

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS  
HEARD BEFORE THE HONOURABLE  
HERMAN J. WILTON-SIEGEL  
held via Arbitration Place Virtual  
on Thursday, October 27, 2022 at 9:36 a.m.

VOLUME 77

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1 Arbitration Place Virtual

2 --- Upon resuming on Thursday, October 27, 2022

3 at 9:36 a.m.

4 MS. BRUCKNER: Good morning,  
5 Commissioner. May I proceed?

6 JUSTICE WILTON-SIEGEL: Yes,  
7 please do.

8 MS. BRUCKNER: Thank you.

9 RESUMED: COUNCILLOR TOM JACKSON

10 CONTINUED EXAMINATION BY MS. BRUCKNER:

11 Q. Good morning, Councillor  
12 Jackson. Thank you for joining us again.

13 A. Good morning,  
14 Counsel Bruckner. Pleasure.

15 Q. We're going to be  
16 starting off today a little bit forward in time  
17 from where we ended our last session, in January  
18 of 2019.

19 Registrar, could you please  
20 call up HAM62634 at images 1 and 2.

21 So, Councillor Jackson, these  
22 are the closed session meeting minutes from a  
23 January 23, 2019 council meeting, which indicate  
24 that you were present when Nicole Auty, the City  
25 solicitor, presented report LS19007 and provided a

1 verbal potential litigation update. Do you recall  
2 attending this particular council meeting?

3 A. I do.

4 Q. What do you recall about  
5 it?

6 A. I mostly just recall two  
7 basic things: That we were being apprised of a  
8 possible FOI request from the media, and that  
9 there was a discovery of a possible report.  
10 That's the main two things I recall from it.

11 Q. Okay. And the possible  
12 report was the Tradewind report?

13 A. I believe that's what it  
14 ended up being, correct. Yes.

15 Q. Prior to going into this  
16 closed session, did you have any knowledge about  
17 what would be discussed?

18 A. No, not at all.

19 Q. Just stepping back for a  
20 moment, in your experience is it uncommon for an  
21 issue to go directly to council rather than to a  
22 GIC or a standing committee of some kind?

23 A. You know, it's not  
24 unprecedented, Counsel Bruckner. It has happened  
25 from time to time. Primarily it would be with the

1 senior leadership team, with the city manager and  
2 general managers and city solicitor in concert  
3 with the city manager to determine if something  
4 quickly should get to council. The typical normal  
5 protocol route would be through committee up  
6 through council, but it's not unprecedented that  
7 would happen.

8 Q. Registrar, could you take  
9 this down and call up HAM61921.

10 So, this is report LS19007  
11 that was presented at the council meeting. Do you  
12 have a recollection of Ms. Auty presenting this  
13 report to council?

14 A. I don't, but, again, I  
15 know we were in camera for some update regarding  
16 the Red Hill Valley Parkway, but I don't remember  
17 this actual report, Counsel Bruckner.

18 Q. Okay. Do you recall if  
19 you would have received the report in advance of  
20 the meeting or during the closed session meeting?

21 A. This one probably we  
22 received on the spot when we went in camera.  
23 Typically staff like to give council at least a  
24 day or two's notice in terms of reports that will  
25 be discussed.

1 Q. Okay. Registrar, could  
2 you please call out the paragraphs under the  
3 executive summary, which is the bottom of the  
4 first image and over on to the top of the second  
5 page.

6 So, I'm just calling out the  
7 executive summary of this report to make it a  
8 little bigger. So, you'll see the executive  
9 summary says:

10 "The purpose of report LS19007  
11 is to advise council of the  
12 potential of litigations  
13 arising from the release of  
14 City records relating to  
15 friction testing on the Red  
16 Hill Valley Expressway. As a  
17 result of a freedom of  
18 information request, it is  
19 unknown at the writing of this  
20 report whether that  
21 information will be released  
22 to the requester in advance of  
23 city staff bringing a  
24 scheduled report to the public  
25 works committee on February 4

1 with an update on the status  
2 of the RHVE and an assessment  
3 of potential liability  
4 associated with the release of  
5 the records regarding friction  
6 testing."

7 And it goes on to say:

8 "It is important that council  
9 be aware of the potential  
10 litigation resulting from this  
11 release and the city staff are  
12 bringing a full report to  
13 committee and council in early  
14 February to give committee and  
15 council a complete status  
16 update on this asset."

17 Prior to this January 23  
18 council meeting, were you aware of the existence  
19 of an FOI request related to friction testing on  
20 the Red Hill Valley Parkway?

21 A. I was not, Counsel  
22 Bruckner.

23 Q. And so, there are  
24 references in this report to potential liability  
25 and potential litigation that might result from



1 the release of certain records in response to that  
2 FOI request. What were the councillors told at  
3 this meeting was potential litigation that might  
4 result from the release of friction testing  
5 results on the Red Hill?

6 A. I honestly cannot recall  
7 what we were told about that.

8 Q. Okay. Did you have any  
9 understanding about what the potential liability  
10 risk was?

11 A. Well, as I stated a few  
12 minutes ago, Counsel Bruckner, I was aware that  
13 primarily there was an FOI request impacting the  
14 Red Hill Valley Parkway, and I seem to recall as  
15 well there was the mention of the some discovery  
16 of a report.

17 Q. Okay. Prior to attending  
18 this closed session, were you aware that city  
19 staff planned at the January 23 to present a  
20 complete status update on the asset, being the Red  
21 Hill, on February 4 of that public works  
22 committee?

23 A. I don't believe I was,  
24 no.

25 Q. Registrar, could you take

1 this down and take us to images 2 and 3 of this  
2 document.

3 So, you'll see under  
4 Historical Background, which starts on the first  
5 image and goes over on to the next image that we  
6 have up on the screen, the report includes a  
7 historical background related to the Red Hill  
8 Valley Parkway construction. It details a couple  
9 paragraphs in that in June 2018, Mr. McGuire was  
10 appointed director of engineering services and  
11 says:

12 "As part of his orientation  
13 into that role, he reviewed  
14 the status of the work being  
15 proposed on the RHVE and in  
16 late September 28 became aware  
17 of a draft report, the  
18 Tradewind report, that  
19 included friction testing done  
20 in 2013."

21 Pausing there, were you  
22 provided with any additional information at this  
23 meeting about how Mr. McGuire became aware of the  
24 Tradewind report?

25 A. I was not.

1 Q. What was your general  
2 understanding of how he became aware of the  
3 Tradewind report?

4 A. At this point in time at  
5 this meeting, I truly wasn't aware of how he had  
6 become aware himself.

7 Q. Okay. Did you later  
8 develop a sense of how he became aware of the  
9 report?

10 A. Yes, at the meeting that  
11 the interim city manager invited me to in the city  
12 manager's boardroom.

13 Q. Okay. I think we may  
14 come to that meeting, but let me know if we don't.

15 Registrar, can you take us  
16 over to images 3 and 4 of this document.

17 So, you'll see that there's a  
18 section entitled Analysis and Rationale for  
19 Recommendation.

20 Registrar, can you call out  
21 the first paragraph of that section.

22 So, the first paragraph of  
23 that section says:

24 "The 2013 Tradewind report  
25 indicates that the standard in

1 the UK for skid resistance was  
2 0.48, a 48 friction number.  
3 The Red Hill Valley Parkway  
4 had friction numbers in the  
5 range of 30 to 40, which was  
6 below or well below the  
7 relevant UK standard for  
8 comparable highways. In  
9 contrast, the LINC had  
10 friction values in the range  
11 of 50 to 60, all comfortably  
12 above the UK standard. The UK  
13 standard used in the Tradewind  
14 report is generally not  
15 recognized in Canada and there  
16 is no comparable friction  
17 standard for pavement in  
18 Canada."

19 Aside from this information,  
20 were you provided with any information about the  
21 Tradewind report or its findings at this meeting?

22 A. To my recollection, I was  
23 not.

24 Q. Were you given a copy of  
25 the Tradewind report or the 2014 Golder report to

1 which it was an appendix at this meeting?

2 A. No. To my recollection,  
3 I was not.

4 Q. Okay. Given Mr. Moore's  
5 prior statements to the public works committee,  
6 which we talked about yesterday, in December of  
7 2015 about friction testing on the Red Hill Valley  
8 Parkway, what was your reaction to the information  
9 of friction testing numbers on the Red Hill Valley  
10 Parkway in this report?

11 A. I don't remember reacting  
12 at this time to this information. I was mostly  
13 just focused on the FOI and the fact that there  
14 had been a discovery of this report. I had much  
15 more to say at a subsequent meeting that was held  
16 a few days later in the city manager's boardroom.

17 Q. Okay. So, this  
18 particular report is focused primarily on  
19 litigation and liability issues for the City.  
20 When you reviewed this information, did you have  
21 any concerns or questions about the friction  
22 levels of safety of the Red Hill Valley Parkway?

23 A. I don't believe I did at  
24 this time during this report and this meeting.

25 Q. Okay. Did staff raise

1 concerns or address questions from other  
2 councillors about the safety of the Red Hill?

3 A. I honestly do not recall  
4 if they did or if other colleagues had asked about  
5 that.

6 Q. Okay. Do you recall if  
7 staff indicated at this meeting that the Red Hill  
8 was safe?

9 A. I don't recall them even  
10 mentioning that either way, Counsel Bruckner.

11 Q. Okay. Registrar, could  
12 you take this down and call out the second  
13 paragraph, the one right below this one.

14 So, you'll see some of this is  
15 redacted for solicitor-client privilege, but the  
16 second paragraph of this section starts:

17 "The concern is that the  
18 Tradewind report was not  
19 shared with other city staff  
20 at the time. As a result,  
21 subsequent reports and  
22 analysis of the condition of  
23 the RHVE did not reference  
24 this report."

25 Were you provided with any

1 information at this meeting as to who had the  
2 report and had not shared it with other members of  
3 city staff?

4 A. No, I don't recall having  
5 that information.

6 Q. Okay. What was your  
7 reaction on hearing that the Tradewind report had  
8 not been shared with other city staff and had not  
9 been referenced in subsequent safety reports and  
10 analyses of the Red Hill Valley Parkway?

11 A. I don't remember  
12 commenting at this time or at this meeting, but I  
13 did shortly thereafter in the city manager's  
14 boardroom.

15 Q. Okay. Registrar --  
16 actually, no, you can leave this up because you  
17 have already called it out for me.

18 So, the next paragraph down  
19 says:

20 "In addition, the report and  
21 its content on friction  
22 testing have not been  
23 consistently addressed in the  
24 media and now that staff were  
25 aware of the report and have

1 identified it as a responsive  
2 record to the FOI request, its  
3 release my also have some  
4 reputational impact on the  
5 City and wide media coverage."

6 In this section of the  
7 presentation on the report, did Ms. Auty mention  
8 Mr. Moore's prior statements to the public works  
9 committee in connection with discussions about the  
10 Tradewind report and friction testing on the Red  
11 Hill Valley Parkway not having been consistently  
12 addressed?

13 A. Counsel Bruckner, I do  
14 not recall whether she did or did not.

15 Q. Okay. Do you recall how  
16 you and other councillors reacted to the  
17 information presented in this January 23 report or  
18 at the meeting?

19 A. I will never speak for  
20 other council colleagues, but for myself it was a  
21 matter of expressing my opinions at a subsequent  
22 meeting in the city manager's boardroom.

23 Q. Okay. Do you recall what  
24 the tone of the actual meeting on January 23 was?

25 A. I do not recall what the



1 tone was, Counsel Bruckner.

2 Q. Okay. So, in his  
3 testimony Mayor Eisenberger described council's  
4 reaction as frustration and dismay. Does that  
5 help to refresh your memory at all?

6 A. Not for this meeting, but  
7 at the further subsequent meeting in February, I  
8 believe it was February 6 at the GIC, which was an  
9 elongated meeting in camera, I remember a lot of  
10 opinions and comments, including myself, being  
11 expressed in dismay and unhappiness.

12 Q. Okay.

13 A. But not at this meeting.  
14 I don't recall doing it at this meeting.

15 Q. Okay. Registrar, you can  
16 take this down and if you can take us to image 4  
17 of this document, please. It's already up. And  
18 if you could call out the section under Next  
19 Steps.

20 So, you'll see under Next  
21 Steps there's a reference to an upcoming  
22 presentation at the public works committee on  
23 February 4 and a further in-camera report. And we  
24 know that ultimately this ends up going to the  
25 February 6 GIC meeting instead of the public works

1 committee.

2 Do you know why city staff  
3 ended up changing the reporting plan originally  
4 set out in this report?

5 A. I could express that now  
6 or I could express that when you get to the  
7 subsequent meeting in the city manager's  
8 boardroom, Counsel Bruckner.

9 Q. Okay. And when you  
10 reference that subsequent meeting, it's the same  
11 meeting where the prior comments that you had made  
12 that you have mentioned so far came up as well?

13 A. Absolutely.

14 Q. Okay. I think I'm going  
15 to come to it, so we can do it as we hit it  
16 chronologically.

17 And at the January 23 meeting,  
18 did staff and council discuss the best standing  
19 committee or the best procedural path forward for  
20 this report?

21 A. Not to my recollection.  
22 Whatever was shown here in Next Steps pretty well  
23 stood at that time.

24 Q. From your perspective,  
25 was there urgency in having staff report back on

1 this issue?

2 A. Absolutely, there would  
3 have been.

4 Q. Okay. Can you expand on  
5 that for me a little bit?

6 A. That given what they had  
7 shared about the FOI request, about the mentioning  
8 of a discovery of a report, that time was of the  
9 essence, that continued presentations, reports, be  
10 brought as soon as possible. That was the essence  
11 of how I felt the atmosphere, if you will, of  
12 hearing this in camera on January 23, that time  
13 was of the essence. I'll put it that way.

14 Q. Aside from this report,  
15 were you provided with any other documents during  
16 the council meeting?

17 A. Not to my knowledge,  
18 counsel.

19 Q. Okay. Did you keep a  
20 copy of this report or was it collected by the  
21 clerks after the meeting?

22 A. I honestly cannot recall  
23 whether it was collected or whether we were able  
24 to keep it, but obviously if we kept it,  
25 hypothetically it would be under confidential

1 reasons and not to be shared publicly, but I  
2 honestly cannot recall. Sometimes clerk staff, at  
3 the request of legal staff, do collect reports  
4 such as this, but I do not recall one way or the  
5 other at this time.

6 Q. Okay. When you say  
7 sometimes they collect reports such as this, do  
8 you mean reports that are presented in in-camera  
9 meetings?

10 A. In-camera meetings, yes.

11 Q. Okay. Registrar, you can  
12 take this down and if you could take us into  
13 overview document 9A, image 357 and 358 at  
14 paragraph 854.

15 So, Ms. Auty, Ron Sabo, who is  
16 also an internal City lawyer, and David Boghosian,  
17 who is the City's external legal counsel, had a  
18 call on January 30, 2019. You're not involved in  
19 this call, but Mr. Boghosian prepared notes of  
20 this call and I interpret some of these notes as a  
21 reflection of what or some of what was discussed  
22 at the January 23 council meeting.

23 So, you'll see the first line  
24 there is:

25 "Council - quite concerned

1 about the situation."

2 Do you recall what, if any,  
3 specific concerns were expressed regarding the  
4 Tradewind report at that council meeting?

5 A. These were Solicitor  
6 Boghosian's notes and I'm not going to comment on  
7 them, Counsel Bruckner.

8 Q. Okay. And you can't  
9 recall any concerns being expressed at the  
10 January 23 meeting that you attended?

11 A. Not to my recollection.

12 Q. Okay. So the next line  
13 is:

14 "Haven't given the Tradewind  
15 report."

16 And I know you indicated that  
17 you didn't think you received the Tradewind report  
18 at that January 23 meeting. Do you recall when  
19 you did first receive a copy of the Tradewind  
20 report?

21 A. I don't recall, other  
22 than I would imagine that it was all part and  
23 parcel of the February 6 GIC, what I would call  
24 more fulsome elongated meeting. I would imagine  
25 it was given at that time, but, again, I'm not

1 sure. But up to then, no, I did not recall  
2 receiving it.

3 Q. Okay. So, the next line  
4 says:

5 "Council wants to know."

6 And it lists two things:

7 "1. If Brian Malone, CIMA,  
8 had the Tradewind report."

9 And so, stopping there at that  
10 first question, do you recall if at the January 23  
11 council meeting councillors asked whether Brian  
12 Malone or CIMA had a copy of the Tradewind report?

13 A. I do not recall and,  
14 again, I'm not going to comment on Solicitor  
15 Boghosian's notes.

16 Q. Okay. But you don't  
17 recall if this discussion came up at the  
18 January 23 meeting?

19 A. I do not recall,  
20 Counsel Bruckner.

21 Q. If not references to CIMA  
22 or Mr. Malone specifically, do you recall  
23 questions at that January 23 meeting about whether  
24 consultants who were involved in Red Hill Valley  
25 Parkway safety reviews were given a copy of the

1 Tradewind report?

2 A. I do not recall that  
3 either.

4 Q. Okay. So, the next note  
5 under "council wants to know" is:

6 "Is there anything else CIMA  
7 thinks needs to be done to  
8 address safety (slipperiness)  
9 as interim measures pending  
10 repaving?"

11 Do you recall questions being  
12 raised at that January 23 meeting about CIMA  
13 potentially considering if there were interim  
14 measures that needed to be taken for safety on the  
15 Red Hill Valley Parkway pending the repaving  
16 project?

17 A. I do not recall if that  
18 was mentioned or requested.

19 Q. Okay. Do you recall if  
20 there was any discussion about whether steps  
21 needed to be taken or considered in terms of  
22 potential interim measures on the Red Hill Valley  
23 Parkway pending the repaving?

24 A. I do not recall that,  
25 Counsel Bruckner.

1 Q. Okay. Registrar, you can  
2 take this down and if you can take us into  
3 overview document 9A, image 349 to 350 at  
4 paragraph 826. And, Registrar, if you don't mind  
5 just pulling out, maybe, the first half of 826 on  
6 image 349 for us, make it a little bigger. Thank  
7 you.

8 So, on January 23 -- sorry, on  
9 January 28, 2019, the mayor and Mr. Zegarac  
10 exchange e-mails about a request for a special  
11 meeting and Mr. Zegarac details a meeting he had a  
12 with you, Councillor Merulla and Councillor  
13 Collins, and he says:

14 "As a starting point,  
15 Mr. Mayor, at the meeting on  
16 Friday with Councillors  
17 Merulla, Collins and Jackson,  
18 the councillors suggest that  
19 the three reports that staff  
20 were expecting to bring to the  
21 February 4 public works  
22 standing committee be pulled  
23 to be brought to a special GIC  
24 for potential in-camera  
25 discussion."



1                   And he goes on, but just  
2     pausing there for a moment, is this the meeting in  
3     the boardroom that you were referencing earlier?

4                   A.     That's exactly the  
5     meeting I was referencing, Counsel Bruckner.

6                   Q.     Okay.  What do you recall  
7     about this meeting?

8                   A.     I remember I was invited  
9     to this meeting with my two colleagues that are  
10    stated there and the interim city manager, Mike  
11    Zegarac, and Mr. Zegarac basically had said about  
12    the succeeding director of engineering, Gord  
13    McGuire.  I believe Director Moore had, if memory  
14    serves me correctly, had retired from his  
15    long-time duty as director of engineering sometime  
16    in 2018, if memory serves me right.  I believe he  
17    was subsequently hired in some capacity to help  
18    with the LRT project.

19                   But putting that aside,  
20    Director McGuire took over sometime in 2018 and I  
21    remember in this boardroom the acting city manager  
22    telling me about -- and, now, this is my  
23    interpretation, Counsel Bruckner.  I'm not putting  
24    words in anyone's mouth, so I want to be very  
25    clear about that.  But when I was told about

1 Director Moore, Director McGuire, apologies, and  
2 what he had discovered, I immediately looked and I  
3 thought, darn it all, here we are, the director  
4 who has taken over from Director Moore -- again,  
5 now, my terminology, my interpretation -- stumbles  
6 across this mystery report and I immediately  
7 flashed back to the meeting at public works about  
8 three, four years ago when, in public session,  
9 Director Moore had raised my comfort level with  
10 assurances. Again, I'm not speaking for him but I  
11 think you have it all documented, the assurances  
12 he had provided about the roadway, about how it  
13 was performing exceptionally well, meeting MTO  
14 standards, nothing wrong with it, and I just --  
15 when the acting city manager brought this to my  
16 attention at this meeting in the city manager's  
17 boardroom, I just remember having a feeling that I  
18 was just stunned, I was unhappy, I was very upset.  
19 I found it troubling, again, tying in and linking  
20 in with just a few years back the raising of my  
21 comfort level, I would suggest raising of many  
22 people's comfort level not only within the  
23 corporation but across the community, that the  
24 road was safe and I just honestly felt that now  
25 the optics of this was just terrible.

1 Q. Okay. So, stepping back  
2 a little bit on that, you said that you were  
3 invited to attend this meeting. Do you recall who  
4 actually arranged the meeting? Was this something  
5 that was done by one of your colleagues on council  
6 or was it arranged by Mr. Zegarac?

