

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Tuesday, October 11, 2022 at 9:30 a.m.

VOLUME 66

Arbitration Place © 2022
940-100 Queen Street 900-333 Bay Street
Ottawa, Ontario K1P 1J9 Toronto, Ontario M5H 2R2
(613) 564-2727 (416) 861-8720

APPEARANCES:

| | |
|-------------------|---------------------|
| Emily C. Lawrence | For Red Hill Valley |
| Chloe Hendrie | Parkway |

| | |
|------------------|----------------------|
| Delna Contractor | For City of Hamilton |
|------------------|----------------------|

| | |
|----------------|-------------------------|
| Colin Bourrier | For Province of Ontario |
|----------------|-------------------------|

| | |
|----------------|----------------------------|
| Nivi Ramaswamy | For Golder Associates Inc. |
|----------------|----------------------------|

INDEX

| | PAGE |
|-------------------------------|-------|
| AFFIRMED: MIKE ZEGARAC | 12380 |
| EXAMINATION BY MS. LAWRENCE | 12380 |
| EXAMINATION BY MS. CONTRACTOR | 12607 |

LIST OF EXHIBITS

| NO. | DESCRIPTION | PAGE |
|-----|--|-------|
| 170 | Affidavit of Stephanie Paparella, RHV1014 | 12380 |
| 171 | Schedule, September 3 to September 9, 2018, HAM61530 | 12406 |
| 172 | Calender invite sent to Mr. Zegarac in January 2019, HAM64395 | 12523 |
| 173 | E-mail exchange between Mr. Zegarac and his assistant dated January 18, 2019, HAM35818 | 12534 |
| 174 | Senior leadership team minutes, HAM48777 | 12560 |
| 175 | Calender invite to Mr. Zegarac and Ms. Fontana, HAM64399. | 12560 |

1 Arbitration Place Virtual
2 --- Upon resuming on Tuesday, October 11, 2022
3 at 9:30 a.m.

4 MS. LAWRENCE: I would like to
5 open this hearing by acknowledging that the City
6 of Hamilton is situated on the traditional
7 territories of the Erie, Neutral, Huron-Wendat,
8 Haudenosaunee and Mississaugas. This land is
9 covered by the Dish With One Spoon Wampum Belt
10 Covenant, which was an agreement between the
11 Haudenosaunee and Anishinaabek to share and care
12 for the resources around the Great Lakes.

13 We further acknowledge that
14 the land on which Hamilton sits is covered by the
15 Between the Lakes Purchase, 1792, between the
16 Crown and the Mississaugas of the Credit First
17 Nation.

18 Many counsel appearing today
19 are in Toronto, which is on the traditional land
20 of the Huron-Wendat, the Seneca and most recently
21 the Mississaugas of the Credit River. Today this
22 meeting place is home to many indigenous people
23 from across Turtle Island, and I am grateful to
24 have the opportunity to work on this land.

25 Commissioner, we have our

1 witness today, Mr. Zegarac. Before he is sworn, I
2 would also like to file an affidavit that
3 commission counsel has prepared for another
4 witness and which all counsel have reviewed and
5 have agreed does not require any examination.
6 This is the affidavit of Stephanie Paparella.
7 Registrar, it is RHV1014 and, by my count, we are
8 on Exhibit 170, so I would ask that be made the
9 next exhibit, please.

10 THE REGISTRAR: Noted,
11 counsel. Thank you.

12 EXHIBIT NO. 170:
13 Affidavit of Stephanie
14 Paparella, RHV1014.

15 THE REGISTRAR: Sorry,
16 counsel. Would you like me to put the document up
17 on the screen?

18 MS. LAWRENCE: No, it's just
19 filing into the record. Thank you. And with
20 that, we can turn to our live witness for today,
21 Mr. Zegarac, who has not yet been sworn.

22 AFFIRMED: MIKE ZEGARAC

23 EXAMINATION BY MS. LAWRENCE:

24 Q. Good morning.

25 A. Good morning.

1 Q. I'm going to start with
2 some questions about your professional background,
3 employment history and education. So, I
4 understand that you have been employed with the
5 City of Hamilton since August 2001. Is that
6 correct?

7 A. That's correct.

8 Q. I understand that you are
9 currently the general manager of finance and
10 corporate services?

11 A. That's correct.

12 Q. And you first began in
13 that role in January of 2013?

14 A. That's correct.

15 Q. You were in that role,
16 general manager, finance and corporate services,
17 until the summer of 2018 when you were appointed
18 interim city manager. Is that right?

19 A. That's right.

20 Q. And you held the role of
21 interim city manager for approximately nine or ten
22 months, from August or July of 2018 to May 2019.
23 Is that right?

24 A. That's right.

25 Q. During that time, was the

1 general manager of finance and corporate services
2 role still your home position?

3 A. It was my home position,
4 but it was backfilled. There was an acting
5 general manager of finance, corporate services,
6 Mr. McMullen. Mr. McMullen held a director
7 position within that department, and so he was
8 providing coverage during that period I was
9 interim city manager.

10 Q. Okay. And so, in May of
11 2019, you went back to your role of general
12 manager, finance and corporate services, and
13 Mr. McMullen went back to his former role. Is
14 that right?

15 A. That's correct.

16 Q. Prior to becoming general
17 manager of finance and corporate services in 2013,
18 I understand you held number of positions within
19 the corporate services division or its predecessor
20 divisions, however they were named. Is that
21 right?

22 A. That's correct.

23 Q. I have the list in
24 descending order: Director of financial planning,
25 manager of planning and policy, senior policy

1 advisor and senior financial analyst. Is that
2 right?

3 A. That's right.

4 Q. Great. So, what is your
5 educational background?

6 A. I have a degree in
7 economics and business administration.

8 Q. Do you have any
9 professional designations?

10 A. I don't.

11 Q. So, my questions today
12 are going to focus on the time when you were in
13 the role of interim city manager. Before we get
14 into the more fact specific questions, I would
15 like to get a sense of your transition from your
16 home role into the role of interim city manager
17 and then your responsibilities in that role.

18 So, let's start with the
19 transition. I understand you took over as interim
20 city manager from Chris Murray, who was a city
21 manager from 2009 to July or August of 2018. Is
22 that right?

23 A. That's correct.

24 Q. How did you come to take
25 over this role?

1 A. I was approached by
2 Mr. Murray, who expressed a desire for me to
3 consider the interim city manager role. I was
4 wanting to be supportive to the corporation and to
5 our senior leadership team and, again, I accepted
6 the offer and, if I recall correctly, council
7 appointed me interim city manager in July of 2018.

8 Q. Mr. Murray formally left
9 the city manager role on August 13, 2018. Did you
10 start as city manager, interim city manager, at
11 that time or was there a period of overlap between
12 you and Mr. Murray?

13 A. So, again, if I recall
14 correctly, council appointed myself interim city
15 manager in July; however, we had some scheduled
16 family time, some vacation time in July, and that
17 led to my assuming the interim position in that
18 transition in late July and then August.

19 Q. Okay. So, that puts your
20 overlap as a couple of weeks. Is that right?

21 A. That's correct.

22 Q. What was the transition
23 like from Mr. Murray to you?

24 A. So, recognizing that I
25 was a member of senior leadership team, I did have

1 some familiarity with respect to priority projects
2 or strategic plan, the work that senior leadership
3 team collectively were working towards. The
4 transition from Mr. Murray to myself entailed a
5 series of meetings and conversations principally
6 with the work that Mr. Murray was supporting and
7 providing as a liaison to the community. So,
8 Mr. Murray, as city manager, would represent the
9 City of Hamilton and the corporation with
10 community partners. That can include
11 institutional, which are education, health sector.
12 I didn't have familiarity with respect to his role
13 at those tables, and that represented the focus of
14 our transition.

15 Q. Okay. That being the
16 externally facing aspects of the role?

17 A. Yes.

18 Q. Were you given any
19 briefings by Mr. Murray or his staff specific to
20 the public works department?

21 A. None specific to the
22 public works department, no.

23 Q. Were you given any
24 briefings specific to the Red Hill or the LINC?

25 A. No.

1 Q. Were you told or did you
2 see any schedule or agenda about the work that was
3 ongoing or planned on the Red Hill or the LINC?

4 A. I wasn't told and I
5 didn't follow closely the public works standing
6 committee agenda, so while there might have been
7 reports being brought forward or had been brought
8 forward, it wasn't a practice of mine to follow
9 closely the agenda items at that standing
10 committee as I didn't personally report through
11 that standing committee.

12 Q. Okay. And it wasn't part
13 of the transition process to get you up to speed
14 on the schedule or the agenda for that committee?

15 A. It wasn't, no.

16 Q. Prior to taking on the
17 interim city manager role, do you recall any
18 discussion with Mr. Murray or anyone else about
19 past safety improvements to the road or
20 outstanding OBL items relating to the LINC or the
21 Red Hill?

22 A. I don't.

23 Q. Did you have any
24 knowledge or awareness about complaints or
25 concerns related to the Red Hill at the time you

1 became city manager?

2 A. Any knowledge I would
3 have had would have been general knowledge, just
4 living in the community and subscribing to media,
5 print media. It would have been just general
6 knowledge with respect to occurrences on the
7 expressway.

8 Q. And when you say general
9 knowledge, what was your general knowledge about
10 occurrences on the expressway?

11 A. So, again, just having
12 read or heard of injuries, fatalities on the
13 expressway, just information that would have been
14 available to the general public.

15 Q. Okay. And, in
16 particular, there was some fatalities over time on
17 the Red Hill. Is that what you're referring to?

18 A. So, my recollection is
19 that that information was reported publicly in the
20 press and that's what I would be relying on or
21 referring to.

22 Q. Okay. Had you heard that
23 some users of the Red Hill viewed it to not be
24 illuminated enough?

25 A. I don't recall that

1 particular detail. I'm not sure that I had that
2 appreciation as to all of the issues or factors or
3 concerns with respect to the roadway.

4 Q. Okay. Did you personally
5 drive on the Red Hill?

6 A. I did in that our mother,
7 her home, was in the immediate vicinity of the Red
8 Hill on the LINC.

9 Q. Before becoming interim
10 city manager, what, if any, direct involvement did
11 you have with any Red Hill related -- with
12 anything related to the Red Hill?

13 A. Principally around the
14 financing of Red Hill related or roadway related
15 projects, so wearing that treasury hat, it would
16 have been interaction with public works staff as
17 it relates to their proposed projects, including
18 Red Hill or LINC projects, either infrastructure
19 capital or operating, so principally around
20 treasury issues.

21 Q. Okay. And do I take from
22 that that in your home role as general manager of
23 finance and corporate services, you were involved
24 in the process to budget out capital works?

25 A. That's correct. We would

1 have conversations with city departments regarding
2 their priorities, either capital or operating, and
3 with a desire to understand the nature of those as
4 we have a variety of funding sources, so we needed
5 to better understand the nature of the projects to
6 determine if they're capital, if they're
7 operating, if they're capital and appropriate
8 source of funding as it relates to those projects.

9 Q. Okay. Did you have any
10 involvement in actually setting out the items to
11 the budgeted or was it really set by the time it
12 came to you in terms of getting it through the
13 budgeting process?

14 A. The setting of
15 priorities, maybe I'll differentiate between
16 operating and capital. With respect to capital,
17 the setting of the priorities are determined by
18 the programmers, by the program areas. They set
19 priorities. We interact with the program areas
20 again to under the priorities, to try to align the
21 financing tools.

22 With respect to that the
23 operating, each department sets priorities in part
24 in alignment with the strategic plan. And then as
25 a member of senior leadership team, we did and we

1 do deliberate on business cases and council
2 referred, so potential enhancements or
3 improvements to programs and services.

4 Q. Okay. And as a member of
5 the senior leadership team, before you took on the
6 interim city manager role, do you recall any
7 discussion about any item related to the Red Hill?

8 A. I don't. With just the
9 exception of any planned or programmed capital
10 works, principally around the capital program.

11 Q. Okay. And do you have a
12 specific recollection of having discussions about
13 planned or programmed capital works on the Red
14 Hill?

15 A. I do recall some
16 conversations, just in regards to general road
17 programs and that we do leverage gas tax funding
18 from the federal government, so just trying to
19 understand the various road components as to how
20 we can apply federal gas tax funding. So,
21 principally with respect to that financing lens.

22 Q. Okay. Do you recall any
23 discussions at the City leadership team before you
24 became interim city manager about resurfacing the
25 Red Hill?

1 A. I don't.

2 Q. Turning now to your role
3 as interim city manager, and I may slip and just
4 say city manager, I do recognize the role as
5 interim, can you describe your day-to-day roles
6 and responsibilities?

7 A. So, as it relates to
8 being a liaison between the administration and
9 council, there were occasional meetings with
10 elected officials, the mayor or councillors to
11 listen to issues that elected officials may have
12 and being a conduit to the program areas in
13 regards to how we were acting or actioning on
14 those issues.

15 As a member of senior
16 leadership team, being a lead member of the senior
17 leadership team, working with the senior
18 leadership team with respect to strategic
19 initiatives or projects, ensuring there's
20 alignment with the various program areas where
21 there may be a shared objective, ensuring that the
22 various program areas were working in
23 collaboration towards those common objectives.

24 During the interim period as
25 well, I did continue to hold on to some of the

1 roles and functions of the general manager of
2 finance corporate services. We were entering into
3 the budget process and, given my familiarity of
4 having led that process for a number of years and
5 given the priority of the budgets in that process,
6 I did continue to carry some of those
7 responsibilities, supported by Mr. McMullen, so,
8 again, still preserving some of those
9 responsibilities. And then as issues would arise,
10 I would either assist in terms of coordinating
11 responses or coordinating meetings to discuss
12 potential resolutions to issues.

13 Q. Can you explain briefly
14 what the relationship is between council and the
15 city manager, besides being a liaison? How would
16 you identify that relationship?

17 A. I would describe it as a
18 direct relationship in that the city manager is
19 there to support council as it relates to their
20 priorities, being available to council to
21 understand issues that may be arising, either
22 within wards for councillors or as it relates to
23 the mayor and broader issues of interest to the
24 mayor attending meetings, A, to listen, B is to
25 act upon any action items that may arise to those

1 meetings. So, again, being a direct support to
2 the mayor and all councillors.

3 Q. And you mentioned the
4 senior leadership team. You've mentioned that
5 already. Just in a bit more detail, who reported
6 directly to you in the role of interim city
7 manager?

8 A. It would have been all
9 the general managers of the departments, as well
10 as within the city manager's office, it would have
11 been our director of corporate, I believe the
12 title was corporate initiatives and
13 communications, as well as human resources, as
14 well as the city auditor.

15 Q. Okay. So, all of those
16 three that you just listed, at the end, those are
17 not in their own departments that have general
18 managers, they're in the city manager's division?

19 A. Yes. So, those directors
20 within the city manager's division as well as the
21 leadership of each of the departments.

22 Q. Okay. What were your
23 expectations about the types of issues that your
24 general managers would raise with you versus those
25 that did not need to be brought to your attention?

1 A. So, typically I would
2 have monthly meetings with general managers and
3 they would just provide me progress reports with
4 respect to initiatives that I was familiar with.
5 They would identify issues, whether they were
6 resource issues or if there were some challenges
7 with respect to the timing and delivery of issues.

8 With respect to new issues
9 that could be arising, I would expect general
10 managers to identify what the issues are and just
11 give me a sense in terms of the challenges that
12 those issues have or the opportunities, whether
13 those opportunities may align with existing
14 priorities as set out by council through the
15 strategic plan. So, again, I would interact
16 monthly, one on one, with general managers, but we
17 would have senior leadership team meetings as well
18 about every two weeks.

19 Q. Would your reports
20 sometimes bring issues to your attention outside
21 the format of your one-on-one meetings or the
22 senior leadership team meetings?

23 A. Yeah. I will note it was
24 pre-pandemic, so we had far more opportunities to
25 meet in person, so there would be conversations

1 before meetings, after meetings, hallway
2 conversations, or there could be e-mails or phone
3 calls identifying issues.

4 Q. Okay. So, the city
5 solicitor, who was Nicole Auty at the time, did
6 she report to you?

7 A. Not directly, no. Her
8 direct report would have been to the interim
9 general manager of finance and corporate services.

10 Q. So your home position?

11 A. That's correct.

12 Q. And so, as a result of
13 her reporting relationship to your home position,
14 I assume there that she, prior to your move into
15 the new role, she reported to you when you were in
16 your home position. Is that right?

17 A. That's correct.

18 Q. And had you worked with
19 her for some time?

20 A. I believe in 2017 there
21 was a restructuring of legal services and risk
22 management, as well as our clerks division from
23 the city manager's office into corporate services,
24 so that was 2017 and, if I recall, Ms. Auty
25 started with the City in and around 2017, so,

1 again, when she joined the City of Hamilton, I
2 think it coincided or was close to the timing of
3 the reorganization.

4 Q. Over the course of your
5 evidence today, I'm going to ask you about some of
6 your interaction with Ms. Auty. Did you find that
7 you dealt with her more directly because you
8 had -- as interim city manager than you might
9 otherwise have had if you didn't have this
10 pre-existing reporting relationship with her?

11 A. I believe that's a fair
12 statement. It's given the familiarity and given
13 that Ms. Auty and I worked closely together within
14 the finance and corporate services portfolio, is I
15 was available to Ms. Auty and she was also
16 available to support me as interim city manager.

17 Q. Okay. And what did you
18 understand about her reporting relationship either
19 to the operational side of the corporation or to
20 the governance side of the corporation?

21 A. So, as it relates to the
22 general manager of finance corporate services, the
23 general manager has a responsibility over the
24 administrative oversight of the city solicitor,
25 and that would be performance appraisals, meetings

1 with the city solicitor in regards to work plans
2 and the progress of work plans, resource issues,
3 and so there was that regular check in
4 administrative function, but as well the city
5 solicitor has a unique role, as to some other
6 legislative positions within the City of Hamilton
7 or Ontario municipalities in that they are
8 solicitor to the corporation, which is council,
9 and so there's that direct conduit to council and
10 that direct relationship to council as well.

11 Q. Thank you. So, you've
12 mentioned the senior leadership team a few times.
13 Who formed part of the senior leadership team, by
14 role and not by name?

15 A. By role, our general
16 manager, health and safe communities, general
17 manager of planning and economic development, our
18 general manager of public works, the general
19 manager of finance corporate services, our
20 executive director of HR and our director of
21 communications sat in, I would say not as a formal
22 member of leadership team, but as a regular
23 participant of senior leadership team meetings.

24 Q. Okay. And I think you
25 said that the senior leadership team meetings were

1 typically held every couple of weeks?

2 A. Typically there would be
3 some changes to that routine. There are
4 particular seasons, particularly around budgets
5 season, where there would be competing demands on
6 calendars, so the meetings would be less frequent.

7 Q. Okay. Who created the
8 agendas for discussion as senior leadership team
9 meetings?

10 A. It was collaborative in
11 that if there was an issue that general managers
12 identified as priorities, they would reach out to
13 the executive assistant to the city manager to add
14 those items to the agenda. I would add items to
15 the agenda, so somewhat of a collaborative
16 approach with senior leadership team.

17 Q. Okay. I'm going to go
18 into our overview document now and ask you some
19 questions with reference to documents.

20 Registrar, could you pull out
21 OD 9A, page 130, please.

22 Mr. Zegarac, can you see that
23 full screen plus our windows where our images are?

24 A. Can we enlarge that
25 image a bit?

1 Q. We'll be able to call out
2 documents, so you can always ask if I haven't
3 called something out.

4 A. Okay.

5 Q. This is as big as this
6 gets in this way, but it may be partly your view.

7 A. I can see the image, yes.

8 Q. You can see the image?

9 A. I can.

10 Q. Registrar, could you
11 bring up 131 as well.

12 So, this is just a tech test.
13 Can you see both the images plus our images?

14 A. I can.

15 Q. Great. Registrar, you
16 can close 131. Thank you. And if you could call
17 out paragraphs 314 to 316, please.

18 Mr. Zegarac, how is that?

19 A. That's helpful, thank
20 you.

21 Q. So, we'll keep doing
22 that, but please remind me if I haven't done that
23 for you.

24 A. Thank you.

25 Q. So, the inquiry has

1 received information that the city clerks received
2 an FOI request, 18189, on November 8, 2018. And
3 you'll see Ms. Watson from the office of the City
4 clerk, the access and privacy officer there, she
5 e-mailed Nancy Wunderlich referencing the receipt
6 of this FOI, and then the FOI, the actual specific
7 question, is in 315.

8 Do you recall when you first
9 became aware that the City had received this FOI
10 request?

11 A. I'm going to suggest
12 somewhere around this time period. The issue
13 first came to my attention through a phone call
14 from Mr. McKinnon and I believe it was just prior
15 to this time period, but what I can't recall is
16 whether that phone call made reference to an FOI
17 process or simply made reference to the Red Hill
18 expressway.

19 Q. Okay. Why don't we talk
20 about that phone call with Mr. McKinnon. When do
21 you recall that phone call occurred?

22 A. I believe it was in or
23 around November 8 or 9, but I can't definitively
24 say it was either of those days or one of those
25 particular days.

1 Q. Okay. Do you remember
2 what you were doing when you received the phone
3 call?

4 A. I was actually in
5 transit. I was in transit to attend a personal
6 commitment and, for that reason, it was a very
7 brief phone call and, again, I don't recall the
8 specific details of that phone call.

9 Q. Okay. What do you
10 remember about that phone call that makes it stick
11 out to you such that you think it might be related
12 to this FOI?

13 A. I do recall reference to
14 the Red Hill Valley Parkway, but, again, I don't
15 recall if Mr. McKinnon spoke to an FOI as it
16 relates to the parkway or might have raised it in
17 some other context.

18 Q. Okay. And what did
19 Mr. McKinnon raise with you as it related to the
20 Red Hill?

21 A. He did raise the need to
22 have a further conversation or meeting with
23 respect to the parkway. Again, it was a
24 conversation of a matter of minutes and, again, I
25 believe it was simply to identify an issue and to

1 request a followup.

2 Q. Okay. Was it common for
3 Mr. McKinnon to call you to speak to issues
4 outside of your formally arranged meetings with
5 him?

6 A. Phone calls not
7 necessarily common, but again, this was
8 pre-pandemic, so we had far more opportunity for
9 in-person interaction. So, less common, but again
10 phone calls or text messages was a channel of
11 communication.

12 Q. Did you exchange text
13 messages particularly with Mr. McKinnon?

14 A. Occasionally. Not
15 regularly. Again, principally we did rely on
16 in-person conversations. We were frequently
17 attending meetings together, council meetings,
18 standing committee meetings, so it was more
19 frequent to have in-person conversations, less
20 frequent to have phone calls, and I would say I
21 would rarely rely on text messages. It would be
22 principally e-mails or in-person conversations.

23 Q. Thank you. And is that
24 true with respect to Mr. McKinnon in particular or
25 is that just your general practice?

1 A. General practice.

2 Q. Did you perceive any
3 sense of urgency from Mr. McKinnon to have that
4 follow-up meeting?

5 A. I don't recall urgency in
6 Mr. McKinnon's tone. And so, I do recall the
7 request for a follow-up meeting or conversation,
8 but, again, I don't recall any urgency either in
9 the tone or any messaging from Mr. McKinnon in
10 terms of having an urgent or immediate followup to
11 our conversation.

12 Q. Thank you. You can close
13 the call out. Registrar, could you go to page 149
14 and call out 351, please.

15 So, on November 12 at 4:55,
16 you e-mailed Darlene Barber. I think that's your
17 executive assistant. Is that right?

18 A. That's correct.

19 Q. Under the subject line
20 "Urgent Meeting," and you'll see this goes on to
21 the next page so this is cut off here, but you ask
22 for a meeting with yourself, Mr. McKinnon,
23 Mr. Sabo.

24 And, Registrar, could you
25 close that down and just pull out the top of 150:

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

5 You can close that down,
6 Registrar. Thank you.

7 So, by November 12 at 4:55, is
8 it fair to say you were aware that there was an
9 MFIPPA issue that Mr. McKinnon wanted to speak to
10 you about?

11 A. I would say based on this
12 e-mail and the subject matter, that would be fair.

13 Q. Okay. Registrar, could
14 you close OD 9A and open HAM61530, please, and if
15 you could go to image 11, please. And if you
16 could pull out November 12. Sorry, if you can
17 call out the square. Yes, thank you.

18 Mr. Zegarac, if you see right
19 at the bottom this is November 12, it looks like
20 you have a telephone call scheduled with
21 Mr. McKinnon from 4:30 to 4:45. Do you see that?

22 A. I do.

23 Q. Was this the follow-up
24 call from the call that you received when you were
25 in transit on November 8 or 9?

1 A. I'm sorry, could you
2 repeat your question?

3 Q. Sure. Was this follow-up
4 call after you had that call when you were in
5 transit on November 8 or 9?

6 A. It may have been, but I
7 can't say for certain that it is.

8 Q. Okay. Registrar, you can
9 close this down.

10 So, it looks like -- and, in
11 fact, you can close the document down.

12 So, just looking at the
13 timing, that was 4:30 to 4:45 and then ten minutes
14 later you ask your assistant to arrange a call.
15 Do you recall the discussion you had with
16 Mr. McKinnon on November 12 before you asked your
17 assistant to arrange a call, a meeting, with him
18 and Mr. Sabo?

19 A. I don't recall the
20 details of that conversation, no.

21 Q. Okay. Before I move
22 forward, I note that the document we were just
23 looking at is not yet an exhibit and I would ask
24 that it be made the next exhibit. It's HAM61530
25 and it's Exhibit 171.

1 THE REGISTRAR: Noted,
2 counsel. Thank you.

3 EXHIBIT NO. 171:
4 Schedule, September 3 to
5 September 9, 2018,
6 HAM61530.

7 BY MS. LAWRENCE:

8 Q. Thank you. Registrar,
9 could you go back into OD 9A, page 149 and 150,
10 please. Registrar, could you pull out
11 paragraph 352, please.

12 So, it looks like this meeting
13 was eventually scheduled on November 13 from 7:00
14 to 7:30 p.m. You're listed as an organizer.
15 Mr. McKinnon, Mr. Sabo are required attendees and
16 Ms. MacNeil was included as an optional attendee.

