

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Tuesday, November 01, 2022 at 9:30 a.m.

VOLUME 79

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

APPEARANCES:

Emily C. Lawrence	For Red Hill Valley Parkway
Delna Contractor Vishaya Mishra	For City of Hamilton
Heather McIvor	For Province of Ontario
Jennifer Roberts	For Golder Associates Inc.

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1 Arbitration Place Virtual
2 --- Upon recommencing on Tuesday, November 1, 2022
3 at 9:30 a.m.

4 MS. LAWRENCE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning.

8 MS. LAWRENCE: We have Mr.
9 Soldo back with us today and he has previously
10 been sworn.

11 May I proceed?

12 JUSTICE WILTON-SIEGEL: Yes,
13 please proceed.

14 MS. LAWRENCE: Thank you.

15 PREVIOUSLY AFFIRMED: EDWARD SOLDO

16 (CONT'D) EXAMINATION BY MS. LAWRENCE:

17 Q. Good morning, Mr. Soldo.

18 A. Good morning.

19 Q. I'm going to dive right
20 in with some questions. Back in the fall
21 of 2018 -- Registrar, can you go to OD9A,
22 page 172, please. You'll see at the bottom of
23 this page is excerpt from Mr. Malone's notebook.
24 Registrar, can you close this page and call out
25 the next page, please, just so we have it as big

1 as possible, and can you call out those notes.

2 I know these notes are a
3 little hard to read. They are from Mr. Malone,
4 and they are from November 30, 2018, and you'll
5 see that they reference a call with you, which
6 Mr. Malone has testified about. Do you recall
7 speaking to Mr. Malone on November 30th?

8 A. I do.

9 Q. You said at your last day
10 of evidence that this call, which was scheduled on
11 November 20, was intended to discuss the speed
12 study and the roadside safety assessment; is that
13 right?

14 A. That's correct.

15 Q. It was just you and
16 Mr. Malone on this call?

17 A. Yes.

18 Q. At this point you have
19 testified that you know about the existence of the
20 Tradewind report. Do you understand that
21 Mr. Malone has knowledge of the existence of the
22 Tradewind report as of November 30th?

23 A. Through -- I would say
24 through the course of discussion at this meeting
25 here, it became evident to me that he was aware of

1 the data from the Tradewind report.

2 Q. How so? How did it
3 become clear to you?

4 A. Well, the discussion was
5 centered originally around the speed limit report
6 and some of the concerns that I had related to it,
7 how I didn't think that some of the later
8 recommendations that had just come in, I believe,
9 a few days before were taken into consideration in
10 the speed limit report. The speed limit report
11 didn't identify a reduction in speed -- posted
12 speed limit, and when I had read the CIMA report,
13 the draft, they identified a couple of items that
14 hadn't -- gave me some concern, particularly the
15 geometrics issue, so, you know, this was really a
16 meeting for me to kind of go over and express some
17 of those concerns and the conclusions that I had
18 come up with in the speed limit report.

19 It was very much a high level
20 discussion. We talked about many different
21 things. We talked about whether the role of
22 stopping site distance in determining appropriate
23 posted speed limits. We talked about things like
24 superelevation as it relates to the curvature
25 that's on the Red Hill itself and how that comes

1 into play. So it all kind of centered around the
2 speed limits, but we also go into the topic of
3 friction, and particularly what stands out in my
4 mind is the discussion related to the expectations
5 of drivers and what they may experience on the
6 different roadways.

7 I was, you know, at this
8 point, considering that we should drop the speed
9 limit on the RHVP, leave it on the LINC the way it
10 is, and we got into a discussion about
11 expectations of drivers and expectations of
12 drivers in terms of stopping site distance, all
13 that.

14 And again, I don't recall all
15 the specifics of this call, but I remember having
16 the discussion about how there's a difference in
17 the friction values on the LINC and RHVP. And,
18 you know, at that time, the only friction values
19 that I'm aware of are those that are coming out of
20 the Tradewind report, and having that discussion
21 about how the friction values were higher on the
22 LINC versus the RHVP.

23 So through that discussion, I
24 felt he had -- he was familiar with the Tradewind
25 report and some of the data that was associated

1 with that report.

2 Q. So the difference in
3 friction values on the Red Hill and the LINC can
4 be explained by the different times that they were
5 resurfaced. So apart from him acknowledging that
6 those friction values on those two parkways might
7 be different, what exactly led you to believe that
8 he had knowledge of the existence of a report that
9 set out specific friction values on the parkways?

10 A. Could you repeat the
11 question for me.

12 Q. Sure. You said that you
13 discussed with him that friction values were
14 higher on the LINC versus the Red Hill, and I'm
15 going put to you that one of the reasons that
16 friction values are higher on the LINC than the
17 Red Hill could be that the Red Hill was resurfaced
18 and the -- had been more recently resurfaced.

19 So apart from you telling him
20 that the friction values on the LINC were greater
21 than the friction values on the Red Hill, what
22 specifically led you to believe that Mr. Malone
23 had knowledge of the existence of a report that
24 set out the friction values on the Red Hill and
25 the LINC?

1 A. Again, I can't recall 100
2 percent of this conversation, but I had the
3 feeling that he had seen the graphs out of the
4 Tradewind report.

5 Q. You're going to have to
6 explain the feeling that you had and what the
7 basis for it was, please.

8 A. Just based on the
9 conversation that we were having, that the -- you
10 know, in terms of what the levels of the friction
11 were and -- I can't give you a word-by-word
12 description of the conversation, but I'm pretty
13 confident that he was aware of the Tradewind
14 report. The Tradewind report, at this point, you
15 know, we're in November, I would say at least
16 internally with City staff, there's multiple staff
17 that actually know about this report, and it's a
18 bit of a common knowledge. I'm assuming that -- I
19 know I indicated earlier that my staff were aware
20 of it as well, and through that conversation, I
21 had an understanding that he was aware of the
22 Tradewind report and the value associated with it.

23 Q. Did you use the word
24 Tradewind when you were discussing friction with
25 Mr. Malone?

1 A. I can't conclusively say
2 I did. I can't recall that conversation to that
3 level of detail.

4 Q. What about Golder? Did
5 you use that phrase, the Golder report?

6 A. Again, I can't recall
7 every -- the specific wording that I used in that
8 conversation.

9 Q. Did you say specifically
10 that there was a report that set out friction
11 values?

12 A. I believe we had
13 discussion about that there was a report that set
14 out friction values.

15 Q. So that's a yes, you did
16 say, we have a report that sets out friction
17 values on the LINC versus the Red Hill?

18 A. Again, I can't give you
19 specific wording of what was said in there, but we
20 had a discussion about the report.

21 Q. What did you tell him
22 about the report?

23 A. It wasn't a long
24 discussion. Obviously this was one piece of a
25 larger conversation, and so we talked about how

1 that -- those friction values, the difference in
2 drivers' expectations. So if you're looking for
3 specific wording, I can't recall.

4 Q. I'm actually just looking
5 for even general wording, because all you have
6 said is that there was feelings and a discussion
7 about the report, and the inquiry would really
8 like some more detailed information on what leads
9 you to believe that Mr. Malone knew that there was
10 a report. Because his evidence is that he did
11 not, from your conversation. So that's why I'm
12 asking follow-up questions.

13 A. Appreciate that. I think
14 what the trigger in my mind is the discussion
15 about the graphs. The graphs that come out of the
16 friction report.

17 Q. The graphs. Like the --
18 that plot the friction values?

19 A. Correct.

20 Q. What do you remember
21 about that discussion with Mr. Malone?

22 A. Nothing more than I have
23 already indicated to you, that we talked about the
24 graphs and how the difference in friction values
25 were identified on those graphs.

1 Q. Is it possible that you
2 believed that Mr. Malone knew about the friction
3 report, that is, the Tradewind report, but you
4 didn't actually give him enough information for
5 him to understand what you were talking about?
6 Like, is it possible that you were actually having
7 a conversation where you thought he knew what you
8 were talking about, but he had -- he was not
9 understanding that you were conveying information
10 about a particular report? Is that possible?

11 A. I guess anything is
12 possible. When we start talking about the graphs
13 themselves, I have to assume he's seen them and he
14 knows that they are from the Tradewind report.

15 Q. Did you have any
16 discussions about the 2007 MTO testing with him?

17 A. I didn't know about the
18 2007 testing at that time.

19 Q. You didn't know that the
20 MTO had done testing in 2007?

21 A. No. As you'll see in my
22 e-mails that occur later on in January and
23 February, I had no knowledge that testing was done
24 by MTO.

25 Q. Mr. Malone didn't tell

1 you that on this call?

2 A. No, I don't believe so.

3 Q. Prior to speaking with

4 Mr. -- no, I'll ask that question differently.

5 Did the feeling that you had about Mr. Malone
6 having knowledge of the friction report, can you

7 identify the source of Mr. Malone's knowledge of
8 the existence of the report from that

9 conversation?

10 A. No.

11 Q. Had you had any

12 discussions with anyone at the City about whether

13 CIMA should be provided with a copy of the

14 Tradewind report or the Golder report?

15 A. I don't recall at the

16 time. We're talking about November 30th. At this

17 point, I had known about the existence of the

18 report, you know, from sometime in October. We've

19 had different meetings on this. You know, you're

20 asking for a question about a specific

21 conversation, and quite frankly, at this point

22 we're having meetings once a week, twice a week

23 about Red Hill. I can't relate specific details

24 of those conversations. I just don't remember

25 them.

1 Q. I believe this is the
2 first time that you speak to Mr. Malone about the
3 reports that CIMA has conducted for the City. So
4 this is the very first meeting. You have a
5 meeting with Mr. McGuire the day before this
6 meeting, and so to orient you back to that period
7 of time, you're starting to think about when and
8 how the Tradewind report needs to be disclosed to
9 council, you have this meeting in your calendar to
10 speak to Mr. Malone. Did you have any
11 discussions with any of your colleagues who knew
12 about the Tradewind report about what information
13 to provide to CIMA?

14 A. I don't recall.

15 Q. Did you have any
16 discussions with Mr. McGuire about whether CIMA
17 should be -- whether the City should ask CIMA to
18 do any work in respect of the Tradewind report or
19 the Golder report?

20 A. I don't recall having a
21 conversation about CIMA doing additional work
22 related to Golder or Tradewind.

23 Q. So we know, of course, by
24 January 30th, CIMA is asked to do additional work.
25 Did you have any discussions with anybody between

1 November 30th and January 30th when CIMA was
2 formally retained to look at the Tradewind report
3 about whether to engage CIMA to review the
4 Tradewind report?

5 A. I don't recall having a
6 conversation.

7 Q. So when you say you don't
8 recall, is that that you did not have
9 conversations before then?

10 A. I don't recall having a
11 conversation.

12 Q. Okay. Well, moving away
13 from your recollection, thinking back to that
14 period of time, thinking back to all of the things
15 that you had on your plate in respect of the Red
16 Hill, what were you thinking about how you were
17 going to assess the Tradewind report and how --
18 what information you needed about the Tradewind
19 report? How did CIMA play into that?

