component.

11 Q. And so you say you would
12 have but you don't actually remember?

13 A. I don't remember, no.

14 Q. Did you convey to the
15 public works staff that CIMA -- well,
16 Mr. Boghosian that there would be no additional
17 safety recommendations in light of the Tradewind
18 results?

19 A. I don't recall whether
20 that was a specific statement that I made, but I
21 did identify that we were working on the premise
22 and that Mr. Boghosian's liability review to this
23 point indicated that the City should -- and that
24 his recommendation was that the City should
25 complete as much of that work that they haven't

1 already done as quickly as possible.

2 So that was the takeaway for
3 me. That was what information I needed to pass on
4 to them.

5 Q. So you didn't think that
6 Mr. Malone saying that there were no additional
7 safety recommendations in light of the Tradewind
8 report was necessary information to pass on to
9 public works staff?

10 A. So I felt that that was
11 implied by my indication that they should do all
12 of those things. I don't know that I would have
13 made that particular distinction, but that they --
14 my recommendation, and David's, was that they
15 complete all of that work and that -- obviously if
16 there were new things to add or if there was
17 anything else then we would have identified that.
18 So I don't -- I think that that was sort of the
19 common sense to deal with that component.

20 Q. You think it would have
21 been implied to public works staff that Mr. Malone
22 didn't have any additional safety recommendation
23 but you didn't actually say it?

24 MS. CONTRACTOR: So again,
25 Mr. Commissioner, I hate to interrupt, but the

1 witness has been very clear that she was dealing
2 with liability and that the information that she
3 was getting and receiving than (skipped audio)
4 liability. And so I just don't think it's a fair
5 characterization to say that Mr. Malone was
6 providing to Mr. Boghosian advice -- safety advice
7 in light of Ms. Auty's prior evidence.

8 JUSTICE WILTON-SIEGEL: I
9 think that that's right. I think that what
10 Mr. Malone appears to have said was that they
11 would have no further recommendations apart in
12 those in the CIMA 2015 and 2018 reports, of which
13 in respect of the latter there was a draft that
14 Mr. Boghosian had; is that correct?

15 MS. LIE: Yes.

16 JUSTICE WILTON-SIEGEL: And
17 that's the extent of what Mr. Malone said. And I
18 think I understand Ms. Auty's advice to be that
19 she didn't feel that she had to communicate any of
20 that to the public works staff.

21 MS. CONTRACTOR: Well, I think
22 her evidence was that she conveyed the information
23 as it related to liability, but of course Ms. Auty
24 can --

25 JUSTICE WILTON-SIEGEL: She

1 communicated that from the perspective that she
2 was looking at all of this. It was important that
3 the City complete any of the recommendations that
4 remained unimplemented in order to minimize
5 liability.

6 MS. CONTRACTOR: That's -- I
7 believe that's been her evidence.

8 JUSTICE WILTON-SIEGEL: That
9 is the extent of the conversation that she said
10 she had with public works staff, if I understand
11 correctly.

12 MS. CONTRACTOR: That's my
13 understanding as well, Commissioner.

14 JUSTICE WILTON-SIEGEL: So
15 I'm not sure whether the question is going beyond
16 that, Ms. Lie, or whether it's, in effect,
17 restating.

18 MS. LIE: I've now forgotten
19 my question, so why don't I ask a new one.

20 JUSTICE WILTON-SIEGEL: Okay.
21 Let's proceed that way.

22 MS. LIE: In terms of -- I
23 think I recall it now. It was about the
24 implication. I think Ms. Auty said it was implied
25 and I just wanted to understand what exactly was

1 implied, because that's where I'm having trouble
2 with trying to understand what exactly was
3 conveyed to public works staff about the
4 discussion between Mr. Boghosian and Mr. Malone.

5 MS. CONTRACTOR: Again, I'm
6 sorry to interrupt. I wonder if we could put
7 Ms. Auty's transcription up. It might be a bit
8 easier for her to read as she views the notes.

9 MS. LIE: Sure. So that is
10 at -- I wonder if we could do it side-by-side.
11 HAM64364. And then if you could go to image 3.
12 Image 2, sorry.

13 THE WITNESS: Can you repeat
14 your question.

15 BY MS. LIE:

16 Q. When you state "was
17 implied" I just want to understand what was
18 implied.

19 A. So in my mind there
20 were -- we were having a conversation -- so my
21 discussions around this issue were dealing with
22 the liability and conveying Mr. Boghosian's advice
23 that the City complete all of the work that CIMA
24 had recommended that they do, and that report --
25 so that came from both the 2015 CIMA report and

1 the current work that public works was doing with
2 CIMA that was the 18008 report. So that whatever
3 recommendation CIMA had made to the City that they
4 should do, and it was my understanding that by
5 saying that the implication was there wasn't
6 anything new. I was asking them to make sure that
7 they did that work.

8 Had there been anything
9 different or new or additional then we would have
10 had that conversation, but they would have been
11 getting that from CIMA, directly because CIMA was
12 giving them the safety advice on what to do for
13 the safety of the road, not me. I was saying from
14 a liability perspective you've been given this
15 safety review, go do that, make sure that that
16 work is being done. So that was how those pieces
17 are connected.

18 Q. Okay. And I think that
19 you said that you may have -- sorry, in terms of
20 whether or not you told -- did you tell the public
21 works staff that Mr. Boghosian had shared the
22 Tradewind results with Mr. Malone?

23 A. I don't recall that level
24 of detail being part of the discussion. As I've
25 indicated, the conversation was we're doing all

1 this work with CIMA, we're getting reports done,
2 we're having conversation provided to us, and my
3 contributions were we've had a conversation,
4 preliminary discussion with David on the
5 liability.

6 I believe that they knew that
7 we were speaking to Mr. Malone as part of that,
8 and as a result David's advice was CIMA has given
9 you information, complete that work, that will
10 assist the City with liability, and presumably
11 then that's also work you would have normally been
12 doing to address the safety concerns. They were
13 part and parcel and they sort of tied together.

14 Q. I still don't understand
15 if you told public works staff that Mr. Boghosian
16 had shared the Tradewind results with Mr. Malone.

17 MS. CONTRACTOR: So again, I
18 think her answer was that she doesn't recall if it
19 got into that level of detail, is the first thing
20 she said in response to that question.

21 JUSTICE WILTON-SIEGEL: Let me
22 put it this way. I'm proceeding on the basis that
23 she did not tell PW staff that Mr. Boghosian had
24 shared the results with Mr. Malone.

25 MS. LIE: Thank you.

1 JUSTICE WILTON-SIEGEL: In
2 whatever form those results took.

3 BY MS. LIE:

4 Q. Right. And I think,
5 Ms. Auty, you said that where there's a note that
6 says would recommendations change with Golder
7 friction testing, that you have no recollection of
8 that even coming up?

9 A. So I don't recall that
10 part of the conversation.

11 Q. So the note that says
12 "under PW reviewing safety audit, what can we do
13 interim," what is that note referring to?

14 A. So I believe that that
15 was referring to the fact that public works was
16 reviewing the information that had been provided
17 to them by CIMA and we were wanting to discuss
18 what, if any, measures we could do in the interim,
19 what other items were there to do, to complete
20 from that work. So they were assessing and
21 reviewing that.

22 Q. Registrar, if you could
23 go to the next page on the handwritten notes.

24 There is a note in the middle
25 of the page that says "we need to be confident the

1 safety issue has been addressed." The arrow says
2 "completed CIMA." What is that note?

3 A. So that was something
4 that was said at the meeting that we were wanting
5 to ensure that the concerns that had been
6 addressed, the safety issue had been addressed,
7 and they had completed all the work that CIMA had
8 recommended.

9 Q. So somebody at the
10 meeting said we need to be confident the safety
11 issue has been addressed?

12 A. Yes.

13 Q. Do you recall who said
14 that?

15 A. No.

16 Q. So what discussion ensued
17 from that?

18 A. I don't recall.

19 Q. Did the public works
20 staff say that they were confident the safety
21 issue had been addressed?

22 A. I don't know whether it
23 was said specifically, but I certainly understood
24 that to be the case.

25 Q. What led you to that

1 understanding?

2 A. There was no -- I didn't
3 make any notes. I didn't identify anything else
4 that was a concern. And had there been a safety
5 issue or some other issue that they had not
6 completed I'm confident that I would have made
7 note of that.

8 Q. I think that your
9 evidence is that you did not know if public works
10 had shared the Tradewind results with CIMA, but
11 you kind of left it to them to share whatever was
12 required. Is that a fair characterization?

13 A. I don't know whether they
14 did. I don't know -- I don't recall having a
15 specific conversation around that. But it
16 certainly was my understanding that they were
17 working with CIMA ongoing and that they were aware
18 and had the Tradewind report with them, and if
19 there was any concerns that they would have had
20 regarding that information and what they were
21 doing that they would have had that conversation.
22 I'm confident that that -- I was confident that
23 they were doing and having that conversation as
24 needed.

25 Q. So you came out of this

1 meeting confident that public works staff had
2 shared the Tradewind results with CIMA?

3 A. I was confident that they
4 were doing what they felt they needed to do to
5 confirm their -- what they needed to do to assess
6 the safety -- but that wasn't my primary concern,
7 that they were doing that work and that I was
8 confident they were doing that to the best of
9 their ability.

10 MS. LIE: Commissioner, it's
11 just past 11. We can take our morning break.

12 JUSTICE WILTON-SIEGEL: Okay,
13 let's take a break. We'll return at 11:15.

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

15 --- Upon resuming at 11:16 a.m.

16 BY MS. LIE:

17 Q. Ms. Auty, just before we
18 leave the December 14th meeting I just have a few
19 more questions.

20 So, Registrar, if you could
21 pull up the notes again, HAM64355. If you could
22 go to image 4.

23 Ms. Auty, at the bottom of the
24 page says it "greater scrutiny friction of test,
25 what role for Gary." What is that note?

1 A. I apologize, I don't
2 remember anything about that particular comment.

3 Q. Did you discuss the role
4 for Gary Moore?

5 A. I don't remember.

6 Q. And then underneath it
7 say says "mayor police service board update what
8 can be said." What's that note?

9 A. So I don't recall sort of
10 the details around that. I know that the mayor
11 was the chair of the police services board and
12 what I appear to have noted there was that there
13 was a question around what, if anything, can be
14 said or to provide an update to the board but I
15 don't recall what we discussed.

16 Q. And I think I had asked
17 you earlier, but now that you've got the benefit
18 of your notes I wanted to just confirm, what was
19 your understanding of the scope of the CIMA 2018
20 roadside safety assessment?

21 A. I understood it to be an
22 update and further work on the work that they had
23 done from 2015, but that was a public works
24 report. I don't know that I had any greater
25 detail about it than that.

1 Q. So you believed that it
2 was an update to the 2015 safety report?

3 A. Well, an update insofar
4 as it was a next iteration of that work. So I
5 don't know if update was the right word, but that
6 they were conducting a safety audit of the Red
7 Hill.

8 Q. And safety audit
9 generally was your understanding?

10 A. Yes. But again, it
11 wasn't my report.

12 Q. Right. But your
13 understanding -- did you have an understanding
14 that it was limited just to roadside safety?

15 A. I can't say that I would
16 have had that fine a distinction.

17 Q. I see.

18 Registrar, can you go to the
19 next image.

20 Ms. Auty, here are some
21 undated notes. Do you recall when these notes
22 were made?

23 A. No, I don't.

24 Q. There is a note that says
25 "remedial, Edward Soldo, Gord" and then "speed"

1 and it says "flashing beacon slippery when wet."

2 Does that assist you at all?

3 A. No, sorry.

4 Q. And then, Registrar, if
5 you could go to the next page.

6 Do you recall when this note
7 was made?

8 A. No, I don't.

9 Q. Is it possible that this
10 was from the January 8th, 2019 call that you
11 referred to?

12 A. I don't know. I can't
13 say.

14 Q. Then, Registrar, if you
15 could go to the next page.

16 What about this? Is this a
17 continuation of the previous one?

18 A. Again I don't recall this
19 note and what order the pages were in, I
20 apologize, or if they were connected.

21 Q. And then, Registrar, if
22 you can go to the next page.

23 Here we have five items that
24 are listed. What is this note?

25 A. I don't know. I don't

1 remember.

2 Q. Registrar, you can take
3 this document down, thanks.

4 So Mr. Boghosian provided his
5 draft opinion to you December 13th, 2018. I think
6 you testified you then spoke with him about it on
7 January 8th, 2019?

8 A. That's my recollection.

9 Q. Did you need any further
10 information from him before he could finalize the
11 opinion?

12 A. I don't believe there was
13 anything at the end of that discussion that
14 required further work. However, we were -- I
15 didn't ask him to finalize it at that point. I
16 wanted to wait and make sure that we had any
17 information that might come up between now and
18 when the report was ultimately finalized.

19 Q. When was your plan for
20 when you would (indiscernible)?

21 A. That was the question.
22 We didn't know that. We were still trying to
23 determine when the report would go and what other
24 pieces were being looked at at the time. So we
25 hadn't decided that yet as far as I know. We

1 wanted to get it to them in January but we were
2 still working on that.

3 Q. So was the thinking that
4 you would finalize Mr. Boghosian's opinion before
5 the report to council?

6 A. Before the ultimate
7 report to council, yes. Like, the final report to
8 council with all the information.

9 Q. And I think you testified
10 that at the January 8th, 2019 meeting
11 Mr. Boghosian actually clarified that Mr. Malone
12 hadn't ranked slipperiness of the road surface as
13 the highest contributing factor. Did you ask
14 Mr. Boghosian to clarify that in his opinion?

15 A. I did ask him to clarify
16 that. I don't recall specifically what he said,
17 but my understanding following that was that CIMA
18 hadn't drawn a conclusion as to the ranking of the
19 causes but that there were contributing factors
20 and that those were discussed in this opinion
21 letter.

22 Q. Did you ask him to
23 clarify that in the opinion letter itself?

24 A. I don't recall having
25 that discussion with him, no.

1 Q. So I want to just turn to
2 the meeting with the mayor on December 18th. Do
3 you recall that meeting?

4 A. I don't recall the
5 specifics. I recall that it happened, who was
6 there, and generally what we discussed.

7 Q. Who was there?

8 A. From my recollection it
9 was Mr. Zegarac as he leads the meetings with the
10 mayor. He had sought Mr. McKinnon to be there. I
11 believe that Mr. McGuire was there as well in
12 addition to myself. There may have been others
13 but I don't recall.

14 Q. Tell me about your
15 recollection of that meeting.

16 A. So my recollection was
17 that the purpose of the meeting was to give the
18 mayor a briefing of the issues and the information
19 that staff had up until this point, what we
20 were -- and particularly to seek his confirmation
21 on the timing and balance that staff were trying
22 to strike between bringing information to council
23 quickly versus having additional time to complete
24 their review in order to provide council with the
25 best available information at the time the report

1 was brought, and he confirmed that approach as
2 being appropriate for bringing back to the next
3 cycle of council in January.

4 Q. When you say that he
5 confirmed the approach, is that the approach of
6 doing the interim report first and then a more
7 fulsome report?

8 A. I'm not sure whether that
9 level of detail was -- like, whether that
10 particular aspect of it was discussed with him,
11 but bringing information to council either in
12 January with as much information as possible. But
13 we also identified that the release of the FOI was
14 part of the consideration so there may be timing
15 issues associated with that.

16 Q. What information did the
17 staff at the meeting provide to the mayor about
18 the Tradewind report?

19 A. So I don't recall the
20 specifics of what public works would have
21 identified with that -- in that regard. I was
22 there to present the mayor with my contribution
23 which was an assessment of -- the preliminary
24 assessment and discussions around the potential
25 liability issues that we were investigating.

1 Q. So what did you tell the
2 mayor about the preliminary assessment?

3 A. So I don't recall
4 specifically. At that point I had had initial
5 discussion with David. I can't recall whether I
6 had an opportunity to fully review his opinion
7 letter, but I would have identified that we were
8 retaining outside counsel and proceeding to get an
9 opinion, ultimately to identify to council what
10 potential liability and what potential mitigation
11 measures might be available to council.

12 Q. And you left it to public
13 works staff to talk to the mayor about the
14 Tradewind report?

15 A. Yes. That was why
16 Mr. Zegarac had brought both subject matter
17 experts on the technical side and myself on the
18 legal component.

19 Q. Whose decision was it to
20 have this initial discussion with the mayor?

21 A. So my recollection was
22 that it was the interim city manager who would
23 have that discussion. Generally speaking, it's
24 his role to coordinate the relationship and the
25 discussions between staff and the mayor and

1 council.

2 Q. And Mr. Zegarac?

3 A. That would be

4 Mr. Zegarac, yes.

5 Q. Was there any discussion
6 about going to council on an interim basis at that
7 time instead of just going to the mayor?

8 A. Instead of what?

9 Q. Instead of just having
10 this meeting with the mayor, but actually just
11 going to council and providing your interim report
12 at that point?

13 A. So my understanding was
14 that the mayor was comfortable with the
15 information that he had been provided that our
16 approach was appropriate. Had there been a
17 concern or anything identified that changed or had
18 a different effect on the mayor then we would have
19 had the opportunity to bring something quickly or
20 verbally to council the next day. There was a
21 council meeting remaining in the year and that, to
22 my recollection, wasn't necessary and wasn't
23 suggested as needed.

24 Q. Is it common to have a
25 preliminary or -- have that meeting to the mayor

1 before you go to council on something?

2 A. I can't speak to sort of
3 the general nature of that. I know it does --
4 that the mayor is briefed on items. Certainly my
5 understanding was that that happened through the
6 City manager, and should there be a concern or a
7 particular issue that they wanted to get his
8 thoughts on, that that's not an uncommon thing to
9 do.

10 Q. So going into the
11 holidays I take it that the plan was to bring the
12 report to council in January 2019?

13 A. As soon as possible to
14 the next -- once we had -- I don't know that
15 January was specifically identified, but as
16 quickly as possible, that the next cycle was in
17 January of committee meetings and council
18 meetings, and once we had the information that we
19 felt was necessary then we would bring that report
20 to council. I don't know whether the discussion
21 of interim or pieces or that report coming in
22 iterations was discussed.

23 Q. Did the mayor indicate
24 that there was any sense of urgency to bring it to
25 council?

1 A. I don't recall that
2 specifically. I do recall that he was supportive
3 of the approach, which was get the information
4 needed and bring it to council as soon as that
5 information was available.

6 Q. Registrar, could you pull
7 up overview document 9A, image 265, paragraph 623.

8 On December 18th Mr. McGuire
9 forwards a scan of the draft 2017 Golder pavement
10 evaluation report to you and to Mr. Sabo. What
11 was your understanding of why Mr. McGuire was
12 providing you with this report?

13 A. I don't recall.

14 Q. Did you review the
15 report?

16 A. I would have taken a look
17 at it but I don't recall specifically.

18 Q. Registrar, if you could
19 go to the next page. Could you put up the next
20 one in addition to this.

21 In the middle of the page,
22 page 267, there's a reference to the BPN value.
23 Do you see that? So do you recall public works
24 staff telling you that Golder had done a pavement
25 evaluation but the results were considered low but

1 because of the snowfall they would not be
2 considered (garbled audio).

3 A. I'm sorry, I didn't hear
4 you.

5 Q. Do you recall public
6 works staff telling you about the results of the
7 2017 Golder pavement evaluation?

8 A. Vaguely, yes. I'm not
9 recalling it specifically, but I do recall that at
10 some point that was mentioned. And this was the
11 technical component of the public works material,
12 so I would have been listening, but I don't know
13 that that would have been something that -- yeah.

14 Q. Do you recall knowing
15 that one of the tests that Golder performed
16 yielded results that were considered to be low but
17 ultimately because of snowfall they were not
18 reliable?

19 A. Again, I do recall it
20 being discussed at some point but I can't say
21 anything beyond that.

22 Q. And then in the last
23 paragraph before it says "closure," there's a
24 reference to an immediate effective solution would
25 be carry out shot blasting/skidabrading in areas

1 of concern. Do you recall any discussion with
2 public works about that as a potential interim
3 measure?