17 Ms. MacNeil here, just given
18 the way the overview document is drafted, is a
19 reference to Byrdena MacNeil. Do you know
20 Ms. MacNeil?

21 A. I did know Ms. MacNeil as
22 a member of our legal services team.

23 Q. So, going through that
24 timeline, consumer anything that led you to
25 schedule this call with this group of people?

1 A. With the exception of the
2 phone call and the potential of the earlier
3 meeting, I don't recall any other conversations as
4 it relates to the Red Hill that might have
5 triggered this meeting request.

6 Q. Thank you. Ms. Barber
7 circulated the calendar invite that said "urgent"
8 in caps. Did you view, if you can recall, whether
9 there was an urgency to have this meeting coming
10 out of your calls with Mr. McKinnon?

11 A. I don't recall that, but
12 I will note that it is my practice occasionally to
13 use the word urgent when dealing with my either
14 executive assistant at that particular time or
15 today my admin coordinator to identify the need
16 for the meeting, the time sensitivity, given the
17 competing demands. So, again, urgent, I might
18 have used the word urgent to send the message
19 around time sensitivity.

20 Q. So, urgent being can you
21 please book in the next few days?

22 A. That's correct.

23 Q. Registrar, you can close
24 this call out.

25 Do you recall why you wanted

1 Mr. Sabo at this meeting?

2 A. I can't recall why I
3 would have invited Mr. Sabo.

4 Q. Okay. So, Mr. Sabo is
5 also in the legal services department. The
6 inquiry has information that Ms. MacNeil at this
7 time was assigned to assist with the response to
8 the FOI that we looked at just a few moments ago.
9 Do you know why she was included as an attendee?

10 A. I don't, no.

11 Q. Did the meeting that's
12 referenced in that calendar invitation take place
13 from 7:00 to 7:30 on November 13?

14 A. I don't have recollection
15 of that meeting, no.

16 Q. At this time was it
17 unusual for you to book a meeting in the evening
18 like this one?

19 A. Not normal practice, but
20 given the timing, so November 13, if I recall, it
21 was just prior to our council orientation and
22 staff were working towards preparing for
23 orientation of our newly elected council, and so
24 again calendars were full, time was in demand and
25 many competing requests on time. And, again, at

1 times I'll send messages around using terms such
2 as urgent or time sensitive to suggest the need
3 for evening meetings. So, they did occur
4 occasionally, but it wasn't normal practice.

5 Q. Okay. Registrar, can you
6 call out paragraph 349 on page 149.

7 So, this is a transcription of
8 a scanned copy of an e-mail that has some
9 handwritten notes on it. I'm not going to take
10 you to the underlying documents. These are not,
11 as far as I can tell, your notes. I believe
12 they're from a package from Debbie Edwards from
13 legal services, but the notes on that e-mail say
14 in and around, at the bottom you'll see the date,
15 11/13/18. It says:

16 "Subsequent disc with
17 D. MacKinnon and Zegarac,
18 Ron + Nicole re: FOI
19 request + next steps."

20 Do you recall meeting with
21 Ms. Auty on the issue of the FOI request during
22 this time?

23 A. I do recall meetings
24 surrounding the FOI request around this time. I
25 don't recall meetings with Ms. Auty as it relates

1 to the FOI request. So, again, I don't recall the
2 specific date when it became clear that there was
3 an FOI request as it relates to the expressway.
4 What I do recall during those earlier times is
5 conversations with Mr. McKinnon and Mr. McGuire
6 around the effort as it relates to the FOI
7 request.

8 Q. Okay. Do you recall
9 Mr. McKinnon being at the very first meeting where
10 you dealt with this with Mr. McKinnon?

11 A. Again, I can't recall who
12 participated, who attended those meetings. Likely
13 Mr. McKinnon attended, but I don't have direct
14 recollection of his attendance.

15 Q. Okay. Registrar, you can
16 close this call out.

17 Did public works staff or
18 legal services staff give you any written
19 materials to review before this meeting on
20 November 13?

21 A. So, again, I don't recall
22 the details of the meeting and I do not recall
23 receiving any materials in advance of the meeting
24 or with the expectation around preparing for the
25 meeting.

1 Q. Okay. We certainly don't
2 have any electronically. I'm just asking if you
3 have any other --

4 A. I don't.

5 Q. So, recognizing your
6 recollection of this meeting may be poor or
7 non-existent, do you recall receiving information
8 about the details of the FOI request; that is,
9 that it related to friction testing on the Red
10 Hill?

11 A. I don't recall receiving
12 any details. I do recall meetings with respect to
13 the FOI request and my recollection is those
14 meetings spoke to consultant reports. I don't
15 recall when it became clear to me that the FOI
16 request was referencing friction as an issue. So,
17 again, in the early days what I recall was
18 consultant reports and I recall conversations with
19 respect to the effort as it relates to compiling
20 the information.

21 Q. Okay. So, leaving aside
22 the issue of friction for the moment, do you
23 recall -- and I'll use your words -- at these
24 early meetings that staff connected for you
25 consultant reports and the information that was

1 being requested as part of the FOI?

2 A. Staff definitely
3 connected the consultant reports in that what I
4 recall was staff highlighting the volume of
5 information that was being requested and the
6 number of reports, keeping in mind that there was
7 change in leadership, and so my sense was they
8 were still orienting themselves with respect to
9 all of the material and what material may be
10 available. That's my recollection of those early
11 days.

12 Q. Okay. So, what I hear
13 you saying is that Mr. McKinnon raised with you an
14 issue of an FOI request that was going to require
15 staff to do a fair bit of work, including finding
16 consultant reports. Was that the entirety of the
17 information that they were raising with you or was
18 there anything else?

19 A. So, again, my
20 understanding of the issues at that time was that
21 the FOI request dealt with the expressway. Again,
22 I don't recall having an appreciation as to the
23 details of that FOI request. My recollection was
24 it spoke to a series of consultant reports and
25 that staff were putting their minds to compiling

1 that content or information to satisfy the FOI
2 request and just concerns with respect to effort
3 and capacity.

4 Q. So, in these early
5 meetings, you don't recall being advised that
6 there was something in this consultant report that
7 was the reason that it was being raised to your
8 level?

9 A. My understanding was it
10 was being raised to my level because of the effort
11 that was required as it relates to the FOI
12 request, given the timelines as it relates to our
13 FOI processes. And, again, my understanding was
14 just bringing to my attention the efforts. And,
15 again, given my past experience with FOI, I do
16 recall raising with staff is the opportunity to
17 reach out to the FOI office, knowing that there's
18 opportunities to ask for extensions as it relates
19 to bringing together all the information that may
20 be required to satisfy an FOI request.

21 Q. Okay. Do you recall
22 Mr. McKinnon or any other attendee at these early
23 meetings raising with you any sensitivity about
24 any of the potentially responsive documents?

25 A. I don't know specifically

1 when I understood that the documents included
2 information that was not shared to council and to
3 the community, so clearly at some point through
4 these conversations that became clear to me. But
5 in the early days of these conversations, what I
6 do recall, it was principally around the volume of
7 information and the effort required.

8 Q. Okay. So, you say
9 principally around the volume. Was it exclusively
10 on that issue?

11 A. Yeah. I would say
12 exclusively.

13 Q. Okay. Recognizing it may
14 be hard to nail down the particular timeframe, and
15 when you say you're not sure when you understood
16 the documents included information that had not
17 been shared with council and the community, we can
18 try to put some goal posts in terms of things that
19 happened to try to orient you, but maybe we'll
20 start with one.

21 Did you know that before you
22 went eventually to brief the mayor?

23 A. Yes, we did. Yeah.

24 Q. Okay. So, that was in
25 mid-December. As we go through the chronology,

1 I'll ask you at various times, but please, I
2 invite you to just let us know if you can identify
3 when you became aware of that sensitivity. Okay?

4 A. Okay.

5 Q. So, we know at this time
6 that -- and you've already made reference to it --
7 there was a new term of council, some newly
8 elected council members, following the election in
9 October of 2018. How much of your time and
10 attention was focused on the start of new council
11 and the process that immediately unfolds once new
12 council is installed?

13 A. So, definitely the tail
14 end of October, the first half of November, in
15 preparation of the orientation for council and I
16 would say even prior to late November in that I
17 continued to provide a supportive role as it
18 relates to the election process. That was part of
19 corporate services, more specifically clerks.

20 So, in November, very much
21 focused on the orientation, working with various
22 leadership. Ms. Auty and our acting clerk,
23 Ms. Pilon, were supporting me in developing the
24 orientation material and the agendas. Working
25 with staff in terms of coordinating that

1 orientation for elected officials. It would have
2 been, if I recall, a two-day orientation period.

3 And in addition to the
4 orientation period, if I recall, there were a
5 series of workshops as well for newly elected
6 officials recognizing some of the extraordinary
7 challenges elected officials face
8 post-inauguration in that what is brought before
9 them immediately are some immediate decisions
10 needed to be made around the budget process. So,
11 again, just compiling all that information in an
12 effort to try to assist council and as well just
13 recognizing that in 2018 we had four newly elected
14 councillors. One councillor who was new in that
15 there was a four-year interruption in their term,
16 so five out of 16, so we had about 30 percent
17 turnover.

18 Q. Thank you for that. I
19 was in fact going to ask about that turnover rate.
20 In your experience, was that a large number of new
21 councillors to have to orient?

22 A. I don't know that it was
23 a large number. Again, I can't recall whether in
24 previous elections -- I don't recall turnover in
25 excess of that level in previous elections during

1 my time with the City, but I can't characterize it
2 as different from previous elections.

3 Q. Thank you. So, going
4 back to the chronology, in your interactions with
5 public works staff and legal services staff, so it
6 looks like the next time you meet with staff on
7 the issue of the FOI and the Red Hill is
8 December 6, and we will certainly get there.
9 There's a few events that happen between the
10 meeting that is scheduled on November 13 and the
11 meeting that is scheduled on December 6, so I'm
12 going to just take you through and ask what you
13 understood in the moment about those events.

14 First, do you remember staff
15 giving you updates coming out of the November 13
16 meeting before the December 6 meeting?

17 A. I do. I don't recall the
18 details of those, but I do recall conversations.
19 Again, your reference to goal posts, I would say
20 those are reasonable goal posts in terms of when I
21 became aware of the friction issue and the
22 Tradewind report in that I do recall leading up to
23 early December conversations with Mr. McKinnon and
24 Ms. Auty, recognizing that we were going to need
25 to be before council to advise council with

1 respect to the FOI request and the contents that
2 are required to satisfy the FOI request. It was
3 our previous practice to be before council and to
4 advise them of these matters before they became
5 public, so it was our understanding this
6 information would be made public.

7 Again, one of the challenges
8 we were facing is, again, reference to turnover of
9 council, not a challenge, but a recognition that
10 it would be best to provide complete information
11 to council to ensure that they're well informed of
12 the issue, and not only the issue but the history
13 surrounding the expressway given some of the past
14 reporting and I wasn't familiar with the level and
15 degree of past reporting, but again relying on
16 Mr. McKinnon and Ms. Auty, we did -- there was
17 agreement that it required a wholesome report to
18 council and December was identified as a
19 possibility. But very early on, I would say by
20 late November, early December, we understood that
21 to be too ambitious in terms of bringing this
22 information together to council.

23 Q. Mr. Zegarac, I'm going to
24 stop you there. Just for clarity -- it's always
25 hard when we're doing this virtually -- do you

1 have notes in front of you that you're reading
2 from?

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

4 Q. You're just looking down?

5 A. Yeah.

6 Q. I can't tell how you're
7 organized.

8 A. Yeah.

9 Q. Thank you. So, I'm going
10 to try to go through some of the things you just
11 said in terms of the chronology and we'll
12 certainly come back to the substance of what you
13 just said.

14 So, on November 15, so that's
15 just a couple of days after that initial meeting
16 that you had with Mr. McKinnon and others, city
17 staff got an extension or asked for an extension
18 on the FOI. Did you get an update about that when
19 it happened, that there wasn't as much urgency as
20 there had been?

21 A. I might have, but I don't
22 recall receiving that update, nor was I following
23 that process, that FOI process.

24 Q. Okay. On November 27,
25 Mr. McKinnon and Mr. McGuire met with Mr. Moore,

1 Gary Moore. Were you aware that that meeting was
2 going to take place?

3 A. I don't have recollection
4 that, no.

5 Q. Okay. And were you
6 updated or briefed about that meeting after it
7 took place?

8 A. I don't recall being
9 updated or briefed.

10 Q. Okay. And I wasn't very
11 precise with my language. I meant, sort of,
12 immediately after, you know, November 27 or
13 November 28?

14 A. I don't recall being
15 updated or briefed in regards to that meeting, no.

16 Q. Okay. Were you ever
17 updated or briefed about that meeting with
18 Mr. McKinnon, Mr. McGuire and Mr. Moore?

19 A. I don't recall being
20 updated or briefed with respect to that meeting,
21 but I do know that public works were putting their
22 minds to compiling the information as it relates
23 to the FOI. But, again, I don't recall being
24 briefed with respect to that meeting or the
25 outcome of that meeting.

1 Q. Okay. Registrar, could
2 you go to OD -- actually, can you go to a HAM
3 document, HAM27452, please, and if you could bring
4 up the next page as well.

5 Mr. Zegarac, this is a
6 document that Mr. McKinnon prepared and a few
7 different versions of this over time. This one is
8 from November 11, 2018.

9 And, Registrar, could you go
10 to the next two pages. Thank you.

11 I'm raising that just because
12 the diagram on the left-hand image might refresh
13 your memory. Do you recall reviewing a summary
14 from Mr. McGuire at any point?

15 A. I'm sorry, a summary from
16 Mr. McGuire --

17 Q. Do you recall reviewing a
18 summary from Mr. McGuire and do you recall -- I'm
19 asking now quite generally. At any point, do you
20 remember receiving a written summary from
21 Mr. McGuire about RHVP issues?

22 A. I recall receiving
23 content around timelines and chronology, but that
24 would have been much later, in advance of
25 February.

1 Q. I thought I would ask the
2 general question before the specific question.
3 So, this one is from November 11. I suspect you
4 would not be able to determine this one from some
5 later one, but do you recall receiving a written
6 summary from Mr. McGuire that included, for
7 example, the diagram on the page that's up now
8 or --

9 A. No.

10 Q. You don't remember that?

11 A. This does not look
12 familiar to me.

13 Q. Okay. Registrar, you can
14 take this down.

15 I was hoping that might be a
16 goal post to help you with the chronology. Okay.
17 So, there is a meeting that doesn't include you on
18 December 3.

19 Registrar, could you bring up
20 OD 9A, page 177, please.

21 So, I'm starting here because
22 it starts at the bottom. This is a meeting with
23 Mr. McGuire, Ms. MacNeil and Ms. Cameron. You
24 weren't at this meeting and these are not your
25 notes, but Mr. McGuire's notes of this meeting

1 contain a reference to you.

2 Registrar, could you bring up
3 page 178 and 179, please. Thank you.

4 So, these are long. You don't
5 have to review them. They are, as I say, not your
6 notes.

7 A. Yeah.

8 Q. But at the bottom of
9 page 179 under point 6, Registrar, if you can see
10 the left-hand side of the right-hand image it says
11 5, 6, 7, 8 at the bottom. If you can pull out --
12 I'm sorry, no, on the other side, the right-hand
13 side.

14 So, this is Mr. McGuire and
15 Ms. MacNeil speaking and there's a reference here:

16 "If there is a need to
17 inform council of this
18 matter, legal, Nicole,
19 city manager, Mike, and
20 general manager public
21 works, Dan, will decide
22 on a strategic direction
23 with Gord's input."

24 So, again, this is just trying
25 to goal post what you knew when. It appears from

1 this note that Mr. McGuire and Ms. MacNeil don't
2 have a sense that anything has been decided in
3 terms of taking things to council. Is it likely
4 that you had discussions with anyone in public
5 works before December 3 about what the next steps
6 were going to be?

7 A. I do recall having
8 conversations with Mr. McKinnon and Ms. Auty with
9 respect to -- Ms. Auty with respect to the
10 litigation work and the litigation risk work that
11 Ms. Auty was leading. I do recall somewhere
12 around this period, again, I can't say
13 definitively what that period is, it became clear
14 to us that we needed to be before council to
15 advise them of the information related to the FOI
16 request that would be made public, and so, again,
17 in terms of timelines, I would say late November,
18 early December, would be a reasonable timeline in
19 terms of determining that a public report or,
20 sorry, being before council to advise them of this
21 FOI request and the fact that the report would be
22 made public.

23 Q. Registrar, you can close
24 this down and go to page 195 and 196 of this
25 document, please. Registrar, if you could pull

1 out paragraph 443 and 444, please.

2 So, Mr. Zegarac, this is an
3 e-mail from Ms. Auty to you and to Mr. McKinnon
4 and she says:

5 "Based on my
6 conversations with Gord
7 and Byrdena today -- "

8 And just as a note, this is a
9 day after the meeting that Ms. MacNeil and
10 Mr. McGuire speak, which is the one we were just
11 looking at:

12 " -- I think we need to
13 get everyone together on
14 the same page to discuss
15 the totality of the
16 reports and information
17 on this issue and review
18 options for next steps.
19 I would propose Thursday
20 afternoon. I would want
21 John McLellan, Gord,
22 Byrdena, myself, plus
23 anyone else you think
24 should be there."

25 And you reply to both of them

1 saying, "Make it happen." So, just stopping
2 there, does that assist you with whether with you
3 had discussions with Ms. Auty before December 6,
4 before this meeting that's going to be scheduled,
5 or if those discussions that you're recalling
6 happened after?

7 A. My recollection is that
8 those conversations happened in and around this
9 period, again, maybe late November, early
10 December. And, again, it was with an
11 understanding that the contents being requested as
12 it relates to the FOI would be made public.

13 Q. Before we move forward,
14 I'm going to be taking you to a number of other
15 people's notes as we go forward in time. We don't
16 have many notes from you. Do you have a practice
17 of taking notes at meetings?

18 A. So, what I recognized
19 during this interim city manager period is that
20 staff often demanded, expected, my attention to
21 the conversations, and so it was not my practice
22 to take notes. There might have been others in
23 meetings to take notes, but again, what I
24 recognize is that staff typically expected my
25 attention.

1 Q. So, we don't seem to have
2 any notes from Ms. Auty, who is quite a regular
3 note taker, with discussions with you and her
4 before December 4, before this. Can you give us
5 any other details about whether your discussions
6 with Ms. Auty were ones where she was taking
7 notes? Maybe that would be a helpful way to
8 start.

9 A. I can't recall exactly
10 which meetings Ms. Auty was taking notes. Again,
11 probably something I wasn't monitoring in terms of
12 note taking at the time.

13 Q. Okay. Registrar, you can
14 close this down. If you can call out 446, please.

15 So, you'll see this is the
16 December 6 meeting being scheduled, the one I was
17 speaking about, and the calendar invitation you
18 sent to Mr. McKinnon, Mr. McGuire, Ms. MacNeil,
19 Mr. McLennan and Ms. Auty. You can close that
20 down.

21 Again, just so that your
22 evidence is very clear from the inquiry, do you
23 recall having one-on-one discussions with Ms. Auty
24 before meeting with this group on December 6?

25 A. I don't have that

1 recollection, no.

2 Q. And what about with
3 Mr. McKinnon, except for those phone calls that we
4 spoke about earlier? Do you remember having one
5 on ones with him before this larger group meeting?

6 A. I might have had general
7 one-on-one meetings just as it relates to our
8 monthly meetings, but specific to this, to the Red
9 Hill issue, I don't have that recollection.

10 Q. Okay. So, what I'm
11 hearing from you, then, is that this group meeting
12 may be the meeting that you're remembering being
13 the start of the discussions about next steps. Is
14 that right?

15 A. That's reasonable. I do
16 recall December being a potential target date for
17 reporting to council and, if I recall, that would
18 have been somewhere in the middle of December.
19 So, this would be, in terms of lead-up time to be
20 before council, this would be a reasonable time
21 period in advance.

22 Q. Okay. Do you remember
23 attending the meeting that you calendared here on
24 December 6?

25 A. I don't recall.

1 Q. You don't recall that
2 meeting?

3 A. I don't recall that -- I
4 don't recall the details of that meeting, no.

5 Q. Okay. Just for
6 comprehensiveness, did you have any one-on-one
7 meetings with Mr. McGuire before this larger group
8 meeting?

9 A. No, and it would not have
10 been my practice to have one-on-one meetings with
11 directors exclusive of their supervisor, so in
12 this case the general manager.

13 Q. Thank you. That's
14 helpful. I thought I should just ask for
15 comprehensiveness.

16 So, you said that you don't
17 have a recollection of the details of this
18 meeting. Do you generally remember having not
19 specific details but general recollection that you
20 attended a meeting with these attendees in early
21 December?

22 A. I do recall meetings in
23 December in regards to this issue that would have
24 included Mr. McKinnon and Ms. Auty, but I don't
25 recall the December 6 meeting or details of that

1 meeting.

2 Q. Okay. So, I've heard
3 your evidence so far. I'm going to suggest to you
4 that in terms of the documents, it doesn't appear
5 that you are involved between November 13 and
6 December 6. Is that how you recall it or do you
7 recall something different?

8 A. I don't recall having
9 specific meetings or conversations with the
10 leadership around this issue. What I recall was
11 leaving this in the hands of public works in terms
12 of satisfying the requirements around the FOI
13 process, and I don't recall checking in or having
14 any check-ins with respect to that work.

15 Q. Okay. So, then we come
16 to the December 6 meeting and I think you said
17 before you had questions about -- you had received
18 concerns about the volume of the FOI compilation
19 process. So, going into this December 6 meeting,
20 did you learn information about the details of the
21 consultant report that was the subject of the FOI
22 that you hadn't known before?

23 A. I don't know that I
24 received information around the details, nor would
25 I say that I understood the issue around friction.

1 My understanding at this time was principally that
2 the FOI process brought to light a report that was
3 not shared broadly, including with council, and
4 that it would be made public and that, as per our
5 past practice, we should get before council to
6 advise them of the report and the potential
7 litigation risks as it relates to that report.

8 Q. What did Mr. McGuire tell
9 you about how he found the consultant report, if
10 anything?

11 A. I don't know that it was
12 Mr. McGuire who told me about finding the
13 consultant reports. It might have been
14 Mr. McKinnon. But I do recall that it was in the
15 context of the change in leadership within public
16 works and that I recall reference to the Red Hill
17 repaving. But, again, just very general terms was
18 that staff were doing their work in advance of the
19 repaving and reviewing various reports.

20 Q. You said just a moment
21 ago that the FOI process had brought to light this
22 report that had not been shared broadly. Was that
23 the information that was conveyed to you from
24 public works staff, that the FOI request was how
25 this issue came to light?

1 A. I don't recall staff,
2 public works staff, specifically identifying the
3 FOI process. And, again, over this period of time
4 I can't recall specifically when it became clear
5 to me that it was as it relates to preparing for
6 the repaving of the project versus the FOI, but at
7 some point it became clear to me that the
8 preparation leading up to the repaving, the
9 projects and doing due diligence in terms of past
10 reports led to the discovery of the report. But,
11 again, I can't recall when that became clearer to
12 me. It might have been shared with me without my
13 appreciation at that time, but, again, at some
14 point around this period of December it became
15 clearer to me that there was a void in terms of
16 how that information was broadcast and shared.

17 Q. Okay. And the FOI
18 process, to the extent that this report was going
19 to be public through that process, that was shared
20 with you, that the connection between the fact
21 that it had not previously been shared to council,
22 that the FOI process was a process by which it may
23 become public?

24 A. Yes. It was understood
25 that the report would be shared and, as it's

1 shared, it could be potentially be made public,
2 not knowing who the applicant was and, again, the
3 necessity to inform council.

4 Q. Did you receive a copy of
5 the Tradewind report in advance or at the meeting
6 on December 6?

7 A. I don't recall receiving
8 a copy of the Tradewind report in advance or at
9 December 6.

10 Q. Do you recall when you
11 received a copy of the Tradewind report?

12 A. I can't recall exactly
13 when I received a copy of the Tradewind report,
14 but I don't recall requesting or receiving a copy
15 in December. It may have been later in January
16 that I recall having that report available.

17 Q. Okay. Were you made
18 aware at the December meeting that the Tradewind
19 report was appended to another consultant report,
20 the Golder report?

21 A. I don't recall that
22 information or the details of that meeting.

23 Q. Okay. When did you
24 become aware that the Tradewind report was
25 appended to another consultant report, the Golder

1 report?

2 A. Again, I can't say
3 definitively what that date would be. It may have
4 been shared with me earlier, but I think I had a
5 better appreciation somewhere in advance of our
6 January 23 meeting with council.

7 Q. Okay. So, are you clear
8 in your mind sitting here today that you did not
9 have the Tradewind report or the Golder report
10 before you met with the mayor?

11 A. Yes, I am clear in my
12 mind.

13 Q. At the December 6
14 meeting, did staff tell you anything about wet
15 weather collision circumstances on the Red Hill?

16 A. Again, I don't recall
17 staff getting into some of those operational or
18 technical matters with me. I believe that the
19 focus was more on the FOI and the consultant
20 report and the need to get before council.

21 Q. Okay. So, the focus was
22 on the fact that this report might become public
23 depending on who the requester was?

24 A. Yes.

25 Q. And you had to manage

1 that and go to council to update council about
2 that. Is that what I'm hearing from you?

3 A. The importance of
4 advising council that this information would
5 likely be made public in the sense that it would
6 have been shared through the FOI process and could
7 be made more or shared more broadly in the public.

8 Q. But why was it that you
9 took the view that this information should be
10 provided to council?

11 A. So, again, my
12 understanding was that it could contribute to
13 litigation risk to the municipality, so that would
14 have been one of the reasons of bringing it before
15 council, and as well having some familiarity of
16 the significance of this asset in terms of past
17 conversations with council, but, again,
18 principally around the litigation matter.

19 Q. Okay. And what did you
20 understand the litigation matter to be?

21 A. Excuse me. So, I
22 understood that the contents in the report could
23 represent some risk to the municipality with
24 respect to past claims or future claims.

25 Q. What risk?

1 A. Just risk as it relates
2 to litigation risks as it relates to the roadway.

3 Q. Can you be more specific
4 about what legal services identified for you the
5 risk was?

6 A. I can't. What I recall
7 was just simply the potential risk as it relates
8 to ongoing claims and potentially new claims
9 arising from the release of this information.