20 A. The Tradewind report, as
21 I indicated earlier, is something that the
22 engineering group was looking after. In terms of
23 your question there, about how one assessed the
24 Tradewind report, we went over that last time. It
25 calls for more investigation, and that's what the

1 engineering group was doing.

2 Q. So you didn't have any
3 conversations about whether to engage a third
4 party expert during that period of time?

5 Recognizing it's not your area of responsibility,
6 but of course, you are responsible for road
7 safety.

8 A. I wasn't -- Gord was
9 handling hiring the consultants and doing any
10 follow-up.

11 Q. What conversations did
12 you have with Gord about that?

13 A. He would keep me -- you
14 know, he would keep me informed every once in a
15 while on what he was doing with Golder, but, you
16 know, very high level discussion. It's not
17 something that we went into a lot of detail about.

18 Q. So apart from Golder and
19 Mr. McGuire's continuing work with him, what
20 discussions did you have with Mr. McGuire, if any,
21 about whether to retain CIMA or any other
22 consultant to assess the Tradewind report in the
23 period of time between November 30th and
24 January 30th?

25 A. I don't remember having

1 any conversations about -- to retain CIMA through
2 the Tradewind report.

3 Q. Is that to say that you
4 didn't? Because when you say I don't recall, it's
5 a very vague answer, and I'm going to keep
6 pressing you, and I don't want you to have to come
7 back for another day, but we're already 20 minutes
8 in today, and I would really like you to try to
9 search your memory and, frankly, search the way
10 that you think about these things and give me your
11 best evidence, please.

12 A. That exactly why I'm
13 saying I don't remember. You know, having CIMA
14 review Tradewind, that wouldn't be within my
15 framework of responsibility. That's the Tradewind
16 report being reviewed by engineering, so if you
17 are asking me for my mind set at this point, this
18 is something that's being taken care of by
19 engineering.

20 Q. So then I'm hearing from
21 your answer is that you did not consider whether
22 to hire any consultant; is that right?

23 A. Would it be my
24 responsibility to hire a consultant to look
25 after --

1 Q. I'm not interested, sir,
2 in what was your responsibility and what wasn't
3 your responsibility. I know that there are many,
4 many, many conversations with many people in this
5 city, and recognizing that it might not have been
6 your responsibility or part of these discussions,
7 you're a very high level staff member in the City.
8 I think you contributed to those discussions. I'm
9 sure you did. So I'm not asking about your
10 responsibility. That's not the answer -- that's
11 not the question I'm asking.

12 I'm asking whether you
13 actually turned your mind to it, and I think your
14 evidence is that you did not; is that right?

15 A. I did not.

16 Q. Last question before we
17 move away from this call with Mr. Malone. Did you
18 explain to Mr. Malone the issue around the use of
19 the UK investigatory standard that was set out in
20 the Tradewind report?

21 A. I would not have that
22 discussion with him.

23 Q. I'm sorry, your
24 microphone is a little low. I missed that.

25 A. I did not have that

1 discussion with him.

2 Q. Okay. So when you said
3 that the LINC friction values were higher than the
4 Red Hill, did you provide him with any further
5 information about the quality or the numerical
6 value of the levels on the Red Hill?

7 A. I don't believe I did.

8 Q. And you didn't tell him
9 that they were below or well below an
10 investigatory standard?

11 A. I don't recall.

12 Q. You don't recall either
13 way?

14 A. I don't recall.

15 Q. When you're dealing with
16 the discussions about driver expectations and
17 stopping distances, I'm going to suggest to you
18 that if you had this conversation with Mr. Malone,
19 it would have been an important fact to provide
20 him with the understanding that the Red Hill
21 numbers were not just lower than the LINC, but
22 they were actually by this consultant objectively
23 low on their own?

24 A. Do you have a question?

25 Q. I was suggesting that to

1 you. Do you agree with that suggestion?

2 A. Sorry, I'm trying to
3 understand what you're suggesting.

4 Q. I'm going suggest to you
5 that if you're having this conversation with
6 Mr. Malone about driver expectation and stopping
7 distances, that telling him that the quality of
8 the Red Hill friction value was actually
9 objectively low according to the Tradewind
10 consultant would be a relevant piece of
11 information. Not just that in contrast to the
12 LINC, but actually looking at the numbers
13 themselves and what the consultant had said. I'm
14 going to suggest that would have been something
15 that would have been relevant to the conversation.
16 Would you agree with that?

17 A. And like I said, I don't
18 recall if we had that conversation.

19 Q. You would agree it would
20 be relevant if you had had that conversation?

21 A. It may, yes.

22 Q. Did Mr. Malone ask to see
23 the report that you were referencing?

24 A. Not that I recall.

25 Q. Did you have an

1 understanding or a feeling that he had a copy of
2 it already?

3 A. I don't think I had an
4 understanding either way.

5 Q. So you said you were
6 talking about charts with him. Did you have an
7 understanding that he had those charts?

8 A. It would be tough to have
9 that conversation without having those charts.

10 Q. Did you ask Mr. Malone to
11 do any work in respect of the Tradewind report?

12 A. No, I did not.

13 Q. Did you ask him to
14 consider the Tradewind report in the context of
15 finalizing the RSA?

16 A. I can't recall if I
17 specifically asked him. Having this conversation,
18 I would assume he would take that information into
19 consideration when he's doing his work.

20 Q. Were you expecting that a
21 reference to friction values would be contained in
22 the RSA?

23 A. I can't tell you what I
24 was expecting at that point. I don't recall my
25 expectations at that point.

1 Q. Well, sitting here today,
2 do you think that the RSA should have actually
3 referenced the fact that there was a Tradewind
4 report and that there was low friction values?

5 A. Not necessarily.

6 Q. If Mr. Malone and CIMA
7 had this evidence, you wouldn't expect that it
8 would be referenced in the RSA? That's not part
9 of your expectations of this consultant?

10 A. You know, the Tradewind
11 report is and the Golder report is still draft at
12 that point.

13 Q. Yeah.

14 A. So if you are asking what
15 my expectations are, I'm not sure what my
16 expectations were at that point.

17 Q. Registrar, could you
18 close this down and go to OD9A, page 174, please.
19 Thank you.

20 This is some but not all of an
21 executive summary that Mr. Malone prepared for Mr.
22 McGuire. It's an executive summary of the
23 lighting report, and I think last time you said --
24 you testified that by December 3rd, you hadn't
25 really been involved in the lighting study

1 project. By December 23rd, as Mr. McGuire is
2 starting to pull together an executive summary for
3 use in a report to council, did you have knowledge
4 and understanding about the contents of the
5 lighting report?

6 A. Not really. I think
7 this -- I wasn't involved or saw anything really
8 related to the lighting till later on. I didn't
9 get my first draft of the report to council from
10 Gord till January sometime. I don't really recall
11 seeing the lighting report or reviewing it.

12 Q. Registrar, could you pull
13 up the next page, please. The lighting report
14 includes at the top of page 75 -- this is just the
15 brief summary of the collision analysis, which
16 shows that there is not a disproportionate number
17 of collisions during dark hours, but there is a
18 continued high proportion of collisions occurring
19 on wet roads. And that is very similar to what
20 you learned in the RSA. Do you recall having
21 discussions with Mr. McGuire about the two
22 different studies in which you were receiving
23 collision information from CIMA?

24 A. I don't recall having any
25 sort of in-depth or even high level discussion

1 with Gord about the lighting study.

2 Q. I understand. I wasn't
3 asking about the lighting study; I was asking
4 about the collision review within the lighting
5 study and whether you had discussions about -- you
6 know, he's received the collision analysis.
7 Really it's very similar to yours, the one that
8 you receive in the RSA. Did you and Mr. McGuire
9 have discussions about the disproportionate number
10 of wet road collisions that CIMA had identified in
11 both of these reports?

12 A. I remember having a
13 discussion at our parkway management committee
14 meeting about the CIMA report and the findings. I
15 don't particularly remember any conversation about
16 the lighting report.

17 Q. The 10th of October or
18 the 10th of December?

19 A. Of December.

20 Q. Mr. McGuire met with
21 Byrdena MacNeil from the legal services department
22 in December, particularly on December 3rd, about
23 whether the Tradewind report would have to be
24 disclosed in response to the FOI request that the
25 City had received. By early December, you are

1 aware that there is an FOI request that is likely
2 to lead to the public disclosure of the Tradewind
3 report; correct?

4 A. Yes, I'm aware of the
5 FOI, yeah.

6 Q. Did Mr. McGuire update
7 you on whether legal was of the view that the
8 Tradewind report would, in fact, have to be
9 disclosed publicly through the FOI in early
10 December?

11 A. I don't remember having
12 any conversations with Mr. McGuire about his
13 involvement with legal. First I start to get
14 involved or get their awareness of this whole
15 package coming together, and the issues related to
16 the holiday and the FOI and those kind of concerns
17 is when we start having the conversations, you
18 know, I want to say December 10th, and then the
19 meeting with Mike Zegarac further after that.

20 Q. Registrar, can you go to
21 OD9A, 191, please. This e-mail starts on the
22 preceding page, but you'll see that it is an
23 e-mail from Mr. Pellegrini at the top of this
24 page, in which he says, in order to understand
25 this analysis and recommendations made by Golder

1 Associates, audit needs an unredacted version of
2 the report?

3 So the reference there is to
4 the Golder report that has been provided from Mr.
5 McGuire's office to audit in a redacted -- with
6 redactions around friction testing. Did Mr.
7 McGuire advise you that the auditor had an
8 unredacted copy of the Golder report and the
9 Tradewind report as of December 4?

10 A. I don't recall a
11 conversation.

12 Q. Mr. McGuire was quite
13 anxious about this. The auditor had come and
14 taken the report, which Mr. McGuire thought was
15 contrary to an agreement that they had made. Do
16 you remember having any discussions about that in
17 early December of 2018?

18 A. I recall finding out that
19 that had occurred where the auditor had come in
20 and taking the report. When I actually found that
21 out, I can't recall. I really wasn't involved in
22 the audit whatsoever at this point. But I
23 remember hearing about the fact that Mr.
24 Pellegrini had come in and taken the report.

25 Q. Thank you. So, Mr.

1 Soldo, I asked did Mr. McGuire advise you that the
2 auditor had an unredacted copy, and you said, I
3 don't recall a conversation. And then I asked you
4 a more detailed question, and you said, I recall
5 finding out that the auditor had come in to take a
6 report. Did you find that out from Mr. McGuire?

7 A. I don't remember who I
8 found that out from.

9 Q. Did you hear it from
10 Mr. McKinnon?

11 A. I don't know. Don't
12 recall.

13 Q. Mr. Pellegrini?

14 A. It's going to be the same
15 answer.

16 Q. You said you can't
17 remember hearing about -- you remember hearing
18 about the fact that this happened. What was the
19 context in which you heard about that?

20 A. Again, I don't have a
21 recollection of what meeting that was or who said
22 it. I just remember hearing it.

23 Q. Registrar, can you close
24 this and go to page 196 and 197, please. You'll
25 see at the bottom of 196, on December 4 you

1 e-mailed Mr. McGuire under the subject line "RHVP"
2 and said, "I need to talk to you about repaving.
3 You around Wednesday?" And Mr. McGuire said, "Not
4 supposed to be here now, tomorrow or Thursday.
5 Call my cell and we can review."