7 A. I believe the acting city  
8 manager had arranged this meeting. I'm not  
9 speaking for him, but I remember he had invited me  
10 to this meeting.

11 Q. Okay. Aside from  
12 yourself, Councillor Merulla, Councillor Collins  
13 and Mr. Zegarac, was anyone else present at the  
14 meeting?

15 A. Not that I recall. I  
16 just remember sitting at one end of the boardroom  
17 table and just feeling dismayed and just, as I  
18 suggested, just feeling stunned and very unhappy  
19 to learn this and it flew in the face  
20 unfortunately of the assurances we had received  
21 and I just thought the optics are not good.

22 And so, if I might,  
23 Counsel Bruckner, just further, I believe that's  
24 where myself and my two colleagues strongly  
25 recommended that instead of just at the public

1 works meeting, which would have probably about  
2 half of council on it, give or take, that this was  
3 a matter that should be before at least a full  
4 standing committee body, which general issues  
5 committee is; hence, my suggestion and  
6 recommendation it be brought to the GIC, which was  
7 only a couple of days after the scheduled public  
8 works meeting.

9 Q. Okay. So, that  
10 recommendation was based, then, on the idea that  
11 you wanted as many councillors as possible to hear  
12 about this report?

13 A. Absolutely. At least all  
14 members of council are voting members of general  
15 issues committee, whereas all members of council  
16 are not voting members of public works.

17 Q. Okay. And was that  
18 recommendation also based on a feeling of urgency  
19 to get the report before as many councillors as  
20 possible?

21 A. Absolutely.

22 Q. And where was that sense  
23 of urgency coming from?

24 A. Well, as I just stated,  
25 the optics of now this -- again, my language --

1 this mystery report being stumbled upon,  
2 discovered, by the new director in light of  
3 assurances of the past, I just thought it was --  
4 the optics of this was not good for the community,  
5 for council, for the corporation.

6 Q. So, you've said optics a  
7 couple times. At this point in time, did you have  
8 any concerns about the safety of the roadway?

9 A. Well, again, I relied on  
10 what I had heard at that meeting, at public works  
11 meeting in December a few years earlier, that the  
12 road overall was safe and that instead it could  
13 very well, and again with all sympathies and  
14 thoughts and prayers to the grieving families,  
15 that, you know, instead it could very well have  
16 been word on the street was that possibly driver  
17 behaviour and not adjusting to road conditions,  
18 whatever the case might be, was more of a factor  
19 than the actual condition of the road. Again,  
20 that's going back, though, to the assurances I had  
21 at the public meeting of public works a few years  
22 earlier.

23 Q. Do you recall what, if  
24 anything, you were told about the substance of the  
25 Tradewind report at this particular meeting?

1                   A.     Whatever call,  
2     Counsel Bruckner, was basically that, again, I'm  
3     using my opinion and my language, so nobody is  
4     assuming or interpreting it to be that I'm putting  
5     words in any staff member's mouth, basically in  
6     that city manager's boardroom I remember that I  
7     got the impression that this Tradewind report was  
8     suggesting you may, you now may have an issue with  
9     the overall condition of the road.

10                  Q.     Okay. Do you recall if  
11     at this meeting Mr. Zegarac made any comments or  
12     addressed the safety of the roadway?

13                  A.     I don't recall him doing  
14     that, no.

15                  Q.     So, there are a couple of  
16     points in this note or e-mail from Mr. Zegarac to  
17     the mayor in which he lays out some of the things  
18     that were discussed at the meeting, and you'll see  
19     the first one there is employee considerations,  
20     council relationship with director, public media.

21                             Do you remember what  
22     discussions occurred at this meeting about that  
23     particular point?

24                  A.     No, I don't recall  
25     directly what was discussed regarding that. I

1 just remember suggesting instead getting it to GIC  
2 instead of public works, getting all the reports  
3 there that needed to be there and ensuring whoever  
4 needed to be there should be there for a complete  
5 fulsome discussion and absorption of all the  
6 information and whatever debate ensued.

7 Q. So, then point 2 there is  
8 technical/engineering safety and there are a  
9 couple points under that. One of them is action  
10 plan to assess technical review with third party.  
11 The next one down is further engage external legal  
12 to engage third party for overall assessment.

13 Do you recall if at this  
14 meeting there was a discussion about retaining  
15 another consultant or a third party to review the  
16 Tradewind report or the safety of the Red Hill?

17 A. I was just in a state of  
18 shock, Counsel Bruckner, and I just remember just  
19 thinking -- I just thought to myself, darn it,  
20 people in the community had talked about, you  
21 know, the road not being safe and the FOI request,  
22 and so I was just in a state of shock and dismay  
23 and unhappiness and whatever further ensued at the  
24 city manager's meeting. I just remember strongly  
25 suggesting let's get everything to that GIC as

1 soon as possible.

2 Q. Okay. Registrar, can you  
3 take this down and just call out the continuation  
4 of this e-mail on to the next page.

5 So, there's just one more  
6 point that I wanted to take you to to see if it  
7 helps to refresh your memory at all. The next  
8 point here, which is under Communications Plan,  
9 is:

10 "Employee - status review,  
11 caution on making  
12 allegations."

13 Do you recall which employee  
14 that was a reference to?

15 A. No, and I don't want to  
16 guess, Counsel Bruckner.

17 Q. And do you recall any  
18 discussions around that point at the meeting?

19 A. No. Everything would be  
20 discussed hopefully at the February 6 meeting.

21 Q. Okay. Registrar, you can  
22 take this down.

23 So, there is another set of  
24 notes about this meeting, which I will take you to  
25 quickly just to see if that helps refresh your



1 memory about it at all as well.

2 Registrar, can you take us to  
3 overview document 9A, image 375, paragraph 869,  
4 please.

5 And so, again, these are not  
6 your notes, but there's another set of notes that  
7 may cover off portions of that meeting that you  
8 had with Mr. Zegarac and Councillor Collins and  
9 Councillor Merulla. I'm just going to give you a  
10 chance to review it and you can let me know if  
11 that helps at all to refresh your memory about the  
12 meeting.

13 A. Now, these were the  
14 interim city manager's notes. Correct?

15 Q. Mm-hmm.

16 A. Okay. Nothing there that  
17 triggers anything further, Counsel Bruckner, other  
18 than getting all the reports and discussions to  
19 February 6 as soon as possible.

20 Q. Okay. That's fine. Is  
21 there anything else that you haven't seen covered  
22 off in this set of notes or the e-mail summary  
23 that we just looked at about this meeting that you  
24 would want to add or that you recall that we  
25 haven't discussed already?

1                   A.     Counsel Bruckner, I was  
2     just, again, in a state of dismay and shock. I  
3     cannot tell you how dramatically it impacted me,  
4     again, based on several years previously and over  
5     those few years my sharing with anyone that wanted  
6     to talk about the Red Hill Valley Parkway that we  
7     had full assurances that it was meeting standards,  
8     performing well, nothing wrong with the road. If  
9     anything, even staff, I think if I recall,  
10    commenting that we need to help change driver  
11    behaviour possibly.

12                   Q.     Okay. Registrar, you can  
13    take this down and if you could take us into  
14    overview document 9A, image 350, paragraph 826 to  
15    827.

16                   So, this is just the  
17    continuation of that exchange between Mr. Zegarac  
18    and the mayor. And so, Mr. Zegarac says to the  
19    mayor -- sorry, no. The next one over, so we're  
20    at 827 and 828 now.

21                   So, I just want to wrap up  
22    this. After this exchange about your meeting  
23    between the mayor and Mr. Zegarac, Mr. Zegarac  
24    says to the mayor:

25                   "Mr. Mayor, at the Friday

1 meeting, councillors expressed  
2 concern of the staff reports  
3 being public for days before  
4 staff had the opportunity to  
5 speak to them with committee.  
6 Staff will be meeting this  
7 afternoon as to what can be in  
8 camera versus public."

9 Do you recall what concerns,  
10 if any, were raised at the meeting that you had  
11 with Mr. Zegarac about these reports being public  
12 before staff could speak to them?

13 A. I honestly do not  
14 remember the details of what we were expressing  
15 concern over, Counsel Bruckner.

16 Q. Okay. Registrar, you can  
17 take this down and if you could take us into  
18 HAM62635 at image 2.

19 THE REGISTRAR: Sorry,  
20 counsel. Did you say 62305?

21 MS. BRUCKNER: Sorry, HAM62635  
22 at images 1 and 2.

23 THE REGISTRAR: Okay. Thank  
24 you.

25 BY MS. BRUCKNER:

1 Q. And so, these are the  
2 minutes from the closed session of the GIC on  
3 February 6, 2019 and you'll see that it indicates  
4 that you attended this meeting. What do you  
5 recall about the discussions at the February 6,  
6 2019 GIC meeting?

7 A. There was -- I keep  
8 using, repeating, the word "fulsome." I remember  
9 we were there for hours. I can't remember how  
10 long, but I remember it was an elongated meeting.  
11 And I just remembered I wasn't alone, but a number  
12 of my colleagues, not speaking for them ever, but  
13 I remember the sentiment in the room was  
14 expressing how unhappy we were, exactly why this  
15 mystery report wasn't forthcoming sooner, and I  
16 remember staff of the various -- well, public  
17 works of course staff that would have been there,  
18 the acting city manager, I seem to recall  
19 consultants would have been there as well.

20 And then afterwards, after all  
21 the Q&As from my colleagues and opinions expressed  
22 about then what next steps we were going to take,  
23 which also I remember I believe Councillor Merulla  
24 led the charge, but I fully supported the fact  
25 that the public needed to know that with some form

1 of apology that the city council was not aware of  
2 this mystery report and that the apology should be  
3 forthcoming to both the community and to council.  
4 That was the essence of what I remember from that  
5 very long meeting.

6 Q. With respect to that  
7 apology, do you recall if city staff were directed  
8 by council to apologize?

9 A. I believe Councillor  
10 Merulla, if memory serves me correctly, was the  
11 one when suggested an apology should be  
12 forthcoming to both the city council but more  
13 importantly to the community at large.

14 Q. Okay.

15 A. And I believe that the  
16 acting city manager did act upon that eventually  
17 publicly.

18 Q. Okay. Do you recall what  
19 the tone of this GIC meeting was as compared to  
20 the January 23 council meeting?

21 A. So, this one, I remember  
22 lots of tension in the room, lots of questions,  
23 concerns, how-could-this-have-happened-type of  
24 sentiments, pretty well everything with the  
25 discovery of the missing report. I think

1 everything coalesced and came together during this  
2 very long meeting. That's what I recall.

3 Q. So, you said that there  
4 was a lot of concerns in the room. Do you recall  
5 if those concerns were directed primarily at the  
6 optics of the non-disclosure and the inconsistent  
7 statements or if they were directed towards the  
8 safety of the roadway or all of the above?

9 A. I seem to recall more --  
10 I'll speak for myself, but I don't think I was  
11 alone, Counsel Bruckner. It was more of the  
12 optics and how this obviously was at odds with and  
13 contrary to what we had been assured about  
14 previously.

15 Q. Okay. Registrar, could  
16 you please take us into HAM61920 at images 1  
17 and 2.

18 So, these are slides from a  
19 slide show presentation that staff gave during the  
20 closed session. Do you recall the presentation?

21 A. I don't recall all those  
22 presentations, but I do recall staff made  
23 presentations and hence that was the reason for  
24 this general issues committee meeting.

25 Q. Okay. Registrar, could

1 you take us into image 4 of this document.

2 So, the slides from  
3 Mr. McKinnon's section of the presentation include  
4 a reconstructed timeline by theme.

5 And then, Registrar, could you  
6 take us into images 10 and 11 of this document.

7 So, that's a reconstructed  
8 timeline with a number of entries in it, kind of,  
9 over time. Under the Council Reports and  
10 Directions section in the timeline there's a list  
11 of various reports presented to council on the Red  
12 Hill Valley Parkway.

13 Given the information that you  
14 had received about the Tradewind report at this  
15 point, did you think these prior reports,  
16 particularly those that you had relied on with  
17 respect to safety concerns from your constituents  
18 about slipperiness and darkness on the Red Hill  
19 Valley Parkway, could have been improved had the  
20 staff or consultants preparing them been aware of  
21 the Tradewind report?

22 A. Could you just ask that  
23 question one more time, please, Counsel Bruckner?

24 Q. Yes. I can rephrase it a  
25 bit as well.

1                   Given the information that you  
2    had received about the Tradewind report at this  
3    point --

4                   A.    Correct.

5                   Q.    -- did you think that the  
6    prior safety reports that you had received and  
7    relied upon with respect to the Red Hill,  
8    particularly when it came to safety concerns about  
9    slipperiness and darkness that you had been  
10   hearing about from your own constituents, could  
11   have been improved had the staff or consultants  
12   working on those reports been aware of the  
13   Tradewind report?

14                  A.    Well, at least it would  
15   have been part and parcel of a further discussion  
16   and it would have been an additional discussion  
17   item and possibly we could have, staff could have,  
18   still at the end of the day provided the  
19   assurances in spite of this report being known at  
20   that time that this was just one consultant's  
21   report from a country, you know, offshore,  
22   possibly with different climates, whatever the  
23   case might be. At least it would have been part  
24   and parcel. There would not have been the optics  
25   of, you know, this report now suddenly discovered



1 several years later.

2 My wish had been in  
3 hindsight -- can I make a retrospective comment,  
4 Counsel Bruckner?

5 Q. Of course.

6 A. My wish in hindsight  
7 was -- and I'm not putting words in Director  
8 Moore's mouth whatsoever. The wish in hindsight  
9 was at the time he gave the assurances at the  
10 public works committee several years earlier, I  
11 think it was in 2015, that he had also referenced  
12 and acknowledged that he had a Tradewind report  
13 that showed we may, may, have issues with the  
14 friction of the roadway.

15 However, members of public  
16 works committee and those in the gallery and  
17 viewing the meeting in the chambers, in the  
18 council chambers, however, even in spite of that  
19 report, I'm your professional director of  
20 engineering, I oversaw the building of the road, I  
21 still stand by the fact that the road is safe and  
22 is meeting standards even in spite of the  
23 Tradewind report. Counsel Bruckner, I just wish  
24 in retrospect that had been shared at that time  
25 and, in my humble opinion, the optics of where we

1 are today with this inquiry could have been  
2 avoided.

3 Q. Okay. Registrar, could  
4 you take us into image 8 of this document.

5 So, this slide show includes a  
6 slide titled Tradewind Scientific Friction Testing  
7 Summary and I think you had indicated earlier  
8 today that at this point in time, at the GIC  
9 meeting, you think that you had a copy of the  
10 Tradewind report?

11 A. I honestly don't recall.  
12 It could have been given out at that time during  
13 the meeting. I honestly don't recall. I was  
14 relying on the discussion that we had that was  
15 ensuing in camera there on February 6.

16 Q. Okay. On receipt of the  
17 Tradewind report, would you have reviewed it in  
18 detail or relied on staff to summarize it for you?

19 A. Pretty well relied on  
20 staff. I think I've consistently said that from  
21 yesterday's hearing. Questions and answers as  
22 well, Counsel Bruckner.

23 Q. So, this is the summary  
24 of the Tradewind Scientific friction testing  
25 summary that was provided in the PowerPoint

1 presentation. Do you recall if any additional  
2 information was provided about Tradewind's  
3 conclusions or findings at the meeting?

4 A. I don't recall if there  
5 was anything more provided or not.

6 Q. Okay. And, Registrar,  
7 could you please pull up beside this GOL1113 at  
8 image 13.

9 So, Councillor Jackson, just  
10 for your reference, this is the final page of the  
11 text or analysis section of the Tradewind report  
12 under Conclusions and Recommendations, and you'll  
13 see that the second paragraph down there says:

14 "However, the overall friction  
15 averages as measured by the  
16 grip tester on the designated  
17 lanes and sections of the Red  
18 Hill Valley Parkway were below  
19 or well below the same UK  
20 investigatory level 2. The  
21 overall low levels and the  
22 variability of friction values  
23 along the lengths of the  
24 parkway indicate the need for  
25 a further examination of the

1 pavement surface, composition  
2 and wear performance. It  
3 should be noted that in  
4 addition to the overall low  
5 average grip number levels on  
6 this facility, there are some  
7 localized sections with quite  
8 low friction values, reaching  
9 27 to 30 in several areas. We  
10 recommend that a more detailed  
11 investigation be conducted and  
12 possible remedial action be  
13 considered to enhance the  
14 surface texture and friction  
15 characteristics of the Red  
16 Hill Valley Parkway based on  
17 the friction measurements  
18 recorded in the current  
19 survey."

20 Do you recall if you were  
21 advised that Tradewind had concluded that overall  
22 low levels and the variability of friction values  
23 along the length of parkway indicated a need for  
24 further examination of the pavement surface,  
25 composition and wear?

1                   A.    I don't recall that in  
2    exact words and detail, Counsel Bruckner.  
3    However, if you recall a few minutes ago I  
4    mentioned that how when Director McGuire stumbled  
5    on the missing report, how it showed that we may,  
6    we may have issues with the friction and overall  
7    condition and slipperiness, potential  
8    slipperiness, of the road.  So, although I don't  
9    recall this concluding letter from the Tradewind  
10   president, it dovetails in with my recollection  
11   that we may have issues, that Tradewind felt we  
12   may have issues with the road.

13                   Q.    Do you recall if at the  
14   GIC meeting you were advised that, in addition to  
15   overall low grip tester numbers for the Red Hill  
16   Valley Parkway, there were some localized  
17   sections that had quite low values?

18                   A.    I don't recall that in  
19   that kind of specific targeted detail.

20                   Q.    Did you have safety  
21   concerns about the Red Hill in response to the  
22   Tradewind report or the information that you  
23   received about it at the GIC meeting?

24                   A.    Well, it obviously did  
25   not reconcile with the information we had received

1 at the public works meeting a few years earlier  
2 and mostly the optics from my standpoint. Even if  
3 staff stood behind the fact that even with this  
4 Tradewind report, it was one report, and if in  
5 their minds it was inconclusive and so, hence, not  
6 just to rely on it. For me, the optics were  
7 number one.

8                                 Number two, in the community  
9 amongst some it led to reopening the whole  
10 question of whether or not the road was actually  
11 safe or not.

12                                 Q. So, I think you said if  
13 in their minds it was inconclusive, in reference  
14 to city staff. Do you recall if at this meeting  
15 or other meetings city staff communicated to you  
16 at the Tradewind report was inconclusive?

17                                 A. No, I do not.

18                                 Q. Do you recall if they  
19 made any representations about the safety of the  
20 Red Hill Valley Parkway?

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

22                                 Q. Okay. Registrar, you can  
23 take the Tradewind report down and take us to  
24 image 17 of the PowerPoint presentation.

25                                 So, Mr. McKinnon's

1 presentation also included a timeline which had  
2 recent staff actions in it, and you'll see that  
3 under August/September 2018 it says:

4 "Mr. McGuire becomes aware of  
5 an e-mail leading to the 2013  
6 RHVP evaluation report from  
7 Golders with attached 2013  
8 Tradewind report on friction  
9 testing."

10 And then indicates that  
11 Mr. McGuire notified Mr. McKinnon and goes on from  
12 there to detail some of the staff actions  
13 following the discovery of the report.

14 And do you recall if there was  
15 any further discussion at the GIC meeting about  
16 how or when Mr. McGuire became aware of the  
17 Tradewind report?

18 A. Other than what I've  
19 stated in my own opinion of what I shared in the  
20 city manager's boardroom that January 25 day, no.

21 Q. Okay. What, if anything,  
22 was council told about what had been done with the  
23 report up to the point that Mr. McGuire found it?

24 A. That he had brought it up  
25 through upper management, made upper management

1 aware and, hence, that's how the acting city  
2 manager became aware and, hence, that's how I was  
3 at the invited meeting on January 25.

4 Q. Okay. What, if anything,  
5 was council told about what had been done with the  
6 report before Mr. McGuire found it, so in the  
7 period of time before he became aware of it?

8 A. I honestly do not recall  
9 if anything was done. I honestly do not recall  
10 either way.

11 Q. Okay. So, you'll see  
12 that in mid-October 2018 the timeline says:

13 "Gord McGuire shares 2013/2014  
14 friction testing, including  
15 consultant's concerns and  
16 recommendation for action with  
17 Edward Soldo."

18 What, if anything, was council  
19 told about these concerns and this discussion  
20 about addressing it before the report came before  
21 council?

22 A. I honestly do not recall.

23 Q. So, this slide indicates  
24 that Mr. McGuire became aware of the Tradewind  
25 report in August or September of 2018, and it



1 appears that staff first came to council about the  
2 Tradewind report on January 23 and then more  
3 detail followed on February 6.

4 What were your views on the  
5 timing of when staff brought the Tradewind report  
6 to council?

7 A. Can you just express that  
8 question one more time, please?

9 Q. What were your views on  
10 the length of time that it took council to bring  
11 the Tradewind report -- sorry. Let me rephrase  
12 that.

13 What were your views on the  
14 length of time that it took staff to bring the  
15 Tradewind report to council after Mr. McGuire  
16 discovered it in August or September 2018?

