

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS  
HEARD BEFORE THE HONOURABLE  
HERMAN J. WILTON-SIEGEL  
held via Arbitration Place Virtual  
on Wednesday, October 12, 2022 at 9:32 a.m.

VOLUME 67

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1 Arbitration Place Virtual

2 --- Upon resuming on Wednesday, October 12, 2022

3 at 9:32 a.m.

4 MS. LAWRENCE: Good morning,  
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good  
7 morning, and good morning, counsel, and good  
8 morning, Mayor Eisenberger.

9 THE WITNESS: Good morning  
10 Commissioner.

11 MS. LAWRENCE: Our next  
12 witness is Mayor Eisenberger. Before we turn to  
13 his evidence, there is an additional affidavit  
14 that commission counsel would like to file. This  
15 is the affidavit of Lora Fontana and it has been  
16 executed and all participants have confirmed that  
17 they have no intention to examine Ms. Fontana on  
18 the contents of her affidavit, and thus I would  
19 like to file it as evidence. It is RHV1026 and I  
20 believe the next Exhibit number is 176.

21 THE REGISTRAR: Noted,  
22 counsel. Thank you.

23 EXHIBIT NO. 176:  
24 Affidavit of Lora  
25 Fontana, RHV1026.

1 MS. LAWRENCE: Thank you.

2 With that housekeeping out of the way,  
3 Commissioner, our next witness is Mayor  
4 Eisenberger and he has not been sworn.

5 AFFIRMED: MAYOR FRED EISENBERGER

6 EXAMINATION BY MS. LAWRENCE:

7 Q. Good morning, Mayor  
8 Eisenberger.

9 A. Good morning.

10 Q. I'm going to start with  
11 some questions about your background and some  
12 evidence in the period of time before 2018, and  
13 then move to 2018. I expect today we're going to  
14 take a break around 11:00 a.m. and I don't think  
15 we'll go the whole day.

16 So, let's start with some  
17 questions about your professional background. You  
18 are currently the Mayor of Hamilton?

19 A. Correct.

20 Q. And except for a period  
21 from 2010 to 2014, you've been the mayor of  
22 Hamilton since 2006. Is that right?

23 A. That's correct.

24 Q. And during that period  
25 when you were not mayor, 2010 to 2014, I

1 understand you were the president and CEO of  
2 Canadian Urban Institute. Is that right?

3 A. That's right.

4 Q. And just jumping back a  
5 little in time, you were also an alderman from  
6 1991 to 2000 in the Region of Hamilton. Is that  
7 right?

8 A. In the City of Hamilton  
9 and the regional council as well, yes.

10 Q. Thank you. Which ward  
11 did you represent?

12 A. Ward 5.

13 Q. Did Ward 5 include the  
14 area where the Red Hill Valley Parkway is now?

15 A. Yeah. It's adjoining the  
16 valley and ultimately the roadway, yes.

17 Q. Okay. So, we're going to  
18 start back in your days as an alderman. We won't  
19 spend too much time in the 1990s, but that's where  
20 we're going to start. We have an overview  
21 document which I know you have been provided with  
22 and our registrar is going to call up documents as  
23 we need them.

24 Registrar, can you start by  
25 bringing up overview document 3, page 4, and could

1 you bring up page 5 as well, please. Thank you.

2 So, Mr. Mayor, before we get  
3 into the details, just in terms of the technology,  
4 can you see both of those pages and also the  
5 windows that have the Commissioner and me and City  
6 counsel?

7 A. Yes.

8 Q. Great. Registrar, you  
9 can close down page 5.

10 So, this is just to orient you  
11 back to the history of the Red Hill and its  
12 development in the 1990s. Registrar, can you call  
13 out all of paragraph 4 that's on that page, just  
14 to blow it up a little.

15 I don't know if that's much  
16 better in terms of be able to see it, but we can  
17 call out aspects of the overview document if you  
18 would like.

19 So, you'll see this is a very  
20 brief history of the LINC and the Red Hill and it  
21 is in a project update to the mayor and to city  
22 council in 2002, so you were not mayor at the  
23 time, and it just sets out that through the 1970s,  
24 1980s and into the 1990s, there was a number of  
25 environmental and legal wranglings that led to the



1 development of the Red Hill.

2 Is that your general  
3 recollection of the history to get to its  
4 construction?

5 A. Yes.

6 Q. Registrar, you can close  
7 that call out.

8 As the Ward 5 alderman, were  
9 you involved in some of the path towards the  
10 construction of the Red Hill in the 1990s?

11 A. To the construction, not  
12 so much --

13 Q. The path to the  
14 construction, the history towards the development.

15 A. Sure. Yeah. Very, very  
16 much so. So, I was elected in 1991. The valley  
17 roadway was an issue right from the very  
18 beginning. It's been on the, kind of, table, you  
19 know, since the 1960s at least, so it's very much  
20 a political issue and certainly something that I  
21 supported in terms of wanting to see the  
22 development of the roadway get started. So, yeah,  
23 it was very much part of the ongoing dialogue, the  
24 effort to work with the province, continuing to  
25 advocate locally as well as regionally. We were

1 still Hamilton at that point in time, not  
2 amalgamated, but we did have regional council, so  
3 there's a number of areas where we were addressing  
4 the issue of how do we advance the road.

5 Q. Thank you. Registrar,  
6 could you go to page 31 of OD 3, please.

7 So, we're moving forward a  
8 little in time. We're now in the 2000s. In  
9 September of 2006, as the Red Hill had been  
10 constructed and was being assessed in terms of its  
11 operating budget for when it opened, staff  
12 prepared and eventually submitted a pavement  
13 sustainability plan for the Red Hill and the LINC.

14 A. Mm-hmm.

15 Q. We sometimes refer to  
16 that in the inquiry as the Stantec report and I'm  
17 going to take you to, at least, the cover page of  
18 that document to ask if it is familiar to you.

19 Registrar, can you bring up  
20 HAM58043, please.

21 So, before getting to the  
22 report, here is one of the information reports.

23 Registrar, I'll come back to  
24 that, actually. Can you close that down for the  
25 moment and can you go to HAM320, please, and could

1 you bring up the next page just to show the mayor.

2 I'm certainly happy to flip  
3 through this document if you would like. Is this  
4 a document that's familiar to you?

5 A. Not really. I mean, I'm  
6 not sure what the date of this document is, but  
7 it's probably something I've seen. But is it  
8 something that I would have recollection of? I  
9 can't say that.

10 Q. It's from 2007.

11 A. Correct.

12 Q. Registrar, you can close  
13 this down.

14 A. So, I have no doubt that  
15 I've seen it, but, you know, put it into the  
16 context of a lot of documents that I've seen since  
17 then and before. So, does it stand out for me?  
18 No, but I have no doubt that I would have put eyes  
19 to it at some point.

20 Q. Thank you.

21 Registrar, could you close  
22 this document and pull up HAM58043, please.  
23 Registrar, could you pull out the content of this  
24 below information update, including Mr. Murray's  
25 signature, just the middle of the page, just so

1 it's a little bit larger, the whole document,  
2 including the to and the from at the top. Thank  
3 you, Registrar. There.

4 And that's really just for  
5 ease of being able to review. So, in 2007 Chris  
6 Murray, who was the acting director of the Red  
7 Hill Valley Parkway project, prepared an  
8 information update to you and to members of  
9 council, and you'll see that he references  
10 providing information for an annual operating and  
11 maintenance costs budget, basically forecasting  
12 for the LINC and the Red Hill, and he references a  
13 sustainability document being developed.

14 Going down, and, Registrar,  
15 perhaps you can actually just highlight this:

16 "Accordingly, the  
17 operations and  
18 maintenance division will  
19 submit resultant  
20 operating estimates for  
21 the 2008 budget process  
22 for consideration in an  
23 annualized context."

24 So, this is just an  
25 information update, really a heads-up of the

1 information to come, including the sustainability  
2 plan, which eventually became the document I just  
3 took you to.

4 Registrar, can you close this  
5 down and can you go to HAM58042, please, and could  
6 you call out the next page as well and could you  
7 call out the first three paragraphs, please.  
8 Pardon me, four paragraphs, please. Thank you.

9 So, this is a further update  
10 from November of 2007 and it references the update  
11 we were just looking at and it says at the bottom:

12 "The operations and  
13 maintenance division will  
14 submit a forecast for  
15 estimates on an  
16 annualized context."

17 If you can close that down,  
18 Registrar, and then if you could call out the  
19 three bullets at the bottom of the left-hand  
20 image.

21 So, Mr. Murray says that the  
22 average annual operations and maintenance budget  
23 will be \$4.28 million for the LINC and the Red  
24 Hill, and then there's reference to an  
25 environmental management process and annual

1 contracts for environmental monitoring.

2 Registrar, if you can close  
3 that down.

4 So, now I've come to my  
5 question. Do you recall, as mayor, receiving a  
6 request to have an annual operating budget, first  
7 to be assessed in 2008, but to carry through on an  
8 annualized context thereafter?

9 A. Not specific recall.  
10 That would have come up through the budget  
11 process. There would be, you know, myriads of  
12 items that would have been brought forward for  
13 consideration for the annualized budget. So, you  
14 know, I don't have specific knowledge of this  
15 number, but clearly it was put on the table  
16 through the budget process.

17 Q. Okay. The sustainability  
18 plan, the Stantec document, includes a maintenance  
19 plan for the Red Hill which is different than  
20 regular operations and maintenance, like snow  
21 clearing, and one aspect of that maintenance plan  
22 is regular friction testing.

23 Do you have any recollection  
24 of being aware at the time, in 2007, that the  
25 City's consultant, Stantec, wanted a regular

1 friction testing regime for the Red Hill?

2 A. No, no. Friction testing  
3 never really came to my mind until it was raised  
4 in December of 2018, I guess, so it's not  
5 something that I had heard of or was made aware of  
6 prior to that date.

7 Q. Okay. In 2019, as part  
8 of an investigation by the office of the auditor  
9 into roads, the inquiry has received information  
10 that the sustainability plan was presented to  
11 counsel but it didn't receive funding for the kind  
12 of maintenance that I'm talking about, like  
13 friction management.

14 Do you recall the presentation  
15 of the sustainability plan and whether council  
16 agreed to provide budgeting for it on a  
17 year-by-year basis?

18 A. Sorry, the last part,  
19 that council had reason?

20 Q. Had agreed to provide  
21 budgeting for it on a year-by-year basis?

22 A. I don't recall  
23 specifically, no. Obviously it was part of the  
24 deliberations. I do recall 2008 was particularly  
25 difficult economic times, so, you know,

1 consideration of the budget would have tried to,  
2 you know, at least manage, you know, the cost to  
3 the taxpayers to the best degree possible given  
4 the challenges we were already facing. So, yeah,  
5 I would have been, you know, deliberating the  
6 context of all of that.

7 Q. Okay. That's helpful  
8 context. Thank you.

9 Registrar, you can close this  
10 down.

11 So, here, and I know I didn't  
12 take you specifically to it, but that Stantec  
13 report does have a friction testing recommendation  
14 for testing every couple of years. Who would you  
15 expect within the City would have responsibility  
16 to determine whether a recommendation like that  
17 would be implemented?

18 A. Well, I mean, the lead  
19 engineer would have been Gary Moore. I think we  
20 had our reliance on all things construction wise  
21 and maintenance wise for the expressway would have  
22 laid with him in terms of the engineering aspect,  
23 so I would say it would be Gary Moore.

24 Q. Thank you. I'm going to  
25 turn now generally to some questions about



1 governance within the City. You just gave  
2 evidence about 2008 being a tough year and  
3 balancing the cost to the taxpayer.

4                               Flowing from that answer, in  
5 your view what's the distinction between the  
6 governance role for city council and the operation  
7 role for city staff in keeping the City running?

8                               A. Well, it's always been an  
9 issue to ensure to the best degree possible that  
10 the elected body kind of stays in the governance  
11 sphere, identifying policy, getting good advice  
12 from staff, but not getting into the, kind of,  
13 day-to-day operations or even week-to-week  
14 operations in terms of the work that needs to be  
15 done or the decisions that have to be made to  
16 execute the governance and the policies and the  
17 budgets that the council has set up.

18                               So, don't get in the weeds, in  
19 other words. That's for other people to do. I  
20 don't hold them accountable. We anticipate our  
21 city manager will hold the general managers  
22 accountable and the general managers will hold  
23 their directors and supervisors accountable, so  
24 there's a hierarchy of responsibility, but there's  
25 a, from my perspective, a level of confidence that

1 we have competent people doing the important work  
2 of, you know, day-to-day operations of our city  
3 and the planning of the directions that council  
4 has set forward in terms of projects that have  
5 been approved and/or budgets that have been set  
6 that they're then to be managed or guided by.

7 Q. What is the primary  
8 interface between members of council and the  
9 City's operational staff? Where do they actually  
10 interfacing and interact?

11 A. Well, by and large,  
12 through committee, whether it's the standing  
13 committees, public works, community health, board  
14 of health or the general issues committee, and  
15 then ultimately council. So, you know, is there  
16 from time to time kind of direct interaction on  
17 localized issues that they might approach a staff  
18 member on in terms of, you know, road work that's  
19 happening in their ward or, you know, a park  
20 project that's, you know, in process or being  
21 designed, there may be some one-on-one interaction  
22 between the councillor and whoever is leading that  
23 project, but by and large I think it's done  
24 through committee process and through the standing  
25 committees and through council.

1 Q. Okay.  
2 Stephanie Paparella has sworn an affidavit that  
3 provides a bit of a summary of some of the  
4 structure of the committees within the City of  
5 Hamilton.

6 Registrar, could you call up  
7 RHV1014, please, and could you go to image 2 and  
8 3, please. Thank you.

9 So, Mr. Mayor, just pulling  
10 out a few of Ms. Paparella's comments about the  
11 administration of the committee structure.

12 Registrar, could you pull out  
13 paragraph 5, please.

14 So, Ms. Paparella is a  
15 legislative clerk. You're familiar with her.  
16 Right?

17 A. Mm-hmm.

18 Q. So, she notes here that  
19 legislative coordinators circulate the annual  
20 calendar and provide deadlines for information  
21 from staff to go to committees or council about  
22 two weeks in advance and that those are  
23 generally -- the agendas are printed and published  
24 or at least they were prior to COVID, now they're  
25 put online.

1                   Is that keeping with your  
2 understanding and experience with legislative  
3 coordinators?

4                   A.    Yes.

5                   Q.    Registrar, you can close  
6 that down and if you could call out paragraphs 7  
7 through 10, please. Thank you. We can come back  
8 to the rest of 10.

9                   Ms. Paparella also notes that  
10 the GIC, the general issues committee, is a  
11 standing committee that reports to council and it  
12 has a mandate set out by by-law and that it is the  
13 whole of council who are members of GIC and who  
14 attend GIC. Is that right?

15                  A.    Correct.

16                  Q.    Ms. Paparella also  
17 indicates that council is the ratifying body for  
18 GIC and for all the other standing committees, and  
19 I think you've mentioned some of them: Public  
20 works, health and safety, there's a few other  
21 planning, there's a few other ones you mentioned.  
22 Right?

23                  A.    Correct.

24                  Q.    She also notes that  
25 generally council meetings do not include

1 delegations. Those are people who come and  
2 actually present to the councillors. Is that  
3 right?

4 A. Yeah. That never  
5 happens. Yeah.

6 Q. Okay. But at GIC there's  
7 a chance to have discussions and receive  
8 delegations?

9 A. It allows for, you know,  
10 delegates and likely could for any other standing  
11 committee, yes.

12 Q. Thank you. Registrar,  
13 you can close that down and if you could have  
14 image 4 and image 5, pardon me, image 3 and  
15 image 4 up, please.

16 At the bottom of image 3 in  
17 paragraph 10 there's also a reference to the  
18 specifics of the mandate of GIC, which include  
19 monitoring council's strategic plan and corporate  
20 strategic plan, the annual capital rate and  
21 operating budgets, labour relations matters and to  
22 receive briefings on legal matters. Has that been  
23 your experience with GIC in terms of its mandate?

24 A. Generally speaking, yeah.  
25 Sometimes it's adjusted with matters that have

1 broad concern that may not specifically fit in all  
2 those categories, but that's generally the rule in  
3 terms of what goes to general issues, yes.

4 Q. Okay. And as a standing  
5 committee, GIC meets at least monthly?

6 A. We have been meeting kind  
7 of bi-weekly, but at least monthly for sure, yes.

8 Q. Okay. Ms. Paparella also  
9 sets out what a special meeting is in  
10 paragraph 13.

11 Registrar, could you pull that  
12 out.

13 So, she says that a special  
14 GIC meeting is a meeting on a specific date  
15 outside the dates that are provided by by-law, and  
16 it can be held any time, sometimes on a specific  
17 matter, sometimes where there's an expectation  
18 there's going to be a lengthy discussion. And a  
19 special council meeting is similarly a meeting of  
20 council on dates outside the dates a that are  
21 provided by the by-law. Do you agree with that?

22 A. Yeah.

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

25 Who has the authority to

1 decide whether to call a special meeting?

2 A. I do. A majority of  
3 council does as well, should they decide  
4 collectively to -- a majority being two-thirds  
5 majority of council could call a special meeting  
6 if they so choose. That's about it.

7 Now, having said that, I mean,  
8 the ones that I've called sometimes were done at  
9 the request of staff suggesting that, you know, a  
10 special meeting, a meeting is necessary and they  
11 would outline the reasons and sometimes I would  
12 agree or often I would agree, sometimes not, and I  
13 don't ever recall a two-thirds majority of council  
14 actually calling a special meeting during my time  
15 as mayor, so it's never occurred, but I've called  
16 numerous special meetings for various issues. I  
17 can't remember them all, but it would have  
18 happened on occasion for sure.

19 Q. Thank you. Registrar,  
20 you can close out this document.

21 As mayor, what is your role on  
22 standing committees?

23 A. I'm an ex-official member  
24 of all standing committees, all committees in  
25 fact. I don't generally attend the standing

1 committees unless there's an issue that I have  
2 particular concern around. GIC, I attend  
3 faithfully. That is something that I need to be  
4 at and part of. And, of course, council at the  
5 end of the day is my, you know, chairing and  
6 oversight role. And I did pass on the deputy  
7 mayor's role to have various councillors as they  
8 are deputy mayor head up the general issues  
9 committee and budget committees when they're on,  
10 so it would flip from one to the other depending  
11 on what months they were in, but by and large I  
12 would chair council meetings. So, ex-official  
13 member of all committees, don't always attend  
14 standing committees, GIC faithfully and of course  
15 council.

16 Q. Okay. So, leaving apart  
17 GIC and your attendance there, you don't, in the  
18 usual course, attend other standing committee  
19 meetings?

20 A. Other than GIC, no,  
21 generally not as a rule. I have attended from  
22 time to time on issues that I might have had  
23 concern over, but generally speaking I leave it to  
24 the committee to deal with.

25 Q. Okay. I presume you



1 would contently be as standing committee meetings  
2 if you had a practice of attending all of them.  
3 Is that fair?

4 A. I would probably not have  
5 time for anything and there's lots of other things  
6 to do, so that's the kind of a time management  
7 issue that we've come to.

8 Q. Do you receive briefings  
9 from your staff in respect of events or  
10 discussions that occur at the standing committee  
11 meetings?

12 A. Yeah, so even though I'm  
13 not attending personally, I do have staff  
14 identified in my office to kind of sit through the  
15 standing committee meetings and report on, you  
16 know, any significant issues that might come out  
17 of that to me just for awareness and, again,  
18 mostly all about, you know, staying in tune with  
19 some of the things that are rising to the floor,  
20 whether at committee or will it ultimately get to  
21 council. So, just to be informed. Without having  
22 to go into the deep detail, they give me kind of  
23 an overview of what might have occurred at all of  
24 the standing committee.

25 Q. We have some examples of

1 those updates that your staff provides to you from  
2 standing committee meetings, specifically a couple  
3 of public works committee meetings.

4 Registrar, could you bring up  
5 HAM43354, please.

6 So, this is an attachment to  
7 an e-mail from Laura Farr. I can go into the  
8 e-mail attaching this, but was Ms. Farr a member  
9 of your staff?

10 A. Laura Farr was a member  
11 of the staff, correct.

12 Q. And this says "Public  
13 Works Meeting December 7, 2015." Is this an  
14 example of the kind of notations that Ms. Farr or  
15 the staff would provide to you coming out of  
16 standing committee meetings?

17 A. Yeah, generally. It  
18 would cover some of the issues that they discussed  
19 at length or in depth and I would get a brief  
20 sentence on what the issue might be. So, yes,  
21 it's not inconsistent with what might have been  
22 reported on, although this seems to go through a  
23 number of issues. Typically there aren't that  
24 many, but --

25 Q. It continues on to the

1 next page as well.

2 Registrar, could you bring up  
3 the next page, please. And then this one, if you  
4 could call out 8.2, please.

5 So, Ms. Farr's notes include  
6 reference to a LINC and RHVP safety review,  
7 suggesting some short-term options. So, again,  
8 this is December 2015. For these notes, you would  
9 have reviewed them when you received them?

10 A. Yeah, generally. Yes.  
11 Yeah.

12 Q. Thank you.

13 Registrar, can we mark this as  
14 the next exhibit, Exhibit number 177?

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

17 EXHIBIT NO. 177: Notes  
18 taken by Laura Farr dated  
19 December 2015, HAM43354.

20 BY MS. LAWRENCE:

21 Q. Registrar, could you  
22 close that call out, please, and can you close  
23 that document.

24 Is there also a process for  
25 you to receive briefings through an agenda review

1 in advance of GIC or council meetings?

2 A. Yes.

3 Q. Can you tell me how that  
4 works?

5 A. So, when the agenda is  
6 set, you know, for general issues committee, it  
7 would have been Stephanie Paparella who was the  
8 legislative assistant. She would organize city  
9 manager and any general managers that had issues  
10 on the agenda to, kind of, a walk-through on, you  
11 know, the agenda items that are coming through the  
12 meeting, along with the chair of the meeting at  
13 the time. So, it would have been the deputy mayor  
14 of whatever that moment in time was, just to have  
15 awareness on any procedural issues, any, you know,  
16 difficult procedural issues. Sometimes there are  
17 kind of, you know, procedural issues that need to  
18 be, you know, understood by the chair so that they  
19 can properly manage the meeting. And then just as  
20 an awareness of the issues that are coming to the  
21 table when the meeting actually happens.

22 Q. And do you attend that  
23 agenda review as faithfully as you attend GIC?

24 A. Pretty much, yeah. I  
25 mean, there might have been occasions where I

1 missed it and left it with the deputy mayor, but  
2 as a rule I would attend, yes.

3 Q. And that process would  
4 give you a bit of a heads-up about what was coming  
5 in from the standing committees to council?

6 A. Yeah, at a high level.  
7 Yes.

8 Q. So, apart from receiving  
9 those briefings from staff and the agenda review  
10 process, did you have direct meetings with senior  
11 operational staff on a routine basis?

12 A. I had, you know, monthly  
13 or bi-monthly meetings with the city manager and  
14 any, you know, folks that were involved in a list  
15 of issues that either the city manager wanted to  
16 bring forward or that I wanted to bring forward of  
17 concern. You know, there's been many of them and  
18 they would have a list of issues that they either  
19 wanted some thoughts on or wanted to give me a  
20 heads-up on, you know, on the premise that, you  
21 know, anything that comes through committee and  
22 council is likely to potentially generate some  
23 media activity, some questions, and generally the  
24 first person they go to is yours truly. And so,  
25 it's really an effort to be, you know, fully

1 informed and prepared to the best degree possible  
2 to be able to respond to any comments or questions  
3 from anyone, including media.

4 Q. The inquiry has received  
5 some minutes from senior leadership team meetings  
6 and some evidence that those minutes were fairly  
7 widely circulated, including to councillors and  
8 elected officials. Did you receive and review  
9 minutes from the senior leadership team meetings?

10 A. I have to be honest to  
11 say that I probably did not, you know, review them  
12 on a regular basis. I'm sure I have had eyes on  
13 them from time to time, but not something I would  
14 seek out to review, you know, regularly.