6 Do you remember the content or
7 why you were asking Mr. McGuire for this
8 conversation?

9 A. I would say at the time
10 there was -- the reports had -- you know, the
11 first report had come in from CIMA, and there was
12 this ongoing discussion back and forth about what
13 improvements are going to come out of the CIMA
14 report and how they would be implemented as part
15 of the repaving. And unfortunately conversation
16 was also centered around about, well, how are we
17 going to pay for this work. And you may recall I
18 indicated earlier where, if the division that I
19 was looking after was coming forward with
20 improvements, we had to come up with a funding
21 source for them as well.

22 I personally never had an
23 issue with the fact that people had to come
24 forward with money. I always felt that the
25 project had to be all-encompassing and covered

1 off. At that time, I know I was getting some push
2 back from -- because in behind the scenes there, I
3 had my staff, Martin White -- Mr. White, sorry,
4 Mr. Ferguson, others starting to pull together
5 their scoping and their documentation and getting
6 push back that they had to come up with funding
7 sources for these.

8 So I believe that was what I
9 was referring to there, but I'm not 100 percent
10 certain, but that's the kind of dialogue that was
11 occurring at the time about who pays for the
12 improvements moving forward.

13 Q. Thank you. So did you
14 call him on his cell on that day?

15 A. I don't remember.

16 Q. Moving to the next
17 paragraph, 450. You e-mailed Mr. McGuire and Mr.
18 McKinnon a claim that was made against the City
19 resulting from the asphalt spill collision that we
20 talked about last time, and there's an e-mail from
21 Adamson Claims that references a number of
22 articles written about the slippery conditions on
23 the Red Hill and that there is a resurfacing
24 project planned, and then it says, please provide
25 us with the engineering reports with respect to

1 the friction tests and the City's justification
2 for resurfacing.

3 And you forward that -- pardon
4 me, and Mr. McGuire forwarded that to Ms. MacNeil.
5 Stopping there, this letter comes in, and you
6 e-mail it. What do you understand to be the
7 division who was going to be responsible for
8 responding to it?

9 A. When I read that, first
10 of all, it's also to make sure everyone is aware
11 that this claim is out there. It was sent to
12 myself, but I wanted to make sure that Mr. McGuire
13 and Mr. McKinnon are aware of it. There is that
14 sensitivity now. There's, you know, Freedom of
15 Information request, there's all sorts of things
16 that are going on, and I'm not necessarily
17 involved in a lot of the work that Mr. McGuire and
18 Mr. McKinnon are undertaking at this point, so I'm
19 trying to make sure that they are well aware of
20 this, actually this is occurring. And then when I
21 read the bottom, can you please provide us the
22 engineering reports with respect to friction,
23 justification for resurfacing, that isn't my
24 division. That is work that would be underneath
25 the purview of engineering, so I'm sending it over

1 to them, to Gord.

2 Q. Registrar, could you go
3 to 201, please.

4 You see at the top you
5 forwarded to Mr. McGuire and Mr. Ferguson draft
6 staff report on the speed limit study. Were you
7 the primary drafter of this draft staff report?

8 A. No, it would have been
9 done by staff. I would have reviewed it.

10 Q. This is the one where
11 you're changing the -- not following the
12 recommendation from CIMA. I believe that
13 Mr. Cooper had initially prepared a draft, so
14 perhaps I'll be more specific. From the draft
15 prepared by Mr. Cooper, which did accept CIMA's
16 recommendations, did you -- were you the
17 primary -- or were you the person who revised that
18 to change the approach by staff?

19 A. I would believe so.
20 There may have been some involvement of
21 Mr. Ferguson as well, but I can't recall.

22 Q. Thank you. So you say,
23 we'll be holding on this report until February, as
24 it should be incorporated into the overall RH
25 report. It in fact wasn't eventually

1 incorporated. At this time, in December, did you
2 understand that this was going to be part of one
3 larger report?

4 A. That was my understanding
5 at the time, that we were going forward with one
6 overall report. It hadn't been drafted yet. It's
7 December 5th, but I wanted to send to Mr. McGuire
8 just so he was aware of, you know, what the
9 contents are. He was holding the pen on preparing
10 the initial draft.

11 Q. You say hold off on this
12 report until February. Was there another earlier
13 public works committee meeting where you intended
14 initially to provide this report?

15 A. I think the intention
16 always was that we were trying to get all of the
17 reports to the January cycle of meetings. There
18 was lighting, there was the CIMA report, there was
19 the other aspects as well that were ultimately
20 considered as one report. At this point, at
21 December 5th, it's too late, we're missing the
22 cycles for that, that the report hasn't been
23 written. Eventually, like you indicated earlier,
24 there's one report that's written, 18008A I think
25 it is, but there's also some standalone reports.

1 It got to the point where, you know, merging all
2 of these together was very complicated, given the
3 contents of the various topics.

4 Q. So you'll see in the next
5 paragraph that Mr. McGuire responded and said,
6 "There is a meeting tomorrow with the City
7 manager. Legal and risk will advise of next
8 steps."

9 What did you understand Mr.
10 McGuire's reference to be about next steps?

11 A. This is kind of where I
12 start to get aware that, you know, we're shifting
13 from -- at this point I was dealing with the
14 aspects underneath the Tong division. Really
15 wasn't involved much with legal or risk. That's
16 really something that Mr. McGuire was dealing
17 with, and when I get this e-mail back, I start to
18 see that there's a bigger picture and more
19 discussions occurring, you know, that I'm not
20 privy to of what is actually going on and how this
21 is going to be presented to council.

22 Q. Registrar, could you go
23 to page 210, please. Could you also call out 209,
24 please.

25 On December 7th, CIMA and the

1 City held a progress meeting on the roadside
2 safety assessment. You're not listed as an
3 attendee. Did you attend that progress meeting?

4 A. No. I was on vacation
5 that day.

6 Q. You'll see in
7 paragraph 492 on page 210 that in the
8 presentations slides there's references to the key
9 findings that are set out here, and then it says:
10 "Findings suggest that
11 inadequate skid resistance
12 (surface polishing, bleeding,
13 contamination) and excessive
14 speeds may be contributing
15 factors to collisions."

16 And this language was in the
17 draft RSA as well. Had your staff identified any
18 collision hot spots where there were a higher
19 proportion of wet surface collisions.

20 A. I recall Mr. Ferguson
21 created a graph, like a map of the entire city
22 with hot spots, you know, for overall collisions.
23 If you're referring to wet weather collisions, I
24 don't recall. But I remember seeing it through
25 the -- action plan that he had created some

1 mapping which identify higher -- locations with
2 higher collisions being identified throughout the
3 City.

4 Q. Thank you. Earlier you
5 mentioned a meeting on, I think you said
6 December 10. Are you referring to the meeting
7 that happens with Mr. Zegarac on December 14 or a
8 different meeting?

9 A. No, December 10th, I
10 think it's one o'clock. It's a meeting of the
11 pavement -- sorry, of the parkway management
12 committee. Pat Leishman, myself, Dan, Gord and
13 David Ferguson attended. It's one of the
14 continuations of the meetings that we had. The
15 reason I recall it, because I had gone and looked
16 at the minutes of that meeting and it was quite
17 the wide-ranging meeting. We talked about all --
18 there's different topics related to the parkways.

19 Q. Thank you. Just give me
20 a moment to pull up that document. I can't locate
21 it, but I will get back to it in just a moment.

22 Registrar, can you go to 9A,
23 page 223, please. You'll see at 528, Mr. Zegarac
24 is exchanging e-mails with Mr. Brown in the
25 context of the lines of inquiry that audit

1 services has prepared and Mr. Brown and Mr.
2 Pellegrini's request to meet with Mr. McGuire to
3 discuss them. And Mr. Zegarac replies saying:
4 "Charles" -- that's Mr. Brown -- "as Dan is Gord's
5 direct supervisor, have you raised this with him?
6 "I've asked Dan, Edward" -- pardon me -- "Gord and
7 Edward to undertake an immediate external
8 independent assessment of traffic operations on
9 the RHP, and possible next steps to secure public
10 safety prior to briefing the mayor and council."

11 Do you recall Mr. Zegarac, and
12 this is December 10th, asking you to undertake an
13 immediate external independent assessment?

14 A. Mr. Zegarac didn't talk
15 to me, no.

16 Q. Did Mr. McKinnon convey
17 to you that Mr. Zegarac had asked for an immediate
18 external independent assessment of traffic
19 operations?

20 A. I don't have any
21 recollection of this statement here being conveyed
22 to myself. At the time we were having CIMA
23 undertake the work, so this may be a
24 misinterpretation by someone of the work that we
25 were doing.

1 Q. What do you recall that
2 you mentioned at, as I said a few times, the
3 December 10th meeting? It was wide ranging. What
4 do you recall in particular about the
5 December 10th meeting as it related to the
6 Tradewind report, if any?

7 A. Well, I've looked at the
8 minutes in preparing for this meeting here. There
9 are actual quite detailed meeting minutes because
10 we had Ms. Leishman there and she -- quite
11 detailed action items. So the -- not in any
12 particular order, but we went through the terms of
13 reference for the group. We went through the OBL
14 list. We talked about the report that Gord was
15 putting together, what should be part of that
16 report. So through the course of discussion for
17 that report, I'm pretty sure we talked about the
18 Tradewind report and what aspects would go into
19 that report, which eventually becomes PW18008A.
20 It speaks about lighting, it speaks about speeds.
21 We talk about CIMA and sort of the outcomes of the
22 work that they are doing, and we also talk about
23 the timing of the parkway reconstruction and those
24 sort of aspects. As well, I think at the end of
25 the meeting, and based on the minutes, we also

1 talk about the value for money audit as well at
2 that meeting.

3 So quite wide ranging.
4 Through the course of talking about what should go
5 into the report that Gord is putting together, I
6 am pretty confident that we would have talked
7 about Tradewind and how we were going to convey
8 that information within the report that Gord was
9 preparing.

10 Q. Thank you. And Ms.
11 Leishman was the one who did the minutes for that
12 meeting?

13 A. Yes.

14 Q. And she would have been
15 detailed and if you had said the word Tradewind,
16 she would have included that?

17 A. Not necessarily. They
18 were action items.

19 Q. Registrar, can you
20 confirm if you have document HAM53960, please.

21 THE REGISTRAR: Counsel,
22 sorry, no, I don't.

23 BY MS. LAWRENCE:

24 Q. Thank you. This is a
25 document that hasn't been referenced or relied on

1 today by the City in respect of this examination,
2 so we'll forward you a copy and we'll come back to
3 this, Mr. Soldo.

4 THE REGISTRAR: Great. Thank
5 you. Also, I received two other documents that I
6 have yet to put in because it's pretty much
7 impossible when I'm screen sharing at the same
8 time, so over the break I can get everything in.