4 A. No.

5 Q. Did Mr. McGuire discuss
6 his meeting with Golder with you?

7 A. Not that I recall.

8 Q. Just coming out of the
9 December 14th, 2018 meeting with public works, did
10 you have any to-do items on your list coming out
11 of that meeting?

12 A. Not that I made note of.
13 I was continuing to work on identifying the
14 report -- sorry, the opinion for preparing the
15 report to council.

16 So after the mayor confirmed
17 the approach, continued do that into the new year,
18 but I didn't make note of anything in particular.
19 Wanted confirmation from public works and getting
20 that -- sorry, I'm just trying to go back to my
21 memory of those notes.

22 So I believe I was looking to
23 get confirmation from public works on the -- what
24 they had and hadn't completed, and I believe that
25 was subsequently provided to me. So if anything,

1 that was my takeaway, was to get that appendix and
2 confirm what had and hadn't been done.

3 Q. And from your perspective
4 what was public works going to do coming out of
5 that meeting?

6 A. I don't -- I didn't make
7 note of their action items. I believe they were
8 continuing to prepare reports and conduct -- get
9 information from CIMA on the reports that they
10 were doing. I can't say what in particular they
11 were actioned with.

12 Q. Registrar, if you could
13 pull up image 279.

14 At paragraph 649 you'll see
15 that there is an e-mail from Mr. McGuire to you
16 and to Mr. Sabo on January 23rd asking if either
17 of you had connected with Mr. Malone on this
18 matter. And he says "I am meeting today on this
19 and wanted to understand next steps."

20 Did you have any understanding
21 of why Mr. McGuire would think you or Mr. McGuire
22 would be connecting with Mr. Malone.

23 A. I can't say specifically
24 what that was -- what Mr. McGuire was referring
25 to.

1 Q. Is it possible that
2 coming out of the December 14th meeting
3 Mr. McGuire's understanding was that legal would
4 be connecting further with Mr. Malone?

5 A. I don't recall that being
6 discussed. You would have to confirm with
7 Mr. McGuire what he was referring to.

8 Q. So you don't recall
9 coming out of that meeting having that --

10 A. No, I don't, I don't. I
11 would have made note of that.

12 Q. Did you talk to Mr. Sabo
13 about Mr. McGuire's e-mail?

14 A. I don't recall whether I
15 did on that day. I'm not entirely certain I was
16 in the office, but I may.

17 Q. And at paragraph 650
18 you'll see that Mr. Sabo replied, advising that he
19 was in the office of Mr. McGuire, wish to discuss.
20 Do you have any further memory of what may have
21 happened with Mr. Sabo and Mr. McGuire?

22 A. No, I don't believe I was
23 involved.

24 Q. Registrar, if you could
25 go to the next page, image 280. At paragraph 654

1 you'll see an e-mail from Mr. McKinnon on January
2 3rd saying:

3 "Hi Nicole, are you
4 available for a call
5 today? I would like to
6 discuss the below and
7 what our plan is for
8 updating council. I've
9 kind of lost the thread
10 on this."

11 Do you recall speaking with
12 Mr. McKinnon?

13 A. I don't, sorry.

14 Q. What was the plan for
15 updating council at this point?

16 A. As I understood it, we
17 were continuing to prepare a report, but I can't
18 recall specifically what my thoughts were at that
19 moment. The plan was as discussed with the mayor,
20 which was to bring a report to council once we had
21 all the information pulled together, as far as I
22 knew.

23 Q. Then at paragraph 655
24 you'll see there is a calendar invite for a
25 meeting scheduled for January 7th, 2019. If you

1 could pull up the next image, Registrar. It
2 includes Ben Racine, Ms. Graham, Mr. Zegarac, Mr.
3 McKinnon, Mr. McGuire, Karen Gordon and you. Do
4 you recall attending a meeting with Karen Gordon?

5 A. I do, sort of.

6 Q. I understand that Ms.
7 Gordon was the principal of a crisis management
8 firm?

9 A. Yes.

10 Q. So at this -- were you
11 involved in the decision to retain a crisis
12 management firm?

13 A. No, I was not.

14 Q. Do you recall the meeting
15 on January 7th, 2019?

16 A. No, not beyond what's in
17 the notes.

18 Q. When you say "the notes,"
19 you're referring to paragraph 656?

20 A. Yes.

21 Q. These are Ms. Graham's
22 notes of that meeting?

23 A. Sorry, that's very small.
24 It's hard to see. I need to get new glasses.

25 JUSTICE WILTON-SIEGEL: Maybe

1 we can have them called out.

2 BY MS. LIE:

3 Q. Yes.

4 A. Thank you.

5 Q. So under -- you'll see
6 there's a point that says "friction" in the middle
7 of the callout there, and then it says:

8 "2015, CIMA went through
9 roadside safety audit
10 collision analysis and
11 said it would be a good
12 idea to do a friction
13 test. They didn't know
14 we had one already."

15 I think yesterday you
16 testified that you didn't know if CIMA had the
17 Tradewind results when it completed its 2015
18 report.

19 A. Yeah, that wasn't my --
20 that wasn't my report, so the nature of it I can't
21 speak to.

22 Q. But by January 7th you
23 would have known that CIMA didn't have the
24 Tradewind report?

25 A. I believe so, yes.

1 Q. And --

2 A. At the time they did it,
3 yes.

4 Q. And then, Registrar, if
5 you could go to the next image. Do you recall
6 discussing a crisis communications plan?

7 A. Not beyond what you see
8 identified here. I ignored being at the meeting,
9 but I don't recall the specifics.

10 Q. Registrar, if you could
11 just call out the section immediately below where
12 it says "options for updating." Thank you. So
13 you'll see it says "GIC January 16 goal, council
14 Jan 23 plan B."

15 Do you recall those as target
16 dates for a report to council?

17 A. They would have been
18 based on the council schedule, but I don't recall
19 specifically that discussion.

20 Q. Do you have -- because we
21 know that ultimately the -- your report goes to
22 council on January 23rd?

23 A. Yes.

24 Q. Doesn't go at the GIC
25 meeting on January 16th. Do you recall why it

1 didn't go on January 16th?

2 A. Not specifically, no.

3 Q. But by January 16th you
4 would have had the information you needed for
5 the -- your litigation report; is that fair?

6 A. I had part of it. We
7 hadn't finalized Mr. Boghosian's opinion at that
8 point. There was still additional pieces that
9 were coming together. So it was a collaborative
10 discussion as to when that report would be
11 prepared and ultimately what information would be
12 provided. We were working through that with the
13 other people involved.

14 Q. What were the additional
15 pieces that needed to come together for the
16 purposes of your initial litigation report?

17 A. The finalization of the
18 opinion. We were working on the communications
19 component. There were other reports that public
20 works were working on with respect to the Red Hill
21 as well. So all that was coming together.

22 Q. But I had understood that
23 there was no outstanding items for Mr. Boghosian
24 as of January 2019?

25 A. Yes, except I wanted him

1 to have -- if there was any additional information
2 between now and the time we went to council,
3 wanted him to have an opportunity to make sure
4 that he addressed those.

5 Q. Right, but you could have
6 gone to council on January 16th with the
7 litigation report?

8 A. I understood that our
9 information that we were provided to the mayor was
10 to bring all of the background information and
11 that there were other components to that that were
12 still being undertaken.

13 Q. And the other components
14 were the public works reports?

15 A. The public works reports,
16 their background, the discussion around the
17 history and the context of the work that was being
18 done on the Red Hill as a whole, yes.

19 Q. Was your understanding
20 from the mayor that all of the reports should go
21 at once to council?

22 A. I don't recall we had a
23 specific discussion about that issue. I do recall
24 we wanted to have as much of the completeness of
25 the picture of the work and activities that were

1 happening on the Red Hill to discuss together. In
2 my experience, that's the best way for council to
3 digest all of that information rather than
4 piecemeal, to have it collected together for them.
5 It's much more valuable to them.

6 Q. So as of this time in
7 January of 2019, there had -- had there been a
8 discussion about going to council all at once
9 versus on an interim basis and then a second
10 report?

11 A. I don't recall.

12 Q. I think yesterday you
13 testified that the reason you ultimately did the
14 initial legal report on January 23rd was because
15 of -- it was driven by the release of the FOI
16 materials. Is that --

17 A. It was driven by the
18 concern that they might be released prior to
19 council having an opportunity to have any update
20 on it, yes.

21 Q. In terms of timing, I
22 understand that the materials were released to the
23 FOI office on January 14th, 2019, is that --

24 A. I don't recall.

25 Q. But once you knew that

1 they were being released to the FOI office, it
2 became clear that you needed to do that heads-up
3 report to council?

4 A. Yes, that was the
5 concern, was that there was no -- and rest of
6 staff outside of the FOI office had no input into
7 the say and the timing around the FOI office's
8 review, so there was a chance, and one that we
9 couldn't quantify, in terms of how quickly that
10 review would be done. So it was important for us
11 that council had some information that we were
12 working on this issue, and then in advance of the
13 fulsome report being provided once it was
14 prepared.

15 Q. But the public works
16 reports were not ready by the time you went to
17 council on January 23rd?

18 A. I believe we were -- that
19 is my recollection, but I can't -- yeah, I don't
20 recall specifically.

21 Q. But that's your
22 recollection of why everything didn't go together
23 on January 23rd?

24 A. Yes, to the best of my
25 memory. There was a great deal going on.

1 Q. I appreciate that.
2 Registrar, if you could turn
3 up image 284. At paragraph 660, there's a
4 transcription of Mr. Boghosian's notes from a call
5 on January 8th, 2019. I think that you had given
6 some evidence already about the January 8th, 2019
7 call. Was Mr. Sabo on this call?

8 A. I don't recall.

9 Q. You testified about
10 clarifying with Mr. Boghosian the ranking of --
11 Mr. Malone's ranking of the contributions to wet
12 weather collisions. Apart from that, what do you
13 recall from the January 8th, 2019 call?

14 A. Just based on
15 Mr. Boghosian's notes, I would have identified
16 that the media consultant was being engaged, that
17 we were working on preparing those reports, but I
18 don't have any other specific recollections.

19 Q. So what was the purpose
20 of getting on a call with Mr. Boghosian on
21 January 8th?

22 A. In part to discuss my
23 comments, I believe, on their opinion, but to also
24 identify the fact that the media consultant was
25 being engaged.

1 Q. Why did you want to tell
2 Mr. Boghosian that?

3 A. I felt it was important
4 to him. I had asked him initially to also be
5 engaged and involved if there were media or
6 council reports and things to review, so I felt it
7 was important that he be advised of that taking
8 place because I was going to rely on him for his
9 assistance in reviewing that material as well.

10 Q. There's a -- in the
11 second row, you'll see it says:

12 "Further testing was to
13 have been done but no one
14 knew about it."

15 Do you recall what that is?

16 A. No, I don't.

17 Q. Then it says:

18 "GIC meeting Jan 16th,
19 her and Gord will speak."

20 Do you recall talking to
21 Mr. Boghosian about January 16th?

22 A. Not specifically. I know
23 we would have discussed what the possible dates
24 would be to bring a report to council, and GIC and
25 council would have been scheduled already for

1 those dates.

2 Q. Where it says "her and
3 Gord will speak," do you recall wanting to talk to
4 Mr. McGuire about that?

5 A. No. I believe I would
6 have been advising Mr. Boghosian that we would be
7 doing -- that public works and legal would be
8 doing the discussion, but that's all I remember.

9 Q. At this time the idea was
10 that public works and legal would present the
11 reports together?

12 A. Yeah, that there would be
13 two components to it, the technical aspect and the
14 legal aspect.

15 Q. Potentially on
16 January 16th?

17 A. At some point, yes.

18 Q. And then it says "Gary's
19 concern top down cracking." Do you recall telling
20 Mr. Boghosian that?

21 A. I don't.

22 Q. Do you recall having any
23 knowledge of Gary's concern being top down
24 cracking?

25 A. I have an understanding

1 that that (skipped audio) specifically the
2 details, or a concern at least.

3 Q. And then it says "cover
4 greater than dollar on experts." (As read)

5 Do you have any recollection
6 of about talking to Mr. Boghosian about experts?

7 A. I don't know what that is
8 referring to, no.

9 Q. Then it says "stand in
10 UK." Do you recall talking to Mr. Boghosian about
11 the standard in the UK?

12 A. At some point, yes.

13 Q. What was the discussion
14 about the standard in the UK?

15 A. I understood that it was
16 not one -- not a standard that was equally
17 recognized in Canada or North America, but I --
18 I'm not sure exactly what that note refers to.

19 Q. And then where it says:
20 "Golder did friction
21 testing in 2017,
22 reference a November 18
23 staff report."

24 And then it reference to "the
25 two tests were adequate, while third pendulum test

1 was..." and then it goes on. It doesn't finish.

2 Do you recall telling

3 Mr. Boghosian about the 2017 Golder pavement

4 evaluation?

5 A. I don't recall the

6 details of the conversation.

7 Q. Do you recall conveying

8 to Mr. Boghosian that there was a 2017 pavement

9 evaluation?

10 A. I don't -- I apologize, I

11 don't recall the specifics of that.

12 Q. You had received the

13 draft Golder report with the pavement evaluation

14 results. I think we looked at that, December

15 18th, 2018?

16 A. Okay.

17 Q. Did you provide that to

18 Mr. Boghosian?

19 A. I don't remember if I

20 did. I haven't seen an e-mail to that effect, I

21 don't believe.

22 Q. Did you think that it was

23 relevant information for Mr. Boghosian to inform

24 his liability assessment to know about the 2017

25 pavement evaluation results?

1 A. I don't believe that was
2 part of the scope of what we discussed, but I
3 would have to check.

4 Q. What would you be
5 checking?

6 A. If there were any of the
7 documents or anything that would indicate that
8 that was part of what I had asked him to give an
9 opinion on. It was the Tradewind report that was
10 our primary concern. I believe we provided him
11 with a number of other reports for background.

12 Q. I think that the
13 documents do show that you had provided
14 Mr. Boghosian with the November 26, 2018 e-mail
15 from --

16 A. Yes.

17 Q. -- Golder which included
18 some of the results?

19 A. Okay.

20 Q. And so that was provided
21 to Mr. Boghosian on December 7th. It was one of
22 the four reports?

23 A. I'm sorry, I don't have
24 it in front of me. Yes, I'm assuming that that's
25 the case.

1 Q. Did you consider whether
2 or not you should be updating Mr. Boghosian now
3 that you had the draft Golder report?

4 A. I don't recall.

5 Q. Registrar, if we could go
6 to image 294. You'll see at paragraph 682 there's
7 an e-mail from Mr. McKinnon to Mr. Soldo and Mr.
8 McGuire. This is on January the 10th. And it
9 says:

10 "Gents, regarding the A
11 version to the previous
12 report as coming forward,
13 once you have all of your
14 material, can you talk
15 and see how much we could
16 accelerate it. Legal is
17 struggling with the
18 reason for going in
19 camera in the absence of
20 some of the report. I
21 need to get a sense of
22 what's the absolute
23 soonest we can bring it."

24 Do you recall struggling with
25 the reason for going in camera in the absence of

1 another report?

2 A. No, I don't. I don't
3 recall what that was referring to. My ability to
4 go in camera on litigation in solicitor-client
5 matters is part of the exemptions in the Municipal
6 Act, so I'm not sure what that would have been
7 referring to.

8 Q. Was it common for legal
9 to bring a report to council on its own without
10 another report?

11 A. Yes.

12 Q. And then at the bottom of
13 this page -- you'll see at paragraph 685 there's a
14 meeting scheduled for January 11, and it includes
15 Mr. McKinnon Mr. McGuire, Ms. Racine, you, Mr.
16 Hertel, Ms. Gordon, Mr. Soldo, and Mr. Sabo. Do
17 you recall that meeting?

18 A. I don't recall the
19 details, no.

20 Q. Registrar, could you go
21 to the next page. We have here just a
22 transcription of Mr. Sabo's notes from the January
23 11th meeting. You'll see there it says "council
24 on 23rd."

25 This is in the fourth row.

1 "On long timelines re poss press." (As read).

2 A. Okay.

3 Q. Do you recall if by this
4 time, January 10th, a decision had been made to go
5 to council on the 23rd?

6 A. I don't recall. It seems
7 that might be what is suggested, but I can't say.
8 Those weren't my notes.

9 Q. Did you recall around
10 this time that that happened at some point?

11 A. Yes, we would have made
12 that decision at some point.

13 Q. And then you'll see under
14 -- halfway down the page, a little bit past
15 halfway, it says "Nicole in," and then it says:

16 "Text could not be
17 confirmed. Report on
18 23rd re FOI. Response to
19 FOI by end of today.

20 That report, 18008, will
21 be updated in February.

22 Include in camera." (As
23 read).

24 Do you recall having a
25 discussion at this point that the public works

1 report will be updated in February and that your
2 report will go on January 23rd?

3 A. I don't recall
4 specifically, but that appears to be what the
5 notes identify.

6 Q. And then it says:
7 "FOI if media need com
8 plan as they may run
9 before February 23rd."

10 And then it says:
11 "Nicole, Janet will give
12 24 to 48 hours heads up
13 before release."

14 Do you recall discussions
15 about getting a heads up before the release?

16 A. I recall having a
17 discussion at some point with (inaudible) that
18 they would -- the clerks would identify when they
19 -- a day or two in advance of when they were going
20 to release the FOI material, they would give me a
21 heads up.

22 Q. And then, Registrar, if
23 you could go to the next page. At the very bottom
24 it says "Gord releasing info to FOI and internal
25 auditor --"

1 A. Okay.

2 Q. And if you then go to the
3 next page, 297, you'll see:

4 "-- at the same time."

5 Do you recall a decision
6 being made that Mr.
7 McGuire would release the
8 materials to the FOI
9 office and to the auditor
10 at the same time?" (As
11 read).

12 A. No, I don't.

13 Q. Were you involved at all
14 in deciding the timing of those releases?

15 A. No, not that I remember.

16 Q. Were you involved at all
17 in the package that ultimately went to the FOI
18 office?

19 A. No, I was not.

20 Q. I understand that around
21 December 16th or 17th Ms. MacNeil went off work
22 for personal reasons. Does that ring a bell to
23 you?

24 A. It does.

25 Q. So when Ms. MacNeil went

1 off, who became responsible for the FOI requests
2 on the legal side?

3 A. I would have to check
4 with Mr. Sabo. I don't recall if it was assigned
5 to another lawyer or if he was assisting with
6 that. I don't recall.

7 Q. It wasn't you?

8 A. It was not me.

9 Q. Registrar, if you could
10 go to image 350. And if you could pull up 360
11 next to it. Thank you.

12 You'll see at paragraph 741
13 that Mr. Ferguson from public works receives the
14 final version of the RHVP roadside safety
15 assessment report. Did you receive a final copy
16 of the CIMA roadside safety assessment around this
17 time?

18 A. I don't recall.

19 Q. Registrar, could you pull
20 up HAM64319. If you could pull up the second
21 image together with it. So the bottom of the
22 first image, there's an e-mail from Mr. Sabo to
23 you on January 7th regarding the (skipped audio)
24 latest CIMA report, and Mr. Sabo provides his
25 comments. Do you recall what the latest CIMA

1 report is?

2 A. No, I don't.

3 Q. Do you recall if public
4 works was providing CIMA's reports as they were
5 coming in to you?

6 A. I don't. I don't
7 remember.

8 Q. And then on image 2 and
9 point number 2, Mr. Sabo says:

10 "While the latest report
11 is very helpful, you
12 wonder if a more complete
13 report with even better
14 comparable road sections
15 might not add or take
16 away from the above, but
17 it's important to
18 remember all these
19 reports will be
20 accessible. Maybe they
21 don't want to keep
22 ordering more unless it's
23 necessary."

24 Do you recall having
25 discussions with Mr. Sabo or with public works

1 about potentially getting a more complete report
2 from CIMA?

3 A. No, I don't.

4 Q. At the bottom of the
5 e-mail on image 2, it says:

6 "Maybe David might
7 recommend, if we need to
8 do anything with these
9 various reports, experts
10 who write reports so far
11 if we need to retain them
12 for testimony and
13 potential litigation
14 matters to prevent anyone
15 else from doing so."