15 Q. Okay. Prior to late  
16 2018, do you remember the topic of the safety on  
17 the Red Hill coming up in any of your briefing  
18 meetings with the city manager or general  
19 managers?

20 A. Prior to, sorry, what  
21 date?

22 Q. Late 2018.

23 A. Not specifically. You  
24 know, I think from time to time there were issues.  
25 There had been some accidents and some of those

1 accidents, kind of, led to some conversation  
2 around, if I recall, lighting, you know, various  
3 issues that would have come up either through  
4 committee or to myself, so it's possible that, you  
5 know, a conversation could have happened around  
6 that, but I don't have specific recall of somebody  
7 coming to me and saying, here is an issue on the  
8 Red Hill Valley Parkway that we have to have a  
9 conversation around.

10                               So, it was general  
11 information, it was part of an update that might  
12 have happened at committee through public works  
13 that I might have received from my own staff, but  
14 I don't remember, you know, specifically having an  
15 RSVP conversation prior to that.

16                               Q. I'm going to take you  
17 through some of those events, some of the  
18 accidents, issues around lighting, so I invite  
19 you, if you do recall any briefings or discussions  
20 you had with staff as we go through those topics,  
21 just let us know.

22                               A. Okay.

23                               Q. Looking to the public  
24 works committee in particular, in your view what  
25 is the role of the public works committee as it

1 relates to its staff using that framework of  
2 governance versus operation?

3 A. Obviously the staff would  
4 bring, you know, important reports on work that's  
5 being done, work that needs to be done, policies  
6 that need to be adjusted or changed relative to  
7 ensuring that functionality of the City is  
8 maintained. It could also include, you know,  
9 garbage schedules and, you know -- I mean, all  
10 manner of things that might come through public  
11 works. And the duty of the committee is to stay  
12 on kind of the governance side and, when asked to  
13 make adjustments to either budgets or policy, that  
14 they would review that and either agree or  
15 disagree or send it back. And so, I mean, that's  
16 generally in a nutshell the work of the committee.

17 It's also their opportunity to  
18 raise, you know, any issues of concern in their  
19 community or community at large that they have  
20 either had some commentary from the public at  
21 large around or some complaints or things that  
22 they might want to bring to the table to discuss  
23 with the staff that are going to be present.

24 Q. Thank you.

25 A. Stop signs and traffic



1 issues was probably the biggest topic for public  
2 works, and currently speed cushions or speed  
3 bumps, most people would call them, but we  
4 affectionately call them speed cushions.

5 Q. Thank you. I'm going to  
6 turn now to 2015.

7 Registrar, could you bring up  
8 OD 7, page 4, please, and could you call out the  
9 top of page 4, which is a carry on from  
10 paragraph 4 on the earlier page. Yeah, that's  
11 perfect. Thank you.

12 In May of 2015, two young  
13 women travelling together on the Red Hill were  
14 killed when their car crossed the grassy median  
15 and collided with a minivan. Do you recall  
16 knowing about that accident when it occurred in  
17 May of 2015?

18 A. I certainly remember  
19 reading about it in the media for sure, yeah.

20 Q. Do you recall members of  
21 the public contacting you about this accident and  
22 their deaths?

23 A. I think there were a  
24 number of e-mails as I recall generally that would  
25 have asked about medians on the roadway. I would

1 have, you know, intimated about lights on the  
2 roadway, that kind of thing, in terms of the  
3 safety issues. So, you know, originally every  
4 time there was an accident, significant accident  
5 on the roadway, clearly tragic loss of life, it  
6 would inspire a number of commentaries that would  
7 have come to my office, I'm sure.

8 Q. So, you mentioned members  
9 of the public asking about medians, perhaps asking  
10 about lighting. Did you have a sense before or in  
11 2015 that there was concerns about the level of  
12 illumination on the Red Hill?

13 A. Well, I mean, I had heard  
14 some concerns expressed by members of the public.  
15 I had not heard any concerns expressed by members  
16 of our staff and I do believe it was a topic of  
17 conversation at committee meetings. And, you  
18 know, not that I was witness to this, but I do  
19 recall general knowledge of, you know, being  
20 advised by, you know, the engineering department  
21 that they didn't believe the median was necessary  
22 and they also didn't believe that lighting was  
23 something that was critically important to the  
24 operations of the roadway, the way it was  
25 constructed and designed.

1                   Q.    Thank you.  During the  
2    same period of time, do you recall receiving  
3    complaints or concerns from the public that the  
4    Red Hill was slippery?

5                   A.    Not specifically, but,  
6    you know, it could have been alluded to in, you  
7    know, various e-mails that we might have received.  
8    Again, I'm sure it would have been flowed back  
9    through to committee and, you know, commentary  
10   would have been had at committee or directly or  
11   otherwise of what slipperiness of the road and  
12   under what circumstances, et cetera.  So, I'm sure  
13   it was discussed, but I don't know that there was  
14   ever a conclusion that the road was hazardous  
15   slippery beyond normal, kind of, operating  
16   conditions.  So, most roads are slippery when  
17   they're wet, especially when they're just wet,  
18   they're most slippery, so that's, kind of, common  
19   knowledge and clearly that information probably  
20   would have been shared with myself and members of  
21   council at some point.

22                  Q.    Thank you.  So, my  
23    question was specifically about public complaints.  
24    Recognizing you might not be personally answering  
25    the phone in your office, did members of your

1 staff update you regularly about topics of  
2 complaints that your office received?

3 A. I would have been aware  
4 of anything significant for sure and, again, they  
5 would have probably I'm sure made me aware of any  
6 specific e-mails related to, you know,  
7 particularly high-profile accidents, so I would  
8 have been aware, sure.

9 Q. Thank you. And so, just  
10 so that I understand your evidence, do you recall  
11 your office receiving public concerns or  
12 complaints that the road was slippery?

13 A. I don't recall that  
14 specifically. I couldn't identify a particular  
15 e-mail or note or communication that was sent to  
16 me that would have indicated that, but, you know,  
17 here is -- after the fact, obviously that's been  
18 part of the topic of conversation.

19 Q. Sure, so let's stay in  
20 2015 and your knowledge and experience at that  
21 time just for the moment.

22 Registrar, you can close this  
23 down and you can go to page 15, please. Pardon  
24 me, page 10, please, and if you can call out  
25 paragraph 29, including the excerpted text.

1                   So, following that fatal  
2    accident involving the two young women, staff  
3    exchanged e-mails about a motion to be added to  
4    the next public works committee meeting, which was  
5    May 21, 2015, and it was specifically referencing  
6    the death of those two young women and then a  
7    resolution that staff be directed to investigate  
8    additional safety measures on the Red Hill and the  
9    LINC, including additional guide rails, lighting,  
10   lane markings and other means to help prevent  
11   future fatalities and serious injuries and then to  
12   report back by December 7, 2015, which is the date  
13   of Ms. Farr's notes that we were looking at  
14   earlier.

15                   Do you recall becoming aware  
16   of this motion going before public works  
17   committee?

18                   A.    I likely would have  
19   become aware of that when it came to council for  
20   sure, but, you know, would I have known it at  
21   committee specifically? I can't tell you that.

22                   Q.    Okay. And given that the  
23   tragic accident involving the deaths of those two  
24   women did seem to have some media around it, did  
25   you pay particular attention when you saw this

1 motion come through ratification at council?

2 A. I'm sure I supported it.

3 You could probably check the record on that. So,  
4 I mean there was always, you know, a need or a  
5 desire to follow up on any concerns that were  
6 expressed, especially when there's, you know, a  
7 sad significant loss of these two young  
8 individuals. So, we would want to follow up and,  
9 you know, ask our staff to make sure that we have  
10 done, you know, what's necessary from their  
11 perspective to make the road safe.

12 Q. So, did this --

13 A. To keep the road safe,  
14 actually.

15 Q. Did this motion and the  
16 direction to staff provide where you with some  
17 assurances that staff were looking into issues  
18 about potential contribution to collisions?

19 A. Yeah. I mean, clearly  
20 this would have, you know, indicated that it's not  
21 something we were ignoring and that the staff were  
22 turning their mind to that. There weren't any  
23 conclusions at this point, but clearly here is  
24 some areas that folks have asked about and have  
25 wondered about. You know, let's report on that

1 and see what, kind of, the experts believe needs  
2 to be done, if anything.

3 Q. Thank you. Registrar,  
4 could you close this down and go to page 15.

5 Just for context, on May 21,  
6 which is the day of the public works committee  
7 meeting, Mr. Ferguson, that's David Ferguson, who  
8 is a superintendant of traffic, he e-mailed you  
9 and councillors.

10 Registrar, could you call out  
11 the underlying text in paragraph 41, please.

12 So, I think this would have  
13 even been before the matter went to council for  
14 ratification. You'll see in the first two  
15 paragraphs he mentions that:

16 "A consultant has been  
17 working on a full review  
18 on the LINC and, per the  
19 direction today that  
20 we -- "

21 I think that's staff:

22 " -- would be retaining  
23 the same consultant to  
24 complete a safety review  
25 and provide

1                                    recommendations on the  
2                                    Red Hill closer to the  
3                                    end of the year."

4                                    So, just providing that  
5                                    context that you received a direct communication  
6                                    from staff about this one.

7                                    A.    Mm-hmm.

8                                    Q.    Was that unusual, to get  
9                                    updates directly from staff on higher profile  
10                                    issues?

11                                    A.    As an information report,  
12                                    I would say no, it wouldn't be unusual.

13                                    Q.    Okay. Thank you.  
14                                    Registrar, you can close that down and can you go  
15                                    to page 75 of this document, please. Can you pull  
16                                    up 75 and 76 as well, please. Thank you.

17                                    So, I'm moving forward in time  
18                                    to just after the December 7 meeting, which we'll  
19                                    get back to in a moment.

20                                    Registrar, can you pull out  
21                                    238, please.

22                                    So, Mr. Mayor, this is just to  
23                                    orient you and we'll go back into the meeting the  
24                                    day before in just a moment, but you'll see the  
25                                    public works committee made a recommendation



1 coming out of that meeting, which was to implement  
2 short-term measures, that the design for medium  
3 and long-term measures would be deferred pending  
4 the outcome of the transportation master plan,  
5 that the police undertake a regular speed and  
6 aggressive driving enforcement and that a copy be  
7 provided to the joint stewardship board. And then  
8 finally that signs be installed stating penalties  
9 and costs associated with speeding. So, I'm just  
10 going to close that down, but I wanted to give you  
11 that context before we get into the December 7  
12 meeting.

13 Registrar, can you call up now  
14 page 73 and 74, please.

15 Mr. Mayor, did you attend the  
16 public works committee meeting on December 7,  
17 2015?

18 A. Not to my knowledge.

19 Q. We do have a video copy  
20 of it. I don't see you there and I don't think  
21 you're introduced. I'm going to go through some  
22 of the information that we have taken from the  
23 video recording and put in the overview document  
24 and, of course, if any of it strikes a  
25 recollection that you did attend, do let me know.

1                   So, Registrar, could you call  
2 out 232 from both pages.

3                   So, Mr. Ferguson is there  
4 presenting a staff report that summarizes a  
5 consultant report. So, just stopping there for a  
6 moment, in the usual course, Mr. Mayor, would you  
7 review staff reports as they were coming through  
8 standing committee to the counsel for  
9 ratification?

10                  A. Mostly, yes. You know, I  
11 would generally rely on the agenda review process  
12 to, you know, get at least acquainted with, you  
13 know, the items that are in the report. I would  
14 have had a briefing from my staff generally of,  
15 you know, the issues that might have been dealt  
16 with, so I had had general knowledge. Would I  
17 have read every word of every report that the  
18 committee dealt with, no.

19                  Q. And what about underlying  
20 materials that are provided to the standing  
21 committees, like here a consultant report that is  
22 then summarized in a staff report, is it fair to  
23 say that you simply don't have the time to do that  
24 kind of preparatory work before council?

25                  A. That's fair to say and,

1 you know, I'm obviously reliant on the information  
2 that I've already received either through updates  
3 from staff or information through the agenda  
4 review process. And at the agenda review process,  
5 if there was an issue that I wasn't fully aware  
6 of, I would ask them, you know -- I would  
7 generally, if they said this is an issue that's  
8 going to, you know, have some tension at council,  
9 then I would likely go back to the report and get  
10 an understanding. But would I read all the  
11 background reports associated with that? Probably  
12 not.

13 Q. Okay. Thank you. So,  
14 the video recording of the meeting indicates that  
15 Mr. Ferguson presented the staff report that  
16 summarized the consultant report on the LINC and  
17 the consultant report on the Red Hill, and  
18 Mr. Merulla, who was a member of the public works  
19 committee, asked Mr. Ferguson to reply to public  
20 comments questioning the quality of the asphalt  
21 and Mr. Ferguson cites statistics regarding  
22 speeding and noted that the pavement itself was  
23 not causing any issues. He also noted that  
24 Mr. Moore was in attendance.

25 Registrar, can you close this

1 call out and if you can call out the next three  
2 paragraphs, please. Thank you.

3 Mr. Moore indicated to the  
4 public works committee that the City had used  
5 stone mastic asphalt, SMA, in the construction of  
6 the Red Hill, which was the MTO's top mix for  
7 high-speed freeway-type roadways.

8 So, just stopping there, does  
9 that provide you with any recollection about  
10 whether you attended the December 7, 2015 meeting?  
11 Again, I don't have any indication you did. I  
12 just wanted to provide you with an opportunity.

13 A. No. I would not have had  
14 any knowledge at that point in time. This is  
15 knowledge that I would have, you know, had after  
16 the fact for sure, but at that moment in time, at  
17 that meeting, I was not present, would not have  
18 heard this.

19 Q. Okay. And at some point  
20 did you actually go back and review this  
21 particular meeting?

22 A. No, not to my  
23 recollection specifically. No.

24 Q. Okay. Were you aware  
25 before 2015 that the City had used a kind of

1 paving surface called stone mastic asphalt?

2 A. I would have not have had  
3 that kind of specific knowledge at that point, no.

4 Q. Mr. Moore also advised  
5 the public works committee that the MTO had  
6 performed initial friction testing and had  
7 received results at or above what the MTO  
8 typically expects from high-grade friction mixes  
9 and that they had performed testing subsequently  
10 five years after and that the road was holding up  
11 exceptionally well. And Mr. Moore also said that  
12 the Red Hill was above the grade of any 400-series  
13 highway.

14 Do you recall receiving in  
15 December of 2015 any information from other  
16 councillors about Mr. Moore's comments at that  
17 public works committee meeting?

18 A. Not at that time, no.

19 Q. Not as it went to  
20 ratification by council?

21 A. Correct, yeah.

22 Q. Registrar, you can close  
23 that call out. Registrar, could you go to page 77  
24 of OD 7, please, and if you can bring up 78 as  
25 well, please.

1                   On December 9, the Lakewood  
2 Beach Community Council e-mailed you and council  
3 under the subject line "RHVP Improvements  
4 Ratification tonight," and I believe that the  
5 ratification, the council ratification, the  
6 council meeting to ratify the recommendations from  
7 public works committee was that day, on  
8 December 9.

9                   The LBCC is a community  
10 organization. Were you familiar with the LBCC?

11                   A. Yes.

12                   Q. Here, they note at the  
13 bottom, and it's a little hard to read -- perhaps,  
14 Registrar, you can call out the bottom of page 77,  
15 please, "We're too late."

16                   So, the LBCC says:

17                   "We're too late to have  
18 this added as an agenda  
19 item and are therefore  
20 requesting that you  
21 consider adding one  
22 recommendation from the  
23 consultant's review to  
24 the list of  
25 improvements."

1 Registrar, you can close that  
2 down and then if you can call out the first  
3 paragraph of 78, please. Thank you.

4 And the LBCC notes that:

5 "The consultants were  
6 recommending a pavement  
7 friction test be  
8 conducted at the cost of  
9 \$40,000. It was on the  
10 short-term list, but we  
11 feel the cost benefit of  
12 conducting this test  
13 would be money well  
14 spent."

15 Registrar, you can close that  
16 down.

17 So, just in terms of process,  
18 when you and council receive an e-mail request  
19 like this on the day of a council meeting, what  
20 are your options in terms of dealing with the  
21 e-mail request?

22 A. Well, unless someone  
23 wants the raise it as an issue, you know, during  
24 the conversation around this particular issue on  
25 the agenda, it's a non-issue at that point. You

1 know, normally these kinds of -- you know, the  
2 Lakewood Beach Community Council and their  
3 proponents were a frequent commenter on various  
4 items, you know, at various committees, so  
5 normally that would be forwarded to city staff,  
6 the appropriate city staff, for response and, you  
7 know, this -- I'm sure we put in -- I would put in  
8 the same category that this is not something that  
9 we should be raising at council meeting as we're  
10 ratifying a vote for this particular item and I'm  
11 sure, you know, the information was referred to  
12 city staff for followup.

13 Q. It was through a bit of a  
14 path.

15 Registrar, could you call out  
16 274.

17 So, you'll see rather than  
18 just a straight referral to staff, Councillor  
19 Jackson wrote back and said three lines down at  
20 the bottom:

21 "I moved your  
22 correspondence to be  
23 referred to the next  
24 public works committee  
25 meeting where recent



1 reports on both  
2 short-term and long-term  
3 recommendations were  
4 debated."

5 So, Registrar, you can close  
6 that down.

7 So, that's another option for  
8 how to deal with a request that comes in by e-mail  
9 in advance of the council meeting; refer it back  
10 to the standing committee for discussion?

11 A. Correct.

12 Q. Registrar, could you go  
13 to page 111 of OD 7, please, and if you can call  
14 out 350.

15 So, this is jumping forward a  
16 couple of months in time and Mr. Ferguson e-mailed  
17 the LBCC back in advance of the next public works  
18 committee meeting and he says, and you're  
19 copied -- pardon me, you're not copied, the office  
20 of the mayor is copied.

21 Does that e-mail address,  
22 office of the mayor, does that go directly into  
23 your personal inbox?

24 A. No, it doesn't.

25 Q. And is that something

1 that your staff would monitor?

2 A. They would monitor and,  
3 you know, respond if necessary. It may never get  
4 to my desk, but it could.

5 Q. Thank you. So,  
6 Mr. Ferguson, again David Ferguson,  
7 superintendant, says:

8 "Your e-mail was  
9 requesting that the  
10 identified friction test  
11 be considered for  
12 short-term testing  
13 through support of public  
14 works committee. I'm  
15 pleased to inform you  
16 that this testing will be  
17 completed by engineering  
18 services in 2016."

19 So, stopping there, do you  
20 have any recollection of personally reviewing this  
21 e-mail when Mr. Ferguson sent it in February of  
22 2016?

23 A. No.

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

1                   The last question before I  
2 move on: Had you received this e-mail directly  
3 into your e-mail inbox, would it have been  
4 noteworthy in any way to you?

5                   A. No.

6                   Q. Registrar, can you go to  
7 page 165 of OD 7, please, and if you can call out  
8 490.

9                   So, this is an e-mail amongst  
10 public works staff. You're not copied on it, but  
11 it's in reference to another crossover fatality on  
12 the Red Hill in February of 2017 and Mr. White is  
13 talking to his colleagues, Mr. Mater, Mr. Lupton  
14 and Mr. Ferguson about reviewing the CIMA reports  
15 on barriers as these, it says fatals, fatalities,  
16 can likely be mitigated with a barrier system.

17                   Registrar, can you close that  
18 down and can you call out the next paragraph,  
19 please, 491.

20                   This fatal accident also led  
21 to some media and some media requests. In this  
22 one, it's a request for you to do a quick  
23 on-camera today about the Red Hill:

24                   "As you may have  
25 heard -- "

1                   It says, Ms. Hall, a reporter  
2    from CHCH:

3                               " -- there was another  
4                               fatal on a stretch of  
5                               highway last night."

6                   And she asks about the  
7    possibility of installing a median/barriers on the  
8    highway.

9                               Registrar, you can close this  
10   down.

11                   Do you recall some public  
12   scrutiny about this second crossover collision  
13   incident in February of 2017?

14                   A.    No doubt there had been  
15   some reporting done on the issue, both print and  
16   television media, but yeah, I would have been  
17   aware of that and certainly aware that they were  
18   asking for comment.

19                   Q.    Okay.  What do you  
20   normally do with media requests like this one?

21                   A.    We review it in our  
22   office.  We also would, you know, get in touch  
23   with, you know, the appropriate staff people to  
24   kind of understand where they're at and what  
25   they're suggesting.  And then we would, you know,

1 in concert with them, you know, fashion some key  
2 talking points that I would work from. I don't  
3 know if I did or I didn't. I'm not sure --

4 Q. I think you did. I think  
5 that's exactly what happened here.

6 Registrar, can you go to  
7 page 167, please.

8 So, the same day, Ms. Graham,  
9 who was a communications staff member who works  
10 with the public works staff regularly, and Andrea  
11 McKinney, director, communications and corporate  
12 initiatives, and Jen Racine, senior communications  
13 officer, had e-mails about this and Ms. Graham  
14 noted another accident on the Red Hill is  
15 resulting in a lot of media enquiries. Many  
16 councillors' offices have been engaged and several  
17 are asking for a traffic safety section about  
18 messaging. And then she puts together some of the  
19 talking points that Mr. Ferguson is going to use  
20 for two interviews.

21 Do you recall personally doing  
22 interviews on this crossover collision with CHCH  
23 or anyone else?

24 A. I don't recall doing that  
25 specifically on this one or any of them quite

1 frankly. I may have but I'm not -- I couldn't  
2 recall them.

3 Q. Sure. It seems that  
4 public works staff, including Mr. Ferguson, were  
5 City representatives for media purposes at various  
6 points in respect of the Red Hill. Is that  
7 common, to have staff with technical expertise be  
8 media representatives?

9 A. Yes. I wouldn't say it  
10 was the rule, but certainly on significant  
11 sensitive issues, you know, I thought it would be  
12 better for people that had all the background to  
13 talk to the media about that. And if the media  
14 still wanted to get, you know, information from  
15 me, they could.

16 Q. Thank you. Registrar,  
17 can you go to the next page, please.

18 So, this is again another  
19 e-mail that you're not copied on at 495.

20 Registrar, could you call that  
21 out, please.

22 So, this is between  
23 Mr. Ferguson and Dan McKinnon and he's giving an  
24 update to Mr. McKinnon and he says:

25 "I just got off the phone

1 with Collins and Conley  
2 asking questions about  
3 barriers and the recent  
4 incident. I believe they  
5 also talked to Gary."

6 And then down at the bottom:

7 "In my discussions with  
8 the councillors, Chad did  
9 start to get on to a bit  
10 of a rant about these  
11 issues occurring as a  
12 result of driver  
13 behaviour and that the  
14 actions of the motorists  
15 aren't being made  
16 public."

17 Registrar, you can close that  
18 down.

19 Do you recall in February of  
20 2017 that this accident triggered discussion  
21 amongst councillors about further countermeasures  
22 to improve safety on the Red Hill?

23 A. I recall there was  
24 concern and, you know, a number of councillors,  
25 especially ones adjoining the expressway, would

1 have identified some of their thoughts and  
2 concerns. You know, some of it included speeding  
3 and, you know, when I read, you know, behaviour of  
4 motorists, I think that largely had to do with  
5 speed. I think speed was an issue that was often  
6 cited as, you know, a major concern using the  
7 roadway, especially the Red Hill Valley portion of  
8 it as people were coming down the hill. So, yes,  
9 I would say I would have been aware of commentary  
10 from some about the status of the road for sure.

11 Q. Thank you. Registrar,  
12 could you pull out again 495. I closed it down  
13 too quickly.

14 Mr. Mayor, Mr. Ferguson here  
15 also says in the fourth paragraph down that he had  
16 provided comment to the media that barriers were  
17 identified as a longer term option as the TMP is  
18 being completed and we have to wait for what  
19 recommendation would be on the widening of the  
20 roadway.

21 So, this is February of 2017.  
22 Do you recall discussions within the City about  
23 the potential to widen the Red Hill or the LINC?

24 A. I believe Councillor  
25 Conley was an individual that actually raised that



1 issue as something that he thought needed to  
2 happen sooner rather than later. I'm not sure  
3 there was general agreement around that, but it  
4 was raised at the committee meeting that I'm aware  
5 of. I've certainly heard about it. I don't think  
6 it went anywhere and I think, you know, to the  
7 answer that's provided here is I think there was a  
8 belief that there needed to be a transportation  
9 master plan done before we started, you know,  
10 adding additional lanes to a roadway.