9 MS. LAWRENCE: Thanks.

10 THE REGISTRAR: Thank you.

11 BY MS. LAWRENCE:

12 Q. Registrar, could you go
13 to page 213, please. Can you call out 497,
14 please. On December 7th, Ms. Auty e-mailed
15 David Boghosian, an external lawyer, and set out
16 three areas that she was seeking Mr. Boghosian's
17 advice on. One was a general risk liability
18 assessment, including any thoughts on the FOI
19 request, and of course that's the reference to the
20 paragraph above which is a reference to a recent
21 FOI request. This is after a phone call, so there
22 is not a huge amount of detail in this e-mail.

23 The second is how to approach
24 obtaining CIMA consultant input on whether interim
25 measures are needed to protect safety before the

1 resurfacing is completed in June 2019, and then a
2 third is media and council information.

3 Were you aware on or before
4 December 7th that Ms. Auty intended to retain an
5 external legal counsel to provide any kind of
6 advice in respect of the Red Hill?

7 A. No, I was not.

8 Q. Registrar, could you
9 close this down. Can you go to the next page,
10 please. And can you call out 498 and 99, please.
11 Thank you.

12 Ms. MacNeil e-mailed Mr.
13 McGuire on the same day and asked for something
14 that explains the current scope of work that
15 CIMA's undertaking for which we are going to be
16 adding/updating them on the Tradewind friction
17 testing results. I need to reference it in the
18 retainer letter. And then Mr. McGuire forwarded
19 her e-mail to you and replied, "I'm reaching out
20 to Edward Soldo if roads and traffic as they have
21 retained CIMA."

22 So from this e-mail exchange,
23 you understood that legal was considering
24 updating, adding to CIMA's retainer a reference to
25 Tradewind friction test results?

1 A. Sorry, could you repeat
2 your question.

3 Q. Of course. It was
4 actually poorly asked. Let me try to rephrase.

5 From this e-mail that Mr.
6 McGuire sent you from Ms. MacNeil, you understood
7 that legal intended to update or add -- pardon me,
8 update CIMA on the Tradewind friction testing
9 results?

10 A. Just reading through this
11 here.

12 Q. Sure.

13 A. Yeah, I wasn't -- Ms.
14 MacNeil, I wasn't involved in any discussions with
15 her, but when I look at the wording here, I'm not
16 sure that I picked up on the fact that they were
17 going to be hiring them to do that. I couldn't
18 tell you what I was thinking at the time, based on
19 this.

20 Q. Okay. So you're asked to
21 explain the current scope of work and to provide
22 that to Ms. MacNeil, and you don't either read the
23 e-mail closely or ask for confirmation about why
24 legal is contacting CIMA or why they need this
25 information?

1 A. I would have provided the
2 scope of what CIMA -- or I would have asked my
3 staff to provide the scope, back to legal, of what
4 CIMA was undertaking for us at the time.

5 Q. That wasn't my question.
6 My question was you didn't look at the underlying
7 e-mail or be curious about why Ms. MacNeil was
8 asking you for this information?

9 A. Of course I would be
10 curious, but I haven't been involved in the
11 discussions, and if legal is going to be hiring
12 CIMA to undertake some work on their behalf, you
13 know, that's their prerogative. But again, I'm
14 trying understand what is your question?

15 Q. Well, my first question
16 was you understood from reading this e-mail from
17 Ms. MacNeil that CIMA was -- that legal was going
18 to update CIMA about the Tradewind friction
19 testing results, and your response was, I'm not
20 sure I picked up on that, and then my question was
21 weren't you curious. I think you went and read
22 that, didn't you? So that was the back and forth
23 that we've just had. So maybe I'll just re-ask my
24 first question.

25 You understood from reading

1 this e-mail from Ms. MacNeil that legal intended
2 to update CIMA on the Tradewind friction testing
3 results; is that right?

4 MR. MISHRA: Counsel, pardon
5 my interruption, but I think Mr. Soldo is a little
6 confused about this e-mail, and I wonder if it may
7 be easier if we can put up the actual e-mail chain
8 itself just to show when he received it and when
9 it was forwarded to him, just for his own
10 reference. I think that might aid in clarity for
11 this question.

12 MS. LAWRENCE: Sure.

13 MR. MISHRA: Thank you.

14 BY MS. LAWRENCE:

15 Q. It is HAM62007. It might
16 also be easier to bring up, I think, 6200 --
17 sorry, 62006.

18 So the right-hand side, Mr.
19 Soldo, is probably more useful to you.

20 A. They look exactly the
21 same to me.

22 Q. That's fair, but the one
23 on the left-hand side is the back and forth
24 between Mr. McGuire and Ms. MacNeil, and the one
25 on the right-hand side, same starting e-mail, but

1 the e-mail is from Gord to you.

2 A. So Gord is asking me can
3 you help out with the scope, so again, I'm trying
4 to understand what is your question here?

5 Q. My question is, having
6 received this e-mail from Mr. McGuire, you
7 understood that legal was going -- or intended to
8 update or add CIMA on -- I'm just using adding and
9 updating, that's the word in Ms. MacNeil's
10 e-mail -- on the Tradewind friction testing
11 results; is that right?

12 A. That's what it says.

13 Q. And that's what you
14 understood?

15 A. You're asking me what my
16 thought process was four years ago. I don't
17 recall what my thought process, you know, at this
18 particular moment I read that e-mail. I'm reading
19 the e-mail. I've been asked to provide scope on
20 the bottom. Yes, they are getting CIMA to
21 undertake some additional work.

22 Q. Thank you. Registrar,
23 can you close this down and go to OD9A, page 229,
24 please. Can you pull out 549, please. Thank you.

25 On December 11 and 12, you

1 exchanged e-mails with Ms. Auty, and she says,
2 "Tried calling you back. Was the contact Brian
3 Malone?" You say, "Yes, he's expecting your
4 call." And you say, "Do you have any time later
5 to speak on this?" And you say, "I'm in meetings
6 most of the day," and she says, "Okay. I will
7 send you an e-mail about what I'm looking for."
8 And then subsequently, Mr. Boghosian reaches out
9 to Mr. Malone.

10 Were you asked by Ms. Auty to
11 reach out to Mr. Malone to let them know that
12 someone from legal was going to be contacting him?

13 A. I don't recall. I would
14 assume so by reading this e-mail that, you know, I
15 reached out to him, he's expecting a call, but I
16 don't recall having that conversation with him.

17 Q. What did Ms. Auty tell
18 you about why legal wanted to reach out to
19 Mr. Malone?

20 A. I don't believe I ever
21 reconnected with Mrs. Auty on this.

22 Q. You don't believe that
23 you connected with her at all in respect of a
24 potential retainer by CIMA -- pardon me -- of CIMA
25 by legal services?

1 A. I don't recall having a
2 conversation with him.

3 Q. Prior to January 30th
4 when you attended a call with Mr. Malone, what did
5 you understand CIMA's role to be, if any, in
6 respect of an assessment of the Tradewind report,
7 through December 11th to January 30th?

8 A. In some of the meetings
9 that we would start to have with Nicole, there's
10 discussion about what questions we should be
11 asking CIMA in terms of the Tradewind report. Do
12 I know -- do I have a good understanding of what
13 the retainer's about? I don't actually. It's the
14 kind of work that herself and others were working
15 on, but I don't recall having any in-depth
16 discussion of what they were hiring CIMA to do.
17 General level, they were probably reaching out to
18 them for some sort of advice, but I don't have a
19 recollection of having a conversation where we get
20 into specifics of what that retainer is about.

21 Q. Thank you. So is that to
22 say at no time in December or January, after
23 January 30th, you understood exactly what or if
24 CIMA was doing anything in respect of the
25 Tradewind report?

1 A. Sorry, could you repeat
2 that.

3 Q. Sure. At no time in
4 December or in January, up to January 30th, did
5 you understand exactly what CIMA was doing in
6 respect of the Tradewind report?

7 A. I had a general
8 understanding that legal was reaching out to CIMA.
9 What that retainer was, I don't have specifics.

10 Q. Registrar, could you
11 close this down and go to 220, please.

12 MR. MISHRA: Counsel, again
13 pardon the interruption, but if you're moving on
14 to another topic, might I ask for an earlier break
15 today just in light of the fact that Mr. Soldo is
16 feeling unwell, and I think maybe more and shorter
17 breaks over the course of the day would be
18 helpful, if that can be accommodated.

19 MS. LAWRENCE: I'm certainly
20 content to do that. I leave it with the
21 Commissioner.

22 JUSTICE WILTON-SIEGEL: That's
23 fine. I appreciate Mr. Soldo is not feeling well.
24 How about if we take a ten-minute break here, and
25 then we'll return at 20 to -- quarter to 11, and

1 we'll have a ten-minute break between that time
2 and lunch at a suitable time. I leave that to
3 commission counsel to make that determination.

4 MR. MISHRA: Thank you,
5 Commissioner. That's much appreciated.

6 JUSTICE WILTON-SIEGEL: Let's
7 stand adjourned until quarter to 11.

8 --- Recess taken at 10:33 a.m.

9 --- Upon resuming at 10:46 a.m.

10 MS. LAWRENCE: Commissioner,
11 may I proceed?

12 JUSTICE WILTON-SIEGEL: Please
13 do so.

14 BY MS. LAWRENCE:

15 Q. Thank you. Registrar,
16 could you bring up HAM53960, please. Could you
17 make that a little bit bigger, just the content on
18 the left -- sorry, the right side of the document.
19 That's not much larger. Thank you. That's
20 better. You don't need to call it out.

21 Mr. Soldo, this is the minutes
22 that you were referring to earlier?

23 A. That's correct.

24 Q. And you'll see that
25 Mr. Ferguson, Mr. McGuire, Mr. McKinnon are there,

1 along with Ms. Leishman. I hope I'm saying her
2 name correctly. Mr. White and Ms. Morello send
3 their regrets. This is, as you say, quite a
4 comprehensive document. Registrar, could you go
5 down so that the table that starts with group name
6 is at the top. You'll see there's a reference to
7 the reports that are going to be included, the
8 resurfacing. Thank you. And you can scroll down,
9 Registrar. The finalization of the RSA. You can
10 scroll down, Registrar. And then over to the next
11 page. Reference to the widening or restripping of
12 the LINC and the value for money. You said
13 earlier that you thought that the Tradewind report
14 was discussed at this meeting; is that right?

15 A. It's kind of hard not to
16 talk about the Tradewind report when you're
17 discussing the report back to council.

18 Q. I don't think that was an
19 answer. I just want to confirm your evidence.
20 It's your evidence that the Tradewind report was
21 discussed at this meeting?

22 A. I'm pretty sure we talked
23 about the Tradewind report.

24 Q. Okay. I think Mr. White
25 and Mr. Ferguson's evidence is that they didn't

1 have knowledge of the Tradewind report until
2 January at the earliest, perhaps February. Your
3 evidence is that -- at least Mr. Ferguson is
4 listed as being at this meeting, so your evidence
5 is that he was part of those discussions?

6 A. I believe the last time I
7 provide that same testimony, that I talked to both
8 of them about the report.

9 Q. Ms. Leishman's role in
10 the parkway coordination committee that is kicked
11 off at this meeting, is it primarily minute taking
12 and meeting organization, or does she have another
13 role?