16 Do you recall having any
17 reaction to Mr. Sabo's comment about potentially
18 retaining the expert to prevent anyone else from
19 doing so?

20 A. No, I don't.

21 Q. Do you recall talking to
22 Mr. Boghosian or Mr. Sabo about that issue?

23 A. I do recall at some point
24 having a conversation around whether we would need
25 to retain any particular experts for future

1 litigation, but I don't recall having any
2 particular discussions about that.

3 Q. That conversation, was
4 that around this time or later in time?

5 A. I don't remember where it
6 fits into the picture.

7 Q. Was that a conversation
8 with Mr. Sabo?

9 A. I don't know if it would
10 have been with Mr. Sabo and Mr. Boghosian, but I
11 believe it was with Mr. Boghosian. Yeah, I don't
12 have a specific recollection.

13 Q. Registrar, if you could
14 pull up image -- sorry, the overview document 9A.
15 Image 297.

16 You'll see at paragraph 687
17 there's a calendar invitation that's for a meeting
18 scheduled on January 17th identifying Mr.
19 McKinnon, Ms. Racine, Mr. Hertel, Mr. McGuire, Mr.
20 Soldo, you, and Mr. Sabo.

21 A. Yes.

22 Q. Do you recall having a
23 meeting on January 17th with these group of
24 people?

25 A. I don't recall

1 specifically that meeting, no.

2 Q. Registrar, could you pull
3 up image 301 next to this one. And then at
4 paragraph 697 there's a transcription of some
5 handwritten notes.

6 My understanding is that the
7 notes are from Jasmine Graham, and her evidence is
8 that she believes that the notes were made on
9 January 17th, 2019, but she can't be sure. I just
10 wanted -- that's my understanding of what
11 paragraph 697 says.

12 You'll see that there's some
13 bullets that say "Nicole's crisis concerns." "How
14 much we say about past." "Not comfortable going
15 this far." "Avoid judgment." "Focus." "Okay, we
16 know now. Proactive, was discovered, instead
17 became aware of." "Litigation point of view, we
18 need to have him on board."

19 Do you recall having crisis
20 concerns that sound like what Ms. Graham has
21 noted?

22 A. I think they were they
23 were concerns regarding the crisis communications,
24 not necessarily that I had crisis concerns, but
25 they were concerns about the crisis

1 communications. And that generally seems
2 consistent with my thoughts at the time.

3 Q. Were you giving advice to
4 the communication staff about the communications
5 plan?

6 A. I was reviewing them and
7 I was providing my comments. I believe I had also
8 asked David to do that to some degree, but, yeah
9 we were assisting them in producing them.

10 Q. When you were providing
11 your advice or your assistance to communications,
12 I take it that was with a lens of trying to
13 minimize the City's liability exposure?

14 A. As my role when I'm
15 reviewing anything is to be able to, you know,
16 minimize the risk and identify any communications
17 that might put the City in harm.

18 Q. Registrar, could you pull
19 up image 325. At paragraph 757 there's an e-mail
20 from Mr. McGuire attaching his comments to -- I
21 believe this is your draft report, and then at
22 paragraph 758 Mr. Boghosian provides his comment.
23 He says:

24 "I think that it should
25 be pointed out to council

1 in report that while the
2 Tradewind report found
3 friction concerns based
4 on comparison for UK
5 friction standard, that
6 standard is not generally
7 recognized in Canada and
8 there's no comparable
9 friction standard for
10 pavement in Canada." (As
11 read).

12 And I think you had testified
13 that you were generally aware of this being an
14 issue.

15 A. Yes.

16 Q. I think your evidence is
17 that you couldn't recall where you got this
18 information from about the UK standard?

19 A. Yeah, I don't
20 specifically recall where I got that from.

21 Q. And then it says:
22 "I think this point
23 somewhat mitigates the
24 failure to disclose the
25 Tradewind report and

1 should be included in any
2 press release that is
3 issued for the same
4 reason." (As read).

5 Did you consider it to be your
6 role to -- or did you consider the role of your
7 report to council to mitigate the failure to
8 disclose the Tradewind report?

9 A. No, my report to council
10 was to provide them with an assessment of the
11 liability and the potential risk associated with
12 the release, but not -- yeah, so no. I think that
13 was not quite the characterization I would say.

14 Q. It wasn't to downplay the
15 role of the Tradewind report to council?

16 A. No.

17 Q. Or to mitigate it?

18 A. No, not in terms of the
19 content. It was to provide them with the
20 liability assessment associated with its release.

21 Q. So we know that on
22 January 23rd there is a council meeting in which
23 your report LS19007 is presented to council. Tell
24 me your recollection of the January 23rd council
25 meeting.

1 A. So I recall that I gave
2 them an overview of their report. Yeah. I recall
3 going over the report with them. I recall that we
4 identified -- I identified that there was ongoing
5 legal advice that was being undertaken. It may
6 help if I had the --

7 Q. I was just thinking --

8 A. -- report in front of me.

9 Q. Registrar, if you could
10 pull up HAM61921. This is the report; is that
11 right?

12 A. Yes. Yes, so I would
13 have walked them through this report, identifying
14 that the purpose of it was to advise of the
15 potential litigation that might arise from the
16 release of the report as a result of the freedom
17 of information request.

18 As I identified, we still
19 didn't know when that was going to happen, but we
20 wanted to make sure that council had some
21 identification of the issues that may arise and
22 that we were continuing to work on.

23 Q. What did you tell council
24 about the Tradewind report?

25 A. I don't recall

1 specifically what I would have identified at that
2 point beyond what was in the report.

3 Q. Actually, while we're
4 looking at page 1 you'll see that under the
5 executive summary it refers to City staff bringing
6 a schedule report to public works committee on
7 February 4.

8 A. Okay.

9 Q. So I take it that as of
10 this time the plan is for you to provide the heads
11 up to council on January 23rd, but public works
12 was going to be bringing a more fulsome report on
13 the RHVP to public works committee on February 4?

14 A. That's what it
15 identifies, yes.

16 Q. Yeah, and then at the top
17 of image 2 it does refer to bringing a full report
18 to committee and council in early February to give
19 committee and council a complete status update?

20 A. Yes.

21 Q. At this time were you
22 planning on bringing a more fulsome litigation
23 report to council as well?

24 A. Yeah, so this report was
25 to identify that there was -- there were potential

1 impacts, but the (skipped audio) detail here was
2 not the -- the assessment; it was more to advise
3 them that this was an issue we were undertaking,
4 reviewing, and providing an assessment on.

5 Q. So the plan was that you
6 would be providing them with a further update on
7 the liability assessment?

8 A. Yes, which we did on
9 February 6th.

10 Q. As of January 23rd,
11 though, had you turned your mind to when you would
12 be providing council with that further update?

13 A. Early February was when
14 we were anticipating doing that.

15 Q. Registrar, if you could
16 go to image 3. I think I was asking you about
17 what you told council about the Tradewind report.
18 So here on image 3 is the description that's in
19 the report.

20 A. Yes.

21 Q. Do you recall telling
22 council anything beyond what is in here?

23 A. I don't specifically
24 recall going into whether more detail was provided
25 or not.

1 Q. Did you provide a copy of
2 the Tradewind report to council?

3 A. I don't believe it was
4 provided at this point. Yeah, I don't believe so.

5 Q. Why wasn't it provided?

6 A. Because staff had not yet
7 completed their review and my liability review was
8 not complete either, so we were trying to -- we
9 were wanting to make sure that council had the
10 full information in front of them when that report
11 was brought forward.

12 Q. So in terms of your
13 liability review, was it just that you were
14 waiting for public works to complete their work
15 and then to confirm with Mr. Boghosian that there
16 was nothing further before you could finalize your
17 liability review?

18 A. Yes, so my intention was
19 to ensure that Mr. Boghosian had the most
20 up-to-date information prior to finalizing his
21 opinion so that the information and opinion that
22 he was providing to council was the best available
23 information and therefore his opinion was as
24 up-to-date as possible.

25 Q. So you wanted to give

1 Mr. Boghosian the public works report?

2 A. I wasn't sure what was
3 going to happen in terms of what additional
4 information or things that -- I knew that public
5 works was working on a number of other reports.
6 We were going to bring those all together, and I
7 wanted to make sure that if anything came out of
8 any of those reports that they needed to be aware
9 of, that he had an opportunity to review that and
10 have an opportunity to update his report as -- or
11 his opinion as needed.

12 Q. Did you provide
13 Mr. Boghosian's draft opinion to council on
14 January 23rd, 2019?

15 A. No, it was not my
16 practice to provide draft reports or draft
17 opinions to council. This was -- the purpose of
18 this report was to identify that the issues --
19 that there was ongoing work that was being done
20 and that that was being brought to them as soon as
21 it was complete. So no, it wouldn't have been my
22 practice to provide the draft report, and this
23 wasn't that level of detail that was provided here
24 either.

25 Q. Did you tell council that

1 Mr. Boghosian had talked to CIMA, the City safety
2 consultant, about the Tradewind results?

3 A. I don't recall whether I
4 provided that specific detail at this point. I
5 can't recall whether I did or not.

6 Q. Who else spoke at this
7 meeting?

8 A. I'm trying to recall. I
9 don't remember if -- I know that a number of
10 questions were asked, so that I believe Mr.
11 McKinnon was answering those on the public works
12 aspects of the questions that council had, but Mr.
13 McGuire may have also. I don't remember.

14 Q. Did they have a
15 presentation that they made, or was it just they
16 were available to answer questions?

17 A. I believe that they were
18 just answering questions, but again I don't
19 recall.

20 Q. Did you or anyone else at
21 the meeting tell council that CIMA had determined
22 that wet weather performance on the RHVP had
23 worsened since its 2015 report?

24 A. I don't recall whether
25 that -- whether that was provided, that

1 information was provided at this point.

2 Q. Did you tell council that
3 in the conversation with Mr. Boghosian, Mr. Malone
4 had indicated that slipperiness of the road
5 surface was the greatest contributing factor to
6 the inordinate number of wet road crashes?

7 A. No, I did not. As I
8 indicated, that was not my understanding following
9 his -- following my conversation with him and the
10 subsequent discussions with staff.

11 Q. Was there any discussion
12 about whether the road was safe?

13 A. I believe that council
14 was provided with the assurance that the road was
15 not unsafe, and that that was partly the genesis
16 for wanting to get additional information from
17 CIMA, to deal with the concerns that the public
18 works may have in terms of whether the road had
19 any -- whether there was any issues with the road.
20 And so I believe that that was why council wanted
21 to have CIMA confirm that, so that the public
22 could be equally assured that the road was not
23 unsafe.

24 Q. Is there a distinction in
25 your mind between saying that the road is safe

1 versus the road is not unsafe?

2 A. No.

3 Q. So who provided the
4 assurance that the road was safe?

5 A. That would've come from
6 public works staff.

7 Q. So that would be
8 Mr. McKinnon and Mr. McGuire?

9 A. Yes, or Mr. Soldo. I'm
10 not sure who would have provided that.

11 Q. Do you recall them
12 talking about that issue?

13 A. I recall it being
14 discussed. I don't recall specifically who did
15 the discussion, or who had provided the comments.

16 Q. You mentioned Mr. McGuire
17 being at the meeting, but I understand that he
18 wasn't listed as being an attendee in the
19 in-camera minutes?

20 A. It may have been Mr.
21 McKinnon. I apologize.

22 Q. Do you have a memory of
23 actually --

24 A. No, I don't. The two --
25 frankly all of the meetings kind of blur into my

1 mind to a certain degree, but I do recall that
2 that was discussed here.

3 Q. Do you recall the
4 councillors asking staff if CIMA had the Tradewind
5 results?

6 A. I don't recall
7 specifically how that came up, but I do recall
8 that we were asked to confirm with CIMA that
9 they -- that none of their recommendations had
10 changed. My recollection is that that came
11 through the desire to ensure that the public had
12 the necessary level of reassurance on that fact
13 and that council wasn't concerned on that basis.

14 Q. What led you to that
15 recollection?

16 A. That's just my
17 recollection. I can't point to anything in
18 particular.

19 Q. So you don't remember who
20 spoke to this issue at the meeting?

21 A. Except that it wasn't me.

22 Q. Right. So it was
23 potentially Mr. McKinnon gave assurances that the
24 road was safe?

25 A. That that was their

1 understanding at the time, yes, I believe so.

2 Q. Do you recall if at that
3 meeting public works staff told council whether or
4 not they had shared the Tradewind report with
5 CIMA?

6 A. I don't recall
7 specifically whether that issue was addressed.

8 Q. So your evidence is that
9 coming out of the meeting the only reason that
10 council wanted a further opinion from CIMA was to
11 assure the public because council was itself
12 assured?

13 A. I believe so. There may
14 have been that they wanted to have that
15 confirmation in writing from CIMA, but I don't
16 recall the specifics. I certainly know that that
17 was part of the rationale. It may not have been
18 the only reason, but that was certainly part of
19 the rationale for CIMA's -- the request to CIMA to
20 confirm.

21 Q. So do you recall if
22 public works staff had said to council that they
23 hadn't provided the Tradewind results?

24 A. I don't remember the
25 details, sorry.

1 Q. Was there a discussion
2 about CIMA's roadside safety assessment at this
3 meeting?

4 A. I don't recall.

5 Q. What were the action
6 items coming out of this meeting?

7 A. So my recollection was
8 that there were questions that council had wanted
9 CIMA to address and that we were to bring those
10 back to the next meeting of council when we
11 brought the further report.

12 Q. Did council identify who
13 they wanted to go out and get this opinion from
14 CIMA?

15 A. I don't recall whether
16 they did or not. Because it was my legal report,
17 I understood that to be their direction of me to
18 obtain that information and to provide it to
19 council.

20 Q. In terms of the three
21 questions that council asked, had those
22 questions -- to your knowledge, had those
23 questions previously been posed to CIMA?

24 A. I don't -- I don't know
25 what you're asking, sorry. Could you repeat the

1 question, please.

2 Q. If you want, I can pull
3 up the three questions. Just give me a moment.
4 Registrar, if you could go to overview document
5 9A, image 369. If you could put up 368 together
6 with it.

7 So at paragraph 861 you'll see
8 an e-mail from you to Mr. Boghosian?

9 A. Yes.

10 Q. Draft e-mail to
11 Mr. Malone?

12 A. Yes.

13 Q. And then near the top of
14 image 369 there's three questions:

15 "Once you've reviewed the
16 above, can you please
17 advise the following."

18 Are these the three
19 questions -- did these three questions originate
20 from the questions from council on January 23rd,
21 2019?

22 A. I believe that certainly
23 the first two did. I'm not entirely sure whether
24 the third one was one that had come from
25 discussions with staff or from council itself.

1 Q. I take it that coming out
2 of the January 23rd meeting council wanted to know
3 if there were any changes needed to the
4 recommendations in their reports and also if there
5 were any additional safety measures that will be
6 recommended?

7 A. Yes, they wanted to
8 confirm that. They wanted to have that
9 confirmation from CIMA, yes.

10 Q. Do you recall if they had
11 gotten that confirmation from public works staff
12 on January 23rd?

13 A. No, I don't.

14 Q. Was it your understanding
15 that public works staff had already addressed
16 these issues with CIMA?

17 A. I don't remember. I
18 don't recall that particularly.

19 Q. In the January 23rd
20 meeting, do you recall any discussion of the fact
21 that Golder had performed a 2017 pavement
22 evaluation?

23 A. I don't recall.

24 Q. Is there anything else
25 that you recall from the January 23rd, 2019

1 meeting?

2 A. No.

3 Q. Registrar, if you could
4 pull up image 341. You'll see at paragraph 803
5 there's an e-mail from you to Mr. Zegarac, copying
6 Ms. Fontana?

7 A. Yes.

8 Q. I understand Ms. Fontana
9 is in human resources?

10 A. Yes, she's the executive
11 director of human resources.

12 Q. You've attached a
13 confidential RHVP action plan?

14 A. Yes.

15 Q. And then, Registrar, if
16 you could pull up the next page together with this
17 one. You'll see the action plan has been
18 excerpted at paragraph 804, and where it says
19 "employee considerations," where did those
20 considerations come from?

21 A. I had understood that
22 those came from Ms. Fontana, and they were HR
23 related.

24 Q. At page 342 where it says
25 "2":

1 "Technical/engineering
2 safety. Action plan to
3 assess technical review
4 with third party.
5 Further engage external
6 legal to engage third
7 party for overall
8 assessment." (As read).

9 What is that referring to?

10 A. That is referencing to
11 council's request to have CIMA provide answers to
12 the three questions, and that because that request
13 came through an in-camera discussion, it was my
14 understanding and my understanding of council's
15 expectation that those communications would remain
16 confidential and privileged, and in order to do so
17 that I would speak to Mr. Boghosian to get that
18 information provided to council.

19 Q. Where it says "third
20 party," that is referring to CIMA?

21 A. Yes.

22 Q. And "external legal" is
23 Mr. Boghosian?

24 A. That's correct.

25 Q. So your understanding is

1 that you should be providing the opinion from CIMA
2 in a way that would remain confidential?

3 A. Yes. So the report that
4 went to council was in camera, and in camera
5 discussions are permissible under the Municipal
6 Act as -- in camera for the purposes of litigation
7 and solicitor-client advice. So as a result of
8 those questions coming through that meeting, it
9 was then my responsibility to ensure, at least
10 until council gave me different direction, that
11 those conversations were privileged and
12 confidential unless council determined otherwise.
13 It's council's privilege to waive. Until they do
14 so, it's my responsibility to ensure that that
15 takes place.

16 Q. Was there an actual
17 discussion at the council meeting about getting
18 legal to do this to ensure that privilege was
19 maintained, or was it just your -- you just came
20 to that conclusion?

21 A. No, so they -- at part of
22 that meeting, they passed a motion in camera --
23 sorry, they don't pass motions in camera. They
24 passed a motion out in public session that the
25 report and communications be -- maintained

1 privilege. So they actively decide that at every
2 meeting, and they did so in this case. So that
3 was their direction to me, to maintain that until
4 such time as they determined that that wasn't
5 their desire.

6 Q. Did they actually say to
7 you you should go off -- we want to ensure that
8 any communication from CIMA is protected by
9 privilege?

10 A. So council doesn't --
11 individual members of council don't provide
12 direction. Council as a whole provides direction
13 with -- through their motions and through their
14 motions through council when they pass the motion
15 and ultimately through bylaws. So when that was
16 their direction, they provided the verbal
17 direction in camera to go enact this information.
18 Their motion and the confirming bylaw is they're
19 confirming that and saying that that is what we
20 want you to do, Ms. Auty, and this is how we wish
21 you to do it. That's how they give me direction.

22 Q. I see. But in the
23 meeting councillors can speak, so --

24 A. Yes, but they also
25 through a show of hands is consensus. It's not an

1 individual, it's them as a group. It's not one
2 person saying, Nicole, go do this, or, Ms. Auty,
3 go and do this. They collectively decided that's
4 what they want to do. They confirm that action
5 through their motions, and so that was how that is
6 confirmed. It's not -- that's the process.
7 That's how council provides direction to me.

8 Q. Was there any discussion
9 at that meeting about ensuring that the
10 communications with CIMA about the three questions
11 would be obtained in a manner that would maintain
12 privilege or confidentiality?

13 A. Yes, by moving by their
14 motion to keep the report and its contents and
15 discussion privileged. They made that decision.

16 Q. Apart from the motion
17 itself, was there discussions about that issue?

18 A. I don't recall whether
19 there was discussion or not, but that's the
20 direction that council provided me.

21 Q. So your understanding as
22 that if you got Mr. Boghosian to go off and talk
23 to CIMA about this, that that would protect the
24 privilege or the confidentiality of that
25 communication?

1 A. Yes.

2 Q. Right. And that's
3 actually what Mr. Boghosian had advised you in his
4 December 10th e-mail about how to prevent access
5 to correspondence with CIMA?

6 A. So that was the
7 discussion that we had around maintaining
8 privilege of the conversations between him and
9 Mr. Malone.