17 A. Thank you. Well, we  
18 were -- I mean, the fall of 2018 was in the middle  
19 of an election campaign as well, lame duck period  
20 for the council, new council coming in, so  
21 possibly, I'm not going to speak for them, I don't  
22 know what was in staff's minds between Director  
23 McGuire and General Manager McKinnon or Director  
24 Soldo, I don't know what was in their minds. All  
25 I know was that for me, the first time was

1 January 23 in camera at council and then on  
2 January 25 in the city manager's boardroom where I  
3 pretty well expressed my entire feelings of how  
4 dismayed, sad and extremely unhappy I was.

5 Q. Okay. Registrar, could  
6 you take us into HAM61922.

7 So, this is LS19010, which is  
8 the legal services report that Ms. Auty presented  
9 at the GIC meeting. Do you recall Ms. Auty's  
10 section of the presentation at that meeting?

11 A. I don't recall, but I do  
12 remember that it was going to be a number of  
13 presentations as we had strongly recommended to  
14 interim City Manager Zegarac on January 25, so  
15 this would have been part and parcel of that  
16 fulsome presentation and discussion for  
17 February 6.

18 Q. Okay. Registrar, can you  
19 take us into image 3 of this document.

20 So, you'll see that there's  
21 Analysis and Rationale for Recommendations section  
22 and in the second paragraph this section describes  
23 the various CIMA reports over time and it goes on  
24 to say:

25 "The focus of recommendations

1                                   has been on changing driver  
2                                   behaviour that is believed to  
3                                   be a major source of ongoing  
4                                   collision rates."

5                                   At this point in time, having  
6                                   been provided with information about the Tradewind  
7                                   report, what was your understanding of what the  
8                                   sources or contributing factors to collisions on  
9                                   the Red Hill Valley Parkway were?

10                                  A.     So, you're asking me that  
11                                  back to the December public works meeting a few  
12                                  years earlier, I was satisfied, relieved, comfort  
13                                  level raised by what Director Moore had said,  
14                                  road's operating fine; instead, potentially driver  
15                                  behaviour was more the contributing factors to the  
16                                  unfortunate accidents and extreme tragic  
17                                  fatalities. And you're saying in light of the  
18                                  Tradewind report being found, what was possibly  
19                                  then my opinion, Counsel Bruckner? Is that where  
20                                  you were going, please?

21                                  Q.     Yes, that's right.

22                                  A.     Well, again, this would  
23                                  have reopened the entire debate of it wasn't just  
24                                  necessarily now potentially driver behaviour, but  
25                                  this would have reopened the debate of the road,

1 the condition of the road, the safety of the road  
2 and, again, the optics of this Tradewind report  
3 not being stumbled across until a few years later.

4 Q. Okay. What, if anything,  
5 did staff say about the role of friction levels in  
6 collisions on the Red Hill Valley Parkway?

7 A. I don't recall the  
8 details of what they would have said about it,  
9 other than Director Moore stating that the road  
10 was operating at MTO standards, I recall.

11 Q. When you say Director  
12 Moore making comments, is that a reference back to  
13 the 2015 --

14 A. Back to 2015, correct.  
15 So, back to this meeting now several years later  
16 for February 6, I don't recall what the staff  
17 overseeing the road at this time would have said  
18 at this meeting regarding the condition or safety  
19 of the road.

20 Q. Okay. Do you recall if  
21 staff said anything about the role of driver  
22 behaviour in collisions on the Red Hill Valley  
23 Parkway at this meeting?

24 A. I don't recall if they  
25 would have mentioned that again at this meeting,

1 no.

2 Q. Were you told that there  
3 was a high proportion of wet weather collisions on  
4 the Red Hill Valley Parkway at this meeting?

5 A. I don't recall if it was  
6 mentioned at this meeting or not,  
7 Counsel Bruckner, no.

8 Q. Do you recall if staff  
9 drew a connection between wet weather collisions  
10 and friction levels on the parkway at this  
11 meeting?

12 A. I do not recall that  
13 either. Sorry. No.

14 Q. So, you'll see the first  
15 section of this Analysis and Rationale for  
16 Recommendations Section, the first paragraph  
17 there, describes the release of the Tradewind  
18 report through the FOI and states that it might  
19 lead to media coverage which would affect the  
20 City's interest in road safety/injury prevention.

21 And portions of this paragraph  
22 are redacted for solicitor-client privilege, but  
23 without getting into privileged information, do  
24 you recall what explanation staff provided for why  
25 media coverage would affect the City's interest in

1 road safety or injury prevention?

2 A. No. I just go back to  
3 the term I've used of the optics of it would have  
4 been at odds with, contrary to, assurances  
5 provided earlier years before.

6 Q. Okay. Registrar, can you  
7 pull up image 4 in addition to image 3.

8 So, starting at the bottom of  
9 image 3 and then going over on to the top of  
10 image 4, this report summarizes CIMA's response to  
11 three questions that were put to CIMA to address.

12 Registrar, do you mind just  
13 pulling out these three questions there. Yes.  
14 Thank you very much.

15 So, Councillor Jackson, you'll  
16 see that there were three questions put to CIMA  
17 which were addressed in a memorandum that CIMA  
18 prepared. Do you recall if council had any input  
19 on putting together these three questions that  
20 went to CIMA?

21 A. I don't recall if council  
22 directed those three questions or not. If council  
23 did and you have documents accordingly, then I  
24 don't recall that.

25 Q. Okay. Registrar, you can

1 take this down and can you pull up the next  
2 paragraph over on the top of image 4.

3 So, this is the summary in  
4 this report about what CIMA's response was. The  
5 response was that:

6 "No changes would be made to  
7 their existing recommendations  
8 and that there are no  
9 additional safety measures  
10 that are recommended beyond  
11 those already undertaken;  
12 however, with a greater  
13 emphasis on speed enforcement.  
14 In addition, it was not  
15 recommended that the road be  
16 closed in whole or in part  
17 pending the resurfacing in the  
18 spring."

19 Do you recall if Ms. Auty's  
20 summary of CIMA's findings around these three  
21 questions provided you with any clarity or comfort  
22 about the safety of the Red Hill Valley Parkway at  
23 this meeting?

24 A. I don't recall that at  
25 all, although the only thing I would say is that

1 later that year we did do, I think it was in the  
2 order of \$6 million to \$8 million, we did end up  
3 carrying out the repaving, resurfacing, of the Red  
4 Hill Valley Parkway and I recall it was done  
5 primarily because of the wear and tear of the Red  
6 Hill Valley Parkway, that projections of the  
7 volume of traffic had far exceeded original  
8 projections when it opened in 2007 and the heavy  
9 truck traffic that was also using it in terms of  
10 delivering goods and services to our business  
11 parks in our community and sometimes making their  
12 way from outside communities, using it as a  
13 transportation corridor to get from destination A  
14 to destination B.

15 So, primarily I recall it was  
16 the resurfacing was done primarily because of the  
17 wear and tear and the increase amount of volume  
18 use that had far exceeded projections when the  
19 roadway opened.

20 Q. Okay. Registrar, you can  
21 take this down and take us into overview  
22 document 10A, images 16 and 17, paragraph 33.

23 So, you'll see that one of the  
24 motions that followed the closed session was for a  
25 reduction of the speed limit on a portion of the



1 Red Hill Valley Parkway, and that's number 6 that  
2 starts part way down the first image there, from a  
3 Greenhill interchange to the QEW, the speed limit  
4 was reduced from 90 to 80 kilometres per hour and  
5 you, I believe, voted in favour of this motion.

6 A. Yes. I remember the -- I  
7 do remember that discussion of reducing the  
8 original posted speed limit of 90 to 80 kilometres  
9 an hour on the Red Hill, not the Lincoln Alexander  
10 Parkway. That stayed at 90.

11 Q. Do you recall what  
12 rationale staff provided for the reduction of the  
13 speed limit in this section of the Red Hill?

14 A. I think it was all just  
15 part and parcel -- what I recall,  
16 Counsel Bruckner, was all part and parcel. If you  
17 harken back to the hearing time with myself  
18 yesterday that traffic staff were implementing  
19 some traffic safety measures with additional  
20 illumination, some additional signage and some  
21 additional police enforcement. And so, this would  
22 have been, if you will, an additional measure from  
23 a traffic safety standpoint, from a motorist  
24 standpoint, to try to make the road safer by  
25 reducing the posted speed limit.

1 Q. Okay. Was speed limit  
2 reduction an important component to addressing  
3 safety concerns on the Red Hill Valley Parkway,  
4 from your perspective?

5 A. I supported the motion.

6 Q. Okay. Coming out of the  
7 GIC meeting, what was your understanding as to  
8 whether or not speed or driver behaviour was a  
9 primary contributing factor to collisions on the  
10 Red Hill?

11 A. I honestly still felt  
12 that hypothetically driver behaviour, not  
13 adjusting to inclement weather, possibly factors  
14 like distracted driving, excessive speed, again,  
15 the curvature of this very, very unique roadway  
16 that we built running from the top of the mountain  
17 all the way down to the QEW, that driver behaviour  
18 and not adjusting and being more complying with  
19 the posted speed limit and weather conditions  
20 still was a factor in my opinion.

21 Q. And was that based on  
22 information that was communicated to you in  
23 connection with the GIC meeting?

24 A. Yes.

25 Q. Okay. Do you recall who

1     communicated that information?

2                     A.     I don't recall who, but I  
3     just recall that driver behaviour was still  
4     something that, as a community, we could work on.  
5     And ironically, if I might segue for one moment,  
6     that driver behaviour across our entire City is at  
7     unfortunately some epidemic reckless proportions.

8                     Q.     Okay.

9                     A.     Generally speaking.

10                    Q.     Registrar, can you take  
11     us into HAM61920 at image 44.

12                    So, you'll see that staff's  
13     recommended communications strategy going into the  
14     GIC meeting was to issue a media release and fact  
15     sheet immediately after the meeting on  
16     February 13, 2019 rather than to release the  
17     Tradewind report or provide additional information  
18     after the closed session.

19                    Do you recall what led staff  
20     to change that strategy?

21                    A.     Changing the strategy  
22     from what, though, Counsel Bruckner, please?

23                    Q.     So, you'll see the  
24     recommended communications strategy is set out  
25     here, so going into the GIC meeting staff were

1 recommending a media release and fact sheet  
2 following the February 13 council meeting?

3 A. Yes.

4 Q. And then responses to  
5 media enquiries through political and staff  
6 spokespeople also beginning on February 13?

7 A. Yes. That would be a  
8 week after the GIC.

9 Q. And we know that  
10 ultimately what happened was that a press release  
11 was issued after the February 6 GIC meeting  
12 releasing the Tradewind report and providing that  
13 public apology that you had referenced.

14 Do you know what happened at  
15 the GIC meeting that led to the press release  
16 being put out a week before staff's original  
17 recommendation?

18 A. I don't know what  
19 exactly, but time was of the essence in light of  
20 the discovery of the mystery report. Time was of  
21 the essence and being as open, as accountable and  
22 as transparent we could be with the public.  
23 That's probably what led us to, right after that  
24 long meeting on February 6, to not wait a full  
25 week later, which would have caused potential

1 suspicions, conjecture in the community, surmising  
2 in the community, et cetera.

3 Q. Registrar, could you  
4 please take us into HAM64331 and if you could call  
5 out image 8. Leave up the first page, but call up  
6 image 8 as well.

7 So, this is an opinion that  
8 was provided to Ms. Auty from David Boghosian, who  
9 is the City's external legal counsel. Do you  
10 recall if you were ever provided with a copy of  
11 this February 4, 2019 legal opinion?

12 A. That's from Solicitor  
13 Boghosian?

14 Q. Yes.

15 A. No, I don't recall.

16 Q. Okay. Registrar, could  
17 you call out on image 8 the start that starts  
18 "when discussed to rank in order of greatest  
19 contribution."

20 So, this opinion details a  
21 conversation that Mr. Malone had with  
22 Mr. Boghosian, and Mr. Boghosian writes:

23 "When asked to rank in order  
24 of greatest contribution to  
25 inordinate number of wet road

1 crashes, Mr. Malone advised as  
2 follows: Slipperiness of the  
3 roadway, i.e., the road is  
4 slippery when wet than other  
5 roads, which leads to greater  
6 incidents, and on roads with  
7 similar large numbers of  
8 horizontal curves in wet road  
9 conditions."

10 He lists second:

11 "Speeds exceeding the  
12 capability of the highway."

13 And then third he lists curves  
14 and he lists proximity of the on/off-ramps to each  
15 other leading to loss of control and driver errors  
16 fourth.

17 Were you advised that  
18 Mr. Malone of CIMA had rated slipperiness of the  
19 road surface as the greatest contributor to the  
20 inordinate number of wet road crashes on the Red  
21 Hill Valley Parkway?

22 A. I honestly don't recall  
23 that, Counsel Bruckner.

24 Q. Okay. Do you recall if  
25 you were ever provided with a ranking system of

1 contributing factors to collision on the roadway  
2 from a consultant?

3 A. No, I don't recall that  
4 and I don't recall this correspondence  
5 specifically from Solicitor Boghosian.

6 Q. Okay. Thank you.  
7 Registrar, you can take this down and if you could  
8 please take us into overview document 10A at  
9 image 90, paragraph 218 and 219.

10 So, this is an exchange on  
11 February 8, 2019. You exchange e-mails with  
12 Mr. McKinnon and the mayor and you eventually  
13 direct in that e-mail below at paragraph 219  
14 Mr. McKinnon to the public works committee meeting  
15 from December 2015 and you say:

16 "Understood, Dan. By the way,  
17 if you haven't already, you  
18 must listen to the public  
19 works committee meeting from  
20 2015 where GM, in answering a  
21 question from Councillor SM,  
22 says, I'm paraphrasing, that  
23 the Red Hill Valley Parkway  
24 asphalt meets or exceeds MTO  
25 standards. This is

1 approximately two years after  
2 the hidden report that he knew  
3 about which stated the exact  
4 opposite. Holy smokes. Just  
5 sharing. I actually listened  
6 to it again this morning."

7 Is this a reference to the  
8 December 2015 public works committee meeting that  
9 we were talking about yesterday?

10 A. Absolutely it would be,  
11 yes.

12 Q. Okay. And GM in this  
13 e-mail, then, is Gary Moore?

14 A. Yes.

15 Q. Okay. And Councillor SM  
16 is Sam Merulla?

17 A. Correct.

18 Q. Why did you flag  
19 Mr. Moore's comments from this December public  
20 works committee meeting for Mr. McKinnon?

21 A. He was the general  
22 manager at this time and I just felt, as the  
23 overall head of the public works department of  
24 whom Director Moore would have reported to, I just  
25 felt I wanted to express to him how I felt.



1 Q. Okay. And, as of  
2 February 8, 2019, what were your views about  
3 Mr. Moore's comments at that public works  
4 committee meeting?

5 A. I think I pretty well  
6 shared the fact that when I heard about the  
7 Tradewind report being stumbled upon, that I was  
8 dismayed and very saddened and upset over the fact  
9 that I had just a tremendous amount of respect and  
10 just a tremendous amount of admiration for the  
11 years of experience, expertise, knowledge, that  
12 Director Moore brought to the table in our City of  
13 Hamilton corporation. Always a big supporter in  
14 terms of his overall knowledge and the number of  
15 successes of building many, many roads or  
16 overseeing the building of many, many roads in our  
17 community. This paragraph would have basically  
18 expressed the fact that I just felt a form of  
19 betrayal, if you will.

20 Q. Okay. Registrar, could  
21 you please take us to overview document 10A,  
22 image 92 to 93, paragraph 223 to 225.

23 So, on February 10, 2019, a  
24 member of the public e-mails the mayor and members  
25 of council with a list of questions about the Red

1 Hill Valley Parkway.

2 Over on to the next page, you  
3 then forward this e-mail to the mayor and you say:

4 "Dear Mr. Mayor. I just  
5 didn't want this left with  
6 your staff without your  
7 immediate knowledge of what  
8 she's questioning. Just  
9 sharing."

10 And Mayor Eisenberger responds  
11 later that day:

12 "Thanks, Tom. All legitimate  
13 questions that need to be  
14 answered, I know council will  
15 do the right thing to get to  
16 the bottom of this. I trust  
17 you got my earlier e-mail to  
18 staff re: Status of  
19 Mr. Moore."

20 And then you reply to this  
21 e-mail.

22 Registrar, do you mind just  
23 calling out paragraph 226 there.

24 So, you respond to the mayor:

25 "Yes, I did. Thank you.

1 Mayor FE  
2 respectfully...please...  
3 (unless there is a darn,  
4 no-other-way-out compelling  
5 factor)...do not attempt to  
6 buy-out GM's contract. Was in  
7 the midst of over 1000  
8 citizens at events the last  
9 two nights. No one is blaming  
10 city council yet (hopefully  
11 never). Everyone is wondering  
12 why the report 'suppressor' is  
13 still with us? Many people  
14 talked about careless 'driver  
15 behaviour' regardless of the  
16 pavement issues...but the  
17 common theme message at the  
18 end of it all...fix the  
19 problem and there must be  
20 consequences for the six-year  
21 concealment. Just sharing."

22 So, that line, "everyone is  
23 wondering why the suppresser is still with us," is  
24 that a reference to Mr. Moore?

25 A. Yes.

1 Q. Had you received  
2 enquiries from your constituents at this point  
3 about Mr. Moore's relationship with the City?

4 A. Not that I recall.

5 Q. Okay. Knowing what you  
6 knew as of the GIC meeting and the events that  
7 followed the disclosure of the Tradewind report to  
8 council, was it your view that Mr. Moore was a  
9 suppressor or had suppressed the Tradewind report?

10 A. One would lead to that  
11 conclusion, yes.

12 Q. Okay. Commissioner,  
13 those are all of my questions for Councillor  
14 Jackson.

15 JUSTICE WILTON-SIEGEL: Okay.  
16 I'm not sure whether we have questions from any of  
17 participants' counsel. Has that been canvassed?

18 MS. BRUCKNER: The MTO and  
19 Golder have both reserved a couple of minutes, so  
20 it may be a good opportunity to confirm with them  
21 if they have any questions now.

22 JUSTICE WILTON-SIEGEL: Okay.  
23 Start with Mr. Bourrier for the MTO.

24 MR. BOURRIER: Good morning,  
25 Commissioner. I can confirm the MTO doesn't have

1 any questions for Mr. Jackson.

2 JUSTICE WILTON-SIEGEL: Okay.

3 And Ms. Bassong for Golders.

4 MS. BASSONG: Good morning.

5 We don't have any questions as well.

6 JUSTICE WILTON-SIEGEL: Okay.

7 MS. BRUCKNER: In that case, I  
8 believe Mr. Mishra does have a couple of minutes  
9 of questions.

10 JUSTICE WILTON-SIEGEL: Okay.

11 Mr. Mishra, I don't know how long your questions  
12 are going to be. We're running up against the  
13 normal break. How long do you anticipate being?

14 MR. MISHRA: I expect only  
15 about five to ten minutes of questions.

16 JUSTICE WILTON-SIEGEL: Okay,  
17 then why don't you proceed with your questions.

18 MR. MISHRA: All right. Thank  
19 you, Mr. Commissioner.

20 EXAMINATION BY MR. MISHRA:

21 Q. Good morning, Councillor  
22 Jackson. I just have a couple of questions for  
23 you today.

24 Commission counsel asked you a  
25 number of questions about whether anyone

1     communicated to you that an environmental  
2     assessment prohibited lighting on the Red Hill  
3     Valley Parkway. In your answers, you advised that  
4     you remembered a number of environmental concerns  
5     being raised. In fairness to you, I just want to  
6     clarify.

7                             To the best of your knowledge,  
8     what was communicated to you on about why  
9     continuous lighting was not implemented on the Red  
10    Hill Valley Parkway?

11                            A. I appreciate that,  
12    Counsel Mishra. It seemed to be just a consistent  
13    answer that, in building the roadway through the  
14    valley, a unique set of circumstances that  
15    lighting would have created potential carnage and  
16    problems from a life standpoint for fowl, for  
17    birds, for deer, for any other habitat that called  
18    the valley home.

19                            Q. Thank you. And, to your  
20    knowledge, did anybody reference specifically an  
21    environmental assessment or was it more broadly  
22    environmental concerns?

23                            A. I don't remember anyone  
24    actually showing me an environmental assessment  
25    report, Counsel Mishra, but I remember just the

1 protection of the habitat and the overall  
2 environmental aspect of it.

3 Q. Thank you, Councillor  
4 Jackson.

5 Mr. Registrar, can you please  
6 pull up HAM4304.

7 THE REGISTRAR: Sorry,  
8 counsel. Is it HAM4304?

9 MR. MISHRA: Yes, that's  
10 right.

11 THE REGISTRAR: Sorry, is this  
12 a native?

13 MR. MISHRA: I believe it's a  
14 PDF, but native works as well if that's easier.  
15 Apologies, I'm sorry. I believe it's 4303. My  
16 apologies.

17 THE REGISTRAR: Okay. Thank  
18 you.

19 BY MR. MISHRA:

20 Q. Thank you. And can you  
21 pull up both image 1 and image 57 side by side,  
22 please, and can you call out under 6.4, Summary of  
23 Potential Countermeasures, can you call out the  
24 red text starting with "the recommended timing"  
25 all the way down through to the long term.