14 A. This is not the first
15 meeting of the group. It's probably the second or
16 third. May have even started before I got to the
17 City. She's the manager at that time -- just
18 trying to draw on my memory here. I believe she's
19 the manager of -- I'm going to get it wrong.

20 (Speaker overlap)

21 Q. We can go to the top.
22 It's referenced on the first page.

23 A. So her role was to kind
24 of be an independent coordinator of things and
25 represent the general manager's office there. So

1 there you go. She's the manager of strategy,
2 continuous improvement and quality.

3 One of the purposes of this
4 group really was to provide for greater
5 coordination of all things related to the parkways
6 themselves, and she's there representing the
7 general manager's office because they are
8 responsible for quality management, strategic
9 initiatives, and those sort of things. She's not
10 there to take minutes. Normally Raffaella would be
11 there to take minutes. She was not in attendance
12 that day.

13 MS. LAWRENCE: Thank you.
14 Commissioner, just before I move on, I see that
15 Ms. Contractor joined us at the break and that
16 she's gone off camera, which is entirely fine if
17 she's not on camera. I just wanted to make sure
18 that we hadn't lost her from the Zoom room.

19 MS. CONTRACTOR: My apologies.
20 That was done inadvertently. Thank you for
21 pointing that out.

22 MS. LAWRENCE: No problem at
23 all. Registrar, could you mark as the next
24 exhibit, which I think is Exhibit 206.

25 THE REGISTRAR: Noted,

1 Counsel. Thank you.

2 EXHIBIT NO. 206: Minutes of a
3 meeting held Dec. 10, 2018;
4 HAM53960.

5 BY MS. LAWRENCE:

6 Q. Thank you. Before the
7 break, we were talking about the retainer of CIMA,
8 and before that I brought you to an e-mail between
9 Ms. Auty and Mr. Boghosian. Did you ever see a
10 copy -- Registrar, you can take this down -- a
11 copy of a legal opinion prepared by Mr. Boghosian?

12 A. In what context?

13 Q. In any context. Did you
14 ever see a legal opinion prepared by him? Or
15 perhaps maybe I'll ask the question differently.
16 Did you otherwise know Mr. Boghosian?

17 A. No, I had no idea who he
18 was.

19 Q. Did you ever see a
20 written legal opinion from Mr. Boghosian?

21 A. In what timeframe?

22 Q. Between December 13th and
23 February 6th?

24 A. I don't recall.

25 Q. Registrar, could you go

1 HAM62512, please. This is a draft that
2 Mr. Boghosian prepared. It's dated December 13.
3 There is a final draft in February. I'm happy to
4 go through it, but I just wanted to provide it to
5 you to see if perhaps reviewing even just the law
6 firm logo, or I can take you through it, if that
7 would assist in refreshing your memo about whether
8 you saw it or not?

9 A. Do you have any e-mails
10 where it's sent to me or forwarded to myself?

11 Q. I don't believe that I
12 do, but that doesn't mean that it didn't get to
13 you. Could have been printed and provide to you.

14 A. Again, I'm going to go
15 back to what I said earlier. I was really not
16 involved in a lot of the legal risk management
17 initiatives at this time. If legal was and
18 Ms. Auty was (indiscernible) Mr. Boghosian, I
19 don't recall being part of that dialogue and/or
20 discussions on it.

21 Q. Thank you. So you can't
22 say either way whether you reviewed a copy of a
23 legal opinion from him, but I understand your
24 evidence more generally; is that right?

25 A. I don't remember

1 reviewing the legal opinion. Wouldn't necessarily
2 be something that would have been sent to staff.
3 It's a legal opinion between two lawyers.

4 Q. Thank you. In fact, do
5 you think that you would remember it if you had
6 reviewed it?

7 A. If I reviewed it, would I
8 remember? I would say most likely, but that's
9 really -- I can't recall having seen this.

10 Q. Fair enough, but I
11 imagine you don't review a ton of legal opinions?

12 A. No.

13 Q. Registrar, could you go
14 to image 7, please. Can you bring up 12 as well.
15 Pardon me, 8 as well. Thank you.

16 There's a reference to a
17 telephone conversation that Mr. Boghosian had with
18 Mr. Malone. You're not part of that telephone
19 conversation, but it's summarized here. In
20 December, did anyone at the City advise you that
21 Mr. Boghosian had spoken to Mr. Malone?

22 A. Well, I mean, you showed
23 me the e-mails from two minutes ago where I had
24 arranged for this call to actually happen. I
25 reached out to him and -- Ms. Auty is going to

1 call Mr. Malone there. In terms of Boghosian
2 talking to Malone, I don't recall having any
3 knowledge that that was occurring.

4 Q. Ms. Auty does receive a
5 copy of this letter, and I know she attends many
6 meetings with you and others on the Red Hill. Did
7 she convey to you the information that is
8 contained in the second paragraph -- third
9 paragraph of page 8? Registrar, perhaps you can
10 pull that out, "when asked to rank."

11 A. I don't recall this being
12 conveyed to myself, no.

13 Q. You don't recall Ms. Auty
14 telling you that Mr. Malone viewed the inordinate
15 wet road crashes to be -- contributed to first by
16 the slipperiness of the road surface, second by
17 speed, then by curves, and then by the close
18 proximity to on/off ramps?

19 A. I don't recall her
20 mentioning that to myself. I know when I was
21 preparing for this and I saw this information, I
22 do recall my reaction was a bit of a surprise. So
23 based on that, I would say I had not seen that
24 before.

25 Q. What about it was

1 surprising to you when you did review it?

2 A. It's different than
3 what's in the report.

4 Q. In terms of the nature of
5 the ranking? In terms of what's included? What
6 in your view is different?

7 A. That there's a ranking at
8 all.

9 Q. Thank you. Registrar,
10 could you close this down. Can you go HAM55560 at
11 image 8, please. You can close down the left-hand
12 side. If you can go to image 8 of that, and if
13 you can call out the top quarter, please. Thank
14 you.

15 So the very first note here,
16 Mr. Soldo, I hope you can read it, it's very
17 small, is "Soldo reaches out to second safety
18 consultant for independent review of the
19 work/issues just to see if available. Auty said
20 not required to do this. INTUS road safety
21 engineering," and the date of this note is
22 December 13th, 2018. And just for reference, this
23 is a chronology that is prepared by City staff.

24 Do you recall reaching out to
25 INTUS?

1 A. I do.

2 Q. You do. Registrar, you
3 can close this down. Can you call out HAM64397
4 and HAM64396.

5 So it looks like, from the
6 right-hand side, that Gerry Forbes from INTUS
7 called on December 12th. Were you reaching out to
8 him and he was returning your call?

9 A. I believe so.

10 Q. Registrar, you can close
11 down the right-hand side. And if you can call out
12 the e-mail and the subject -- the e-mail body at
13 the top, just to make it a little bit bigger.
14 Basically all the content on this page. That's
15 perfect. Thank you.

16 Did you know Mr. Forbes from
17 INTUS before reaching out to him in 2018?

18 A. I did. I have known him
19 for quite some time.

20 Q. Why did you reach out to
21 him about a potential assignment?

22 A. You know, at this point
23 we're starting to get into risk management of some
24 legal issues. It's never a bad thing to get
25 potentially a second opinion, but it's a very

1 small field in terms of who does this kind of
2 work. So wanted to see if there was -- Gerry's
3 available in case we decided to get a second
4 opinion on something.

5 Q. And what in particular
6 were you seeking a second opinion about?

7 A. We've used Gerry in the
8 past to do similar roadside safety audits on
9 different roadways, or at least I have on one, and
10 at this point we've had CIMA doing work in 2013,
11 2015, we're here in 2018, or about to be early
12 2019, and Dave kind carried the ball the entire
13 time, done a great job, but potentially might be
14 good to have someone peer review the CIMA roadside
15 safety assessment.

16 Q. So particularly peer
17 reviewing the roadside safety assessment, not
18 going back and looking at the 2015 and 2013
19 reports?

20 A. No, we -- the work that
21 is coming back in.

22 Q. Did you anticipate that
23 Mr. Forbes would also review the Tradewind report
24 as part of the assignment to peer review the RSA?

25 A. I wasn't considering

1 that.

2 Q. Is that to say you were
3 not intending to do that?

4 A. My focus was on the
5 roadside safety assessment.

6 Q. What aspect of the
7 roadside safety assessment did you want peer
8 reviewed?

9 A. Well, peer review is on
10 the whole report, so....

11 Q. I understand, but was
12 there something in particular? Was it the way
13 that they approached the signage? Was it their
14 recommendations? Was it their collision analysis
15 that you wanted to have redone? What -- or was it
16 all of that?

17 A. I would say it would be
18 all of. Would Gerry come up with different --
19 would Mr. Forbes come up with different, I would
20 say, recommendations in terms of mitigation or any
21 other enhancements that he would feel, you know,
22 might be good in terms of implemented on the RHVP.
23 Many different countermeasures you can apply, and
24 at this point we've gone through a number of
25 countermeasures and various reports, and, you

1 know, looking to have Gerry provide a different
2 perspective, a different -- approach it from a
3 different lens.

4 Q. Why did you want a
5 different perspective, given how recently CIMA had
6 been retained complete the RSA?

7 A. At this point, I was only
8 seeing potentially who was available, and at that
9 point I don't think a determination that we're
10 going to do this or not, just a consideration.

11 Q. Okay. So my question
12 was, why did you want a different perspective,
13 given how recently CIMA had been retained?

14 A. Road safety, different
15 professionals look at road safety in different
16 manners.

17 Q. Yeah, but why?

18 A. See if there's anything
19 else that could -- that they would come up with.
20 It's always good to, you know, do a review and see
21 if there's anything missed or if there's other
22 enhancements. Different people may have different
23 perspectives on enhancements to be applied.

24 Q. I certainly understand
25 the potential benefit for a second set of eyes.

1 We're in December, and I think you want to be
2 tendering for this resurfacing pretty shortly, and
3 CIMA had had quite a quick turnaround. So can you
4 provide anything else about why, at this point, in
5 December, you sought a different perspective?

6 A. Not much more than I can
7 add, but I think that was actually one of the
8 reasons where we didn't go with the Gerry is
9 because at this point he would have to get up to
10 speed and the timelines were pretty tight, as you
11 mentioned, so....

12 Q. So the potential
13 assignment that you reached out to Mr. Forbes
14 about did not proceed?

15 A. No, it did not.

16 Q. Registrar, could you
17 close this down, and could you go to OD9A,
18 page 243, please. Sorry, before I move on, those
19 two documents that I just mentioned both need to
20 be marked as exhibits. It's HAM64396 and
21 HAM64397. If those could be marked the next two
22 exhibits, which I think are 207 and 208.

23 THE REGISTRAR: Noted,
24 counsel. Thank you.

25 EXHIBIT NO. 207: One-page

1 e-mail dated 12/11/18;
2 HAM64396.
3 EXHIBIT NO. 208: One-page
4 e-mail dated 12/13/2018;
5 HAM64397

6 BY MS. LAWRENCE:

7 Q. Thank you. Registrar,
8 could you bring up 242 as well, please. That's
9 244. 242 and 243, please. Thank you.
10 You'll see at the bottom of
11 242, there is an undated note from Mr. Sabo that
12 includes a number of initials, including ES, which
13 I think is you, and I believe that these notes
14 reference the meeting that you had with Mr.
15 Zegarac, Mr. McGuire, Mr. McKinnon, and Ms. Auty
16 on December 14th. Do you remember that meeting
17 with Mr. Zegarac?