11 So, I recall Councillor Conley  
12 being kind of the proponent of let's get on with  
13 putting more laneways on the expressway.

14 Q. And did you understand at  
15 the time that, in addition to adding more lanes  
16 for traffic, that widening of the parkways would  
17 be an opportunity to also install median barriers?

18 A. I don't remember that  
19 being the focus of the conversation, but I think  
20 it certainly was introduced in terms of the answer  
21 that I see here, but I don't know that Councillor  
22 Conley, you know, would have said, I would like  
23 barriers, like lighting and could you please add a  
24 couple of lights? So, I think his focus was  
25 adding laneways to, you know, increase capacity,

1 and that was the general focus, I think, of that  
2 conversation, although, you know, staff would have  
3 added some detail around that.

4 Q. Thank you. Registrar,  
5 can you close this call out and can you go to  
6 page 177, please. Can you bring up 178 as well.  
7 Actually, I'm going to go into the underlying  
8 document. Registrar, can you go to HAM25870,  
9 please. Thank you. And can you call out the two  
10 paragraphs under the signature. Thank you.

11 The call out is covering up  
12 what this is, but hopefully you had a glimpse of  
13 it. This is an information report and it was  
14 provided to mayor and councillors, so not just the  
15 public works committee meeting, in March of 2017.  
16 And it's from Martin White, the manager of traffic  
17 operations and engineering. And the content is  
18 quite brief. It's at the top there, which is:

19 "Staff were requested to  
20 provide an update about  
21 the short-term safety  
22 improvements."

23 And then there is a list of  
24 short-term improvements with the status of each of  
25 them. And then another appendix that had the list

1 of recommended improvements in the longer term.

2 Registrar, can you close that  
3 call out down.

4 Mayor, do you recall receiving  
5 and reviewing this document in March of 2017?

6 A. I'm sure I reviewed it  
7 along with many others, but specific recall?  
8 Generally yes. Specifically, you know, I would be  
9 hard-pressed to provide any detail, but I would  
10 have had eyes on this document for sure.

11 Q. Okay. And you'll see  
12 under the Appendix A there's reference to some  
13 aspects of the improvements being completed, other  
14 coming up for completion, for example, spring,  
15 summer, 2017, and then one, install recessed  
16 pavement markings. It says:

17 "Work to be completed  
18 during resurfacing, 2018  
19 to 2021."

20 Do you recall if you knew in  
21 March of 2017 that engineering services was  
22 thinking about resurfacing the Red Hill?

23 A. I would have known that  
24 at some point, sure. You know, again, would I  
25 have ingrained in my mind kind of the timeline?

1 You know, maybe not, but certainly at some point  
2 there needed to be a resurfacing of the roadway,  
3 and so I would have been aware of that for sure.

4 Q. Thank you. Registrar,  
5 can you close this down and go back into OD 7,  
6 page 180, please, and can you bring up 181 as  
7 well, and can you call out the e-mail -- actually,  
8 the entirety of paragraph 523 at the bottom of 180  
9 that extends on to 181. Thank you.

10 So, the call out at the top,  
11 Mr. Mayor, is an e-mail from you to Mr. McKinnon  
12 and Mr. Murray. The subject line is expressway  
13 and you've kind of members of city council. If  
14 you want to take a moment, you can read your  
15 e-mail. Do you recall sending that e-mail?

16 A. I do.

17 Q. Did you regularly drive  
18 on the Red Hill and the LINC?

19 A. Yes. I would say I was a  
20 frequent user of -- a lot of the events that I  
21 went to were at two banquet facilities that are up  
22 the hill from where I live, so lower city, close  
23 to the expressway is where my home is or to the  
24 valley, Red Hill Valley Parkway, and on the  
25 mountain up in the top of the escarpment are two

1 banquet facilities that were frequent -- where I  
2 frequented lots of events, so I would be going up  
3 and down the Red Hill Valley Parkway and LINC  
4 quite extensively. If not daily, you know,  
5 sometimes multiple times a day.

6 Q. Thank you. So, you say  
7 in your e-mail to Mr. McKinnon that you travel  
8 through the city quite often, quite frequently on  
9 the Red Hill and the LINC, and that you find the  
10 lane markers very faint on dry days and virtually  
11 invisible when it is raining:

12 "The reflectors that have  
13 been installed in some  
14 locations do help, but  
15 many of them are missing  
16 or not reflecting. I'm  
17 not sure which."

18 Then you compare that to the  
19 QEW, the 401 or the 407 where the lane markings  
20 are bright and highly visible. And you say:

21 "I'm generally a  
22 confident and unflappable  
23 driver and, as you drive  
24 the expressways in wet  
25 road conditions, you find



1 storm. I must kind of tell you that it wasn't  
2 just your, you know, shower. It was teeming. But  
3 that, then, you know, virtually didn't allow for  
4 either the visibility of the lane markings. I had  
5 to use the sides of the roads to understand which  
6 way I needed to go.

7 Now, I knew the road pretty  
8 well, so I was in, you know, familiar territory,  
9 but it was difficult, if not almost impossible, as  
10 I indicate, to see the lane markings on the  
11 roadway. And, you know, if I was having that  
12 trouble, other people were having that same  
13 trouble as well. My eyes are good. Cataracts  
14 surgery has taken place, and so I'm virtually  
15 20/20. And sometimes I've been accused of a lack  
16 of vision, but on this night I could not see. I  
17 could not see.

18 So, either that morning or I'm  
19 not sure what time of day I sent this, but I sent  
20 it, you know, having had that experience that  
21 particular evening and only the once, to be  
22 honest. You know, I didn't experience necessarily  
23 again. I've been looking for it. I just wanted  
24 to relay to them the experience that I had on that  
25 particular night on that occasion, and that, you

1 know, should that arise again, you know, similar,  
2 if changes weren't made, similar -- certain people  
3 would find them in similar circumstance.

4 Q. That's helpful. So, it  
5 was a very specific incident that led to this.  
6 Had you previously observed that the lane markings  
7 were faint, very faint, on dry days, which you  
8 also mention in your e-mail?

9 A. Yeah. I would have, you  
10 know, reminded them that, you know -- and I guess  
11 this was in --

12 Q. It was in April of 2017.

13 A. Yeah, so after the winter  
14 season. So, my understanding that there is a  
15 natural fading as a result of snow and snow  
16 clearing and all of that sort of thing. But, you  
17 know, it was April and it was pretty evident that  
18 they were faint and needed to be refreshed. And,  
19 you know, on top of that, the rain made it even  
20 that more difficult. So, I would have, in the  
21 same breath, have said yes, and I've noted that  
22 these lane markings aren't as bright as the lane  
23 markings we find on the 401 or in the 407 in fact.  
24 So, you know, why and what can we do about it?

25 Q. You say:



1 "I find this to be an  
2 unsafe condition and a  
3 hazard and should be  
4 easily remedied."

5 Can you think of another  
6 circumstance in which you e-mailed the general  
7 manager of public works and the city manager  
8 describing something in the city as an unsafe  
9 condition or a hazard?

10 A. No, I can't, you know,  
11 think of another occasion where I might have done  
12 that. I mean, I may have identified some problem,  
13 you know, in the course of my travels throughout  
14 the city, whether it was garbage strewn around the  
15 city. I would, you know, usually, if I saw  
16 something that needed attention, I would share  
17 that with the appropriate staff, but I can't think  
18 of a time when I would have sent this kind of on  
19 e-mail identifying or using the words hazard or  
20 concern.

21 Q. And was that because you  
22 had a significant concern about the issues that  
23 you identified for Mr. McKinnon and Mr. Murray?

24 A. At that moment in time  
25 given that evening and the circumstances around

1 the very severe rain that was happening, that was  
2 the issue that I had identified in this e-mail. I  
3 would say that it wasn't a concern most of the  
4 time in my regular use of the road and, you know,  
5 generally speaking there would be snow on the road  
6 from time to time and roads are inherently  
7 hazardous places anyway, but, you know, we need to  
8 ensure that we're maintaining and keeping it in a  
9 state that, you know, makes it at least manageable  
10 to navigate. And I didn't find on this particular  
11 occasion that that was the case.

12 Q. Thank you. And it seems  
13 that Councillor Jackson agrees. You'll see at the  
14 bottom in the call out at 524, he says:

15 "I couldn't agree more.  
16 I drove on the Red Hill  
17 in the last 24 hours too  
18 during the late evening  
19 and it was horrendous  
20 trying to determine where  
21 the lane markings were."

22 He mentions during a rainfall  
23 it's even worse.

24 Registrar, you can close that  
25 down.

1                   A.    Always happy to have  
2    Councillor Jackson agree with me.

3                   Q.    You can close those down  
4    and if you can call out 525.

5                   You'll see that Mr. Martin  
6    replies to your e-mail the next day and he  
7    references that the pavement markings are the same  
8    as the ones used on MTO roads, but they do need to  
9    be done as the seasons pass.  And he says in  
10  respect of the inlaid reflectors:

11                                "We are aware that a  
12                                number of these  
13                                reflectors are now  
14                                missing, having been  
15                                installed."

16                   And, Registrar, could you just  
17  highlight this.  It's in the second full  
18  paragraph:

19                                "Engineering services  
20                                section is planning to  
21                                repave the LINC and the  
22                                Red Hill over the next  
23                                few years, and therefore  
24                                placing the markers will  
25                                be done in combination

1 with the anticipated  
2 upcoming pavement  
3 operations."

4 And so, he summarizes that  
5 upon repaving, the pavement markings will be  
6 restated, in-line pavement markings will be  
7 installed or reinstalled. And then I won't go to  
8 the next part of this, which should be called out  
9 as well, but it says:

10 "We're also going to  
11 repaint the pavement  
12 markings this year as we  
13 do every season in the  
14 spring."

15 Were you aware before this  
16 e-mail that engineering services was planning to  
17 repave the LINC or would this have been a first  
18 indication for you about this potential repaving?

19 A. Well, I would have had  
20 general knowledge of the need to repave, you know,  
21 at some point. Would I have had those dates  
22 engraved in my mind? I wouldn't think so. I  
23 would like to keep my brainpower useful for, you  
24 know, immediate things that are going on rather  
25 than clogging it up with all kinds of information

1 that other people have. So, if I needed to know,  
2 I would know where to go, but it's not something  
3 that I would carry with me as knowledge.

4 Q. Thank you. Registrar,  
5 you can close that down and can you pull out  
6 HAM259216, and can you pull out the next image as  
7 well.

8 And so, we were just looking  
9 at that e-mail that's on the right-hand side from  
10 Mr. White and then you respond:

11 "Thanks for this answer  
12 and information. Clearly  
13 having more reflective  
14 and durable lane markers  
15 is the ultimate answer.  
16 I'm happy to hear you're  
17 making these changes."

18 And then you say, and  
19 hopefully you can read this, the font is kind of  
20 small:

21 "In the meantime, I would  
22 also ask you to assess  
23 and consider the current  
24 safety issues. Perhaps  
25 put out some short-term

1                   electronic signs that can  
2                   be activated evenings and  
3                   during rain events for  
4                   users to dramatically  
5                   reduce their speed in  
6                   these hazardous moments."

7                   And then I'll just go through  
8 the rest of the chain before I ask you some  
9 questions. And Mr. White says:

10                   "Thank you. That's an  
11                   excellent suggestion  
12                   about the electronic  
13                   signage. It's worthwhile  
14                   to pursue and we'll take  
15                   it to public works."

16                   And you say, "Thank you." And  
17 then Mr. McKinnon and Mr. Mater have a followup on  
18 their own chatting about this.

19                   So, given that back and forth  
20 with Mr. White, did the public works staff  
21 response satisfy your concerns that you had raised  
22 initially to Mr. McKinnon?

23                   A. Yes, generally. Yes.  
24 With the knowledge that, you know, lines were  
25 going to be spruced up and, you know, they're

1 looking at signage to make people aware of  
2 different driving conditions they ought to be  
3 mindful of, et cetera, et cetera. So, I thought  
4 some of the ideas that were coming forward to  
5 enhance the visibility and provide warnings for  
6 folks was appropriate.

7 Q. Thank you. Registrar,  
8 can you now pull up HAM52704, please, and can you  
9 pull up the first two images.

10 Mayor, did you review this  
11 July 2017 Hamilton Spectator article when it was  
12 published?

13 A. Likely, yes. I don't  
14 remember it specifically, but I'm sure I would  
15 have read it.

16 Q. It's quite a lengthy  
17 article, at least in electronic form. It's six  
18 pages. And is this the kind of article that you  
19 would be inclined to read, a sort of in-depth  
20 reporting piece from the Hamilton Spectator?

21 A. Sure, yeah.

22 Q. Registrar, can you call  
23 out -- so, this is all about, as the title  
24 suggests, why are there so many crashes on the Red  
25 Hill?

1 Registrar, can you pull out  
2 the first five paragraphs, please.

3 So, this is just the opening  
4 paragraphs. The fifth paragraph says:

5 "The City has done  
6 limited friction testing  
7 on the road, but refuses  
8 to make the results  
9 public, saying only that  
10 they were ultimately  
11 inconclusive."

12 Do you recall taking note of  
13 this when you read this article? I know it's a  
14 long time ago.

15 A. If I read the article, I  
16 would have noted it. But did it jump out at me  
17 as, you know, something that was revolutionary  
18 information? I wouldn't say so.

19 Q. Okay. Registrar, could  
20 you close this call out and call out the last five  
21 paragraphs of this page. Perfect. Thank you.

22 So, this is somewhat more  
23 repetitive to what we just looked at bullet the  
24 article says:

25 "The City did a friction



1 test later that year  
2 after a 2015 report, but  
3 the results were never  
4 made public."

5 And Mr. Moore is attributed as  
6 saying:

7 "There's no official  
8 report, only informal  
9 chart. The friction test  
10 was not fulsome and the  
11 results were  
12 inconclusive, but instead  
13 of doing further testing  
14 as it was recommended,  
15 the City has decided to  
16 repave."

17 By July of 2017, had anyone  
18 told you that the City's decision to repave the  
19 Red Hill in and around that time was linked in any  
20 way to friction test results?

21 A. No.

22 Q. Registrar, you can close  
23 this down and if you can call up image 3 of this  
24 document, please, and if you can call out the  
25 first five paragraphs, please.

1                   The article goes on to say  
2   that the City refused to share the chart that was  
3   referenced in the image above about friction  
4   testing, and Mr. Moore is attributed as saying:

5                   "No one ever releases  
6                   (that type) of  
7                   information because it's  
8                   the first thing anyone  
9                   (would use in a)  
10                  lawsuit."

11                  From your perspective, what is  
12   the appropriate City posture in respect of media  
13   enquiries for information, like this one?

14                  A.   Well, that's kind of a  
15   complicated question.  I mean, you know, I don't  
16   believe that all the reports that staff used to  
17   come to a conclusion that they then report on to  
18   committee and council are, you know, reports or,  
19   you know, generally made public to anyone quite  
20   frankly.  It's part of their, you know, everyday  
21   work.  Many, many consultant reports go to staff  
22   that they use to, you know, fashion the  
23   recommendations that they're making to council.  
24   So, I would say it would be very unusual that a  
25   singular report on a singular issue be actually

1 made public, certainly not to be made public prior  
2 to it coming to committee and council. It would  
3 be totally unusual if a senior member or any other  
4 member of staff would release a report at all  
5 without it going to senior leadership team, city  
6 manager, you know, committee and council.

7 Q. Okay. Or it could be  
8 released through an FOI request, if one was made,  
9 I presume?

10 A. Clearly that's the media  
11 option or anyone else out there that would want to  
12 request that. It doesn't mean it's going to be  
13 released, but it could be asked for and, you know,  
14 we don't know what the end result of that might be  
15 due to the independence of the FOI process.

16 Q. Thank you. I see we're  
17 at five minutes after 11:00, which is about break  
18 time.

19 Commissioner, is this an  
20 appropriate time to take a break? I'm about to  
21 move to a different topic.

22 JUSTICE WILTON-SIEGEL: Yes, I  
23 think that would be appropriate. Let's take our  
24 usual 15-minute break and return at 11:20.

25 --- Recess taken at 11:05 a.m.

1 --- Upon resuming at 11:21 a.m.

2 MS. LAWRENCE: Commissioner,  
3 may I proceed?

4 JUSTICE WILTON-SIEGEL: Yes,  
5 please do.

6 BY MS. LAWRENCE:

7 Q. Turning now to 2018, in  
8 January of 2018 public works staff submitted a  
9 report to the public works committee that was  
10 quite a lengthy update on the Red Hill and the  
11 LINC.

12 Registrar, can you call up  
13 HAM46147, please. Thank you.

14 Mr. Mayor, this is quite a  
15 lengthy document. We provided it to you in  
16 advance for your preparation today. Is this a  
17 familiar document to you?

18 A. Yeah.

19 Q. So, this was delivered to  
20 the public works committee but then it would have  
21 gone up through the process we've talked about to  
22 council at ratification. Do you recall reviewing  
23 it as it was coming -- as the recommendations set  
24 out in it were coming to council for ratification?

25 A. I would have seen, kind

1 of, the high-level recommendations, yeah. I'm not  
2 sure I would have seen kind of the background  
3 report, but I would have seen the recommendations,  
4 yes.

5 Q. Okay. So, you don't have  
6 a recollection sitting here today that you  
7 actually read the staff report?

8 A. I don't recall. I may  
9 have given the, kind of, import of the issue, but  
10 I don't have specific memory of doing that, no.

11 Q. Okay. You'll see that  
12 the recommendations are numerous. To implement  
13 some short and medium-term collision  
14 countermeasures, that's in A. In fact, maybe for  
15 all of our eyes, I'll get the registrar to call  
16 these out.

17 Registrar, can you call out  
18 the bottom half of the left-hand image, please.  
19 Thank you.

20 The second is to undertake an  
21 annual detailed collision analysis and report back  
22 as part of the Hamilton strategic road safety  
23 program annual report, that the Hamilton Police  
24 Service be requested to undertake regular speed  
25 and aggressive driving enforcement, that the staff

1 undertake an annual collision count, that median  
2 barriers be installed on the LINC and the Red Hill  
3 in coordination with any future widening, and that  
4 public works report back in 2020 with an update on  
5 the overall operating conditions of the LINC and  
6 the Red Hill.

7 Registrar, why don't we go to  
8 the next page just to finish off that  
9 recommendation, if you can close that call out and  
10 if you can call out the top half of the right-hand  
11 side. Thank you.

12 With a focus on the MTO  
13 activity in terms of widening and truck activity,  
14 and then a number of items to be taken off the  
15 outstanding business list.

16 Registrar, you can close that  
17 call out.

18 By 2018, what was your general  
19 impression about the reasons for collision on the  
20 Red Hill?

21 A. Very and, you know,  
22 numerous. It would be reliant on, you know, speed  
23 being a primary factor in some of the collisions.  
24 I'm not sure that at any point would I have  
25 evaluated the, you know, friction testing or

1 slipperiness on the road as being, you know, a  
2 contributing factor, although it was mentioned in  
3 a number of reports, but that also has something  
4 to do with rain and wet conditions and speed and  
5 how people navigate the road or change their  
6 driving behaviour based on conditions.

7                   So, I mean, I would have a  
8 general impression of a roadway that I thought was  
9 safe. That there weren't any, you know, undue or  
10 unnecessary hazards and, you know, some of the  
11 improvements that were asked for, I think at this  
12 point, had been made. So, you know, things were  
13 heading in the right direction.

14                   Q. Did you have an  
15 impression that speeding on the Red Hill was still  
16 a significant issue?

17                   A. Yeah. I would have had  
18 that feeling for sure. And I think at this point  
19 we had already done some speed change, I'm not  
20 recalling, kind of, the time and chronology, or  
21 enforcement of speed control by policing. So, we  
22 at some point had set out a self-funded police  
23 squadron that would focus specifically on the  
24 RHVP. I think it might have been done already or  
25 it was in process or had been applied and then was

1 going to be applied again, but I can't remember  
2 all the timelines around that.

3 Q. That's fair. And just  
4 for the understanding of the inquiry, what is your  
5 relationship as mayor to the Hamilton Police  
6 Service?

7 A. At that point I would  
8 have been a member of the Hamilton Police Service.  
9 I'm not sure if I was chair at that point, but I  
10 would have been a member of the Police Services  
11 Board and had been since I got elected the second  
12 time around.

13 Q. So, your recollection of  
14 the self-funded police squadron that would focus  
15 on the Red Hill, is that as a result of your  
16 membership on the Police Services Board?

17 A. No. It would have been  
18 both. I mean, obviously it was council that asked  
19 for it and it would have had to have been flowed  
20 as a request to police services and they would  
21 have had to agree with that. It was done  
22 operationally, I believe. I'm not sure there was,  
23 kind of, a board resolution around that. I think  
24 the police chief of the day agreed with the  
25 approach and implemented on behalf of council.



1 Q. Thank you. Registrar,  
2 you can close that down and if you can go to OD 7,  
3 page 70, please. I'm sorry, I misspoke. It's  
4 OD 8, page 70, please. Registrar, can you call  
5 out paragraph 195, please.

6 So, in February of 2018  
7 Mr. White and Mr. McKinnon pick up again some  
8 discussions about replacing the pavement marking  
9 reflectors as part of an upcoming repavement  
10 project and repainting the LINC. And I'm going to  
11 go into the underlying document because I think  
12 that this discussion actually is prompted by you.

13 Registrar, you can close the  
14 call out and the document and go to HAM1137,  
15 please, and if you can go to the second image as  
16 well and show both, and if you can call out the  
17 right-hand side first, please, the two e-mails.  
18 Right there. No, on the right-hand -- those two  
19 e-mails. Yes. Thank you, Registrar.

20 So, Mr. Mayor, you'll see that  
21 Mr. McKinnon and Mr. White are having a  
22 discussion, the one that we were just looking at,  
23 and then Mr. McKinnon flips that discussion to you  
24 on the same day and it says:

25 "Hi, Fred. In followup

1 to your questions."

2 Do you recall prompting  
3 Mr. McKinnon for an update on pavement marking  
4 reflectors or repainting the LINC?

5 A. Yes.

6 Q. What was the impetus to  
7 get in touch with Mr. McKinnon about these issues  
8 in February of 2018?

9 A. Just following up on, you  
10 know, previously identified work that they were  
11 committed to and wanted to know and understand the  
12 status of that and where we were at and when is it  
13 happening.

14 Q. So, you hadn't had  
15 another driving experience, like the one that led  
16 to your first e-mail to Mr. McKinnon?

17 A. No.

18 Q. Registrar, you can close  
19 that down and if you can call out the mayor's  
20 e-mail at the bottom of that. Yes, exactly.

21 Thank you. That's perfect.

22 So, you in response say:

23 "When is the resurfacing  
24 scheduled for? If it's  
25 years away, what do we do

1 with these reflectors in  
2 the meantime?"

3 I read these questions as  
4 having a real desire from you to ensure that the  
5 reflectors -- that the parkway had working  
6 reflectors. Is my interpretation correct?

7 A. Yes. Well, I mean part  
8 of it is it was installed not too long ago and why  
9 the heck are they missing? Obviously there was  
10 some faulty work there if these are intended to be  
11 in the pavement and permanent and, you know, half  
12 of them are gone, so what's the story with the  
13 faulty work and why are we not replacing them?  
14 Because I did see them as a useful, you know, way  
15 to, you know -- for way finding, you know, as  
16 you're navigating down the road in all conditions,  
17 so it's been very helpful.

18 Q. Thank you. Registrar,  
19 you can close this and if you could call out  
20 Mr. White's response, please.

21 So, Mr. White responds and he  
22 has some information about the reflectors and he  
23 says they're going to be:

24 "The repaving was  
25 originally scheduled for

1 2018, so they weren't  
2 going to replace until  
3 that repaving was done.  
4 However, there's a chance  
5 that the paving tender  
6 and contract may be held  
7 over to 2019 and if  
8 that's the case, then  
9 traffic is just going to  
10 replace the missing  
11 reflectors in the  
12 construction season in  
13 2018."