10 Q. Where it says "internal
11 staff process review, audit external," what is
12 that referring to?

13 A. So my recollection, and I
14 may have not mentioned this when we discussed
15 earlier, but there was also some discussion around
16 what appropriate process there might be to review
17 sort of the how this had happened and how the --
18 like, what steps might be taken to improve
19 processes in that regard.

20 So there was -- at this moment
21 it was whether it was an audit review or
22 potentially some other review, which ultimately
23 was determined to be the inquiry.

24 Q. So there was some
25 discussion on January 23rd about potentially have

1 some kind of a review of what happened?

2 A. Yes.

3 Q. And that may have been
4 audit or external?

5 A. I think both were
6 discussed at some point.

7 Q. And then overall action
8 plan. So what was the action item on this point?

9 A. I don't recall whether we
10 were pulling any information together, but to be
11 aware of what potential options there were in
12 terms of making -- in terms of having such a
13 review.

14 Q. So you were tasked with
15 trying to figure out what the options were for
16 this kind of review?

17 A. Honestly, I don't recall
18 whether it was that well-formed at this point in
19 time or whether it was just identifying that that
20 was an issue that was raised. It doesn't entirely
21 fit with where I had it in the list, so I'm not
22 sure if that was just making note of it in this
23 draft.

24 Q. We saw in your report
25 that -- in your litigation report to council, that

1 the plan had been that the public works reports
2 would go to the public works committee meeting on
3 February 4th?

4 A. I believe that was what
5 it said, yes.

6 Q. Ultimately we know of
7 course that it goes on February 6th at the GIC
8 meeting instead.

9 A. Mm-hm.

10 Q. What's your recollection
11 of why that was changed?

12 A. I don't have a specific
13 recollection, although it's not uncommon for
14 reports and certainly for council to want to have
15 the totality of the information in front of them
16 at the same time, at the same meeting, rather than
17 dealing with pieces at different points. So that
18 is likely how that came to be, but I don't recall
19 specifically. I wasn't involved in that
20 discussion.

21 Q. That wasn't your decision
22 to make?

23 A. No. No, public works
24 reports are public works reports, and that's a
25 city manager, GM, discussion, not mine.

1 Q. Once the decision was
2 made to go with GIC on February 6th, did you
3 contemplate doing a further litigation report to
4 council on February 6th as well?

5 A. I'm sorry, I don't
6 follow. That was what we provided, was an
7 in-camera report.

8 Q. So that was the -- you
9 know what, that's okay. I'll ask you questions
10 when we get there.

11 I understand that you spoke
12 with Mr. Boghosian on January 30?

13 A. Yes, I do recall that.

14 Q. What was the purpose of
15 that call?

16 A. I don't remember the
17 particular genesis. It was likely to -- if I had
18 the notes. I do believe it was dealing with
19 providing discussion on the points that Mr. Malone
20 had been asked to address by council.

21 Q. We don't have notes from
22 you, but we do have some notes from Mr. Boghosian.
23 Registrar, if we could turn up HAM64363. It's
24 HAM64363. These are Mr. Boghosian's notes, and
25 they indicate that you and Mr. Sabo spoke with

1 him. So what's your recollection of this call, if
2 these notes assist your --

3 A. They do. Thank you. I
4 do recall that we were wanting to have a
5 conversation with Mr. Boghosian in order to update
6 him about what the discussion was at council and
7 what next steps we were doing, in particular
8 speaking about the questions that we were going to
9 put to Mr. Malone from the council discussion.

10 Q. Where it says "council
11 quite concerned about situation," do you recall
12 council being very concerned or quite concerned?

13 A. I recall that they had a
14 number of questions, and certainly there were
15 issues that they wanted to have addressed. Yeah,
16 I would say that there was -- they had an
17 appropriate level of interest in what information
18 would be brought back to them.

19 Q. So what were the issues?
20 Was one of them the opinion from CIMA?

21 A. Yeah, certainly they
22 wanted to have additional information and
23 confirmation from CIMA regarding the impact of the
24 Tradewind report on their previous work. They
25 wanted to confirm that.

1 Q. But your evidence was
2 that -- your impression from the January 23rd
3 meeting was that council was assured that the road
4 was safe?

5 A. That they had assurance,
6 I believe that that's -- I may not be remembering
7 that correctly, but that's my recollection.

8 Q. Then it says "haven't
9 given the Tradewind report." Do you recall
10 telling Mr. Boghosian that you hadn't provided the
11 Tradewind report to council?

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

13 Q. Then there's some that
14 council wants to know, and these are the three
15 questions. Then it says:

16 "Council concerned with
17 Gary Moore's
18 judge/honesty/trust
19 worthiness with them in
20 the past." (As read).

21 Do you recall telling
22 Mr. Boghosian that council was concerned about
23 Mr. Moore's judge/honesty/trustworthiness with
24 them in the past?

25 A. I don't recall the

1 specifics. I do recall identifying that there
2 were concerns around the inconsistencies between
3 some previous statements, but I don't recall
4 specifically using those words.

5 Q. But do you recall your
6 impression from the council meeting being that
7 council was concerned about Mr. Moore's
8 judge/honesty/trustworthiness?

9 A. No, I don't.

10 Q. The request had come from
11 council on January 23rd to get a further opinion
12 from CIMA. Why did it take a week to speak with
13 Mr. Boghosian on this issue? What were you -- was
14 there any reason that -- for that week-long delay?

15 A. So I believe that -- so
16 council meets on Wednesday evenings. I believe
17 that -- I'm going from my memory, but there were
18 budget meetings. January is usually a very heavy
19 council schedule with various budget meetings, so
20 I believe that there were budget meetings on the
21 days following that discussion, and I believe that
22 on -- I reached out to Mr. Boghosian early that
23 next week, and twice I believe we tried to
24 connect, and then ultimately we connected on the
25 Wednesday.

1 So this plus, you know, there
2 were a number of high priority files that I was
3 dealing with in addition to that at that moment,
4 so there were a number of items, and as soon as I
5 was able to connect with Mr. Boghosian I did so.

6 MS. LIE: Registrar, I don't
7 believe that this document is in any of the
8 overview documents, so could we mark HAM64363 as
9 Exhibit -- I believe we're at 163.

10 THE REGISTRAR: Noted,
11 counsel, thank you.

12 MS. LIE: Thank you.

13 THE REGISTRAR: Yes, it's
14 Exhibit 163.

15 EXHIBIT NO. 163: One-page
16 document dated 30/1/19;
17 HAM64363.

18 BY MS. LIE:

19 Q. Do you recall speaking
20 with public works staff and with Mr. Malone and
21 Mr. Boghosian that day, on January 30th, 2019?

22 A. I recall there were a
23 couple of meetings over those two days. I
24 believe, yes, one of them was that day.

25 Q. Do you have a general

1 recollection of that first call, January 30th,
2 2019?

3 A. Not particularly, no.

4 Q. Registrar, could you pull
5 up overview document 9A, image 362.

6 So, Ms. Auty, we don't have
7 any of your notes from these meetings. It may be
8 because they are in the notebook that can't be
9 found, but we do have Mr. Boghosian's notes.

10 Registrar, if you could pull
11 up the next page as well. Here is a transcription
12 of Mr. Boghosian's notes from that meeting if it
13 assists you.

14 A. Yes, I believe, based on
15 his notes we were looking at preparing the report
16 for the February 6th GIC.

17 Q. Do you recall who was on
18 this call?

19 A. I believe it was myself,
20 Mr. Sabo, Mr. McGuire, Mr. McKinnon, Ms. Racine,
21 Mike Zegarac, Mr. Hertel, and Mr. Soldo I presume.

22 Q. There's a note that says
23 "three other names I didn't get Brent and Ted."
24 Do you know a Brent and Ted?

25 A. Not that I can

1 immediately think of, no.

2 Q. Mr. Malone I take it was
3 on this call too?

4 A. I believe so. I believe
5 we joined him in on the call. We spoke to him a
6 number of times or a few times over this period,
7 so I believe he was on the call.

8 Q. Was any other CIMA staff
9 on the call?

10 A. No, I don't recall
11 speaking with anyone else from CIMA.

12 Q. So I just want to
13 understand, was there -- did you have a call or a
14 meeting first with the public works staff and then
15 you had -- and then you had another call with
16 Mr. Malone, or was it just one -- full one big
17 call?

18 A. I know there were a
19 couple of meetings around this time. I know we
20 did meet as staff before we brought Mr. Malone and
21 Mr. Boghosian in to have further discussions. I
22 don't recall if it was this meeting or the next
23 one, but yeah, can't say to that exactly.

24 Q. You don't remember if you
25 had kind of like a pre-meeting with public works

1 first and then spoke with Mr. Malone?

2 A. Not specifically at this
3 point. Yeah, I don't.

4 Q. In terms of this call,
5 was anybody leading the call from the staff side?

6 A. Not that I recall
7 specifically.

8 Q. Did you do any talking on
9 the call?

10 A. I may have. I don't
11 recall.

12 Q. So tell me about your
13 recollection of this call.

14 A. I recall us discussing,
15 or at least as I see from David's notes, the four
16 items that ultimately became the outline of the
17 February 6th presentation, and report to council.

18 Q. And then so you were --
19 you recall talking to -- telling Mr. Malone this
20 was the plan?

21 A. Yeah, I remember we
22 discussed what the presentation structure would be
23 and ultimately the information that we were
24 providing to council in general based on
25 Mr. Boghosian's notes.

1 Q. Where it says:
2 "Suggested reducing
3 speed, new speed limits
4 to 80 kilometres an hour,
5 plus speed advisories in
6 four high collision
7 areas."

8 Do you recall discussing
9 reduction of the speed limit?

10 A. I don't specifically, no.

11 Q. Then there's a note that
12 says "BM: Greater police speed enforcement is
13 also needed."

14 Do you recall Mr. Malone
15 expressing the view that greater police speed
16 enforcement was needed?

17 A. I don't specifically, but
18 I believe if Mr. Boghosian made that note, that he
19 mentioned that.

20 Q. Registrar, could you pull
21 up the next page as well. Where it says at the
22 bottom of 363:

23 "BM: Closed RVHP not
24 necessary, will cause
25 issues on the roadways

1 A. Yeah, I can't say.
2 Certainly my understanding was that he had
3 discussed those results. Again, I don't think I
4 could have said whether it was in writing or
5 verbally, but I certainly knew he was aware of
6 them, the results themselves and the report.

7 Q. And that is based on the
8 discussion you had with Mr. Boghosian?

9 A. Yes. And the opinion
10 letter.

11 Q. And I think your -- you
12 had also understood that public works was getting
13 whatever information they needed from Mr. Malone,
14 and so they would have shared it if they needed
15 to?

16 A. Had they needed to, yes,
17 I believe that's my understanding.

18 Q. It says:
19 "Road is not unsafe but
20 is less safe in
21 comparable urban
22 parkways."

23 Do you recall Mr. Malone
24 expressing that view?

25 A. Not specifically.

1 Q. And then underneath that
2 it says "slippery when wet or flashing." And then
3 on the left it says "thinks that it should be
4 done."

5 Do you recall Mr. Malone
6 saying that the slippery when wet or flashing
7 beacons should be done?

8 A. No.

9 Q. Where it says "point
10 number one, stresses wet road issue," and then on
11 the left it says "he won't do that. Skated by the
12 issue."

13 Do you recall there being some
14 discussion about having Mr. Malone stress that
15 it's a wet road issue?

16 A. No I don't.

17 Q. And then it says:
18 "No accepted friction
19 value for pavement in
20 Canada. Will say UK
21 standards are not NA in
22 Ontario." (As read).

23 Do you recall Mr. Malone
24 saying that he would say that the UK standards are
25 not applicable?

1 A. I remember that being
2 his -- my understanding of his view on that, yes.

3 Q. Okay. And then it says:
4 "Why no recommendations
5 for reducing speed limit
6 in his reports?"

7 And then:

8 "He explained that he
9 recommended reduction to
10 80 kilometres an hour in
11 one discrete section."

12 Do you recall that coming up
13 on this call?

14 A. Not specifically, no.

15 Q. Do you recall being aware
16 that Mr. Malone had not recommended reducing the
17 speed limit on the entire roadway?

18 A. I don't.

19 Q. And then it says:
20 "Discussion of applicable
21 TACC geometric design
22 standards."

23 Do you recall that discussion?

24 A. No.

25 Q. Do you recall on this

1 call talking to Mr. Malone about ensuring that the
2 communications that he was having would be
3 protected by privilege?

4 A. No, I don't.

5 Q. Do you recall any
6 communication to Mr. Malone that this would be
7 considered a legal issue from now on?

8 A. No, I don't.

9 Q. Registrar, if you could
10 go to image 368. And then if you could put up 369
11 as well.

12 We had already looked at this
13 e-mail, but you'll see at paragraph 861 that you
14 sent an e-mail to Mr. Boghosian with a draft
15 e-mail for Mr. Malone setting out what the
16 questions are.

17 So I take it it was important
18 for you that the request to Mr. Malone come from
19 either you or Mr. Boghosian as counsel?

20 A. Yes.

21 Q. Again, that was to try to
22 preserve the privilege around the communications?

23 A. The communications,
24 that's because they flowed from council's
25 direction in camera. Again, that's their

1 privilege to waive, not mine.

2 Q. Right. And your belief
3 was that if you or Mr. Boghosian were sending this
4 communication, it would --

5 A. It would be protected by
6 privilege, yes.

7 Q. Did you have a view as
8 between who would send it, you or Mr. Boghosian?

9 A. Not particularly. That's
10 why I was seeking his input.

11 Q. Ultimately he asks you at
12 paragraph 862 "Do you want me to send it out?"
13 And you reply "Yes, please."

14 So you decide that it should
15 go from Mr. Boghosian?

16 A. Yeah, I mean at that
17 point it was consistent with the timing and,
18 frankly, I had a lot of other things going at the
19 time. It made sense for him to send it.

20 Q. In the last paragraph of
21 the e-mail it refers to being available to speak
22 to council if needed on February 13th.

23 A. Yes.

24 Q. At this time were you
25 contemplating bringing the report back to council

1 on February 6th or the 13?

2 A. The 6th; however, as
3 it's -- council operates in a committee schedule,
4 so they do -- they have a number of reports that
5 they receive throughout the committee meetings,
6 and those are ultimately confirmed at council.

7 So had this -- intention was
8 to bring this to the GIC on the 6th; however, it's
9 not unusual if there's a particularly -- a report
10 that has particular interest of council that they
11 would have either additional questions or seek
12 additional information from staff at the council
13 meeting. That's where they as a council review
14 the materials that had been reviewed at the
15 committee levels and make a final determination.
16 So until council deals with it at the committee
17 meeting, any direction or any specific motions are
18 not final.

19 Q. So you were contemplating
20 potentially having Mr. Malone attend the council
21 meeting but not the GIC meeting?

22 A. I understood that he was
23 unavailable on the GIC meeting, and so if he was
24 then also available on the 13th, that would be
25 another opportunity, had council had any follow-up

1 or outstanding items from the committee meeting,
2 that they could have that addressed at council,
3 and that was fairly usual practice.

4 Q. Registrar, if you could
5 pull up image 385. At paragraph 896, there's an
6 e-mail exchange between you and Mr. Boghosian on
7 January 31st. You write:

8 "David, any response from
9 Brian? I think we also
10 need to send him the 2014
11 Golder report that the
12 Tradewind report was
13 appended to. Do you have
14 this that you can send to
15 him today?"

16 What did you want Mr. Malone
17 to also have the 2014 Golder report?

18 A. I don't recall beyond it
19 was the basis of -- or the report that the Golder
20 report was attached to. For completeness, I would
21 imagine. I don't recall specifically.

22 Q. So were you the one who
23 was deciding what reports should go to Mr. Malone
24 for the purposes of getting his opinion?

25 A. Well, in part, but I also

1 understood Mr. Boghosian to be providing that
2 input if he felt necessary.

3 Q. Did public works staff
4 have any input on what would be going to
5 Mr. Malone?

6 A. Not that I recall.

7 Q. Why wouldn't public works
8 staff be involved in the discussions?

9 A. They may have been. I
10 don't recall particularly, but there's no
11 particular reason they would or wouldn't be,
12 particularly at this point because we were working
13 from council's direction together, so I don't see
14 why there would be -- there wouldn't have
15 necessarily been a barrier between them.

16 Q. I want to talk about the
17 February 1st, 2019 call. Registrar, if you could
18 pull up image 401 together with 402.

19 I understand that on February
20 1st, 2019, there was a call with Mr. Malone. What
21 we've put up here is a transcription of Mr. Sabo's
22 notes of that call.

23 A. Thank you. I appreciate
24 that. Thank you.

25 Q. Do you recall this

1 February 1st, 2019 call?

2 A. I do recall there were a
3 number of meetings, like I said, in those few days
4 in between the council meeting and the committee
5 meeting that we were preparing for.

6 Q. What was the purpose of
7 this February 1st call?

8 A. My understanding was that
9 it was an opportunity for us to review the
10 questions that council had been -- that council
11 had requested and that we had sent to Mr. Malone,
12 there was an opportunity to discuss those with him
13 and to have all parties, public works, myself,
14 communications, everybody who was going to be
15 addressing the report at council, to have all
16 those parties available to have the discussion.

17 Q. Tell me what you recall
18 from that discussion.

19 A. I recall we went through
20 the various questions; that Mr. Boghosian was
21 assisting in guiding that discussion through with
22 Mr. Malone; that he was asking those questions and
23 having Mr. Malone respond.

24 Q. In Mr. Sabo's note in the
25 middle, it says:

1 "Preliminary comment is
2 Golder's? TW for
3 friction testing plus
4 summarizes TW grip
5 number."

6 And then it goes on to say:

7 "Don't think Golder read
8 it correctly. Brian
9 would see 35 or 30 plus,
10 not 48."

11 Do you recall there being a
12 discussion about whether or not Golder had
13 misinterpreted the friction results?

14 A. I don't specifically, but
15 I don't have any reason to believe Mr. Sabo's
16 notes are incorrect but -- I don't recall that
17 specifically. I do remember specifically going
18 through the questions, but I don't recall that
19 part of the discussion.

20 Q. Do you recall that issue
21 coming up before February the 1st about Golder
22 misinterpreting the results?

23 A. I don't recall that
24 but -- yeah.

25 Q. And then at the bottom it

1 says:

2 "Nothing (inaudible)
3 recommended by CIMA. Do
4 want efforts to reduce
5 speed of drivers." (As
6 read).

7 A. Sorry, where do you see
8 that?

9 Q. It's at the very bottom
10 of the callout.

11 A. Yes, okay. So number 2,
12 nothing additional received by CIMA. Do want
13 efforts to reduce -- okay.

14 Q. So do you recall what
15 Mr. Malone said about his preliminary view about
16 whether or not additional safety measures were
17 required?

18 A. That isn't helping me
19 remember anything in particular about that
20 discussion, I'm sorry. I mean, ultimately I do
21 recall that they said that there wasn't anything
22 additional that they were going to be recommending
23 as a result. I'm not sure exactly what that note
24 refers to.

25 Q. Registrar, if you could

1 pull up image 370. If you could also pull up 371
2 next to it.

3 So at paragraph 866 it refers
4 to an undated handwritten note which was authored
5 by Ms. Graham. I understand that Ms. Graham has
6 confirmed that they are her notes, but she wasn't
7 sure about the date the notes were made. On
8 page 371, just under the middle of the page, where
9 it says:

10 "Levels in Tradewind did
11 not reach intervention
12 levels. We have long
13 history of investigating
14 and taking actions."

15 Do you see that? And then
16 there's a little "3" circled:

17 "Results in Tradewind
18 report do not suggest we
19 do not meet standards."

20 Do you remember Mr. Malone
21 conveying that on the February 1st, 2019 call?

22 A. I don't recall specifics.
23 I don't have that recollection.

24 Q. Having had a chance to
25 look at Mr. Sabo's notes, do you recall anything

1 else from the February 1st, 2019 meeting?