18 A. I think it's the first
19 time that this -- you know, we got together.

20 Q. Registrar, could you call
21 out the top of 243. Thank you. So there's a
22 reference to the Golder 2017 testing. Are you
23 aware, at least at a high level, that Golder had
24 completed some materials testing that Mr. McGuire
25 was working to finalize?

1 A. Yeah, I was aware that
2 Mr. McGuire had hired them to do that work.
3 Again, I'm not involved in the study, but at a
4 high level, I know they're undertaking that work.

5 Q. Thank you. So
6 recognizing you're not involved, did you
7 understand that Mr. McGuire had hired Golder
8 initially to do this -- this materials assessment?

9 A. I'm not sure if I -- I'm
10 not sure what my understanding at that time was.
11 Did Mr. McGuire hire them? Did someone else hire
12 them? I can't say for sure.

13 Q. Okay. They were hired
14 before Mr. McGuire took on the role as director of
15 engineering services, and you had said you thought
16 that he was hired, but I just want to confirm.
17 You don't have any knowledge either way about how
18 that initial assignment came to be?

19 A. No, I don't.

20 Q. You'll see at the
21 bottom -- actually, just looking at this, it looks
22 like this is the beginning of trying to identify
23 the strategy of how to deal with the Tradewind
24 report and all of the other safety work that has
25 been done on the parkway in order to get to

1 council. Is that, at the highest level, the
2 purpose of this meeting on December 14th?

3 A. I think a lot of the
4 things that we talk about here also were talked
5 about, as I said earlier, on the Monday of that
6 week as well, so I kind of see this as a
7 carryover. First time I've really been involved
8 with legal in the room and risk management, so
9 it's taken on a different perspective.

10 Q. Sure, and city manager is
11 there, so also that's an escalation? Did you view
12 in that way?

13 A. I did.

14 Q. Registrar, could you
15 close this down, and can you go to pages 254 and
16 255, please.

17 So on 254, these are Ms.
18 Auty's notes -- they start on the next page -- of
19 that same meeting. Registrar, can you now close
20 254 and bring up 255 and 256. Thanks. And can
21 you call out the content on 255, just to make it a
22 little bit bigger.

23 I don't know if it's my tired
24 eyes or if this is a little bit sort of blurry and
25 very hard to read. Can that you see that and read

1 it, Mr. Soldo?

2 A. Not really.

3 Q. Thank you for your
4 honesty. I also saw you muted for a minute. Are
5 you all right?

6 A. (Witness nods head.)

7 Q. Registrar, can you try
8 bringing up just the first half of this page,
9 please. Thank you. I'm actually rubbing my eyes
10 just to see if it's me. It does look like it's a
11 little off today. Can you read it now, Mr. Soldo?

12 A. A little bit better.

13 Thank you.

14 Q. Good. You'll see there's
15 some reference to Mr. Boghosian, so by that point,
16 you knew Mr. Boghosian's name and that he was an
17 externally retained lawyer; is that right?

18 A. Yeah, at this point I'm
19 aware that they have something going on.

20 Q. And I asked you this
21 before, but just now that you're seeing the notes
22 of this call, I asked you before about what you
23 knew about Mr. Boghosian's retainer or what his
24 work was, and there's a reference there in the
25 first four lines. Does that refresh your memory

1 about what you knew about what Mr. Boghosian was
2 doing for the City?

3 A. Whose notes are these?

4 Q. These are Ms. Auty's.

5 A. Sorry, what was your
6 question?

7 Q. My question was, looking
8 at the first four lines: "Boghosian, would
9 recommendations change with Golder friction
10 testing, Boghosian, CIMA back/share friction
11 testing to assess outstanding safety, CIMA
12 back/share friction testing to assess outstanding
13 safety."

14 So I don't know if that
15 refreshes your memory about what you knew, if
16 anything, about what Mr. Boghosian was doing in
17 his work for the City.

18 A. I'm not exactly sure what
19 you're asking here. I have a general awareness of
20 what he's working on, but are you asking do I know
21 specifically what he's working on?

22 Q. Did you know specifically
23 that he was reaching out to CIMA or getting
24 information from CIMA?

25 A. I don't recall having a

1 conversation about this.

2 Q. And as I do, does that
3 mean that you're confident that you did not have
4 that conversation, didn't know that, or you just
5 don't recall either way?

6 A. I don't recall. If that
7 was the discussion at the meeting, that's not -- I
8 don't have that in my recollection.

9 Q. That sounds like you're
10 confident that you don't remember that, learning
11 that at this meeting; is that right?

12 A. I'm not sure how to
13 answer your question because you're asking me when
14 did I learn about something. Well, I don't
15 remember, you know, exact time frames and what I
16 knew exactly at this time -- in terms of this
17 meeting at this point, so I don't recall.

18 Q. Maybe I was imprecise
19 with my question. My question was, did you know
20 that Mr. Boghosian was reaching out to CIMA to get
21 information from CIMA at this meeting?

22 A. I don't recall.

23 Q. There's a reference to
24 ES, which I think is you, and it says
25 "enforcement/speed, curve/cat eyes, friction."

1 Are you explaining in this meeting what the City
2 has done to date to implement CIMA's past
3 recommendations?

4 A. Well, if I was to guess,
5 looking at these minutes here and speculate, which
6 I don't like to do. It says review PW18008. That
7 is the old report that was to council prior to me
8 coming. And there's a chart in the back which
9 says what things -- you know, enhancements or
10 initiatives undertaken, and why I say that is
11 because when it talks about curve, cat eyes, that
12 was all done before I actually came on board. So
13 I'm assuming that someone is going through that
14 chart and saying what's been done in the past. I
15 don't have a specific recollection, but that would
16 be an assumption on my part, just based on what I
17 see in these notes.

18 Q. Okay. It also says, in
19 reference to that 18008 report, "complete friction
20 testing." By this point, had you come to
21 understand that the appendix in that report
22 contained a reference to CIMA's recommendation to
23 complete friction testing, that it had been done?
24 Sorry, that was a very poorly asked question. Do
25 you need me to repeat that?

1 A. I believe that that table
2 that was presented to council said that that
3 friction testing was completed.

4 Q. Yes. It did. And were
5 you aware, at this meeting, by the time of this
6 meeting, of that fact?

7 A. Well, I would have read
8 the appendix and would have saw that it had been
9 indicated it was completed.

10 Q. Did you know whether
11 there had been any friction testing done to check
12 that box apart from the Tradewind testing in 2014?

13 A. No, I don't believe so.
14 I think the -- I recall having a conversation, and
15 there's some e-mails related to that later on
16 here, where I asked, Steve, well, how did you guys
17 know that it was done, and I believe because they
18 were told it was done.

19 Q. Thank you. Yeah, those
20 are in mid-January, the e-mails with Mr. White and
21 Mr. Ferguson that you're talking about?

22 A. I believe so.

23 Q. Registrar, could you
24 close this down and pull out the second half of
25 this page, please. From Gord, "can't do anything

1 to surface." Thank you.

2 So Gord, who I think is Mr.
3 McGuire, is referenced as saying "can't do
4 anything to the surface." Do you recall any
5 conclusions at this meeting that there was nothing
6 that could be done to the surface to improve
7 friction prior to repaving?

8 A. I'm sorry, can you
9 repeat. I was just reading that.

10 Q. Of course. So at the
11 top, do you recall any conclusions at this meeting
12 that there was nothing that could be done to the
13 surface to improve friction, prior to repaving?

14 A. I don't know if it was at
15 this meeting or some other meeting that there was
16 a very high level preliminary discussion about is
17 there anything that needs to be done in between,
18 and my recollection was, you know, we're in the
19 middle of winter at this point, and that there
20 really was no need to do anything in between, and
21 that we were resurfacing. So, I'm not exactly
22 sure what the notes here mean, "can't do anything
23 to the surface."

24 Q. Okay. So recognizing you
25 remember at some meeting there was a discussion

1 about whether anything needs to be done. Do you
2 mean anything to the surface?

3 A. Yes.

4 Q. And apart from that one
5 time that that high level discussion happened, do
6 you remember any return to that discussion about
7 whether anything could or should be done to the
8 surface pending repaving, or was it just a
9 one-time discussion that you were involved in?

10 A. I don't recall. Just
11 trying to think. It's not something that we had a
12 discussion about it. I want to say it's the
13 parkway management committee or something like
14 that. If it got brought up at this meeting, Gord
15 would have spoke to it, but I don't have like a
16 very vivid recollection of what we actually talked
17 about.

18 Q. So my question was, you
19 recall one meeting in which whether anything could
20 be done to the surface was discussed. Are you
21 confident that you have one discussion about that
22 and no further discussions, or do you think that
23 that was a topic that came up again?

24 A. I'm not confident either
25 way. I mean, did it come up in another meeting?

1 Possibly. I just don't recall.

2 Q. Registrar, can you close
3 this down, the callout. At this meeting, did you
4 understand that engagement with CIMA, relating to
5 the Tradewind report, would go through legal?

6 A. Yes, I think after -- you
7 know, based on the interactions I've had up to
8 this point, legal was going to be undertaking
9 their own sort of work with CIMA and/or whoever
10 else they needed to, I guess.

11 Q. So you're of course
12 having to deal with Mr. Malone to finalize the
13 RSA. Likely ask questions about the speed study.
14 There are sort of continuing involvement that you
15 have with Mr. Malone, but on the Tradewind report
16 in particular, did you understand that you should
17 not be dealing directly with CIMA about issues
18 around the Tradewind report because legal was
19 going to do that?

20 A. I'm not sure I would say
21 that. No one said to me, don't deal with CIMA and
22 the Tradewind report. I'm going to deal with CIMA
23 however I need to be able to -- the reports that I
24 have. If legal is dealing with CIMA separately,
25 that's underneath their purview, but it wasn't a

1 clearcut line saying, don't talk to them, or
2 anything like that.

3 Q. In respect of the reports
4 that you did have with CIMA, did you feel any need
5 to raise the Tradewind report with Mr. Malone
6 after that conversation you had on November 30th?

7 A. No, I think at this
8 point, if legal was dealing with CIMA on various
9 aspects, I was going leave that with them.

10 Q. Okay. So no one told you
11 not to speak to CIMA, but you were going to leave
12 it with legal to deal with CIMA; is that fair?

13 A. No need to duplicate
14 effort.

15 Q. Registrar, could you go
16 to page 261 please, and can you call out 614 and
17 615. Thank you.

18 So these are references to
19 invitations with the mayor for a discussion with
20 the attendees that are set out in 614. Was part
21 of the purpose of the meeting on December 14th
22 with Mr. Zegarac to prepare how the City staff
23 were going to explain the Tradewind issue to the
24 mayor?