10 Q. And so, in your
11 recollection, although you don't remember this
12 meeting, you think all of that information was
13 provided to you at the December 6 meeting, or are
14 you unclear about when exactly you received that
15 information?

16 A. I can't be clear that
17 that occurred on December 6, but that timeline
18 seems reasonable in that originally we were
19 targeting a December committee meeting to bring
20 the information before council before we realized
21 that we were not ready to provide that
22 comprehensive information before council.

23 Q. Okay. So, let's talk
24 about that chronology. You said you were
25 targeting to go to council. When did you make the

1 decision to target to go to council in December?

2 A. I would say it was an
3 intent to go to council. If I recall there was a
4 council meeting in the middle of December that was
5 being contemplated, but again in consultation with
6 public works, who were leading the technical work
7 in regards to the FOI and legal service, Ms. Auty
8 and her team who were leading the litigation work,
9 it became quite clear that we would not be in a
10 position to bring wholesome or fulsome information
11 to council in December.

12 Q. When you say you were
13 targeting to go to council in December, when was
14 that? When were you having the discussions to
15 target the mid-December council date?

16 A. Again, my recollection
17 was it would have been likely around this time
18 period, early December, but again it was a short
19 period of time before we realized that we would
20 not have been ready to present the information in
21 December. So, again, it was an initial
22 conversation around the intent to be before
23 council, identifying, reviewing calendars and
24 calendars were especially challenging because of
25 the various committee meetings and the commitments

1 on staff and council, but again I would say it was
2 a short window before staff realized that was too
3 optimistic to be before council in December.

4 Q. Okay. And do you recall
5 was it a discussion to go to council proper or to
6 go to one of the standing committees of council?

7 A. I recall that being a
8 conversation. And so, recognizing that public
9 works typically reports to public works standing
10 committee, we, as staff, recognized some of the
11 challenges of having fragmented or conversations
12 with council if the technical information went to
13 public works standing committee. Public works
14 standing committee is not composed of all elected
15 officials, so you would not have all elected
16 officials, and we saw that as a weakness to the
17 public works standing committee process. And, if
18 I recall, there was some initial conversations
19 with respect to council and the city solicitor has
20 that avenue as it relates to legal matters, but
21 again general issues committee, which is a working
22 committee referred to as a standing committee,
23 would have more wholesome, fulsome opportunities
24 to bring information and provide answers to
25 questions.

1 So, again, we were still
2 putting our minds to setting our minds to which
3 committees. And, again, this is in the context of
4 recognizing that we had a number of councillors
5 who likely had limited familiarity with the
6 historical information surrounding the expressway.

7 Q. All right. And you said
8 there was a short window in which you were trying
9 to get to council in December before you realized
10 that that was too optimistic. What in particular
11 made that too optimistic?

12 A. What I recall is
13 immediately after or soon after the December 1
14 inauguration, we had a series of scheduled
15 committee meetings, principally, I believe, four
16 or five around our rate budget, which is our water
17 waste, stormwater budget, our tax capital budget,
18 and those tend to be all-day committee meetings
19 and, as they are budget GICs, we can't add agenda
20 items that are not budget related. It would
21 require a special GIC or special committee
22 meeting.

23 So, early December we
24 recognized too many competing demands. We had
25 budget GICs and standing committees, so, if I

1 recall, there was some conversation with respect
2 to middle of December, recognizing City of
3 Hamilton has a practice of a holiday shutdown end
4 of December and not reconvening again until
5 somewhere in the middle of January. So, again, it
6 would have been middle of December that we were
7 originally discussing, but again, my recollection
8 was that was a short period of time before we
9 realized that was too optimistic.

10 Q. Okay. So, I think you
11 said it was too optimistic and I think you also
12 said we wouldn't be ready. So, you went through
13 the workload from the council perspective and of
14 course staff have to support that workload. Were
15 there discussions about the work that needed to be
16 done by the staff involved in these discussions
17 that would make December, going to council in
18 December, too optimistic?

19 A. Yeah. So, thank you for
20 the question because it let's me expand upon that
21 challenge, that constraint as well. So, a number
22 of the individuals who were supporting this body
23 of work were also critical as it relates to those
24 December committee meetings. So, Mr. McGuire,
25 having a critical role as it relates to

1 engineering projects, he would have had a critical
2 role as it relates to those budget deliberations.
3 In fact, if I recall, he was a presenter around
4 asset management in addition to being available to
5 speak to likely hundreds of capital projects that
6 were being presented from his division.

7 As well, Ms. Auty was, as I
8 mentioned previously, she was supporting the city
9 manager's office and supporting our acting clerk
10 and assisting with the orientation for council, so
11 in November I know Ms. Auty was consumed around
12 the orientation. And, in addition to the
13 orientation, Ms. Auty would have had a role as
14 well with respect to the corporate services
15 departmental budget information that would have
16 been compiled in December in advance of a January
17 discussion.

18 Q. Okay. So, what I'm
19 hearing from you is that there were staff who were
20 otherwise going to have a very busy workload. Was
21 there any discussions about work that needed to be
22 done on this issue before it was ready to go to
23 council?

24 A. There was just an
25 understanding that we were working towards

1 bringing the technical information alongside of
2 the litigation information. So, our past practice
3 with council is to assist them to make informed
4 decisions, and as it relates to this matter,
5 again, we recognized that some elected officials
6 had familiarity with respect to the project and
7 the various reports, frankly more familiarity than
8 I did in that they were long-standing members of
9 the public works committee. But some newly
10 elected officials would not have that familiarity.
11 And then, in addition, wanting to speak to the
12 changes in leadership and how the changes in
13 leadership and the repaving in part led to the
14 discovery of the report.

15 So, what I'm trying to
16 highlight is our intent was to bring, you know, a
17 full body of work to committee and council in
18 order for them to understand not only this issue
19 but this issue in the context of previous
20 information shared with council to assist them in
21 their discussions and deliberations and ultimately
22 any recommendations or actions coming out of
23 future committee meetings.

24 Q. Thank you. When you say
25 you were trying to build in the technical

1 information, as of December 6, what did you
2 understand public works was doing to compile
3 technical information?

4 A. At that particular time
5 in December, my understanding was they were still
6 compiling information. I'm not sure in December I
7 understood the technical information or degree of
8 technical information we would ultimately bring
9 before council, but they were principally
10 compiling the information, but recognizing that
11 there would need to be some technical contents to
12 a future committee meeting.

13 Q. Did you understand that
14 public works was in the midst of doing some
15 project with a consultant about the Red Hill?

16 A. In December, I don't
17 believe I had that understanding, no.

18 Q. Okay. And did you
19 understand that public works was going to obtain
20 further information about what these consultant
21 reports actually meant, how to interpret them;
22 that is, the Tradewind report and the Golder
23 report?

24 A. In December, no, I
25 didn't.

1 Q. Okay. And that's -- do I
2 take it from your answer that you really didn't
3 know what technical information they were
4 compiling. You just knew they were compiling some
5 information?

6 A. Yes. And by technical,
7 I'm thinking previous technical information that
8 would have been shared with previous terms of
9 council.

10 Q. I see. Well, that might
11 be a good way to distinguish it then. So, you
12 understood they were compiling historical
13 information about the Red Hill and the various
14 work done on the Red Hill, including by
15 consultants. Is that what you mean?

16 A. Yes.

17 Q. Okay. Did you understand
18 they were going out and getting new technical
19 input from consultants?

20 A. In December, I don't
21 believe I had that appreciation or understanding,
22 no.

23 Q. Okay. And in December,
24 you didn't have an appreciation or understanding
25 of the specifics of what the consultant reports

1 were saying? I think you said that before. Is
2 that right?

3 A. Yes. That's accurate. I
4 had not -- I don't recall requesting or having
5 access to those reports or reviewing those
6 reports.

7 Q. Okay. So, the issue that
8 was brought to you from staff was really the one
9 that you mentioned before, that this was a report
10 that was discovered, it was going to be made
11 public in the FOI likely and it had to go to
12 council as a result. Is that correct?

13 A. That's correct.

14 Q. Okay. The day after
15 December 6, Ms. Auty and Ms. MacNeil have a call
16 with Mr. Boghosian, who was a lawyer at Boghosian
17 & Allen. Do you recall any discussions on
18 December 6 about legal services wanting to get
19 some external assistance from an external lawyer?

20 A. I recall Ms. Auty
21 expressing an interest to leverage some external
22 expertise. I don't recall if that was on
23 December 6. It may have been around December 6.
24 Again, it was something that she didn't require
25 the interim city manager's or the general

1 manager's authority to do. Ms. Auty, as
2 solicitor, would have that authority under city
3 policy to leverage external expertise and it
4 happens from time to time as it relates to
5 external legal expertise, subject to the subject
6 matter and our expertise as it relates to that
7 matter or workload issues.

8 Q. Okay. So, recognizing
9 that she didn't need your approval, she did give
10 you a heads-up she was doing that. Is that right?

11 A. She did. She did.

12 Q. Registrar, can you go to
13 page 214 and 215 of OD 9A, please.

14 Mr. Zegarac, you'll see at the
15 bottom of 501 and the top of 502 this is a
16 document that Ms. Auty worked on called the
17 retainer Boghosian doc.

18 Registrar, can you call out
19 the top of page 215, please, and 502 as well,
20 please. Thank you.

21 So, this is some of the
22 content of the retainer letter that went to
23 Mr. Boghosian, you'll see in paragraph 502.
24 Before this retainer was sent, were you aware that
25 the scope of the retainer would include the four

1 points that are listed?

2 A. I don't recall having any
3 involvement in developing the scope or reviewing
4 the scope.

5 Q. Okay. So, besides not
6 having involvement, did you have an awareness that
7 Ms. Auty was going to seek a general
8 risk/liability assessment from an external
9 counsel?

10 A. I did have an awareness
11 as it relates to the general risk and liability
12 assessment. I'm not sure I had an awareness
13 regarding the FOI process.

14 Q. Okay. And what about the
15 third one, how to approach CIMA consultant on
16 whether interim measures are needed?

17 A. Again, no recollection of
18 the third one nor the fourth one.

19 Q. Okay. Registrar, you can
20 close this.

21 Do you recall having any
22 discussions on December 6 with Ms. Auty or other
23 staff about whether interim measures needed to be
24 assessed to protect, to ensure, that the road was
25 safe?

1 A. I don't recall having any
2 conversations with Ms. Auty with respect to any
3 interim measures. I do recall, and I can't say it
4 was around this period of time, conversations with
5 public works. I would have relied more so on
6 public works with respect to any interim safety or
7 safety enhancement measures and, again, I don't
8 recall public works staff advising me of the
9 requirement for any interim measures.

10 Q. Okay. When you say you
11 don't recall them advising you, are you confident
12 that they didn't or you just can't recall either
13 way?

14 A. I'm confident that staff
15 advised me that the road was safe. I don't
16 recall -- public works staff, sorry, public works
17 staff, advising me the road was safe. I don't
18 recall public works staff advising me of the need
19 for any interim measures. And, again, my
20 understanding was we were working towards the
21 repaving of the road and that would ultimately
22 lead to some operational improvements.

23 Q. Okay. Is it your
24 evidence that public works staff advised you that
25 the road was safe before you met with the mayor?

1 Again, I'm just using as that a time post.

2 A. It was -- yes, it was my
3 understanding and recollection that public works
4 staff advised me the road was safe prior to our
5 December, I believe it was December 18 or
6 thereabout meeting with the mayor.

7 Q. Okay. Besides just
8 saying, Mr. Zegarac, the road is safe, how did
9 that they explain to you that they assessed the
10 road was safe?

11 A. I'm not sure I asked for
12 that assessment in terms of the road was safe.
13 Public works staff did share with me their
14 opinion, position, that the road was safe and I
15 would present it in the context that no additional
16 measures were required in advance of the repaving
17 of the road.

18 Q. Okay. So, just so that
19 I'm clear about your evidence, public works staff
20 told you the road was safe. Who told you that?
21 Which particular person --

22 A. I can't -- it would have
23 been -- again, I would have relied on Mr. McKinnon
24 and Mr. McGuire and at some point through this
25 issue, Mr. Soldo as well, but I can't recall when

1 Mr. Soldo joined in the conversation in that he
2 had joined the City somewhere either just in
3 advance or somewhere around this period.

4 Q. Okay. So, it was
5 Mr. McKinnon, Mr. McGuire, perhaps Mr. Soldo who
6 told you that the road was safe, but they did not
7 go into the detail of the steps that they had
8 taping to determine that the road was safe. Is
9 that right?

10 A. That's right. I would
11 have relied on their professional expertise.

12 Q. Okay. And they told you
13 that no interim measures were necessary because of
14 the repaving? Is that your evidence or was there
15 no discussion about interim measures? I'm a
16 little confused about your evidence.

17 A. I apologize for any
18 confusion. I don't recall raising the interim
19 measures. I think what I'm trying to highlight is
20 staff did not suggest to me that we take any
21 intermediate efforts or interim measures to
22 improve the safety of the road.

23 Q. Okay. Thank you. I have
24 that evidence.

25 MS. CONTRACTOR: Sorry to

1 interrupt, but I note that we're past our regular
2 break time. I wonder if this would be a good time
3 to take a break.

4 MS. LAWRENCE: Great minds
5 think alike. I was just going to suggest that,
6 Commissioner.

7 JUSTICE WILTON-SIEGEL: That's
8 fine. It's ten past. Let's return at 25 past
9 11:00.

10 --- Recess taken at 11:11 a.m.

11 --- Upon resuming at 11:26 a.m.

12 MS. LAWRENCE: Thank you,
13 Commissioner. May I proceed?

14 JUSTICE WILTON-SIEGEL: Yes,
15 please do.

16 BY MS. LAWRENCE:

17 Q. So, Mr. Zegarac, just
18 following from your evidence just before the
19 break, I understood your evidence to be that you,
20 by December 6, were of the view that the
21 consultant report needed to be disclosed to
22 council because it had not previously been
23 disclosed to council. Is that right?

24 A. That's my understanding.
25 I can't say definitively December 6, but in around

1 that period.

2 Q. Okay. But the content.

3 Leaving aside the timing for the moment --

4 A. Yes.

5 Q. Why did the fact that
6 this report had not been disclosed to council, why
7 did that in and of itself require a disclosure to
8 council?

9 A. I'm sorry, could you
10 repeat your question?

11 Q. Sure. I can try to
12 reframe it, in fact.

13 Why was it the fact that this
14 report had not been disclosed to council mean that
15 you needed to disclose it to council? I don't
16 really understand the connection between those two
17 things.

18 A. So, again, this was in
19 the context of the FOI request and recognizing
20 that the FOI request may lead to this -- the
21 contents of this report that was previously not
22 shared broadly being made public. It was staff's
23 previous practice to advise council in advance of
24 information being made public that previously
25 wasn't shared with council of sharing that

1 information with council and advising them of any
2 impacts that information may have. So, as it
3 relates to the potential litigation risks as well
4 as recognizing that contents in that report would
5 be now shared with the public more broadly.

6 Q. Okay. So, you said that
7 it was staff's previous practice to advise council
8 in advance of information being made public.
9 That's public in the context of an FOI? Was that
10 the staff practice?

11 A. Not -- no, not -- I
12 apologize. I should be clearer. Not in general
13 with respect to FOIs. We do provide FOI reporting
14 through our clerk's office, but those are general
15 statistics. We don't advise council of every FOI
16 request that comes in and the contents of the
17 response to the FOI requests. I'm raising the FOI
18 in the context of the litigation risk to the City,
19 so recognizing the contents of that release could
20 represent some litigation risks.

21 Q. Okay. Not only the
22 content of the release, but the fact it hadn't
23 been released. Those two things together were
24 related to the litigation risk?

25 A. More so the content, but

1 recognizing more so in terms of council,
2 recognizing that this would be new information for
3 some councillors who previously would have been
4 familiar with the file.

5 Q. So, just so the evidence
6 is very clear, this is not just a general staff
7 past practice that any consultant report that's
8 not previously provided to council directly or
9 through a staff report would automatically later
10 be provided to council. Is that right?

11 A. That's right. And
12 important to note that it was not our past
13 practice to share consultant reports to council.
14 Staff's role was to provide information, summarize
15 that information and potentially provide access to
16 those consultants. But, again, our past practice
17 was not to share all consultant reports to
18 council; rather to provide the relevant
19 information within those consultant reports
20 through a staff report, if I understood the
21 question.

22 Q. Thank you. So, at the
23 same time as the information for the FOI was being
24 compiled, engineering services staff were also
25 reporting to or were on a roads value for money

1 audit being undertaken by the office of the city
2 auditor, and on December 4, 2018, Mr. McKinnon
3 forwarded you and Ms. Auty a long e-mail chain on
4 that.

5 Registrar, could you bring up
6 OD 9A, page 196, and you can call up 447, please.

7 So, this doesn't include the
8 entirety of the e-mail chain. We can go to that
9 if you want. But you'll see what he forwards to
10 you and to Ms. Auty is:

11 "Gord was in my office
12 not long ago. He is very
13 frustrated about this.
14 He felt he was clear with
15 Domenic and felt a little
16 betrayed with what
17 happened. This is new
18 water for me and I'm not
19 sure if anything needs to
20 be said to Charles, but
21 if so, not sure it should
22 be me. Any advice?"

23 And so, I'll just very briefly
24 summarize the underlying e-mail, which was that
25 audit services, in particular Mr. Pellegrini,

1 Domenic referenced here, obtained an unredacted
2 copy of the 2014 Golder report, which included the
3 Tradewind report, by coming to Mr. McGuire's
4 office. Do you recall receiving this e-mail and
5 reviewing the underlying e-mail chain?

6 A. I do recall receiving
7 this e-mail and I can't recall if I read the
8 entirety of the e-mail chain.

9 MS. CONTRACTOR: Perhaps we
10 could go to the underlying e-mail chain if the
11 witness is being asked if he recalls reviewing the
12 underlying e-mail chain.

13 MS. LAWRENCE: Sure.

14 BY MS. LAWRENCE:

15 Q. It's HAM62000. And you
16 may need to bring up the second image on that
17 document, Registrar.

18 Mr. Zegarac, just for ease of
19 review, it's the bottom of the left-hand image.

20 Registrar, can you call out
21 Mr. McGuire's e-mail to -- yes, exactly. Anywhere
22 in there. That's perfect. Thank you.

23 So, I'll give you a moment to
24 read that, but, Mr. Zegarac, really my question
25 was: Do you recall having an understanding that

1 there had been a back and forth with
2 Mr. Pellegrini and Mr. McGuire, the result of
3 which Mr. Pellegrini had an unredacted copy of the
4 Golder report and the Tradewind report?

5 A. At that time, I'm not
6 sure I understood the various staffs who were
7 involved in this matter and the back and forth.
8 As I understood it at that time or it was my
9 understanding at that time was in regards to
10 Mr. McKinnon's e-mail and, again, just
11 interpreting it with that broader theme about
12 demands on staff and capacity of staff, but I
13 don't recall having familiarity with respect to
14 the various staff involved in the exchanges.

15 Q. Okay. Registrar, could
16 you close this and call out Mr. McKinnon's e-mail
17 to Mr. Zegarac, right at the top. Yes, thank you.

18 So, Mr. McKinnon says quite
19 specifically that Gord is very frustrated about
20 this and he felt it was clear -- he was clear with
21 Domenic and he felt a bit betrayed. So, this is
22 not about just resources. This is a different
23 issue that he's seeking your advice on. And so,
24 did you review the underlying e-mail so that you
25 could provide a response to Mr. McKinnon?

1 A. So, again, I don't know
2 that I reviewed all of the e-mail chain and I
3 appreciate, you know, again I did interpret this
4 at the time in terms of the demands on Mr. McGuire
5 in terms of not only this issue but the work he
6 was leading as it relates to the FOI work as well
7 as the work he was leading as it relates to other
8 efforts, such as budget information. And so, at
9 the time, I did not interpret this as an issue
10 with regards to public works and audit services.
11 I think it became clear to me soon after this
12 e-mail when I heard directly from the city
13 auditor.

14 Q. Okay. We'll come to
15 that. Registrar, you can close this down and you
16 can close this document down.

17 Before receiving this e-mail
18 from Mr. McKinnon, were you aware of the existence
19 of the value for money audit?

20 A. I was aware but I don't
21 know to what degree I was aware, and I'll try to
22 explain that. As I mentioned previously, the city
23 auditor reported administratively into the city
24 manager and during this period into myself as
25 interim city manager. As I mentioned previously,

1 I had a practice of monthly meetings, so the city
2 auditor might have raised this as a work item, the
3 value for money roads audit, but I don't know that
4 he did, but I just don't want to exclude the
5 possibility that he raised it with me during those
6 monthly meetings.

7 Q. Okay. Maybe I'll ask it
8 from the other perspective. Had Mr. McKinnon or
9 anyone in Mr. McKinnon's group told you that his
10 staff were being asked by the auditor to provide
11 information about a roads audit?

12 A. So, I do recall those
13 conversations, but I don't recall if those
14 conversations were after the December e-mail from
15 Mr. McKinnon to myself.

16 Q. Fair enough. We'll go
17 through some of the chronology on this and maybe I
18 invite you to, if it becomes clear when you first
19 learned about this, do let me know.

20 Just before we leave this and
21 recognizing that I think I have your evidence on
22 this, but just so that I'm clear, before receiving
23 the e-mail from Mr. McKinnon that attached
24 Mr. McGuire's e-mail, were you aware that
25 engineering staff had provided redacted copies of

1 the 2014 Golder report and withheld the Tradewind
2 report from the auditor?

3 A. I wasn't, no. I believe,
4 again, it was that December e-mail from
5 Mr. McKinnon was the introduction of the issue to
6 me.

7 Q. Okay. So, in that e-mail
8 that we looked at from Mr. McKinnon, he said that
9 this is new water for me, any advice? Did you
10 provide any advice to him before you spoke with
11 Mr. Brown?

12 A. No. I don't recall
13 providing any advice to Mr. McKinnon. I do recall
14 an e-mail from Mr. Brown suggesting a conversation
15 between Mr. Brown and Mr. McKinnon, given that
16 Mr. McKinnon, being the general manager, had
17 responsibility and oversight with respect to
18 ensuring the compliance of the audit to the city
19 auditor.

20 Q. Registrar, could you pull
21 out OD 9A, page 222 and 223, please. This is over
22 two pages and the text is a bit small. Registrar,
23 could you call out paragraph 527 at the bottom of
24 222 and then also at the top of 223.

25 Is that the e-mail that you

1 were just referring to, Mr. Zegarac?

2 A. Yes, it is.

3 Q. Do you want to close that
4 down, Registrar, and if you can call out the next
5 paragraph, please.

6 And so, I read this, and I'm
7 just looking at the first sentence for the moment:

8 "Charles, as Dan is
9 Gord's direct supervisor,
10 have you raised this with
11 him?"

12 So, just stopping there, we're
13 going to come back to this e-mail, but on that
14 point, is that what you were referencing just now
15 in your evidence --

16 A. Yes.

17 Q. -- that Mr. McKinnon
18 should be the one dealing with this?

19 MS. CONTRACTOR: Perhaps he
20 can be shown the rest of the e-mail, because I do
21 think it's important context, to confirm whether
22 this is the conversation that relates to the
23 redacted report issue.

24 MS. LAWRENCE: Sure. You mean
25 the totality of this e-mail?

1 MS. CONTRACTOR: Yes, please.

2 MS. LAWRENCE: Sure.

3 BY MS. LAWRENCE:

4 Q. Registrar, it is
5 HAM27768.

6 Mr. Zegarac, is there anything
7 else you would like to add?

8 A. Yes. So, I just wanted
9 to --

10 MS. CONTRACTOR: Go down to
11 the e-mail from Mr. Brown to Mr. Zegarac so he can
12 review what he's responding to.

13 MS. LAWRENCE: Sure.

14 BY MS. LAWRENCE:

15 Q. Registrar, can you bring
16 out Mr. Brown's e-mail.

17 So, this is part of what we
18 were just looking at when the Registrar brought up
19 those two call outs together. It continues on to
20 the next image, but just so it's big enough for
21 you to read.

22 A. Okay. Thank you. Okay.
23 Thank you.

24 Q. So, I believe my question
25 to you was: Was this the e-mail exchange where

1 you were suggesting to Mr. Brown that he should be
2 dealing with Mr. McKinnon?

3 A. Yeah. So, this is the
4 e-mail exchange. I'm referring to my comment
5 above:

6 "Charles, is Dan Gord's
7 direct supervisor? Have
8 you raised this with
9 him?"

10 So, this is in the context of
11 my experience in dealing with the city auditor and
12 audit services, principally on the side of the
13 compliance audits, is that there is a channel of
14 communication with the auditor if there are issues
15 in regards to the timeliness or demands on staff
16 to satisfy the time demands, is my past experience
17 is the auditor was open to have those
18 conversations and consider extensions with respect
19 to those timelines. If there's a need to better
20 inform or educate one's self in terms of the role
21 of the auditor, I understand the role of the
22 auditor over my years of dealing with treasury
23 issues or finance issues with the auditor may have
24 from time to time done a compliance audit in terms
25 of the responsibilities and powers of the auditor,

1 and so what I was suggesting is reaching out to
2 Mr. Brown to have that conversation and to either
3 seek out clarity or if the need was for a time
4 extension to seek the support of the city auditor
5 or auditor general for that time extension.

6 Q. Thank you. I think I
7 understood that from your earlier answer.

8 Registrar, you can close this
9 down and can you go back into OD 9A, page 221 and
10 222, please.

11 And this is quite lengthy.
12 This is e-mail exchanges starting at 5:26 on
13 December 10 with Ms. MacNeil, e-mail exchanges
14 with Ms. Auty, Mr. Sabo, Mr. McLennan, regarding
15 Mr. McGuire's upcoming meeting with audit services
16 and I think this is in advance of the e-mail that
17 Mr. Brown then sends to you about this. You're
18 not copied on these e-mails but you are referenced
19 and I just would like to ask you a question about
20 that.