14 Registrar, you can close this  
15 down. I think you said earlier you weren't really  
16 keeping track of the timeline for repaving. Was  
17 this suggestion from Mr. White that the paving  
18 tender and contract might be held over until 2019,  
19 was that new information when he provided it to  
20 you?

21 A. New in the sense that it  
22 might be held over, yes. So, obviously, you know,  
23 previous conversation was we were intending on  
24 holding off until repaving happened. Now, you  
25 know, as I asked the question around, you know,

1 where are these reflectors and why are they not  
2 being replaced, they're indicating that there  
3 might be some delay, so can we not make sure that  
4 they're replaced in due time rather than having to  
5 wait for the next contract to do repaving.

6 Q. And did Mr. White's  
7 response that it would either be done in a  
8 resurfacing in 2018 or traffic would just replace  
9 the missing reflectors in 2018, did that response  
10 satisfy you in terms of your concerns about the  
11 reflectors?

12 A. Yes.

13 Q. Registrar, you can close  
14 that down and if you can go to HAM1336, please,  
15 and if you could show the next image as well.  
16 Registrar, can you call out the public service  
17 announcement that starts at the bottom of the  
18 left-hand side.

19 So, a few months later the  
20 communications department sent out a public  
21 service announcement about these closures and that  
22 was sent to council and support staff. It's not  
23 unusual that you get an update if there's going to  
24 be a closure of a major artery. Is that fair?

25 A. Correct, yeah.

1 Q. So, here there's a  
2 reference to completing sampling of asphalt, and  
3 the third paragraph says:

4 "The closure will allow  
5 crews to take samples  
6 which will be tested for  
7 a potential future  
8 recycling and resurfacing  
9 in the Red Hill in 2019."

10 Did you take note of the fact  
11 that, by July, the resurfacing was going to be  
12 done now in 2019?

13 A. Well, by virtue of this  
14 information, yeah, I would have been aware that  
15 it's 2019, not 2018.

16 Q. Well, I can see you might  
17 have read it, but were you starting to note that  
18 the repaving was being pushed year over year or  
19 was that not something that really struck you  
20 either way?

21 A. You know, I would have  
22 noted it, but would it have jumped out at me as an  
23 area of concern or an issue that needed additional  
24 information? Probably not.

25 Q. Okay. And the issue

1 around sampling the asphalt and the potential  
2 future recycling, those sort of technical details,  
3 those would not have really been something that  
4 you would focus on?

5 A. Correct.

6 Q. You would leave that to  
7 the public works staff?

8 A. Sure. I mean, I would be  
9 aware and, you know, but obviously resurfacing  
10 there's a couple of ways that they're done.  
11 They're either done with brand new asphalt or  
12 sometimes it's shave and pave. So, generally  
13 aware of what, you know, it means to test to see  
14 if the current asphalt is going to be reusable or  
15 not. I would have had knowledge around that in a  
16 general sense, but specific to this particular  
17 issue, I would have left it to the experts to make  
18 their determination and come back and report to  
19 us.

20 Q. Fair to say your focus  
21 when they reported back would be about how much it  
22 was going to cost, how long it was going to last  
23 and how inconvenient it was going to be. Is  
24 that --

25 A. Sure. It would have

1    been, you know, when are you doing it?  What's the  
2    budget for this?  Do we have it approved in the  
3    budget?  Et cetera, et cetera.  So that would be  
4    kind of the natural reporting on things that we  
5    would be responsible for approving.

6                    Q.    And is that an example of  
7    the distinction between, sort of, the governance  
8    role that you see you and council playing versus  
9    the operational role of staff?

10                   A.    Yes.  You know, clearly  
11   we shouldn't be digging into, you know, minutia  
12   around testing and testing results.  That's  
13   something that staff are responsible for and, you  
14   know, would report on in due time.

15                   Q.    Thank you.  Registrar,  
16   you can close the call out and the document and if  
17   you can go to -- before I do, I understand this is  
18   not an exhibit.  If you can make this document the  
19   next exhibit, which I think is 177, but,  
20   Registrar, I may be off by a number.

21                   THE REGISTRAR:  Noted,  
22   counsel.  It's Exhibit 178.

23                               EXHIBIT NO. 178:  Public  
24                               service announcement,  
25                               HAM1336.



1 BY MS. LAWRENCE:

2 Q. You can close this down,  
3 Registrar, and if you can go into overview  
4 document 9A, please. If you can go to page 103  
5 and also bring up 104, please. Thank you.

6 So, Mayor Eisenberger, we're  
7 back in an overview document. The underlining is  
8 just to demonstrate that it's a some new content  
9 that's been more recently added. It is a little  
10 harder to read, but I'll make sure I blow them  
11 out.

12 Registrar, can you call out  
13 263 first, please. Thank you.

14 So, Ms. O'Reilly, a reporter  
15 from the Hamilton Spectator, e-mailed Michelle  
16 Shantz, communications and media relations in your  
17 office, saying she was working on an article about  
18 the resurfacing of the Red Hill and wanted to  
19 speak to you.

20 Do you generally have  
21 Ms. Shantz deal with communications requests that  
22 come into your office?

23 A. With the request. Not  
24 necessarily responding to it independently, but  
25 certainly she would receive the request and then

1 there would be, kind of, follow through on what  
2 the response from the office might be and who  
3 would make that.

4 Q. Okay. And when is it  
5 that she brings you in and when does she deal with  
6 it on her own? What's the, sort of, threshold of  
7 when it gets escalated to you?

8 A. Well, I would say that  
9 she wouldn't be dealing with it on her own  
10 predominantly. That would be taboo, so anything  
11 that comes out of my office is coming from me.  
12 And so, unless she was getting some background  
13 information -- and again, I'm not reading the  
14 entirety of what you have here, but if it was  
15 anything that involved commentary from the office,  
16 that would be coming through me.

17 Q. Okay. And it would have  
18 your eyes on it before it went out?

19 A. Yes, absolutely. The  
20 rule is anything that comes from my office, any  
21 requests for information, I have eyes on it before  
22 it goes.

23 Q. Thank you. If I can  
24 direct you to the e-mail from Ms. O'Reilly, she  
25 notes that Gord McGuire appears to have told her

1 that testing showed significant cracking from the  
2 top down, so staff were expediting plans to  
3 resurface and when the Red Hill was built, it used  
4 a higher end pavement that's supposed to last  
5 longer. And then she has some questions that she  
6 directs to Ms. Shantz.

7 Registrar, can you close this  
8 down and call out the remainder of this paragraph  
9 on page 104.

10 MS. HALE: Ms. Lawrence, I  
11 wonder if it would make more sense to go to the  
12 actual document so that Mayor Eisenberger could  
13 see the full e-mail.

14 MS. LAWRENCE: I was going to  
15 take him into a related document, but yes, I can  
16 do that.

17 BY MS. LAWRENCE:

18 Q. Registrar, it's HAM62869.  
19 It is a little hard to read in the OD in these  
20 sections. And, Registrar, could you go to  
21 images 2 and 3.

22 So, this is what we were just  
23 looking at, Mr. Mayor, is Ms. O'Reilly's initial  
24 e-mail at the bottom on image 3. And then you'll  
25 see Ms. Shantz, which is where I was just about to

1 go, flips it to you and she has listed several  
2 questions I think attributed to Ms. O'Reilly and  
3 some draft responses.

4 A. Okay. Yeah.

5 Q. Registrar, can you now go  
6 to image 1 and 2.

7 And so, you'll see the draft  
8 response is from Ms. Shantz to you and to your  
9 staff, which are now on the bottom of image 2.  
10 Include a reference at the very bottom to, you  
11 know, this being expected maintenance within the  
12 cost of the resurfacing project. And then it  
13 looks like from that Ms. Shantz goes and gets some  
14 more information from public works staff, at least  
15 she says at the top:

16 "More information below  
17 for our files. Waiting  
18 for public works staff to  
19 provide any update."

20 And there's a number of pieces  
21 of information about some asphalt testing in 2018,  
22 the cost and how it was funded and what is called  
23 the benefit, which references attracting jobs and  
24 aid businesses.

25 Do you personally, as you're

1 working with your communications officer, do  
2 anything to confirm the accuracy of the messaging  
3 and information that communications people provide  
4 to you?

5 A. No. I take it as, you  
6 know, something they've gotten from, you know, an  
7 expert authority in staff that had provided this  
8 information, so I would not, you know, spend a lot  
9 of time freshening each element of this. I would  
10 take it at face value, unless something jumped out  
11 at me that I knew wasn't accurate. I mean, that's  
12 why I have eyes on everything that goes out from  
13 me, to ensure that it's consistent with my  
14 knowledge and understanding. But, you know, in  
15 terms of specific technical details, I know that  
16 would come from our expert staff.

17 Q. And did you note on  
18 image 1 under Asphalt Testing, the third bullet  
19 point down, actually, all three of them, there's a  
20 reference to the potential of using new  
21 technology, stripping the asphalt, mixing it with  
22 the new material and putting it back down, but the  
23 testing is not complete, so we're not going to use  
24 it. We're going to go with a tried and true shave  
25 and pave.

1                   Was that information, the  
2     technology they were testing, that testing wasn't  
3     complete and that they were going with a shave and  
4     pave, was that new information to you when  
5     Ms. Shantz collected it and provide it to you?

6                   A.     I'm not sure where they  
7     had previously landed on in terms of how they were  
8     going to do it. I was generally aware of the  
9     process in terms of repaving roads, and so would  
10    that have jumped out at me as brand new  
11    information? Probably not. It would just have  
12    been this is the -- you know, we've done our test  
13    and this is the direction that we're going to go.

14                  Q.     Okay. Thank you.  
15    Registrar, you can close this down and if you can  
16    go back into OD 9A, page 130, please. So, this is  
17    a different topic. Registrar, can you pull out  
18    314 and 315.

19                  In November, early November,  
20    November 8, the City received a request for  
21    information, an FOI request, and in particular  
22    that request is the -- the subject of that request  
23    is at 315 and it is for access to any reports,  
24    memos, drafts, correspondence, about friction  
25    testing on the Red Hill in the last five years and

1 any reports, memos, including drafts and  
2 correspondence about asphalt or pavement testing  
3 assessments, plans on Red Hill for the last two  
4 years.

5 In the usual course, does the  
6 fact of a receipt of an FOI request get escalated  
7 to you?

8 A. No, not necessarily, not  
9 unless it was something that was directed to our  
10 office and asking for information from our office  
11 regarding, and that's certainly happened on  
12 occasion and I would be aware of that. But in a  
13 general sense in terms of this specific request,  
14 it would not be something I would generally be  
15 aware of.

16 Q. Did anybody make you  
17 aware of it in November of 2018?

18 A. Not to my recollection,  
19 no. I don't believe I was aware of it and I think  
20 a follow-up question might be, you know, at the  
21 next meeting in December. Was I aware of it? I  
22 don't have recollection of it being raised as an  
23 issue. Thereafter, you know, it certainly, you  
24 know, became part of certainly some of the  
25 motivation, but at that moment and that date, I

1 don't recall it being raised as an issue.

2 Q. Okay. Thank you. You  
3 can close this call out.

4 We will get to the  
5 mid-December meeting that you had with staff.

6 Before we get there,  
7 Registrar, can you go to page 63 of OD 9A and can  
8 you bring up 64 as well and can you call out 150  
9 at the bottom of 63 and the first two paragraphs  
10 of the rest of this paragraph at 64. Thank you.  
11 Could you move the top call out down just a little  
12 bit so we can see it completely. Thank you.

13 Mayor Eisenberger, so in  
14 August of 2018 the staff in the audit services  
15 department commenced an audit, and you'll see in  
16 this e-mail from Mr. Pellegrini of that office  
17 that the objective of this audit was to look at  
18 how pavement performance is tracked and managed  
19 both holistically and for each segment.

20 Were you aware in the late  
21 summer, early fall of 2018 that audit was  
22 commencing an audit on this issue?

23 A. Not that I recall, no.

24 Q. Is that unusual or did  
25 you have insight into the workings of audit



1 services at any given time?

2 A. Well, they would  
3 generally report to the appropriate committee, so  
4 audit and finance would be the place they would  
5 generally go to identify their work plan for the  
6 year and then they would do their work plan. So,  
7 I would likely not have been at the audit and  
8 finance committee when they dealt with this issue.  
9 I have no doubt that if any recommendations came  
10 out of finance, it would have made its way to  
11 council. At that moment in time, I would have  
12 likely have seen a work plan for the year and this  
13 would likely have been on it. Did I have specific  
14 knowledge in terms of date and timelines as to  
15 when they were doing it? No.

16 Q. Okay. Registrar, you can  
17 close that down and if you can go to page 224,  
18 please, and if you can call out all of 531,  
19 please.

20 So, this is an e-mail from  
21 Mr. Brown to Mr. McGuire, copying Mr. McKinnon,  
22 and Mr. Brown says:

23 "Some preliminary  
24 findings from the ongoing  
25 construction audit have

1 led me to open an  
2 investigation into  
3 friction management in  
4 the Red Hill. As part of  
5 this, I'm asking for a  
6 number of documents."

7 So, this is December 11. We  
8 are shortly going to get to a meeting that you had  
9 on December 18 with staff. Prior to that meeting  
10 with staff on December 18, were you aware that  
11 audit service had expanded its roads audit to also  
12 look at friction management?

13 A. No.

14 Q. Registrar, you can close  
15 this down.

16 So, by October of 2018 and by  
17 the time you're having those back and forths with  
18 your communications officer, Ms. Shantz, staff in  
19 the public works department had found and reviewed  
20 a copy of the Tradewind report. You don't learn  
21 of its existence at that time, in October of 2018.

22 What was your expectation  
23 about when staff would advise you or your staff  
24 about the existence of the Tradewind report?

25 A. I'm not sure I have an

1 expectation. I'm not sure that I could, you know,  
2 kind of look back and speculate on that. I would  
3 say, you know, I was made aware at a particular  
4 moment in time and that's the first time I was  
5 made aware of the report, a report, existing that  
6 wasn't necessarily consistent with information  
7 that had been shared previously. So, I don't know  
8 that I could or would or should speculate on when  
9 it should have been brought to anyone's attention.

10 Q. Okay. Prior to meeting  
11 with staff on December 18, were you aware that  
12 engineering services had provided a redacted copy  
13 of the Golder report, another consultant report to  
14 which the Tradewind report was appended, to audit  
15 services with redactions specifically around  
16 friction testing?

17 A. No. Again, I would  
18 consider that, you know, being in the weeds and  
19 certainly not on a day-to-day basis would I be  
20 looking for, you know, individual, you know, audit  
21 processes or individual reports related to that.  
22 I would be looking for an information report or,  
23 you know, a report to go to council that would  
24 overview that work at some point in time, but  
25 certainly not on a moment-to-moment basis.

1 Q. Okay. So, we've already  
2 had some reference to the meeting that you had  
3 with staff on December 18. Who first gave you a  
4 heads-up that there was an issue that staff wanted  
5 to raise or discuss with you that related to the  
6 Red Hill?

7 A. Dan McKinnon did, general  
8 manager of public works, did give me a heads-up  
9 that they were looking to have a meeting and there  
10 was some concern around, you know, a particular  
11 report. I didn't get any details or specifics,  
12 just a heads-up as to why they were wanting the  
13 meeting. And we then subsequently arranged a  
14 meeting to hear whatever they were prepared to  
15 share.

16 Q. Okay, so you didn't have  
17 any details besides it related to the Red Hill?

18 A. Right. Correct.

19 Q. Do you remember  
20 approximately when that was, maybe with reference  
21 to how many days before the meeting? Was it  
22 within days of the meeting or was it --

23 A. Yeah, I would say within  
24 days. Obviously there was some urgency on getting  
25 to it, certainly in Dan's voice, so I don't

1 remember specifically how many days, but I think  
2 we would have been in a let's set it up as quickly  
3 as possible so that we can hear, you know, what  
4 they're talking about.

5 Q. Okay. Registrar, can you  
6 go to page 261, please.

7 So, there was, I think, some  
8 revisions to the time, but you'll see in  
9 paragraph 614 at the top of this page that  
10 Mr. Zegarac sent a revised calendar invitation to  
11 you changing the time of a meeting to a scheduled  
12 time of 9:00 a.m. on December 18. And the  
13 attendees in the invitation for the meeting were  
14 you, Mr. McKinnon, Mr. McGuire, Ms. Auty,  
15 Ms. Omazic and Mr. Soldo, and the location, I  
16 believe, was in the boardroom near your office?

17 A. Right.

18 Q. It's not listed there,  
19 but I think that's right. The mayor's boardroom?

20 A. Yes.

21 Q. So, before we get into  
22 the actual meeting, as a general practice do you  
23 usually get briefings orally or do they often --  
24 are they accompanied by written materials?

25 A. No. This kind of meeting

1 would be, you know, a verbal oral meeting update.  
2 You know, it generally wouldn't, you know, bring a  
3 raft of documents. If they were planning on  
4 providing documents, I would have asked for an  
5 opportunity to review them before the meeting.  
6 So, you know, this would be an oral, you know,  
7 presentation on, you know, what they discovered  
8 and what the concerns were. I don't remember any  
9 paperwork being delivered to me as a result of  
10 that. And, you know, city manager's meetings  
11 would have been in the same vein. You know, every  
12 time I had a briefing from the city manager, you  
13 know, bi-monthly, it would be here are the items  
14 we want to talk about and it would be a verbal  
15 conversation around that issue as opposed to a  
16 whole bunch of documentation. So, you know,  
17 generally speaking, our meetings would have been  
18 verbal.

19 Q. Okay. And it was common  
20 that there was not even a briefing note or a  
21 summary that you would review in advance?

22 A. Correct.

23 Q. Okay. To your  
24 recollection, who attended this meeting on  
25 December 18?

1                           A.    Mr. McKinnon,  
2    Mr. McGuire, Mr. Zegarac, Mr. Soldo and my chief  
3    of staff, Drina Omazic.

4                           Q.    Okay.  Do you remember  
5    whether Ms. Auty, City solicitor, attended?

6                           A.    Ms. Auty would have been  
7    there as well, yes.

8                           Q.    Okay.  Do you have a  
9    specific recollection of Mr. McGuire and Mr. Soldo  
10   attending?

11                          A.    Yeah, I believe so.  I  
12   mean, as specific as my memory is, you know, they  
13   would have been likely people to have there given  
14   their responsibilities.  So, we wanted to have  
15   people in the room that were directly involved  
16   with the RHVP from a legal or operational  
17   perspective, so that would certainly include  
18   Mr. McGuire and Mr. Soldo.

19                          Q.    Do you recall  
20   specifically if your chief of staff attended, or  
21   is that just an assumption because --

22                          A.    No, no.  I recall  
23   specifically that I asked her to be there.

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

1                                   Who led the discussion during  
2 the meeting on December 18?

3                                   A.    I know it likely would  
4 have started either with Dan or Mike Zegarac.  I  
5 don't have total recall on that, but, you know,  
6 city manager would have been probably the opener.  
7 And then Dan McKinnon would have, you know, filled  
8 in with whatever knowledge he had and then he  
9 would have led to others, Mr. McGuire and  
10 Mr. Soldo, as the conversation evolved, including  
11 Ms. Auty, from a legal perspective.  So, you know,  
12 I think they all would have had a role.  Was it  
13 Mike Zegarac or Dan McKinnon that, kind of, led  
14 the way?  I don't recall specifically.

15                                Q.    Okay.  But you do have a  
16 recollection of Mr. McKinnon and Mr. McGuire, sort  
17 of, providing some updates and then Ms. Auty  
18 providing some information from a legal  
19 perspective?

20                                A.    Yes.

21                                Q.    Okay.  And what was the  
22 nature of the briefing from your perspective?  Was  
23 it staff providing information to you or was it  
24 more of a question and answer?

25                                A.    Well, originally them



1 providing information in terms of what they  
2 discovered and, you know, what it meant, both  
3 legally. I remember my original reaction was, you  
4 know, for anyone that had an accident on the  
5 roadway given this, you know, what was  
6 characterized as an inconclusive but divergent  
7 report, you know, when it became public, would  
8 lead many of them to make an assumption that it  
9 was the friction of the roadway that was the  
10 cause, even though that may or may not be  
11 accurate. But if I were a parent and I had lost a  
12 child or had someone involved in an accident, I'm  
13 sure I would have turned my mind in exactly the  
14 same way, so I remember that reaction.

15 And then, you know, there  
16 would have been an interactive conversation  
17 around, you know, all of the things that pertain  
18 to the legalities of the issue, the lawsuits that  
19 were already outstanding and what this might mean  
20 relative to that. And then the conversation  
21 turned to how were we going to bring this to  
22 council.

23 Q. Okay. So, let's take  
24 those sort of step by step. So, first, did staff  
25 provide you information about where the Tradewind

1 report had been found? Like, how it was  
2 discovered?

3 A. I don't remember delving  
4 into the detail in terms of how it was discovered  
5 or what cabinet or what door it was in. I really  
6 don't know. All I knew was and they were advising  
7 was that they had discovered this report that was  
8 a bit of an outlier compared to other reports that  
9 were previously identified.

10 Q. What do you mean a bit of  
11 an outlier?

12 A. Well, it came to a  
13 different conclusion on friction testing than the  
14 other report that was also out there that came to  
15 a conclusion around friction testing, as I was  
16 being advised. So, it was -- and I recall them  
17 also identifying that different standards that  
18 were being applied, whether it was a UK standard  
19 or a Canadian standard, so we got into some of the  
20 specifics, but not in, you know, a great level of  
21 detail. You know, the conversation more started  
22 to drift towards what are the legal ramifications?  
23 How do we bring it to council? How do we make it  
24 public?

25 Q. Okay. So, before we get

1 there, my question was perhaps not targeted  
2 enough. Was there discussion about why this  
3 report was from 2014 but it was only being raised  
4 with you now in 2018? In terms of that period of  
5 time, any explanation for it? Was that conveyed  
6 to you?

7 A. Yeah, I think so. I  
8 think it would have been, you know, suggested or  
9 indicated that Gary Moore was responsible for  
10 having received this report and deemed the report  
11 to be inconclusive and not necessarily -- well,  
12 let's leave it as inconclusive. In his mind, it  
13 was inconclusive and didn't really provide what in  
14 his mind was information that was useful in terms  
15 of the surface of the road. He didn't think it  
16 jibed with the previous report and decided to not  
17 advance it or do anything more with it. That's my  
18 understanding of what I was provided as a result  
19 of why the report never came to light.

20 Q. Okay. Did staff  
21 specifically tell you that the Tradewind report  
22 had contained friction values for the Red Hill  
23 that were below or well below an investigatory  
24 standard from the UK?

25 A. So, there was discussion

1 around different standards being applied and the  
2 fact they were, you know, out-of-country standard  
3 or UK standard as compared to, I think, a Canadian  
4 standard. I'm not sure if it's a North American  
5 standard. But there was some discussion around  
6 that, that this report actually identified a lower  
7 friction standard than the previous information  
8 that was known. Yeah, so...

9 Q. Okay. So, you mentioned  
10 a couple of times that there was a previous  
11 report. Did you get more information about this  
12 previous report that, I think in your words,  
13 didn't jibe or was different than the Tradewind  
14 report?

15 A. Yeah, and I think that's  
16 information that probably came to us, you know,  
17 later on. So, you know, I think the -- when we  
18 talked about public works meetings that happened,  
19 you know, much before, questions were asked about  
20 the viability of the surface, the slipperiness of  
21 the road, Mr. Moore had answered that the road was  
22 just fine. There was no concern. And, you know,  
23 so I think that's what I'm referring to, not  
24 necessarily a specific report that had friction  
25 testing information in it, but previous reporting

1 from Mr. Moore to committee saying everything is  
2 fine with the road, no need for concern, carry on.

3 Q. Okay. Thank you. So, it  
4 wasn't actually an actual report that --

5 A. No. It was --

6 Q. Okay.

7 A. It was based on a  
8 question asked at committee to which Mr. Moore  
9 responded and I see that as reporting, but not  
10 certainly a report.

11 Q. Okay. Thank you. And  
12 so, was there discussion about Mr. Moore having  
13 made comments to the media that were arguably  
14 inconsistent with what the Tradewind report itself  
15 said?