2 A. No, not -- I mean, the
3 answers and the questions, but that -- that's it.

4 MS. CONTRACTOR: I'm sorry,
5 I'm not sure that we went to the second page of
6 Mr. Sabo's notes. I don't know if that would add
7 anything to Ms. Auty's recollection. But I wonder
8 if we could just pull up that page 403.

9 BY MS. LIE:

10 Q. Good idea. Thank you.
11 Maybe we can put up both. Go ahead.

12 A. Yes, I mean, I do see
13 that they did make -- they did identify that there
14 were no changes to their recommendations. I
15 believe that's the first item with number 1 on the
16 notes there, on the first page. We went through
17 each of the questions. They were not recommending
18 that the road be closed. Yeah, I don't recall
19 anything else specific. I don't think so.

20 Q. Thank you. Registrar, if
21 you could pull up image 410. At paragraph 940
22 there's an e-mail from you to Mr. Boghosian on
23 February 2nd, so this is the next day. And then
24 in the third paragraph you ask for the final
25 version of his opinion letter?

1 A. Yes.

2 Q. Or an outline of his
3 presentation. And then you say:

4 "I'm not proposing to
5 provide the opinion
6 letter to council at this
7 time, but it will form
8 the basis of our report
9 and presentation."

10 A. Yes.

11 Q. Why did you not want to
12 provide Mr. Boghosian's opinion to council?

13 A. It was my experience that
14 with council and the number of and sort of
15 complexity of issues that they were being asked to
16 address, that it was much more valuable and better
17 digested if the author of the opinion was there to
18 walk through it with them.

19 My report would outline the
20 basics, sort of the overview of the opinion, and
21 then having the -- by having the person who wrote
22 the opinion there to walk through it directly
23 rather than through me or anybody else, and they
24 would then be also available to answer questions
25 as their -- that is the most, I think, efficient

1 way of providing that information to council.

2 Q. So your experience, you
3 typically don't provide opinion letters from
4 external counsel directly to council? You do it
5 in the way that you just described?

6 A. Yeah. So the overview,
7 my overview covering report would provide a high
8 level summary. The author of the report would
9 attend and speak to their opinion directly; they
10 would walk council through it verbally and have
11 that discussion, have an opportunity to ask
12 questions. And then at any point in time if
13 council wanted to see a written opinion or to have
14 anything provided to them in writing, that was
15 always available to them, and they could request
16 that, and certainly would have no issues providing
17 that to them.

18 Q. So what you just
19 described is your general practice, and so this
20 was consistent with your general practice?

21 A. Yes.

22 MS. LIE: Commissioner, I see
23 that it's 1 o'clock. Probably good to pause here.

24 JUSTICE WILTON-SIEGEL: It is.
25 Okay, let's stand adjourn until 2:15.

1 --- Recess taken at 1:01 p.m.

2 --- Upon resuming at 2:17 p.m.

3 BY MS. LIE:

4 Q. Registrar, could you pull
5 up overview document 9A, image 411. Ms. Auty,
6 you'll see at paragraph 941 that Mr. Boghosian
7 responds to your e-mail from the day prior, and he
8 says:

9 "I can provide you with a
10 signed version of my
11 opinion letter tomorrow.
12 In terms of revised, were
13 there any changes you
14 wanted made to it before
15 it is issued in final?"

16 And then you respond at
17 paragraph 942, you raise a concern about the use
18 of SMA, and then you say:

19 "Can you please update
20 your letter based on what
21 we heard from Brian over
22 the past week and confirm
23 that your assessment is
24 the same, particularly in
25 terms of whether, one, we

1 need further independent
2 review of the staff
3 decisions made/studies
4 provided to preservation
5 of any portions of the
6 road for future defence."

7 Did you have any discussions
8 with Mr. Boghosian about the need for a further
9 independent review of staff decisions made/studies
10 provided?

11 A. Not that I recall.

12 Q. Are you referring there
13 to the independent review of staff decisions
14 including potentially the audit investigation
15 there?

16 A. That's possible.
17 Certainly that was part of the discussions we were
18 having at this point in time.

19 Q. That was one of the items
20 that was in the action plan?

21 A. Yes, that's correct.

22 Q. So you may have spoken
23 with Mr. Boghosian about that, but you don't
24 remember?

25 A. That's correct. I don't

1 specifically recall what that point was, but that
2 certainly does correspond with the action item on
3 the plan that I prepared.

4 Q. Did you have any
5 discussions with Mr. Boghosian about the
6 preservation of any portions of the road?

7 A. I don't recall
8 specifically. I do believe that we had some
9 general discussions about potential next steps in
10 the -- in whatever litigation may arise, but I
11 don't recall the details of those discussions.

12 Q. Here you're asking him to
13 update his opinion to include that information?

14 A. If he felt necessary. So
15 I really was asking him if he felt that there was
16 anything he needed to advise. I wasn't directing
17 him to change his opinion. I was just asking if
18 he felt that there were any updates needed in
19 light of what we had been discussing over the past
20 few days.

21 Q. I think that you had said
22 previously that you wanted to get -- the reason
23 Mr. Boghosian's opinion wasn't finalized was
24 because you wanted to see what other information
25 there was and to see if it would change

1 Mr. Boghosian's assessment?

2 A. That's correct.

3 Q. So did you provide

4 Mr. Boghosian with the PW18008 report?

5 A. I don't recall if that
6 was specifically provided to him or if we had
7 discussed it in the other meetings. I knew he had
8 the -- well, I think -- I believe he had the
9 appendix, which was the relevant portions as far
10 as I was aware.

11 Q. Then I think that he --
12 he did have the 2017 -- the draft Golder report
13 regarding the 2017 pavement evaluation because we
14 know that he sent it to Mr. Malone on
15 January 30th?

16 A. Yes, and he had the
17 appendix to PW8 I believe as well.

18 Q. Do you know if he had the
19 final roadside safety assessment from CIMA?

20 A. That I don't know.

21 Q. So did you take any steps
22 to ensure that Mr. Boghosian had additional
23 information before finalizing the opinion?

24 A. He had the information
25 that he had been provided through the

1 conversations that we had and had he needed
2 anything else or asked for anything else, I would
3 have certainly provided it.

4 Q. And then, Registrar, if
5 you could go to image 417. At paragraph 959
6 there's an e-mail from you to Mr. Boghosian on
7 February 4th, 2019. In the second paragraph, you
8 said:

9 "Can we consider whether
10 his report can be
11 provided to council in
12 camera once final and
13 released publicly or
14 whether council should
15 direct a further report
16 from CIMA on this issue?"

17 What are you referring to
18 there?

19 A. So here I'm referring to
20 what I anticipated might be one of council's
21 directions or requests following this information
22 being presented to them, which was I anticipated
23 based on the conversations previously that they
24 would want to have this information available to
25 be provided to the public, and so I was asking for

1 David's thoughts and opinions on how to -- in what
2 way that that might be prepared in advance so that
3 it would be easier to make that transition rather
4 than trying to address waivers of privilege or
5 other type of discussions at the time. I was
6 trying to facilitate what I felt was council's
7 desire to have that report -- that portion of the
8 memo released publicly.

9 Q. So you were contemplating
10 that even though council had made this request of
11 you in a confidential manner, you were
12 contemplating the fact council might want to
13 ultimately release it publicly?

14 A. Yes, that was my
15 expectation. But that was again their decision to
16 make.

17 Q. Right. So you wanted to
18 make sure that you were preserving that?

19 A. Being proactive in terms
20 of trying to address that concern.

21 Q. Okay. Registrar, if you
22 could go to image 423. If we could also put up
23 424.

24 So at paragraph 985 you'll see
25 that Mr. Boghosian sends you his final opinion,

1 and there's now a section that refers to his --
2 the conversation with Mr. Malone on February 1st,
3 2019?

4 A. Yes.

5 Q. And then there's also a
6 revision to the paragraphs relating to the MSA
7 treatment. Registrar, could you pull up 425 as
8 well.

9 So my understanding is that
10 these are the only changes that were made from the
11 draft opinion to the final opinion. Mr. Boghosian
12 didn't, for example, revise his opinion to reflect
13 the fact that Mr. Malone hadn't ranked
14 slipperiness of the road surface as the greatest
15 contributing factor?

16 A. That's correct.

17 Q. And you didn't ask him to
18 clarify that in his final opinion?

19 A. No, I did not.

20 Q. He hasn't actually
21 provided any further information about a potential
22 independent external review of staff decisions?

23 A. Sorry.

24 Q. In the final opinion?

25 A. I don't see that here,

1 no.

2 Q. So did you follow up with
3 him on that because that was something you had
4 asked for?

5 A. That was something I had
6 suggested, if he felt he needed to include in the
7 opinion, but again this is his opinion, so I was
8 asking -- I wasn't directing him to do that; I was
9 providing thoughts that he could consider when
10 finalizing his opinion. We were also going to
11 committee in a day-and-a-half. My focus was on
12 getting that presentation prepared.

13 Q. Registrar, could you turn
14 up HAM62570. Include the next image as well.

15 Do you recall on February 5th,
16 2019 asking Mr. Boghosian to have Mr. Malone
17 remove the paragraphs in Mr. Malone's February 4th
18 memo about the speed limit reduction?

19 A. I don't have a specific
20 recollection beyond what's in the e-mail, but I do
21 recall that happening.

22 Q. Why did you ask
23 Mr. Boghosian to ask Mr. Malone to remove those
24 references?

25 A. I believe that that was

1 at the request of director Soldo, who had reviewed
2 it and felt that it was potentially more
3 information than was needed on that point and not
4 relevant to the discussion, and it may have had
5 other questions that weren't related to what they
6 were asked to provide. Can't remember the wording
7 that he used, but I couldn't find that.

8 Q. Do you recall if it was
9 because public works staff were in fact
10 recommending a speed limit reduction?

11 A. I can't recall
12 specifically. It was Mr. Soldo's request. I
13 didn't find it reasonable, so I passed it on.
14 Importantly, as I indicated in e-mail, it didn't
15 change anything in terms of CIMA's
16 recommendations.

17 Q. Right, but you were
18 removing something that CIMA had decided that they
19 wanted to tell the City, which was that they did
20 not recommend lowering the speed limit, and for
21 the reasons that are set out in the highlighted
22 portions.

23 A. So that was at Mr.
24 Soldo's request. Again I didn't find it
25 unreasonable. It wasn't what council had asked

1 them to speak about. It wasn't, in my mind,
2 unreasonable for that to be removed so that it
3 didn't create any confusion at council.

4 Q. And the concern was that
5 there might be confusion because public works
6 staff were actually recommending the reduction of
7 the speed limit?

8 A. Again I didn't -- it
9 wasn't my initial request. I can't speak to the
10 rationale. Mr. Soldo would need to speak to that.

11 Q. So you never understood
12 from Mr. Soldo what the rationale was?

13 A. I understood that it was
14 on the basis that I explained but not more than
15 that.

16 Q. So the basis you
17 explained was that it might cause confusion, but
18 you don't know why it would cause confusion?

19 A. Because it wasn't related
20 to the issues that council had asked CIMA to
21 respond to. It wasn't a part of that response. I
22 think that's what -- again, I can't speak for him.

23 Q. Registrar, could you pull
24 up HAM62569. So here there is an e-mail from you
25 to Mr. Soldo on February 5th, 2019, the subject is

1 "CIMA urgent," and say:

2 "Can you take a quick
3 call with me, please. I
4 want to confirm your
5 concerns regarding the
6 report."

7 Do you recall confirming Mr.
8 Soldo's concerns?

9 A. Not beyond what's in my
10 e-mails, no.

11 Q. Okay. And not beyond
12 what you've just testified today about your
13 understanding of his concerns?

14 A. Yes, that's correct.

15 Q. Registrar, could you pull
16 up overview document 9A, image 434. You'll see at
17 paragraph 1014 that there is a transcription of
18 notes from Mr. Sabo referencing a call with
19 himself, you, and Mr. Boghosian on February 5th,
20 2019. Do you recall having a call with
21 Mr. Boghosian in that period of time?

22 A. I recall having a number
23 of discussions with him. I don't recall this one
24 specifically.

25 Q. There's a note says "TW

1 inaccurate or misleading, so don't release it."

2 Do you recall any discussion
3 about the Tradewind report being inaccurate or
4 misleading?

5 A. Not specifically, no, I
6 mean, beyond the other comments that had been made
7 around it in various other points, but no.

8 Q. Do you recall a
9 discussion where you talked about not releasing
10 it?

11 A. No, I don't. It was
12 always my expectation that we were -- and my --
13 that that was going to happen.

14 Q. There's a note that says:
15 "Concern with reducing
16 speed. Could have done
17 that any time. Red
18 flag."

19 Do you recall a discussion at
20 this time about a concern that -- of the reduction
21 of the speed limit would be a red flag?

22 A. No, I don't.

23 Q. There's a note that says
24 "speed report review." Had you reviewed the
25 public works reports that were going to council?

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

3 Q. Would it have been your
4 practice to review the reports that would be going
5 to council at the same time as one of your
6 litigation reports?

7 A. I would have -- I suspect
8 I would have had an opportunity review them, but I
9 don't recall being asked to provide advice. So
10 yes, I would have had a chance to read them, but
11 no, I don't recall providing any specific advice
12 on it.

13 Q. Do you recall reviewing
14 them and knowing that the public works staff were
15 recommending a reduction of the speed limit?

16 A. I was aware that that was
17 their -- in their report, yes.

18 Q. And you don't recall any
19 concerns expressed about doing that?

20 A. No, I don't.

21 Q. There's a note that says
22 "David checking with Brian on release of letter."

23 Do you recall why
24 Mr. Boghosian might have been checking with
25 Mr. Malone?

1 A. No, I don't. Beyond the
2 question that I had asked him, which was how we
3 might -- that council would want to do that. So I
4 don't know -- I presume he might have made that
5 request, or at least -- not request, but advised
6 Mr. Malone of that desire or potential desire.

7 Q. Registrar, could you pull
8 up HAM64194. At the top of the page you'll see an
9 e-mail from Mr. Boghosian?

10 A. Yes.

11 Q. To you on February 5th.

12 Mr. Boghosian says:

13 "Regarding the speed
14 limit recommendation, the
15 fact that it is contrary
16 to the external
17 consultant's
18 recommendation and is
19 expressly premised on the
20 collision history is a
21 concern from a liability
22 standpoint. It would be
23 better if the reason was,
24 for example, so the RHVP
25 qualified for automated

1 speed enforcement, max
2 speed of 80 kilometres an
3 hour, in order to utilize
4 it, not safety."

5 So did you convey this concern
6 that Mr. Boghosian had expressed to public works
7 staff?

8 A. I don't remember.

9 Q. Do you recall having any
10 further discussions with Mr. Boghosian about this
11 issue?

12 A. I don't have any
13 particular recollection about that.

14 Q. Registrar, could you go
15 to overview document 10A, image 5. If we could
16 pull up image 6 as well.

17 So you'll see at paragraph 10
18 that on February 6th, 2019, you e-mail
19 Mr. Boghosian, attaching some draft motions, and
20 then at paragraph 11, under number 1, it says:

21 "That the city solicitor
22 be directed to engage an
23 independent third party
24 engineering consultant to
25 review the safety

1 measures taken and advise
2 whether all reasonable
3 steps have been taken,
4 and if not, what impact
5 this has on the public
6 safety and the City's
7 liability."

8 What prompted you to prepare
9 this draft motion?

10 A. I don't recall the
11 specifics. I recall at the time we were trying
12 to -- staff collectively were trying to anticipate
13 what some potential direction might be from
14 council following the review of the report, and
15 the issue of a third party review had been
16 identified as a potential concern, and was trying
17 to anticipate, if anything, what council might
18 want to do about that going forward. So again
19 trying to anticipate what council might wish to
20 do.

21 Q. When you say "the issue
22 of a third party review had been identified as a
23 potential concern," who identified that as a
24 potential concern?

25 A. I believe that came from

1 the council discussion on the 23rd. It was I
2 believe identified similarly on the action plan,
3 but it may not have been the same item, but I do
4 recall there being that type of discussion.

5 Q. I see. So on the
6 January 23rd council meeting, there was a
7 discussion about potentially having an independent
8 review of staff decisions and also an independent
9 third party review of the safety measures?

10 A. I don't recall that from
11 the council meeting, but it was I think at this
12 point being discussed as a possible addition to
13 that review if council was interested. Again, we
14 were just trying to anticipate. I don't know that
15 I have a particular basis for where that came
16 from.

17 Q. Registrar, if you could
18 also pull up image 7. You'll see actually at
19 paragraph 13 Mr. Boghosian replies and says:

20 "I thought you had
21 decided not to get an
22 independent third party
23 engineering review for
24 the time being and leave
25 it to individual

1 litigation matters."

2 And then you say:

3 "Yes, that would be my
4 recommendation, but this
5 is just in case council
6 wants to take a step."

7 So by this time you had
8 already decided to leave it to individual
9 litigation matters?

10 A. Yes, at this point we
11 were anticipating addressing that at some point in
12 the future if necessary from a litigation point of
13 view, and that would have been -- this would have
14 been, again, if council wanted to take that
15 additional step, this is the way for them to do
16 that.

17 Q. Do you recall if you
18 advised council on January 23rd that you had
19 decided that your advice was not to get a third
20 party engineering review for the time being?

21 A. I don't believe that that
22 was the level of detail that was discussed at that
23 meeting. We didn't have -- I don't believe we had
24 that level of a discussion.

25 Q. Okay. I want to now talk

1 about the February 6th, 2019 GIC meeting. What is
2 your recollection of that meeting?

3 A. I don't have specific
4 recollection beyond what was identified in the
5 presentation and the report, but I do understand
6 that there were notes and potentially the
7 presentation. So I do recall that the
8 presentation went forward as identified in the
9 slides.

10 The public works staff went
11 through the technical discussion and historical
12 background in context. Mr. Boghosian then went
13 through his liability -- his opinion on liability
14 and the risk assessment related to that. I then
15 identified and had a brief discussion on the
16 current claims that the City was involved in
17 regarding the Red Hill Valley Parkway, and then
18 there were -- I believe the last item was audit or
19 communication. I don't have it off the top of my
20 head, but one of those two, and there were then a
21 number of questions that followed from that which
22 were responded by -- responded to by a number of
23 different parties.

24 I should mention also, though,
25 that the CIMA questions were addressed by public

1 works in the initial discussion.

2 Q. Was it Mr. McKinnon who
3 was giving the presentation by public works?

4 A. Yes, that's my
5 recollection.

6 Q. Did Mr. Sabo play a role
7 in that meeting?

8 A. I don't believe he spoke.
9 I believe he was in attendance in support of our
10 work.

11 Q. So is it your
12 recollection that Mr. Boghosian walked through his
13 opinion letter with council?

14 A. Yes, it is.

15 Q. Registrar, could you pull
16 up HAM64331. If you could go to the next image.
17 Also pull up image 3 as well.

18 Do you recall if Mr. Boghosian
19 went through the background facts that are
20 identified at pages 2 and 3?

21 A. I don't have a specific
22 recollection. That would correspond to the
23 various points of his opinion letter. I do recall
24 him going carefully through his opinion and his
25 ultimate assessment of liability. I don't recall

1 the specifics of each line and paragraph that he
2 went through. My recollection is not that
3 specific.

4 Q. If we go to image 6. Do
5 you recall if there was a discussion at council
6 about the roadside safety assessment?

7 A. CIMA's roadside safety
8 assessment? I do believe, yes.

9 Q. That would have been by
10 public works, though, not Mr. Boghosian?

11 A. Initially by public
12 works. It may have been referenced by
13 Mr. Boghosian in his liability assessment. I
14 can't say for certain.

15 Q. Was the roadside safety
16 assessment provided to council at this time?

17 A. That I don't know. I
18 would need to check with public works. I can't
19 recall if that was part of their presentation.

20 Q. Would that have been your
21 decision in terms of what reports would have been
22 provided?

23 A. No.

24 Q. Do you recall any --

25 A. Not exclusively, yeah.

1 Q. Sorry? I missed that.

2 A. Not exclusively. Like, I
3 would have been -- we would have discussed it, but
4 I don't recall specifically making a determination
5 on that issue.