1 Actually, the entire thing works as well. Thank  
2 you. Then can you just shift it over a little bit  
3 so you can see the image to the left. Perfect.

4 Councillor Jackson, this is  
5 the final draft of the 2013 CIMA report. I  
6 believe commission counsel brought you to this  
7 document yesterday. In this report in the  
8 highlighted section, you'll see here that short  
9 term is defined as zero to five years, medium term  
10 is defined as five to ten years, and long term is  
11 defined as ten plus years, and this is with  
12 respect to the recommended timing for implementing  
13 various countermeasures. Do you see that?

14 A. Yes.

15 Q. Perfect. Mr. Registrar,  
16 can you take this document down, please, and can  
17 you now please pull up HAM24702, and side by side  
18 can you also please pull up HAM56684 at image 57,  
19 please. Perfect. And can you call out on the  
20 left-hand side the medium-term options chart.  
21 Thank you. And then on the right-hand side, can  
22 you please pull out the recommendation for  
23 friction testing. It's conduct pavement friction  
24 testing with \$40,000, just a little bit of --  
25 sorry. Perfect.



1                   Councillor Jackson, for your  
2   reference, the image on the left with the call out  
3   which is above with the box that says medium-term  
4   options, that's an excerpt from an appendix to a  
5   2015 staff report. On the right-hand side you'll  
6   see that the called-out portion is a portion of a  
7   chart from a 2015 CIMA report, so the consultant  
8   report.

9                   Commission counsel asked you  
10  if you would have expected staff to identify in  
11  their staff report that they listed pavement  
12  friction testing as a medium-term option while  
13  CIMA had listed it as a short-term option. And in  
14  your response you advised that if there was a  
15  discrepancy, you would have expected them, as in  
16  staff, to highlight the difference from  
17  professional staff's recommendation versus the  
18  consultant's recommendations.

19                  I just want to provide some  
20  background in fairness to you. While we  
21  previously looked at the definition of short-term  
22  countermeasure in the 2013 CIMA report where it  
23  was listed as zero to five years, short term is  
24  not defined in the 2015 CIMA report as commission  
25  counsel advised you in their questioning. From

1 previous testimony, CIMA has confirmed that the  
2 definition of short term in the 2013 CIMA report  
3 also applies to the 2015 CIMA report.

4 So, knowing that the CIMA  
5 recommended friction testing be completed within  
6 zero to five years as a short-term countermeasure  
7 and city staff identified friction testing be  
8 completed in two to five years as a medium-term  
9 option, does that change your answer if you would  
10 have expected staff to identify in the staff  
11 report that they listed friction testing as a  
12 medium-term option while CIMA had listed it as a  
13 short-term option?

14 A. Well, yes, it would have,  
15 Counsel Mishra, because then it coincided, then,  
16 if the short term by CIMA was zero to five, staff  
17 put it in as medium term, two to five, it would  
18 have more or less coincided and almost matched and  
19 been parallel with CIMA. And then, in my humble  
20 opinion, if that was the case, then there really  
21 wouldn't have been any necessity for staff to  
22 explain further.

23 Q. Understood. Thank you.  
24 And commission counsel further asked you if you  
25 would have acted differently had you been aware

1 that friction testing was a short-term  
2 countermeasure in the consultant report but a  
3 medium-term one in the staff recommendation  
4 report. You had responded that you would expect  
5 it would have caused a more, quote, robust  
6 discussion and debate, end quote, in council about  
7 the recommendations.

8                                   Knowing that CIMA had  
9 recommended friction testing be completed within  
10 zero to five years and city staff identified  
11 friction testing should be completed in two to  
12 five years, does that change your answer to the  
13 question if you would have acted differently had  
14 you been aware that friction testing was a  
15 short-term countermeasure in the consultant report  
16 but a medium-term one in the staff recommendation  
17 report?

18                                   A. It would have. It would  
19 have, because then it would have more or less the  
20 staff recommendation would have pretty well  
21 overlapped with the CIMA recommendation as well.

22                                   Q. Understood.  
23 Mr. Commissioner, can I just have a second to look  
24 at my notes?

25                                   Councillor, I just have one

1 more question for you. You were asked a few times  
2 as to whether you relied on staff and specifically  
3 Director Moore's statements around the Red Hill  
4 Valley Parkway. Your consistent evidence was that  
5 you would rely on staff's advice and judgment. If  
6 Director Moore shared the results of the Tradewind  
7 report with you in 2014 and advised you that the  
8 report was not useful because there was no Ontario  
9 or Canadian standards that could be used to  
10 interpret the tested results, would you have  
11 relied on Director Moore's judgment in that  
12 regard?

13 A. Back at the December 2015  
14 public works meeting, Counsel Mishra?

15 Q. Either at the 2015  
16 council meeting or any time prior to the 2019 GIC  
17 meeting.

18 A. I think I -- absolutely.  
19 I think I mentioned about a half hour or hour ago  
20 that my one regret was at the time assurances were  
21 given by him, which I accepted and was pleased and  
22 relieved to hear that the roadway was operating  
23 well and meeting standard, I wish, again, never  
24 putting words in his mouth, I wish that a comment  
25 had been made: However, members of committee and

1 council, I do have a report that may suggest  
2 otherwise from one consultant. However, having  
3 reviewed that report and all this being stated  
4 publicly, in my opinion, as your director of  
5 engineering, I strongly still feel that the road  
6 is safe regardless.

7 I would have been extremely  
8 accepting of that complete response referencing  
9 the Tradewind report as well and still standing by  
10 his professional opinion, which I had already been  
11 willing to accept.

12 Q. Understood. Thank you,  
13 Councillor Jackson.

14 Thank you, Mr. Commissioner.  
15 Those are all of my questions.

16 JUSTICE WILTON-SIEGEL: Okay.  
17 Mr. Jackson, thank you very much for attending and  
18 giving your evidence at the inquiry.

19 THE WITNESS: Thank you.

20 JUSTICE WILTON-SIEGEL: You  
21 can sign off now. You're excused.

22 THE WITNESS: Thank you,  
23 Mr. Commissioner. Thank you, Counsel Bruckner and  
24 Counsel Mishra as well.

25 JUSTICE WILTON-SIEGEL: Okay.

1 Have a good day.

2 Now, the rest of us, I  
3 understand the next witness is Mr. Hertel.

4 MS. BRUCKNER: That is right.

5 JUSTICE WILTON-SIEGEL:

6 Mr. Mishra, do you know if Mr. Hertel is available  
7 immediately after the break?

8 MR. MISHRA: He is,  
9 Mr. Commissioner.

10 JUSTICE WILTON-SIEGEL: Okay.

11 Well, it's almost ten past. Why don't we return  
12 at 25 past. That will allow him a little bit of  
13 time to get put in place. So, we'll stand  
14 adjourned until 25 past 11:00.

15 --- Recess taken at 11:07 a.m.

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

17 MS. HENDRIE: Good morning,  
18 Commissioner. The inquiry's next witness today is  
19 John Hertel.

20 AFFIRMED: JOHN HERTEL

21 EXAMINATION BY MS. HENDRIE:

22 Q. Thank you. Good morning,  
23 Mr. Hertel.

24 A. Good morning.

25 Q. I would like to begin

1 today with some questions about your professional  
2 background.

3 A. For sure.

4 Q. I understand you were  
5 employed with the City of Hamilton from mid-2010  
6 until June 2020. Is that correct?

7 A. Yes. It was March 1,  
8 2010 and I finished at the City and retired at the  
9 end of June 2020.

10 Q. Okay. So, when you left  
11 the City, it was for retirement?

12 A. That's correct.

13 Q. And at the time that you  
14 retired, I understand that your position was  
15 director of strategic partnerships and  
16 communications?

17 A. That's correct.

18 Q. And you held that  
19 position from in and around December 2017 until  
20 your retirement?

21 A. That's correct.

22 Q. And prior to that, I  
23 understand that you held the following positions  
24 within the City or City affiliates: The director  
25 of strategic partnerships and revenue generation,

1 director of finance administration and revenue  
2 generation, and then some executive positions  
3 within Hamilton Entertainment and Convention  
4 Facilities. Is that right?

5 A. That's correct.

6 Q. Okay. So, those roles  
7 spanned March 2010 to June 2020?

8 A. Yes. The first three  
9 years beginning March 1, 2010 were spent with the  
10 HECFI organization, as it was called.

11 Q. Okay. And that's the  
12 Hamilton Entertainment Convention Facilities?

13 A. That's correct.

14 Q. And briefly can you just  
15 tell us what your professional experience was  
16 prior to joining the City in 2010?

17 A. Yes. Primarily a private  
18 sector, so senior positions with both Bell and  
19 Nortel, business prof at one point in the college  
20 system, and involved in four small business  
21 start-ups prior to joining the City on March 1 of  
22 2010.

23 Q. And what's your  
24 educational background?

25 A. I have a Bachelor of



1 business administration from the former Ryerson  
2 University as well as executive development  
3 training through Queen's University.

4 Q. My questions today are  
5 going to focus on the time period between late  
6 2018 and until early 2019.

7 A. Okay.

8 Q. And that would be when  
9 you were in the role of director of strategic  
10 partnerships and communications?

11 A. Correct.

12 Q. So, if you could tell us  
13 a little bit about what your responsibilities were  
14 in that role, particularly focusing more on the  
15 communications piece of that role as opposed to  
16 the strategic partnership?

17 A. Right. Maybe just a  
18 brief overview of the strategic partnerships  
19 piece. It was a bit of a diverse portfolio that  
20 included the Hamilton farmer's market, community  
21 initiatives, strategic initiatives, our web team,  
22 a grants team and marketing and social media.

23 And then, on the  
24 communications side, my direct report was Jen  
25 Racine, the manager of communications, and Jen had

1 varied a little bit, but I'll say on average eight  
2 of her direct reports, Jasmine Graham being one of  
3 those eight, and reported to Jen, who, in turn,  
4 reported to me.

5                   The structure was such that  
6 each department had a minimum of one dedicated  
7 communications officer and, depending on the size  
8 of the organization, there was a bit of a variance  
9 in that some were enormously large and diverse, so  
10 they may have had more than one dedicated. And  
11 for the most part Jasmine operated as the prime  
12 contact within public works, but also had some  
13 additional support at the later date from that  
14 point on.

15                   Q.    Okay. And so, when you  
16 say that -- you said that Ms. Racine had eight or  
17 nine direct reports or, on average, eight direct  
18 reports?

19                   A.    Yeah.

20                   Q.    Were those communications  
21 officers?

22                   A.    That's correct.

23                   Q.    And that's what  
24 Ms. Graham's role was?

25                   A.    That's correct.

1 Q. She was the  
2 communications officer for public works?

3 A. Right. Senior  
4 communications officer. There was a bit of a  
5 hierarchy, if you will, and Jasmine was the senior  
6 communications officer.

7 Q. And how would you  
8 describe what the role of a communications officer  
9 was once they were assigned to that division or  
10 department?

11 A. Right. So, the general  
12 notion was of course to be there for helping to,  
13 I'll say, package and prepare and understand at a  
14 fairly high level at least the organization, its  
15 particular vision, mandates, et cetera. And then  
16 for all activities related within that department  
17 that were to be communicated either internally or  
18 externally, then the communications officer would  
19 lead that particular activity, in a sense, a bit  
20 of a communications-project-management-type role  
21 where the communications officer would work hard  
22 with the, I'll say, subject matter experts, to  
23 understand the situations, issues, et cetera, and  
24 help then to frame the appropriate communication  
25 out to the public or it could also include

1 internal, and then was the primary interface with  
2 the various media outlets in those regards.

3 Q. So they were, sort of,  
4 the on-the-ground staff in the division and the  
5 department and also interfacing with the media?

6 A. Yes, and they were  
7 physically embedded with the department so that  
8 they were there for the day-to-day understanding  
9 of what was going on and what areas needed some  
10 assistance.

11 Q. Okay. How did -- talking  
12 specifically about Ms. Graham and the public works  
13 department, how did her, sort of, roles and  
14 responsibilities as it relates to public works  
15 communications compare to her manager,  
16 Ms. Racine's, roles and responsibilities and then  
17 the next level up, your roles and  
18 responsibilities?

19 A. Sure. I mean, a typical,  
20 I'll say, hierarchy. Jasmine, being front line,  
21 was there doing the work day to day and would  
22 bring collectively to her colleagues through Jen  
23 for, I'll say, monthly meetings some of the common  
24 issues, et cetera, projects that they needed to  
25 do, but primarily Jasmine would be day to day

1 interfacing director with the general manager and  
2 various directors to ensure that their messages  
3 were being, I'll say, collected accurately and  
4 thoroughly and objectively and transparently to be  
5 shared through their media contacts.

6                   Jen would have some interface  
7 with the media, but I'll say primarily in this  
8 example it would be Jasmine. And then Jen, as the  
9 manager of the group, was involved in the typical,  
10 in addition to the pure communications piece,  
11 because that's her background as well, is a  
12 communications expert, offering coaching and  
13 support to her team. And then, of course, having  
14 to do the administrative side of it, you know,  
15 staffing, training, all those sorts of things,  
16 reporting.

17                   And then my role as the  
18 director was to be there to provide support, to  
19 hopefully clear roadblocks, help again with any of  
20 the issues that they felt they needed my help and,  
21 again, you know, going across the organization  
22 where appropriate to provide resources and  
23 information for them.

24                   My particular role would be  
25 ideally in circumstances more at a strategic

1 level, being involved with the direction of the  
2 group and, on a particular project, being, I'll  
3 say, a different lens of objectivity hopefully to  
4 how we were proposing to approach various  
5 circumstances.

6 Q. Thank you. That's  
7 helpful. And so, typically, based on the answers  
8 that you have given, would it be fair to say as  
9 that director you didn't sort of necessarily have  
10 detailed knowledge or information about what was  
11 going on in various departments, but that sort of  
12 information would trickle up to you from your  
13 staff sort of on an as-needed basis?

14 A. That's correct.

15 Q. And one last background  
16 question. I understand you were part of the  
17 senior leadership team as director of  
18 communications. Is that right?

19 A. Yes. That specific part  
20 of my portfolio, the communications portion of it,  
21 then led to me being part of the senior management  
22 team so that at any of the senior leadership team  
23 meetings there was, I'll say, communications  
24 representation.

25 Q. Thank you. So, as I said

1 earlier, most of the my questions today are going  
2 to focus on the late 2018, early 2019, period.

3 A. Okay.

4 Q. Focusing on the Tradewind  
5 report and the discovery and disclosure of the  
6 Tradewind report to council and the public.

7 A. Great.

8 Q. To provide some context  
9 for you, we know that the City received an FOI  
10 request on November 8, 2018 and that the Tradewind  
11 report was identified as a responsive or  
12 potentially responsive document in and around this  
13 time. And there was also a value-for-money audit  
14 that was ongoing by the City's audit services  
15 department at the same time.

16 A. Right.

17 Q. And so, I have some just  
18 general questions before I come to any specific  
19 documents where you're named, but just some  
20 general questions about your context and your  
21 knowledge background this time.

22 A. Okay.

23 Q. Registrar, if we can call  
24 up overview document 9A, pages 130 and 131.

25 So, Mr. Hertel, just before I

1 ask you any questions about the documents that  
2 we've got on the screen, can you see both myself  
3 and the video panels and then also the documents  
4 on the screen?

5 A. I can and I will say in  
6 advance I may have to trade glasses off and on  
7 depending on the distance I am from the screen, so  
8 I apologize in advance.

9 Q. That's no problem. I can  
10 also have our Registrar call up any portions of  
11 the documents so that they become enlarged. So,  
12 if you need me to bring something closer or zoom  
13 out, we can do that as well.

14 A. Okay. Great. Thank you.

15 Q. Registrar, if we could  
16 call up paragraphs 314 and 315. Thank you.

17 So, you'll see, Mr. Hertel,  
18 this is an e-mail on November 8, 2018 where the  
19 access and privacy officer, Ms. Watson, had  
20 received the FOI request, 18189, and she --  
21 paragraph 315 says:

22 "The request as outlined in  
23 the information sheet was for  
24 access to any reports, memos,  
25 drafts, correspondence about



1 friction testing on the Red  
2 Hill Valley Parkway in the  
3 last five years and any  
4 reports, memos, including  
5 drafts, or correspondence  
6 about asphalt and/or paving  
7 testing assessments, plans on  
8 the Red Hill Valley Parkway in  
9 the last two years."

10 And, Registrar, if we can  
11 close this call out down.

12 This request was circulated to  
13 public works and eventually made its way to the  
14 engineering services department.

15 And, Registrar, if we can call  
16 up paragraph 318.

17 You'll see that Mr. McGuire,  
18 who was the director of engineering, forwarded  
19 that request to Ms. Graham on November 8. So,  
20 sort of a process question first. In your  
21 experience, was it common for communications  
22 officers or communications staff to be involved in  
23 FOI requests and responses?

24 A. Yes, I would say it was  
25 very common because the FOI request would often,

1 not exclusively, but would often come through the  
2 media, so it was important to ensure that the  
3 communications officer was involved from the  
4 beginning, because that was her primary contact in  
5 this case for Jasmine.

6 Q. And sort of moving up the  
7 chain of hierarchy, was it common for managers and  
8 for directors to become involved in FOI request  
9 responses?

10 A. I would say it's  
11 potentially -- depending on the information being  
12 requested, they would be informed and asked to  
13 provide documents if that was appropriate, again,  
14 based on the description. In the case of Jasmine,  
15 as a communications officer Jen met with all of  
16 the officers on a regular basis, so it would be  
17 important for Jen to -- excuse me, for Jasmine for  
18 keep Jen apprised of the fact that it had been  
19 received and, you know, what would be the work  
20 involved for the communications team.

21 Q. Okay. Focusing  
22 specifically on this FOI request, do you recall  
23 when you first became aware of FOI request 189?

24 A. I was not aware of the  
25 details of it so much as just the general notion

1 as we were moving along in the -- I'm going to say  
2 in the mid to latter part of November as a result  
3 of the broader issue that had been identified with  
4 the discovery of the Tradewind's report. So, it  
5 was somewhere in that period of time I was aware  
6 of it. I didn't have any direct involvement in  
7 it, but I was aware that it was in process.

8 Q. Okay. So, you were aware  
9 at some point, I think you said mid to latter part  
10 of November, about the FOI request?

11 A. I believe that was the  
12 time frame, yes.

13 Q. Okay. Do you recall who  
14 made you aware of the FOI request?

15 A. I mean, possibly Jasmine  
16 because, you know, certainly as a communications  
17 team we were in touch on a regular basis, and I  
18 know it was mentioned, again not in detail but  
19 mentioned, at some of the meetings that I  
20 participated in as the month rolled on, I'll say,  
21 in mid-November and on. We had many meetings and  
22 somewhere in that process I know it was mentioned  
23 because particularly there was a lot of work  
24 involved in pulling all of those documents, so  
25 that, you know, was -- it was an easy one for me

1 to remember because of the sheer volume of it.

2 Q. Okay. And I think you  
3 said -- Registrar, we can close this call out down  
4 for now.

5 And you said that you had  
6 participated in some meetings as the month rolled  
7 on, and that month is November?

8 A. Yes. I'm not sure of  
9 exact dates, but somewhere either at the very end  
10 of October or somewhere early in November I became  
11 aware of the Tradewind report being discovered,  
12 and that set in motion a series of meetings that  
13 ultimately led up to presenting information at GIC  
14 in February.

15 Q. Okay. Can you tell me  
16 about who you learned about the Tradewind report's  
17 discovery from, when that conversation took place,  
18 any of the details you recall about that  
19 conversation, sort of focusing first on the  
20 initial conversation when this was brought to your  
21 attention?

22 A. Yes. And, as I said, I  
23 think it was very end of October, perhaps early  
24 November. I recall being in the small boardroom  
25 on our floor at City Hall and I'm sure Mike

1 Zegarac was there, Dan and Gord, possibly Nicole  
2 and others, but I'm not a thousand percent sure of  
3 that, and it was being identified to me for the  
4 first time. Clearly discussions had been held  
5 certainly between Dan and Gord and Mike about the  
6 discovery, so it was in and around that time I  
7 became aware of it.

8 Q. Okay. So, you recall  
9 meeting, you think it was at City Hall?

10 A. Yes. We had a small  
11 boardroom beside the city manager's office where  
12 many of our meetings were held.

13 Q. And just for my benefit,  
14 the inquiry, I don't believe, has received any  
15 documents that sort of indicate a calendar  
16 appointment or anything where you attended a  
17 meeting in late November or, sorry, late October,  
18 early November. Was this a prearranged meeting?  
19 Was it sort of a, like, you passed each other in  
20 the hallway and they said, come in, we want to  
21 talk to you about something? How did that meeting  
22 come to be?

23 A. My recollection, it was a  
24 bit ad hoc in terms of just being invited to join  
25 us in the boardroom. Of course, I hadn't been at

1 in the City for, I guess, now, almost two and a  
2 half years, so I don't have access to any calendar  
3 information, et cetera, so I couldn't verify that,  
4 but presumably all details of my calendar and  
5 other things were forwarded to you that are  
6 relevant, so I would deduct that it was probably a  
7 bit of an ad hoc thing.