16 A. At this meeting?

17 Q. Yeah.

18 A. Yeah. I mean, it would  
19 have been part of the discussion for sure that  
20 Mr. Moore had previously said everything was  
21 a-okay, fine. And this report, you know,  
22 obviously when it came to light wasn't necessarily  
23 consistent with that, so that inconsistency was a  
24 concern and that would have been a flash point  
25 from a legal perspective as well as a concern from

1 public at large when it became public that, you  
2 know, they may have some doubts on, you know, the  
3 surface of the road.

4 Q. Did staff tell you about  
5 the work over time to implement safety  
6 countermeasures on the Red Hill? Did they give  
7 you, sort of, a history of the work that had  
8 already been done?

9 A. I don't think that was  
10 part of the conversation, to be honest. I think  
11 it's something that I would have known and  
12 probably didn't need to be reminded of, given that  
13 we had, you know, shared e-mails around, you know,  
14 roadway concerns. I mean, there would be a number  
15 of things that have already happened to --

16 Q. Yes.

17 A. -- improvements on the  
18 road surface, so I don't know that we spent a lot  
19 of time rehashing that. We spent more time  
20 deciding how we were going to advance this and my  
21 mission to them was let's get this to council, but  
22 let's get it to council comprehensively and not  
23 piecemeal in bits and pieces, so take all the time  
24 you need. You know, is there anything, you know,  
25 concerning about the road? Any emergency? Any

1 safety issues that we need to be aware of? And  
2 the answer to that was no --

3 Q. Who told you that?

4 A. Sorry?

5 Q. Who told you that? Which  
6 staff members in particular?

7 A. I'm going to surmise  
8 Dan McKinnon or Mr. Soldo at the time would have  
9 been part of the meeting, so, you know, the  
10 question would have been, you know, is there  
11 anything immediate we need to do? And the answer  
12 would have been no, so then the next step would  
13 have been so how do we --

14 Q. I'm just going to stop  
15 you because I don't want to get to the next step  
16 yet.

17 A. Okay.

18 Q. You said the question  
19 would have been. I think you asked the question:  
20 Is the road safe? Is that right?

21 A. I'm sure it would have  
22 come up in the conversation, sure. Yeah.

23 Q. And did staff who were at  
24 this meeting provide you with any specific basis  
25 for the answer being no? You know, work they had

1 done, analysis they had done, assessment they had  
2 done?

3 A. So, I think that it was  
4 their sense that the road was not unsafe --

5 Q. It was their sense?

6 A. You know, based on  
7 whatever evidence they had. Based on, you know,  
8 collision track record, you know, everything they  
9 use to make that kind of an assessment. That  
10 certainly became a flash point thereafter in terms  
11 of having that confirmed in some manner or  
12 another, but, you know, at that moment in time,  
13 you know, from my perspective, you know, is there  
14 an emergency that needs to be dealt with? And the  
15 answer to that was no.

16 Q. I understand that  
17 evidence and I understand that we'll have more  
18 discussions about that flash point later. In the  
19 moment, in that question and answer, is the road  
20 safe, from you or is it not unsafe, I think is how  
21 you put it, and the answer being the road is not  
22 unsafe or the road is safe, was there any further  
23 discussion about what steps staff wanted to take  
24 to confirm that sense that they had?

25 A. Yeah. I mean, in a



1 general sense, you know, we would have --  
2 obviously they would have talked about getting  
3 some confirmation from, you know, outside experts  
4 and getting a second opinion or, you know, getting  
5 a second look at, you know, current conditions and  
6 confirmation of what they believed to be, you  
7 know, a safe road or that it was not unsafe or  
8 there was not an emergency. But there would have  
9 been some conversation around that there needed to  
10 be next steps to evaluate that and to be able to  
11 bring that evidence to committee and council.

12 Q. Okay. I note that you  
13 used there would have been. Do you actually have  
14 a recollection of that happening or are you trying  
15 to piece together things that happened knowing  
16 what you know sitting here today?

17 A. Yeah. I'm trying to  
18 piece it together and I'm trying to remember as  
19 best I can, kind of, the essence of the  
20 conversation at a high level. I can say, you  
21 know, the essence of the conversation was, here is  
22 a report, we have a concern around this report  
23 that hasn't been shared, you know, with others at  
24 this point and what do we do with it? And then  
25 the ensuing conversation would have led into legal

1 issues, road safety issues, all of the parameters  
2 around all of that.

3                                 So, when I say it would have  
4 happened, I would have engineered that kind of  
5 conversation to give myself some comfort that the  
6 staff were doing what they needed to do to gather  
7 the information so that we could provide a full  
8 picture at some point to council and to the public  
9 at large.

10                                Q. Okay. You mentioned that  
11 you would have engineered it so that there would  
12 be a second look and confirmation of current  
13 conditions. Those things did not happen before it  
14 went to council. Is that surprising to you  
15 sitting here today, that that wasn't part of the  
16 materials that were first provided to council?

17                                A. No. I think council  
18 needed to have, you know, certainly the overall  
19 framework. I think staff were also looking for  
20 some direction from council at some point to kind  
21 of confirm, you know, steps that needed to be  
22 taken. So, you know, they were going to council  
23 to get that direction and then follow through on  
24 it.

25                                Q. Okay. So, your evidence

1 is that on December 18, you gave staff instruction  
2 to go get confirmation of the current conditions  
3 of the road and get a second look from a technical  
4 expert?

5 A. I think it was part of  
6 the conversation. They don't take direction from  
7 me singularly and solely. That's a council  
8 responsibility. So, at some point I told them,  
9 let's do this comprehensively to the best degree  
10 possible to get it to council and then we'll see  
11 where we go from there. So, I would say, you  
12 know, what I didn't want to have happen is that  
13 there would be little dribs and drabs of  
14 information being shared, you know, at various  
15 committees on various different times that didn't  
16 include all members of council. So, my main  
17 takeaway from this meeting or my main request of  
18 our staff at this meeting was let's ensure that we  
19 have as much information as is available to be  
20 able to bring that full package to council all at  
21 the same time.

22 Q. Okay. Did staff tell you  
23 that the consultant CIMA was doing a roadside  
24 safety assessment in advance of the repaving or is  
25 that too in the weeds?

1                   A.    I'm sure I would have  
2    become aware of that.  I don't know that that was  
3    part of the December 18 meeting.

4                   Q.    Okay.  Was it clear from  
5    the information that staff provided to you that  
6    there was a possible causal connection between the  
7    friction values that Tradewind had found and the  
8    collision history on the Red Hill?

9                   A.    Well, there was  
10   uncertainty about that.  I think that's what this  
11   report, kind of, caused that uncertainty.  You  
12   know, in hindsight, if I had been Gary Moore, I  
13   might have asked for a second opinion on that to  
14   kind of look at why are these two reports  
15   inconsistent.  So, the inconsistency of it caused  
16   concern and, you know, I think you can understand  
17   why or at least I understood why and, you know, we  
18   needed to get, you know, at least something  
19   reliable to kind of be the basis of how we go  
20   forward with this.

21                  Q.    And my question was  
22   actually probably more basic than that, which was:  
23   Did you understand that when the Tradewind report  
24   was talking about friction values, that that can  
25   have an effect on how slippery the road is or how

1 likely collisions were to happen? Either did  
2 staff convey that to you or did you already know  
3 conceptually?

4 A. I came to know what  
5 friction testing is rather quickly. And yes, if,  
6 you know, the values in this report were the  
7 values that actually existed on the road, that may  
8 have, you know, a detrimental effect on the  
9 function of the road. So, I understood that, but  
10 I also understood that there were reports that  
11 were -- that the previous reporting from Mr. Moore  
12 had indicated that there was no concern on that  
13 issue, so that inconsistency obviously needed to  
14 be rectified somehow through some sort of process.

15 Q. So, you said earlier that  
16 you -- I think your evidence was you can't recall  
17 if the FOI request dealing with friction testing  
18 came up during the December 18 meeting?

19 A. Mm-hmm.

20 Q. And I think your evidence  
21 had been just more recently been you were strongly  
22 suggesting to staff that they needed to pull a  
23 comprehensive package of information together and  
24 report to council. Is that right?

25 A. Right.

1 Q. So, on that second point,  
2 why was it your view that this information should  
3 be provided to council? And just for the moment,  
4 when I say council, let's not talk about the forum  
5 or the format. I just mean to councillors.

6 A. Well, I thought part of  
7 this important information. Clearly this was  
8 going to be something that we needed to share, not  
9 something that we needed to deep-six or bury or  
10 not that we would do that anyway, but this seemed  
11 to be important information that council should be  
12 aware of and ultimately I believe that the  
13 community should be aware of, even though it was  
14 not, you know, necessarily consistent with  
15 information that was previously reported to  
16 committee.

17 Q. I'm going to suggest to  
18 you that staff did tell you that was an FOI  
19 request and that that was actually an important  
20 consideration in the final decision to report to  
21 council. Is that fair?

22 A. You know, you asked me to  
23 stretch my memory on that meeting. I don't  
24 remember FOI coming up at that meeting. It may  
25 have been a motivator for our staff. When I look

1 at it now, I see myself saying, take all the time  
2 you need, and you saying that the FOI was the  
3 driving motivator for the staff to do this as  
4 quickly as possible with no knowledge of when the  
5 FOI would actually be done. So, I wasn't  
6 motivated by an FOI. Our staff may have been, but  
7 certainly that wasn't my motivation at all. And,  
8 again, on the December 18 meeting, I don't  
9 remember FOI coming up.

10 Q. Okay. So, your evidence  
11 today is that you suggested to staff that they  
12 should report to council because of the nature of  
13 the information, not because there was any other  
14 considerations at play?

15 A. Correct.

16 Q. I fear I may be repeating  
17 a question, but did staff raise with you at this  
18 meeting that audit services was also interested in  
19 obtaining a copy of the Tradewind report or had a  
20 copy of the Tradewind report and that that was  
21 another avenue in which this information may be  
22 made public at some point?

23 A. Again, I don't have  
24 specific knowledge of that. I mean, I'm sitting  
25 at the meeting with, you know, a shocking piece of

1 information and trying to focus on what next steps  
2 ought to be. You know, did I take note of every  
3 detail of what they were putting on the table?  
4 Probably not. I have no doubt that if the audit  
5 was in process, they would have mentioned that the  
6 audit was ongoing. That wasn't a factor in terms  
7 of moving the report forward. Again, I said take  
8 all the time you need to, you know, do a  
9 comprehensive presentation to council and, you  
10 know, there might have been other motivators for  
11 other people, but I was not aware at that time.

12 Q. Do you remember any  
13 discussion with staff about when staff thought  
14 they would be ready to report to councillors?

15 A. Not at this meeting.  
16 Again, you know, there was some thought about -- I  
17 think there was some thought about -- this is  
18 after the fact here, so maybe I shouldn't speak to  
19 it in this way. At this meeting I don't recall  
20 them setting a date specific. Again, there was,  
21 from my perspective, no sense of urgency because  
22 there was some sort of an emergency that needed to  
23 be dealt with. Had there been a concern over the  
24 safety of the road, things would have moved much  
25 more quickly, like within hours and even days as



1     opposed to months.  What I asked staff to do was  
2     to be comprehensive, gather all the information  
3     that you need to paint the appropriate picture for  
4     council and then ultimately for disseminating to  
5     public.

6                             Q.     Okay.  So, in your mind,  
7     you didn't leave -- this is almost as you're going  
8     off for December holidays or as all of us tend to  
9     take that period off.  There was no impression in  
10    your mind that this was going to be something to  
11    come back to early in 2019?

12                            A.     No.  I mean, I didn't  
13    have an expectation.  I think, you know, staff  
14    needed time to compile with either outside legal  
15    counsel or with other consultants in terms of the  
16    evaluations that they were heading towards, so  
17    that takes time.  So, I really didn't have an  
18    expectation.  I wanted to do it as expeditiously  
19    as possible, but as thoroughly as possible.

20                            Q.     Okay.  And did you talk  
21    about to whom or to which committee or council the  
22    report would be made?  Were you getting into that  
23    level of logistics during this meeting?

24                            A.     No, not at this point.  
25    That was, you know, a discussion that was had

1 later on, but at this point, no, it was go gather  
2 information. We really hadn't made any  
3 determination as to where it was to go.

4 Q. Okay. You said earlier  
5 that you sensed some urgency in Mr. McKinnon's  
6 voice when he first reached out to you to arrange  
7 this meeting and that you moved pretty quickly to  
8 arrange this meeting. Did you have a sense of  
9 urgency from staff at the meeting about next  
10 steps?

11 A. No. And, you know, then  
12 I guess to translate someone's kind of sense of  
13 this is an important issue, we need to get to it  
14 sooner rather than later, I think that's an  
15 urgency, but not an urgency in that sense. And,  
16 again, had there been any sense of concern around  
17 the safety of the road, an emergency would have  
18 been a special council meeting and we would have  
19 moved quickly to act to prevent anything from  
20 happening that would have been caused by anything.  
21 So, I've never had that sense of urgency from the  
22 staff at this meeting. The urgency was this is an  
23 outlier report. We need to, you know, basically  
24 wrap our heads around how we're going to work with  
25 this report and bring it to council in an

1 appropriate way.

2 Q. Okay. So, the other  
3 possible sense of urgency would be if staff needed  
4 to provide information to the FOI office and then  
5 for eventual release to a request or another sense  
6 of urgency would be trying to get that information  
7 before council so that council wasn't surprised  
8 when it made its way into, for example, the  
9 Spectator? That would be another sense of  
10 urgency. Right?

11 A. Sure. And I know that  
12 now. You asked me if I was aware of that or felt  
13 that at this meeting and I did not.

14 Q. Okay.

15 A. I did later on, but not  
16 at this meeting.

17 Q. Okay. So, maybe we'll  
18 talk about that. When later on did you first  
19 realize that the FOI request or an FOI request was  
20 a factor in the timing to get before councillors?

21 A. Yeah. I'm really not  
22 sure about that in terms of the exact time I was  
23 informed of that or how. I'm really not sure as  
24 to when that occurred, but, you know, probably not  
25 long after this meeting.

1 Q. Okay.

2 A. You know, it became  
3 evident that there was also an FOI request.

4 Q. Okay. So, do you think  
5 it was in December?

6 A. No, I don't think so.  
7 Although I think -- I really don't know. I really  
8 don't know. I couldn't put a date on it if my  
9 life depended on it.

10 Q. That's fine. I know it's  
11 very hard to put dates on things. I'll try to  
12 give you some events that happened and perhaps you  
13 can tell me if you can then connect them to  
14 learning that information. But just in terms of,  
15 sort of, a broader stroke, did you know that there  
16 was an FOI request that motivating getting in  
17 front of the councillors before January 23, which  
18 is the date that --

19 A. Yeah, I would think so.

20 Q. -- staffers came to  
21 council?

22 A. I would think so, yeah.

23 Q. You would think so or you  
24 did?

25 A. I would think I did.

1 Q. You think you did? Okay.

2 A. I'm trying to be as clear  
3 as I can, but I'm not trying to avoid the answer.  
4 I believe I did, but I can't say that I could turn  
5 my mind back to the 21st or the 22nd of January  
6 that year and say that's the eureka moment, that's  
7 when I knew. I couldn't tell you that, but I came  
8 to know it.

9 Q. I'm not suggesting that  
10 you're trying to evade the question. It's very  
11 common when someone isn't sure if they can  
12 remember something that you say, I would have done  
13 this, or, I would have done that, relying on what,  
14 you know, about yourself and your practices, so  
15 I'm just trying to separate out what you actually  
16 remember versus what you think you would have  
17 done. So, that's why I ask when you say, I would  
18 have done this.

19 A. I'm not sure I can give  
20 you greater clarity on that.

21 Q. Okay. So, just in terms  
22 of -- I think one really significant sign post is  
23 going to council on the 23rd of January. Ms. Auty  
24 provides a legal services report. That report  
25 does talk about the lack of disclosure of the

1 Tradewind report.

2 Before that date -- or maybe  
3 I'll put it this way: Do you walk into that  
4 council meeting and understand for the first time  
5 that there is this FOI request that could be  
6 affecting the timing of disclosure?

7 A. I would have known before  
8 that.

9 Q. Okay. But you're just  
10 not sure when before that?

11 A. No.

12 Q. Okay. Understood. So,  
13 we spent a lot of time on the December 18 meeting.  
14 Was there anything else that you have not told the  
15 inquiry about that meeting that I haven't asked  
16 about?

17 A. I don't think so.

18 Q. Okay. The inquiry has  
19 received a copy of Mr. Zegarac's calendar  
20 reflecting a meeting with you on January 7, and  
21 all it says is "meeting, city manager and the  
22 mayor." Does that assist you in whether you  
23 learned at that point, on January 7, that there  
24 was an FOI request?

25 A. No, not really. That

1 would have been, you know, part of the regular  
2 city manager/mayor's meetings that we had. You  
3 know, there would have been a number of issues on  
4 there and I'm really not clear on whether the  
5 issue of the RHVP FOI request would have been part  
6 of the conversation. Again, I don't specifically  
7 remember when I found that out, but this would  
8 have been a standard city manager/mayor meeting  
9 that happens about twice monthly. There would be  
10 a number of issues on the agenda. Because we were  
11 in the middle of the RHVP issue, there might have  
12 been, you know, a conversation around that. So, I  
13 don't remember specifically, you know, what was  
14 talked about at that issue, but there would have  
15 been a number of other issues that we talked about  
16 as well.

17 Q. Okay. Do you recall that  
18 you learned about the FOI from Mr. Zegarac or was  
19 it from someone else?

20 A. Again, I don't have  
21 recollection of that, to be honest. It could have  
22 been any number of people that might have informed  
23 me of that. I just really don't recall how I came  
24 to know that.

25 Q. Okay. But you're

1 confident it was sometime after the December 18  
2 meeting?

3 A. Yes.

4 Q. Okay. Just picking up on  
5 something that you just said, the standing  
6 bi-weekly or by monthly meetings that you had with  
7 Mr. Zegarac, he had been in that role since August  
8 of 2018, having taken over from Mr. Murray. Do  
9 you recall did you have standing meetings with him  
10 through the fall? That's an election year, if  
11 that matters.

12 A. We tried to schedule them  
13 every couple of weeks just to stay updated. Were  
14 we always successful? Not necessarily. And so, I  
15 would have to track back on the dates, but  
16 typically we would try to make them happen.

17 Q. There would be no reason  
18 why you wouldn't be having standing meetings with  
19 Mr. Zegarac through the fall given his new role as  
20 interim city manager. Is that right?

21 A. Correct.

22 Q. And so, through those  
23 standing meetings and just generally, had you got  
24 to know Mr. Zegarac fairly well by January of  
25 2019?



1                   A.    Well, I already knew him  
2   fairly well, so I don't think I got reacquainted  
3   with Mr. Zegarac.  I've known him for many years  
4   prior to that.

5                   Q.    Maybe I'll put it  
6   differently.  Was he well settled into his role as  
7   interim city manager by then?

8                   A.    Yes.

9                   Q.    At least in his dealings  
10  with you?

11                  A.    Yeah.  I mean, by all  
12  counts, he was performing the role as he should.

13                  Q.    Okay.

14                  A.    Although he would  
15  ultimately tell me it's a role he would never want  
16  to do again, but notwithstanding that, he did a  
17  fine job when he did it and he certainly helped us  
18  out in terms of the interim that (unintelligible)  
19  city manager, for sure.

20                  Q.    So, between December 2018  
21  and January 23, 2019, did you have any other  
22  meetings with staff, groups of staff, about the  
23  Red Hill?

24                  A.    Not to my recollection,  
25  no.  I would have been relying on them continuing

1 on with the gathering of whatever information they  
2 needed to gather and would be working towards, you  
3 know, some date to bring it to me.

4 Q. So, you weren't meeting  
5 with groups of staff. Do you have specific  
6 recollection of having discussions with  
7 Mr. Zegarac about how they were doing in compiling  
8 the comprehensive report you had suggested?

9 A. Not specific  
10 recollection. You know, our offices are not far  
11 apart, so, you know, when we're getting a coffee  
12 in the lunch room or when we're walking by each  
13 other, it might have occurred, you know, a  
14 conversation around how is it going, but I don't  
15 remember any specific sit-down conversation, you  
16 know, with any kind of detail around how things  
17 were coming along in terms of the information  
18 gathering that they were doing.

19 Q. Okay. And same question  
20 in respect of Mr. McKinnon. Any formal or  
21 informal discussions with him in January?

22 A. Not that I recall, no.

23 Q. And what about Ms. Auty?

24 A. No, no. And typically I  
25 wouldn't necessarily bump into Ms. Auty on a

1 regular basis. Our offices are quite removed from  
2 one another, including Dan McKinnon's quite  
3 frankly. So, if there were a casual conversation  
4 around this, it would likely have been  
5 Mr. Zegarac.

6 Q. Okay. So, then in  
7 advance of January 23, apart from your sense that  
8 you knew about the FOI request at some point, did  
9 you learn any other information about staff's work  
10 to bring this issue to councillors?

11 A. No, not at that point.  
12 You know, we're anticipating, you know, trying to  
13 pull some reporting on this, so leading up to the  
14 council update from a legal perspective on the  
15 23rd, I believe it was. Beyond that, it was, you  
16 know, let's target the -- we got into a bit of a  
17 debate as to where it should appropriately go with  
18 clerks and with staff and actually other members  
19 of council. But no, I didn't receive any kind of  
20 previous update prior to the 23rd that I'm aware  
21 of.

22 Q. Okay. And that reference  
23 to the debate about where it should appropriately  
24 go, that was the meeting that happened after the  
25 23rd. Right?

1 A. Correct, yeah.

2 Q. Did you have any  
3 involvement in the selection of January 23, that  
4 council meeting, as the time when staff first  
5 reported this issue?

6 A. Well, I was aware it was  
7 happening. We did have a conversation around, you  
8 know, should we, kind of, at least give them some  
9 preliminary information about what's coming. And  
10 it was decided that it would be an appropriate  
11 thing to do in an in-camera session with council.

12 Q. Okay.

13 A. But yeah, I would have  
14 been -- they didn't ask for my approval, but I  
15 would have said yes, this is the right thing to do  
16 in preparation for a future meeting.

17 Q. Okay. With whom did you  
18 have that conversation that, yes, this is an  
19 appropriate thing to come to council on the 23rd  
20 in an in-camera session to give some preliminary  
21 information?

22 A. It would have likely have  
23 been a conversation -- again, I don't recall  
24 specifically -- with Mr. Zegarac and Ms. Auty or  
25 just Mr. Zegarac saying, here is what we're

1 planning on doing, and we're basically saying,  
2 okay, let's go. Is it on the agenda? Have you  
3 run it through clerks? That kind of thing.

4 So, I don't know that I would  
5 have had specific knowledge as to what they were  
6 going to be putting on the table other than some  
7 legal issues around that. That's why we're in  
8 camera. So, it would have been likely Mr. Zegarac  
9 informing me what the plan was and obviously, you  
10 know, agreeing to it being an appropriate first  
11 step.

12 Q. Okay. But it wasn't --  
13 they were not seeking your approval. This is  
14 staff making a direction to bring something to  
15 council. Is that right?

16 A. Correct.

17 Q. So, you didn't walk in on  
18 January 23 completely cold about this issue?

19 A. No.

20 Q. Did you have any other  
21 details about the content that was going to be  
22 provided, besides the fact that it was coming from  
23 legal?

24 A. No. You know, that's  
25 always a bit of an issue. I mean, I was given a

1 heads-up on the content or the concern around a  
2 report. Obviously that was December 18. But  
3 beyond that, it was really about, you know,  
4 gathering the information so that all members of  
5 council could be made aware of that. So, I was a  
6 lot concerned about, you know, getting this out in  
7 dribs and drabs or with just a few people or just  
8 a few people here for members of council. My view  
9 was get everybody on the same page at the same  
10 time.

11 Q. Did you review a draft of  
12 the legal report that was presented really as a  
13 walk-on report on January 23?

14 A. No. I wouldn't expect  
15 that to happen. I wouldn't ask for that to  
16 happen. I would be, you know, one member of  
17 council that should be hearing this for the first  
18 time in a general sense.