21 In the middle of page 222,
22 five paragraphs down, it says Ms. MacNeil.

23 Registrar, can you call that
24 out. Thank you.

25 So, this is about whether --

1 this e-mail exchange is about whether Mr. McGuire
2 should go to a meeting on December 10 and what he
3 should do at that meeting. And Ms. MacNeil says:

4 "Agreed, Ron. I did tell
5 Gord that this really
6 should be bumped up to
7 Dan McKinnon and/or
8 Mike Zegarac to put the
9 brakes on the audit
10 meeting at this point in
11 time. However, it did
12 not appear that that was
13 going to happen before
14 1:30 p.m. meeting."

15 So, given the evidence that
16 you just gave, I understood that you were not
17 advised in advance, but can you just confirm did
18 staff ever ask you to put the brakes on a meeting
19 between Mr. McGuire and audit?

20 A. No. Staff neither
21 advised me of the need to put the brakes on nor
22 asked me for my opinion. And, again, my past
23 experience with audit is that there are a series
24 of meetings and appreciating these were compliance
25 audits, but there's a series of meetings that

1 typically occur with general managers and
2 directors that provide staff the opportunity to
3 share information and if there were concerns, and
4 I'm making some assumptions here that the concern
5 in part may be around the time demands, that's an
6 opportunity to raise during those meetings.

7 Q. This is unrelated to the
8 issue of the audit, but in the same back and forth
9 between Ms. MacNeil, Ms. Auty, Mr. Sabo and
10 Mr. McLennan, there's a reference to Ms. MacNeil
11 advising that:

12 "Edward Soldo is now
13 perhaps questioning using
14 CIMA for future matters
15 relating to the Red Hill
16 given the relationship
17 between Brian Malone of
18 CIMA and the fact that
19 his wife, Betty
20 Matthews-Malone, was the
21 former (?) director
22 operations at the City of
23 Hamilton during the years
24 we are now reviewing."

25 So, you're not copied on this

1 e-mail again. The inquiry is aware that
2 Mr. Malone and CIMA had a number of retainers with
3 the City. Indeed, Mr. Malone and
4 Ms. Matthews-Malone are married. Was the issue of
5 a potential conflict of interest given that
6 spousal relationship raised with you in or around
7 December of 2018?

8 A. It was not. I recall the
9 issue being raised through a series of meetings
10 with Mr. Malone, I believe leading up to our
11 February reports, and someone identifying to me, I
12 can't recall exactly who, the relationship and my
13 asking whether Ms. Malone had identified a
14 potential conflict and being advised that, yes,
15 she did, and the appropriate ethical walls were
16 established.

17 Q. And so, recognizing in
18 December of 2018 when the staff were exchanging
19 this e-mail you would not have been aware, at any
20 time did you have any concern about the
21 information that Ms. Matthews-Malone provided to
22 you about the steps she had taken to disclose the
23 spousal relationship?

24 A. I was not aware in
25 December and once I received confirmation from

1 staff that the disclosure occurred and the ethical
2 walls were in place, I was satisfied that there
3 was no conflict.

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

6 That was a bit of a detour.
7 I'm going back to the audit now.

8 Registrar could you go to the
9 next page, please.

10 After that e-mail that we were
11 just looking at, the top of the e-mail chain,
12 Registrar, can you pull out 528, please.

13 So, turning now to the second
14 sentence in that e-mail exchange:

15 "I have asked Dan, Gord
16 and Edward to undertake
17 an immediate external
18 independent assessment of
19 traffic operations on the
20 RHVP and possible next
21 steps to secure public
22 safety prior to briefing
23 the mayor and council."

24 So, we did just look at the
25 e-mail that Mr. Brown sends you that you're

1 responding to. Why did you convey to Mr. Brown
2 that public works staff were going to take steps,
3 the steps that you set out there?

4 A. I believe I was sharing
5 it just out of general knowledge as it relates to
6 my understanding of the value for money audit,
7 but, again, there was no particular action I was
8 expecting from Mr. Brown or any attention from the
9 audit office as I'm just, again, sharing
10 information.

11 Q. Okay. Did you request of
12 Mr. McKinnon, Mr. McGuire and Mr. Soldo that they
13 undertake an immediate external independent
14 assessment of safety operations on the Red Hill?

15 A. No, I didn't. And so,
16 again, in hindsight, the reference to external is
17 not the proper descriptor. So, at this time,
18 recognizing we had new leadership, a fresh set of
19 eyes and understanding there were some historical
20 reports with respect to the expressway and what I
21 was requesting is for the new leadership to review
22 those historical reports in an effort to determine
23 whether or not they have any recommendations or
24 advice to me as it relates to taking any
25 additional measures.

1 Q. Okay. So, you'll recall
2 earlier this morning you were talking about, sort
3 of, technical information and I distinguished
4 that, sort of, more about the timeline of the past
5 information that the City had received versus
6 obtaining technical analysis by an external
7 person. Is that the same difference that you're
8 raising here in terms of what it says versus what
9 you meant?

10 A. Yes, and I believe you
11 captured it previously where it's historical, the
12 historical information. That's what I'm referring
13 to.

14 Q. Okay. So, you did not
15 expect the public works staff to undertake
16 retaining an external independent consultant to
17 complete an assessment of traffic operations?

18 A. No. At this time, it was
19 more so to have that fresh set of eyes review the
20 historic consultant reports as it relates to this
21 facility.

22 Q. Okay. Why would you want
23 just a fresh set of eyes? Do you mean a fresh set
24 of eyes because of the fact of the Tradewind
25 report?

1 A. No. Just recognizing
2 that we had new leadership. Fresh set of eyes, if
3 there's an opportunity as it relates to reviewing
4 that information if there was a different opinion
5 with respect to any interim safety measures, is
6 welcoming that opportunity for staff to share
7 those opinions.

8 Q. Okay. So, were you
9 expecting staff to review the past information
10 coming from a place -- let me try that question
11 again.

12 Did you expect these public
13 works staff to review the past information in
14 light of the Tradewind report or just in any
15 event?

16 A. I would describe it in
17 any event. And so, again, this is in context --
18 for me this was in the context of the repaving of
19 the road, and so recognizing that they were
20 compiling this information, is there any
21 observations they would have in advance of the
22 repaving of the road that would suggest any
23 interim measures.

24 Q. Were you aware at this
25 point that CIMA was conducting a roadside safety

1 assessment?

2 A. I don't know at this
3 point. If I can just confirm, this is December of
4 2018?

5 Q. December 10, so it's
6 about four days after the meeting that we were
7 looking at before the break.

8 A. I don't have recollection
9 of knowing that.

10 Q. Okay. Mr. Boghosian was
11 asked to provide his legal opinion on December 7,
12 so just a few days before this and after the
13 December 6 meeting. Is your reference to
14 Mr. Brown here about an immediate external
15 independent assessment of traffic operations, is
16 that in relation to Mr. Boghosian's opinion?

17 A. No. So, with respect to
18 traffic operations, so this was the work that
19 public works were embarking on with Mr. -- and I'm
20 not sure I knew that it was Mr. Boghosian at the
21 time. With respect to the external legal
22 expertise, my understanding was that they were
23 going to focus on the litigation risk.

24 Q. Okay. Thank you. The
25 end of the last sentence says:

1 "Prior to briefing with
2 the mayor and council."

3 So, just, again, to give you
4 again a bit of a goal post, this is December 10.
5 By December 10, had the decision been made to
6 bring the existence of the Tradewind report and
7 Golder report to the mayor and council?

8 A. So, in December -- and
9 again, I'm not sure at this time I understood the
10 Golder report, Tradewind report. I understood the
11 issues surrounding friction and information not
12 previously shared. And in December it was our
13 understanding that this information would be made
14 public through the FOI process and needed to be
15 shared with the mayor and members of council.

16 Q. Okay. Mine wasn't really
17 a question of timing. So, we're at December 10.
18 Interpreting your own e-mail, had the decision
19 been made to brief the mayor by December 10?

20 A. That's my recollection,
21 yes. Sorry, on December 18. I believe it was
22 December 18 we were working towards.

23 Q. Yes. This e-mail is
24 dated December 10.

25 A. Yes.

1 Q. Okay. Who made the
2 decision to brief the mayor before briefing the
3 mayor and council together?

4 A. That would have been my
5 decision. So, the mayor and the city manager have
6 bi-weekly scheduled meetings. These are check in
7 meetings that the mayor could ask for updates on
8 issues or the city manager could bring forward
9 agenda items, and so it was my decision to bring
10 this issue before the mayor on December 18 in
11 consultation with our general manager of public
12 works and our city solicitor.

13 Q. So, from this e-mail with
14 Mr. Brown to when you met with the mayor on
15 December 18, do you recall learning from Mr. Brown
16 that the value for roads audit would be expanded
17 to include the issue of friction testing?

18 A. I don't have that
19 recollection in December. I believe that became
20 clear to me in January of 2019. Leading up to
21 February, I recall some e-mails with respect to
22 the value for money audit and lines of enquiry
23 that was shared between the audit office and
24 myself, but my recollection that was in 2019,
25 early in 2019. January or February.

1 Q. Registrar, could you
2 close this down and go to the next page, please.

3 Mr. Zegarac, just to attempt
4 to assist with refreshing your memory, Registrar,
5 if you could pull out -- sorry, I'm just trying to
6 see if this will be enough to orient you. I don't
7 think it will. Maybe I'll just take you through
8 this before we go into the underlying document.

9 You'll see on December 11
10 Mr. Brown e-mailed Mr. McGuire, copying
11 Mr. McKinnon, and it was a memorandum addressed to
12 Mr. McGuire with copies to you and to
13 Mr. McKinnon, and then Mr. McKinnon e-mailed you
14 and Mr. McGuire in response, and just going into
15 those underlying documents just so you can see it,
16 given your evidence just now.

17 Registrar, can you bring up
18 first Mr. Brown's e-mail, which is HAM27784,
19 please, and then second HAM27786.

20 So, this memorandum is dated
21 December 12, 2018 and it is CC'd to you and it's
22 short, but you'll see it does have a reference to
23 investigate specific to friction management on the
24 Red Hill. Do you see that?

25 A. I do.

1 Q. And then, Registrar, can
2 you call out Mr. McKinnon's e-mail on the
3 left-hand side at the top.

4 And then Mr. McKinnon says:

5 "We need some direction.
6 If I had five Gord's right
7 now, this would be a
8 challenge."

9 And he says at the end -- he
10 goes through some reasons why and he says at the
11 end:

12 "We need some breathing
13 room."

14 So, I think your evidence just
15 now was that you received sort of lines of
16 enquiry. This is not the lines of enquiry
17 document per se, but this is a document that
18 references the investigation of friction
19 management. Does that assist with your
20 recollection of when you learned that the auditor
21 was investigating friction management in
22 particular?

23 A. I do appreciate bringing
24 up the memo because I do recall the memo and,
25 again, that would confirm that I was aware of it

1 in the middle of December. So, thank you for that
2 opportunity.

3 Q. Registrar, could you
4 close the call out down.

5 So, just so that I understand,
6 by December 12, did you have enough information
7 about the content of the consultant reports that
8 were subject to the FOI that you could connect it
9 to friction management?

10 A. Middle of December, I
11 don't know that I had -- and I'll be careful about
12 enough content because I'm not sure what enough
13 content is, but I don't know that I had a good
14 familiarity of what the issues were as it relates
15 to friction. So, I understood the term friction,
16 I understood the absence of some reporting to
17 council, but middle of December I'm not sure I had
18 a good appreciation of the issues surrounding
19 friction.

20 Q. Okay. And you received
21 that e-mail, the one we looked at before, where
22 Mr. McKinnon asked for advice because Mr. McGuire
23 is feeling betrayed and the underlying e-mail is
24 about Mr. Pellegrini taking an unredacted version
25 of the Tradewind report and the Golder report, so

1 I've gone through that.

2 But at the time, did you
3 understand that audit services had an unredacted
4 version of the consultant reports that you were
5 talking about in the context of the FOI?

6 A. I don't know that I had
7 an understanding what audit services had as it
8 relates to a redacted or unredacted version.

9 Q. Okay. Did you understand
10 that by this point in December 12 that there were
11 two potential paths where the Tradewind report
12 could be made public: The FOI or through the
13 auditor's process where things can become public.
14 Did you understand that there was now two paths
15 and not just the FOI?

16 A. So, I would say I didn't
17 understand the audit being a path, and if I can
18 just explain that, is that audit services are an
19 internal division of the City and if audit
20 services were to report to council regarding any
21 content as it relates to a compliance audit or a
22 value for money audit is that information would be
23 shared through a standing committee, a standing
24 committee that is supported by the city manager,
25 by the general manager of finance, corporate

1 services, by our executive director of HR.

2 What I'm trying to highlight
3 is that information would have been made available
4 to leadership so that leadership could provide any
5 companion information as it relates to that audit
6 report. So, I didn't see a similarity in terms of
7 the information being provided through audit
8 services versus the information being provided
9 through the FOI process in that that information
10 could be made public. I see more opportunities
11 for awareness and coordination as it relates to
12 audit services bringing in the information to the
13 attention of council.

14 Q. I appreciate the
15 information about what the path would look like
16 from audit services to a potential public
17 disclosure. That's helpful. My question was
18 really getting at whether you understood that
19 audit services had a document that was also
20 responsive to the FOI, the same one that had never
21 gone to council. Did you understand that audit
22 services now had that and that could be a path, as
23 curvy as it is that you have just described, that
24 that could be a path for it to be released
25 publicly as well?

1 A. I understood that that
2 information could be made public through audit
3 services, but I understood that we had the
4 opportunity as administration to have more
5 awareness in terms of the timing of that
6 information being made public to council. Made
7 public to council.

8 Q. Right. Thank you. But
9 you did understand that audit services had a copy
10 of the same document that you were discussing in
11 the context of the FOI?

12 A. I understood that audit
13 services had the information that they were
14 relying upon. And, again, I'm not quite sure that
15 I understood it to be the Tradewind report, but I
16 think it's fair or reasonable to assume it was the
17 Tradewind report.

18 Q. Okay. Moving on to a
19 different topic, Mr. Boghosian provided a draft
20 opinion letter that was sent to Ms. Auty on
21 December 13. Ms. Auty then -- Registrar, you can
22 actually close these documents down. Ms. Auty
23 then sent it to Mr. Sabo the same day. The
24 inquiry hasn't received any documents that you
25 were electronically sent a copy of the draft

1 Boghosian opinion from Ms. Auty or Mr. Sabo, but
2 of course there's other ways you could have
3 received it. There's also a final version of
4 Mr. Boghosian's opinion that's dated February 4,
5 2019.

6 Registrar, could you bring up
7 HAM62512, please.

8 This is the December 13 draft.
9 Can you bring up the next page.

10 Mr. Zegarac, you can take as
11 long as you need to look at this. Did you receive
12 a copy of the December 13 Boghosian opinion in the
13 draft version?

14 A. I don't recall receiving
15 any copy of the opinion letter.

16 Q. When you say you don't
17 recall, are you confident that you did not receive
18 it?

19 A. I'm confident I did not
20 receive it.

21 Q. Okay. And I can pull up
22 the February 4 version as well if that would
23 assist. It's HAM64331. Did you receive a copy of
24 this -- sorry, you don't have to have the
25 December 13 up. I was getting confused. There we

1 go. Did you receive a copy of this opinion at
2 some point after February 4?

3 A. I'm confident that I
4 never received copies of the opinion letters.

5 Q. Okay. Thank you.

6 Registrar, you can close this
7 down.

8 Do you recall speaking to
9 Ms. Auty or Mr. Sabo at any point about
10 Mr. Boghosian's opinion or the contents of his
11 opinion before February 4?

12 A. I recall conversations
13 with respect of that opinion as it relates to the
14 staff report, but I can't recall the timing for
15 that relative to February 4. It might have been
16 before February 4. It might have been in advance
17 of our January 23 council meeting, but I'm not
18 certain.

19 Q. Okay. Do you recall
20 having any discussions with Ms. Auty or Mr. Sabo
21 before meeting with the mayor about
22 Mr. Boghosian's opinion?

23 A. I don't have recollection
24 of discussions about Mr. Boghosian's opinion. I
25 have recollections in preparing for a meeting with

1 the mayor in that Ms. Auty would speak to the
2 potential litigation risks as it relates to the
3 report.

4 Q. So, in the meeting to
5 prepare for the meeting with the mayor, Ms. Auty
6 was tasked to speak to that issue when you were
7 speaking to the mayor?

8 A. That's correct.

9 Q. Okay. Registrar, can you
10 bring up HAM62512 again, please. This is the
11 December 13 draft. Registrar, we're not seeing it
12 up on the page. HAM62512. I'm just going to
13 double check that we haven't lost the registrar.

14 THE REGISTRAR: Sorry,
15 counsel. I was typing it in but it's not popping
16 up now. So, it's 61512?

17 MS. LAWRENCE: HAM62512.

18 THE REGISTRAR: Okay. That
19 was bizarre. Thank you for your patience.

20 MS. LAWRENCE: No problem.
21 And if you could go to image 8, please.

22 BY MS. LAWRENCE:

23 Q. So, this is in the middle
24 of the draft opinion.

25 Registrar, can you pull out,

1 "When asked to rank." So, Mr. Boghosian
2 summarizes a discussion that he had with
3 Mr. Malone of CIMA about Mr. Malone's and CIMA's
4 past work on the Red Hill in 2013 and 2015 and
5 there's a reference to the safety countermeasures
6 that the City had implemented since. And then
7 Mr. Boghosian references this discussion with
8 Mr. Malone:

9 "When asked to rank in
10 order of greatest
11 contribution to the
12 inordinate number of wet
13 road crashes, Mr. Malone
14 advised as follows."

15 And then he has slipperiness
16 of the road, speeds exceeding the capability of
17 the road given the curvature, curves in the road
18 and a close proximity of on/off ramps to each
19 other leading to losses of control and/or driver's
20 errors.

21 Do you recall Ms. Auty or
22 Mr. Sabo advising you of Mr. Malone's comments on
23 this ranking?

24 A. No, I don't. What I
25 recall were conversations with respect to

1 Mr. Boghosian providing us legal advice in terms
2 of risks. In terms of the slipperiness or speeds,
3 I would have relied on public works staff to
4 advise me or speak to those issues. So, I would
5 not have necessarily focused on a legal letter
6 that speaks to road safety issues. I would have
7 more so relied on public works staff to speak to
8 road safety issues.

9 Q. Fair enough. This is
10 Mr. Boghosian conveying the comments from
11 Mr. Malone, who is at CIMA. Do you remember
12 receiving information about this ranking and how
13 CIMA viewed the ranking?

14 A. I don't recall receiving
15 this information from CIMA. I recall having
16 conversations with Mr. Malone and, as I recall,
17 those conversations were in the context of public
18 works engaging CIMA as it relates to preparing for
19 the repaving of the roadway. But that would have
20 been, I believe, after this date.

21 Q. Okay. A fair bit after
22 this date?

23 A. Yes.

24 Q. Okay. Registrar, you can
25 close this down. You can also close this

1 document. Thank you.

2 Ms. Contractor, I just noticed

3 you're not muted. I just wanted to make sure I

4 wasn't -- good?

5 MS. CONTRACTOR: Yes.

6 MS. LAWRENCE: Thank you.

7 BY MS. LAWRENCE:

8 Q. Registrar, can you go

9 back into OD 9, page 223, please, and could you

10 pull out 530, please. Registrar, actually, just

11 for a bit more context, could you close the call

12 out and call out 529 and 530, please.

13 So, this is still December 10

14 and Mr. McKinnon e-mailed Ms. Melatti, that's your

15 assistant. Right?

16 A. That's correct.

17 Q. Ms. Auty, Mr. McGuire,

18 Mr. Soldo, Mr. Zegarac and Ms. Wunderlich, subject

19 line "Expressway":

20 "Mike asked that I

21 connect with you to

22 arrange a meeting this

23 week with the above staff

24 to develop a note

25 relative to the Red Hill

1 to guide the conversation
2 with the mayor."

3 And then you ask your
4 assistant to also request a meeting with the mayor
5 and the people listed in the e-mail.

6 Registrar, you can close that
7 call out.

8 Did you ask for a -- what did
9 you mean when you asked for the development of a
10 note relative to the Red Hill?

11 A. I don't recall requesting
12 a briefing note. That wasn't our practice at the
13 time, to prepare briefing notes to frame the
14 conversation with the mayor at these bi-weekly
15 meetings. I believe the intent was more so to
16 determine what Mr. McKinnon will be speaking to,
17 what Ms. Auty will be speaking to and what I will
18 be speaking to, so more so around roles.

19 Q. Okay. So, not a formal
20 note that you were going to provide to the mayor
21 in writing, but rather a note to be prepared so
22 that staff all knew what they were doing at the
23 meeting with the mayor. Is that what you mean?

24 A. Yes. So, a formal note
25 to be provided to the mayor, no. That was not our

1 practice.

2 Q. Yes.

3 A. And with respect to a
4 note, I would describe it more so a framework for
5 the conversation.

6 Q. Okay. Do you recall any
7 staff providing you with any written framework for
8 the discussion with the mayor?

9 A. I don't have recollection
10 of those details, no.

11 Q. Is that to say you're
12 confident that you didn't receive a written note
13 or you just don't remember?

14 A. I don't remember.

15 Q. Okay. Do you recall
16 having that meeting that you referenced to arrange
17 a meeting with the staff to develop the note? Do
18 you remember having the meeting with staff to
19 develop the note?

20 A. I don't recall having the
21 meeting with staff, no.

22 Q. Okay. Knowing the way
23 that you like to work and your practices, would
24 you have a meeting with staff in advance of a
25 briefing with the mayor?

1 A. So, this would have been
2 new to me. So, in December, it was inauguration
3 of council in December, so this might have been
4 the first time that I led a bi-weekly with the
5 mayor, so it would be reasonable to suggest that
6 we did meet to discuss roles and responsibilities
7 in terms of that meeting.

8 Q. Okay. Wouldn't you have
9 led the biweeklies with the mayor before the
10 election?

11 A. There would have
12 potentially been bi-weeklies with the mayor. I
13 don't recall -- you know, typically during
14 election period is elected officials are consumed
15 with campaigning, so I don't recall meetings prior
16 to this with the mayor, but there might have been
17 meetings in early fall with the mayor.

18 Q. Okay.

19 A. September, October.

20 Q. Registrar, could you call
21 up HAM62518, please.

22 So, this is a calendar
23 appointment and it looks like you'll see the
24 attendees are set out in a way that's easy to read
25 on the bottom on December 14, and it says CMO

1 boardroom. What's CMO boardroom?

2 A. The city manager's office
3 boardroom, and so that is one of two typical
4 meeting locations. It was more usual to have the
5 meetings with the mayor at the mayor's boardroom.
6 The mayor's office has their own boardroom.

7 Q. Right. And, in fact, I
8 think when you met with the mayor, that's where
9 you met. Right?

10 A. That's my recollection,
11 yes.

12 Q. So, this looks like a
13 meeting with a number of public works staff and
14 Ms. Auty. It says Red Hill expressway. Do you
15 recall this being a preparation meeting for the
16 meeting with the mayor?

17 A. It may have been a
18 preparation meeting for a meeting with the mayor
19 or it may have been some -- a meeting tied to the
20 work that staff were still compiling. It could
21 have been a check-in, so I can't say for certain
22 that it was tied to the meeting with the mayor.
23 But as it relates to timelines, reasonable to
24 suggest it had some input to the meeting with the
25 mayor.

1 Q. So, we don't have any
2 meetings from you that you took at this meeting,
3 but we do have notes from others. First, we have
4 a transcription of Ms. Auty's handwritten notes.

5 Registrar, can you bring up
6 HAM64364 and could you go to image 2 and 3,
7 please.

8 So, this is the transcription
9 of Ms. Auty's notes from that day and I'm going to
10 take you through. There's a few references to you
11 here.

12 Registrar, could you just,
13 really for ease of review and being able to see
14 it, can you call out from "notes" and then down.

15 So, you're listed as an
16 attendee at this meeting and there's some
17 additional notes that we have not called out, but
18 just so that you can actually read it, at the top
19 it says:

20 "Mr. Zegarac,
21 Mr. Boghosian, would
22 recommendations change
23 with Golder friction
24 testing?"

25 Then it says:

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

8 What do you recall, if
9 anything, about this notation?

10 MS. CONTRACTOR: I'm sorry, I
11 don't quite understand the question given that
12 Mr. Zegarac did not make that notation.

13 MS. LAWRENCE: I'll rephrase.

14 BY MS. LAWRENCE:

15 Q. It says "Zegarac" and
16 then it has an arrow. Do you recall having
17 discussions about Mr. Boghosian's opinion? And it
18 says:

19 "Would recommendations
20 change, Golder friction
21 testing?"

22 Do you remember either asking
23 that question or having any discussions about that
24 notation or that would reflect that notation?

25 A. I don't recall having

1 discussion reflecting that notation, nor do I
2 recall asking a question of Mr. Boghosian's work.

3 Q. Do you remember having
4 discussions with those in attendance about
5 Boghosian sharing friction testing to assess
6 outstanding safety? Sorry, sharing with CIMA
7 friction testing to assess outstanding safety?

8 A. I don't recall any
9 conversations regarding how Mr. Boghosian was
10 relying on CIMA or how Mr. Boghosian was
11 satisfying himself with respect to any information
12 he required.

13 Q. Okay. Did you know
14 either way whether CIMA had been provided with a
15 copy of the Tradewind report on or before
16 December 14?

17 A. I didn't, no.

18 Q. When you say that you
19 don't recall having any discussions about how
20 Mr. Boghosian was satisfying himself in respect of
21 any information he required, are you confident
22 that that discussion did not occur while you were
23 there or you just don't remember either way?

24 A. I don't remember those
25 conversations, and nor do I remember having

1 conversations regarding how information was being
2 shared amongst the various external experts.

3 Q. Okay. There's a note
4 that Ms. Auty has made here. It says, "PW
5 reviewing safety audit." Do you recall learning
6 at this meeting anything about the work that CIMA
7 was currently undertaking in respect of the Red
8 Hill?

9 A. It may have been around
10 this time that I understood that public works was
11 engaging CIMA in advance of the repavement of the
12 road, so it may have been at this meeting or
13 around this time of...

14 Q. Did you understand that
15 CIMA's retainer at this time included an
16 assessment of the friction values of the pavement
17 surface?

18 A. I did not know that, no.

19 Q. Did you expect that CIMA
20 would provide an opinion to public works staff
21 about the friction values of the pavement surface?