8 Q. Okay. And what were you  
9 told in that initial meeting or that first  
10 discussion that you had in City Hall about the  
11 Tradewind report?

12 A. I was told that Gord  
13 McGuire, who was relatively new in the position,  
14 was going through his own, I'll say, transition  
15 into the role and going through all of the files,  
16 et cetera, to help himself get up to speed and  
17 that he had come across this particular report  
18 that was in, I'm assuming, an electronic file that  
19 he was not familiar with previously and could see  
20 no -- that no action had been taken as a, you  
21 know, very, very specific result of that.

22 But I remember also, and I  
23 think it's important to point out and this is, I  
24 guess, more my personal observation than anything,  
25 was how impressed I was. I didn't know Gord very



1 activities, issues, problems, through a  
2 communications lens. And I think in this case  
3 clearly as the communications guy one of the first  
4 things that, you know, comes to mind is that if a  
5 report was discovered, what does that mean? And  
6 it kind of triggers in your role as communications  
7 to also then be equally intrigued and trying to  
8 understand what that meant.

9 Q. And earlier you said that  
10 you were impressed with the sincerity and  
11 integrity of their approach, of --

12 A. Yes.

13 Q. -- the approach that was  
14 shared with you. Do you recall what was the  
15 approach or what was your understanding of the  
16 approach or what was done or what was going to be  
17 done at that time?

18 A. Well, if I could contrast  
19 it to an alternative which, thankfully, we never  
20 experienced in my time at the City, the worst  
21 thing that could have happened in my opinion would  
22 be that someone could just close their eyes, close  
23 the file and pretend it didn't exist. That alone  
24 to me, you know, my first impression was this guy  
25 Gord, I don't know him well but I sure like his



1 style. He's very, very anxious just to do the  
2 right thing and doesn't know necessarily at this  
3 point in time any implications of it, but  
4 identifying it was the first right thing to do.

5 Q. So, you said you  
6 appreciated that or your understanding was that  
7 Mr. McGuire was anxious to do the right thing. Do  
8 you recall more generally what the tone of staff  
9 was in relation to the Tradewind report and its  
10 discovery?

11 A. Well, I think clearly at  
12 that point in time one of the unknowns, of course,  
13 was why was it not acted upon, I'll say? And at  
14 the same time, of course, the previous director of  
15 engineering services was in a different role, so  
16 it was -- the tone of the thing overall was, you  
17 know, what the heck does this mean? And it  
18 really, as I mentioned a moment ago, was the  
19 beginning of, I'll say, a broader search and  
20 understanding of what did it mean.

21 Q. And when you say what did  
22 it mean, does that mean in terms of the safety of  
23 the road? Like, what do you mean by that?

24 A. Literally not knowing if  
25 anything, I'll say, was an outcome of it because

1 certainly at that point in time nothing was  
2 discussed about the safety of the road. It was  
3 just about probably more the perception. And,  
4 again, you referenced the FOI earlier. I'm not  
5 sure where all of this fit in exactly on the  
6 timeline, but I think you indicated timing wise  
7 that Gord and the team probably were aware at that  
8 point of the FOI.

9                   So, I think, again, from a  
10 communications point of view, the lens that I'm  
11 looking at it is that, you know, what is it and  
12 how will we begin to understand it enough that we  
13 can properly and, I'll say, holistically plan to  
14 communicate this if it needs communicating in an  
15 objective and transparent way.

16                   Q. Okay. So, you think  
17 probably, based on your last answer there,  
18 probably Mr. McGuire and staff were aware of the  
19 FOI request at the time you had this conversation  
20 with them?

21                   A. They may have been, yes.  
22 I mean, I don't know that for sure. I was just  
23 going more of your comment a moment ago of the  
24 timing that Mr. McGuire received the FOI. I think  
25 you said the 8th of February?

1 Q. Yes.

2 A. So, it was very, very  
3 close in that range, so it's possible he was aware  
4 of that. But, again, just knowing that, you know,  
5 the highway was in the media a lot for some, you  
6 know, unfortunate reasons of course with the  
7 accidents, the fatal accidents that took place  
8 that, again, through a communications lens, you  
9 have to be extremely sensitive to that and it  
10 makes all these things just keep begging the  
11 question, you know, what does it mean? What are  
12 the implications? How does this all fit together?

13 Q. At the meeting that you  
14 recall, this first meeting, do you recall if you  
15 actually saw the Tradewind report or, if not at  
16 that meeting, do you recall when you first saw the  
17 Tradewind report?

18 A. I don't know that or how  
19 long it was before I actually saw the whole  
20 Tradewind report. You know, what I do recall is  
21 more the discussion and it's possible that some of  
22 the visuals, you know, the graphics and stuff were  
23 used in some of those early meetings to share this  
24 UK-based result and report.

25 I would never have --

1 apologies to public works, but I never would have  
2 read the report from end to end. In my role, I  
3 would not be typically reading technical reports.  
4 So, somewhere along the line, you know, certainly  
5 I became increasingly aware of the content, but at  
6 a high level and would stay there in my mind so  
7 that I wasn't getting into the details sort of  
8 thing and throwing us off our need to be  
9 objective.

10 Q. You've said meetings a  
11 number of times. Were these meetings that took  
12 place throughout, sort of, when you became aware  
13 sometime in, you think, November through to  
14 February 2019?

15 A. Yes, that's correct.

16 Q. Okay. And focusing  
17 specifically on the latter part of 2018, do you  
18 recall if there were meetings that you attended  
19 throughout November and December?

20 A. Again, without having my  
21 calendar, I can't confirm it, but I would suggest  
22 anecdotally that I definitely participated in some  
23 many discussions along the way, some internally  
24 within my own team with Jasmine and Jen, and then  
25 some with the broader group involving the city

1 manager, Mike, Dan. At some point Edward Soldo  
2 and others became part of those meetings, but that  
3 kind of evolved over time in terms of the  
4 participants --

5 Q. Okay. When you spoke to  
6 Ms. Graham and Ms. Racine internally within  
7 communications, was it your impression they  
8 already knew about the Tradewind report and the  
9 FOI or was this new information that you shared  
10 with them? You'll see in paragraph 318 Ms. Graham  
11 did receive the FOI request on November 8, if that  
12 assists.

13 A. Yeah. Realistically in  
14 probably all cases involving the details within  
15 the department, Jasmine would certainly hear it  
16 first and then realistically probably Jen second  
17 and myself third.

18 Q. Okay. And from a  
19 communications perspective and standpoint, what  
20 was your understanding or your impression of next  
21 steps that you or your staff were responsible for  
22 as it relates to the Tradewind report? Situating  
23 this in time, late November, early December,  
24 before 2019.

25 A. Yeah. So, next steps

1 really were about a much broader look at the whole  
2 situation. For some of us, the details of so many  
3 activities that had been taken on the Red Hill as  
4 far as what I would call regular, you know,  
5 maintenance of any major roadway where there's all  
6 sorts of improvements being made, et cetera. So,  
7 I know in general terms that public works had been  
8 using different consultants to help put reports  
9 together and, as time was going on, it became  
10 obvious that to keep this in context, we needed to  
11 have a very, very fulsome and comprehensive  
12 summary of all of the activities that would then  
13 help us develop the communications strategy and  
14 tactics. And, again, as I'm sure we'll look at  
15 later, the communications plan that was developed  
16 was very comprehensive and authored by Jasmine  
17 because, again, of her front-line activities.

18 Q. Thank you. We will come  
19 to that plan.

20 Registrar, can we close out  
21 this overview document and call up HAM62037. And  
22 if we could enlarge, sort of, the entire  
23 appointment.

24 A. Thank you.

25 Q. For my benefit as well as

1 yours. So, you'll see, Mr. Hertel, this is a  
2 calendar appointment that you send on January 4,  
3 2019 for a meeting on January 7, and it was in the  
4 CMO boardroom. And in the body of invitation, the  
5 subject says "Re: Red Hill." So, this is  
6 actually, from my review, the first document that  
7 the inquiry has received sort of placing the  
8 chronology where your name appears in relation to  
9 the Red Hill.

10 A. Okay.

11 Q. And you'll see there's a  
12 number of -- it's a bit difficult to read, but  
13 there's a number of people that you sent the  
14 appointment to: Yourself, Ms. Racine, Ms. Graham,  
15 Mr. Zegarac, Mr. McKinnon, Mr. McGuire, Karen at  
16 Gordon Strategy, who I understand is Karen Gordon?

17 A. Yes.

18 Q. And Nicole Auty?

19 A. Right.

20 Q. What led you to send this  
21 meeting invitation or to set up this meeting  
22 related to the Red Hill on January 7?

23 A. I would have to draw  
24 some -- I'll summarize what logically would have  
25 happened, sort of best practices.

1 Q. Sure.

2 A. That as we were moving  
3 along with bringing pieces together and seeing  
4 that Karen Gordon's name is also on there, it may  
5 have been a request that either I initiated. I  
6 can't honestly say that I did, it comes out from  
7 me, but may have been at the request of the city  
8 manager, Mike. Our offices were, you know, ten  
9 feet apart across the hall, so often logistically  
10 we would provide support, administrative support,  
11 to the city manager's office as well.

12 So, I can't say for sure that  
13 I have a strong clear reason of why I initiated  
14 the meeting, but clearly it was an important  
15 meeting to bring the parties together in this  
16 ongoing, I'll say, sequence of meetings as we're  
17 trying to pull everything together. And in this  
18 case, and pardon for the long answer, it may be  
19 that I initiated it specifically because Karen  
20 Gordon was being invited to it.

21 Q. So, it's possible that  
22 you might have set it up on your own initiative or  
23 possibly one of your colleagues, Mr. Zegarac,  
24 requested that you set up a meeting with  
25 everybody?



1                   A.    Yes.  It's not clear in  
2   my mind, but that would be often the case where  
3   we're providing support for the city manager's  
4   office but also doing our own meeting agendas, so  
5   I don't have a more specific answer.  Sorry.

6                   Q.    That's okay.  And did you  
7   and Mr. Zegarac, based on the proximity of your  
8   offices to each other, did you have, sort of,  
9   casual hallway conversations or pop into each  
10  other's office and chat about issues on an  
11  as-needed basis?

12                  A.    I would say from time to  
13  time but both of our jobs were so heavily booked  
14  and scheduled, there weren't many of those, I  
15  would say.  They tended to be a little bit more  
16  formally established just so that we could make  
17  sure that we had the time together, but, you know,  
18  certainly there would be times for casual  
19  conversation as well in the hallway.

20                  Q.    And Ms. Gordon, you've  
21  mentioned her.  I understand she's an external  
22  communications person?

23                  A.    That's correct.

24                  Q.    How did Ms. Gordon come  
25  to be invited to this meeting and more broadly

1 involved in this issue?

2 A. Yeah. I'm not sure who  
3 had the relationship with Ms. Gordon before. I  
4 don't believe it was anybody on the communications  
5 team, but I'm going to suggest that either the  
6 city manager or, more likely, the general manager  
7 of public works had some experience in perhaps  
8 working with her in the past, and we ended up --  
9 this is the, I think the only time, that I ever  
10 actually spoke with her. I don't think I ever met  
11 her face to face. She, as I recall, ended up  
12 calling into this meeting because she was located  
13 in Toronto.

14 So, she was brought in because  
15 I think we were all sensitive, I'll say, to the  
16 importance of this topic and it's always good to  
17 bring someone in with, sort of, third-party eyes,  
18 if I can use that term, just to look at the work  
19 we were doing. We were not asking her to do the  
20 work, I'll say. We were asking her to have a look  
21 at the work that we were doing, the plans that  
22 were in place by that date.

23 We would have, that's the  
24 royal we, Jasmine would have started some really  
25 good basic information laying out the framework

1 for the communications plan, and we really wanted  
2 to make sure that we were thorough, that we were  
3 transparent, you know, that we were being very  
4 objective, which is, I'll say, easier for us to do  
5 than anybody else because we are removed one step  
6 from the details. And then Karen Gordon would  
7 have had one additional layer of that objectivity  
8 and comprehension, making sure we were doing what  
9 we needed to do.

10 Q. Okay. In your  
11 experience, was it common for an external  
12 communications person to be brought in for the  
13 purposes that you have described?

14 A. I wouldn't say it was  
15 uncommon, but at the same time it was not a  
16 regular occurrence. Depending on the topic and  
17 the timing, you might need a third party either  
18 for their expertise or just, you know, some  
19 additional work to be done. In this case, it was  
20 for Karen's expertise and experience to, sort of,  
21 shine a light on the work that we had done and we  
22 hoped of course, as it turned out, she did, I'll  
23 say, validate that our approach was pretty spot  
24 on.

25 Q. I actually do have a

1 question on -- you've used the word validate, so I  
2 have a question on that.

3 Registrar, can we close this  
4 document down and call up HAM54399 at images 43  
5 and 45.

6 So, this is just jumping  
7 forward in time to the general issues committee  
8 meeting on February 6.

9 A. Right.

10 Q. And we'll come to that.

11 I have some questions on that.

12 A. Okay.

13 Q. But just on the use of  
14 the word validate, you'll see -- Registrar, can we  
15 call up on the slide on the right-hand side in the  
16 speaker notes below. Yes, perfect.

17 So, you'll see there,

18 Mr. Hertel, it says:

19 "We are working with external  
20 crisis communications  
21 consultant Karen Gordon of  
22 Gordon Strategy in Toronto who  
23 has been advising us over the  
24 last few weeks."

25 And then in brackets it says

1 "validating"?

2 A. Right.

3 Q. So, focusing first on the  
4 advising, what was or what did you understand  
5 Ms. Gordon's role to be in advising the City?  
6 What sort of advice did she provide?

7 A. Well, as I say, in the  
8 one meeting that I participated in where  
9 Ms. Gordon was -- I'm fairly certain she had  
10 called in as opposed to being with us in person.  
11 We walked through, I'll say, the current status of  
12 our findings, you know, all of the work that  
13 individuals had been doing including, of course,  
14 the communications plan, which was the structure  
15 that we were mostly building out, if I can say  
16 that.

17 So, we would have gone through  
18 the different elements of where each of the  
19 directors or general manager and city manager, of  
20 their points to that date. And then the major  
21 part of it, of course, from the communications  
22 perspective, we had by then started to shape what  
23 we thought were the key elements, the strategy and  
24 the tactics. A lot of things still to fill in,  
25 but we would have a framework there. And I guess

1 our question to Ms. Gordon was: Are we on the  
2 right track or right path and what's your advice?

3 And, as I say, I think, you  
4 know, she obviously offered some points, but in a  
5 sense she was -- the good news was she was  
6 validating that we were on the right path in terms  
7 of how we were approaching the overall messaging.  
8 And, in particular, I think what we felt and she,  
9 you know, strongly validated was that we needed to  
10 be fully transparent, have a very, I'll say,  
11 wholesome or comprehensive story to tell because  
12 it's a pretty complex thing, as I learned over  
13 time, you know, building and maintaining roads,  
14 especially when they wind their way through  
15 valleys. So, that would be the kind of advice  
16 that she would have provided.

17 Q. Right. And I think  
18 you've explained what the word validating there in  
19 brackets, what her role was as it relates to that.

20 Registrar, we can close this  
21 down and we can close this document out.

22 So, back to the January 7  
23 meeting, I do have some notes that Ms. Graham  
24 prepared from that meeting. But before I take you  
25 to those, generally what do you recall from that

1 meeting and what was discussed at that meeting?

2                   A. I would categorize this  
3 meeting as being very similar in the agenda for  
4 many of the upcoming meetings as well where we  
5 have a framework that we're trying to fill in all  
6 the blanks and, as each member of the team was  
7 doing further investigation in their own area,  
8 could have been on, you know, digging out reports  
9 that had been presented to council previously that  
10 talked about the work that had been done on the  
11 parkway, et cetera, that each one was just a  
12 building block and iterative approach to working  
13 towards a date of some sort where we would be  
14 bringing this to council.

15                   Q. What was your role as a  
16 member of the team on the further investigations?  
17 Was there a specific area that you were  
18 responsible for or was your role more in relation  
19 to Ms. Graham and Ms. Racine's?

20                   A. Yes, the latter. As the,  
21 you know, non-technical side of it, neither, you  
22 know, legal or public works in the various  
23 departments, our role was to always be coming with  
24 a communications lens that we look through and  
25 trying to make sure that we were aware enough of

1 all the piece parts that we could help frame the  
2 communications more into the tactics now, because  
3 I think we were aligned in our principles and  
4 strategies at this point in time.

5 Q. How would you describe  
6 the tone at this meeting?

7 A. I would say very, I'll  
8 say, working-session like. It wasn't -- it was by  
9 no means negative. It was by no means a  
10 celebration. It was just, okay, we're meeting for  
11 a period of time. Let's just go through our work  
12 and decide what are next steps and then go and get  
13 these next steps done.

14 Q. Okay. Registrar, can we  
15 call up overview document 9A, pages 281 and 282  
16 for now.

17 So, these, Mr. Hertel, are an  
18 excerpt of Ms. Graham's notes from that meeting,  
19 and I will call up the sections that I'm going to  
20 ask you about so that you don't have to strain  
21 your eyes.

22 A. Thank you.

23 Q. So, Registrar, can we  
24 call up on page 281 the bullets underneath RHVP  
25 Introduction and Summary. That's perfect. Thank



1     you.

2                                 So, there's a number of  
3     bullets here related to some of the history on the  
4     Red Hill, issues identified on the road during wet  
5     weather, an overview of the studies and testing  
6     that had been done on the road over time. Do you  
7     recall if this was information -- I think you said  
8     people had been doing different work over time.  
9     Was this information new to you at the time of  
10    this meeting?

11                                A.    I don't know that it was  
12    all new. I mean, because it is a summary, I would  
13    surmise that pieces of this were known and shared  
14    at meetings before and that there were some  
15    additional pieces, but this was really just, to  
16    me, the process that we had to go through to keep  
17    collecting information, kind of play it back, you  
18    know, are we accurate, are we objective, et  
19    cetera, and I'm not sure how else to respond to  
20    that.

21                                Q.    Okay. Who provided this?  
22    Recognizing it's a summary of what looks like  
23    quite a number of points that were discussed, do  
24    you recall who provided this information at the  
25    meeting?

1                   A.     Depending on the line  
2     item, it would have been one of the directors  
3     around the table.  So, engineering services would  
4     be Gord, the operations and traffic would have  
5     been Edward, I'm sure Dan had some commentary.  
6     So, whoever was the subject matter expert, I  
7     guess, would be my answer.

8                   Q.     Okay.  Thank you,  
9     Registrar.  We can close this call out down.  And  
10    looking over to page 282, and if we could call out  
11    the section underneath Crisis Comms Plan.

12                   I take it crisis comms plan,  
13    that's a crisis communications plan?

14                   A.     Yes.

15                   Q.     What is a crisis comms  
16    plan?

17                   A.     Well, to me, it's just a  
18    communications plan.  I guess depending on the  
19    severity or the media attention on a particular  
20    activity, some folks might like to add the label  
21    crisis, but it doesn't change the process.  It  
22    doesn't change what you do.  It might heighten  
23    the, I'll say, urgency of timeframes to pull it  
24    all together, but call it a class A communications  
25    plan.

1 Q. Okay. Thank you. That  
2 was going to be my next question. What  
3 distinguishes a crisis plan from a regular plan?

4 So, in terms of this plan, and  
5 you may have mentioned this, was this something  
6 that Ms. Graham was working on at the time,  
7 putting together a communications plan?

8 A. Yes. Jasmine was the  
9 author, the primary author, and she would put  
10 together in as -- and my bias would be just an  
11 excellent job in putting together quickly and in  
12 advance of any of these meetings of the most  
13 current information that we had that we could then  
14 walk through at these meetings to carry on. I  
15 know that she worked closely with Jen as required  
16 from time to time, but yes, she was the primary  
17 author.

18 Q. Okay. The top bullet  
19 there says:

20 "Council information sharing."

21 And then below that, "Mayor  
22 knows today." At this time, so this is January 7,  
23 had there been a decision that this issue in the  
24 Tradewind report needed to be brought to council?

25 A. Yes. I'm very confident

1 in that. I'll say it's a matter of practice. It  
2 is our professional responsibility as staff to  
3 inform council of anything that, you know, has an  
4 impact either on their individual wards or the  
5 City as a whole, so there was no question that we  
6 were, you know, bringing this to council at this  
7 point.

8 Q. "Mayor knows today."  
9 This is, again, January 7. Is that a reference to  
10 today being January 7 or is that a future  
11 reference to whatever day this was shared with  
12 council?

13 A. I honestly don't know.  
14 It sounds like an action item almost or something  
15 that's going to happen, but I don't like to run  
16 the risk of trying to too much interpret Jasmine's  
17 notes because I don't really know the exact date  
18 offhand that the discussion was had with the  
19 mayor.

20 Q. There was a discussion, a  
21 briefing, that staff had with Mayor Eisenberger on  
22 December 18, but there's no indication that you  
23 were at the meeting.

24 A. I was not, no.

25 Q. Okay. Were you aware

1 that the mayor had been briefed separately from  
2 the rest of council?

3 A. I was at some point. And  
4 I don't know how far along the path I was aware of  
5 that, but I was at this point in time aware that  
6 he had been given, I think, a very high-level, you  
7 know, acknowledgement that the report had been  
8 found.