6 Q. Do you recall discussing
7 whether or not the 2018 roadside safety assessment
8 should go to council?

9 A. No, I don't.

10 Q. And then if we can go to
11 image 7. Do you recall if Mr. Boghosian talked to
12 council -- or told council about what Mr. Malone
13 had shared with him on their December 11th call?

14 A. No, I don't recall
15 specifically whether he did.

16 Q. Do you recall if
17 Mr. Boghosian shared with council the information
18 about Mr. Malone's views on the contributing
19 factors to the inordinate number of wet weather
20 collisions?

21 A. I don't recall. I do
22 believe he went through in some detail, so it's
23 certainly possible that he did. But again, his
24 focus was on the liability assessment and review
25 because that's what his mandate was, and his area

1 of expertise.

2 Q. We actually have some
3 notes from the meeting from Mr. Sabo, so I'm going
4 to just put them up just to see if they assist
5 your memory about the meeting.

6 Registrar, could we have
7 HAM64370. Image 10, please.

8 This is a transcription of Mr.
9 Sabo's notes. They are quite lengthy, so I'm not
10 going to take you through it line by line. In the
11 middle of the page, do you see where it says:

12 "Investigation plus
13 intervention, just
14 reached this level, but
15 TW went ahead and rec
16 steps didn't breach
17 investigation or design
18 standards." (As read)

19 Do you recall this being
20 conveyed to council, that it didn't breach
21 investigation or design standards?

22 A. Not specifically, no.
23 But again I -- yeah, I don't. These are Mr.
24 Sabo's notes. I don't recall specifically.

25 Q. Do you recall generally a

1 discussion about whether or not there's a breach
2 of design standards at the February 6 meeting?

3 A. I don't have a
4 recollection.

5 Q. If we could go to the
6 next image, Registrar. Again at the very top it
7 says:

8 "Look at recs of CIMA
9 before repaving. Design
10 standards have not been
11 breached." (As read)

12 That doesn't assist your
13 recollection?

14 A. No, those would not have
15 been my comments. I can't recall. So I didn't
16 make that comment, so I can't speak to it.

17 Q. You don't recall --

18 A. I don't remember the
19 public works -- the specific details of the public
20 works presentation.

21 Q. And then you'll see near
22 the middle of the page, in the bottom half of the
23 page, it says:

24 "Re how bad road is, TW
25 well below CIMA in design

1 domain. If meets design,
2 why replace it?" (As
3 read).

4 Yeah, there it is.

5 A. Okay.

6 Q. Do you recall a
7 discussion about if the -- a discussion about how
8 bad the road is?

9 A. Those comments would not
10 have been directed to me. I don't -- I did not
11 speak to that.

12 Q. That wasn't my question.
13 My question is if you recall any discussion --

14 A. No, I don't recall the
15 discussion. It wasn't directed at me, so it
16 didn't trigger in my memory.

17 Q. But certainly you have a
18 recollection of the meeting beyond just what you
19 were asked to do?

20 A. I do, but I can't -- my
21 memories are more associated with the parts that I
22 was responsible for. I don't have a detailed
23 recollection of that area.

24 Q. If you could go to the
25 next image, Registrar. You'll see near the middle

1 of the page under page 4, it says:

2 "Mike got report on
3 safety and says safe but
4 obstacle is inconsistent
5 info shared publicly with
6 council."

7 And then it says "my
8 emphasis."

9 So do you recall the focus or
10 the discussion at the meeting being about how
11 there was inconsistent information shared?

12 A. I do recall that coming
13 up.

14 Q. Do you recall the message
15 being to council that the issue was the
16 inconsistent information, not the safety of the
17 road?

18 A. I certainly recall there
19 being the discussion that the road was not unsafe,
20 and that there certainly was an appreciation at
21 the staff level that a concern was the
22 inconsistent statements, that that was certainly
23 something that we were aware of and recognized
24 that that might be an issue for council and the
25 public.

1 Q. At then at the bottom of
2 this page, it says:

3 "Nicole, David W help
4 answer, plus CIMA says
5 look at numbers
6 correctly." (As read).

7 Do you recall conveying to
8 council the need to look at the numbers correctly?

9 A. So I don't recall that
10 specific statement, but I was responding to I
11 believe a question from a Councillor. So I
12 believe I indicated that David would help respond
13 and that CIMA was providing advice. I don't
14 recall specifically what that was attempting to
15 capture.

16 Q. Registrar, could we also
17 have image 13 up as well. At the top of 13, it
18 says:

19 "No other steps to take.
20 Ref to OP, could we have
21 two experts saying dif
22 things?" (As read).

23 A. So I believe, and it's
24 hard to tell from the note there, but that my
25 comment around CIMA was in terms of the standards,

1 dealing with the standards that were being
2 referred to in the Tradewind report, and also that
3 they had confirmed that there were no additional
4 steps that they needed to take, and that that
5 would assist in addressing the exposure to
6 liability that was referred to in the question.

7 Q. And when it says could we
8 have two experts saying different things?

9 A. I believe that was a
10 continuation of the question, not my statement.

11 Q. And then at the bottom of
12 the page -- so just you'll see it says David and
13 then there's a number of bullets underneath it.
14 It says "CIMA only recently saw numbers."

15 This is at the bottom.

16 "So hadn't been commented
17 on before. Not challenge
18 the friction numbers, but
19 CIMA ref conclusions need
20 to go back to TW for
21 conclusions." (As read)

22 So hadn't been commented on
23 before, not exactly friction anyplace but CIMA ref
24 -- TW for conclusions.

25 Do you recall Mr. Boghosian

1 talking about the fact CIMA only recently saw the
2 numbers?

3 A. No, I don't.

4 Q. Was there discussion
5 about going back to Tradewind?

6 A. I don't recall that.

7 Q. Registrar, if you could
8 pull up 14, next to 13. Thank you.

9 Near the middle of the page,
10 you'll see there's a note that says:

11 "Hard to counter
12 conclusion this is this a
13 problem in wet. CIMA
14 made recs long list in
15 November 2015. Serious
16 wet road. David made
17 sure to downplay TW or Q
18 them. The conclusion
19 would be a wet road
20 problem." (As read).

21 Do you recall Mr. Boghosian
22 stressing to council that this was a wet road
23 issue?

24 A. No. I mean, not beyond
25 what's identified in the notes.

1 Q. Do you recall in your
2 discussions with Mr. Boghosian if that was a theme
3 for Mr. Boghosian, that this was a wet road
4 problem?

5 A. I don't recall that in
6 particular, no.

7 Q. And then if you would go
8 to image 15, Registrar. You'll see under the
9 second line it says "Nicole, discussion of six
10 claims."

11 Do you recall discussing the
12 claims that the City had faced?

13 A. I do, to a certain
14 extent.

15 Q. Where had you gotten the
16 information about the claims from?

17 A. I had obtained that
18 information from Mr. McLennan and from my staff.

19 Q. Registrar, if you could
20 go to the next image. One more actually. About
21 the middle of the page, this is on image 17,
22 you'll see it says "mayor" and a bunch of question
23 marks. And then you'll see it says Nicole four
24 lines. It says:

25 "Nicole, but in dif way.

1 Collision stats, so
2 arguably IDed by other
3 means." (As read).

4 There's a question. It says:

5 "Was council ever
6 informed of wet road
7 problem to degree found
8 today? Dan not aware of
9 it re friction. Nicole
10 but in dif way.

11 Collision stats, so
12 arguably IDed by other
13 means." (As read).

14 Do you recall conveying to
15 council that arguably the wet road issues were
16 conveyed by other means?

17 A. I don't have a specific
18 recollection of that exact statement, but I have
19 no reason to believe it's not correct.

20 Q. If you could go to image
21 19, Registrar. Actually let's do 18 and 19,
22 sorry.

23 At the bottom of 18, the
24 Whitehead -- there's a few bullet points that says
25 "staff or council interests," and then over at 19

1 it says "council informed and protected," and it
2 says:

3 "Nicole, client is City,
4 primary response is to
5 corp, plus if diverge,
6 take action but don't see
7 diverge at this point."

8 Do you recall telling council
9 that your client was the City and not council?

10 A. No, because that's not
11 the case. My client is the City and council, they
12 are one and the same thing. What I was
13 identifying the distinction between there was that
14 Councillor Whitehead had asked if there were -- if
15 there had been a situation where staff and council
16 interests diverged or if there was a conflict
17 between those two, and I identified that the
18 corporation and city council are my client and if
19 there was a distinction or a divergence between
20 what was my duty to the City as my client versus
21 what staff we might otherwise be responsible in
22 terms of staff, that we would address that
23 conflict at that point in time. But until there
24 was a divergence in those interests, that there
25 would not be a need to address that issue.

1 Q. Up until this point, you
2 didn't consider there to be any divergence
3 between what you were doing with staff and your
4 duty to council and the City?

5 A. Absolutely not.

6 Q. Registrar, could you go
7 to image 21. You'll see in the middle of the page
8 it says:

9 "Gary, cocky,
10 condescending. Why won't
11 be a fall guy? Do we
12 need him for lawsuits?"

13 (As read).

14 Do you recall that discussion
15 coming up at this meeting?

16 A. No, I don't.

17 Q. Do you recall this issue
18 about whether or not you need him for lawsuits
19 coming up?

20 A. I remember there being a
21 discussion about whether Gary had or Mr. Moore had
22 or had not been involved in previous claims, but
23 no, I don't recall any more details of the
24 conversation.

25 Q. Then further down the

1 page you'll see it says:

2 "Nicole understands
3 concern with Gary's
4 conduct. Might be
5 beneficial to have a
6 third party look at
7 reasonableness."

8 Do you recall conveying that?

9 A. No, I don't.

10 Q. Last page. If you could
11 go to image 22. You'll see in the middle of page
12 it says:

13 "Mayor, release of
14 documents now. Nicole,
15 no, go through process re
16 FOI. Release of what has
17 to be but also protect
18 (indiscernible)." (As
19 read).

20 Do you recall advising council
21 that the release of any further documents should
22 go through the FOI process?

23 A. I don't specifically
24 recall having that conversation, but that was our
25 usual practice. So I would have been identifying

1 that that was the usual practice because that
2 process had safeguards in terms of reviewing to
3 ensure that there was no privileged or otherwise
4 information that wouldn't normally be released.
5 So it had a review process. So that was our
6 normal practice, was to go through FOI. Again,
7 ultimately that was council's decision --
8 determination to make.

9 Q. What would be?

10 A. Whether or not to release
11 any particular documents or to provide anything to
12 the public.

13 Q. Right, but your advice to
14 council at this point was to go through the FOI
15 process?

16 A. I don't recall making
17 that specific advice, rather than identifying that
18 that was the usual process.

19 Q. You didn't give any
20 advice either way?

21 A. I don't recall making a
22 recommendation that they don't do that because to
23 this point in time we were going under the --
24 like, that information was going to be released,
25 so I'm not sure that that's consistent with what

1 was happening.

2 Q. Registrar, could you pull
3 up overview document 10A, page 72. At
4 paragraph 172 there's an e-mail from Mr. Soldo,
5 circulating a copy of the 2019 roadside safety
6 assessment. Just for your reference, this is on
7 February 7th, 2019.

8 A. This is from
9 February 7th?

10 Q. 7th, yeah, the next day.

11 A. Okay. Sorry, there's a
12 lot of dates in there.

13 Q. At 173 you reply "was
14 this the report provided to committee?" And he
15 says "it was not attached to the report."

16 And then if we could also pull
17 up 73. You'll see at paragraph 175 it says:

18 "Later that day Ms.
19 Racine replied to Mr.
20 Soldo's e-mail. She
21 wrote apologies
22 (inaudible) this report
23 already public. I lost
24 track of what is and
25 isn't. Are you just

1 providing it to us so
2 that we have it to
3 reference? If it's not
4 public, I think we are at
5 legal saying that
6 additional report
7 requests will be
8 considered through the
9 FOI process at this time.
10 If we're able to provide
11 information earlier, we
12 will advise." (As read).

13 Do you recall that being the
14 advice at the time?

15 A. I recall that being a
16 live issue in terms of how we were going to
17 release any further documents. I don't recall if
18 it's in this particular section, but I do remember
19 having conversations with Mr. Zegarac around how
20 exactly -- whether we were going to follow our
21 normal process, which would have otherwise been
22 the case, or whether there was -- you know, in the
23 absence of direction from council, or were we
24 going to release the documents at the request of
25 individuals in the public. I don't recall making

1 a particular recommendation. I do remember we
2 were discussing it at the time in terms of how
3 best to proceed.

4 Q. And then actually I
5 should have taken you to this. If you could go to
6 image 76. At paragraph 184 there's a reply from
7 you where you say:

8 "I would want to confirm
9 the approach on the last
10 issue with Mike, i.e.,
11 advising that FOI is not
12 needed." (As read).

13 That's what you were referring
14 to?

15 A. Exactly, yes. So I was
16 wanting to confirm with the City manager what our
17 approach was going to be.

18 Q. Registrar, could you pull
19 up --

20 A. This was again prior to
21 seeing council again, right, in a week, so we
22 were -- nobody knew we were going to be in front
23 of them again with this issue on the agenda for
24 the 7 -- 13th. I believe.

25 Q. Right. So you wanted to

1 confirm the approach because of the upcoming
2 council meeting?

3 A. If we were going to --
4 how we were going to address these requests in
5 that intervening period.

6 Q. Do you recall the council
7 meeting on February 13th, 2019?

8 A. To some extent. Not
9 specifically.

10 Q. What is the extent of
11 your recollection?

12 A. I don't have specific
13 recollection at that point. I know it was quite
14 late in the evening, and I don't believe I had any
15 notes around what we discussed.

16 Q. So you don't have any
17 recollection of the February 13th meeting?

18 A. Not specifically, no.

19 Q. When you say "not
20 specifically," do you have any recollection --

21 A. I remember being there
22 and I remember it happening, but I don't recall
23 the contents of the discussion.

24 Q. Registrar, could you pull
25 up image 108. You'll see at paragraph 266, this

1 is February 14th, 2019, Mr. Soldo sends you an
2 e-mail together with Mr. McKinnon and Mr. McGuire,
3 and he says:

4 "The last memo from Brian
5 was through your office
6 and the external lawyer.
7 I would like to contact
8 CIMA regarding the new
9 friction data we have
10 from MTO in order for
11 them to review it in the
12 same context and to
13 extrapolate a degradation
14 curve based on the data.
15 Do we go through the same
16 process with the external
17 lawyer?" (As read).

18 You forward that to
19 Mr. Boghosian, and then you ask if he's
20 comfortable with staff dealing with CIMA directly
21 or should it be through us, and Mr. Boghosian says
22 "I think Edward should deal with CIMA directly."

23 Why were you asking
24 Mr. Boghosian for advice on this?

25 A. At that point we were a

1 day or two out of the council meeting, and I was
2 still relying on David for support on the
3 litigation component and reviewing the various
4 comments that were being made publicly. It was
5 just a double check. It was certainly not my
6 expectation that Edward would need to go through
7 us to have those conversations with CIMA. I
8 simply was just double checking given where we
9 were with all of the situation with council, so I
10 just was double checking that.

11 Q. Right, because previously
12 the only reason that the CIMA report was obtained
13 through you and Mr. Boghosian was because of this
14 intention to protect it with privilege?

15 A. So only from -- only on
16 the basis from that stemming from the 23rd council
17 meeting, yes.

18 In my mind that particular
19 loop was closed, so there was no reason for -- on
20 that particular question, so there was no need for
21 any of the staff to continue to go through that
22 route, that they could resume their usual duties,
23 which was to speak to CIMA directly. That small
24 blip was done.

25 Q. Because there was no more

1 concern about whether -- about the communications
2 between public works and CIMA becoming public?

3 A. Because that very
4 specific question that council had asked was
5 answered.

6 Q. So after the
7 February 13th meeting with council, what role, if
8 any, did Mr. Boghosian have?

9 A. I was relying on him for
10 some further advice on reviewing communications if
11 there -- to assist to see if there were any
12 concerns around any particular communication or
13 response made publicly. To a certain extent. And
14 really Mr. McKinnon was dealing with those very
15 well and on his own.

16 Q. Mr. McKinnon was dealing
17 with the communications, but you were providing
18 some assistance on that?

19 A. As needed and as
20 requested, but certainly not on every single
21 thing.

22 Q. And you would then look
23 to Mr. Boghosian for some advice if necessary?

24 A. Yes, if that was needed,
25 I was still -- Mr. Boghosian was still available

1 to assist if I needed.

2 Q. Just give me one moment.

3 Thank you, Ms. Auty, those are
4 my questions. I understand that counsel for
5 Golder may have questions for you.

6 MS. JENNIFER ROBERTS:
7 Commissioner, may I please proceed?

8 JUSTICE WILTON-SIEGEL: Yes,
9 please proceed, Ms. Roberts.

10 MS. JENNIFER ROBERTS: Thank
11 you.

12 EXAMINATION BY MS. JENNIFER ROBERTS:

13 Q. Ms. Auty, I'm Jennifer
14 Roberts and I'm counsel for Golder, and I do have
15 a few questions.

16 Registrar, I want to -- pardon
17 me -- I want to go back and forth between two
18 documents, Hamilton 64331 and CIMA CIM17195. Is
19 it possible to put them both up on the screen?
20 Hold on. You'll have to bear with me. I don't
21 think that's the right one. I have 17195 being
22 the Golder report.

23 MS. CONTRACTOR: I think for
24 the CIMA documents you have to add .001.

25 MS. JENNIFER ROBERTS: Thank

1 you. So that is 0001. Thank you, Ms. Contractor.

2 BY MS. JENNIFER ROBERTS:

3 Q. Let's look first at

4 Mr. Boghosian's letter of February 4 which you've

5 just gone through. One of the documents that

6 Mr. Boghosian looked at was the six-year

7 performance review, which we've been calling the

8 Golder report. Registrar, can we please turn to

9 page 2 of the February 4 letter, image 2. That's

10 Hamilton 64331. Thank you.

11 So, Ms. Auty, the Golder

12 report summarized on the second page of

13 Mr. Boghosian's letter, it's part of background

14 facts in it, you'll see it in the middle of this,

15 and in the paragraph beginning "The report notes."

16 Registrar, can you please call out those two

17 paragraphs, "The report notes that friction

18 testing." Thank you.

19 Does that make it easier for

20 you to see, Ms. Auty? It makes it easier for me.

21 Thank you.

22 So you'll see that the letter

23 summarizes parts of the Golder report, and

24 Mr. Boghosian writes that:

25 "Golder summarized

1 Tradewind's findings as
2 showing that friction
3 testing in both the
4 southbound and northbound
5 lanes derive friction
6 numbers of 34 to 39.
7 Golder notes that
8 friction testing values
9 should be at least 40 to
10 be considered adequate."

11 Do you see that?

12 A. I do see that.

13 Q. So I want, please, to go
14 to -- Registrar, can you please go to image 10 of
15 the Golder report, which is that CIMA Document
16 17195.0001. Thank you.

17 In subparagraph 5,
18 Dr. Uzarowski summarizes the friction testing and
19 -- thank you -- and you'll see in that paragraph
20 below the chart that he writes here that:

21 "The friction number
22 values are higher than
23 when measured in 2007."

24 And he summarized:

25 "They are considered to

1 be relatively low."

2 Do you see that?

3 A. I do.

4 Q. So here you have a
5 pavement and materials consultant that City of
6 Hamilton has retained who's providing advice, his
7 findings as to interpreting the CIMA results, and
8 he says that they're relatively low. Do you see
9 that?

10 A. I see that that's what's
11 written there, yes.

12 Q. Registrar, can you please
13 go back to that same paragraph in the Boghosian
14 opinion letter that you had called up. Thank you.

15 I'm going to observe for you
16 that Mr. Boghosian chooses not to include
17 Dr. Uzarowski's findings that the friction values
18 on the surface of the Red Hill is relatively low.
19 Do you agree with that?

20 A. This is Mr. Boghosian's
21 letter. What choices he did or didn't make in
22 terms of what he provided as a summary, you would
23 need to speak with him. I cannot answer that.