22 A. I would not have had
23 input in terms of the scope of work for CIMA, so I
24 would not have expected it because I typically
25 would not have involved myself in the development

1 of that work.

2 Q. Sure. So, I'm not
3 talking specifically about CIMA being consulted,
4 but on a general level were you expecting that
5 public works staff by this point were going to go
6 out and assess the current friction values of the
7 Red Hill?

8 A. I was not expecting it.
9 Again, in the context of the road was being
10 programmed for repaving and that staff had assured
11 that road was safe.

12 Q. Okay. It says:
13 "What can we do in the
14 interim?"

15 And then there's a bit of a
16 gap and it says:

17 "ES - enforcement/speed.
18 - curve/cat's eyes."

19 And then in the next bullet is
20 friction. Do you recall any discussions about the
21 safety countermeasures that had been taken up to
22 2018 on the Red Hill?

23 A. I do recall those
24 conversations, but my recollection of those
25 conversations aligned more with the January and

1 February time period, when that information was
2 shared to council and reported on, not only to
3 council but reported on publicly.

4 Q. Okay. There's a
5 reference to PW18008, complete friction testing.
6 Do you have any recollection about any discussions
7 about public works reports and reference to
8 completing friction testing?

9 A. No, I don't. I have no
10 recollection.

11 Q. Ms. Auty notes:
12 "Gord - can't do anything
13 to the surface - did
14 prelim
15 review/tendering/timing."

16 And then the next bullet point
17 down is a reference to:

18 "Q Golder (Nov 2017)
19 (polished stone, measured
20 texture depth, adequate)
21 pendulum not completed."

22 Do you remember Mr. McGuire
23 providing those in attendance with any information
24 about 2017 testing that had been undertaken?

25 A. No. That note is not

1 triggering any memories, no.

2 Q. Okay. Do you recall
3 Mr. McGuire advising those in attendance that one
4 can't do anything to the surface?

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

6 Q. Okay. Do you recall
7 Mr. McGuire providing the attendees with any
8 information about the potential remediation that
9 could be done to the pavement surface if there was
10 a decision to do remediation?

11 A. I don't recall that, no.

12 Q. When you say you don't
13 recall, you're confident that that conversation
14 didn't happen in your presence or you just can't
15 recall either way?

16 A. I just can't recall
17 either way.

18 Q. At the very bottom of
19 this page it says:

20 "Need to be confident the
21 safety issue has been
22 addressed."

23 Do you have any insight into
24 how or by whom the safety issue had to be
25 addressed?

1 A. So, I had confidence in
2 our public works leadership team and, when they
3 assured me that the road was safe, that I was
4 satisfied with their expertise and reviewing
5 consultant reports and coming to that opinion.
6 So, I was reliant on public works and assured that
7 road was safe.

8 Q. Okay. Do you recall if
9 those assurances that you spoke about earlier this
10 morning, whether those happened on December 6 or
11 the December 14 or both?

12 A. I can't recall the
13 specific dates, so it could have happened at
14 either of those dates or both of those dates.

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

17 So, I think you've explained a
18 little about your process for approaching briefing
19 meetings with the mayor, including that this may
20 have been one of your first ones and your process
21 may not have been crystallized yet.

22 What threshold issues or what
23 was the threshold for issues that you brought to
24 the mayor for briefing?

25 A. So, it could range. It

1 could range from issues that we knew that the
2 mayor had an interest in and a champion of. It
3 could be issues that relate to an opportunity, so
4 where we could leverage a partnership with the
5 federal, provincial governments, so those
6 intergovernmental relation matters, and it could
7 be an issue such as this issue that we felt it was
8 timely to be before the mayor to advise him of
9 some information being made public and needing to
10 come before council with respect to how we would
11 present that information.

12 Q. What was the reason for
13 giving the mayor a heads-up before providing this
14 to all of council?

15 A. So, again, firstly was to
16 bring the issue to the mayor's awareness. I don't
17 recall prior to this advising the mayor of the FOI
18 request, nor someone suggesting that they have
19 advised the mayor of the FOI request and more
20 specifically the report that would be made public
21 through the FOI request and the potential
22 litigation risks that are tied to that report.
23 So, that was the principal reason for the meeting.

24 And then in alignment with
25 that information, wanting to share some of the

1 information that public works leadership were
2 compiling, as well as how that information was
3 discovered by public works, and so the
4 circumstances as it relates to how that
5 information was discovered. And, again, in terms
6 of our interest, to bring all this information
7 forward in a complete manner was just confirming
8 with the mayor that he was supportive of the
9 approach that staff were taking and the timelines
10 that we were proposing as it relates to that
11 information.

12 Q. Okay. That's helpful,
13 your evidence there. My question was specifically
14 why go to the mayor first, and I think your very
15 last point answers that. Is that right, that you
16 were trying to ensure that he was supportive of
17 the approach that staff was taking?

18 A. Yes, and it wasn't
19 uncommon to brief the mayor in advance of
20 committee meetings and council meetings as it
21 relates to issues, including sensitive issues.
22 So, again, that was my understanding of common
23 practice participating in these meetings as a
24 general manager.

25 Q. Okay. So, the meeting

1 with the mayor was ultimately scheduled for
2 December 18. I think I might have misspoke
3 earlier when I said it was two days after
4 December 14. It was, I think, December 18. The
5 calendar invitation lists the mayor, Mr. McKinnon,
6 Mr. McGuire, Mr. Oddi, Mr. Soldo and you and the
7 mayor's chief of staff. Is that the list of
8 attendees to your recollection?

9 A. My recollection differs
10 in terms of my recollection of the meeting. I
11 recall Ms. Auty, Mr. McKinnon, myself and the
12 mayor. I'm not suggesting others weren't in
13 attendance, but that's my recollection of the
14 meeting.

15 Q. Okay. So, I was asking
16 you some general questions about your practice on
17 briefing the mayor. So, more specifically to this
18 meeting, who led the discussion with the mayor?
19 Was that you or someone else?

20 A. So, I recall introducing
21 the issue and then relying on Ms. Auty to speak to
22 the litigation matters, and so the litigation risk
23 and the litigations risk in the context of the FOI
24 request and the reports. And then Mr. McKinnon
25 spoke to some of the technical matters, but as

1 well as the timelines, the change in leadership
2 and how information was ultimately discovered.

3 Q. Did any of you advise the
4 mayor about the existence of the FOI?

5 A. I can't recall
6 specifically. I'm assuming it formed part of
7 Ms. Auty's speaking to the litigation risks.

8 Q. Okay. How detailed was
9 the level of information that Mr. McKinnon
10 provided about the background, the technical
11 matters, as you characterize them?

12 A. I don't recall it being
13 detailed. Again, this was a communication in the
14 sense of a conversation, so again there was no
15 written material to support the conversation. It
16 was more of an awareness for the mayor and to
17 gauge the mayor's response in terms of what we
18 were proposing as it relates to reporting back and
19 the process that we were proposing as it relates
20 to reporting this information.

21 Q. Okay. Do you recall
22 whether Mr. McKinnon specifically summarized the
23 conclusions in the Tradewind report?

24 A. I don't have that
25 recollection, no.

1 Q. Are you confident that
2 didn't happen?

3 A. I'm not confident that it
4 didn't happen, but I don't recall getting into a
5 lot of detail with the mayor. These conversations
6 tend to be relatively short, you know, 20 minutes,
7 30-minute items, so I don't recall getting into a
8 lot of detail with the mayor.

9 Q. Okay. But that key
10 detail, that the Red Hill had low friction values,
11 according to the Tradewind consultant, was that
12 information provided to the mayor?

13 A. Again, I don't have
14 recollection.

15 Q. What about Mr. Moore's
16 involvement in the retainer of Golder to complete
17 friction testing?

18 A. I don't recall that being
19 discussed.

20 Q. What about
21 inconsistencies in the messaging to council or to
22 the public about the existence of the Tradewind
23 report?

24 A. So, I do recall us
25 raising that and discussing it given that the

1 mayor would have had some familiarity with past
2 reporting, so identifying this as an issue that
3 will trigger some interest from elected officials,
4 especially those who are returning, were
5 returning, to the next term of council.

6 Q. Do you recall if Ms. Auty
7 provided a summary of Mr. Boghosian's draft
8 opinion to the mayor attributing it to him, or was
9 she just providing an overall opinion on the risk
10 around litigation?

11 A. My recollection, it was a
12 general summary of the risk of recollection. I
13 don't recall staff providing any materials, such
14 as written materials, or getting into a lot of
15 detail.

16 Q. Okay. Was there any
17 discussion in advance of the meeting with the
18 mayor about whether to provide any documents to
19 him?

20 A. There wasn't. I don't
21 recall us having that discussion and, again, that
22 wasn't our practice. That's not what I witnessed
23 previously as a general manager.

24 Q. Okay. Prior to this
25 meeting with the mayor -- and I'm sorry if I

1 already asked this -- had you received a copy of
2 the Tradewind report?

3 A. I don't recall receiving
4 a copy of the Tradewind report at this time. My
5 recollection is I received a copy in that
6 January/February period. That's my recollection.

7 Q. Okay. What was the
8 mayor's response to the information that staff
9 shared with him at this meeting?

10 A. I recall the mayor being
11 supportive of what staff were proposing in terms
12 of bringing information to committee and council.
13 I recall the mayor raising some questions around
14 process, similar to what staff were discussing,
15 what is the proper standing committee or committee
16 to bring this information forward to. So, again,
17 we were left with an impression that the mayor was
18 supportive of what staff were proposing. The
19 question was which standing committee to bring the
20 information forward to.

21 Q. Okay. So, he was
22 supportive. In terms of the content of the
23 information, did he have a reaction that you could
24 perceive?

25 A. I would say he was

1 supportive of the approach. I'm not sure that we
2 got into the detail just in terms of content. I
3 don't recall us getting into detailed conversation
4 what we were proposing with respect to the
5 content. My sense was that the mayor shared his
6 frustration in terms of information being
7 available on an issue that he was familiar with,
8 was reported to previously to council, so I sensed
9 some frustration.

10 Q. You sensed some
11 frustration that this information had not been
12 previously reported to council?

13 A. Yes. Sorry. That this
14 information in the context of many pieces of
15 information previously being reported to council
16 was not previously shared with council or reported
17 to council.

18 Q. What direction, if any,
19 did the mayor provide on next steps that staff
20 could or should do, besides just being generally
21 supportive of the approach?

22 A. I recall that he had an
23 interest in terms of ensuring all information was
24 being brought forward to the standing committee in
25 a complete manner, and I say that in the context

1 public works were working towards some collision
2 reporting and some additional public information,
3 and so the mayor shared an interest in bringing
4 all of that information forward to committee and
5 council. The question was just around process,
6 how to do so.

7 Q. Okay. To your knowledge,
8 was the mayor the first member of council to be
9 briefed on these issues?

10 A. Yes.

11 Q. Okay. Coming out of this
12 meeting with the mayor, what was the timing and
13 the process for where this information was going
14 to be provided to council or committee?

15 A. It wasn't clear to me
16 coming out of this meeting that we landed on a
17 timing and process. There was questions regarding
18 continuing to report to public works committee and
19 some of shortcomings in terms of sharing this
20 information to all elected officials, if we
21 proceeded to public works committee versus a
22 general issues committee. So, it was my
23 impression that the mayor had an interest to
24 report to general issues committee. It was just a
25 question about which general issues committee to

1 report it.

2 Q. Okay. And what sort of
3 time in advance did you need to be able to get on
4 the agenda for a general issues committee meeting?

5 A. We typically, for general
6 managers, there's a bit of a runway in terms of
7 sign-offs on reports. I would say two weeks would
8 be a time period that reports would have to be
9 finalized two weeks in advance of a committee
10 meeting.

11 Q. Okay. Registrar, can you
12 bring up 9A, page 280, please, and if you could
13 call out 654, please.

14 So, the meeting with the mayor
15 was in one of the last business days in December
16 before, as you say, there's a practice to shut
17 down. On January 3, Mr. McKinnon forwarded an
18 e-mail that's not relevant to the rest of this to
19 Ms. Auty saying:

20 "Hey Nicole. Are you
21 available for a call
22 today? I would like to
23 discuss the below and
24 what is our plan for
25 updating council? I kind

1 of lost the thread on
2 this."

3 By January 3, in your view,
4 was there a plan that had been solidified or had
5 Mr. McKinnon lost the thread because it actually
6 had not been solidified yet?

7 A. In January there was a
8 clear intention to bring the litigation matter and
9 supported with some public works reporting. In
10 January it's not -- I would say it would have been
11 premature to at this stage understand which
12 complete meeting we were targeting as it relates
13 to this information.

14 Q. Why was it premature?

15 A. In January I don't recall
16 there being an understanding in terms of the state
17 of the litigation work, and where we had of left
18 off prior to the holiday shutdown, my impression
19 was that public works were still working towards
20 compiling the information, suggesting they would
21 not have had the necessary time to develop a staff
22 report surrounding the information they were still
23 compiling.

24 Q. Okay. So, you said I
25 don't recall there being an understanding in terms

1 of the state of the litigation work. You mean
2 Ms. Auty had not yet reported to you?

3 A. I don't recall whether in
4 January whether or not Ms. Auty had drafted up a
5 report to take to council. I believe that that
6 work was still outstanding.

7 Q. Okay. So, was there lack
8 of understanding or just Ms. Auty had just had a
9 lot on her plate and had not yet had time to do
10 the draft report?

11 A. Yeah. So, again, we left
12 off prior to the holiday shutdown. We recognized
13 that January was as well likely the January 19
14 committee meeting may be a challenge, so again we
15 did not leave -- we did not go into the holiday
16 shutdown with an expectation that staff would be
17 developing these reports for January 19. So,
18 again, that was not my impression that staff were
19 working towards a January 19 timeline.

20 Q. You referenced
21 January 19. That was a date that you understood
22 was a possibility?

23 A. Yeah. So, again, many
24 competing demands in terms of the committee
25 calendar. I believe that was our general issues

1 committee meeting and I apologize because I don't
2 expect people to know all the nuances, but there
3 are restrictions in terms of procedural policy,
4 how information can be brought forward, and that
5 would have been an appropriate committee meeting
6 for information of this nature to be brought
7 forward.

8 Q. Okay. Just a last
9 attempt to clarify the issue around the status of
10 the litigation information. Did you understand
11 that Ms. Auty had additional work that she needed
12 to do, assessment, expert consultation, et cetera,
13 or was it a matter that she just needed to find
14 the time to actually write the report?

15 A. So, it's my understanding
16 that she was still working with the external legal
17 expert, which would suggest that the report, the
18 drafting of the report, was still, you know, some
19 weeks away.

20 Q. Okay. And you said that
21 it was your impression that public works was still
22 working towards compiling information, and so you
23 understood that the compiling of information was
24 staying some time and was not yet ready to go to
25 mid-July GIC meeting? Pardon me, January GIC

1 meeting?

2 A. That's what I was
3 advised, yes, by public works leadership.

4 Q. Okay. Registrar, you can
5 close this down and if you can call out the next
6 page as well, please.

7 So, Mr. Zegarac, at the bottom
8 of page 280 Mr. Hertel sends a calendar invite for
9 a meeting for January 7, confidential agenda in
10 the CMO boardroom. Jan Racine is going to be
11 there, Ms. Graham from communications, you,
12 Mr. McKinnon, Mr. McGuire and Karen Gordon, who is
13 a principal at Gordon Strategy. Do you recall
14 attending a meeting with these attendees on
15 January 7?

16 A. I do recall attending a
17 meeting and it might have been a few meetings with
18 these attendees, yes. I can't recall the specific
19 date.

20 Q. Ms. Gordon is someone who
21 I think you wouldn't have otherwise been having
22 meetings with because she's external. Is that
23 something that assists in your recollection that
24 you had one or two meetings, is it because of her
25 attendance?

1 A. Exactly, yeah. So, we
2 engaged Ms. Gordon for her expertise, similar to
3 the expertise we engaged on the legal matter, and
4 it was recommended by our communications staff
5 that it would assist them in terms of reviewing
6 the communication plan that staff were preparing.

7 Q. Okay. This seems to be
8 the first meeting in which communications staff
9 were brought into the mix, at least in a larger
10 group. Certainly Ms. Graham had been involved
11 because she worked quite frequently with public
12 works, but in terms of Mr. Hertel and Ms. Racine,
13 was that your understanding and impression as
14 well, that this was really when the communications
15 side of this issue got going?

16 A. That is my understanding,
17 yes.

18 Q. Okay. Ms. Graham
19 prepared, she called them minutes, notes of this
20 meeting. They go on for a few pages.

21 Registrar, can you call up 281
22 and 282.

23 So, it starts off with an
24 introduction and summary and it goes through --
25 yes, thank you, Registrar. That would be great,

1 if you can pull that out. So, it goes through a
2 background: The previous head of engineering
3 oversaw construction; 2013/2014 studies indicate
4 performance issue in wet weather; number of
5 parameters indicate performance of facility;
6 friction testing in 2013, 2014; did other studies
7 and eventually programmed facility in 2018,
8 freedom of information request in November 2018,
9 and then there's another reference to friction.

10 So, just stopping there, that
11 seems like a nice little summary of some of the
12 information that public works has compiled about
13 the chronology of issues on the Red Hill. Was
14 that the first time that you were hearing those
15 details?

16 A. I think this is the first
17 time I would have seen this in a summary form and
18 a bit of chronology in timelines, yes.

19 Q. Okay. Was there
20 information in there that was new to you? Maybe
21 I'll put it this way: New and noteworthy to you?

22 A. No, no.

23 Q. So, you had no knowledge
24 of these points before, just not in a, sort of,
25 spending 20 minutes going through the summary kind

1 of way?

2 A. I would say generally
3 speaking some of the nuances, I'll describe them
4 nuances, in terms of the relationship of Tradewind
5 to Golder, I'm not confident at this time I
6 understood that relationship in terms of
7 engagement, but I understood the issue surrounding
8 friction and I started to become more familiar
9 with some of the timelines at this stage with
10 respect to the previous CIMA reports.

11 Q. Okay. Thank you.
12 Registrar, you can close this down and if you can
13 call out the next page, 282, sort of up from the
14 top until options for updating. Perfect. Thank
15 you.

16 In terms of stone mastic
17 asphalt, it looks like there's also a summary
18 provided at this meeting about SMA. Were you
19 aware before this meeting about the type of
20 pavement surface that was used on the Red Hill?

21 A. I don't recall when stone
22 mastic asphalt was identified to me. It might
23 have been through this meeting or shortly around
24 this time, so it would be reasonable to assume
25 around this time.

1 Q. Okay. In the next
2 section it says "Crisis Comms Plan." Had you
3 reviewed any written crisis communication plan in
4 advance of the January 7 meeting?

5 A. No. It was my
6 understanding the January 7 meeting was to share
7 some preliminary framework around the scope and
8 approach around the communication plan, including
9 some facts and figures, and to get some general
10 response and feedback from Ms. Gordon with respect
11 to the approach that staff were proposing.

12 Q. Okay. It says:
13 "We are being queried
14 deeply on FOI."

15 Did you perceive that the FOI
16 process was a deep enquiry into this issue?

17 A. No, and I don't recall
18 following that FOI process. I would have relied
19 on public works to satisfy that process. I don't
20 recall continuing to follow that FOI process.

21 Q. Okay. I presume you
22 would have been interested in when response of
23 documents were going to be released as part of the
24 FOI process?

25 A. Yeah. That's fair, given

1 that staff wanted to advise council in advance of
2 when we would have either known or assumed that
3 that information would be made available.

4 Q. Okay. Registrar, could
5 you close -- actually, last point:

6 "Gary's key point, he
7 thought the results were
8 inconclusive because the
9 standard was not used in
10 North America.

11 Understanding that a bit
12 better and who answers
13 those questions?"

14 Was this the first time that
15 you had insight into Mr. Moore's key point about
16 the Tradewind report being inconclusive?

17 A. It might have been. I
18 don't recall that being a focus in terms of the
19 conversations in January, so it may have been the
20 first time that this information -- again, not my
21 notes. Not sure the degree of discussion
22 surrounding this point.

23 Q. Okay. By this point,
24 January 7, had you understood that the Tradewind
25 report referenced a standard, an investigatory

1 level, that was UK based?

2 A. My understanding -- yes.

3 My understanding would have been it referenced a

4 standard that was UK based, yes.

5 Q. Okay. Did you understand

6 if public works was doing any assessment of what

7 the appropriate standard would be to apply in

8 Ontario?

9 A. I did not, no.

10 Q. Okay. Registrar, could

11 you close this down and call out the remainder of

12 these notes. Thank you.

13 So, it says:

14 "GIC - January 16 (goal).

15 Council - January 23

16 (plan B)."

17 So, earlier, Mr. Zegarac, you

18 said January 19. Did you mean January 16,

19 assuming that's the date of the mid-January GIC?

20 A. Assuming that was the

21 date of the January GIC, I seem to recall that the

22 GIC, and I could be wrong, was after our meeting

23 with the mayor, but I could be wrong about that.

24 Q. After a meeting with the

25 mayor in January or in --

1 A. Yes. In January.

2 Q. Okay. Good. I thought I
3 was confused back to December. All right.

4 But just so that it's clear,
5 the plan was to go to a GIC meeting, whenever that
6 was, in mid-January. Is that right?

7 A. Yes. So, again,
8 recognizing the benefits of bringing this
9 information to a standing committee that had full
10 representation of all elected officials, yes.

11 Q. Thank you. Registrar,
12 you can close this down.

13 And, Commissioner, I see it is
14 1:00 on the nose and I would suggest that we take
15 our lunch break now before I move to another
16 topic.

17 JUSTICE WILTON-SIEGEL: Okay.
18 That's very good timing. Let's stand adjourned
19 until 2:15.

20 --- Luncheon recess taken at 1:00 p.m..

21 --- Upon resuming at 2:16 p.m.

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

24 JUSTICE WILTON-SIEGEL: Yes,
25 please proceed.

1 MS. LAWRENCE: Thank you.

2 BY MS. LAWRENCE:

3 Q. Mr. Zegarac, we're going

4 to be talking now about January of 2019.

5 Registrar, can you pull up

6 HAM64395, please.

7 THE REGISTRAR: Sorry,

8 counsel. Do you mind repeating the doc ID for me?

9 MS. LAWRENCE: Sure.

10 HAM64395.

11 THE REGISTRAR: Sorry, is it a

12 native file?

13 MS. LAWRENCE: I don't believe

14 so. It is not an exhibit already.

15 THE REGISTRAR: HAM64395?

16 MS. LAWRENCE: Yes.

17 Registrar, I think there may have been some

18 distribution issue to you. We'll try to get it to

19 you. I may just move on in the meantime. Perhaps

20 I'll ask my questions without the document and, if

21 it's not working, then we can just press on.

22 THE REGISTRAR: Okay.

23 Apologies. Yes, I don't have that one.

24 MS. LAWRENCE: No need to

25 apologize.

1 BY MS. LAWRENCE:

2 Q. Mr. Zegarac, the inquiry
3 has received a copy of your calendar reflecting a
4 meeting with the mayor on January 7, 2019 from
5 11:00 to 12:00, and it was the calendar that I
6 wanted to show you. Do you recall providing the
7 City's lawyers with a copy of that calendar? Do
8 you know what I'm talking about?

9 A. I do, yes.

10 Q. So, maybe we can do this
11 without actually going to the missing exhibit.

12 A. Sure.

13 Q. Do you recall having a
14 meeting with the mayor and/or mayor staff on
15 January 7?

16 A. I don't recall having a
17 meeting with the mayor or mayor staff on
18 January 7.

19 Q. Okay. Is it possible
20 that you had enough meetings with the mayor that
21 you might not remember one meeting over another?

22 A. That is a possibility.
23 It was not unusual for the mayor to have to cancel
24 and reschedule bi-weekly meetings with the city
25 manager because of competing demands. That might

1 have been a possibility and why that day -- why I
2 do recall that day in my calendar. There was a
3 possibility that I was absent that day, but
4 confirming my calendar, I was in attendance. So,
5 again, it may have been cancelled because of
6 competing demands.

7 Q. Okay. And there's
8 nothing about the calendar invitation that
9 suggests this is about the Red Hill. The subject
10 is meeting mayor and city manager in the mayor's
11 boardroom, and the invitee is you and the mayor
12 has invited you.

13 Sitting here today, do you
14 recall if you had a meeting with the mayor about
15 the Red Hill in early January?

16 A. I don't have recollection
17 of meeting with the mayor in early January or
18 January 7, and if I had a meeting with the mayor,
19 I would have expected to bring the appropriate
20 subject matter experts to that meeting.

21 Q. Okay.

22 Registrar, I believe that you
23 have a copy of that document now.

24 THE REGISTRAR: Yes. Sorry, I
25 don't have it in OnCue yet because I just received

1 it, so if you want me to share it, it's going to
2 be native.

3 MS. LAWRENCE: Sure.

4 THE REGISTRAR: Okay. Thanks.

5 MS. LAWRENCE: Thank you. Is
6 there any way for you to make that significantly
7 bigger? And you really only have to show the
8 January 7 date. Could you make it even bigger?

9 BY MS. LAWRENCE:

10 Q. Mr. Zegarac, I don't know
11 if that's readable for you and we can't call it
12 out the way we can with documents in our regular
13 system. When I was asking you about this calendar
14 invitation, if you remember it, is this the
15 document you were thinking about?

16 A. It is readable and it is
17 the document I was thinking of. Thank you.

18 Q. Great. Thank you.
19 Registrar, can we make HAM64395 the next exhibit,
20 which I think is Exhibit 172?

21 THE REGISTRAR: Noted,
22 counsel. Thank you. Yes, it's 172.

23 EXHIBIT NO. 172:
24 Calender invite sent to
25 Mr. Zegarac in January

1 2019, HAM64395.

2 MS. LAWRENCE: Thank you. It
3 doesn't have to be a native version that's made an
4 exhibit.

5 THE REGISTRAR: Okay. Thank
6 you.

7 BY MS. LAWRENCE:

8 Q. You can close that down,
9 Registrar. Thank you.

10 So, Mr. Zegarac, we'll come to
11 this shortly, but on January 23, 2019 there was a
12 council meeting in which city staff reported the
13 existence of a Tradewind report. Between
14 December 18, 2018, that meeting with the mayor
15 that we already talked about, and January 23,
16 2019, did you meet with the mayor about the Red
17 Hill?