9 Q. A few lines down, it's  
10 the third bullet, it says:

11 "We are being queried deeply  
12 on FOI."

13 I take it based on your  
14 answers to my questions earlier you were aware of  
15 the FOI at this point?

16 A. I was by this point and I  
17 know, at least my own interpretation of the word  
18 deeply, would be that it was very, very extensive  
19 in terms of the amount of information that was  
20 being requested. And, as I had mentioned earlier,  
21 that's one of those that kind of sticks out in my  
22 mind because it was big job just pulling  
23 information together.

24 Q. So, deeply is perhaps a  
25 reference to the depth of information that was

1 required from the FOI response as opposed to  
2 perhaps the requester themselves following up?

3 A. You know, I hadn't  
4 thought of it in that light, but, I mean, either  
5 one is possible. I honestly don't know.

6 Q. Okay. And it's  
7 referenced, the FOI and being queried deeply here,  
8 is referenced in the section on the crisis  
9 communications plan. How did considerations  
10 related to the FOI factor into the communications  
11 strategy?

12 A. Well, certainly when, in  
13 this case, you're working on, I'll say, a very  
14 comprehensive plan that was originally about staff  
15 discovering a report, then from a timing point of  
16 view, of course, as a communications team, we  
17 needed to be very aware of what was going on with  
18 the timing of the information being pulled for the  
19 FOI, how that would synchronize with the work we  
20 were doing to then plan to inform council.

21 Q. And then the next bullet  
22 down says:

23 "Negative reputational harm to  
24 the City and more litigation."

25 What do you remember about

1 discussion of these points, negative reputational  
2 harm and more litigation?

3 A. I don't recall that  
4 discussion specifically at this meeting, but in  
5 general, again, as the communications group, we're  
6 always looking at each incident with the idea of  
7 trying to mitigate reputational harm and, I guess,  
8 by default, litigation.

9 But one of the things that  
10 strikes me about this particular file that we were  
11 involved with, and I had no idea about road  
12 building until we got into this, but it is a  
13 really complex piece of business and in isolation  
14 any one thing could be taken out of context. So,  
15 again, our notion throughout the process was to do  
16 a very comprehensive fulsome review and  
17 preparation materials to try to mitigate any  
18 negative reputational harm to the City and of  
19 course, through that, hopefully with clarity that  
20 we could bring to the situation, it might have  
21 hopefully a positive impact on mitigating  
22 litigation, I'll say, unnecessarily. Not  
23 certainly in my role to judge at all what should  
24 or shouldn't be litigated, but again with the  
25 notion that anything in isolation, if taken out of

1 context, could unnecessarily result in litigation.

2 Q. So, when you talk about  
3 this being a complex piece of business, is that  
4 what the note at the bottom there where it says  
5 "part of the bigger story," is that what that  
6 relates to?

7 A. Exactly, yes.

8 Q. Thank you. Registrar, we  
9 can close this down and on that same page, 282,  
10 there's a note that says Karen, and if we could  
11 expands that up to the two lines that are bolded,  
12 the GIC and council references. Yes, that's  
13 perfect. Thank you.

14 So, it says:

15 "Karen, come at it and confess  
16 it."

17 Was this what Ms. Gordon's  
18 strategy was or what she advised the City?

19 A. Again, I don't want to  
20 overinterpret the notes. I'm not sure if these  
21 are, sort of, jotted notes in general or, you  
22 know, quotes.

23 Q. Fair enough.

24 A. But I would say that if I  
25 took it more generally than what Karen was



1 offering is, again, indirectly validation of the  
2 approach we had already shared with her.

3 Q. And below where it says  
4 "options for updating," you said at this time the  
5 decision had been made that this would be brought  
6 to council, and I take these two dates here,  
7 January 16 and January 23, as possible dates  
8 for --

9 A. Yes. I think we  
10 certainly felt the professional responsibility to  
11 bring it to GIC and then council as quickly as we  
12 can or could and we knew there was a lot of work  
13 to be done, but, you know, like all good things, I  
14 think you should have a goal. So, we said, you  
15 know, maybe we can be ready for January 16. And,  
16 if that doesn't work out, then, you know, the next  
17 available opportunity would be January 23, et  
18 cetera.

19 Typically, I would point out  
20 as well, that when we were, as staff, preparing  
21 reports and presentations of any sort, the  
22 protocol was to go to GIC first, which is the  
23 working committee of council, same members, and  
24 then it would ultimately then go to council at the  
25 next meeting in most cases where it would be

1 approved more officially and formally into the  
2 record books, if you will.

3 Q. And this timeline,  
4 recognizing that the date that this note was made  
5 was January 7, are the timelines here, sort of, an  
6 accelerated timeline to bring something to council  
7 or is this consistent with the normal course?

8 A. I would say it was  
9 ambitious for sure, because typically there would  
10 be a sign-off process where you do a report and  
11 you would consult with, you know, the appropriate  
12 departments, you write the report, create a  
13 presentation, it would go to the legislative  
14 clerks after all the approvals and, depending on  
15 the topic, the report may be approved by a  
16 director or it might require the general manager  
17 or city manager. That whole process would  
18 normally take longer than this, so clearly this  
19 was an ambitious goal.

20 Q. Thank you. Registrar, we  
21 can close that call out down and we can close this  
22 document.

23 And we spoke and you've given  
24 some evidence about, sort of, the communications  
25 strategy at this stage, January 7. How would you

1 say that that strategy developed over time or if  
2 it did, sort of, how would you describe what that  
3 strategy was moving forward from this January 7  
4 meeting?

5 A. Well, I think at the high  
6 level, that being our strategy as opposed to our  
7 tactics, at the high level I think this meeting  
8 gave us confirmation that we were on the right  
9 path and other than, you know, perhaps a future  
10 little wordsmithing, we knew that the approach  
11 that we were taking strategically was, I'll say  
12 again, sorry to overuse the word, validated by a  
13 third party and the folks who were on the table  
14 and we would continue on to flesh out the broader  
15 plan.

16 And, of course, in each  
17 meeting different ideas would come up, like we  
18 should prepare, you know, a summary, chronological  
19 summary, of all the reports, et cetera. So, each  
20 of these meetings produced more input to fill in  
21 the blanks, plus often, you know, a few  
22 suggestions, we should also do this, this and this  
23 because, again, we wanted to make sure we were  
24 bringing a really well done comprehensive report  
25 and reports plural, you know, to the committee or

1 council so that again they could see it  
2 objectively as well.

3 Q. And of the staff at the  
4 table sort of contributing at these meetings, was  
5 there one group or one staff member driving the  
6 strategy or was it collaborative?

7 A. Well, I would say the  
8 communications strategy per se was initiated by us  
9 and confirmed by the people around the table.

10 Q. Okay. Thank you. And  
11 you spoke earlier about and I asked you about  
12 meetings that you attended, sort of, beginning  
13 from the time that you were advised about this  
14 issue in late 2018 in advance of February 6 and  
15 January 23, which is when this issue was  
16 ultimately brought to council.

17 A. Right.

18 Q. And the inquiry has  
19 received a number of documents that relate to  
20 meetings that took place over this time period.  
21 And from the documents, and I'll take you to some  
22 of them, it appears that you attend some but not  
23 all meetings during this time. Does that sound  
24 consistent with your recollection?

25 A. Yes, it does.

1 Q. Registrar, can we call up  
2 overview document 9A, page 294 and can we also  
3 call up 295. Thank you.

4 So, Mr. Hertel, you'll see in  
5 paragraph 685 there's a note that says:

6 "Ms. Graham organized a  
7 meeting scheduled for  
8 January 11, 2019 at 9:30 a.m.,  
9 subject, confidential  
10 discussion."

11 And you were one of the  
12 attendees that was listed.

13 A. Sorry, can you call that  
14 out?

15 Q. Sure. Registrar, can you  
16 call out paragraph 685.

17 A. Thank you.

18 Q. And if we could put that  
19 a little bit smaller. And there's notes that  
20 Mr. Sabo prepared that are excerpted on the next  
21 page.

22 A. Okay.

23 Q. And you're referenced in  
24 those notes. It says:

25 "Call Jasmine, John H, Gord,

1 Dan, Karen, John, recap of  
2 meeting of group with Mike."  
3 First, do you recall attending  
4 this meeting on January 11?

5 A. Again, not specifically,  
6 but no doubt attended. It was one more in a  
7 series. Just again looking at the participants,  
8 it was now a working committee, I'll call it, and  
9 as any sort of project management approach, you  
10 have some target end dates and you want to just  
11 keep meeting quite frequently giving people just  
12 enough time to get the work done in between, but  
13 keep, you know, calling people back to the table  
14 to ensure that we're still on track.

15 Q. And what was the recap of  
16 the meeting of group with Mike, which I understand  
17 to be Mike Zegarac?

18 A. Yeah.

19 Q. What was that recap, if  
20 you recall?

21 A. I'm guessing that, just  
22 looking at the invites, yeah, Mike was not invited  
23 to the meeting either because we knew he was  
24 unavailable or we didn't feel it was appropriate  
25 use of his time. And then someone, in this case

1 it looks like it was me, was asked to meet with  
2 Mike after the meeting just to give him an update  
3 of where we were.

4 Q. Okay. So, you think that  
5 refers to an update that you provided to  
6 Mr. Zegarac after the meeting?

7 A. It sounds like it, yes.

8 Q. I appreciate these aren't  
9 your notes. Then below that there's a note that  
10 says:

11 "If FOI is media - need comms  
12 plan as they may run before  
13 February 23."

14 A. Okay.

15 Q. Was there discussions or  
16 concerns about a communications plan needing to be  
17 developed in case the Tradewind report was made  
18 public before staff brought it to council?

19 A. That would be a normal  
20 action for us, that if, regardless of the topic,  
21 I'll say, if there was a council meeting that was  
22 coming up where the item ideally would be done to  
23 inform councillors before the FOI became public,  
24 that would be great. But when the opposite is  
25 true and an FOI was likely to be completed out of

1 that sequence, then we would always have a  
2 communications plan around that.

3 Q. So, this isn't a  
4 Tradewind-report-specific concern or topic of  
5 discussion?

6 A. No. I mean, it may have  
7 been related to, you know, this specific FOI, but  
8 the practice itself would be somewhat normal.

9 Q. Okay. Thank you,  
10 Registrar. We can close this document down and if  
11 we can jump forward in the same overview document  
12 to page 315, and we can call out paragraphs 738  
13 and 739, please.

14 So, this note says:

15 "Ms. Graham sent a calendar  
16 invitation for a meeting  
17 scheduled on January 17 titled  
18 Confidential Discussion, Red  
19 Hill Valley Parkway."

20 And Mr. McKinnon, Ms. Racine,  
21 yourself, Mr. McGuire, Mr. Soldo, Ms. Auty and  
22 Mr. Sabo were listed as the attendees for that  
23 meeting. And just -- it's not reflected in this  
24 excerpt in the overview document, but that meeting  
25 that Ms. Graham organized, she organized it on



1 January 11, which was the same day of that meeting  
2 that we just looked at.

3 A. I'm sorry. Just to be  
4 clear, then, this meeting was organized on the  
5 11th for the 17th?

6 Q. Yes.

7 A. Okay.

8 Q. So, it took place on the  
9 17th, but it was arranged six days before.

10 A. Right.

11 Q. So, looking at this group  
12 here, which is a bit of a bigger group than had  
13 been present at the January 11 meeting, do you  
14 have any insight or understanding into what the  
15 purpose of this meeting would be?

16 A. I can only conclude that  
17 it was the next in a series because the attendees  
18 are essentially the same. I don't know if --  
19 let's see. I don't know if Mr. Sabo had been at  
20 all of the previous ones, but certainly he was  
21 there to assist Ms. Auty. And I think Jen  
22 attended many but not all of the meetings as well,  
23 so it's essentially the same group.

24 Q. Okay. So, just further  
25 readiness for that eventual update to council?

1 A. Yes.

2 Q. In paragraph 739

3 Ms. Graham e-mailed Ms. Auty under the subject  
4 line "Confidential road issue preparation document  
5 for your advice." She says:

6 "Please see attached the  
7 confidential inform document  
8 for your review for the  
9 1:00 p.m. meeting."

10 And because it's not  
11 referenced here, I'll take you to that document,  
12 which is a draft of the crisis communications  
13 plan.

14 A. Okay.

15 Q. So, Registrar, can we  
16 call up HAM62091 and if we can call up images 1  
17 and 2 for now.

18 I take it this document looks  
19 familiar to you? You've seen this before,  
20 Mr. Hertel?

21 A. Yes. This would be, at  
22 this point in time, I'm going to guess, the third  
23 or fourth even iteration.

24 Q. Right. Because this was  
25 a document that changed and developed over time

1 sort of as these discussions were happening?

2 A. Yes. It's pretty much a  
3 part of every one of our team meetings that there  
4 would be more updates to this document at each of  
5 those meetings.

6 Q. And I believe you've said  
7 this and this is consistent with Ms. Graham's  
8 evidence that she was primary drafter of this  
9 plan?

10 A. That's correct.

11 Q. What was legal's role in  
12 reviewing or drafting the crisis communications  
13 plan?

14 A. Their role as legal  
15 services was really to review and comment if and  
16 where they saw anything that we were proposing  
17 that they may not feel is appropriate.

18 Q. Who are these plans  
19 prepared for? Are they internally used by staff  
20 or is the idea that they will eventually go to  
21 council?

22 A. The detailed plans here  
23 were internal working documents and then at some  
24 point down the road we would be preparing a  
25 summary of the plan. And, in this particular

1 case, it ended up primarily being put into the  
2 PowerPoint part of this scheduled for February 6.

3 Q. Okay. And that's the  
4 PowerPoint I had up earlier?

5 A. That's correct.

6 Q. We'll come to that as  
7 well. What involvement did you have at this  
8 stage, so this is January 17 or 16, what  
9 involvement had you had to date with the  
10 communications plan?

11 A. Just being a part of the  
12 review team, if you will, and more specifically  
13 with Jen and Jasmine to, you know, continue to see  
14 this evolve, make sure that, you know, at least  
15 the three of us were clear on how it was being  
16 presented, we could ask each other questions of  
17 clarification sort of thing, but it was strictly  
18 in a reviewer role.

19 Q. And was that your  
20 involvement moving forward as well?

21 A. Yes. I mean, not to  
22 diminish my own job, but realistically Jen and  
23 Jasmine and the other communications officers were  
24 trained professionals in communications, writing,  
25 et cetera, and I couldn't, in any level of detail,

1 offer anything better than what has been produced  
2 here. I may have some comments or questions of  
3 clarification.

4 So, in my role I would be a  
5 little closer to being, I'll say, removed from the  
6 detail so that as we're going through things I  
7 would perhaps put myself in the position of the  
8 outside audiences, the stakeholder groups, hearing  
9 the information and did we really tell the story  
10 clearly and comprehensively.

11 Q. Okay. Thank you.  
12 Registrar, we can close this document down now and  
13 call up HAM62634.

14 So, now, Mr. Hertel, we're  
15 jumping forward about a week to January 23.

16 A. Yes.

17 Q. And these are the closed  
18 session minutes from the council meeting that  
19 happened on January 23. And you're listed. If  
20 you look in the section that says also present,  
21 your name is listed there.

22 And, Registrar, can we call up  
23 item I, Potential Litigation Update.

24 So, first a question about  
25 your attendance. Was it common for you to attend

1 council meetings or, in particular, closed  
2 sessions of council in your capacity as director?

3 A. Yes. I attended all  
4 council meetings if I were available and, if I  
5 were unavailable, I would ask Jen or another  
6 member of the team to attend on my behalf so that  
7 we always had a communications person in the room  
8 to, I'll say, here what's going on, learn what's  
9 going on, understand the questions and answers  
10 being given by staff. So, again, looking at it  
11 just from the communications perspective in case  
12 there were actions that were required subsequent  
13 to the meeting.

14 In my role as director, I was  
15 often included in the in-camera portions as well  
16 for the same reasons and not all for certain. It  
17 would depend on the topics. If they were of a  
18 broader nature in terms of City impact, I would be  
19 there. If it would be something to do with, you  
20 know, personnel, that sort of thing, I would  
21 probably not be there.

22 Q. Okay. Thank you. That's  
23 helpful. So, you'll see, this is from the  
24 minutes, that Ms. Auty addressed council and  
25 provided a verbal update respecting the potential

1 litigation update and she presented report  
2 LS19007, so I'll call that document up now.

3 Registrar, can we have  
4 HAM61921, images 1 and 2, and can we call up the  
5 executive summary section, which carries over on  
6 to both pages.

7 So, Mr. Hertel, I'll just give  
8 you a moment to read that.

9 A. Yes. Thank you. Okay.

10 Q. Did you have any  
11 involvement in the preparation of this report that  
12 was presented to council on January 23?

13 A. I typically wouldn't have  
14 any contribution to make to legal services  
15 reports.

16 Q. Had you reviewed it or  
17 seen it before you attended this meeting on  
18 January 23?

19 A. Not that I recall.

20 Q. All right. And what do  
21 you recall about Ms. Auty's presentation on  
22 January 23 and the information that was given to  
23 council on that date?

24 A. You know, it's one of  
25 those meetings where I clearly was in attendance,

1 but there's nothing, I'll say, striking that I  
2 recall from the meeting because it was intended to  
3 be a heads-up with, obviously, details to follow  
4 on February 6. So, I don't have any specific  
5 recollection of debates, discussions, even  
6 questions. I think it was really just a heads-up  
7 without getting into any detail that -- I'll use  
8 that as the reason for my not remembering a lot of  
9 detail about it.

10 Q. Sure. If not the debates  
11 or discussions or questions, do you have any  
12 recollection of tone or the reaction of  
13 councillors to the information that was presented?

14 A. In this meeting, no, I  
15 don't.

16 Q. Okay. Do recall what  
17 Ms. Auty said -- in the second call out, it says:  
18 "It's important that council  
19 be aware of the potential  
20 litigation resulting from this  
21 release and that city staff  
22 are bringing a full report to  
23 committee and council in early  
24 February to give a complete  
25 status update."



1 Do you recall what council was  
2 told about the potential for litigation resulting  
3 from the release of the Tradewind report?

4 A. Not specifically, no.

5 Q. Okay. In general, what  
6 was your understanding of what potential  
7 litigation might result?

8 A. Again, I think it was  
9 just a heads-up. And, again, I apologize. I  
10 don't have a recollection of any discussions  
11 around it at the meeting. In my own mind, I'm  
12 kind of of the opinion that there wasn't a lot  
13 because we were coming back quickly with a  
14 comprehensive set of reports.

15 Q. Okay. Earlier when we  
16 looked at Ms. Graham's notes from the January 7  
17 meeting there had been reference to the January 16  
18 GIC meeting as the goal and then this council  
19 meeting on January 23 as the plan B?

20 A. Right.

21 Q. Do you have any insight  
22 into why disclosure of this initial heads-up ended  
23 up happening on January 23, the plan B date?

24 A. I think in line with our  
25 overall goal of getting to council as quickly as

1 possible, this was a piece of important  
2 information that we could share with council and  
3 let them know that we're coming back with details  
4 on February 6. It's really just more of a  
5 professional courtesy advice, I think, and because  
6 we were not ready with the full set of reports, et  
7 cetera, that we ultimately were for the 6th.  
8 Again, our goal from the beginning was to be  
9 thorough and transparent, et cetera, with our  
10 reporting and with council, and I think this was  
11 chosen as the first thing we could at least  
12 apprise council of so that they're not going to  
13 hear everything for the first time on February 6.

14 Q. Thank you. Registrar,  
15 can we close this call out down and go to image 4  
16 of this document and call out the section  
17 underneath Next Steps, please.

18 So, Mr. Hertel, it says:  
19 "Corporate communications  
20 staff are preparing a  
21 communications plan in the  
22 event the FOI request leads to  
23 release of information in  
24 advance of the PW report  
25 scheduled to come before

1 council on February 4."

2 I take it that communications  
3 plan, that's a version of the document that  
4 Ms. Graham was working on?

5 A. Yes, and we would have  
6 used it as the basis for anything that we had to  
7 do, if we had to do it, before the 4th, as it's  
8 indicated here, but realistically it became the  
9 6th.

10 Q. And we know that there  
11 was some feedback that council provided on the  
12 communications strategy that was proposed at the  
13 February 6 meeting, which we'll come to?

14 A. Yes.

15 Q. At this meeting on  
16 January 23, did council provide any direction or  
17 advice to staff about the communications strategy  
18 or any feedback?

19 A. Not that I recall at all,  
20 no. It wasn't a topic of discussion.

21 Q. Following this meeting on  
22 January 23, what were the next steps for you and  
23 your staff as it relates to disclosure?

24 A. Quite simply to carry on  
25 with finishing all the details, filling in all the

1 blanks, if you will, preparing all the materials.  
2 And, as a communications team, we were there to  
3 support the, in this case primarily, the public  
4 works group but also legal services. And then I  
5 think ultimately audit was participating on the  
6 6th just to make sure that the materials were  
7 packaged in such a way that it would be easily  
8 understood by council and, you know, that our --  
9 we would typically, for example, draft media  
10 releases prior to council and then take the  
11 feedback from the discussion to then fine tune as  
12 required.