19 Q. Okay. Before January 23  
20 and that meeting, did you receive any other  
21 briefing notes from staff on the issue of the Red  
22 Hill or the Tradewind report? We don't have any  
23 documents. I will take you to any documents we  
24 might have.

25 A. I'm not aware of any. I

1 would not generally go looking for, you know,  
2 updates from people when I know that they're in  
3 the process of doing their work. It's the kind of  
4 micromanaging I like to avoid, so I have  
5 confidence in the competence and kind of the  
6 follow through that, you know, city manager and  
7 other department heads are prepared to make on  
8 most issues and, certainly on this issue, my  
9 expectation was they're doing what they need to do  
10 and we'll find out in due course what they have  
11 come up with.

12 Q. I'm going to run through  
13 a few other types of documents. It may be the  
14 same answer, but just to ensure that I understand  
15 and the inquiry has your evidence on this.

16 Did you review any consultant  
17 reports that were prepared from before 2018 at any  
18 point between December 18 and January 23?

19 A. No.

20 Q. What about consultant  
21 reports that were prepared in 2018 or in 2019?

22 A. Not beforehand. I didn't  
23 ask for any information from our staff ahead of  
24 time, ahead of the full briefing that happened on  
25 February 6.

1 Q. Okay. And did that  
2 include copies of the Tradewind report and the  
3 Golder report, you did not ask for copies of  
4 those?

5 A. I did not.

6 Q. And you did not receive  
7 them?

8 A. I didn't ask for them and  
9 did not receive them.

10 Q. Okay. In respect of the  
11 FOI request, did you at some point get an update  
12 that the Tradewind report was at least in process  
13 in the FOI office to get released? Were you kept  
14 up to date in terms of the timing on that path?

15 A. And that's something that  
16 we would not at all do. FOI is running  
17 independently on their own timeline and no one  
18 should be, you know, interfering in terms of, you  
19 know, their work to, you know, exercise the  
20 freedom of information request. So, no, I would  
21 not ask for the timeline, nor would I be aware of  
22 the timeline, nor was it an issue for me. As I  
23 think I mentioned earlier, I wanted comprehensive  
24 information from our staff. I didn't want them to  
25 be driven by, you know, other factors, but clearly



1 other factors were part of the process for sure.

2 Q. Thank you. Commissioner,  
3 I am in your hands, but I'm moving on to another  
4 topic, the January 23 council meeting. I expect  
5 that that's going to take some time and I wonder  
6 whether it would be appropriate to break  
7 15 minutes before our usual lunch break, come back  
8 15 minutes early and then attempt to finish off my  
9 examination before the afternoon break.

10 JUSTICE WILTON-SIEGEL: Unless  
11 anyone has any objection, I'm happy to do that.  
12 We would break now and then return at 2:00 on the  
13 dot. In the absence of any objections, we're  
14 adjourned until 2:00.

15 --- Luncheon recess taken at 12:43 p.m.

16 --- Upon resuming at 2:00 p.m.

17 MS. LAWRENCE: May I proceed?

18 JUSTICE WILTON-SIEGEL: Yes,  
19 please do.

20 MS. LAWRENCE: Thank you.

21 BY MS. LAWRENCE:

22 Q. Mayor Eisenberger, we're  
23 going to turn now to the January 23 council  
24 meeting.

25 Registrar, could you bring up

1 HAM26234, please.

2 THE REGISTRAR: Sorry,  
3 counsel. Did you say 214?

4 MS. LAWRENCE: I said 26234.

5 Except I totally misspoke. Sorry. That's a typo.  
6 It's HAM62634. Can you bring up the next image as  
7 well, please. Registrar, can you bring up the  
8 next image as well. Thank you.

9 THE REGISTRAR: Sorry. It was  
10 struggling to bring up the next image. I  
11 apologize.

12 MS. LAWRENCE: We all seem to  
13 be struggling after lunch. All right, back to it.

14 BY MS. LAWRENCE:

15 Q. Mayor Eisenberger, so  
16 this is the closed session minutes from the  
17 council meeting on January 23, and you'll see the  
18 very first line, it's a closed session discussion  
19 respecting potential litigation update that began  
20 at 9:43 p.m. And then you'll see on the second  
21 page that the council rose from the closed session  
22 at 10:45 p.m. and reconvened the open session.

23 Does that accord with your  
24 recollection, that you were in closed session for  
25 about an hour?

1 A. Yes.

2 Q. Okay. Registrar, you can  
3 close the second image. Thank you.

4 So, there's not much detail in  
5 here, but there is a reference to receiving  
6 subject matter pertaining to litigation or  
7 potential litigation, and you're present, a number  
8 of other councillors are present and then there  
9 are a number of staff members and clerks present.

10 Again, does that accord with  
11 your recollection of who attended the closed  
12 session meeting?

13 A. Yes.

14 Q. On the bottom in the  
15 substance of the minutes, it says Ms. Auty  
16 addressed council and provided a verbal update  
17 respecting the potential litigation amount. Do  
18 you remember, besides Ms. Auty, did anyone else  
19 provided oral comments during the closed session?

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

21 Q. Okay. In addition to the  
22 oral verbal update that Ms. Auty provided, she  
23 also presented a litigation update. Do you  
24 remember that?

25 A. Generally, yeah.

1 Q. Okay. Registrar, can you  
2 bring up HAM61921, please. Thank you.

3 This is a four-page document.  
4 These are the first two pages. Do you recall  
5 receiving this litigation update, LS19007?

6 A. Specifically, no, but  
7 yes, I'm sure I did.

8 Q. Okay. Do you remember  
9 whether you received a copy of this in advance of  
10 attendance at the council meeting or during the  
11 council meeting?

12 A. I think we would have  
13 received it during the council meeting. I don't  
14 recall receiving any documentation prior to.

15 Q. Okay. You'll see at the  
16 bottom of the left-hand image it says "Executive  
17 Summary."

18 Registrar, could you bring up  
19 Executive Summary, including the paragraph that's  
20 on image 2. Thank you.

21 So, you'll see the Executive  
22 Summary says:

23 "The purpose of this  
24 report is to advise  
25 council of the potential

1 of litigation arising out  
2 of a release of city  
3 records relating to  
4 friction testing as a  
5 result of a freedom of  
6 information request."

7 So, just further to your  
8 evidence before lunch, you said at some point  
9 before January 23 you were aware of this freedom  
10 of information request. Is that right?

11 A. Mm-hmm. Correct.

12 Q. And it goes on to say:  
13 "It's not known at the  
14 writing of this report  
15 whether the  
16 information -- "

17 That is, the friction testing:  
18 " -- would be released to  
19 the requestor in advance  
20 of the City bringing a  
21 scheduled report to the  
22 public works committee on  
23 February 4."

24 Were you aware before  
25 January 23 that staff's plan was to bring a

1 scheduled report to the public works committee on  
2 February 4 but to provide this litigation update  
3 on January 23?

4 A. I don't know that I would  
5 have been aware of that on January 23. That's  
6 kind of an iteration that happened thereafter and  
7 there was some discussion around that issue in  
8 terms of where it should land and how. So, at  
9 this moment in time I would not have twigged on  
10 the fact that it was going to public works  
11 actually. It's right in the recommendation here  
12 or right in the summary here, but we had a further  
13 conversation around how to ensure that everyone on  
14 council gets the same information at the same  
15 time, and that kind of led to a further discussion  
16 around where it should more appropriately go as  
17 opposed to public works. And public works being,  
18 you know, seven members of council or six members  
19 of council, whereby only they would be  
20 knowledgeable of the fulsomeness of the report  
21 that is being referred to here for delivery --

22 Q. Do you know -- sorry to  
23 interrupt you. So, the inquiry knows that this  
24 plan is not ultimately what happened, bringing the  
25 scheduled report to PWC on February 4. But I

1 think I'm hear your evidence is before January 23  
2 you weren't aware that that's what the staff's  
3 plan was?

4 A. No.

5 Q. Okay. In the second box  
6 that's blown out it says:

7 "It's important for  
8 council to be aware of  
9 the potential litigation  
10 resulting from this  
11 release and that staff  
12 are bringing a full  
13 report to committee and  
14 council in early  
15 February."

16 Did this two-step process of  
17 doing this litigation update on January 23 and  
18 then doing a full report, using the words from  
19 this report, did that accord with your preference  
20 to have a complete package brought to the  
21 councillors?

22 A. Yes. You know, I would  
23 see this as just, kind of, a high level, you know,  
24 introduction to an issue percolating that they  
25 should be aware of and no doubt the concern

1 expressed in this piece was that we don't know  
2 whether or not there's going to be an FOI release  
3 or whether or not that hits the media. We're not  
4 privileged to know that information. So, from  
5 that perspective, I think it was wise to give  
6 council at least a high-level knowledge of, you  
7 know, potentially what's coming a little later on.

8 Q. Okay. Registrar, you can  
9 close these call outs, please, and if you can call  
10 out the bottom half of the image on the right-hand  
11 side.

12 In the fourth paragraph it  
13 says that Mr. McGuire, appointed as director of  
14 engineering services, reviewed the status of the  
15 work being proposed on the RHVP and in late  
16 September 2018 became aware of the draft report  
17 that included the friction testing.

18 Was that information that had  
19 already been conveyed to you?

20 A. So, he became aware of  
21 the report that was not known to them. That was  
22 made aware -- I was made aware of that at the  
23 meeting in December the 18th.

24 Q. You were made aware that  
25 it was Mr. McGuire who found the report and that



1 it was during his orientation into that role he  
2 reviewed the status and in September it was when  
3 he became aware. All of those pieces of  
4 information were conveyed --

5 A. I don't know that I was  
6 made aware of all the specific details on how the  
7 report was discovered. I was just made aware that  
8 there was a report and I think Mr. McGuire was  
9 identified as the person that discovered it  
10 initially. Beyond that, I don't recall that there  
11 were any specifics given to me on December 18 in  
12 terms of exactly how and when and --

13 Q. Thank you. So, the next  
14 paragraph says:

15 "Mr. McGuire stopped  
16 exploring the opportunity  
17 to potentially  
18 rehabilitate the RHVP  
19 using hot in-place  
20 recycling."

21 Pardon me, I forgot a key  
22 point:

23 "As a result of this  
24 report, he stopped  
25 exploring."

1                                   Was that information that was  
2 conveyed to you on December 18?

3                                   A.     No.

4                                   Q.     Registrar, you can close  
5 this and if you can bring up images 3 and 4,  
6 please. Can you call out the bottom half of the  
7 left-hand image from analysis and rationale down.

8                                   So, there's a reference here  
9 to the UK standard and the friction levels being  
10 below or well below the relevant UK standard and  
11 the contrast that the LINC had friction values  
12 that were all comfortably above the UK standard.  
13 Had that information, that is, the difference  
14 between the friction values on the LINC and the  
15 Red Hill, been conveyed to you at the December 18  
16 meeting?

17                                  A.     Well, I mean, they  
18 identified there was an inconsistency in the  
19 information for sure. You know, the latter half  
20 of this statement also indicates that the  
21 Tradewind report is generally not recognized in  
22 Canada or the UK standard is not recognized in  
23 Canada, so all of that, I think, was relayed to me  
24 on December 18 in some fashion or another --

25                                  Q.     Including --

1                   A.     There was some  
2     inconsistency or incompatibility in the report  
3     they had discovered as opposed to what was  
4     previously indicated by Mr. Moore in the previous  
5     meetings.

6                   Q.     Thank you.  I'm going to  
7     reframe my question because I don't know if it was  
8     clear.  Was it conveyed to you that the LINC had  
9     quite good friction values and Red Hill did not,  
10    according to the Tradewind report?

11                  A.     I don't think it was kind  
12    of put in these terms actually, so I really don't  
13    recall them making that comparison between the  
14    two, other than, you know, the Red Hill Valley  
15    Parkway was more curvy and had more access points  
16    and the LINC was straight and had less access  
17    points in terms of, you know, operational ability.  
18    So, I don't remember them making a comparison  
19    between skid resistance between the LINC and the  
20    RHVP.

21                  Q.     The next paragraph says:  
22                            "The concern is that the  
23                            Tradewind report was not  
24                            shared with other city  
25                            staff at the time.  As a

1 result, subsequent  
2 reports and analysis of  
3 the condition of the Red  
4 Hill did not reference  
5 this report."

6 And then there's a portion  
7 that is redacted for solicitor-client privilege.  
8 And then it goes on to say:

9 "In addition, the  
10 Tradewind report and its  
11 content on friction  
12 testing have not been  
13 consistently addressed in  
14 the media, and therefore  
15 the release may have some  
16 reputational impact on  
17 the City."

18 Did you understand from  
19 Ms. Auty's presentation that the concern from  
20 staff was that the Tradewind report had not been  
21 shared and that there was inconsistency? Were  
22 those the two primary concerns that staff had?

23 A. Well, I mean, it was a  
24 concern once they saw the report. I guess the --  
25 I'm not sure that their prior knowledge not being

1 aware of a report would have had a concern around,  
2 you know, the friction tests on the road. So, I  
3 guess I'm -- once you have information that is  
4 inconsistent, I think everyone needs to respond to  
5 that at some level or another especially in terms  
6 of litigation and I have no doubt that Ms. Auty  
7 was looking after the interests of the  
8 corporation.

9                   Knowing what I felt initially  
10 when I heard it, which was, you know, obviously  
11 the folks that have had, you know, incidents on  
12 the road will turn their mind to this report as,  
13 you know, evidence of, you know, whatever they  
14 claim the cause of that would have been. So, I  
15 think it would have been reasonable for her to  
16 assume that this is going to have some potential  
17 litigation impact coming out of any public  
18 dissemination of this information.

19                   Q. How did the councillors,  
20 apart from you, those who were hearing it for the  
21 first time, how did they react to the information  
22 that Ms. Auty presented on January 23?

23                   A. There was frustration and  
24 dismay, especially from those that were on the  
25 public works committee that might have asked

1 questions about, you know, the roadway at public  
2 works committee meetings. I think they're  
3 referenced directly to Mr. Moore and were told on  
4 numerous occasions no issues with the road  
5 surface, roadway, all was well, cause of accidents  
6 are varied and there are many different potential  
7 causes for accidents. It was not deemed to be the  
8 roadway or the surface of the roadway, according  
9 to Mr. Moore back when they had their public works  
10 meeting.

11 So, those councillors, having  
12 read this information, were quite frustrated and  
13 quite disturbed, quite angry, I would say, that,  
14 you know, this information hadn't surfaced or  
15 hadn't been followed up on. And certainly my view  
16 was if Mr. Moore had this information and it was  
17 not consistent with what he had already had in  
18 hand, you know, why didn't he, you know, get a  
19 second opinion, follow up with someone else to  
20 kind of verify or deny, you know, the information  
21 that he was looking at relative to the UK  
22 standard.

23 Q. Did you perceive any  
24 difference in the reaction among the newly  
25 appointed councillors versus returning

1 councillors?

2 A. Yes. You know, their  
3 reaction had more inferred something to the tune  
4 of, you know, shouldn't somebody have known and  
5 didn't you, former councillors and the previous  
6 counsellor, were you not aware of this? And there  
7 was more of that kind of response from the new  
8 councillors and some hints and suggestions that  
9 somehow this was deep-sixed to protect against  
10 some election results, none of which was true in  
11 my mind. I don't believe it to be true at all,  
12 but those were some of the kind of inferences or  
13 comments that the newer members of council might  
14 have alluded to.

15 Q. So, you've given evidence  
16 today that certainly your view was that if  
17 Mr. Moore had this information and it was not  
18 consistent with what he understood about the  
19 roadway, that he should go get a second opinion or  
20 follow up to verify or deny the information  
21 relative to this UK standard.

22 A. Mm-hmm.

23 Q. Did any of the staff in  
24 the closed session on the 23rd raise with you what  
25 steps could be taken to do that second followup

1 or, pardon me, to do a followup or get a second  
2 opinion?

3 A. I'm not sure that that  
4 happened at this point. I think that's something  
5 that was brought to the February 6 meeting. So,  
6 I'm pretty sure that wasn't the end result of this  
7 meeting. That was yet to come, I think, in  
8 February 6.

9 Q. Okay. Did council  
10 express concern about whether the roadway was safe  
11 or not, given the information that Ms. Auty  
12 provided in this report?

13 A. I would suggest that  
14 councillors would have asked the same questions I  
15 would have asked, which is, you know, is there any  
16 immediate concern on the roadway from a staff  
17 present here? You know, my recollection is that  
18 the answer was consistent with what I heard  
19 December 18, which was no, there's no emergency  
20 issue here, there's no cause for alarm, but there  
21 is this inconsistent report and we need to follow  
22 through on that.

23 Q. Do you recall who  
24 answered that question?

25 A. Specifically, I do not,



1     although it would likely have been either  
2     Mr. McKinnon and I'm not sure that Mr. Soldo was  
3     in this in-camera meeting, I'm not sure about  
4     that, or Mr. McGuire. I don't recall. You might  
5     have a list of attendees there, but that message  
6     would have come probably from Dan McKinnon.

7                   Q.     Yes, Mr. Soldo was not  
8     there, but you don't have a clear recollection of  
9     that question being answered and that answer being  
10    given by Mr. McKinnon?

11                   A.     No, not clear  
12    recollection. I'm surmising that the question  
13    would have been asked and I'm also surmising that  
14    Mr. McKinnon would be the likely one to answer  
15    that question.

16                   Q.     Registrar, can you close  
17    this call out and this document and go to OD 9A,  
18    page 357 and 358, please. Thank you.

19                   So, on January 30 Ms. Auty and  
20    Mr. Sabo had a discussion with Mr. Boghosian, and  
21    his notes are transcribed at the top of page 358.

22                   Registrar, can you pull out  
23    the box at the top of page 358.

24                   So, his notes reflect their  
25    discussion. You of course were not part of this

1 discussion, but he jotted down:

2 "Counsel - quite  
3 concerned about the  
4 situation. Haven't given  
5 the Tradewind report.  
6 Council wants to know:  
7 1. If Brian Malone/CIMA  
8 had the Tradewind report.  
9 2. Is there anything  
10 CIMA thinks needs to be  
11 done to address safety  
12 (slipperiness) as interim  
13 measures pending  
14 repavement."

15 And then in the next row:

16 "Council is concerned  
17 about Gary Moore's  
18 judgment/honesty/  
19 trustworthiness with them  
20 in the past."

21 So, recognizing these are  
22 notes that happened after the fact, I interpret  
23 them to be that this is a reflection coming out of  
24 the January 23 meeting. Did council ask whether  
25 Mr. Malone or CIMA had a copy of the Tradewind

1 report during the January 23 meeting?

2 A. I don't remember that  
3 specifically, but it's very possible that someone  
4 had mentioned it or asked about it.

5 Q. Is it possible sort of  
6 more generally, not perhaps with reference to CIMA  
7 by name, but do you recall any questions about  
8 whether consultants who were involved with  
9 assessing the safety of the Red Hill had been  
10 given a copy of the Tradewind report at any point?

11 A. I don't remember that  
12 specifically coming up, but it's reasonable that  
13 it would given the circumstances, but I don't  
14 really have specific knowledge of that coming up.

15 Q. Okay. So, you're not  
16 confident either way whether that was raised?  
17 You're not confident in your memory?

18 A. No, no. Quite often, you  
19 know, staff will use council as, kind of, the  
20 motivator to get information. So, you know,  
21 directed by council or asked by council to, you  
22 know, get this and this, you know, may motivate,  
23 you know, other people to take the request more  
24 seriously. So, I don't know if a council member,  
25 you know, actually drove that. It may be an

1 interpretation from city staff that, you know,  
2 made the kind of -- in the context of all the  
3 discussions that happened, discern that this was  
4 something that would have come out as part of that  
5 discussion. I don't remember somebody  
6 specifically standing up and saying, by the way,  
7 did Mr. Malone have the CIMA Tradewind report?

8 Q. Okay. Do you remember  
9 something perhaps more general about ensuring that  
10 City consultants who were giving advice or, pardon  
11 me, who had given advice in the past were now  
12 given a copy of the Tradewind report?

13 A. Again, I don't  
14 specifically remember that, but it makes perfect  
15 sense that that would be a topic that would come  
16 up.

17 Q. Okay. The second point  
18 is:

19 "If there is anything  
20 that CIMA, the  
21 consultant, thinks needs  
22 to be done to address  
23 safety as an interim  
24 measure."

25 Do you recall any of the

1     councillors making enquiries about whether  
2     anything needed to be done in the interim, before  
3     repaving in the spring?

4                     A.    I would say, given the  
5     concerns expressed and the report that we were  
6     seeing, that virtually all of the councillors  
7     would have expressed that.

8                     Q.    Okay.  And do you  
9     remember them giving direction to staff to go make  
10    sure that CIMA was asked whether any interim  
11    measures should be done?

12                    A.    I don't remember an  
13    actual motion in terms of direction, but I  
14    remember the conversation and it was kind of  
15    mutually agreed that this is a step that had to be  
16    taken to either provide confidence in the road  
17    from a party that had expertise in this area or,  
18    you know, identify any concerns that there may be.  
19    So, it was, kind of, a generally accepted next  
20    step that had to occur.

21                    Q.    Do you recall if that  
22    discussion was specific to CIMA or if it was more  
23    along the lines of the evidence you gave earlier  
24    that getting a second opinion or getting a follow  
25    up would be helpful?

1                   A.    Yeah, it's more on that  
2 line. I don't know that any of us would have been  
3 terribly familiar with all of the variables in  
4 terms of who reported to whom and when, so it was  
5 more a general view of get more information, let's  
6 satisfy ourselves that even though the staff  
7 believe there is nothing wrong with the road,  
8 let's make 100 percent sure, you know, by using  
9 some other authority or an authority to give us  
10 that information.

11                   Q.    Was there some lack of  
12 confidence in the staff's sense that the road was  
13 safe that the councillors wanted to ensure --

14                   A.    No.

15                   Q.    -- that there was an  
16 second independent set of eyes on this issue?

17                   A.    I don't know that there  
18 was a lack of confidence in the existing staff.  
19 There was a lack of confidence in or maybe some  
20 mistrust of what Mr. Moore had shared with members  
21 of council previously and what we were seeing now  
22 in the CIMA report or the Tradewind report. So,  
23 you know, there's some doubt and, you know,  
24 whenever you're in doubt you want to have that  
25 doubt removed or at least confirmed. And so, the

1 effort was, please, staff, do this. Have it  
2 confirmed or have it denied.

3 So, I'm not sure anybody was  
4 walking around saying, I don't trust you to do  
5 this work. I think for the people that were in  
6 the room that were bringing the information and  
7 there was some respect for the fact that someone  
8 saw something that they didn't think was quite  
9 right and actually brought it to the table as  
10 opposed to what he could have done, I suppose, is  
11 deep-six the report never to see the light of day.

12 There's some respect for the  
13 fact that the staff were bringing it forward as  
14 opposed to finding ways of deep-sixing it, not  
15 that they would, but someone could have. Gary  
16 Moore clearly didn't believe the value of the  
17 report and put it away and said it was not helpful  
18 for his purposes, so could the, you know, existing  
19 director of engineering done the same? He could  
20 have.

21 Q. Mr. Boghosian's notes say  
22 there's a reference to council being concerned  
23 about Mr. Moore's judgment, honesty and  
24 trustworthiness with them in the past. Apart from  
25 the evidence that you have already given -- I

1 think you've inferred a few times the concerns  
2 about Mr. Moore providing information earlier and  
3 it now being inconsistent with the Tradewind  
4 report -- was there anything else that came out in  
5 the January 23 meeting where council had concerns  
6 about his judgment, honesty or trustworthiness?

7 A. No. It was really a line  
8 to, you know, this specific incident. And, you  
9 know, previous to that, I think Mr. Moore was  
10 well-regarded and respected and appreciated for  
11 his work, had been at the City for a long, long  
12 time and I think he was known to be, you know,  
13 direct and, you know, sometimes a little gruff,  
14 but a talented and experienced engineer that  
15 people believed was sharing, you know, accurate  
16 and credible information. So, there was no --  
17 prior to this, there was nothing that would  
18 indicate any mistrust or, you know, a sense of  
19 dishonestly or any judgment on Mr. Moore's part,  
20 other than competent and working well for the City  
21 of Hamilton.