25 A. I'm not sure I would

1 characterize it as that but -- yeah, I'm not sure
2 I would characterize it as that, but that
3 there's -- there was some discussion about going
4 to the mayor and bringing him up to speed.

5 Q. What issue do you have
6 with my characterization?

7 A. The meeting is really
8 about more of an all-encompassing meeting. It
9 wasn't just to -- it wasn't just meant to come up
10 with an approach for how we're going to deal with
11 the meeting with the mayor. At least not to my
12 knowledge.

13 Q. Okay. So apart from that
14 part of the meeting on the 14th, what else was
15 being discussed?

16 A. Well, I think -- are you
17 talking about the 14th with Mike Zegarac?

18 Q. Yeah.

19 A. Right. So we just went
20 through the minutes there, and updates from Gord.
21 There was 18008, we've gone through that.

22 Q. I think perhaps you and I
23 have miscommunicated. I had said was part of the
24 meeting on the 14th to figure out an approach to
25 the mayor, and I think your answer, the evidence

1 I'm hearing from you is that, yes, part of that
2 meeting was to discuss how to frame this for the
3 mayor. Is that right?

4 A. There was definitely a
5 discussion about what we are going to be
6 presenting to the mayor, so maybe I did
7 misinterpret your question.

8 Q. No, I don't think that
9 you did. And then part of the meeting was
10 actually to figure out what the general approach
11 was as well in terms of reporting to council, in
12 terms of where people sat on their to-do lists in
13 respect of the Red Hill. Is that a fair summary
14 of the rest of the meeting?

15 A. Yeah, I think how we're
16 going to approach council and what reports we're
17 going to bring to council, that's been discussed,
18 you know, previously. But now this has taken on
19 more of a broader lens where we're looking at it
20 from a legal and risk management perspective as
21 well. So, yeah, I would agree that that meeting
22 also starts to formulate next steps in moving
23 forward.

24 Q. What was your role at the
25 meeting with the mayor on the 18th?

1 A. I don't think I said a
2 word, actually. I was there to provide any, you
3 know, information, if required related to the CIMA
4 work.

5 Q. Do you recall, was there
6 any information that was required from you?
7 Presumably not if you didn't speak.

8 A. I don't remember saying
9 anything in the meeting itself. Mostly the
10 discussion there was led by Mr. Zegarac and Ms.
11 Auty, and with Mr. McKinnon providing some input.
12 But, yeah, I don't recall having the opportunity
13 or the requirement to say anything at that
14 meeting.

15 Q. Thank you. Registrar,
16 could you close this and go to 266, please. Could
17 you bring up 265 as well.

18 Mr. Soldo, you said earlier
19 that you had a high level awareness that Mr.
20 McGuire was working with Golder to -- in respect
21 of a pavement evaluation project, and on
22 December 18, Mr. McGuire provided to Mr. Sabo and
23 Ms. Auty a copy of the first draft that Golder had
24 prepared, in respect of that project. And I don't
25 believe that you're copied on this draft. Do you

1 recall reviewing this draft? And, Registrar,
2 perhaps I'll actually pull up the full draft. Can
3 you go to 266 and 267. Just so that you can
4 review it. Do you recall receiving a copy of this
5 in December of 2018?

6 A. I don't recall seeing a
7 copy, and if you have any e-mails. But, like, I
8 would generally not get this kind of information
9 from Gord. It's very technical and it's based on
10 work that engineering is undertaking.

11 Q. So Mr. McGuire worked
12 with Golder over the course of December and
13 January, actually February and into March, to
14 finalize this report, which deals with a few
15 different types of testing, including British
16 pendulum testing. Did Mr. McGuire ever raise with
17 you what British pendulum testing was or that
18 Golder had done it?

19 A. Again, going back to some
20 of the meetings that we have, Gord would most
21 likely have -- he would have provided an update on
22 various initiatives he's undertaken. He would
23 provide an update on the work that he's undertaken
24 with Golder, but I don't remember any specifics,
25 necessarily.

1 Q. Registrar, you can close
2 this down, and can you go to 268, please. Can you
3 pull out 269 as well, please. Thank you.

4 Mr. Soldo, you see at the
5 bottom of 268 and up to 269, that Mr. Ferguson
6 provided you six motor vehicle accident reports in
7 response to a request that you made for them. And
8 he identified these as all fatal accident reports
9 on the Red Hill since 2007 when it opened. Why
10 were you requesting copies of fatal accident
11 reports on the Red Hill in December of 2018?

12 A. Yeah, so at this point,
13 you know, we just met with the mayor on the 18th,
14 and as I indicated earlier in my earlier
15 testimony, you know, I came to Hamilton in July
16 31st of that year. Don't really have a good
17 understanding of all the other history of the
18 RHVP, what's been going on, and not really privy
19 to various media reports, all that. This is
20 starting to -- this whole issue is starting to be
21 highlighted and take more precedence in everyone's
22 schedule, and I kind of realized I really didn't
23 have a good understanding, at this point, of the
24 historical nature of some of the collisions that
25 actually had occurred.

1 You know, I can read the CIMA
2 report and review the various characteristics, but
3 the issue of fatalities has been raised more than
4 once, and, you know, I realized I should probably
5 spend a little more time to take a look at this,
6 get a better understanding. So that's why I asked
7 for those six -- he forward me those six reports.
8 I did not know what the nature of those reports
9 was, and I asked for them from Mr. Ferguson so I
10 could do a more in-depth review of them myself.

11 Q. Thank you. Before
12 seeking this request, did you know that there
13 was -- there had been six fatalities on the Red
14 Hill since 2007? Just not the details of them?

15 A. Well, the fatalities are
16 identified in the various collision report and
17 everything else, so they are there, but I didn't
18 really know the specifics of what had occurred in
19 each of those fatalities.

20 Q. Registrar, could you go
21 to OD9A, page 281 to 282. Actually, just before
22 we get there, did you go in and look at the
23 accident reports that Mr. McGuire sent you?

24 A. Mr. Ferguson sent me --

25 Q. Pardon me.

1 A. And I did take a look at
2 them and see if there was anything that stood out
3 to myself.

4 Q. Did you find anything
5 that stood out to you or that gave you some
6 insight into these fatalities?

7 A. I'd say that each one of
8 those fatalities was vastly different, the
9 circumstances under which it occurred. You can
10 look at all the various factors that come into
11 play and, you know, doing a scan of those
12 fatalities, my conclusion there really was that
13 they are all different.

14 Q. Okay. We're now at
15 January 7th. These two pages contain minutes
16 prepared by Ms. Graham, in respect of a meeting
17 with Karen Gordon, who was an external
18 communications person. Did you attend that
19 meeting with Ms. Gordon?

20 A. The difficulty I'm having
21 with-- was, at this meeting or not, is that I
22 don't remember Ms. Gordon, meeting her.

23 Q. She may have been by
24 phone, just to interrupt. I don't know if that
25 helps. If you're trying to get an image of a face

1 in your mind, that might be the reason that you
2 can't.

3 A. I'm assuming if this
4 meeting was in my calendar that I would have been
5 there. I just don't recall dealing or interacting
6 with Ms. Gordon.

7 Q. There's a reference on
8 282 where it says: "Karen, come at it and confess
9 it. Difficult to explain. More problematic for
10 new council. Greatest concern explaining a few
11 first time councillors. You can't know who the
12 FOI came from. Cleaner part of the story,
13 improvements to the road." I don't know if that
14 helps, but I think, as I interpret it, that that
15 is what was Ms. Gordon's communications advice.
16 Does that refresh your memory?

17 A. Not really, yeah.

18 Q. Okay. I tried.
19 Registrar, can you close this down. Actually, can
20 you go to 282 and 283, please. Thank you. Can
21 you pull out the bottom quarter of this, the GIC
22 and council. Yeah, down there. Exactly. And
23 then the last line on 283.

24 So these notes reference the
25 goal of going to GIC on the 16th, and going to --

1 a plan B of going to council on the 23rd. What
2 did you understand at this point, so we're in
3 January 7th, just back from the New Year, what did
4 you understand about when the report or reports
5 that you were working on would go to councillors?

6 A. So the original goal, I
7 believe, was in January to go forward with those.
8 And what was the date of this meeting again?

9 Q. The 7th.

10 A. The 7th. Of January?

11 Q. Yes.

12 A. So at that point, to meet
13 a GIC of the 16th, that would have been quite
14 difficult. I don't believe at this point Gord has
15 even drafted a report yet to go to council. And
16 this is where the separation of some of these
17 reports starts because, you know, at this point,
18 we're trying to finalize the report on the speed
19 limit, we're trying to finalize the report on
20 collision report, we're still getting in the
21 reports from CIMA. I'm not sure if at this point,
22 January 16th, we have the final version.
23 Somewhere in this time frame. But that was the
24 original goal, was to hit January 16th with the
25 reports. If we went through that at this meeting,

1 don't think it feasible or plausible that we could
2 actually hit that goal because it's only nine days
3 away and the overall report still hasn't been
4 written.

5 Q. Okay. So why don't we
6 just stop there and talk about what's on your
7 plate in January. You've done a draft of the
8 speed study? We looked at that before.

9 A. Yeah.

10 Q. The report. And
11 Mr. Ferguson has done a draft of the annual
12 collision report that ends up going; is that
13 right?

14 A. The original draft is way
15 back in August. There was a considerable amount
16 of work that had to be done with it. I'm not sure
17 exactly what the status on the 7th would have
18 been, but it would have been pretty close to
19 getting done.

20 Q. And then you have the
21 joint report that you're doing with Mr. McGuire,
22 and I hear from your evidence that Mr. McGuire had
23 the pen for the first draft?

24 A. Yes. Yeah, I think he
25 sends me a first draft, I want to say the 14th,

1 15th, somewhere there, of January.

2 Q. Did you do any sort of
3 pre-drafting of any sections of that and then give
4 it to him, or did he take the first cut from a
5 blank page, if you will?

6 A. I can't remember. I
7 think I may have given him pieces to put in, but I
8 can't recall exactly.

9 Q. Okay. During this time,
10 and we'll come to an e-mail about this, but are
11 you doing or are you instructing your staff to do
12 any work on collecting documents for the FOI?

13 A. Is there an e-mail you
14 can point me to?

15 Q. There is. In fact, I was
16 really just trying to itemize what you had going
17 on in January, but I can get there in the
18 chronology.

19 A. Well, at this time as
20 well, I'm just about to pull the reorg my
21 division, which was taking up a significant amount
22 of time, my time.

23 Q. Okay. Registrar, can you
24 close this down and go to page 290, please. At
25 the top of this page, you'll see that Mr. White

1 sent you a serious of e-mails related to the Red
2 Hill, starting on January 9th. And then
3 January 9th and January 10th he sends you some
4 more e-mails.

5 Do you recall if or why you
6 started -- maybe I should put that differently.
7 Did you start requesting historical e-mails about
8 the Red Hill and the LINC from Mr. White or
9 others, other staff underneath you?

10 A. I think at this time
11 Jasmine -- Mrs. Graham, sorry, and Mr. McGuire and
12 I are starting to pull together kind of a
13 historical, okay, what happened when sort of --
14 and as part that, I really can't speak to what
15 occurred prior to my coming to the City itself, so
16 I think I would have asked Mr. White and
17 Mr. Ferguson to give me some more historical
18 context.