13 Q. Thank you, Registrar. We  
14 can close this document down, please, and can we  
15 call up images 357 and 358 of overview document 9A  
16 and can we call out the transcription at the top  
17 of page 358, please.

18 So, Mr. Hertel, these are  
19 notes from a telephone call that Nicole Auty, Ron  
20 Sabo, and David Boghosian, who is the City's  
21 external legal counsel, had on January 30. You  
22 weren't part of this call, but I want to ask you  
23 some questions about the notes because I interpret  
24 them as some reference to what was discussed or  
25 what may have come out of the January 23 council

1 meeting.

2 And so, you'll see it says at  
3 the top:

4 "Council - quite concerned  
5 about situation."

6 And then, "Council wants to  
7 know," and then there's two questions listed  
8 below. And then below that it says:

9 "Council concerned re: Gary  
10 Moore's  
11 judge/honesty/trustworthiness  
12 with them in the past."

13 Looking at these notes, does  
14 this assist at all in refreshing your recollection  
15 about what may have been discussed at the  
16 January 23 council meeting?

17 A. No. Actually, when I see  
18 these comments, I think of them more as comments I  
19 remember from the February 6 meeting.

20 Q. Okay. So, you recall  
21 these topics or questions being things that may  
22 have been discussed at the February 6 meeting but  
23 not January 23?

24 A. Yeah. Just my  
25 recollection and not necessarily in this order,

1 level of detail, but my recollection, right or  
2 wrong, is more about everything to do with  
3 February 6 as opposed to the 23rd.

4 Q. Okay. As I said,  
5 Mr. Boghosian was the City's external legal  
6 counsel on this issue. Do you recall when you  
7 first learned about Mr. Boghosian's retainer?

8 A. No, I don't specifically.

9 Q. Did you have any insight  
10 or understanding into what he was retained for and  
11 for what purpose?

12 A. No, not specifically. I  
13 would only understand that and Nicole Auty felt  
14 that it was appropriate to have external legal  
15 services on this. And I think that was -- it was  
16 a thought shared from time to time by council  
17 members as well when there would be a topic that  
18 would, I'll say, be best represented legally by  
19 outside sources.

20 Q. Okay. Thank you,  
21 Registrar. We can close this call out down,  
22 please.

23 And, Commissioner, I see it's  
24 just before 1:00 and I am about to move to a  
25 different topic, so I wonder if this might be a

1 good time for us to break for lunch. You're  
2 muted, Commissioner.

3 JUSTICE WILTON-SIEGEL: I  
4 apologize. I assume you're going to be some time  
5 after lunch. Is that correct?

6 MS. HENDRIE: Yes.

7 JUSTICE WILTON-SIEGEL: So it  
8 doesn't make sense to continue for a short while?

9 MS. HENDRIE: I don't think  
10 so.

11 JUSTICE WILTON-SIEGEL: Okay,  
12 then let's take a break until 2:15.

13 --- Luncheon recess taken at 12:58 p.m.

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

15 MS. HENDRIE: Good afternoon,  
16 Commissioner. May I proceed?

17 JUSTICE WILTON-SIEGEL: Yes,  
18 please do so.

19 BY MS. HENDRIE:

20 Q. Registrar, if we can call  
21 up overview document 9A, pages 349 and 350. Thank  
22 you.

23 So, Mr. Hertel, there's an  
24 e-mail exchange between Mayor Eisenberger and  
25 Mr. Zegarac that's excerpted in the overview

1 document here.

2 And, Registrar, perhaps we can  
3 call out, in paragraph 826, just the first two  
4 e-mails. No, sorry. The two sections above that.  
5 Perfect.

6 And, Mr. Hertel, if you could  
7 just read this. This is just for context. You're  
8 not copied on these e-mails.

9 A. Okay. Okay.

10 Q. Thank you, Registrar. We  
11 can close that call out.

12 And below there is  
13 Mr. Zegarac's e-mail. It says:

14 "The councillors discussed a  
15 public motion directing the  
16 work below."

17 And then there are a number of  
18 items listed below: Employee considerations,  
19 technical/engineering safety and communication  
20 plan are the three, sort of, bigger topics.

21 And then, Registrar, can we  
22 call ought HAM48662. Thank you.

23 And so, as I said, Mr. Hertel,  
24 that last e-mail exchange between the mayor and  
25 Mr. Zegarac, that was provided in part as context



1 for this e-mail exchange, which is the next day,  
2 January 29. It's between yourself and Ms. Racine,  
3 and you say to Ms. Racine in the e-mail on the  
4 right there:

5 "Hi, again. There have been  
6 new developments and  
7 directions from councillors on  
8 the path forward on the RH  
9 situation. I'll review with  
10 you in person."

11 Which I understand RH to be  
12 Red Hill?

13 A. Yes.

14 Q. Do you know what the new  
15 developments and directions you were referring to  
16 were?

17 A. Well, I think, as you had  
18 indicated, originally the plan was that I believe  
19 it was three reports, two or three reports, from  
20 public works were going to go to the February 4  
21 public works committee meeting. And as you  
22 indicated in the discussion that Mr. Zegarac had  
23 with the councillors, they decided to roll those  
24 into the February 6 meeting.

25 Q. And so, based on that,

1 the councillors that you're referring to here,  
2 would that be Councillor Jackson, Councillor  
3 Merulla, and Councillor Collins, who are the  
4 councillors referred to in Mr. Zegarac's e-mail?

5 A. Yes, the councillors  
6 referred to in Mr. Zegarac's e-mail.

7 Q. And do you recall how or  
8 from who you learned about the new developments  
9 and directions from the councillors?

10 A. I would have heard it  
11 directly from the city manager, Mike Zegarac.

12 Q. And so, based on the  
13 answer that you just gave, was your understanding  
14 of the path forward that perhaps the reports would  
15 not be brought to public works but would be  
16 brought all together at one GIC meeting?

17 A. That's correct.

18 Q. Okay. The inquiry has  
19 received a number of e-mails and documents between  
20 city staff related to the scheduling of the GIC,  
21 which, as we've talked about, eventually did  
22 happen on February 6?

23 A. Correct.

24 Q. Did you have any  
25 involvement in the scheduling process or were you

1 just, sort of, told of the date after the fact?

2 A. No. I was just, I'll  
3 say, copied on or acknowledged when the final  
4 dates were established.

5 Q. Okay. So, you didn't  
6 have any involvement in discussing the appropriate  
7 forum or --

8 A. No. That would have been  
9 primarily the city manager from the staff point of  
10 view.

11 Q. Okay. Thank you.

12 Registrar, we can close this  
13 document down and if we can go back into overview  
14 document 9A, page 359 and perhaps 360 as well.  
15 And can we please call out paragraph 856.

16 There was a meeting on  
17 January 30 amongst a number of city staff that  
18 Ms. Graham set the calendar invitation for, and  
19 you'll see here in this paragraph you were one of  
20 the attendees at the meeting?

21 A. Yes.

22 Q. And the invitation said:  
23 "This meeting will be a  
24 check-in and update on the  
25 current roads issue."

1 A. Right.

2 Q. So, we spoke before lunch  
3 about, sort of, there was a series of meetings  
4 getting ready for that GIC meeting. I take it  
5 this was one of those meetings?

6 A. Yes, one more in the  
7 series.

8 Q. Okay. Do you recall, and  
9 I'll take you to it in a moment, but at the  
10 certain point in this call Mr. Boghosian and  
11 Mr. Malone joined the call, but there was a  
12 meeting of staff before that. Do you recall that?

13 A. I don't recall their  
14 participation, no.

15 Q. Do you recall the meeting  
16 with just the staff on January 30?

17 A. I recall, again, the  
18 series, but I couldn't, without checking my own  
19 calendar, confirm January 30, but I assume that it  
20 would be one more in the series that I did attend.

21 Q. Okay. But you don't have  
22 specific recollections of what was discussed or  
23 what your role was at that meeting?

24 A. No. Just, again, similar  
25 roles in terms of providing updates, refining the

1 content and moving forward to the next steps.

2 Q. Registrar, can we close  
3 this call out.

4 And, you'll see, Mr. Hertel,  
5 in the right-hand side is -- these are  
6 Mr. Malone's notes. It's a transcription and  
7 there's a reference to you. It says "John - corp  
8 com" in the names listed there of the people who  
9 were on the call?

10 A. Okay.

11 Q. Perfect. Thank you. So,  
12 you'll see there "John - corp com."

13 And then, Registrar, we can  
14 close this down and if you can go forward to  
15 page 363 and 364. And these are Mr. Boghosian's  
16 notes and if we could call out the names on the  
17 top of the left side as well.

18 There's a reference, I think  
19 it's to you. It says "John Ratelle," but I think  
20 that's to you. But I think you said, as I  
21 understand your earlier response, Mr. Hertel, that  
22 you don't recall the telephone call with  
23 Mr. Boghosian and Mr. Malone?

24 A. No, I don't. This was a  
25 separate call, not at the meeting. Is that what

1 you're suggesting?

2 Q. My understanding was  
3 there was a meeting that staff had and then  
4 Mr. Boghosian and Mr. Malone called into that  
5 meeting, so there was -- it may have been, sort  
6 of, one series of meetings that happened that  
7 afternoon, but that there was one where just staff  
8 were present and then Mr. Malone and Mr. Boghosian  
9 joined?

10 A. Okay. No, I'm sorry, I  
11 don't recall.

12 Q. Okay. And do you recall,  
13 appreciating that you don't have a specific  
14 recollection of this call, do you recall ever  
15 speaking to Mr. Boghosian or Mr. Malone in a  
16 meeting?

17 A. I don't, like,  
18 individually. I think the only recollection I  
19 would have of Mr. Boghosian would be in council  
20 chambers.

21 Q. Okay. And do you  
22 recall -- so, Mr. Malone works at CIMA. When did  
23 you become aware of CIMA's involvement or that  
24 CIMA would be involved in the disclosure of the  
25 Tradewind report?

1                   A.    Again, not knowing their,  
2    in the early going, their particular specialties  
3    or areas of expertise, all that I can really  
4    recall is, you know, CIMA's name coming up in the,  
5    I'll say, ongoing discussions based on various  
6    pieces of work that they had done with public  
7    works.  And then, near the very end, I recall that  
8    they provided a letter, I think it was back to  
9    staff, which was then formed part of the  
10  discussion on February 6.

11                  Q.    Okay.  Yes, we'll come to  
12  that, the February 4 memo that CIMA prepared.

13                  A.    Right.

14                  Q.    And so, when you say sort  
15  of near the very end in your last response, was  
16  that near the very end of the series of meetings  
17  that you participated in in the lead-up to  
18  February 6?

19                  A.    Yes.  And it's just an  
20  estimate, but I would, again, estimate that in my  
21  mind their corporate name, I'll say, started to  
22  appear in my recollection, to me at least,  
23  probably in December forward.

24                  Q.    Okay.  Thank you,  
25  Registrar.  We can close this document down and if

1 we could call up HAM28364. And perhaps we can  
2 call out everything up to Ms. Minard's e-mail  
3 signature.

4 A. Thank you.

5 Q. So, on February 1  
6 Brigitte Minard, who is in the audit services  
7 department, e-mailed a copy of the lines of  
8 enquiry document to yourself and to Ms. Racine.  
9 She says in her e-mail:

10 "Hi, Jen and John. I did a  
11 phone call with Jen earlier  
12 this afternoon and said I  
13 would share Charles' line of  
14 enquiry for the one specific  
15 component of our roads  
16 construction audit."

17 And that's what she sent to  
18 you and Ms. Racine. By this time, this is  
19 February 1, were you aware of audit's involvement  
20 in relation to the Tradewind report or the  
21 interactions that audit staff had had with staff  
22 in the public works department as it relates to  
23 the Tradewind report?

24 A. I was aware of their  
25 audit and assumed that the Tradewind report and



1 related processes would be part of their audit, as  
2 would be typical. And, as I recall, and I'm not  
3 sure honestly if it was during prep that I  
4 remember seeing it or at the time, but it was more  
5 or less, you know, a courtesy note from Brigitte,  
6 who used to be part of our division, as just a  
7 heads-up for information only, that this would be  
8 a line of questioning that was being pursued in  
9 the audit.

10 Q. Were you aware that audit  
11 services had received a redacted copy of the 2014  
12 Golder report at any point in time? And for  
13 context, the 2014 Golder is the report that the  
14 Tradewind report was appended to.

15 A. I know of that  
16 subsequently, but I don't know if I knew it at  
17 that time.

18 Q. Sure. Okay. Fair  
19 enough. That was a subject that came up, I  
20 believe, at the February 6 meeting. What was your  
21 understanding from, sort of, where you were  
22 sitting on the communications side of the  
23 relationship, if any, between the work that audit  
24 was doing and the work that yourself and other  
25 city staff were doing in terms of preparing to

1 bring this information forward to council?

2 A. Sorry, could you say that  
3 again?

4 Q. Sure. So, how did the  
5 work -- and perhaps I'll rephrase it. How did the  
6 work that audit was doing in relation to their  
7 audit and the lines of enquiry document that you  
8 received and the work that you were doing with  
9 staff in preparing to bring the Tradewind report  
10 to council? Like, how did you understand the  
11 relationship between what they were doing and what  
12 you were doing at the time, if any?

13 A. Okay. Typically, the  
14 internal audit by its name would be an internal  
15 process and review. And if I could just separate  
16 it for a moment, if an audit was being done on  
17 your division or your department, it would be done  
18 purely internally, they would produce a report,  
19 you would respond to the report, et cetera. It  
20 would not generally, at least I can't recall any  
21 example where it would be something that the comms  
22 people would be involved with, unless we needed to  
23 help with some internal document -- not  
24 documentation, but perhaps correspondence or  
25 information sharing to staff.

1 I think it's similar in this  
2 case. I was certainly aware that, you know, at  
3 this point they were doing their full audit. I  
4 know one of the factors that, you know, makes me  
5 still remember was all of these things converging  
6 in the same timeframe. The FOI, you know, the  
7 audit and preparation for council was a tremendous  
8 workload on many, many people in the public works  
9 department.

10 Q. Thank you, Registrar. We  
11 can close this document down.

12 And so, at this time, in the  
13 sort of early February, there was a significant  
14 amount of work that was being done, as you said,  
15 by staff and a number of different groups in order  
16 to get ready to bring this to council?

17 A. Right.

18 Q. Who did you perceive to  
19 be leading the efforts or sort of overseeing all  
20 of these different groups in terms of eventually  
21 getting all of this before council?

22 A. If I were to pick one  
23 person, I would say it was interim city manager  
24 Mike Zegarac. And then Mike, through the members  
25 of the working team that you have seen appear in

1 so many of these meetings, would be the ones  
2 pulling their pieces together, knowing that Mike  
3 was, I'll say, leading at a very high level the  
4 overall exercise and interfacing ultimately with  
5 council.

6 Q. Okay. Registrar, can we  
7 please call up overview document 9A, page 412.  
8 And perhaps we could, sort of, expand the entire  
9 paragraph here.

10 And, Mr. Hertel, if it's not  
11 big enough when it's called out, just let me know.

12 A. I think that's good.

13 Q. Okay. So, on February 3  
14 Ms. Graham, she e-mailed Nicole Auty and yourself,  
15 Ms. Racine, Mr. McKinnon and Mr. Sabo, attaching  
16 three draft documents, so there was a  
17 communications plan, a timeline and presentation  
18 slides. We've received in the inquiry a number of  
19 versions of all of these documents and I think you  
20 said earlier this morning it was, sort of, an  
21 iterative process --

22 A. Yes.

23 Q. -- developing the  
24 documents for disclosure?

25 A. Yes.

1 Q. Okay. So, I have some  
2 questions about your involvement, sort of, in each  
3 of these documents.

4 A. Okay.

5 Q. And rather than ask you  
6 in the abstract, I'll call them up.

7 A. Okay.

8 Q. And then we can look at  
9 them that way. So, starting first with the  
10 communications plan summary.

11 Registrar, if we can call up  
12 HAM61918.

13 This is the version,  
14 Mr. Hertel, that ultimately, you'll see there, it  
15 says item 14.4?

16 A. Right.

17 Q. So, this was the version  
18 that ultimately did go before council?

19 A. Mm-hmm.

20 Q. And you may have said  
21 this earlier today, but I understand that  
22 Ms. Graham was the primary drafter of this version  
23 of the communications plan?

24 A. That's correct.

25 Q. Okay. And this is the

1 summary version that we looked at or that we  
2 talked about earlier, that there was a bigger plan  
3 that staff put together, the crisis communications  
4 plan, and this was a summary version that went  
5 before council?

6 A. Right.

7 Q. This version doesn't have  
8 crisis plan in front of it. Do you have any  
9 insight into why that is? It's just called a  
10 communications plan whereas the version we looked  
11 at earlier was a crisis communications plan.

12 A. I don't have any, you  
13 know, specific thought other than, as I said in my  
14 previous comments, I never really considered a  
15 crisis communications plan being the appropriate  
16 title for what would become a public document.  
17 Communication plan is a communication plan. I  
18 think internally somehow it got labelled as a  
19 crisis communication plan. I'm not sure why.  
20 Perhaps because we had engaged Karen Gordon as a,  
21 you know, crisis communications strategist. I'm  
22 not sure. But there was nothing particular that I  
23 could think of that would cause the change in  
24 title.

25 Q. Okay. So, as you said,

1 Ms. Graham was the primary drafter. What was your  
2 role in this specific version of the  
3 communications plan?

4 A. It would be strictly a  
5 reviewer after either this version or perhaps a  
6 draft version just before it would have been  
7 shared with myself and Jen Racine. And if I had  
8 any questions or comments, I would have asked at  
9 the time.

10 Q. As director, was your  
11 sign-off required?

12 A. On reports going to  
13 council, yes.

14 Q. And this wouldn't qualify  
15 as a report or would it?

16 A. I'm just trying to think  
17 of the -- because it's not done in a normal report  
18 format per se.

19 Q. Yeah. My understanding,  
20 if it assists, is that there were a number of  
21 reports that did go to council. There was a legal  
22 services report, an audit report and then I think  
23 that there were a number of documents that may  
24 have just been handed up to council perhaps --

25 A. Yeah.

1 Q. -- as, sort of, a  
2 supplement to the actual reports.

3 A. Yes. To answer your  
4 original question, yes, typically absolutely would  
5 sign off and I'll say regardless of who the author  
6 would be, the director would be totally  
7 responsible and accountable for the documents put  
8 before council and committee.

9 Q. Registrar, can we call up  
10 HAM61919.

11 So, this is a preliminary  
12 reconstructed timeline and it's a number of pages.  
13 I don't think I need to call up all the pages, but  
14 if it assists, I'm happy to. So, my question is:  
15 What involvement, if any, did you have in  
16 preparing this document?

17 A. I would have no  
18 involvement in that particular document. The only  
19 time I would be if it were specifically an  
20 activity that the comms group were responsible for  
21 in this list of chronological items.

22 Q. Did you see it at all  
23 before it went before council?

24 A. I do recall seeing it,  
25 not reading it entirely because, again, not



1 relevant, I'll say, to the role I played in  
2 communications.

3 Q. Okay. Thank you,  
4 Registrar. We can close this document down.

5 There was another document,  
6 Mr. Hertel, that you also received in advance of  
7 the GIC. It was the slide presentation, but  
8 rather than discuss it twice, I'll ask my  
9 questions about your involvement in those slides  
10 when we come to the February 6 meeting.

11 A. Great.

12 Q. Registrar, if we can call  
13 up HAM54361 and if we can expand that calendar  
14 invitation.

15 So, you'll see, Mr. Hertel,  
16 there was a meeting that was arranged for the  
17 evening of February 4, so two days before the GIC  
18 ultimately took place. And Mr. Zegarac, Ms. Auty,  
19 Mr. McKinnon, Mr. Sabo, Mr. Soldo, Mr. McGuire,  
20 yourself, Ms. Graham, Ms. Racine and Mr. Brown,  
21 the auditor, were listed as the attendees at the  
22 meeting. And the subject line of the meeting is  
23 "RHVP GIC debrief," but it's a few days before the  
24 GIC, so it suggests to me it's perhaps more of a  
25 pre-brief than a debrief?

1 A. Yes.

2 Q. Do you recall this  
3 meeting?

4 A. In fairly vague terms, I  
5 do. I know that it was important to Mike that we  
6 get together one last time and do, kind of, a  
7 rough or high-level walkthrough just to make sure  
8 that all the reports were done, that everything  
9 was, you know, flowing smoothly because there  
10 would be a number of presentations. Yeah, I  
11 remember, I'll say vaguely, the meeting.

12 Selfishly, the feedback I would have been looking  
13 for was support for the communications section of  
14 this and wouldn't have paid too much attention,  
15 I'll say, to the other sections because they're  
16 the ones with the expertise.

17 Q. Okay. So, you think you  
18 might have done a rough walkthrough or, sort of,  
19 prep session for at least what you recall would  
20 have been your section of the presentation?

21 A. Yes. And given, quite  
22 frankly, that Jasmine and Jen were there, I would  
23 suggest that Jasmine would have been the  
24 individual on our team who would have led the  
25 discussion for that section.