22 Q. Registrar, can you close  
23 this and can you open HAM62094, please, and can  
24 you call out the text on that document, please.

25 So, Mr. Mayor, this is a



1 document that Mr. Zegarac and Ms. Auty and  
2 Ms. Fontana, director of HR, it was part of an  
3 e-mail exchange that they were having and it's  
4 described as an action plan. It's from e-mails  
5 two days after the January 23 council meeting.  
6 And there's three categories here that I'll  
7 suggest to you are things that were sitting with  
8 Ms. Auty, Mr. Zegarac and Ms. Fontana coming out  
9 of the January 23 meeting.

10 The first is employee  
11 considerations. Just looking at that, do you  
12 recall coming out of or at the January 23 meeting  
13 that council instructed staff to enquire into  
14 employee considerations as they related to the  
15 Tradewind report lack of disclosure?

16 A. I don't know that that  
17 was direction from council. Clearly, I mean, I  
18 recall having asked about that a little time  
19 later, but at this moment in time it was, I think,  
20 the staff kind of making some assessments of, you  
21 know, considerations they needed to deal with that  
22 were the out fall of, you know, the conversations  
23 that happened on January 23.

24 So, I would say, you know, a  
25 conversation with Mr. Moore was necessary and

1 there was a need to, you know, at some level,  
2 like, keep him engaged and aware of what was going  
3 on in terms of the employee relationship, and I  
4 think that was a need. So, from that perspective,  
5 I would say, you know, this would be a normal kind  
6 of action plan, staffing action plan, approach  
7 that would guide them in terms of how they were  
8 going to deal with these issues going forward.

9 Q. The second is  
10 technical/engineering safety, an action plan to  
11 assess technical review with third party.  
12 Ms. Auty has given testimony to the inquiry that  
13 the first three bullets there refer to council's  
14 enquiries to have CIMA provide information about  
15 questions for the next meeting.

16 Does that accord with your  
17 recollection of the -- I don't want to use  
18 instructions or directions, but the game plan  
19 coming out of January 23?

20 A. I think it was part of  
21 the overall discussion on the 23rd by members of  
22 council and staff and I think what you're seeing  
23 here is, kind of, their interpretation of what the  
24 needs were going to be for a future more fulsome  
25 detailed meeting around all the aspects around the

1 roadway and the legal issues and everything else  
2 that was involved.

3 Q. Do you recall on  
4 January 23 if there was discussions about staff  
5 creating a communications plan in order for the  
6 disclosure of the Tradewind report and information  
7 that gave context to that disclosure?

8 A. There was discussion  
9 around the communications. Once the issue became  
10 a public matter, whenever that would happen, there  
11 needed to be a communications plan mapped out by  
12 staff and others to, you know, help guide those  
13 that are going to be speaking to the issue. And  
14 at some point in time thereafter I think  
15 Dan McKinnon and myself were indicated as the lead  
16 spokespersons for this issue. So, my interest  
17 would have been let's fashion a communications  
18 plan sooner rather than later, at least have a  
19 foundation of one so that, you know, if and when  
20 it's needed, it's ready to go.

21 Q. Thank you. Last question  
22 before I move on from January 23: Did you  
23 understand that the process coming out of this was  
24 going to be going to the public works committee  
25 meeting, or by the end of January 23 had there

1 been another path for the next meeting that you  
2 had developed?

3 A. No, not at that point.  
4 That only got triggered when I actually found out  
5 that it was going on to the public works committee  
6 and certainly having thought it through a little  
7 over a bit of time, I had the opportunity to think  
8 about what's the best way to manage or the best  
9 way to bring this to all members of council. I  
10 didn't think in hindsight that public works was  
11 the right place for that to go.

12 So, at this point, you know,  
13 it wasn't really clear as to where it was going to  
14 go next, although it was inferred, you know, in  
15 one of the documents that it would be public  
16 works. It didn't twig a kind of concern at the  
17 time for me, but thereafter when they officially  
18 decided to bring it to public works, my concern  
19 was heightened.

20 Q. Okay. Thank you.  
21 Registrar, you can close this down and if you can  
22 go to OD 9A, page 342.

23 You'll see at the bottom of  
24 this page, paragraph 805, on January 25  
25 Ms. Davenport sent a calendar invitation for the

1 February 4 public works committee meeting to  
2 various staff members and council members of the  
3 public works committee. I think those are all  
4 council members of that committee.

5 So, I think you said, you  
6 know, when it became official. I'm not sure if  
7 the calendar invitation makes it official, but I  
8 just wanted to give you that context before we  
9 move on. I don't have a question about it.

10 Registrar, can you now go to  
11 HAM54311 and if you can start at image 3, please.

12 So, there's some back and  
13 forth that we're not going to start with about  
14 actually getting some reports to public works  
15 committee, but what I would like to direct you to  
16 is on January 25 the e-mail from Alicia Davenport.

17 Registrar, can you pull out  
18 the e-mail that's at the top of -- yeah, exactly.

19 So, this is an e-mail from  
20 Ms. Davenport to Mr. McKinnon and it says:

21 "As discussed, the annual  
22 collision report has been  
23 removed from the  
24 February 4, 2019 public  
25 works committee agenda

1 and all three reports  
2 referenced below have  
3 been provided to  
4 Stephanie Paparella for  
5 inclusion in the GIC  
6 agenda."

7 Registrar, can you close this  
8 and can you go to image 2 and 3, please.

9 We're just going to work our  
10 way up these e-mails. So, Ms. Paparella responds:

11 "Thanks, Alicia. I have  
12 all three and they'll be  
13 included in the  
14 February 6 GIC agenda."

15 And then on the left-hand side  
16 at the bottom at 4:23, Ms. Paparella then responds  
17 and says:

18 "Just spoke to Ms. Auty  
19 and I'm not going to put  
20 these three reports to  
21 the February 6 GIC  
22 agenda. I'm going to  
23 hold them in my cabinet."

24 Mr. McKinnon says:

25 "Sounds like I'm a

1                                   passenger waiting for a  
2                                   plan."

3                                   And Mr. Zegarac says:

4                                   "I believe the mayor will  
5                                   be requesting a special  
6                                   GIC. I'll confirm with  
7                                   the mayor on Monday."

8                                   And then Ms. Paparella, now  
9                                   we're at the top of the left-hand side, says on  
10                                  January 28:

11                                  "Mr. Mayor, if you would  
12                                  like a special GIC  
13                                  regarding this matter, I  
14                                  can try to arrange it for  
15                                  this Friday."

16                                  And now, Registrar, if you can  
17                                  go to image 1 and 2, please.

18                                  So, you then write to your  
19                                  chief of staff at the bottom of the left-hand side  
20                                  and say:

21                                  "Can you follow up and  
22                                  find out what and why?"

23                                  And then it says:

24                                  "Michael advised of the  
25                                  details."

1                   And, going up to the top of  
2   that, Mr. Zegarac says:

3                   "The councillors are  
4                   asking for a special GIC.  
5                   Happy to discuss further  
6                   with the mayor and  
7                   yourself."

8                   And then she responds to you:

9                   "Mike says it was  
10                  requested by the  
11                  councillors."

12                  So, that was a bit of a chain,  
13   but just starting on that point, you said earlier  
14   in your evidence today that it's your authority or  
15   two-thirds of council to have a special GIC. Yes?  
16   Just confirming that evidence.

17                  A.    Yes.

18                  Q.    And at this point,  
19   January 25 to 28, it wasn't in your mind  
20   personally that you were going to do a special GIC  
21   on this issue. Is that right?

22                  A.    Right.

23                  Q.    Registrar, can you close  
24   this and go into HAM62876.

25                  So, these e-mail chains spread



1 into various chains, so this is somewhat related.

2 Registrar, can you bring up  
3 the next image as well.

4 So, we're still on January 28  
5 and you can see at the bottom of this chain where  
6 it starts, you e-mail Mr. Zegarac and say:

7 "Just heard about this  
8 request for a special  
9 meeting. Please advise  
10 of the need and what we  
11 expect to have as an  
12 outcome."

13 Then Mr. Zegarac -- Registrar,  
14 can you pull this out. It's the bottom of the  
15 left-hand side.

16 A. Thank you. My eyes are  
17 strained to be able to read that.

18 Q. Yes.

19 A. My glasses aren't  
20 powerful enough.

21 Q. Mr. Zegarac says:

22 "At the meeting on  
23 Friday -- "

24 So, that would have been the  
25 Friday before the 28th, so the 25th:

1 " -- Councillors Merulla,  
2 Collins and Jackson  
3 suggested that the three  
4 reports that were going  
5 to go to the February 4  
6 public works committee  
7 meeting should be pulled  
8 and brought to a special  
9 GIC for a potential  
10 in-camera discussion."

11 And then Mr. Zegarac sets out  
12 the aspects or the topics for that special GIC.

13 Registrar, can you close that.  
14 Registrar, can you call out the top half of this  
15 now, of the left-hand side.

16 So, you respond:

17 "The GIC on the 6th or  
18 so, there is a GIC on the  
19 6th or so with a lean  
20 agenda. Can we not make  
21 it an agenda item rather  
22 than a special meeting?"

23 And Mr. Zegarac says that the  
24 councillors were concerned about staff reports  
25 being public for days before staff had an

1 opportunity to speak to them at committee.

2 Okay. So, we've gone through  
3 some of that back and forth. Now I have some  
4 questions.

5 Registrar, you can close that  
6 call out.

7 First, Mr. Zegarac references  
8 a meeting with Councillors Merulla, Jackson and  
9 Collins in which they requested a special meeting.  
10 Were you aware that Mr. Zegarac was going to meet  
11 with a subset of councillors about this Red Hill  
12 issue?

13 A. No, and I'm not at all  
14 clear whether Mr. Zegarac set out to meet with a  
15 subset of councillors. That's very possible that  
16 they sought him out to meet with him. So, you  
17 know, it's very possible that they walk into his  
18 office and, you know, shared some thoughts and  
19 concerns with him. So, I'm not sure how it  
20 happened. After the fact, I was not pleased to  
21 hear that it happened, but it happened nonetheless  
22 and we were going to deal with that going forward.

23 Q. What were your concerns  
24 about the prudence of having this discussion  
25 between Mr. Zegarac and the councillors?

1                   A.    Well, to the same point  
2    of having all members of council have the same  
3    information at the same time, it seemed to me that  
4    that was kind of falling apart a little bit.  So,  
5    you know, my hope and wish was that we would have  
6    everybody in the room and everybody getting the  
7    same information collectively to start  
8    piecemealing this.  It gets complicated and  
9    obviously it gets more difficult to ensure that  
10   all members of council feel like they are  
11   respected in the same way, and I think that's an  
12   issue for me as mayor.  That may not be an issue  
13   for a councillor whose sole responsibility might  
14   be next to his roadway.  And I think these three  
15   councillors were all adjoining the roadway, so I  
16   understand their heightened concern, but the  
17   reality was this was a concern for the entire  
18   council and I was hoping and preferring that all  
19   of council would get the same information at the  
20   same time.

21                   Q.    Did you express your  
22    displeasure at Mr. Zegarac meeting with a subset  
23    of councillors to Mr. Zegarac?

24                   A.    No, I don't think so.  I  
25    mean, I just took it for what it was and proceeded

1 on with angling towards what I thought was a  
2 better approach in terms of getting all the  
3 information at a subsequent GIC meeting that was  
4 already in place. So, if I took exception to, you  
5 know, every nuanced issue that happened around the  
6 council table, I would be a very bitter, angry  
7 mayor, so I try not to take all these things to  
8 heart and try to focused on what I thought was the  
9 bigger picture, which is let's set a date that  
10 made sense as part of our regular process and we  
11 didn't really need to identify this as special.  
12 This would be just a regular agenda issue on a GIC  
13 agenda.

14 Q. Did you share the  
15 councillors' concern as expressed by Mr. Zegarac  
16 about staff reports being public for days before  
17 the staff had an opportunity to speak to them at  
18 committee?

19 A. I didn't have that  
20 concern, you know, largely because much of the  
21 reporting was initially to be done in camera  
22 because of potential litigation issues. So, you  
23 know, it was not a major concern for me. I'm not  
24 sure why it was a major concern for the  
25 councillors. I do know that in one of the

1 concerns that I heard, and I'm not sure how I  
2 heard it but I did hear, that they were angling  
3 towards a forensic audit, which, you know, in my  
4 mind, you know, suggested some level of  
5 criminality, which I thought was completely  
6 inappropriate. So, you know, part of my pushback  
7 was let's not let that start to take hold and  
8 let's get back to, you know, getting all the  
9 information gathered at one moment in time with  
10 all members of council.

11 Q. Okay. So, that issue of  
12 that, sort of, forensic review, how did that  
13 relate to which forum would be appropriate to hear  
14 this? I'm confused about the connection between  
15 that issue of potential criminality or forensic  
16 issues and whether it should be heard at the  
17 special meeting or not?

18 A. I think it's all tied  
19 together. I mean, I wouldn't single out any one  
20 item in all of this. Obviously there were some  
21 members of council trying to direct, you know,  
22 where this was to go and that didn't include, you  
23 know, all members of council. I had the ultimate  
24 authority in terms of whether or not we would  
25 request a special meeting and I declined to do so,

1 and so then the question was: Where should this  
2 appropriately go?

3 In the mix of all of that, a  
4 forensic audit was thrown on the table, you know,  
5 some heightened concern from some members of  
6 council, you know, prepared to, you know, do the  
7 blame game, you know, quickly and fast and in a  
8 hurry and I wanted to, you know, slow that down  
9 and get all the facts on the table before we made  
10 any functional decisions about what needed to  
11 happen going forward.

12 So, all of that was in the mix  
13 and I wouldn't single it out to any one issue  
14 that, you know, drove, you know, a change in the  
15 agenda situation. It was a whole collection of  
16 things, including the fact that I wasn't there at  
17 the time and couldn't really have -- you know, I  
18 was communicating by text message and might have  
19 made a couple of phone calls, you know, but I was  
20 in Ottawa, not in Hamilton, so I couldn't get a  
21 hold of folks directly and have a more fulsome  
22 conversation around this, so it was all of that in  
23 the mix.

24 Q. Thank you. In terms of  
25 the concerns expressed by the councillors, if

1 these reports were already on the PWC meeting  
2 agenda, would councillors be able to go in camera  
3 with them? Was there a concern about, sort of,  
4 the ability to go in camera if they were at PWC?

5 A. It would have been in  
6 camera at public works in any event, so it was --  
7 for me, it was more about how many people would  
8 have eyes on as opposed to all members of council  
9 as opposed to seven members of the public works  
10 committee. Going back to that, you know, central  
11 theme for me was everybody at the same time.

12 Q. Understood. Registrar,  
13 can you bring up HAM45330, please. HAM45330. I  
14 think that is not what I'm looking for. Let's try  
15 again. HAM54330. There we go.

16 So, you have a back and forth  
17 with Ms. Paparella on January 30 and Mr. Zegarac  
18 is on most of these e-mails as well.

19 Registrar, can you pull out  
20 the top half of the right-hand side, please.

21 So, you say in this back and  
22 forth about getting it on to the GIC agenda on  
23 February 6:

24 "It would be helpful to  
25 have them all done at one



1 time and then have a  
2 media strategic prepared  
3 for a public release,  
4 which I sense councillors  
5 would like to make to get  
6 ahead of this issue."

7 I think you have already  
8 addressed that point. But you also say:

9 "There is a concern that  
10 the open reports will  
11 trigger the media  
12 interest and questions."

13 On that issue, which open  
14 reports were you talking about? Open reports at  
15 public works?

16 A. So, whatever the open  
17 reports would have been on public works. At this  
18 moment, I'm not even clear what they would have  
19 been at this moment, but there would have been,  
20 you know, an open, I imagine some open reporting,  
21 and then a lot of in-camera reporting at public  
22 works. In any event, rather than having some of  
23 it happen at public works and some of it happening  
24 at GIC or general issues committee, I still  
25 believe and still do believe that it is -- it was

1 important to have them all done at the same time.

2 Q. Okay. And you wanted to  
3 do that and figure out the logistics of getting it  
4 before GIC in a way that was not going to provide  
5 knowledge in advance of the GIC. Is that fair? I  
6 mean knowledge to the media.

7 A. No. My GIC agenda report  
8 would have been publicized like any other report  
9 would have been. I'm not sure what you're  
10 inferring there. Was I trying to not have some of  
11 the reports? I'm not sure what you're trying to  
12 say.

13 Q. I'm just referencing the  
14 reference here:

15 "There's a concern that  
16 open reports will trigger  
17 the media interest and  
18 questions."

19 And just before you answer,  
20 there's another reference as well.

21 Registrar, can you close this  
22 down and go to image 1 of this document at the  
23 very bottom, Mayor Eisenberger's e-mail. Right  
24 there, yes.

25 You also say:

1 "I hear they are not on  
2 the public works agenda  
3 hopefully."

4 I think that's in respect of  
5 reports:

6 "I don't want to be in a  
7 position to refer from  
8 public works."

9 So, my question was really:  
10 Joining those two things, did you have a concern  
11 that having to move from public works to GIC might  
12 trigger some knowledge to the media that this was  
13 going before GIC that otherwise would not happen?

14 A. No. And if I recall  
15 correctly, I don't think that public works  
16 committee agenda had been published just yet.  
17 Therefore, it would not have been a known entity,  
18 but I'm not 100 percent certain about that.

19 Q. Okay.

20 A. From a public perception,  
21 you know, they would not have yet seen any reports  
22 on public works, I don't believe, and so moving  
23 them from public works would have been an inside,  
24 you know, move as opposed to a public move around  
25 having removed some reports off of that agenda and

1 put it on GIC.

2 Q. Okay. And then, as  
3 appropriate for in-camera proceedings, whatever  
4 would be appropriate would be on the agenda for  
5 GIC?

6 A. Yes.

7 Q. Okay. Registrar, you can  
8 close this. You can close the whole document and  
9 if you can go to OD 10A starting with page 8,  
10 please.

11 So, starting at the top of  
12 this page -- Registrar, just really for ease of  
13 our eyes at this stage in the day, can you call  
14 out paragraph 15 to 16, please.

15 So, Mayor, I'm going to take  
16 you through just to give you some reorientation to  
17 the information that council received at GIC. So,  
18 GIC met on February 6 at 9:30 a.m. Just stopping  
19 there, I know that this council or this GIC  
20 meeting goes quite late into the night. Is that  
21 common when you have a GIC that they can be very  
22 lengthy?

23 A. They can be. I mean, one  
24 of the -- that had not been the practice  
25 previously. It was, you know, a bit more

1 official. But we had new members of council and  
2 that certainly, you know, generated a lot of more  
3 comments and questions, so, you know, meetings  
4 went on considerably longer than had been the  
5 practice in the past.

6 Q. Okay. So, there were --  
7 you were there and you chaired in the usual  
8 course?

9 A. Actually, Councillor  
10 Collins chaired. I didn't. I never chair the  
11 general issues committee. It would be the deputy  
12 mayor of the day.

13 Q. I see. You said that  
14 earlier.

15 A. And that was Councillor  
16 Collins at the moment.

17 Q. Thank you. There were  
18 two Red Hill-related reports that were included in  
19 the agenda.

20 Registrar, could you close  
21 this and can you open HAM12743 and go to image 3.

22 And you'll see at the top  
23 there's reference to three different reports.

24 Registrar, could you pull out  
25 10.4, 10.5 and 10.6 in the top half of this

1 document.

2 Mr. Mayor, do you recall  
3 receiving at this council meeting the annual  
4 collision report, quite a lengthy update prepared  
5 by Mr. Soldo and Mr. McGuire, and then also a  
6 speed limit reduction feasibility study report?

7 A. I do.

8 Q. Registrar, you can close  
9 this document. Thank you. And if you could bring  
10 up HAM62635 and start with image 1.

11 So, this is the closed session  
12 minutes.

13 Registrar, could you go to  
14 image 2 now. Actually, if you could bring up  
15 image 2 and image 3, that would be great.

16 So, again, Mr. Mayor, I'm just  
17 trying to orient you back to all the information  
18 you received at this council meeting, both in  
19 closed and open session. So, this is the closed  
20 session minutes and it reflects receiving a roads  
21 audit update from the auditor. Do you see that on  
22 the left-hand side?

23 A. Mm-hmm.

24 Q. Do you remember receiving  
25 that?

1 A. Yes.

2 Q. And then a report from  
3 legal services, a litigation and review  
4 assessment?

5 A. Correct.

6 Q. Registrar, you can close  
7 that down.

8 And then the final thing is  
9 there was a presentation that was provided via a  
10 slide deck.

11 Registrar, can you bring up  
12 HAM61920 and if you can go to image 2 and image 3,  
13 please.

14 Do you recall being presented  
15 with this slide deck and the presenters that are  
16 listed here: Mr. McKinnon, Mr. Brown, Ms. Auty  
17 and Mr. Hertel?

18 A. I do.

19 Q. Okay. So, I think we've  
20 gone through a bit of the paperwork to get on to  
21 the questions. First question: Did you receive  
22 the reports that I just went through? That is,  
23 the speed limit study report and the report  
24 PW18008A, the one that was about a number of  
25 different matters but the Golder report and the

1 status of the parkway, and annual collision  
2 report. Did you get all of those in advance of  
3 the GIC meeting?

4 A. So, I mean I would have  
5 to separate out the public reports from the  
6 in-camera reports. And the public reports, I  
7 would assume, were all delivered ahead of time and  
8 made public, as public reports ought to be. The  
9 in-camera ones, I believe, were delivered to us  
10 and given to us at the beginning of the in-camera  
11 session.

12 Q. In hard copy?

13 A. Sorry?

14 Q. In hard copy?

15 A. In hard copy, as I  
16 recall, yes.

17 Q. And what about the slide  
18 deck? Did you get a hard copy of the slide deck?

19 A. No, I don't believe we  
20 did, although some might have asked for it, but  
21 I'm not sure that it was offered up as a hard  
22 copy. It was from a slide deck presentation that  
23 the city staff or the staff kind of walked through  
24 for, you know, better understanding of timelines,  
25 et cetera. So, I don't believe there was a hard



1 copy delivered on this presentation.

2 Q. Okay. There were a  
3 number of resolutions that were made at GIC and  
4 later ratified at council.

5 Registrar, could you close  
6 this out and go into OD 9A, page 15. Pardon me, I  
7 misspoke. 10A, page 15. And can you bring up 16  
8 as well. Thank you.

9 So, Mr. Mayor, I will take you  
10 through very briefly some of these resolutions,  
11 but I'm going to ask some questions as I go  
12 through that process.

13 And the first is trying to  
14 understand during the closed session, did you  
15 receive all of those reports and information and  
16 then get the presentation from staff? Like, just  
17 in terms of the chronology of how you received  
18 information?

19 A. You're talking about the  
20 open session reports?

21 Q. Yeah. So, you get the  
22 open session reports and then you go into the  
23 closed session and then there's the legal services  
24 report and the audit services report, you get  
25 those, and then the presentation starts, that

1 slide deck that we were just looking at?

2 A. Yes.

3 Q. Okay. And coming out of  
4 GIC, as we'll go through in a moment, there was a  
5 number of resolutions. Did council hold making  
6 resolutions until they had gone through the  
7 entirety of the presentations and their reports?

8 A. Yes.

9 Q. Were they trying to do it  
10 holistically?

11 A. Typically, yes.

12 Q. Okay. So, amongst the  
13 resolutions that came out of this GIC meeting are,  
14 one, the development of terms of reference for a  
15 functional design. So, just looking at page 15,  
16 in the middle of the page there's a reference to  
17 the resolution.

18 Registrar, can you go to --

19 A. Item 5 here?

20 Q. Yes. You're very close,  
21 Registrar. Where it says item 5A. That's right.  
22 Thank you.

23 Do you recall the staff  
24 rationale for developing terms of reference for a  
25 functional design for the LINC and the Red Hill?