18 A. No. So, I think I might
19 have misspoken prior to the break. I might have
20 said January 18. What I was referring to was the
21 December 18 meeting with the mayor in advance of a
22 December 19 GIC, so and I apologize for
23 misspeaking prior to the break.

24 Q. No problem. Thank you
25 for the clarity. So, you don't believe you had

1 any meetings with him --

2 A. I don't recall any
3 meetings with the mayor regarding the Red Hill.
4 There might have been meetings with the mayor on
5 other matters, but not on the Red Hill.

6 Q. Thank you. Registrar,
7 can you bring up order 9A, page 294, please, and
8 can you call out 684, please. Thank you.

9 So, this is January 10 and
10 Ms. Auty is exchanging e-mails with you and
11 Mr. McKinnon about report timing on the RHVE and
12 she says:

13 "Can we speak about this
14 ASAP?"

15 And Mr. McKinnon says:

16 "Mike and I are together
17 and will try to call you
18 just after 1:00."

19 And she says:

20 "Thanks. I'll be in my
21 office."

22 Registrar, you can close that
23 call out down. So, she's asking for a discussion
24 ASAP. Do you recall the conversation that you and
25 Mr. McKinnon appeared to have had with Ms. Auty

1 around 1:00 on January 10.

2 A. I don't recall that
3 conversation.

4 Q. Okay. The subject line
5 is "Report timing on the RHVP." As of January 11,
6 had a decision been made about which day and to
7 which entity the first report would go?

8 A. So, by this time we were
9 still being driven in part by the FOI and I can't
10 recall whether the FOI requirements were met by
11 this point. And then having met all the reporting
12 requirements of the FOI, understanding that the
13 information could be made public soon after, so
14 that was a top-of-mind consideration for us as it
15 relates to being before committee, before council,
16 to advise them of the FOI matter and the potential
17 litigation matters relating to the FOI matter.
18 So, again, January, I recall some urgency in terms
19 of working towards a January reporting to council.

20 Q. Okay.

21 A. But I don't recall the
22 timing exactly.

23 Q. The urgency was that you
24 wanted to get to a committee or to council prior
25 to the release of the responsive documents in the

1 FOI to the requester?

2 A. That's correct.

3 Q. Registrar, could you go
4 to page 305 and call out 712, please.

5 So, just in terms of following
6 that timeline, Mr. McGuire sent a letter to
7 Ms. Watson, who is in the privacy office, I can't
8 remember her exact title, with copies to
9 Ms. Rashford, also in that office, and Ms. Auty,
10 and it has an index of information and two bound
11 books of correspondence. So, the information is
12 going to the FOI office. Were you kept in the
13 loop about how long it might take to go from the
14 FOI office to the requester?

15 A. I wasn't. I wasn't
16 monitoring, directly monitoring, the FOI process,
17 nor do I recall our FOI office advising me in
18 terms of when the information was shared with the
19 applicant. So, again, I wasn't following the
20 issue and I don't recall being contacted by the
21 FOI office regarding the release of the
22 information.

23 Q. Thank you. Registrar,
24 you can close this down and going back to 294,
25 please.

1 So, I'm not sure if I fully
2 understood your evidence on this point. As of
3 January 10, had a decision been made about whether
4 the existence of the Tradewind report would be
5 disclosed to council or to GIC on a particular
6 date?

7 A. Not on particular dates.
8 Again, it wasn't clear to us that we could provide
9 the information to the January GIC, which would
10 have limited the information that we could provide
11 directly to council. Council would be -- we would
12 be eligible to bring some legal information to
13 council, but not the public works related body of
14 work could not go directly to council. It would
15 have to go through a standing committee.

16 Q. I see. I'm not sure I
17 understand what the limitation of information that
18 you could provide directly to council would be.

19 A. As I understand it, the
20 council, the standing committee's report to
21 council and standing committees are where the
22 issues are presented and debated and deliberated
23 and ultimately recommendations are made that are
24 then ratified at council. It's my understanding
25 that committee work can not go directly to

1 council, so while legal information can go
2 directly to council, all of the public works
3 reporting that we were working towards would not
4 be eligible to go directly to council. It would
5 have to be through a standing committee, such as
6 public works or general issues committee.

7 Q. Okay. So, as of
8 January 10, did you understand that there would be
9 one circumstance, time, event, when information
10 would be provided to the public works committee
11 first, including legal information? I'm just
12 trying to understand how you thought that that
13 going to play out as of January 10.

14 A. So, my recollection at
15 this time, January 10, was that the FOI-required
16 information was moving towards completion and not
17 knowing the timelines then in terms of when they
18 would be released, some sense of urgency as it
19 relates to getting before council to advise them
20 of the FOI issue and the associated reports and
21 the litigation risk. And so, recognizing that
22 bringing the litigation matter and the public
23 works information was likely not a possibility for
24 the January GIC, we did have to pivot and bring
25 the legal information directly to council on the

1 23rd, and I believe on the 23rd we messaged to
2 council that the public works information would
3 follow in report format and presentation format on
4 February 4. So, we had to pivot a bit because of
5 not being able to meet the January timeline and,
6 as I understand the restrictions with respect to
7 bringing some of the information we intended to
8 bring forward to council directly.

9 Q. Okay. So, was it your
10 expectation in early January that the information
11 about the litigation a risk and the public works
12 information, being the technical information about
13 the current status of the Red Hill, that those
14 could both go to GIC?

15 A. That was our
16 understanding and that's what we were hoping to
17 do, but we came to a realization that we weren't
18 in the position to do that for the January GIC.
19 And given that the, as I understand that we were
20 moving towards competing the freedom of
21 information requirements, that we needed to advise
22 council of the issue sooner rather than later.

23 Q. Okay. And why were you
24 not in a position to be ready to go to the
25 January 16 GIC meeting?

1 A. Again, similar to the
2 issues in December, staff were still compiling the
3 information to present to committee.

4 Q. Okay. Were they
5 compiling information, because they provided all
6 of it to the FOI office by January 14. Is it
7 really they were preparing the staff reports?

8 A. Sorry, not to confuse the
9 FOI. By compiling information, it's as it relates
10 to the reports to committee and council and the
11 associated information.

12 Q. Thank you.

13 Registrar, can you go to the
14 next page, 295, please.

15 So, on January 11 Mr. Sabo and
16 others, including Ms. Graham, Mr. Hertel,
17 Mr. McGuire, Mr. McKinnon and I think Ms. Gordon
18 and Ms. Auty, there's some notes here that
19 reference all of those people in the middle of the
20 page. You're not referenced in this meeting, but
21 it does appear to be a meeting on January 11. Do
22 you recall attending a meeting on January 11 with
23 public works and legal services staff?

24 A. I don't and, without
25 having the committee and council calendar, we have

1 many budget deliberations in January and that
2 might have been a conflict.

3 Q. Okay. There are a number
4 of other meetings through January related to the
5 Red Hill, some of which you attend, it appears,
6 and some of which you don't. Is that consistent
7 with your recollection of your involvement, that
8 meetings were happening without you and you
9 attended when you could?

10 A. Yes, that is my
11 recollection.

12 Q. Were you brought up to
13 speed or updated by staff as needed during that
14 period, from January 10 to the 23rd?

15 A. I know that there were
16 check ins, and so I would have been reliant on
17 public works and legal services to provide
18 updates, and those were occurring occasionally.

19 Q. Okay. Registrar, can you
20 go to page 326, please, and could you call out
21 764.

22 So, on January 19, you sent a
23 calendar invitation to Ms. Auty, Mr. McGuire,
24 Mr. Soldo and Mr. McKinnon with the subject line
25 RHVP discussion for January 21, 2019. By

1 January 21, was the plan crystallized to go to
2 council on January 23?

3 A. I believe it was in that
4 we were, again, we recognized we needed to pivot
5 in that we weren't able to bring the legal and
6 public works information to the same committee, so
7 we were looking to bring a legal report to council
8 on January 23.

9 Q. Registrar, you can close
10 that down.

11 And, Mr. Zegarac, just for
12 little bit more context to refresh your memory,
13 Registrar, can you leave up OD 9A and also bring
14 up HAM35818. This is also not an exhibit. I'm
15 glad you have it. This has a second image, but
16 there's nothing on it, so really it starts at the
17 bottom.

18 Your assistant is contacting
19 you on the 18th asking about if you and Dan
20 decided if the meeting was going to form part of
21 the one on one you had with him or a separate
22 meeting before council next week, and you said:

23 "Separate. There need to
24 be a broader group,
25 including legal."

1 And she says:

2 "Do you want it prior to
3 council?"

4 And you said yes.

5 Registrar, you can close that
6 down, but before we leave that, Mr. Zegarac, do
7 you remember that back and forth with your
8 assistants?

9 A. I do. So, again, the one
10 on one is in reference to monthly meetings with
11 Mr. McKinnon and my request that this be -- not
12 form part of the one on one and that we needed a
13 broader audience of staff.

14 Q. Thank you. Registrar,
15 can you make that's document the next exhibit.
16 173 is the Exhibit number and, again, it's
17 HAM35818.

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

20 EXHIBIT NO. 173: E-mail
21 exchange between
22 Mr. Zegarac and his
23 assistant dated January
24 18, 2019, HAM35818.

25 BY MS. LAWRENCE:

1 Q. Thank you. So, what was
2 the purpose of the meeting that ended up being
3 arranged on the 21st?

4 A. The purpose was to
5 prepare for council on the 23rd. Ms. Auty would
6 have drafted her legal report to council for the
7 23rd and recognizing that we would want
8 Mr. McKinnon to be in attendance on the 23rd to
9 provide some context to the expressway and, more
10 specifically, historic reporting, and the
11 timelines, including some of the issues such as
12 the turnover and the new leadership, and as well
13 as the repaving of the LINC or, sorry, the Red
14 Hill and the review of consultant reports in
15 advance. So, again, recognizing there was a legal
16 report, but with the expectation that Mr. McKinnon
17 would be at committee to speak to the technical
18 issues surrounding the expressway.

19 Q. Mr. McKinnon was going to
20 provide an oral update and not written materials?

21 A. Yeah. So, again, my
22 understanding is that we are limited in terms of
23 what written materials we can provide directly to
24 council, and while the legal report was
25 appropriate to provide a written report with

1 respect to the timelines and the chronology and
2 the history surrounding the expressway, that would
3 be information that should be brought to standing
4 committee, not to council.

5 Q. What did you anticipate
6 or foresee that your role was going to be at the
7 January 23 meeting?

8 A. Given that it was a
9 private and confidential matter led by a legal
10 report, I would have expected the City solicitor
11 to start the conversation in that it is the
12 solicitor's report to council and to be available
13 to answer any questions that council may have, and
14 as well as for Mr. McKinnon to be available to
15 provide some context and answer any questions
16 council might have.

17 Q. So, you just referenced
18 that Ms. Auty was going to provide a legal report.
19 Just returning back to your evidence this morning,
20 before you saw this report, what did you
21 understand the risk from a litigation perspective
22 to be exactly?

23 A. I don't know that I had
24 an appreciation as to what the risk as it relates
25 to the report and the information. That's what we

1 were relying on Mr. Boghosian and I was relying on
2 Ms. Auty to present to council and as well to
3 myself.

4 Q. Okay. And so, over the
5 course of December and January, did she convey
6 more information to you so you had a better sense
7 of what the litigation risk was as it related to
8 the Tradewind report?

9 A. That's not my
10 recollection, no. By the end of January, I
11 believe or January 23, we were in a position to
12 advise council of these issue, but we still were
13 not in a position to provide some assessment as to
14 what the legal risks were.

15 Q. I understand that you
16 might not -- that no one would be able to predict
17 or speculate what sort of risk would unfold. I'm
18 just having a hard time understanding what you
19 understood the litigation issues to be --

20 A. I understand the
21 litigation issues to be tied to the report, to the
22 Tradewind report, and information that previously
23 was not shared broadly. That was my understanding
24 as it relates to the litigation issues.

25 Q. Yeah. I think you said

1 that before. Can you provide any more explanation
2 about the relevance of the connection of those two
3 things?

4 A. So, I can just simply
5 expand that the additional information, my
6 understanding, additional information could
7 require or could trigger some additional claims as
8 it relates to the expressway or it may impact
9 existing claims. That was my understanding
10 surrounding litigation.

11 Q. Okay. Did you have any
12 more detail about actually how that might play out
13 in practice in litigation?

14 A. No. I wouldn't have had
15 a better appreciation or understanding, no.

16 Q. Okay. Registrar, can you
17 go to page 329, please, and if you can call out
18 771, please.

19 So, Mr. Sabo e-mailed you and
20 Mr. McKinnon on January 20 with a draft of
21 Ms. Auty's report. You said earlier this morning
22 that usually you would expect a couple of weeks in
23 advance to get a report done, so this is coming
24 fairly late in the day. Is that right?

25 A. It would have been and,

1 while it wasn't our preferred approach, it does
2 happen from time to time that we deliver reports.
3 We sometimes refer to them as walk-on reports to
4 council, and so it does happen from time to time.

5 Q. Okay. Mr. Sabo notes
6 that it's been circulated to Gord and to outside
7 counsel for edits and there could be some further
8 edits. Did you review this draft when you
9 received it or did you hold off and wait to see if
10 there was going to be more edits before you
11 reviewed it?

12 A. I can't recall if -- I
13 recall reviewing the report. I can't recall if I
14 reviewed the draft report or final report. It was
15 more common for me to review a final report of
16 legal services. Again, legal services report
17 directly to council under the signature of the
18 City solicitor. And so, unless there was contents
19 that I had some expertise to review and comment
20 on, my normal practice was to review the final
21 version of legal services' reports.

22 Q. Thank you. Just to
23 provide you with a context that might be useful
24 for you, Registrar, can you go to page 333.

25 And at the top at 782, so it

1 says the same day, that day is January 21, which
2 is earlier in the narrative of the OD, Mr. Sabo
3 replied to his e-mail attaching two draft reports:
4 A clean version and a version containing revisions
5 made and, again, says:

6 "Here is a revised draft
7 report in track changes
8 and clean."

9 And we don't have any
10 electronic documents that suggest that you
11 provided comments on either of these drafts. Does
12 that assist in refreshing your memory about which
13 drafts you saw?

14 A. I don't recall making
15 edits or comments, so that would be consistent
16 with my recollection.

17 Q. Okay. Did you understand
18 that Mr. Sabo was sending you these various
19 versions of the drafts and the clean copy as a
20 sort of for your information or as a for seeking
21 approval?

22 A. For my information. So,
23 again --

24 Q. I think I get it and --

25 A. Okay.

1 Q. I'm concerned about the
2 time. I would really like --

3 A. I appreciate that.

4 Q. I don't mean to interrupt
5 you or cut you off.

6 A. I understand.

7 Q. Registrar, can you go to
8 326 and 327, please.

9 Maybe just for the record
10 because I do feel badly about cutting you off, was
11 it for your information only because legal reports
12 directly to council?

13 A. That's right. And don't
14 feel badly. I'll try to be concise.

15 Q. Thank you. Registrar,
16 could you pull out the bottom of the left-hand
17 side, 765, and then also the continuation at the
18 top of the next page. Thank you.

19 So, Ms. Graham from
20 communications has notes that appear to be from a
21 meeting and I think -- it says "meeting with
22 Mike," which I think is you. The document is
23 undated, but it appears to be from before the in
24 camera council meeting on Wednesday, which would
25 be the 23rd. Do you recall having a meeting with

1 Ms. Graham, possibly with others in the days
2 leading up to the January 23 meeting?

3 A. So, I do recall meetings
4 leading up to January 23. I do recall Ms. Graham
5 participating through a series of meetings related
6 to the Red Hill, but I don't recall this meeting
7 referenced in Ms. Graham's notes.

8 Q. Okay. There's two
9 references in these notes that are on points that
10 I haven't asked you about yet today. One is the
11 speed limit report, and it says it's Edward's
12 report about the speed limit, and then the second
13 is referenced as PW18008A, end-to-end illumination
14 and friction testing, 2017 assignment.

15 What did you understand, if
16 anything, about these two pieces of information
17 and how they played into the process to get
18 information to council?

19 A. So, I understood these
20 measures being mitigation measures. I understood
21 these to be measures that staff would be
22 recommending to council. I believe originally we
23 were targeting February 4 public works committee,
24 but that had changed through, I believe, a
25 decision of PERKS [ph] that ultimately led to

1 February 6. So, I do recall these mitigation
2 measures being raised in the context of reporting
3 to committee in February.

4 Q. Thank you. And you said
5 earlier, just a few minutes ago, that your
6 understanding was some things could go to GIC or
7 council, that is the legal issues, and then other
8 things had to go to PWC. Is this what you were
9 thinking about in terms of the types of items that
10 had to go to the appropriate standing committee?

11 A. Yes, exactly, so
12 recommendation actions would go to standing
13 committee, not to council. So, staff were
14 recommending these measures and seeking approval
15 from committee. That would have to be committee
16 work.

17 Q. When did you first
18 understand that public works was going to
19 recommend reducing the speed limit to 80
20 kilometres an hour on a stretch of the Red Hill?

21 A. In lead up to our
22 February report, but I don't recall a specific
23 date or period other than leading up to the
24 February report to committee and council.

25 Q. Okay. For PW18008A,

1 there's a reference to end-to-end illumination.
2 What information did you have by January 21 about
3 the assessment of end-to-end illumination on the
4 Red Hill?

5 A. So, I don't have detailed
6 recollection of end-to-end illumination. I do
7 recall the speed limit reduction on a span of the
8 roadway. I do recall increasing some signage,
9 some lighting to signage, but I don't recall a
10 conversation around illumination. I'm not
11 suggesting it didn't happen; I just don't recall.

12 Q. Thank you. Registrar,
13 you can close this down and if you could pull up
14 HAM48777.

15 Mr. Zegarac, I asked you at
16 the very outset your evidence about the senior
17 leadership team and the meetings of those teams.
18 This is a minutes from Thursday, January 23, 9:00
19 to 12:00, so that was the same day as the council
20 meeting but in the morning. Is that right?

21 A. That's correct.

22 Q. And so, you'll see 1.1,
23 it says:

24 "SLT to move in camera at
25 the completion of the

1 meeting regarding RHVP
2 council report."

3 And then, Registrar, could you
4 go to the last image of this document. It's
5 image 5.

6 And then a reference there,
7 Red Hill Valley Parkway in camera. Do you see
8 that?

9 A. I do.

10 Q. Registrar, can you go
11 back to the first page.

12 So, on the column to the right
13 it says your name, where it says 1.1. Did you add
14 this agenda item to the senior leadership team
15 meeting?

16 A. I recall adding agenda
17 items 1.1 through 1.3.

18 Q. Okay. Why did you move
19 for the discussion about the Red Hill council
20 report to be held in camera at this meeting?

21 A. So, providing the -- the
22 context being that the information we were sharing
23 had not been shared with committee and council
24 confirm yet, so treating it in a similar manner as
25 we treat committee and council as in camera. And

1 I'll just make the connection to 1.3. It was not
2 the practice at this time that all SLT members
3 would receive private and confidential committee
4 meeting information, so there was an absence of
5 knowledge at senior leadership team as to what
6 private and confidential items might be being
7 discussed at other standing committee meetings and
8 senior leadership team felt there was a void in
9 trying to understand what issues they may benefit
10 from from having awareness. So, 1.1 in part
11 stemmed out of a desire for senior leadership team
12 as captured in 1.3 to have access to private and
13 confidential matters that were being brought to
14 the various standing committee meetings.

15 Q. Okay. Why was it that
16 you wanted to have an in camera session of the
17 senior leadership team meeting? And maybe I'll
18 ask given that these are just minutes of a
19 meeting, they're not minutes of a committee.

20 A. So, again, under 1.1 it
21 would have been a briefing to senior leadership
22 team as it relates to the issues surrounding the
23 expressway and staff's intention to bring a report
24 to council that evening, and as well a bit of
25 description as it relates to the issues and future

1 reporting. So, again, in the absence of SLT being
2 privy to this information through the minutes or
3 through copies of agendas, it was for the benefit
4 of senior leadership team to give them some
5 awareness of this issue that was going to be -- we
6 expected would be a broader issue once the
7 information became public.

8 Q. Okay. So, just looking
9 at the attendees, who had prior knowledge of this
10 and who was hearing this information in 1.1 for
11 the first time?

12 A. Is maybe simpler as to
13 who would be receiving it for the first time:
14 Mr. Johnson, Mr. McMullen, Mr. Thorne,
15 Ms. Leadbetter, and Ms. Melatti, given she had
16 control over my calendar and meetings, would have
17 known of some of the topics or issues.

18 Q. Okay. So, my question
19 before, probably ineloquently asked, was this is
20 an SLT meetings. Why do you go in camera? Is it
21 because these minutes are going to go somewhere
22 and you're worried about it, or is there some
23 other reason that you actually go in camera in a
24 private meeting?

25 A. We go in camera similar

1 to council going in camera similar to our minutes
2 are made available to the corporation as a whole,
3 so all staff through leadership have access to SLT
4 minutes.

5 Q. Thank you. Registrar,
6 you can close this down.

7 So, I'm going to ask you some
8 questions now about the general recollection of
9 the January 23 council meeting. Report SL19007
10 was presented by Ms. Auty to the council in a
11 closed session on that day. Do you remember her
12 presentation?

13 A. I recall a verbal
14 description of the report. That's my recollection
15 of the 23rd. As well as -- sorry.

16 Q. Go ahead.

17 A. I apologize. As well as
18 Mr. McKinnon providing some context as to the
19 issue and just confirming for council on the 23rd
20 that the road was safe. That was a clear
21 objective going into the 23rd, for Mr. McKinnon to
22 confirm as our lead of public works that the road
23 was safe. Some context surrounding the report,
24 the Tradewind report, but again a verbal summary
25 with a commitment to report back. And, I believe,

1 at that time we were considering a February 4
2 public works standing committee meeting that
3 ultimately was amended to February 6 general
4 issues committee.

5 Q. Thank you. Registrar,
6 could you bring up HAM61921, please.

7 So, I believe that this is the
8 report that Ms. Auty, the written report that she
9 provided on this day. We went through and you
10 said that you got it as an FYI.

11 Registrar, could you pull up
12 page 1 and page 2, please.

13 Here, there is an executive
14 summary. Then there's a historical background
15 with some context about the construction and
16 Mr. McGuire reviewing the status of work being
17 proposed and becoming aware of the draft Tradewind
18 report.

19 Registrar, could you go to 3
20 and 4 now.

21 Now there's a reference to
22 analysis and rationale for recommendation.

23 Registrar, could you pull the
24 second half of image 3 out, please. Thank you.

25 So, in the second paragraph it

1 says:

2 "The concern is that the
3 Tradewind report was not
4 shared with other staff
5 at the time. As a
6 result, subsequent
7 reports and analysis of
8 the condition of the RHVP
9 did not reference this
10 report."

11 And then there's a part that
12 is redacted for solicitor-client privilege and
13 then:

14 "In addition, the
15 Tradewind report and its
16 content on friction
17 testing have not been
18 consistently addressed in
19 the media and now that
20 staff are aware of this
21 report and have
22 identified it as a
23 responsive record, the
24 release may have some
25 reputational impact on

1 the City and wide media
2 coverage."

3 Does your recollection of
4 Ms. Auty's presentation follow that these were the
5 primary points that she raised with council?

6 A. That is my recollection,
7 yes.

8 Q. Registrar, you can close
9 this down.

10 You said Mr. McKinnon's focus
11 was on -- I want to make sure I get your
12 language -- confirming that the road was safe. I
13 think that was your language?

14 A. Yes.

15 Q. What information did he
16 provide to council to provide those assurances
17 that the road was safe?

18 A. Mr. McKinnon just
19 delivered the message just, again, relying on
20 Mr. McKinnon and his team and the context of the
21 review of the reports that they had undertaken in
22 advance of the repaving, so at this point they
23 would have reviewed the historic CIMA reports and
24 that would have been the basis in terms of
25 Mr. McKinnon's comment, my understanding of the

1 basis.

2 Q. How did the councillors
3 react to the information that staff presented on
4 January 23, to your perception?

5 A. I would describe it as
6 varied. So, again, along the theme of there were
7 some councillors who were familiar with past
8 reporting and new councillors who this would have
9 been introduced as a new item or maybe less
10 familiar with the issue. For those councillors
11 who were more familiar with past reporting and as
12 it was presented in terms of how the information
13 became available, I would describe them as
14 frustrated and that frustration could be felt in
15 terms of the tone to some of the questions. And
16 so, again I would describe some councillors as
17 being frustrated. Others, again, I believe they
18 were trying to understand the issue at hand and
19 were maybe reliant upon the subsequent information
20 that we would be bringing forward in February.

21 Q. Registrar, could you
22 bring up OD 9, page 357 and 358, please.

23 While that's coming up,
24 Mr. Zegarac, the following week Ms. Auty had a
25 conversation with Mr. Boghosian where she relayed

1 some information that came out of council.

2 Registrar, could you call out
3 the top of 358, please.

4 So, you'll see four lines
5 down:

6 "Council wants to know if
7 Brian Malone/CIMA had the
8 Tradewind report, if
9 there's anything else
10 CIMA thinks needs to be
11 done to address safety,
12 slipperiness, as interim
13 measures pending
14 repaving."

15 So, of course, this is
16 Mr. Boghosian's notes, not yours. You're not on
17 the call, but do you recall councillors asking
18 staff to obtain answers to those two questions?

19 A. I do recall these two
20 questions being action items for staff to report
21 back at the next committee council meeting. So,
22 as I understood it, it was what would CIMA's --
23 would CIMA's recommendations change and would CIMA
24 propose any additional recommendations relative to
25 their earlier work.

1 Q. So, going into the
2 January 23 meeting, did you personally know either
3 way whether Mr. Malone or CIMA had a copy of the
4 Tradewind report?

5 A. I would not have known
6 whether Mr. Malone or CIMA had a copy of the
7 Tradewind report, no.

8 Q. No, you did not know?

9 A. I did not know.

10 Q. Okay. What about the
11 other staff who attended the January 23 meeting,
12 like Ms. Auty? If council asked that, was she in
13 a position to confirm factually either way?