1 Q. So, to the extent that we  
2 talked about, sort of, the division of labour and  
3 the work flow as between Ms. Graham, Ms. Racine  
4 and yourself, at this point, as you're getting  
5 into the lead-up towards the GIC, would it have,  
6 sort of, started to pass on to you given that you  
7 were the presenter at the meeting?

8 A. I mean, it was getting  
9 close for sure, so I had to get more engaged in  
10 the actual report content for communications, had  
11 to be comfortable with, I mean, literally every  
12 word in the presentation and the flow. And that,  
13 again, would have been drafted by Jasmine with,  
14 I'm sure, some support from Jen. And then I would  
15 have typically reviewed it in some form of draft,  
16 asked questions of clarification if I had any, and  
17 then, you know, signed off and tried to do my  
18 homework before the 6th.

19 Q. Okay. Thank you,  
20 Registrar. We can close this document down now  
21 and if we can go back into overview document 9A,  
22 page 439 and if we can call out paragraph 1028,  
23 the top paragraph.

24 So, on February 4 -- sorry,  
25 this is February 5?

1 A. Yes.

2 Q. So, in the morning on  
3 February 5, I know the date is not there but it is  
4 February 5, Ms. Auty e-mailed a copy of the  
5 February 4 CIMA memorandum to a number of city  
6 staff, including yourself. She says:

7 "Please see the attached memo  
8 from CIMA. This is privileged  
9 and not to be distributed  
10 beyond this group."

11 A. Right.

12 Q. Perhaps I'll call up the  
13 CIMA memo just to orient our discussion.

14 Registrar, that's HAM12842.

15 Do you recall seeing this  
16 document, Mr. Hertel?

17 A. I do.

18 Q. Did you review it at the  
19 time that Ms. Auty sent it to you or at any point  
20 before the February 6 meeting?

21 A. For sure I would have  
22 read through it just to get a general  
23 understanding. Primarily I think, again, to  
24 understand how, if any, in any way, it impacted  
25 our communications plan and needed to at least

1 understand it at that level. I wouldn't  
2 necessarily understand some of the technical  
3 parts, but overall I understood that it was, I'll  
4 say, a complementary part of the presentation  
5 materials.

6 Q. You said you read it in  
7 part to understand if it impacted the City's  
8 communications plan. Do you recall if it did  
9 impact the City's communications plan, the  
10 findings in the CIMA memo?

11 A. It did not influence, you  
12 know, our strategy and our tactics and, on the  
13 tactical side, wouldn't influence the framework  
14 for those, but it ended up, of course, being part  
15 of the evidence, if you will, that was released on  
16 February 6; therefore, that informed the way in  
17 which we, I believe, drafted some of the, or  
18 redrafted, some of the portions of the news  
19 release that went out that night.

20 Q. Okay. We'll come to the  
21 redrafting of the news release.

22 A. Okay.

23 Q. What was your impression  
24 or your takeaways from reading the CIMA memo?

25 A. My personal impression

1 was that it was a good news story, that it, you  
2 know, reaffirmed what I understood to be the  
3 situation throughout all of the meetings, et  
4 cetera, where, you know, public works had done a  
5 tremendous amount of work improving the roadway,  
6 executing over a period of years the  
7 recommendations that were brought forward to  
8 council and approved, and then, you know, in that  
9 sense, again, from a communication lens, was, I'll  
10 say, a third-party professional opinion that  
11 things were in pretty good shape on the roadway  
12 relative to its specifications.

13 Q. Okay. Thank you.  
14 Registrar, we can close these two documents down  
15 and if we can go to HAM62635 and if we could call  
16 up both images.

17 So, Mr. Hertel, these are the  
18 closed session minutes from the GIC on February 6.  
19 And, as you mentioned, you were there at that  
20 meeting, the minutes reflect that, along with a  
21 number of other city staff, many of who were at  
22 these meetings that we've discussed today?

23 A. Right.

24 Q. I take it based on the  
25 answers that you have given so far that you recall

1 attending that meeting?

2 A. I do.

3 Q. Generally, what do you  
4 recall about the meeting, perhaps in, sort of,  
5 comparison to the meeting on January 23 that we  
6 spoke about earlier?

7 A. Yeah. I apologize for  
8 kind of blending those two together, I guess, but  
9 what I associate with the February 6 meeting was  
10 the, I'll say, number one, the length of the  
11 discussions. It was a very long meeting. I think  
12 we finished up at 3:30 or 4:00 in the morning --

13 Q. There was another council  
14 meeting and I think that meeting went to 3:30 in  
15 the morning. This meeting, I think, went to just  
16 after 10:00, but you were in closed session for  
17 about six hours.

18 A. Oh, okay. So, let me  
19 just -- so, this is GIC. Is this by chance the  
20 public portion?

21 Q. So, these are the closed  
22 session minutes and they reflect that the closed  
23 session -- you went into closed session at  
24 4:18 p.m. and you came out of the closed session  
25 at 10:03 p.m., but I believe that the meeting

1 started earlier in the day, perhaps in the morning  
2 on February 6, so it would have run about  
3 12 hours, I think?

4 A. Okay. My apologies. I  
5 am mixing it with another marathon of a meeting, I  
6 think. But certainly content wise, regardless of  
7 the hour of the day, I recall it being a, you  
8 know, challenging atmosphere, I'll say. There, of  
9 course, were many questions through the reports.  
10 The discussion went in fact so long on the  
11 previous reports that I believe I got through one  
12 and maybe part of another slide in my actual  
13 communications section, which was later in the  
14 agenda. And I recall, you know, the mood being  
15 one of, to some degree, even confusion,  
16 frustration, what did this mean? You know, not  
17 dissimilar to what everyone else experienced, I'll  
18 say, back earlier times when, you know, there was  
19 certainly an attempt to put all of this in  
20 perspective through the various presentations that  
21 were given.

22 But I still think some  
23 councillors, not all, were particularly anxious,  
24 I'll say, maybe frustrated, that more from a media  
25 perspective, you know, what the heck? Right? How



1 can we have gone on all these years and are just  
2 hearing about this now, knowing that the Red Hill  
3 Valley Parkway was always kind of high profile  
4 from before it was built to the present day. So,  
5 there was a degree of frustration, particularly by  
6 some.

7 Q. Okay. And I think you  
8 said that there were some councillors who were  
9 anxious or particularly anxious, I think is how  
10 you described it.

11 A. Yeah.

12 Q. In terms of council's  
13 reaction, do you recall if the anxiety or concern  
14 or frustration that was expressed, was that  
15 related to potential safety issues and safety  
16 concerns on the Red Hill or was it more about the  
17 fact that the report was just being brought to  
18 council's attention at this point in time?

19 A. Yes, quite the latter,  
20 because all of the reports and work that had been  
21 done over the years, as I mentioned a few moments  
22 ago, was all the work either had been done or was  
23 scheduled to be done, such as the repaving. The  
24 CIMA letter, I'll say, confirmed all of that, so  
25 there was not a discussion or concern about the

1 safety. It was more about the fact that some  
2 statements had been made in the media by a staff  
3 member, you know, I guess I would say now we're in  
4 February, so in the previous year to respond to  
5 reporters that there was no report, et cetera, and  
6 now here we were talking about a report that, in  
7 fact, had been filed.

8 Q. Okay. Registrar, can we  
9 call up HAM54399 and I think images 1 and 2 to  
10 start.

11 So, we looked at this  
12 document, a slide in this document, earlier and  
13 we've made reference to this. These are the  
14 in-camera slides and you're listed in the slide on  
15 the right-hand side under part 4, Communications  
16 Strategy?

17 A. Right.

18 Q. So, these are the slides  
19 that were presented at the council meeting?

20 A. Right.

21 Q. In terms of the  
22 communications slides that I'll take you to in a  
23 moment, generally can you describe what the  
24 process was for how those slides were created and  
25 how they came to be?

1                   A.    Yes.  Again, the primary  
2   author was Jasmine, some strong support and  
3   assistance from Jen, and then they presented the  
4   draft slides to me with speaking notes included  
5   and I would have at the time commented, asked, you  
6   know, questions if I had any, et cetera, but  
7   that's how they were created.  And when we got to  
8   this point, obviously I was in full support of the  
9   presentation materials they had prepared.

10                  Q.    Okay.  So, the creation  
11   of the slides and the speaking points, that was  
12   also an iterative process?

13                  A.    Yes, and I would say it  
14   was, from my recollection, not much of an  
15   iterative process.  It was probably more of asking  
16   them to clarify and expand on any points I may  
17   have had some curiosity about, but I don't recall  
18   that anything was particularly changed.  It was  
19   more of my, I'll say, getting up to speed on their  
20   thoughts around those particular speaking notes.

21                  Q.    Understood.  Registrar,  
22   can we move forward in this document to image 42.

23                            This is part of the  
24   communications section of the presentation?

25                  A.    Right.

1 Q. Before I ask any specific  
2 question about this slide, I think you said  
3 earlier you think you may have gotten through one  
4 or maybe one and a half of your slides. Is that  
5 right?

6 A. Yes.

7 Q. How did it come to be  
8 that you didn't actually get through all of your  
9 slides for what happened in the meeting?

10 A. Kind of a rule of thumb  
11 is never be the last speaker on a council agenda.  
12 Even in the best of marathons, people start tiring  
13 near the end. And the reason primarily that we  
14 didn't go any further in was there had been so  
15 much discussion by councillors at that point that  
16 it really was all about let's just get on with it,  
17 let's be -- I mean, they were aligned. They may  
18 not have 100 percent realized it, but they were  
19 very much aligned with what we were proposing,  
20 which was to be very transparent, make sure that  
21 we were providing as much of context as we could.  
22 We had planned to over time share the reports and  
23 all that sort of thing.

24 So, when it got to, I'm going  
25 to say, the beginning of slide 2, it was like,

1     okay, okay, we know where we want to go.  It's  
2     been a long meeting.  Why don't you folks go back  
3     into the anteroom and, based on the conversations  
4     we've just had, you know, do a redraft of the news  
5     release that we would want to put out that  
6     evening.

7                             Q.     I'll come to the news  
8     release in a moment.  Just on that, so just in  
9     terms of sort of understanding the flow of events,  
10    there were three presenters before you?

11                            A.     Yes.

12                            Q.     Were there, sort of,  
13    communications discussions mixed in to the other  
14    various parts of the presentation?

15                            A.     I would say not specific  
16    to our strategy, but more about the notion of  
17    being transparent.  And, you know, there were some  
18    examples, some case study examples, that I recall  
19    being kind of tossed out that, you know, here was  
20    an example where the company did the right thing  
21    against their lawyer's advice and just put it  
22    right out there and got past it, you know, very  
23    quickly.  So, there was that kind of a discussion,  
24    but not specifically about components of our plan.

25                            Q.     So, you'll in the slide I

1 that have up here, it says Risk Assessment:

2 "Goal is to mitigate the  
3 risks/issues as much as  
4 possible."

5 And then there's two sections:  
6 Reputational and Financial/Legal?

7 A. Right.

8 Q. The second bullet under  
9 Reputational says:

10 "Perceived public safety  
11 concern."

12 I think you may have spoken  
13 about this earlier, but from your perspective was  
14 there an actual safety concern or was the concern  
15 more about the perception of a safety concern?

16 A. The key word is  
17 perception and we knew that, you know, based on  
18 some of the media coverage over the previous year  
19 or so that the questions were raised in articles,  
20 which creates a perception or a question in  
21 citizens' mind and our job was to make sure that  
22 we were aware of and finding the right balance to  
23 deal with the perception of a safety concern as  
24 opposed to there being a safety concern.

25 Q. And underneath the

1 Financial/Legal it says:

2 "Current and potential future  
3 litigation."

4 What did you come to  
5 understand as you prepared for this presentation  
6 and when you gave this presentation the litigation  
7 risk to be and how did that factor into the  
8 communications strategy?

9 A. Well, it's really a truly  
10 a part B to the one above in the sense that if you  
11 don't do a good job on, I'll say, part A, then  
12 you're likely to have an influence on part B.

13 So, it was my understanding at  
14 the time that -- and I don't know the numbers and  
15 I hate to in any way minimize the litigations that  
16 were, I'll say, on the books, because they're for  
17 terrible reasons in terms of fatalities. But I  
18 knew there were some litigations in the background  
19 and the point of this particular one was that we  
20 really need to help the City mitigate on the  
21 financial and legal side as well by making sure  
22 we're telling the whole story transparently,  
23 comprehensively and in a manner that makes sense  
24 to the general public, because that's how  
25 perceptions can get off the rails. And so, that

1 was a natural flow that we had to also see as part  
2 of our mandate.

3 Q. Okay. Registrar, if we  
4 can move forward to slides 43 and 44.

5 So, these are some additional  
6 communications slide. In the slide on the  
7 right-hand side it says:

8 "A media release following  
9 council on February 13 will  
10 allow us to -- "

11 Then there's a number of  
12 points below that?

13 A. Yes.

14 Q. And, as I understand it,  
15 that was the plan going in? The strategy proposed  
16 was to do a media release after the subsequent  
17 council meeting on February 13?

18 A. Yes. That would be our  
19 typical protocol, you would go to general issues  
20 committee with draft materials and as far as media  
21 releases you would take the information shared  
22 during the discussions, you would fine tune that,  
23 and then once the whole meeting agenda, if you  
24 will, and all the reports had been ratified by  
25 council, then it was available for release. That



1 would be the normal process, but it was decided  
2 that, no, we're going to go tonight, sort of.

3 Q. When you say go tonight,  
4 you're referring to the press release that was  
5 ultimately issued on February 6?

6 A. That's correct, yes. And  
7 that was a direction of council.

8 Q. Okay. Why don't we call  
9 that document up. Registrar, can we call up  
10 HAM12841, images 1 and 2.

11 I think you've given some  
12 evidence about how this document came to be, that  
13 staff perhaps went back to the anteroom or on a  
14 break, did some redrafting of the original draft.  
15 Is that correct?

16 A. That's correct, yes.

17 Q. And were you involved in  
18 the redrafting of the press release?

19 A. Yes. This was a  
20 many-hands editing exercise where, if my  
21 recollection is accurate, Jasmine was not in the  
22 in-camera portion of the meeting and was waiting  
23 in the anteroom. So, those of us who were allowed  
24 to stay in the in-camera session went into the  
25 anteroom and Jasmine was the quarterback, I'll

1 say, of the exercise. I believe that we had to  
2 have some sort of orderly approach to it because a  
3 dozen people throwing out ideas is not very  
4 efficient.

5 So between, I'll say, myself  
6 as perhaps a bit of a police officer and Mike  
7 Zegarac, the city manager, helping to lead through  
8 the discussions, we went through, I think, two for  
9 sure, maybe three revisions in that roughly one  
10 half hour timeframe where Jasmine took the initial  
11 barrage of suggestions, organized them, printed  
12 them off for the people in the room, took a  
13 minute, read through, then some more editing went  
14 for the next iteration or two until we produced  
15 the final version.

16 Q. The release starts with  
17 an apology on staff's behalf?

18 A. Yes.

19 Q. The inquiry has heard  
20 evidence from a number of people about the apology  
21 and we heard from Councillor Danko yesterday that  
22 that apology came as part of an order or direction  
23 from council to have that apology included. Is  
24 that consistent with your recollection?

25 A. It is, yes.

1 Q. And what was your  
2 understanding of why council wanted an apology?

3 A. Well, I think, as I  
4 mentioned a moment ago, that some councillors were  
5 more upset, I'll say, than others about the  
6 discovery and what might, you know, come of it in  
7 terms of public perception, et cetera. And I  
8 think, you know, in all fairness, and it's sort of  
9 an editorial comment, so forgive me, council  
10 relies on staff to do the work, and yet when  
11 things go wrong, whether they were unintentional  
12 or intentional by staff, council kind of wears it.

13 So, I think for some  
14 councillors who were very close to the situation  
15 for a long time, many iterations, I think they  
16 were quite disappointed, you know, feeling a bit  
17 blindsided perhaps and really felt it appropriate  
18 that staff would publicly apologize to council and  
19 the general public for the report just, you know,  
20 coming out now and being made aware to council at  
21 this point in time.

22 Q. Okay. There are a number  
23 of references to speeding in the press release and  
24 we know that council did ultimately reduce the  
25 speed limit on a portion of the Red Hill coming

1 out of this meeting?

2 A. Yes.

3 Q. Was speeding an important  
4 or essential part of the messaging to the public  
5 coming out of the GIC?

6 A. Yes. I think all of the  
7 data that had been researched and presented  
8 throughout the investigation pointed to speeding  
9 as one of the important factors that had led to  
10 many of the accidents on the Red Hill. And, you  
11 know, I forget exactly the timing, but I know we  
12 wanted more police enforcement on speed, we were  
13 initially going to reduce the speed for a portion  
14 of the Red Hill from 90 to 80, et cetera, so it  
15 was an attempt to remind people that the road is  
16 safe if you stay within speed limits, et cetera.

17 And knowing that, the  
18 figure of 110 kilometres an hour comes to mind as  
19 in one of the reports that had been produced, and  
20 I don't recall exactly which one, that turned out  
21 to be the average speed that had been tracked on  
22 the Red Hill, far above the 90 kilometres an hour  
23 that was posted. And so, the notion was to  
24 emphasize speed through this press release,  
25 knowing that additional things would be probably

1 coming down the road where we would add  
2 enforcement and lower the speed, et cetera.

3 Q. Okay. And I understand  
4 that Mr. Zegarac read this statement out at the  
5 end of closed session. Is that right?

6 A. That's correct.

7 Q. Is that common in your  
8 experience?

9 A. First time I had seen it  
10 in my, sort of, seven years, I guess, with the  
11 organization.

12 Q. What was your  
13 understanding of why Mr. Zegarac read the  
14 statement out?

15 A. Again, at the direction  
16 of council to make sure that the information  
17 contained in the media release was heard firsthand  
18 on the record in the open session recordings, and  
19 also there were a few, I forget, three or four  
20 maybe media professionals were still waiting for  
21 the public session, so wanted it to be shared in  
22 that venue, I'll say.

23 Q. Okay. Registrar, we can  
24 close this document down and if we can go to  
25 overview document 10A, page 75. Could you call

1 out paragraph 181.

2 So, two days after the GIC  
3 meeting, on February 8, Mr. Zegarac circulated a  
4 calendar appointment for a meeting titled RHVP  
5 Communications Strategy, and yourself, Ms. Graham,  
6 Ms. Racine, Mr. McKinnon, Ms. Auty and Ms. Shantz,  
7 who I understand is in the mayor's office or was  
8 one of the mayor's staff, you're all listed as the  
9 attendees at the meeting?

10 A. Yes.

11 Q. More general question.

12 So, this is post disclosure. What was the City's  
13 communications strategy related to the Red Hill  
14 and the Tradewind report post-disclosure moving  
15 forward and how did it change, if at all, from  
16 what the strategy was going into the February 6  
17 GIC?

18 A. The strategy itself did  
19 not change. The tactics, I'll say, were  
20 fine-tuned by the final content, if you will, of  
21 the media release, but I do recall the next few  
22 days being very busy in terms of additional media  
23 requests coming in, et cetera. But the actual  
24 strategy and tactics fundamentally didn't change.  
25 It was now more about making sure that we were

1 executing the strategy and tactics. As you  
2 indicated, Ms. Shantz was at the meeting and was  
3 the communications officer within and reporting to  
4 the mayor's team.

5 If memory serves, again from,  
6 I'll say, prep documents as opposed to my memory  
7 being that good, this was, like, a 15-minute phone  
8 call or something, so it was just a quick touch  
9 base to probably ask the same question you just  
10 asked me.

11 Q. Okay. Thank you.

12 Commissioner, I have no  
13 further questions for Mr. Hertel.

14 JUSTICE WILTON-SIEGEL: Okay.  
15 We should ask counsel for the other participants  
16 whether they have any questions. We'll start with  
17 Ms. Ramaswamy for Golders.

18 MS. RAMASWAMY: Good  
19 afternoon, Commissioner. We can confirm we have  
20 no questions for Mr. Hertel.

21 JUSTICE WILTON-SIEGEL: Thank  
22 you. Mr. Bourrier for the MTO?

23 MR. BOURRIER: Good afternoon,  
24 Commissioner. We don't have any questions either  
25 for this witness.

1 JUSTICE WILTON-SIEGEL:

2 Ms. Talebi?

3 MS. TALEBI: We have no  
4 questions for Mr. Hertel. Thank you,  
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Okay.  
7 Well, I think, then, Mr. Hertel, thank you very  
8 much for attending. You're excused. You can sign  
9 off.

10 THE WITNESS: Great. My  
11 pleasure. Thank you and good afternoon to you  
12 all.

13 JUSTICE WILTON-SIEGEL: Thank  
14 you. The rest of us, my understanding is that the  
15 witness for tomorrow has had to be rescheduled for  
16 sometime next week.

17 MS. HENDRIE: That's correct.

18 JUSTICE WILTON-SIEGEL: So, we  
19 will now stand adjourned until 9:30 Monday  
20 morning. So, I wish all counsel a good weekend.  
21 Thank you.

22 --- Whereupon the proceedings adjourned at  
23 3:12 p.m. until Monday, October 31, 2022 at  
24 9:30 a.m.

25