1 A. Yes.

2 Q. Do you remember what that  
3 was related to? Maybe I'll put this differently.

4 Was that related to the  
5 disclosure of the Tradewind report and the Golder  
6 report?

7 A. Not specifically. I  
8 think it was more, kind of, what's the longer term  
9 status of parkway and the LINC and, you know, are  
10 we going to start the terms of reference for the  
11 future design of the roadway. So, I don't know  
12 that they were particularly linked to the  
13 Tradewind report. It was just a desire to get on  
14 with future design work for these two facilities.

15 Q. Thank you. Registrar,  
16 you can close that call out and if you can call  
17 out the speed limit reduction feasibility study.  
18 It's item 6 on the right-hand side.

19 So, this speed limit reduction  
20 feasibility study, staff recommended that the  
21 existing speed limit be reduced to 80 kilometres  
22 an hour, and that was even though CIMA's speed  
23 limit study did not make that recommendation. Do  
24 you remember receiving information from staff  
25 about the difference between staff recommendations

1 and the consultant's recommendations?

2 A. Yes.

3 Q. And was that related to  
4 the low friction values that had been found in the  
5 Tradewind report?

6 A. I wouldn't say that. I  
7 would say it had everything to do with the belief  
8 that the stated speed on the Red Hill Valley  
9 Parkway wasn't being adhered to and was, you know,  
10 being exceeded significantly and there was a  
11 desire to, you know, slow it down significantly.  
12 So, you know, even though the recommended design  
13 speed was 90, I think from a consultant, it was  
14 believed that city staff had a better handle on  
15 what was needed there because they worked it and  
16 lived it every day and city staff recommended 80  
17 and council decided 80 was the number that they  
18 supported for the parkway in the near future.

19 Q. Okay. Registrar, you can  
20 close this and if you can go to page 18.

21 This is the last of the  
22 resolutions I'm going to take you to and then I  
23 have some general questions.

24 If you can call out number 9,  
25 please. Thank you.

1                   So, one of the resolutions was  
2    that the director of audit services be directed to  
3    conduct an independent special investigation into  
4    processes, managerial systems and procedures  
5    regarding friction management.

6                   So, am I correct that that was  
7    an outcome from a longer discussion looking at all  
8    of the information that was provided to council in  
9    the context of the information that you had  
10   received on January 23?

11                   A.    Yes.

12                   Q.    Registrar, you can close  
13   the call out.

14                   So, on that discussion, really  
15   bringing all of these reports together in the way  
16   that you wanted that comprehensive package, what  
17   do you recall about the tone of the closed  
18   session?

19                   A.    Well, the tone was  
20   similar to, you know, the previous tone when folks  
21   were advised of this report that hadn't been  
22   shared: Frustration, anger, disappointment, and  
23   were all, kind of, areas of concern shared? Not  
24   necessarily that disappointment of landing on  
25   current staff that were bringing this material; it

1 was predominantly landing on, you know, Mr. Moore  
2 quite frankly. There was some respect and  
3 appreciation for the fact that the current  
4 director and others and the general manager had  
5 brought this forward and I think there was an  
6 appreciation of respect for that, but there was  
7 concern, you know, dismay, disappointment,  
8 rightfully or wrongfully, and I'm not sure it was  
9 wrong either way, that Mr. Moore had not brought  
10 this forward or had not necessarily gotten a  
11 second opinion on this information. And, hence,  
12 we are where we are.

13 Q. Did the additional  
14 information contained in these various reports,  
15 the auditor's report, the legal services report,  
16 we haven't really gone into those today, but those  
17 two reports and then the public reports, did that  
18 crystallize the frustration and dismay of  
19 councillors or did it remedy it in some way?

20 A. I don't think the dismay  
21 was, you know, what occurred and with whom it  
22 occurred with, but the ensuing information that  
23 was provided, you know, certainly gave most  
24 members of council some comfort that we didn't  
25 have a road that, you know, had undue concerns

1 from the staff perspective as well as now an  
2 updated, you know, assessment from, you know, the  
3 resident expert, CIMA, in terms of giving it a  
4 thumb's up that all was well except for, you know,  
5 some issues that needed to be dealt with.

6                   So, I think there was some  
7 comfort in that, kind of, second opinion, as it  
8 were, that the road was not unsafe and that, you  
9 know, use of the road could continue. Had there  
10 been a different message at any point, including,  
11 you know, going back to December 18, that there  
12 was concern about the safety of people using this  
13 road or that there was, you know, undue concern  
14 about the surface or slipperiness, that we would  
15 not have taken as long as we did to, you know,  
16 react to that.

17                   So, I think there was some  
18 comfort by most members of council that we weren't  
19 dealing with a situation where we had to shut down  
20 a road and, you know, cause all of that level of  
21 consternation in the broader view.

22                   Q. And you said the updated  
23 assessment from CIMA. That's a February 4 memo  
24 from CIMA?

25                   A. I don't know --

1 Q. In fact, just so you can  
2 see it, it's HAM54 --

3 A. Yeah.

4 Q. HAM54382, please.

5 A. I can get confused  
6 between Tradewind report and CIMA report, so just  
7 to refresh my memory, CIMA was asked to review the  
8 road again?

9 Q. That's right, not  
10 Tradewind.

11 A. Current information?

12 Q. Yeah. So, this is --  
13 Registrar, can you bring up the next page.

14 This is a few pages long. I'm  
15 not going to show all of it, but just you had said  
16 there was an updated report. Is this the report  
17 that you were referring to?

18 A. I think so, yes.

19 Q. And did you and other  
20 councillors receive a copy of this at the closed  
21 session?

22 A. I believe we would have.  
23 Again, you know, there was a lot of information  
24 shared at that point, but I would think that this  
25 would have been one document that would have been



1 delivered in the closed session for sure, yes.

2 Q. Okay. Thank you.

3 A. May not have been one  
4 that they kept. On occasion, these documents are  
5 given and then asked for them to be returned once  
6 they have been read, but I'm not sure what  
7 happened in this instance.

8 Q. I think this one was  
9 actually an appendix to the legal services report.

10 A. Right.

11 Q. Which was an in-camera  
12 report. Do you recall if this was one of those  
13 circumstances where staff asked councillors to  
14 return information at the end of the session?

15 A. I don't recall. I mean,  
16 that has happened on occasion just to, you know,  
17 not get it out prematurely, but I don't know if  
18 that occurred in this instance.

19 Q. Okay. Registrar, can you  
20 close this and then can you go to -- actually, can  
21 you bring up two documents. On one side, can you  
22 bring up HAM61920, image 44, and on the other one,  
23 can you bring up HAM123841. I meant to say  
24 HAM12841.

25 So, the two documents that I

1 have up, one is the press release that went out at  
2 10:34 on February 6 and the other is from the  
3 slide presentation that was presented to the  
4 councillors in respect of a recommended  
5 communications strategy.

6 So, the communications  
7 strategy that was recommended was a media release  
8 and fact sheet following the February 13 council  
9 meeting and that response from the City to media  
10 issues would start as soon as that was publicly,  
11 you know, released or as soon as the information,  
12 the media release, was released on February 13.

13 Registrar, you can close the  
14 left-hand side now and if you could bring up the  
15 second image of that document.

16 So, that is not what occurred.  
17 It looks like, and you'll see here, on February 6  
18 in the evening there was an immediate release that  
19 went out. Do you recall that councillors took a  
20 different approach than was recommended by staff  
21 around communications?

22 A. Absolutely.

23 Q. And why that was?

24 A. There was a desire to  
25 make this public as soon as possible. I think

1 there was -- the rolling inference around, you  
2 know, what did council know and when did they know  
3 it and all of that sort of stuff was rumbling  
4 around certainly in the minds of councillors, some  
5 councillors, and, you know, others wanted to, you  
6 know, get this out and into the public as soon as  
7 possible to, you know, address some of the issues  
8 as to when council knew and what they knew and how  
9 they knew it.

10 Q. And to have that desired  
11 outcome to make this public as soon as possible,  
12 did council instruct staff to prepare this press  
13 release during the closed session?

14 A. I think they collectively  
15 decided if we're going to make this public, then  
16 we need to draft something that we can get out  
17 right now. So, I do recall that there was -- that  
18 staff were requested to go and spend some time,  
19 you know, in an anteroom and craft something and  
20 bring it back.

21 Q. Okay. On the very first  
22 line in this press release is:

23 "On behalf of the City of  
24 Hamilton, staff  
25 apologized to council and

1 the general public for  
2 how this matter has come  
3 to their attention."

4 Was that apology sought from  
5 council?

6 A. No, not directly, I don't  
7 think. I think the staff felt badly about, you  
8 know, the circumstance that had evolved here and I  
9 think on their own volition they felt it necessary  
10 to apologize. Some members of council might have  
11 mentioned that in the course of their conversation  
12 throughout the meeting, so I'm not so sure that it  
13 was a direction from anyone specifically, but I  
14 think collectively I think the staff felt that an  
15 apology from them to council was in order.

16 Q. Okay. Registrar, can you  
17 go to the next image on this document.

18 You'll see that there's two  
19 attachments to this press release. One is the  
20 Tradewind report itself from November 2013 and the  
21 other is the memo that we were just looking at  
22 prepared by CIMA on February 4. That was the one  
23 that had originally been part of the in-camera  
24 legal services report.

25 Whose decision was it to

1 attach these two documents to the press release?

2 A. That was council's  
3 decision. You know, the advice from, I think,  
4 legal staff was, you know, what the FOI process  
5 kind of evolved and let it take its course. And  
6 council had no interest in making it difficult for  
7 this information to get out there and was more  
8 interested in getting it out there on our terms  
9 rather than, you know, waiting for, you know,  
10 someone to give us the a-ha moment saying I got it  
11 and why didn't you share it.

12 Q. Registrar, could you call  
13 out the quick facts. Actually, I'm just looking  
14 at the time. Can you close that out.

15 Commissioner, I'm just looking  
16 at the time and it is 3:18 and we've been going  
17 since 2:00. I have about perhaps less than ten  
18 minutes of questions left. I'm happy to keep  
19 going if the mayor would prefer and if you would  
20 prefer and then we can take our break, or we can  
21 take our break and then we can resume with the  
22 remainder of my questions and then over to any  
23 participants who wish to ask questions of the  
24 mayor.

25 JUSTICE WILTON-SIEGEL: All

1 right. Let Mayor Eisenberger decide what he  
2 prefers. Do you want a break at this point or do  
3 you --

4 THE WITNESS: I'm feeling  
5 powerful. I'm good for another ten minutes, so if  
6 you want to finish this train of thought, if  
7 there's a division between your questions, then  
8 let's finish this and then we can get on to  
9 another topic if you wish.

10 BY MR. LEWIS:

11 Q. Thank you. I'm certainly  
12 finished as it relates to February 6.

13 A. Okay.

14 Q. Subject to looking at my  
15 notes, but I'm moving on to another topic now and  
16 I have another ten minutes. So, again, I'm in  
17 your hands whether you would like to take a break  
18 now or if you would like me to power through.

19 A. Since it's another topic,  
20 I think it's probably an opportune time to take a  
21 break.

22 JUSTICE WILTON-SIEGEL: We'll  
23 break for 15 minutes and return at 25 to 4:00.

24 --- Recess taken at 3:19 p.m.

25 --- Upon resuming at 3:36 p.m.

1 MS. LAWRENCE: Commissioner,  
2 may I proceed?

3 JUSTICE WILTON-SIEGEL: Yes,  
4 please proceed.

5 BY MS. LAWRENCE:

6 Q. Thank you. So, before  
7 the break we were talking about the February 6 GIC  
8 meeting, so turning to events that happened after  
9 that meeting.

10 Registrar, can you bring up  
11 OD 10A, page 94 and 95, please. Actually, just 94  
12 and can you call out paragraph 228, please.

13 Mayor Eisenberger, this is an  
14 e-mail that you sent to Mr. Zegarac, Ms. Fontana,  
15 Mr. McKinnon in an e-mail address listed as DL  
16 council only. Am I correct that DL council only  
17 is to all councillors?

18 A. Correct.

19 Q. It was under the subject  
20 line "Gary Moore" and you say in the first  
21 substantive paragraph:

22 "I trust you will be  
23 making some decisions  
24 soon given the knowledge  
25 we currently have on the

1 status of the continued  
2 working relationship we  
3 have with Mr. Moore.  
4 This issue will clearly  
5 need to be addressed  
6 going forward."

7 In the next paragraph:

8 "As always, we need to  
9 bear in mind the impact  
10 on our employees. We  
11 equally need to bear in  
12 mind the angst, anger and  
13 mistrust this issue has  
14 caused in our community  
15 and among members of  
16 council and possible many  
17 other employees. Please  
18 advise tomorrow where you  
19 are on this issue."

20 Registrar, you can close that  
21 call out.

22 Mr. Moore was at this point an  
23 employee working for the Hamilton LRT. Pardon me,  
24 maybe I should restate. Mr. Moore was working for  
25 the Hamilton LRT. You were aware of that?



1 A. Yes.

2 Q. Is the decision about his  
3 continued working relationship with the City an  
4 operational decision or a governance decision?

5 A. No. Purely an  
6 operational decision and certainly I was not  
7 trying to make a decision on anybody's behalf. I  
8 was just highlighting the issue of something that  
9 needed to be dealt with one way or the other and  
10 invariably it was, but I was just, I think, stream  
11 of fashion to set the moment thinking, you know,  
12 should we not be at least informing anyone and  
13 everyone that, you know, stop the speculation  
14 around what could or should be done and have a  
15 determination as to what will be done, if  
16 anything.

17 Q. Okay. And, to your  
18 knowledge, the City didn't take any steps to  
19 change Mr. Moore's employment status or working  
20 status with the City or with the LRT office  
21 following --

22 A. It was the LRT office  
23 city component. Right? So, there's the Metrolinx  
24 component and the city component.

25 Q. Yes.

1                   A.    So, for all intents and  
2    purposes, he was still a city employee and the  
3    decision collectively, which I don't disagree  
4    with, was to let him continue to work on the LRT  
5    project.

6                   Q.    Thank you.  Registrar,  
7    can you go to OD 9A, page 399, please.  This is  
8    just a matter of clarity.  Registrar, could you  
9    call out 909.

10                  You sent a calendar invitation  
11    to some individuals in audit services office on  
12    January 31, subject line "Meeting with director of  
13    audit services to discuss term of council work  
14    plan," and the meeting was scheduled for after the  
15    February 6 GIC, on February 11.  There was an  
16    attached briefing note describing the purpose of  
17    the meeting and, in fact, maybe I'll just go right  
18    into that.

19                  Registrar, can you bring up  
20    HAM12479.

21                  So, this is the briefing note.  
22    You'll note there's nothing in here that  
23    specifically deals with the Red Hill, although  
24    there is a reference to value for money auditing.  
25    Given the timing of this meeting on February 11,

1 do you recall did you discuss the auditor's  
2 investigation in respect of the Red Hill with  
3 Mr. Brown and others in attendance?

4 A. No.

5 Q. Why is it more generally  
6 that you would have a meeting with the auditor to  
7 set his work plan for the year?

8 A. Well, it was actually  
9 Mr. Brown's initial initiative to want to have a  
10 discussion with me around the work plan for the  
11 coming term of council or coming few years. So,  
12 it was not -- even though I might have been the --

13 Q. Writer?

14 A. -- developer of the date  
15 and time or the invite from the calendar, it was  
16 actually an invitation and Mr. Brown was going to  
17 all, I think, members of council to get their  
18 thoughts and ideas about audit services' work plan  
19 going forward. So, it's just happenstance that  
20 the happened, you know, within days of our  
21 February 6 report. It was not at all angled  
22 towards, you know, having a discussion around  
23 auditing around the RHVP.

24 Q. Thank you. Registrar,  
25 you can close this down and can you go back into

1 OD 10A, please, and to page 79. Registrar, could  
2 you pull out paragraphs 193 and 194.

3 On February 12, Mr. Van Dongen  
4 from the Hamilton Spectator was exchanging e-mails  
5 with your communications person, Ms. Shantz, and  
6 added Ms. Graham and you and Mr. McKinnon to an  
7 e-mail chain and he said:

8 "Hello, all. The  
9 provincial transportation  
10 Minister has said he will  
11 release the province's  
12 2007 friction results and  
13 asked why the City cannot  
14 release its 2017 friction  
15 results."

16 And noted that telling us  
17 those reports are not public at this time was what  
18 the Hamilton Spectator was -- that was the  
19 information that the Hamilton Spectator was  
20 receiving from the City.

21 And then Mr. Van Dongen also  
22 writes to members of council and asks for comments  
23 or thoughts about why the City was not releasing  
24 additional friction tests from 2017 and 2018 and  
25 noted that their response to that request had been

1 that the reports were not currently public and  
2 they were invited to file a freedom of information  
3 request.

4 Do you remember receiving  
5 these e-mails from Mr. Van Dongen about the  
6 decision not to provide additional relevant  
7 documents to him or documents relevant to friction  
8 to him?

9 A. In a general sense, yes.  
10 Yeah.

11 Q. Registrar, could you  
12 close this down and could you go to page 82.

13 What was your view of the City  
14 staff's decision to not disclose information and  
15 instead suggest that the Spec would follow the FOI  
16 process?

17 A. Well, that's a good  
18 question. So, I don't know that I have, you know,  
19 a view on that. Obviously there were, kind of,  
20 legal issues that were involved in that. You  
21 know, some of the concerns around the actual  
22 testing results and whether or not they could have  
23 impact on, you know, litigation that was already  
24 in play. You know, it obviously had something to  
25 do with that and clearly the legal department in

1 this instance believed that this was not something  
2 that was in the corporation's best interest to  
3 release at this time. So, I mean, the legal  
4 advice that was given, I think, kind of, that was  
5 generally accepted by members of council.

6 Q. Okay. I'm going to come  
7 back to the council meeting to ratify the  
8 resolutions at GIC, but just on this point of  
9 disclosure of information, on February 14, which  
10 is after the council meeting, the City issued a  
11 media release.

12 Registrar, could you pull out  
13 the first three paragraphs, pardon me, four  
14 paragraphs of that media release. Thank you.

15 Do you recall discussions at  
16 council to approve a motion to direct -- pardon  
17 me. To approve the disclosure of two additional  
18 reports: One, a roadside safety assessment  
19 conducted by CIMA, and then another one made  
20 public in December 2015, also a safety analysis by  
21 CIMA?

22 A. Correct. Yeah.

23 Q. And was that undertaken  
24 after consideration amongst city council?

25 A. It would have been, but

1 I'm not sure, you know, when and how.

2 Q. Okay. Well, it's on the  
3 14th and it says:

4 "Also, this evening,  
5 Hamilton City Council  
6 directed city staff to  
7 release two additional  
8 reports."

9 A. Right. Was this after  
10 city council?

11 Q. Yes. This is on  
12 February 14 after city council.

13 A. Okay. So, presumptively  
14 we had an in-camera discussion on some of the  
15 issues around all of these reports and then raised  
16 a direction.

17 Q. Thank you. Registrar,  
18 you close this down and if you can go to page 98,  
19 please, and if you can call out 239 and 240.

20 So, just for that context  
21 about council meetings, so council met on  
22 February 13 and 14 and passed a number of motions  
23 relying to the Red Hill, including the motions to  
24 reduce the speed limit that had been addressed at  
25 GIC, directing staff to request better speed

1 enforcement and directing the director of auditor  
2 services to conduct an independent investigation  
3 following from the auditor's report at GIC.

4 Do you recall having further  
5 substantive discussion about passing these motions  
6 at council on February 13 and 14?

7 A. I'm assuming it's 13 and  
8 14 because we went late into the night, so --

9 Q. I think that's correct,  
10 yeah.

11 A. Yeah. Sure. I remember  
12 having conversations around these motions and  
13 directions for sure, yeah.

14 Q. Was there a difference of  
15 views or positions between February 6 and  
16 February 13?

17 A. Not substantially, I  
18 don't think, other than there was a desire to, you  
19 know, make as much public as possible. So, you  
20 know, that was, kind of, the backlash to, you  
21 know, some accusations of, you know, trying to  
22 hide things as opposed to we're not here to hide  
23 things. The moment we found out of this  
24 information, we went through a process and came to  
25 a conclusion that much of it needed to be made



1 public. And, you know, speed limit was certainly  
2 part of the conversation and it was, as you  
3 indicated before, a recommendation from a  
4 consultant to go 90 and staff said 80 and that  
5 then resulted in specific direction to actually  
6 put a lower reduced speed limit into effect.

7 I think at the same time we  
8 also indicated that enhanced enforcement through  
9 Hamilton Police at the moment in time and then  
10 directed audit to dig in at least initially to an  
11 internal investigation around these matters.

12 Q. Registrar, can you close  
13 this call out and go to page 131, please. Could  
14 you bring up 130 as well, please.

15 So, jumping forward in time a  
16 little, you'll see at the bottom of page 130, on  
17 February 27 Ms. Wunderlich forwarded an e-mail  
18 that was attaching a follow-up notice from  
19 February 12, so this is going back in time again  
20 to that February 13 and 14 council meeting, and  
21 this was approved item 7.9.

22 Registrar, could you pull out  
23 7.9 at the top of 131.

24 So, this was an item from that  
25 same council meeting:

1 "Policy or protocol to  
2 guarantee the sharing of  
3 consultant reports with  
4 council when there's a  
5 risk to human health and  
6 safety."

7 What do you recall about the  
8 discussions at that council meeting that led to  
9 the adoption of this item?

10 A. I recall it was a  
11 singular effort by Councillor Clark to put this  
12 motion together and I'm not sure there was wild  
13 enthusiasm for this approach, but it was, you  
14 know, for all intents and purposes a bit of a  
15 relevant statement. So, it passed but it came out  
16 of -- it wasn't a preordained or premeditated  
17 motion. It was not something that, you know,  
18 members of council were aware of beforehand and it  
19 was kind of, you know, dropped on the table at the  
20 last moment during the meeting.

21 Q. Okay. Can I infer from  
22 that that there weren't discussions with staff  
23 beforehand about the scope of what this policy  
24 would look like or how it would be implemented  
25 from a resource basis?

1                   A.    Yeah.  I'm pretty sure  
2    that's the case.  And it was certainly a concern,  
3    but not one that would have overridden, you know,  
4    the desire to move something that gave some folks  
5    a comfort level that future risk and human health  
6    and safety issues would be brought to the  
7    attention of council.

8                   Q.    Thank you.  Registrar,  
9    could you bring up RHV890, please.

10                  This is an anonymous letter  
11    that was received to audit services in March of  
12    2019.  Do you recall personally -- pardon me,  
13    receiving a copy of this letter?

14                  A.    I'm assuming it was  
15    addressed to me as well, so I would have seen it.  
16    I was not in the habit of, you know, delving  
17    deeply into anonymous letters, so I would have  
18    likely passed on to the city manager for their  
19    attention and review.

20                  Q.    Because I have to ask,  
21    did you write this letter?

22                  A.    I did not.

23                  Q.    Do you know who did?

24                  A.    I have no idea.

25                  Q.    Okay.  Thank you.  Let me

1 just check my notes.

2 Mr. Mayor, those are all of my  
3 questions. Thank you for your attention today. I  
4 believe that Golder does not have any questions  
5 for the Mayor and that MTO has reserved some time  
6 to ask questions and I would ask that Ms. McIvor  
7 confirm?

8 MS. MCIVOR: Thank you,  
9 Ms. Lawrence. Mr. Commissioner, MTO has no  
10 questions.

11 JUSTICE WILTON-SIEGEL: Okay.  
12 Thank you.

13 MS. MCIVOR: Thank you.

14 MS. HALE: The City also does  
15 not have any questions for Mayor Eisenberger.

16 JUSTICE WILTON-SIEGEL:  
17 Mr. Hale, the City has no questions?

18 MS. HALE: Correct.

19 JUSTICE WILTON-SIEGEL: Okay.  
20 Mr. Eisenberger, then we're done for the day.

21 Thank you very much for attending and giving your  
22 testimony. You're excused.

23 THE WITNESS: Thank you,  
24 Commissioner. Thank you, all, and have a great  
25 day.

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JUSTICE WILTON-SIEGEL:

Everyone else, we'll stand adjourned 9:30 tomorrow morning. Have a good evening.

--- Whereupon the proceedings adjourned at 3:56 p.m. until Thursday, October 13, 2022 at 9:30 a.m.