24 Q. Okay. So I get that, but
25 is that -- when you were reviewing Mr. Boghosian's

1 opinion letter, and it looks as though it took
2 more than six weeks to be finalized, did you note
3 that Mr. Boghosian had not in fact included the
4 finding of the pavement expert retained by
5 Hamilton?

6 A. So I did review this --
7 his opinion letter, and I was comfortable with the
8 information he was providing, but ultimately how
9 he came to the information he put in here, into
10 his opinion letter, is his decision, and certainly
11 I don't have any comment to make on it.

12 Q. Did you note the absence
13 of that finding in Mr. Boghosian's opinion letter?

14 A. I don't recall having
15 that particular thought.

16 Q. He then summarizes the
17 analysis and recommendations, which is the next
18 paragraph. Do you see that?

19 A. I do.

20 Q. He's got a number facts
21 here about the Red Hill Valley Parkway. Actually,
22 Registrar, can you take out that callout because
23 that looks like as though that's the total of what
24 he summarizes about the Golder report. Do you see
25 that? Then he goes on to the Tradewind report.

1 If we go to look at the Golder
2 report, which is the other document you've got up,
3 analysis and recommendations, you'll see there's
4 overlap there in terms of the findings about the
5 number of average annual daily traffic and the
6 fact that there were two flooding episodes.

7 Registrar, can you please go
8 to the next image on the Golder report. Thank
9 you.

10 You'll see in fact that the
11 analysis and recommendations in the Golder report
12 go onto a second page which aren't included in
13 Mr. Boghosian's summary. Do you see that?

14 MS. CONTRACTOR: Mr.
15 Commissioner, I'm not sure I understand this line
16 of questioning. I don't think we've confirmed
17 whether Ms. Auty has even reviewed the Golder
18 report, but she stated Mr. Boghosian's summary is
19 really up to him. I'm not just sure whether --

20 JUSTICE WILTON-SIEGEL: I
21 think we'll allow the line of inquiry. She can
22 answer the questions. What to make of them is
23 another matter altogether.

24 MS. CONTRACTOR: Thank you.

25 JUSTICE WILTON-SIEGEL: Go

1 ahead.

2 BY MS. JENNIFER ROBERTS:

3 Q. Thank you. Then if we
4 can please go down to the Golder report, beginning
5 the paragraph "on the remaining portion of the Red
6 Hill, of the RHVP, existing cracks." Can you
7 please call that out, Registrar. Thank you.

8 Here there's additional
9 recommendations that are provided by
10 Dr. Uzarowski, and he states here, he provides for
11 some remedial steps for the Red Hill, and then he
12 goes on and says:

13 "By carrying out mill and
14 overlay where required
15 and applying
16 microsurfacing, the issue
17 of relatively low FN,
18 friction number, on the
19 Red Hill Valley Parkway
20 would also be addressed."
21 (As read).

22 And then he goes on to make
23 recommendations about what is included. Do you
24 see that?

25 A. I do.

1 Q. You'll agree with me that
2 the recommendation to apply resurfacing to
3 address, in part, the relatively low friction
4 number on the Red Hill is not something captured
5 by Mr. Boghosian's opinion?

6 A. So I don't see it in
7 Mr. Boghosian's opinion, if that's what you're
8 asking.

9 Q. Right. Is that
10 something -- was it not included at your
11 direction, Ms. Auty?

12 A. No.

13 Q. Did you recognize that a
14 recommendation from Golder about using
15 microsurfacing to improve friction had not been
16 included in Mr. Boghosian's opinion?

17 A. Sorry, could you repeat
18 that. I'm not sure that I follow your question.

19 Q. Of course I could. Did
20 you note that a recommendation made by Golder to
21 improve surface frictioning using microsurfacing
22 had not been included in Mr. Boghosian's opinion?

23 A. No, I did not.

24 Q. Did you have any
25 discussions with Mr. Boghosian about Golder's

1 recommendations?

2 A. Sorry, was that the end
3 of your question?

4 Q. Yes. Did you have any
5 discussions?

6 A. Not specifically that I
7 recall. We discussed a number of things at
8 various points in time. I would need to check
9 over the notes and see if there was any reference
10 to that. I don't recall anything specific.

11 Q. Do you know why he didn't
12 include Golder's recommendation?

13 A. No, I do not. You would
14 need to ask him.

15 Q. Yeah, I will. I'm asking
16 for whether you know though.

17 Can we please go back to
18 Mr. Boghosian's opinion. So take down that
19 callout and go to image 11, page 11. Perhaps it
20 would help if we called out page 11 beginning with
21 the paragraph "in our opinion," and then the whole
22 balance of the page, Registrar, thank you.

23 Mr. Boghosian writes in his
24 opinion under the heading "City's response to the
25 experts' findings and recommendations":

1 "In our opinion, the
2 friction testing in 2013
3 provided no basis in and
4 of itself for any action
5 to be taken, partly
6 because Golder made no
7 recommendations to the
8 City about addressing the
9 issue."

10 Do you see that?

11 A. I see that was his
12 opinion, yes.

13 Q. I've just taken you to
14 the Golder opinion. When you read that now --
15 when you read that now, it's actually not correct,
16 is it, Ms. Auty?

17 A. This is Mr. Boghosian's
18 opinion. You would need to ask him what he relied
19 on to come to that conclusion. I can't speak to
20 that.

21 Q. But this is an opinion
22 that you then took back to city council, Ms. Auty.
23 What did you do to verify that Mr. Boghosian's
24 opinion was actually -- particularly where he
25 relies on Golder recommendations, that they were

1 true, that it was accurate?

2 A. So I provided
3 Mr. Boghosian with the information and the
4 necessary access to experts to satisfy himself as
5 to the opinion he was providing. As an expert in
6 this field, I was relying on him to provide that
7 advice to myself and to council, and that's -- so
8 that's what I did. I relied on that opinion
9 provided by him.

10 Q. I take it from that,
11 Ms. Auty, you're saying you didn't independently
12 verify that what Mr. Boghosian was summarizing was
13 correct?

14 A. I didn't independently
15 verify that particular -- that particular section.
16 It was -- Mr. Boghosian's opinion was consistent
17 with the information that I had been provided
18 through conversations with staff and through the
19 other information that I had available. There was
20 nothing inconsistent or that didn't -- that struck
21 me as a difficulty or as a concern.

22 Q. Well, it may not have
23 struck you previously, Ms. Auty, but it's a
24 glaring inconsistency. There is a recommendation
25 and it's not recorded.

1 MS. CONTRACTOR: I'm sorry,
2 I'm not sure what the question is.

3 BY MS. JENNIFER ROBERTS:

4 Q. Thank you. I'll move on
5 long. Let's go to the bottom paragraph,
6 beginning:

7 "While it is tempting in
8 hindsight to suggest that
9 the City ought to have at
10 least resurfaced portions
11 of the Red Hill Valley
12 Parkway identified by
13 CIMA as being the
14 high-risk areas for wet
15 road related collisions
16 to provide more slip
17 resistance --"

18 It goes on to provides
19 details.

20 "-- no consultant made
21 any such
22 recommendations."

23 That's not correct, is it,
24 Ms. Auty?

25 A. Again, I did not make

1 that conclusion and draw that conclusion. I can't
2 speak to that. I'm neither an engineer nor an
3 expert in that field.

4 Q. Did you suggest to
5 Mr. Boghosian that he verify the information he
6 was relying on by speaking with Golder directly?

7 A. No, I did not.

8 Q. So when this is reported
9 to the City, I'm going to suggest to you it was --
10 that the report to the City about what
11 recommendations had actually been made by
12 consultants was incomplete, Ms. Auty. Do you
13 disagree with that?

14 A. I can't agree with that.
15 I believe that this information was provided by
16 Mr. Boghosian based on his review. I don't have
17 any comment to make on that.

18 MS. JENNIFER ROBERTS: Thank
19 you. Those are my questions.

20 JUSTICE WILTON-SIEGEL: Thank
21 you, Ms. Roberts. Does the Ministry of
22 Transportation have any comments, any questions?

23 MR. BOURRIER: I can confirm
24 we don't have any questions for this witness,
25 Commissioner.

1 JUSTICE WILTON-SIEGEL: Thank
2 you. Ms. Contractor?

3 MS. CONTRACTOR:
4 Mr. Commissioner, I have a handful of questions,
5 if I may proceed.

6 JUSTICE WILTON-SIEGEL: Yes,
7 please do. It sounds as if the fire alarm has
8 suspended or terminated.

9 MS. CONTRACTOR: Thankfully it
10 has. I do note that we're past the break. I'm
11 happy to take a quick break or I'm happy to
12 proceed.

13 JUSTICE WILTON-SIEGEL: How
14 long do you anticipate being?

15 MS. CONTRACTOR: Ten minutes.

16 JUSTICE WILTON-SIEGEL: Unless
17 there's any objection, I suggest we do that. We
18 hear your questions and then take our break, allow
19 time for the next witness to be placed, wherever
20 he is going to be.

21 MS. CONTRACTOR: We'll ask the
22 next witness to make his way over.

23 JUSTICE WILTON-SIEGEL: Okay.

24 EXAMINATION BY MS. CONTRACTOR:

25 Q. Good afternoon, Ms. Auty.

1 Your evidence was that at the December 18th
2 meeting, the mayor confirmed the approach that
3 staff were taking with respect to gathering the
4 pertinent information before going to council and
5 that if he wanted an immediate report, you would
6 have provided a verbal report at the council
7 meeting that was scheduled the following day. Do
8 I have that evidence correct?

9 A. Yes, that's correct.

10 Q. Mr. Registrar, could we
11 go to overview document 9A and to image 282.
12 Ms. Auty, these are Ms. Graham's notes from a
13 meeting in January, I believe. I wanted to draw
14 your attention to the section under "Crisis cons
15 plan." If we could pull that out, Mr. Registrar.
16 Thank you.

17 You'll note that under
18 "Council information sharing," it states:
19 "Mayor knows today, don't
20 like verbal updates, the
21 reason we're here, why we
22 want you to be aware,
23 ready to answer their
24 questions." (As read).

25 Is that consistent with your

1 recollection of the direction that the mayor gave
2 you.

3 A. Yes, it is.

4 Q. Mr. Registrar, if we
5 could go to image 283, paragraph 657. This is an
6 e-mail that you send to Mr. Boghosian on
7 January 7th to set up the call that takes place on
8 January 8th. Here you state:

9 "Do you have time
10 Thursday or Friday to go
11 over some
12 questions/discuss your
13 draft opinion on this
14 matter?"

15 A. Yes.

16 Q. Was that the purpose of
17 the January 8th call?

18 A. Yes, it was. That was
19 why I was asking to speak with him.

20 Q. Does this assist you in
21 recalling when you made your notes on the draft
22 opinion?

23 A. So I believe I made them
24 around this time. I indicated I felt that it was
25 likely closer to my call with Mr. Boghosian which

1 I would have initiated here and had on the 8th.

2 Q. Thank you.

3 Mr. Registrar, could you please go to HAM64359.

4 Thank you. That's the right one. Can you put
5 both images up, first page and second page,
6 please. Thank you.

7 Ms. Auty, your evidence as I
8 understood it was that you initially engaged
9 Mr. Boghosian to get a general liability
10 assessment to understand the City's exposure in
11 light of the Tradewind report and to confirm what
12 was at the time the prevailing view that the City
13 would need to produce the Tradewind report in
14 response to the MFIPPA.

15 You also stated that it was on
16 that call that Mr. Boghosian indicated he had a
17 relationship with Mr. Malone and could reach out
18 to him to make sure he had an accurate
19 understanding of the matters. Do I have that
20 right?

21 A. Yes.

22 Q. These are Mr. Boghosian's
23 notes from the December 7th call. And you'll note
24 that under "Issues," there are only two items
25 listed there, which are MFIPPA and FOI and impact

1 of liability. Again is that consistent with your
2 recollection as to why you retained Mr. Boghosian?

3 A. Yes, it is. Those were
4 the primary issues: a quick confirmation on the
5 FOI approach, and most importantly the impact of
6 liability.

7 Q. Thank you.

8 Mr. Registrar, if we could go back to OD9A, image
9 301.

10 Commission counsel took you to
11 these notes that were made by Ms. Graham and asked
12 if when you were providing your advice or your
13 assistance to communications, whether it was with
14 the lens of trying to minimize the City's
15 liability exposure, and your response was that
16 when you're reviewing anything as part of your
17 role, you seek to minimize the risk and identify
18 any communications that might harm the City.

19 I want to draw your attention
20 to the penultimate point there, "proactive was
21 discovered."

22 Mr. Registrar, if we could
23 pull that out. The second last -- with respect to
24 the comment "proactive was discovered," arrow,
25 "instead became aware of," do you recall speaking

1 with Ms. Graham with respect to this point.

2 A. Yes, I believe I do.

3 Q. What advice did you give

4 Ms. Graham?

5 A. I was suggesting that

6 she -- that the language used be more proactive in

7 terms of using a more proactive voice when making

8 those comments, and in particular that I wanted to

9 have Mr. Boghosian look at those communications

10 and provide his advice.

11 Q. Specifically, what was

12 your concern with the "was discovered" language?

13 A. My concern with that

14 language was that it might suggest a judgment or a

15 particular -- it's a judgment, like in terms of

16 judgment, or looking at making comments on

17 information that -- based on information that we

18 didn't necessarily know yet, so we were trying to

19 be consistent with that language.

20 Q. So that was you

21 considering the accuracy of the information; is

22 that fair to say?

23 A. Yes.

24 Q. Thank you, Mr. Registrar.

25 We talked a little bit about the January 23rd

1 meeting with council. Do you recall if council
2 asked for a copy of the Tradewind report at that
3 meeting?

4 A. No, they did not.

5 Q. If council wanted the
6 Tradewind report, they could have made that
7 request at the meeting?

8 A. Absolutely. And there
9 would have been no concerns about providing it to
10 them.

11 Q. Thank you. Could we go
12 to HAM62570. Both pages, please. Thank you.

13 Commission counsel took you to
14 this e-mail in which you made some proposed
15 revisions to CIMA's February 4th memo. At the
16 time that you made this request, and I think your
17 evidence was that was at the request of director
18 Soldo, were you aware that CIMA had prepared a
19 speed study report on the Red Hill containing
20 their recommendations to keep the speed limit.

21 A. I believe I was.

22 Q. Did you have an
23 understanding as to whether that report -- summary
24 of CIMA's recommendations in that report would be
25 provided to counsel separately?

1 A. Yes, it was my
2 understanding there was a separate report that was
3 going to address the issue of speed limits and
4 their reduction and that that was going through
5 public works, through director Soldo in
6 particular.

7 Q. What did you expect CIMA
8 to do in response to your request for proposed
9 revision if they did not agree with the revision?

10 A. I would have expected
11 them to identify that as a concern and we would
12 have then discussed it.

13 Q. Last question, Ms. Auty.
14 When you have received Mr. Boghosian's draft
15 opinion did you compare the summary of the
16 technical reports that he provided to the
17 underlying reports themselves?

18 A. No, I did not.

19 MS. CONTRACTOR: Thank you,
20 Ms. Auty. Mr. Commissioner, those are my
21 questions.

22 JUSTICE WILTON-SIEGEL: Let's
23 take a 15-minute break, and we'll return at 10 to
24 4.

25 (DISCUSSION OFF THE RECORD)

1 JUSTICE WILTON-SIEGEL: Thank
2 you very much for attending and giving your
3 testimony over the last two days, Ms. Auty, and
4 you are excused.

5 THE WITNESS: Thank you,
6 Mr. Commissioner.

7 JUSTICE WILTON-SIEGEL: We'll
8 adjourn for 15 minutes until 10 to 4.

9 --- Recess taken at 3:36 p.m.

10 --- Upon resuming at 3:51 p.m.

11 AFFIRMED: RON SABO

12 EXAMINATION BY MS. LIE:

13 Q. Good afternoon, Mr. Sabo.
14 I understand you have been with the City of
15 Hamilton since 1989?

16 A. That's correct.

17 Q. And you were with the
18 corporation of the City of Hamilton from 1989 to
19 2001?

20 A. Yes.

21 Q. Then from the City of
22 Hamilton from 2001 to the present?

23 A. That's correct.

24 Q. And what is that
25 distinction between the corporation of the City of

1 Hamilton until 2001 and then the City of Hamilton
2 from 2001 to date?

3 A. Corporation of the City
4 of Hamilton was an area municipality, one of six
5 under a regional municipality, and in 2001 it was
6 converted to a single tier municipality that
7 combined all of those prior municipalities into
8 the City of Hamilton.

9 Q. And I understand that you
10 held the position of deputy city solicitor dispute
11 resolution in the legal services division from
12 2005 until March of 2022?

13 A. That's correct.

14 Q. Since March of 2022 you
15 have been the acting city solicitor with the City
16 of Hamilton?

17 A. Yes.

18 Q. Could you describe your
19 role as -- let's do this. Can you describe the
20 role of the dispute resolution group within legal
21 services?

22 A. Dispute resolution is
23 primarily a group of litigation lawyers who handle
24 the bulk of the civil litigation, what the City
25 does, and this might be include administrative

1 litigation of a variety, and it can include advice
2 on a variety of matters as well depending on the
3 individual lawyers. So for instance Freedom of
4 Information matters that sometimes may have fallen
5 within the scope of (indiscernible) the lawyers
6 report to me.

7 Q. And what about provincial
8 offences and the prosecutors that prosecute those
9 offences?

10 A. I am this legal contact
11 on prosecution matters for the paralegal
12 prosecutors who are part of our -- who are our
13 prosecution team for provincial offence matters.

14 Q. Did they report to you,
15 the prosecutors?

16 A. They report to the legal
17 services manager, that's mainly on administrative
18 matters. If it were a legal issue or if they
19 needed counsel to attend higher courts that
20 paralegals aren't allowed to attend, then I would
21 likely be the person who would make those
22 attendances.

23 Q. Did the legal manager
24 report to you?

25 A. No, the legal manager

1 reported to the city solicitor.

2 Q. Was it this structure
3 back in 2018 and 2019?

4 A. That's correct.

5 Q. I understand the risk
6 management (indiscernible) was added to the
7 dispute resolution group in April 2018?

8 A. That's correct.

9 Q. Where did risk management
10 sit before April of 2018?

11 A. They reported within
12 finance and corporate services, so there was a
13 staff person, probably a director that they
14 reported to prior to April of 2018.

15 Q. What was the role of risk
16 management?

17 A. Primarily they handled
18 all claims against the City that might be that
19 things that haven't turned into litigation yet or
20 they could give directions on litigation. Their
21 staff also dealt with contractual matters, the
22 requirements for insurance and indemnities, and
23 they also procured the insurance coverages for the
24 City.

25 Q. The manager of risk

1 management was John McLennan?

2 A. At the time, yes.

3 Q. Did John McLennan report
4 to you?

5 A. Starting in April 2018
6 yes.

7 Q. Describe your role and
8 responsibilities as deputy city solicitor of
9 dispute resolution back in the 2018, 2019 time
10 period?

11 A. I was the team leader or
12 manager of the team of litigation lawyers that
13 were in dispute resolution and later on I also had
14 risk management reporting to me. So we would
15 provide legal services primarily in the area of
16 litigation to the whole corporation, but the bulk
17 of our work were claims that came through risk
18 management as matters that might be covered under
19 insurance.

20 Q. How many lawyers reported
21 to you?

22 A. In 2017, 2018 I had a
23 full-time complement of seven lawyers. Over time
24 I had various contract lawyers come in for terms
25 of contract but my permanent staff were seven

1 lawyers.

2 Q. I understand that Byrdena
3 MacNeil, now Justice MacNeil, reported you to?

4 A. Yes, that's correct.

5 Q. What was her role?

6 A. Byrdena did the bulk of
7 our administrative litigation. So matters that
8 weren't necessarily the straight claim for
9 negligence, nuisance. If it was a municipal
10 matter there's lots of unique litigation and
11 possibly tribunal work that a municipality does,
12 and Byrdena would tend to be involved in those
13 matters, like issues arising out of elections for
14 one example. And all the lawyers, but
15 particularly both Byrdena and I, gave advice to a
16 number of departments on a variety of issues and
17 Byrdena's work included advice to the clerk's
18 department, public health, she sometimes worked on
19 human resource policies.