14 A. I don't know if Ms. Auty
15 would have been in a position to confirm that.

16 Q. But she didn't confirm
17 that at the meeting, to your recollection?

18 A. She may have. I don't
19 have recollection of that.

20 Q. Okay. Did the
21 councillors express concerns about the potential
22 safety or slipperiness, as Mr. Boghosian puts it,
23 on the Red Hill during that meeting?

24 A. I don't know that the
25 term "slipperiness" and I don't know if these are

1 minutes or someone's notes, so, again, I don't
2 recall the reference to slipperiness. Again, my
3 recollection was council was interested if CIMA
4 would revise any earlier recommendations or if
5 they would propose any additional recommendations.
6 That's my recollection of the action items arising
7 from council.

8 Q. I understand. So, this
9 is Mr. Boghosian's notes receiving information
10 being relayed from Ms. Auty about the meeting, so
11 I think we can all take that that this is not
12 minutes of the meeting by someone who attended the
13 meeting, so we don't need to focus on the
14 particular words.

15 My concern or my question,
16 pardon me, was: Did these two questions arise in
17 the context of the councillors being concerned
18 about potential safety issues? Is that why they
19 were asking for these action items?

20 A. So, I understood that
21 council wanted some independent confirmation
22 beyond staff's comments with respect to
23 commitment -- sorry, outside of staff's comments
24 with respect to the safety of the road. I don't
25 recall these specific references. I don't recall,

1 again, slipperiness or the Tradewind report.

2 Q. Registrar, you can close
3 this down.

4 Do you recall any discussion
5 on January 23 at the council meeting about
6 Mr. Moore's involvement with the retainer of
7 Tradewind to complete its report?

8 A. I don't recall that, no.

9 Q. Okay. Are you confident
10 there was no discussion about that or you just
11 can't recall either way?

12 A. I just can't recall
13 either way.

14 Q. Okay. Registrar, can you
15 go to 341, please.

16 You'll see at the bottom of
17 this page, on January 25 Ms. Auty e-mailed you,
18 copying Ms. Fontana, a document called
19 confidential RHVP action plan.

20 Registrar, can you bring up
21 the next page as well.

22 And the attached document had
23 three primary points: Employee considerations,
24 technical/engineering safety, and communication
25 plan with external support. Do you remember

1 discussions coming out of the January 23 meeting
2 with staff about the action items that were
3 collectively on your plate?

4 I'm sorry, it's a little bit
5 small. I'm happy to have the registrar call these
6 out if you need them to be blown up.

7 A. Sure. Can I ask you to
8 repeat the question?

9 Q. And sure. Do you
10 remember discussions coming out of the January 23
11 meeting with city staff about the action items
12 that were on your collective plate?

13 A. I do recall conversations
14 regarding employee status, the meet with employee,
15 and that is in reference to Mr. Moore, and in
16 reference to Mr. Moore being on contract for the
17 Hamilton LRT project.

18 The technical/engineering
19 safety, I'm interpreting that to be the CIMA
20 questions, so, again, I do recall the two
21 questions regarding recommendations, past
22 recommendations, and potential future
23 recommendations.

24 And the communication plan, I
25 can't recall if that was discussed or suggested

1 would follow in February.

2 Q. Okay. And of those three
3 items, were any of them your personal
4 responsibility?

5 A. With respect to the
6 employee status, that was an action item for me to
7 take away along with Mr. McKinnon and Ms. Fontana.
8 And with respect to current employment agreement,
9 that was for me to take away with Ms. Fontana as
10 well as our SLT champion for our LRT project, and
11 that was Mr. Thorne, just engaging with Mr. Thorne
12 on Mr. Moore's contract and support of the LRT
13 project.

14 Q. It seems there are
15 different groups of staff handling all the bits
16 and pieces of this follow up to get information to
17 council for the next, sort of, disclosure to
18 council. Would you agree that all staff
19 collectively needed to have one person to look to
20 for final direction and sign off and that one
21 person was you?

22 A. That's fair to say, yes.

23 Q. Registrar, you can close
24 this down. Registrar, can you bring up HAM64399.

25 THE REGISTRAR: Sorry, this

1 one is going to have to be native as well.

2 MS. LAWRENCE: Thank you.

3 BY MS. LAWRENCE:

4 Q. So, Mr. Zegarac, this is
5 just a calendar invitation from your assistant to
6 you and Ms. Fontana. So, just as reminder,
7 Ms. Fontana is -- I'm not sure of her exact title
8 did she head of HR?

9 A. Executive director of HR,
10 yes.

11 Q. Thank you. And it says
12 PW and compensation. This is the same day as the
13 e-mails that we were just looking at. Did this
14 relate to the employee action event that you had
15 on your to-dos coming out of January 23?

16 A. It may have. It may have
17 been related to the contractual relationship we
18 had with Mr. Moore as it relates to the LRT
19 project.

20 Q. Okay. I realize I forgot
21 to make an earlier document an exhibit and I would
22 also like to make this an exhibit. So, Registrar,
23 could you make HAM48777, which is the senior
24 leadership team minutes that we were looking at,
25 Exhibit 174, and then this document 175.

1 THE REGISTRAR: Noted,
2 counsel. Thank you.

3 EXHIBIT NO. 174: Senior
4 leadership team minutes,
5 HAM48777.

6 EXHIBIT NO. 175:
7 Calender invite to
8 Mr. Zegarac and
9 Ms. Fontana, HAM64399.

10 MS. LAWRENCE: Thank you. You
11 can close this.

12 BY MS. LAWRENCE:

13 Q. So, we've talked a little
14 on your evidence about the different committees
15 where this information could go and I think you
16 had said earlier that there was a move from going
17 to public works committee with the speed limit
18 report, the end-to-end illumination, those types
19 of documents on February 4 and then that got moved
20 to February 6. Is that right?

21 A. That's correct.

22 Q. And we've seen a number
23 of documents in the inquiry that relate to the
24 scheduling. It suggests that you have some
25 involvement into that scheduling process?

1 A. I wouldn't describe it as
2 involvement. I would say that I recall some
3 elected officials expressing an interest as to
4 which committee meetings these items go to, but
5 ultimately that is the authority of clerks and
6 responsibility of clerks to determine which agenda
7 items go to which standing committee meetings.

8 Q. Thanks. Why don't we go
9 to that just to give you some reference.

10 Registrar, could you go to 9A,
11 348, please. Apologies, Registrar. Can you go to
12 the next page.

13 So, you're having some back
14 and forth with the mayor about the scheduling of a
15 special meeting.

16 Registrar, could you pull out
17 under 826 it says Mayor Eisenberger then the next
18 one down is Mr. Zegarac. Can you pull out --
19 right there is perfect.

20 So, you say:

21 "At a meeting on Friday
22 with Councillors Merulla,
23 Collins and Jackson, the
24 councillors suggested
25 that the three reports

1 that staff were expecting
2 to bring to the
3 February 4 meeting should
4 be pulled and brought to
5 a special GIC for a
6 special in camera
7 discussions."

8 Just stopping there, in terms
9 of the scheduling and leaving aside where the
10 suggestion came from, that's in fact at the end of
11 the day what happened. Right?

12 A. That is the outcome, but
13 again I don't know how that was rescheduled from
14 February 4 to 6, other than there was an e-mail
15 between, I believe, the mayor's office and clerks
16 advising of that change.

17 Q. Okay. And why did you
18 understand that the councillors were making this
19 suggestion to move the reports from PWC to a
20 special GIC?

21 A. My understanding was
22 similar to the councillors were trying to work
23 through some of the issues I had identified
24 previously. One of the challenges at public works
25 committee is not all elected officials have

1 standing at public works committee and, therefore,
2 could not vote. And while they may be attendees,
3 they may be able to ask questions if the chair
4 allows, but they cannot ultimately vote. I
5 believe the other concern of elected officials and
6 similar to the concern staff had is that the
7 information would be fragmented, some information
8 being brought forward at public works committee,
9 some information potentially at general issues
10 committee and then some at council, so an overall
11 desire for all information to be brought to one
12 committee meeting and I believe at some point it
13 was suggested, in fact it is in this e-mail here,
14 a special general issues committee to allow for
15 all related items to be on the same agenda.

16 Q. Thank you. Commissioner,
17 I'm looking at the time. It's 3:16 and we take
18 our afternoon break at 3:15. My suggestion is
19 that we do that now and I'll speak to counsel
20 about the remainder of our day.

21 JUSTICE WILTON-SIEGEL: Okay.
22 Let's take a break until 3:30 and, Mr. Registrar,
23 we'll ask you to have counsel put in a separate
24 breakout room.

25 --- Recess taken at 3:16 p.m.

1 --- Upon resuming at 3:30 p.m.

2 MS. LAWRENCE: Commissioner,
3 may I proceed?

4 JUSTICE WILTON-SIEGEL: Yes,
5 please do.

6 BY MS. LAWRENCE:

7 Q. Registrar, could you
8 bring up OD 9A, 348, please.

9 Before the break we were
10 talking about the meeting with councillors.

11 Sorry, Registrar, could you
12 also bring up the next page.

13 At the bottom of 349, you'll
14 see those three points that we were just looking
15 at that came out of the action plan from Ms. Auty:
16 Employee considerations, technical/engineering
17 safety, and communications plan. Did you raise
18 those points from Ms. Auty's action plan with the
19 councillors during their meeting?

20 A. No. My recollection of
21 the meeting that we had with councillors after
22 January 23 was principally focused on the
23 components of information we would be reporting
24 back in February surrounding.

25 Q. Thank you. So, these

1 three councillors were all long-standing
2 councillors. They were not new to council and
3 they all have wards that intersect one way or
4 another with the Red Hill. Is that right?

5 A. That's correct.

6 Q. So, you said earlier that
7 the councillors with some familiarity had a fair
8 bit of frustration about this information. Were
9 these three councillors in that group of
10 councillors who were frustrated with the
11 disclosure of the existence of the Tradewind
12 report?

13 A. That was my impression.

14 Q. Registrar, you can close
15 that call out and if you can go to page 355 and
16 356, please.

17 On January 30 you had some
18 e-mail exchanges with the mayor and with
19 Ms. Paparella, the legislative coordinator. If
20 you see at 850, you responded to an original
21 e-mail. I won't go through. There's a few
22 different e-mail chains here, but you'll see that
23 you say -- and, Registrar, if you could pull this
24 out at 850:

25 "Dan and I had a follow

1 up discussion with the
2 councillors we met with
3 yesterday proposing a
4 reporting process. The
5 councillors were not in
6 alignment with what we
7 proposed."

8 Can you confirm did you have a
9 second meeting with Councillors Merulla, Collins
10 and Jackson with Mr. McKinnon?

11 A. There was a second
12 meeting that included the three councillors. The
13 first meeting included Councillor Collins and
14 Councillor Merulla.

15 Q. So, this meeting with
16 Mr. McKinnon included all three but the meeting
17 before was just two?

18 A. Yes, including
19 Mr. McKinnon and I and the two councillors.

20 Q. I see. Okay. So, where
21 you say here proposing a reporting process, what
22 were you talking about?

23 A. So, with respect to the
24 four categories at the bottom of this e-mail, that
25 this was what we were gauging the councillors for

1 their reactions in terms of whether they felt that
2 this information would be helpful in February and
3 satisfying in terms of the information that they
4 were expecting in February. We were careful.
5 I'll say that these meetings aren't unusual. They
6 do occur from time to time with councillors on
7 ward issues or issues that they're champions of,
8 so, again, just gauging their reaction in terms of
9 did we get the categories right? Are we going in
10 the right direction as the information, additional
11 information, they're expecting and want to see?

12 Q. Okay. So, where you say
13 that the councillors were not in alignment with
14 what we proposed, were they not in alignment with
15 the four categories or with some other aspect of
16 your proposals?

17 A. I believe it was more so
18 in the report we made reference -- sorry, in the
19 January 23 council meeting we made reference to a
20 public works standing committee and that is the
21 issue that I recall the councillors not being in
22 alignment with.

23 Q. Okay. So, the issue that
24 you were --

25 A. Yes.

1 Q. On which you gave
2 evidence before the break?

3 A. Yes.

4 Q. You also note here:
5 "I've asked Rosana if she
6 can find time with you to
7 discuss today."

8 Do you recall discussing this
9 issue with the mayor on the 30th?

10 A. I don't recall it but it
11 might have happened.

12 Q. Okay. Registrar, you can
13 close this call out.

14 So, this morning you said you
15 had not, you thought, read the Tradewind report or
16 the Golder report until January of 2019. Do you
17 recall when you first actually sat down and
18 reviewed the Tradewind report and the Golder
19 report?

20 A. I don't recall reviewing
21 them cover to cover in a great detail. I do
22 recall reviewing the reports and my immediate
23 sense was they were very technical and beyond my
24 ability to fully appreciate. And, again, unless a
25 staff person was making reference to a particular

1 section in the report, again, it was there as a
2 resource to me but it was not -- my recollection
3 it was beyond my ability to comprehend the chart,
4 the data and the information in the reports.

5 Q. Thank you for that. My
6 question was about the timing when you reviewed
7 them. I think I hear from you that the skimmed
8 them. When did that happen?

9 A. Around the time of
10 January 23 and February 6, around that window.

11 Q. So, sometime after the
12 23rd but before February 6?

13 A. Yes, yes.

14 Q. Okay. Registrar, can you
15 go to page 351, please, and pull up 352 as well.

16 So, on January 28 Councillor
17 Danko e-mailed you several questions relating to
18 the Red Hill, technical questions. So, I
19 understand that Councillor Danko is a professional
20 engineer. Is that right?

21 A. That's my understanding.

22 Q. And did this e-mail come
23 after a discussion with him? Were you expecting
24 this e-mail when you received it?

25 A. I wasn't expecting the

1 e-mail. It followed a meeting that Mr. McKinnon
2 and I had with Mr. Danko as suggested by
3 Mr. McKinnon.

4 Q. Okay. Do you remember
5 when that meeting with Councillor Danko occurred?
6 Was it on the 28th or before that?

7 A. It may have been on the
8 28th. I believe it was in the same time period as
9 we were meeting with the other councillors.

10 Q. Apart from you and
11 Councillor Danko and Mr. McKinnon, was there
12 anyone else in attendance?

13 A. There wasn't.

14 Q. And so, I think you said
15 this was Mr. McKinnon's initiation to have a
16 meeting with Councillor Danko?

17 A. Mr. McKinnon recommended
18 it and I supported it.

19 Q. Why did Mr. McKinnon
20 recommend that?

21 A. Mr. McKinnon recommended
22 it given Councillor Danko's engineering background
23 and I believe as well Councillor Danko was a
24 member of the public works committee, maybe vice
25 chair of the public works committee, so that was

1 my understanding of why Mr. McKinnon requested the
2 meeting or recommended the meeting.

3 Q. Okay. It's a little
4 unclear from the phrasing of the e-mail who the
5 questions and answers are from. So, you see at
6 the bottom it says:

7 "What requirements were
8 used for the original
9 design of the road?"

10 And then instead of a two it
11 says:

12 "I suspect that the 1999
13 edition of the TAC
14 geometric design for
15 guides was used."

16 I'm paraphrasing, but it seems
17 like there are questions and answers. Were those
18 both coming from Councillor Danko?

19 A. Yes, they were.

20 Q. What did you understand
21 the purpose of Councillor Danko providing both
22 questions and answers to you to be?

23 A. I interpreted it as
24 questions Councillor Danko had and it seems as if
25 he's answering his own questions.

1 Q. Yes.

2 A. So, I interpreted that he
3 had these questions and he was able to satisfy
4 himself as it relates to these questions.

5 Q. Okay. Did you understand
6 that he was trying to provide potential answers so
7 that staff could confirm those answers?

8 A. No. I don't recall any
9 action items arising as a result of this e-mail
10 and I don't recall all of these elements in the
11 e-mail being discussed at the committee meeting,
12 so again I just interpreted it as Councillor Danko
13 sharing his thoughts and answering his thoughts.

14 Q. Okay. Did he send this
15 e-mail before or after you met with him?

16 A. After. My recollection
17 was after our meeting.

18 Q. Okay. Registrar, can you
19 go to page 359, please, and if you can bring up
20 360 as well.

21 So, on January 30 a number of
22 city staff attended a conference call with
23 Mr. Malone. Do you remember attending a
24 conference call with Mr. Malone on that day?

25 A. I recall a conference

1 call leading up to the February 6 committee
2 meeting with Mr. Malone in attendance. I can't
3 recall the specific date.

4 Q. Okay. And do you
5 remember only attending one conference call with
6 Mr. Malone during that period of time?

7 A. There may have been more
8 than one.

9 Q. But you can't remember
10 either way?

11 A. I can't remember either
12 way. I do recall a conflict with Mr. Malone on
13 February 6, so that's why there might have been a
14 second one leading up to February 13 council
15 meeting.

16 Q. Okay. I know Mr. Malone
17 attended conference calls with city staff on
18 January 30 and February 1. Do you recall
19 attending more than one conference call with
20 Mr. Malone before February 6?

21 A. Again, I can't recall the
22 timing of those conference calls, but there might
23 have been two conference calls that I recall.

24 Q. Okay. So, I think you
25 did attend this one because at the top just a few

1 lines down it says:

2 "Phone call, Gord, Dan M,

3 Jen, Ron Sabo, Mike -- "

4 And I think that's your name

5 but misspelled:

6 " -- Segerek -- "

7 A. Yes.

8 Q.

9 " -- Jasmine, Edward,

10 John."

11 Do you remember Mr. Boghosian

12 also being on that call?

13 A. I don't. I recall

14 Mr. Malone, but I don't recall Mr. Boghosian being

15 on that call.

16 Q. Okay. And what was your

17 role on that call?

18 A. It was principally to

19 ensure the various pieces that were laid out, the

20 four components in terms of reporting back to

21 committee were being worked upon, so ensuring that

22 the flow of work was moving forward as it relates

23 to that February date.

24 Q. Okay. So, council on

25 January 23 had asked in the two followups from

1 CIMA. One, whether they had a copy of the
2 Tradewind report and, two, if there were
3 additional interim measures. Did you understand
4 that CIMA was going to provide answers to those in
5 a written form?

6 A. My understanding was
7 Mr. Malone had a personal conflict for that date
8 but would provide a memo and if I recall would be
9 available at the subsequent councillor meeting.

10 Q. Okay. Registrar, can you
11 go to 363 and 364.

12 So, there are a number of
13 different notes from this meeting given the number
14 of attendees. These are Mr. Boghosian's notes
15 that are transcribed.

16 Registrar, could you pull up
17 both of them, everything in the boxes.

18 So, you'll see at the very
19 bottom of the first one -- and, again, these are
20 not your notes -- it says:

21 "BM, close the RHVE? Not
22 necessary."

23 Do you recall staff asking
24 Mr. Malone during the call on January 30 if, in
25 CIMA's view, the road should be closed?

1 A. I don't recall that
2 question.

3 Q. Okay. And do you recall
4 Mr. Malone expressing a view that might lead --
5 that was about whether or not to close the road?

6 A. I don't have recollection
7 of that.

8 Q. Okay. Registrar, you can
9 close those down and if you can go to page 366,
10 please. Thank you. And if you could call up just
11 the middle of the page where it says January 30.
12 That's perfect.

13 So, these are parts of
14 transcriptions of Mr. Sabo's notes of January 30
15 and you'll see there's "T/C David Bogh." And then
16 it says:

17 "Mike Z - getting reports
18 now - litig'n -> liab
19 aspect.

20 -safety.
21 = risk if 'all report' to
22 be made public then could
23 catch litig'n reports.

24 T/C Brian Malone."

25 So, just stopping there just

1 for clarity, do you recall having a discussion
2 with Mr. Sabo in which you conveyed anything about
3 reports being made public or catching litigation
4 reports? I know it's very unclear, but I'm just
5 trying to understand if you remember speaking with
6 Mr. Sabo on that day.

7 A. No. And, again, at this
8 stage we were working towards an assumption that
9 council would expect reports to be made public in
10 part based on their reaction on January 23, so my
11 impression would have been and was at this time
12 that reports would likely be released by council
13 related to this matter.

14 Q. Registrar, you can close
15 this down and could you call up HAM64331.

16 So, this is the final opinion
17 letter from Mr. Boghosian.

18 Could you, Registrar -- thank
19 you.

20 So, just because we didn't go
21 through this in much detail last time and I think
22 you confirmed that you didn't see a copy of this,
23 so it has some background facts and then it
24 summarizes some of the past reports.

25 Registrar, can you go to the

1 next two pages.

2 It goes through the 2015 CIMA
3 report. It goes through some of the recommended
4 next steps.

5 And, Registrar, if you can go
6 to the next two pages. More on that. Apologies,
7 I could have said you can skip those two and if
8 you can go to the next two pages, 7 and 8, please.

9 So, here there's a reference
10 to this conversation with Brian Malone on
11 December 11, 2018 and we looked at that excerpt
12 about the ranking in order of greatest
13 contribution earlier.

14 Registrar, can you go to the
15 next two pages, please. Thank you.

16 So, stopping here, there's a
17 reference to a telephone conversation with
18 Mr. Malone on February 1, 2019, so this is from
19 Mr. Boghosian and he is writing to Ms. Auty, so he
20 says you, so he says:

21 "You, Mr. Sabo,
22 Mr. McKinnon, Mr. McGuire
23 and a number of other
24 public works staff had a
25 telephone conversation

1 with Mr. Malone on
2 February 1, 2019 to
3 discuss his preliminary
4 findings."

5 You're not mentioned as an
6 attendee on this call on this document, nor can we
7 find anything that suggests that you're an
8 attendee on that call in any other documents, but
9 just taking a look through what Mr. Boghosian
10 references here on the left-hand side, does that
11 assist you with whether you attended or
12 participated in the call on February 1?

13 A. It's not triggering any
14 memories. Again, I recall my time in discussing
15 the matter with Mr. Malone was the lead-up to the
16 February 6 and, again, I can't recall the specific
17 date.

18 Q. Okay. Registrar, you can
19 close these down and if you can go to HAM54381.

20 So, I'm not going into the OD,
21 just to show you this. So, Ms. Auty sends you and
22 others an attached memo from CIMA on February 5.

23 Registrar, can you now go to
24 HAM54382 and if you can call out the next page as
25 well, please.

1 So, this is the memorandum
2 that Mr. Malone from CIMA prepares. Do you recall
3 reviewing this when you received it on February 5?

4 A. I do recall reviewing the
5 memo, yes.

6 Q. On images 2 and 3,
7 Registrar, could you bring up 2 and 3, there are
8 three questions that are set out here. The first
9 is:

10 "In light of the
11 information from the 2014
12 Golder report, are any
13 changes needed to be
14 recommendations from the
15 previous CIMA report?"

16 The second is:

17 "Are any additional
18 safety measures
19 recommended recognizing
20 that the Red Hill is
21 scheduled to be
22 resurfaced?"

23 And then the third is:

24 "In light of the
25 information in the 2014

1 Golder report, should the
2 RHVP be closed to traffic
3 in whole or in part until
4 the completion of the
5 resurfacing work?"

6 What was your reaction to
7 reading the commentary in Mr. Malone's memo in
8 response to these three questions?

9 A. So, again, initially I
10 didn't recall this third question being raised by
11 council, so that was my initial interpretation of
12 the memo. I recall the first two questions.
13 Notwithstanding that, I appreciate that it was
14 contained within the memo. And as it relates to
15 in terms of closing the report or closing the
16 road, I interpreted that as consistent with
17 staff's position that the road was safe. And with
18 respect to the alternative routes, again, I would
19 have left that with public works to interpret the
20 impact of taking this measure as it relates to
21 traffic increases on alternative routes.

22 Q. Thank you. Registrar,
23 you can close this down and if you can go back
24 into 9A and page 375, please.

25 So, this looks like a meeting

1 with Ms. Auty, you, Mr. McKinnon, Ms. Fontana on
2 January 28, 2019 and there's a reference to
3 Jackson, Collins, Merulla, Mike had a meeting
4 with. At the bottom where it says action:

5 "Talk to Gary
6 Wednesday/Thursday."

7 Do you recall making a plan
8 with this group of staff for you to speak to
9 Mr. Moore before the February 6 meeting?

10 A. I do recall and it might
11 have stemmed from the January 23 in council,
12 council meeting, with respect to Mr. Moore's
13 employment relationship with the City, did his
14 past actions compromise that employment
15 relationship and are there any concerns with
16 Mr. Moore continuing to support the LRT project,
17 so I believe that is the trigger to a January 31
18 meeting with Mr. Moore.

19 Q. Okay. Registrar, can you
20 go to page 378 and 379, please.

21 So, it looks like there's some
22 back and forth with a few people adding to a list
23 of questions that appear to be for discussion with
24 Mr. Moore, and you'll see on 379 there's a number
25 of questions. I'll just give you a moment to look

1 at them, but they do seem to be related to some
2 factual questions, like did you commission this?
3 What was the rationale there? Did you share the
4 report? Those sorts of things. Do you understand
5 that staff at this point need or wanted answers to
6 these questions and that they did not have them
7 yet?

8 A. I didn't understand that
9 these were gaps, maybe rather just confirming
10 staff's interpretation or understanding of past
11 reports and process. That's how I was
12 interpreting some of the technical questions.

13 Q. Okay. Registrar, can you
14 go forward to page 395 and 396, please.

15 So, you met with Mr. Moore,
16 Mr. McKinnon and Ms. Fontana on January 31. Prior
17 to this meeting, had you spoken to Mr. Moore about
18 the RHVP or the Tradewind report?

19 A. I don't recall speaking
20 to Mr. Moore. Sorry, was the question to
21 Mr. Moore?

22 Q. Yes. Had you spoken to
23 Mr. Moore about the Red Hill Valley Parkway or
24 about the Tradewind report?

25 A. No, I didn't.

1 Q. What was your role at
2 this meeting and how did it differ from
3 Mr. McKinnon's and Ms. Fontana's?

4 A. So, my role was to set
5 some context in that we were before council on
6 January 23 as it relates to a freedom of
7 information request pertaining to a report that
8 Mr. Moore would have had direct involvement in
9 commissioning and in leading. As well,
10 Ms. Fontana was there to observe and just observe
11 Mr. Moore's responses to determine whether there
12 was any concerns with respect to Mr. Moore's
13 previous decision making actions, processes he
14 followed, as it relates to labour relations and I,
15 too, was listening with that lens.