20 So there was a variety of
21 municipally-related work, and that depended
22 basically on the range of Byrdena's expertise and
23 experience.

24 Q. Did that role, what you
25 just described of Ms. MacNeil's role, was that

1 different from the other lawyers that were in your
2 group?

3 A. Yes. So I almost never
4 assigned a civil claim to Byrdena. I like to
5 reserve her experience in the unique matters, say
6 a bylaw challenge, the types of administrative
7 litigation I mentioned for her. I try to reserve
8 her capacity to deal with those issues and -- but
9 she was quite busy. She would fill her time
10 providing advice to other departments or getting
11 involved in other projects, again like policy
12 development, advising the clerk's department of
13 various matters.

14 Q. I understand that Dana
15 Lezau and Daniel Bartley also reported to you?

16 A. That's correct.

17 Q. What were their roles?

18 A. They were primarily civil
19 litigators so they would deal with claims made
20 against the City for personal injury, property
21 damage. Dan also dealt with some matters through
22 the human resources department and workplace
23 safety, but primarily the bulk of their work was
24 on civil claims and their main client was risk
25 management with those claims.

1 Q. When you say their main
2 clients, so they would take advice from risk
3 management on what to do on civil claims?

4 A. They would take
5 direction. So think of risk management, something
6 like an internal insurance department. So the
7 lawyers would handle the legal work on the claims
8 but the direction on those claims would come
9 through risk management.

10 Q. I should have said -- so
11 they would give advice to or take instructions
12 from the risk management folks?

13 A. Yes.

14 Q. What was your
15 involvement, if any, in civil litigation matters
16 that were handled by lawyers in your group?

17 A. Primarily I would assign
18 work to them and check in with them at various
19 periods on the status of work or on particular
20 claims.

21 So the normal claim would come
22 in through risk management and at the point they
23 needed legal services where say there was an
24 impending deadline to enter a statement of
25 defence, then they would transfer the statement of

1 claim to me along with documents they collected in
2 their work on the claim, and I would pick the
3 lawyer and assign the files to them.

4 Q. Who was involved in the
5 collection of documents for the purposes of a
6 civil litigation claim?

7 A. If we're talking about
8 risk management claims it would be risk management
9 staff. They would have contacts in the various
10 departments. Most of their claims came through
11 public works. So they would reach out to contacts
12 depending on the type of claim. If there was a
13 road or a park or depending on a facility or issue
14 involved and they would collect relevant documents
15 for the claim, and that's the type of material
16 that I would pass on, along with any external
17 adjusting reports that may have been included and
18 risks or notes or work on a file. And from that
19 point on the lawyer and their staff team would
20 pursue any necessary follow-ups with witnesses,
21 documents, in order to complete the affidavit of
22 documents and proceed with the claim.

23 Q. Did you have any role in
24 that process, collection of documents?

25 A. No. What I would tend to

1 do is I would receive the documents -- again using
2 the example of risk management, what they sent to
3 me. If it was an area that I had routinely been
4 involved with over my career, such as bylaw
5 enforcement, regulatory enforcement like fire
6 department, building department, then I might also
7 give some suggestions to lawyers about issues that
8 were raised by the claim, but as far as document
9 collection I was turning over what I received.

10 Q. When did the City retain
11 external counsel for the purposes of the
12 litigation claim?

13 A. So that could arise, one,
14 through shortage of resources, so my staff were
15 overloaded or the other section staff were
16 overloaded, then that might be one reason to go to
17 outside counsel. The other was expertise. That
18 would sometimes be the basis for reaching out to
19 external counsel. And also where an independent
20 opinion was sought then that might be the basis
21 for the city solicitor, either the two deputies
22 reaching out for outside counsel. And lastly,
23 risk management as part of their role in
24 maintaining the relationship with insurers would
25 sometimes work with insurers to select outside

1 counsel where the insurer required or the City
2 requested that the claim be handled through the
3 insurer.

4 Q. That might happen if --
5 depending on the size of the claim, for example?

6 A. Yes. One of the criteria
7 for informing the insurer was the potential to
8 exceed a certain amount of the deductible, then
9 that would be a basis to return to the insurer and
10 to discuss the possibility of outside counsel.

11 Q. So when outside counsel
12 was retained who did they report to?

13 A. So in the case of risk
14 matters then they would tend to report to John
15 McLennan or Diana Swaby at the time of 2017, 2018.
16 If the lawyer was retained by say myself and it
17 wasn't a risk claim, they would report to me, but
18 if it was still a risk claim I would have them
19 make the same reports to either John McLennan or
20 Diana Swaby and I would often be copied or request
21 to be copied.

22 In the case of the city
23 solicitor, or Debbie Edwards, who was deputy at
24 the time, they would make their own arrangements
25 for who that counsel reported to because either of

1 those persons could retain counsel. Although in
2 the case of Debbie Edwards and myself there's a
3 budget issue about how much you can spend, so we
4 could tend to seek out the City solicitor's
5 approval with the work and expense involved.

6 Q. When you say risk claim,
7 does that mean a claim against the City?

8 A. Sorry. I mean a claim
9 that comes through risk management. If for
10 whatever reason I was retaining counsel to deal
11 with a risk claim, a risk management claim, then I
12 would still make sure that they were reporting to
13 risk management staff because those staff again
14 would be giving the directions on handling the
15 claim to the lawyer.

16 Q. And risk management
17 claims would be claims involving the insurer?

18 A. Ones that fall within the
19 range of insured interests of the City.

20 Q. I understand that there
21 was also a commercial development and policy
22 group, CDP, within level services?

23 A. That's correct. There
24 was another deputy city solicitor. There were
25 only two of us, and the other section of the

1 office was commercial development policy, that was
2 headed up by Debbie Edwards. And they dealt with
3 a range of legal matters including advice to
4 various departments, land use tribunal matters,
5 now it's the OLT, before it was the Ontario
6 municipal board. They deal with contracts and
7 procurement, development of construction
8 contracts, bylaws, a variety of matters that would
9 fall under that section.

10 Q. Generally non-litigation
11 matters?

12 A. Except for the land
13 tribunal that I mentioned, yes. Generally not
14 litigation matters.

15 Q. What interaction did your
16 group have with the CDP group?

17 A. Well, if it was a purely
18 litigation matter then likely there wouldn't be
19 any overlap except maybe in a construction-type
20 claim where that expertise on the contract and
21 status of things might be on the other side. But
22 there were times where staff on both sides would
23 collaborate, work together on legal matters, maybe
24 something that might turn into litigation, then
25 CDP lawyers might seek out the assistance of a

1 dispute resolution lawyer.

2 Q. If something was coming
3 the CDP group to your group would that come to you
4 directly or would it go directly to one of the
5 lawyers within your group?

6 A. It would -- I would tend
7 to be informed of it. It wouldn't necessarily
8 come to me. Once staff had -- once staff knew the
9 relevant expertise of various lawyers then quite
10 often communication would occur between lawyers
11 and sometimes even clients.

12 Like, I know risk management
13 staff would occasionally reach out to a specific
14 lawyer because they are already dealing with a
15 claim that's related to another claim that has
16 come in or a very similar claim. But I would tend
17 to be informed of those matters, new actual files
18 coming up, because we try to track who has those
19 and -- so we can reach out to them and monitor
20 those activities from time to time.

21 Q. What involvement did the
22 dispute resolution group have with FOI requests,
23 Freedom of Information requests (skipped audio)
24 to the City?

25 A. At the time probably our

1 best expert in the office was Byrdena MacNeil.
2 The expertise varies over time with new staff and
3 so from time to time that expertise has been
4 primarily on the CDP side, but at this time
5 Byrdena was the likely person who -- definitely
6 who I would reach out to for her expertise on FOI
7 matters, freedom of information.

8 Q. I understand the City had
9 its own FOI office that would ultimately determine
10 what documents would be released.

11 A. That's correct. I use
12 the acronym, but Municipal Freedom of Information,
13 Protection of Privacy Act. That is the act that
14 deals with municipal Freedom of Information
15 requests, and the act also allows counsel to
16 delegate ahead for the purpose of determining
17 responses to Freedom of Information requests, and
18 that head as assigned a staff in the clerk's
19 department.

20 Q. So what role would
21 Ms. MacNeil or anyone else in legal services be
22 playing in determining whether or not a document
23 would be responsible to a FOI request?

24 A. Ms. MacNeil's expertise
25 would be applied to analyze documents either at

1 the request of a client group, like another staff
2 department or section, to help guide them through
3 the process or explain in more detail so that the
4 issues that related to the character and the
5 document that may be releasable or non-releasable
6 depending on the circumstances, and that
7 information also given the access and privacies
8 office experienced with Byrdena, they would often
9 refer to that material as guidance.

10 For instance, Byrdena might
11 review and research access to a record and give
12 the results of her research to the access and
13 privacy office, but ultimately that office
14 determined what documents were released under a
15 request.

16 Q. I understand that you
17 reported to the city solicitor, Nicole Auty?

18 A. That's correct.

19 Q. How much contact did you
20 have with Ms. Auty on a day-to-day basis?

21 A. We would tend to see each
22 other during the day. We would have periodic
23 meetings the management team, if you will, of
24 legal and risk would meet periodically as well.

25 So I would routinely have

1 access to Nicole, or she to me, because I was one
2 of the people who supported her in her role. Like
3 if she was away on vacation I might have to step
4 in to meetings and things of that sort as well.
5 So we would try to discuss those things in advance
6 so there was coverage for the city solicitor
7 position.

8 Q. How much oversight did
9 she provide over the work you were doing?

10 A. That's difficult to
11 answer. In amount terms, she had considerable
12 experience in the legal matters, including
13 litigation, and I would either seek her guidance
14 periodically or accept her guidance on matters and
15 I would try to bring significant issues to her
16 attention so that she had an opportunity to do so.
17 But it's difficult to quantify that.

18 Q. What are the significant
19 issues that you would take to Ms. Auty?

20 A. It would really depend on
21 the circumstances. It could be a variety of
22 things. One of the things that would tend to be
23 raised with the city solicitor are matters heading
24 to committee or council in report form, or issues
25 that would generate discussion in those locations,

1 committees or counsel, or counsel itself.
2 Anything significant financially again, legal
3 services has a budget that it has to follow, so
4 impacts to the budget would be another, staffing
5 concerns, resource needs in general. As I
6 mentioned before, seeking permission to obtain
7 outside counsel.

8 We would tend to work as a
9 team total, the two deputies, like myself and Ms.
10 Edwards at the time and the city solicitor to
11 discuss issues like that and work through them if
12 we need to know the direction.

13 Q. Who would Ms. Auty report
14 to?

15 A. It varied over time who
16 the city solicitor reported to. Between the
17 general manager of finance and corporate services
18 and the city manager, and it had gone back and
19 forth a couple of times so I don't specifically
20 remember in 2017 or 2018 if there was the city
21 manager or the general manager.

22 Q. So the inquiry has
23 received a number of handwritten notes that were
24 authored by you. What was your practice in terms
25 of note taking at this time in 2018, 2019?

1 A. I would tend to make
2 notes just as a tool for recollection. If I wrote
3 it down then I would have a better chance of
4 remembering it even without referring to the
5 notes.

6 And I would also tend to make
7 notes about tasks I had to do, a to do list of
8 things arising from whatever discussion I was
9 involved in. That's generally it. Did follow a
10 sort of standard practice what I wrote down, but
11 that was primarily why I wrote things down.

12 Q. Did you take notes of all
13 calls and meetings?

14 A. No.

15 Q. Was there anything about
16 a particular call or meeting that would prompt you
17 to take a note or not?

18 A. It would really depend on
19 the circumstances. Some things -- let's say there
20 were something I had to do if I did it right away
21 or knew I could do it right away that I might not
22 take a note, for instance, of that. But it really
23 depends on the circumstances why I took notes.

24 Q. Registrar, could we pull
25 up HAM52704. Mr. Sabo, we have here an article in

1 the Hamilton Spectator. This is dated July 15th
2 2017 called "Highway Traffic Tragedies. Why Are
3 There so Many Crashes on the Red Hill?"

4 Registrar, could we pull up
5 image 2 along with image 1. Do you recall seeing
6 this article around the time it was published.

7 A. I do. I believe I read
8 the article around the time it was published.

9 Q. How did it come to your
10 attention?

11 A. I believe I was either
12 just reviewing the newspaper on say the day it was
13 published or looking at the online service, if
14 that was available at this time, I don't recall.
15 But those would be how I tended to see newspaper
16 articles.

17 Q. You read it as a resident
18 of Hamilton, not -- it didn't come to your
19 attention in your capacity as deputy city
20 solicitor?

21 A. I would read the paper
22 primarily for interest and mentions of the City or
23 any personal interest in particular stories. It
24 wasn't necessarily one role or the other. I was
25 reading a newspaper.

1 Q. Registrar, if you could
2 call out the last four paragraphs on image 2.
3 Makes it a little bit easier to see.

4 A. Thank you.

5 Q. So here you'll see
6 there's a quote from Mr. Moore, it says:

7 "There's no official
8 report. Moore had only
9 an informal chart sent in
10 an e-mail in December
11 2015. Friction testing
12 was not fulsome and the
13 results were conclusive"
14 he said.

15 "But instead of doing
16 further testing as was
17 recommended the City
18 decided to repave."

19 And then, Registrar, could we
20 pull up image 3. Call out the first three
21 paragraphs.

22 There's a quote from

23 Mr. Moore:

24 "All we got was an
25 indication that we should

1 do further work, Moore
2 said. It was moot when
3 we decided to go ahead
4 with repaving. The City
5 refused to share that
6 chart with the Spectator.
7 No one ever releases that
8 type of information
9 because it's the first
10 thing anybody would use
11 in a lawsuit, Moore
12 said."

13 Do you recall any discussion
14 at the time around these comments that Mr. Moore
15 had apparently made to this spectator?

16 A. No, I don't.

17 Q. Do you recall if these
18 comments caused you any concern at the time?

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

20 Q. Registrar, could you pull
21 up HAM64106, image 2. You'll see the bottom of
22 the page there's an e-mail from Dane Lezau, August
23 3rd, 2017. It refers to opening a new file in the
24 third paragraph.

25 Then you'll see at the top of

1 the page there's an e-mail from you to Ms. Lezau
2 and Cheryl Morrison that same day. You say:

3 "This may be somewhat
4 related to recent
5 articles in the Spectator
6 questioning the choice of
7 paving material for the
8 Red Hill. The story has
9 a staffer saying they
10 wouldn't release a study
11 done on the surface to
12 the effect or everyone
13 would sue us. I expect
14 the study will be a
15 relevant record."

16 What were the recent articles
17 in the Spectator that you were referring to here?

18 A. I believe it may be a
19 reference to a series of articles the local
20 newspaper had done around the time, but I believe
21 in this e-mail I was connecting some of the
22 content of the article you pointed me to to the
23 issue of the claim had come in and identifying
24 that as a relevant record that the lawyer would
25 want to pursue.

1 Q. So the staffer you're
2 referring to here is Mr. Moore based on the
3 July 2017 article that we just looked at?

4 A. I believe that, just
5 based on the very specific reference to content of
6 the article that they wouldn't release it, that I
7 believe I was connecting that recollection of the
8 article to this issue on the e-mail.

9 Q. When you reference the
10 study, when you say "I expect the study will be a
11 relevant record," what's the study that you are
12 referring to?

13 A. I believe it was whatever
14 document the staffer was referring to. Beyond
15 that I don't -- I didn't have any knowledge of
16 what record or document was being referred to. I
17 think I was just connecting it to the specific
18 statement that the newspaper reported in that
19 article.

20 Q. Apart from this e-mail
21 that you sent to Ms. Lezau copied to Ms. Morrison,
22 did you take any steps to determine if there was a
23 friction study at this time?

24 A. No, I'm not sure I was
25 thinking in terms of a friction study. I was just

1 indicating that there's a relevant record that we
2 wanted to make sure we looked at.

3 Q. Apart from this e-mail
4 did you take any steps to determine if there was
5 that study?

6 A. No, I didn't.

7 Q. Here you're referencing
8 the comments from the staffer. Do you recall any
9 discussions within the City about those comments?

10 A. No, I don't. Not at the
11 time, no, I don't.

12 Q. There were no discussions
13 or you don't recall any? There may have been but
14 you just don't remember?

15 A. I don't recall any
16 discussions being part of them if it's -- if the
17 question relates to contact with Gary Moore, it
18 was very infrequent that I had any involvement
19 with Mr. Moore. I knew who he was but it was very
20 rare that I had any contact with him, so I don't
21 believe I had any discussion with him and I don't
22 recall discussions by anyone else about that.

23 Q. Were you aware of any
24 followup arising from this e-mail of August 3rd,
25 2017?

1 A. No, I wasn't aware. Just
2 like a normal situation, I had left the document
3 process to risk management staff as well as the
4 individual lawyer on the file.

5 Q. Were you aware that
6 Shillingtons LLP had been retained by the City for
7 the claim involving a collision on the LINC?

8 A. Timeframe?

9 Q. In 2017, 2018.

10 A. I don't believe I was
11 aware of their involvement in a claim for the
12 City. I know risk management would reach out to a
13 variety of outside counsel and Shillingtons was
14 one of them but I don't have any recollection of
15 being told they were on a specific claim at the
16 time.

17 Q. So you weren't involved
18 in the retainer of external counsel on these risk
19 management claims?

20 A. I apologize, you referred
21 to one claim. Are you asking now was I involved
22 ever in the selection of Shillingtons?

23 Q. No, just were you
24 involved generally? If there's a claim involving
25 a collision on the LINC and risk management had

1 decided to go off and retain external counsel were
2 you involved in that process?

3 A. Generally no. I might in
4 monitoring the activity with risk management ask
5 about significant claims, but it was primarily
6 risk management role to maintain the relationship
7 with the insurer often through the City's broker,
8 and so they would make sure that they were
9 communicating with the insurer and any claims that
10 weren't being handled internally, my understanding
11 was they would discuss together the selection of
12 outside counsel.

13 Q. Did you have any contact
14 with Shillingtons?

15 A. I don't recall having any
16 direct contact with Shillingtons on any claim.

17 Q. Do you recall being aware
18 in August of 2017 Shillingtons had spoken with
19 Mr. Moore and had obtained a copy of the Tradewind
20 report?

21 A. I wasn't aware of that.
22 In 2017 risk management wasn't actually reporting
23 to me, so it was unlikely I would have learned
24 that.

25 Q. Were you aware in May

1 of 2018 -- so this would have been early days of
2 risk management reporting to you -- that there was
3 some discussions between Shillingtons and
4 Mr. Moore about the friction study?

5 A. I wasn't aware of that,
6 no. I don't recall anyone discussing that issue
7 with me.

8 Q. Registrar, pull up
9 HAM64357. Here we have a letter from Shillingtons
10 to Diana Swaby on January 31st, 2018. If we could
11 pull up image 2 together with image 1. Do you
12 recall seeing this letter at the time?

13 A. At the time no, I didn't
14 -- I don't recall seeing this, and again this was
15 early 2018 before risk management was even
16 reporting to me.

17 Q. Do you recall seeing this
18 letter at any point before preparing for your
19 evidence at the inquiry?

20 A. I don't recall seeing it
21 before my preparation through the inquiry.

22 Q. Just on page 2 in the
23 middle of the page in the paragraph that starts
24 "overall" you'll see in the second sentence
25 there's a reference to varied reports. Do you

1 recall any discussions or references to varied
2 reports?

3 A. No, I don't.

4 MS. LIE: Commissioner, I'm
5 about to move into a new section so I wonder if
6 you want to break for the day?

7 JUSTICE WILTON-SIEGEL: Sounds
8 like the appropriate time. So we'll stand
9 adjourned then until 9:30 tomorrow morning.

10 MS. LIE: Thank you.

11 --- Whereupon at 4:29 p.m. the proceedings were
12 adjourned until Wednesday, October 5, 2022 at
13 9:30 a.m.

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