16 And then in the case of
17 Mr. McKinnon, it was just confirming some
18 technical facts, and that was my recollection of
19 the meeting.

20 Q. Did you have any
21 discussions -- let me try that again. Did you
22 give Mr. Moore any information about what this
23 meeting was about before it occurred?

24 A. Again, just turning to
25 the notes there, I would say the opening comments

1 are fair in regards, again, capturing -- setting
2 some context. We have this freedom of information
3 request as it relates to Tradewind, staff were
4 before council on the 23rd and I might have -- I
5 can't recall if I suggested we would be back
6 before council in the coming days, whether that
7 was determined to be February 4 or February 6, but
8 that was the context setting I provided.

9 Q. Okay. So, you did tell
10 Mr. Moore that you had been to council on the 23rd
11 about this?

12 A. That's my recollection.

13 Q. And you're not sure
14 sitting here today whether you told him that you
15 were going to be back before councillors on the
16 6th?

17 A. I can't recall whether I
18 or possibly Mr. McKinnon or Ms. Fontana identified
19 the expectation and commitment to report back.

20 Q. Okay. So, there's a
21 number of questions and I think you said it's
22 mostly Mr. McKinnon who is sort of asking the
23 factual questions. What was your reaction to
24 Mr. Moore's responses to those questions?

25 A. He was very professional,

1 you know, very forthcoming, providing a lot of
2 information around the start of this project, you
3 know, far more information than I was familiar
4 with, going back to 2007, around the process,
5 around value of the methodology or process of the
6 project. My impression was he was willing to
7 provide information, and that was my recollection
8 of how Mr. Moore contributed and behaved.

9 Q. Did you consider having
10 him attend the February 6 GIC meeting to provide
11 some more context?

12 A. No, he didn't. And that
13 was a decision I made. I was of the opinion that
14 Mr. Moore was no longer part of the public works
15 leadership team. We had a public works leadership
16 team who was leading this work and I was reliant
17 on that leadership team.

18 Q. Registrar, can you go to
19 page 398, please.

20 So, you'll see on January 23
21 you send a calendar invitation to Ms. Auty,
22 Mr. McKinnon, Mr. Sabo, Mr. Soldo, Mr. McGuire,
23 Mr. Hertel, Ms. Graham, Ms. Racine and Mr. Brown
24 for a meeting titled GIC debrief on February 4.
25 That's of course a meeting before the February 6

1 meeting, so it's more of a pre-brief. Is that
2 fair to say?

3 A. Yes. And I describe it
4 as a bit of a dry run. There were, if my
5 recollection is correct, four presentations, and
6 so a bit of a dry run for each of the leads on
7 those presentations to go through their content.

8 Q. Is it common to do dry
9 runs with staff in advance of committee or council
10 meetings?

11 A. It was my practice as a
12 general manager within finance corporate services
13 on issues of significance, is to go through a dry
14 run and just to assess the flow of the information
15 and whether or not we needed to make any
16 adjustments as it relates to the flow of the
17 information.

18 Q. Okay. And Mr. Brown is
19 at this meeting.

20 Registrar, can you go to
21 page 3 -- pardon me, 436.

22 So, you'll see at the bottom
23 on February 5 Ms. Minard from Mr. Brown's office
24 sent you a confidential audit services report for
25 the meeting the next day, and we know from the

1 documents the inquiry has received that Mr. Brown
2 spoke at the February 6 meeting. Why was the
3 auditors report presented at the same meeting as
4 the legal and public works reports?

5 A. I can't recall if it came
6 about through the conversations on January 23 or
7 if it was in response to the mayor's desire that
8 all relevant information come to the same
9 committee meeting. So, again, the mayor expressed
10 back in I believe December a desire that all
11 information come forward, so we saw the
12 opportunity to include the value for money audit
13 as relevant information in the context of the
14 issue.

15 Q. Okay. Registrar, can you
16 bring up 437, please.

17 So, the reference at the top,
18 this is really just for context, Mr. Zegarac, is:

19 "A report regarding
20 friction testing came to
21 audit services' attention
22 November 2018."

23 So, you'll recall from this
24 morning that I took you to some back and forth
25 with Mr. Brown about the audit from December of

1 2018. Between that time and when you received
2 this report from audit services, how would you
3 describe your involvement in the work that audit
4 was doing on this value for money audit, if any
5 involvement at all.

6 A. I don't recall having any
7 involvement at all. I would describe it as this
8 work was occurring in parallel with the work that
9 legal was leading and the work that public works
10 was leading.

11 Q. Okay. Do you recall when
12 you looped in Mr. Brown and Ms. Minard about the
13 intention to make a disclosure to the councillors
14 about the Tradewind report?

15 A. Could you repeat the
16 question?

17 Q. Sure. Do you recall when
18 you looped in, advised, Mr. Brown and Ms. Minard
19 about the intention to make a disclosure to the
20 councillors about the Tradewind report?

21 A. I can't recall if I
22 advised Mr. Brown or his office of the intention
23 to go before council on January 23, so I don't
24 have that recollection.

25 Q. Okay. Do you remember

1 whether or not Mr. Brown or Ms. Minard attended
2 the closed session on the 23rd?

3 A. I don't have recollection
4 of their attending the closed session. My
5 recollection is Ms. Auty, myself and Mr. McKinnon
6 attending representing staff.

7 Q. Okay. But sitting here
8 today, you can't recall whether Mr. Brown knew
9 about the content of your report or not?

10 A. I can't, no.

11 Q. Okay. There were a
12 number of reports and presentation materials that
13 were circulated in draft and prepared for
14 February 6: A communications plan, a timeline of
15 events, three public works reports, the legal
16 services report, a second one and the audit
17 services report, so there's a lot, plus the
18 February 4 CIMA report. If you can answer this at
19 the highest level, what involvement did you have
20 in the preparation of these materials for GIC?

21 A. So, again, just reviewing
22 and helping to coordinate, so the meeting in terms
23 of the various attendees and their pieces of
24 information, allowing them the opportunity to go
25 through a dry run, the information possibly

1 allowing for the opportunity to review or correct
2 information if it required correcting. Again, it
3 was more around steering the information, not
4 developing the information.

5 Q. Okay. Mr. Boghosian's
6 final opinion, the one dated February 4, it was
7 not submitted to council. Was there any
8 discussion amongst staff that you were involved in
9 about whether or not to include Mr. Boghosian's
10 report in the council materials?

11 A. I don't recall
12 conversation with respect to providing appending
13 the legal opinion, and I don't recall that being a
14 common practice in terms of providing legal
15 opinions. I do recall providing elected officials
16 access to expert legal witnesses if required, but
17 our typical practice was to have the City
18 solicitor provide a report that would have relied
19 upon the legal opinion.

20 Q. Okay. To your
21 recollection, did Mr. Boghosian attend the
22 February 6 GIC meeting?

23 A. That is my recollection,
24 yes.

25 Q. Okay. So, turning to

1 that meeting, you're not listed as one of the
2 presenters for the closed session agenda
3 presentation. We know that at the close of or at
4 the end of the closed session, you read an apology
5 and a public statement aloud, and we'll come to
6 that. But aside from reading that statement, what
7 was your role in the closed session portion of the
8 meeting?

9 A. It would have been
10 answering any questions that committee might have
11 had of me in closed session, and then I do recall
12 requesting a recess, and then when we reconvened
13 was my reading of the public apology.

14 Q. What do you recall about
15 the tone of the GIC meeting?

16 A. Again, that continuation
17 of frustration at the GIC meeting and that
18 frustration was -- I would describe it as
19 frustration and disappointment. And as it relates
20 to the information that previous councillors,
21 those councillors who had history upon this issue,
22 understood versus how the information was being
23 presented on February 6. So, again, frustration
24 and disappointment.

25 Q. Okay. So, did you view

1 there to be more frustration and disappointment at
2 this meeting than there had been at the January 23
3 meeting?

4 A. Yes.

5 Q. Why was that, if you have
6 an understanding?

7 A. I believe that the
8 February 6 was an expanded conversation, more
9 information, more details around timelines,
10 chronology and that might have contributed to the
11 building up of frustration over the hours that we
12 were with council that ultimately led to my public
13 apology.

14 Q. Okay. Registrar, can you
15 close these down and go to OD 10A, page 21,
16 please.

17 So, this may or may not be a
18 possibly for you to answer. These are
19 Mr. McGuire's notes from the GIC meeting and
20 you'll see there's times, 6:00 and 6:30. In fact,
21 he's listed, sort of, times throughout. You'll
22 see at 5:18, it says, "Mike Z, not satisfied."

23 Can you shed any light on what
24 the discussion was that would lead to Mr. McGuire
25 making this note?

1 A. I can't. That comment is
2 not triggering a memory. Sorry.

3 Q. Okay. Do you remember
4 saying to council that you were not satisfied
5 about anything?

6 A. I don't.

7 Q. Okay. Registrar, can you
8 go to HAM61920, please.

9 So, this is the slide deck for
10 the in camera presentation. I think your evidence
11 earlier was that you reviewed this before it was
12 filed?

13 A. Yes.

14 Q. Registrar, can you go to
15 image 44 of this document, please.

16 So, I've just jumped over a
17 number of slides that deal with Mr. McKinnon's
18 comments, Ms. Auty's comments, Mr. Brown's
19 comments, there's a Mr. O'Dell's comments, there's
20 a few different things, but I just want to take
21 you to this recommended communications strategy.
22 So, there's tactics on one side and there's timing
23 on the other, and it says:

24 "Media release and fact
25 sheet immediately

1 following February 13
2 council meeting."

3 So, just stopping there, we're
4 at a GIC meeting, so was your expectation that
5 anything that happened at this GIC meeting would
6 be ratified by council?

7 A. That's normal practice.
8 It doesn't preclude any amendments being made at
9 council.

10 Q. Okay. So, we know that
11 the release, the media release, the press release,
12 didn't ultimately get released on the 13th. It
13 got released on February 6 and read aloud by you
14 in the reopening of the open session. Is that
15 your recollection as well?

16 A. Yes.

17 Q. How did it come to be
18 that that timeline for the proposed communications
19 release was moved up?

20 A. It was direction from
21 council. Council wasn't satisfied with respect to
22 the timing of the media release and fact sheet and
23 felt that this needed to be released immediately,
24 and so it formed part of my public apology. I
25 believe it was appended to the public apology.

1 Q. Okay. And the public
2 apology, was that something sought by council?

3 A. Councillors made
4 reference to the need for an apology, which led me
5 to ask for a recess. Staff convened. We had a
6 bit of a side bar. Myself, public works, legal,
7 corporate communications worked towards the public
8 apology. I ultimately reviewed and approved the
9 final apology and, when we reconvened, I asked for
10 the opportunity to read the public apology to
11 council and for it to be shared publicly.

12 Q. Okay. Registrar, can you
13 go to HAM123841, please.

14 THE REGISTRAR: Sorry,
15 counsel. Can I ask for that doc ID again?

16 MS. LAWRENCE: Of course.
17 HAM123841.

18 THE REGISTRAR: Sorry, is this
19 a native?

20 MS. LAWRENCE: I don't think
21 so. Let me just double check that I haven't made
22 a typo. I did. It's not 123, it's 12841. Sorry
23 about that.

24 THE REGISTRAR: Okay. Thank
25 you.

1 BY MS. LAWRENCE:

2 Q. Can you bring up the next
3 image as well.

4 So, this was on, but,
5 Mr. Zegarac, is this the press release that was
6 drafted during the recess?

7 A. The front end, the
8 apology and then the quick facts would have formed
9 part of the media release that staff were
10 expecting to release after the February 13 council
11 meeting.

12 Q. Okay. So, that had been
13 pre-drafted?

14 A. The quick facts I believe
15 formed part of our communication strategy that was
16 pre-drafted.

17 Q. Okay. Registrar, could
18 you pull out the first three paragraphs on the
19 bottom of the left-hand side, earlier tonight.

20 Were these three paragraphs
21 pre-drafted for potential release on the 13th or
22 were they drafted during the recess on the 6th?

23 A. They were drafted during
24 recess on the 6th.

25 Q. Okay. Why does it say:

1 "Today committee received
2 detailed information for
3 the first time regarding
4 a consultant's report
5 relating to friction on
6 the parkway"?

7 That's not accurate. They had
8 received information on the 23rd and the mayor had
9 received information the month before?

10 A. So, they had not received
11 details of the report. On the 23rd was a legal
12 report that spoke to the issue of a report and
13 contents in the report that was not made public
14 and that would, could, represent a risk to the
15 City as it relates to current claims and past
16 claims related to the Red Hill.

17 And with respect to the mayor,
18 the mayor did not receive detailed information in
19 December with respect to the report. Again, staff
20 spoke to the issue, but, again, the details were
21 before committee for the first time on February 6.

22 Q. Okay. Registrar, you can
23 close this down.

24 On February 6, did you have
25 contact with Mr. Moore during the GIC meeting?

1 A. I did. During the
2 recess, I took the opportunity, just given the
3 tone of the meeting and the direction that meeting
4 was going into, I took the opportunity to reach
5 out to Mr. Moore to advise Mr. Moore that we were
6 before committee. And I can't recall the detail
7 of information I shared in terms of the purpose
8 for being before committee and the content of
9 information. It was principally to advise
10 Mr. Moore that if he were to be contacted by media
11 or members of the public in regards to his
12 previous role on the Red Hill and in regards to
13 the Tradewind report, he should redirect those to
14 a City spokesperson and that City spokesperson was
15 ultimately Mr. McKinnon.

16 Q. Okay. Registrar, can you
17 go back into OD 10A, page 51, please, and can you
18 pull up 112, please.

19 So, this is an e-mail that
20 Mr. Moore drafted in response to an e-mail that
21 you sent about the disclosure of the Tradewind
22 report. I think it says a follow-up to an all
23 staff e-mail. Do you recall receiving this
24 e-mail? We can't determine if it was sent or not.

25 A. I don't recall receiving

1 this e-mail. I recall seeing it in preparation
2 for the inquiry, but I don't recall seeing this
3 e-mail.

4 Q. Okay. Mr. Moore says:
5 "It concerns me you went
6 to council with a report
7 and gave me no heads up
8 other than the call."

9 Does that clarify or refresh
10 your memory about whether you told Mr. Moore about
11 an upcoming council meeting when you met with him
12 on the 31st?

13 A. Again, I can't recall
14 whether I might have mentioned the meeting and
15 whether Mr. Moore forgot or whether I did not make
16 any reference to the meeting.

17 Q. Okay. Registrar, can you
18 go to OD 9A, page 160, please. Go to the next
19 page, please. Can you go to the next page, 162
20 and 163. I'm confused because I've given the
21 wrong OD numbers. Apologies. It's OD 10A,
22 page 160, please. Thank you.

23 In March of 2019 Ms. Minard
24 from the auditor services office e-mailed you and
25 Ms. Fontana about an anonymous and confidential

1 letter addressed do the City auditor received
2 today. Do you recall receiving a copy of --
3 actually, seeing the underlying letter that
4 Ms. Minard is referring to?

5 A. I do recall the letter.
6 I can't recall how that letter came to my
7 attention.

8 Q. Okay. Registrar, can you
9 go to page 162 and 163, please.

10 You'll see on the bottom, I've
11 just jumped through the content of the letter:

12 "Bridget, is this author
13 is citizen or a staff
14 member? Is this a
15 whistle blower?"

16 And Ms. Minard replied:

17 "We are unsure who the
18 author is. It was sent
19 anonymously. Anonyms do
20 not qualify as whistle
21 blower items."

22 And then you said:

23 "We need to discuss this
24 this afternoon."

25 Why did you want to discuss

1 this with Ms. Minard, Ms. Fontana and Ms. Auty and
2 Ms. Melatti?

3 A. So, as it relates to my
4 e-mails to audit, I was interested in whether
5 audit would investigate this letter as a whistle
6 blower. I'm not confident that they would because
7 I am somewhat familiar with how they deal with
8 issues that are anonymous and there's no ability
9 to circle back to the individual who provides the
10 letter.

11 And with respect to the
12 broader grouping of staff, given the list of staff
13 members just wanting to share whether or not there
14 is any content in this report or, sorry, in this
15 letter that would be of concern warranting any
16 further review, but knowing as well -- and I can't
17 recall specific timelines here, but my sense was
18 given council's previous request for information
19 as it relates to the auditor doing an
20 investigation, I did expect that this letter would
21 form part of the information that may be shared as
22 it relates to an investigation. And at that time
23 I thought it was an investigation that might be
24 led by the auditor general, the City auditor
25 general.

1 Q. Okay. Did you take any
2 steps outside the auditor general's office to
3 initiate an investigation into the content of this
4 letter?

5 A. No, I didn't. And,
6 again, given the lack of a source and the
7 anonymous nature, again, sharing it with others
8 but with an expectation if there were any concerns
9 in terms of the accusations, it would form part of
10 the further investigation.

11 Q. Thank you. And, as a
12 matter of course, did you write this anonymous
13 letter? I can pull it up if you need.

14 A. I didn't. No need to
15 pull it up. I didn't.

16 Q. Do you have any
17 information about who wrote this letter?

18 A. I have none.

19 Q. I have one last question.
20 Registrar, can you go back into OD 9A, page 14,
21 and if you could pull out 22, please.

22 So, we're jumping back in time
23 to May of 2018 and there is a discussion between
24 an administrative assistant and a senior project
25 manager who says:

1 "No reports of a
2 sensitive nature are to
3 be brought forward past
4 July 27 as there's a
5 possibility of a lame
6 duck council due to
7 elections."

8 So, the election is in October
9 of 2018 that year. Are you familiar with the
10 notion of a lame duck council and any policy about
11 not bringing particular reports forward during a
12 certain time in an election here year?

13 A. I am.

14 Q. What can you tell me
15 about that?

16 A. So, lame duck is a
17 general term as it relates to restricting powers
18 of council. And going into an election there's
19 two critical dates that where councils may find
20 themselves in a situation where their powers are
21 restricted. Those two dates are a nomination
22 period, so a nomination being some period in May.
23 If you were then 75 percent of incumbents put
24 their names forward for re-election, council then
25 is in a restricted power, sort of lame duck

1 situation.

2 The second critical date is
3 assuming that date is satisfied, not triggered,
4 that the nomination period, the next potential
5 date for restricted powers would be after the
6 election. If you were then 75 percent of
7 incumbents are re-elected, that would trigger the
8 restricted powers of council.

9 So, in 2018, we were in fact
10 in a lame duck after the October election, so 5
11 out of 16 members of council were new. And what
12 that really relates to, the restrictive powers are
13 tied to land acquisition, disposition, any
14 expenditures that were not budgeted for exceeding
15 \$50,000, as well as any acts as it relates to the
16 employment relationship with legislative
17 positions. So, for instance, the fire chief, the
18 clerk, the treasurer. So, it does not prohibit
19 council dealing with emergency situations. So,
20 what it does is it really limits council as it
21 relates to real estate matters, some financial
22 matters.

23 What I do want to point out
24 is, and I don't recall this practice or directive,
25 what I will say is it's not uncommon if there is

1 an issue that is going to staff anticipate
2 multiple conversations with council, we try not to
3 initiate that conversation leading up to an
4 election because you wouldn't want to be in a
5 positions where you start, for instance, a lengthy
6 financial policy taxation issue with the current
7 term of council only to find yourself restarting
8 that process with the next term of council.

9 So, again, I don't recall this
10 as a policy, a practice. I don't recall such a
11 directive. And lame duck is fairly limited around
12 real estate and around financials. And I
13 apologize for the length of my answer.

14 Q. No problem. I take from
15 what you're saying that this practice did not
16 affect the timing of when staff brought the
17 Tradewind report to council in this case. Is that
18 right?

19 A. It did not. And what I
20 do recall, in fact we did convene a council
21 meeting, not outside the election period, but we
22 had a flooding event that required deeming it a
23 disaster for the purpose of compassionate grants
24 to residents, and I believe we scheduled a special
25 council meeting in October 2018.

1 Q. Thank you. Those are my
2 questions. Thank you very much.

3 Commissioner, I understand
4 that the MTO and Golder do not have any questions
5 for this witness and that Ms. Contractor may have
6 questions for this witness.

7 MS. CONTRACTOR: Good
8 afternoon, Mr. Commissioner. I have a handful of
9 questions for Mr. Zegarac.

10 JUSTICE WILTON-SIEGEL: Go
11 ahead, Ms. Contractor.

12 EXAMINATION BY MS. CONTRACTOR:

13 Q. Mr. Zegarac, am I correct
14 that when attending council meetings, councillors
15 are entitled to and often ask staff questions they
16 may have about the particular issue at hand?

17 A. That's correct, yes.

18 Q. Okay. And is it
19 important for staff to be able to answer those
20 questions?

21 A. Yes.

22 Q. Can you tell us why?

23 A. So, again, our objective
24 is to provide council with the information they
25 need to make an informed decision. We often coach

1 staff that that's our role. Whether that is our
2 recommendation through a recommendation report or
3 providing alternatives, again, our role is to
4 provide informed information to council and that's
5 what we strive to do.

6 Q. Thank you. In your
7 evidence you indicated that there was a consensus
8 that a wholesome report to council should be
9 presented with respect to the Tradewind report.
10 Do I have that right?

11 A. There was, in
12 consultation with Ms. Auty, Mr. McKinnon, and
13 again this was our past -- always been our past
14 practice, is to provide complete information to
15 council. And so, again, we felt that it was
16 important to provide this information for a
17 variety of reasons that I've already identified
18 today, including the fact that we had some new
19 members of council.

20 Q. Thank you.
21 Mr. Registrar, could we go to HAM54395, to
22 image 4.

23 So, this is the presentation
24 that was delivered on February 6 by staff and
25 you'll see this slide provides a presentation

1 outline, which shows that there was a
2 reconstructed timeline by theme, so for each of
3 those points. And the timeline goes on for 14
4 pages. I'm not going to topic take you through
5 that, but I take it this is the kind of wholesome
6 and comprehensive information that you were
7 referring to?

8 A. That's correct, and as
9 well as for those returning councillors who might
10 have questions with respect to the cause for new
11 information, we felt it was important to speak to
12 staff arrivals and departures.

13 Q. Thank you. Your evidence
14 was that -- Mr. Registrar, you can take that down.
15 Your evidence was that you don't believe that the
16 mayor was provided a copy of the Tradewind report
17 at the meeting on December 18, 2018. Do you
18 recall why he wasn't provided a copy of the
19 report?

20 A. Again, the intent of the
21 meeting was to provide a summary, as we normally
22 do, to the mayor and had the mayor asked for
23 additional information or a copy of the report, we
24 would have provided that information to the mayor.

25 Q. Thank you. Following the

1 meeting with the mayor on December 18, there was a
2 GIC meeting on December 19. Could staff bring a
3 verbal update to council about the Tradewind
4 report at that meeting if so directed by the
5 mayor?

6 A. If the mayor directed us
7 to provide a verbal update, we would have,
8 recognizing that was not the preference of council
9 at that time. They preferred to have something
10 written, which is my there was a legal report on
11 January 23.

12 Q. Thank you. And,
13 Mr. Registrar, could we please go to HAM54380.

14 And, Mr. Zegarac, the document
15 that the Registrar is pulling up is the report by
16 the auditor that was also presented on February 6,
17 providing an update on the roads audit as it
18 related to the Tradewind report. And you'll see
19 that this report was also presented in camera
20 because it involved litigation or potential
21 litigation matters. Do you see that?

22 A. Yes.

23 Q. Commission counsel asked
24 you if you had an understanding as of December 12
25 that there were two potential paths where the

1 Tradewind report could be made public, and your
2 response, I believe, was that you did not see them
3 as the same because there was more opportunity for
4 collaboration as it relates to audit services
5 bringing the information to council, and I wanted
6 to understand that a little bit more. What type
7 of collaboration were you referring to?

8 A. So, the City auditor
9 reports through the same standing committee that
10 the general manager of finance and corporate
11 services, treasurer and the City manager reports
12 through. That's audit finance admin. Audit
13 finance admin has agenda reviews whereby the chair
14 and vice chair are taken through the various items
15 that will be forthcoming to committee. That would
16 have provided an opportunity for awareness for
17 myself as interim city manager and my colleague,
18 Mr. McMullen, to identify if the auditor did bring
19 forward a report regarding the expressway and
20 Tradewind, we would have been aware of that and
21 that would have opened the opportunity to, A,
22 discuss the report with the auditor or B is to
23 provide a companion report, a legal report,
24 ultimately something similar to the January 23
25 report.

1 And I'll just expand,
2 apologize for the length again, that my experience
3 with the City auditor has been principally around
4 compliance issues. Not only do they engage with
5 the program area at the start of the process; they
6 engage with the program areas at the end of the
7 process. So, there's an opportunity for staff to
8 engage with the auditor reducing any surprise
9 factors.

10 Q. Thank you. And I take it
11 at those meetings one of the items that would be
12 discussed is whether or not the matter should be
13 heard in camera or not depending on whether it
14 raises potential litigation or litigations
15 matters?

16 A. That would typically be
17 led by the City auditor. If that work was still
18 ongoing or they felt that it could lead to
19 litigation matters, they may consult with legal
20 services on those matters in advance of the agenda
21 as clerks determined what items are private and
22 confidential. So, what I would expect and based
23 upon past experience is the auditor would consider
24 those factors, engage with the relevant internal
25 departments, including legal, and make such a

1 recommendation to clerks and to the chair of the
2 committee.

3 Q. Thank you very much.

4 Those are all of my questions.

5 JUSTICE WILTON-SIEGEL: Okay.

6 Ms. Lawrence, anything further?

7 MS. LAWRENCE: No.

8 JUSTICE WILTON-SIEGEL: Okay.

9 Mr. Zegarac, thank you very much for attending.

10 It's been a long day. I'm sure it's been longer
11 for you. You're excused.

12 THE WITNESS: Thank you.

13 JUSTICE WILTON-SIEGEL: And,

14 counsel, we'll now stand adjourned until 9:30
15 tomorrow morning when we hear the next witness.

16 Have a good evening. Thank you.

17 --- Whereupon the proceedings adjourned at

18 4:39 p.m. until Tuesday, October 11, 2022 at

19 9:30 a.m.

20

21

22

23

24

25