19 Q. Registrar, can you go to
20 the next page, please. Bring up the next page as
21 well, please.

22 So at the bottom of this page,
23 291, this is the same day, so this might be
24 related. And if it is, you can certainly let me
25 know. To the question I was just asking you.

1 You e-mail Mr. White and
2 Mr. Ferguson and you say that you need some
3 information on an urgent basis.

4 Registrar, can you pull --
5 actually, could you go to the underlying document,
6 it's HAM12046, please. Can you bring up the
7 bottom half of this page, please.

8 So just in terms of timing,
9 this is fairly early in the morning, and Mr. White
10 actually sends you those e-mails that he was
11 flipping you, that we were just looking at a
12 little bit later in the morning, but you see, in
13 the morning you e-mail Mr. Ferguson, Mr. White,
14 and Mr. --

15 A. Switenky.

16 Q. Switenky. Thank you.

17 And you say, "Gents, working
18 on something urgent and need some info." And you
19 say, "the chart that was in the report that
20 outlined all the initiatives that we had
21 undertaken needs to be updated and sent to me in
22 electronic form. I thought you had done this
23 already, but I can't seem to find it. I need
24 costs of those items. Pulling together this
25 report today, so please make it a priority". And

1 then you asked about how the guide rail markings
2 were coming. Have we started. Are we finished
3 and cost.

4 Do you recall what you were
5 working on on January 9th, for which you were
6 seeking an updated CIMA -- an updated appendix
7 like the appendix in PW18008?

8 A. Yeah, that's exactly what
9 I would have been working on, is updating that
10 appendix. So 18008 had an appendix -- David
11 actually updated on a periodic basis throughout
12 the course of the year. He actually sent me a
13 very detailed e-mail, here's all the
14 countermeasures that were identified in the
15 report, and he had provided, like, photos of what
16 had been achieved, what had been done. I just
17 couldn't find that e-mail, and so I was asking him
18 to resend that to myself. That chart then would
19 go eventually into the updated PW18008A report.

20 Q. So you say, "Working on
21 something urgent and need some info." This is
22 January 9th of 2019.

23 If you had told Mr. White and
24 Mr. Ferguson about the Tradewind report and about
25 the process to get it to council, why are you so

1 oblique in what you're referencing here.

2 A. Why I'm so bleak?

3 Q. Yeah, "Working on

4 something urgent and need some info."

5 A. Let me decode "working on
6 something urgent for you." When I send that to
7 Mr. Ferguson, Mr. White, you'll see an actual
8 number of e-mails back. If I don't say it's
9 urgent, it doesn't come to me in a very timely
10 manner, so I tend to put that into e-mails to Mr.
11 White and Mr. Ferguson, I'm working on something
12 urgent. So that they understand that I'm looking
13 for something in a fairly short timeframe, first
14 of all.

15 So then to answer your
16 question there, they are well aware of what we're
17 working on, in terms of that staff report. They
18 participated in those discussions previously.
19 I've had Dave updating this chart in the past as
20 well as -- you know, as I state here.

21 I was working on that report
22 with Mr. McGuire. I wasn't necessarily asking
23 Mr. Ferguson or Mr. White to put the pen to paper
24 on this report.

25 Q. Registrar, could you

1 close this down, and could you go to page 302,
2 please. Sorry, page 302 of OD9A. Can you pull
3 out -- call out 303 as well, please. Thank you.
4 Can you call out 700 and 701, please.

5 So the following week on
6 January 14th, you e-mail Mr. White and
7 Mr. Ferguson and say, "As you know, there are some
8 issues related to the RHVP reporting. I need
9 written confirmation from both you of the
10 following: That the 2013 Tradewinds consulting
11 reports was never shared with you or any of your
12 staff regarding the friction testing." And then
13 you ask, how do we know the table, that is, the
14 friction testing report, was completed. So I
15 think you referenced this earlier in your
16 testimony today.

17 A. Hm-hmm.

18 Q. And Mr. Ferguson
19 responded: "I've never seen the report, I had
20 asked Gary previously but never received a
21 response." And then, "It was listed as complete
22 as Gary had verbally stated it on numerous -- it
23 was completed on numerous occasions."

24 Registrar, you can close this
25 down. If you can call out 702, please. And

1 Mr. White also confirms, I've never seen the
2 report. I did ask for it several times. Gary
3 admitted it once, but he discounted the results.
4 And then he references a meeting with Mr. Mater,
5 Dan, Dave and myself -- I think that's Mr.
6 McKinnon, Mr. Ferguson and Mr. White. Something
7 about it being an English test, and he declined to
8 show the results. He also said the asphalt was
9 filled with rubber from tires.

10 So just closing that down.

11 Thank you. Mr. Soldo, what is your evidence about
12 whether Mr. White had seen a copy of the Tradewind
13 report by January 14th? Or maybe I'll put it this
14 way. Had you provided him a copy of the report?

15 A. No, I believe my previous
16 evidence is that I did not provide him a copy, but
17 we spoke about it.

18 Q. This e-mail that you
19 send, you say, I need written confirmation. You
20 reference the Tradewind report by name. That
21 certainly suggests to me that you didn't have to
22 explain what the Tradewind report was, that by
23 saying the 2013 Tradewind consulting report,
24 Mr. Ferguson and Mr. White already knew what that
25 was by January 14th; is that right?

1 A. Like I said before, we've
2 talked about the Tradewind report previously, so I
3 didn't need to be specific in what I'm referring
4 to here.

5 Q. So you ask in your
6 e-mail, how do you know that the friction testing
7 set out in the appendix that's listed as complete
8 actually was completed, and Mr. Ferguson responds,
9 it was listed as completed because Gary verbally
10 stated that it was, and then Mr. White provides
11 his context of this meeting. So that to me
12 doesn't look like Mr. Ferguson and Mr. White are
13 providing you with written confirmation of
14 something they have already told you. Is that
15 right? That they are providing new information to
16 you here in these e-mails?

17 A. I don't understand your
18 question here. Your question is, are they
19 providing me with new information?

20 Q. Yeah, the information
21 that's referenced here is listed as complete
22 because Gary said it had been complete, and
23 Mr. White's comments about the meeting and what
24 Gary told him, was that information that they're
25 providing to you for the first time on

1 January 14th?

2 A. No. They have said to me
3 somewhere along lines before that Gary has told
4 them in the past that the friction testing was
5 completed. I can't give you a timeline on when
6 that was or anything like that, but this is not
7 new information -- (indiscernible).

8 Q. Okay. In the e-mail that
9 you send, you say, "How did you know it was
10 completed?" That is the reference to the friction
11 testing in appendix A, and Mr. Ferguson responds,
12 it was completed because Gary told me. Was that
13 new information about why the appendix A had been
14 updated the way that it had?

15 A. I don't believe so. It's
16 just confirmation I think, but -- if you're asking
17 me what exactly I knew at that time, I would say
18 this wasn't new information. They've stated that
19 in the past, that -- just repeating what they
20 stated, I guess.

21 Q. Okay. I understand
22 you're asking for written confirmation of
23 something that you already know in the first two
24 paragraphs, but the third paragraph looks like
25 you're actually asking a question that you don't

1 know the answer to.

2 A. What are you referring to
3 in the third paragraph?

4 Q. Sure. Oh, sorry, it's
5 700. It's the first e-mail that I took you to.
6 Registrar, could you call out paragraph of 700.

7 A. So I would say to you
8 that I'm looking for confirmation there on how
9 they knew. I wouldn't say that's new information.

10 Q. On the third sentence and
11 your question in the third sentence, that you're
12 asking for written confirmation of something you
13 already knew?

14 A. I believe so.

15 Q. Okay. Thank you.
16 Registrar, could you close this.

17 Commissioner, it is 10 to 12,
18 and we're on an accelerated break schedule, and I
19 think this might be an appropriate time to take a
20 break.

21 JUSTICE WILTON-SIEGEL: Let's
22 take a break for ten minutes, and we'll return at
23 noon.

24 --- Recess taken at 11:49 a.m.

25 --- Upon resuming at 12:00 p.m.

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

3 JUSTICE WILTON-SIEGEL: Yes,
4 please proceed.

5 BY MS. LAWRENCE:

6 Q. Thank you. Registrar,
7 can you bring up OD9A, page 294, please. Can you
8 call out 682. This is an e-mail from Mr. McKinnon
9 to you and to Mr. McGuire about accelerating your
10 report, joint report, and he says, "Legal is
11 struggling with a reason for going in camera in
12 the absence of some other report. I need to get a
13 sense of what's the absolute soonest we could
14 bring it." Do you recall having any conversations
15 with Mr. McKinnon about this e-mail after he sent
16 it?

17 A. I don't recall.

18 Q. Do you recall at this
19 point whether the plan was to have an in-camera
20 update from legal as something distinct from the
21 reports that you were preparing?

22 A. I recall some discussion,
23 again, I'm not exactly sure which meeting that was
24 at, about what style the reports were going to be,
25 what was going to be presented for each topic, and

1 things like that, but -- you know, so when do I
2 recall that there was going to be an in-camera
3 meeting? To answer your question, I was under the
4 assumption, at that point, that it was going to be
5 the reports were going to go in closed, and then
6 some reports were going to go in open session.

7 Q. Okay. Did you understand
8 that those were going to occur on the same day to
9 the same body of councillors?

10 A. That was my
11 understanding, it was going to be one
12 all-encompassing effort, and bringing everything
13 together so that council has the full breadth of
14 all the information.

15 Q. Did understand that would
16 have to be to all council at a council meeting or
17 a GIC meeting as compared to public works?

18 A. I'm not sure I understood
19 that part because we had always -- in the
20 beginning was the intention was go to public works
21 committee.

22 Q. Registrar, can you close
23 this down, and can you call out the next page as
24 well. Thank you.

25 You'll see that on January 11,

1 there is another meeting that Ms. Graham
2 organizes. You are listed as an attendee. This
3 is another one with some communications people who
4 are now more involved, Ms. Racine and Mr. Hertel,
5 and Ms. Gordon attends, again I think by phone.
6 And Mr. Sabo took some handwritten notes of that
7 meeting. Do you remember attending a second
8 meeting with Ms. Gordon?

9 A. So that was a meeting
10 on -- I'm just kind of reacquainting myself here.
11 January 11th, is that a Friday?

12 Q. I don't know.

13 A. Yeah, because I believe
14 this was one of the meetings where I couldn't
15 attend because I had a meeting with a councillor,
16 and depending on when I was done with that
17 meeting, I was going to call in or not. I don't
18 recall calling in, so I'm not sure if I actually
19 attended this meeting.

20 Q. Registrar, you can go to
21 page 297, please. Just before we go on, you said
22 you were meeting with a councillor. Did you meet
23 were any councillors in advance of the
24 January 23rd meeting or the February 6th meeting
25 in respect of the issues that we've been talking

1 about?

2 A. No, I did not.

3 Q. Okay. Registrar, could
4 you bring up paragraph 688, please. You asked for
5 an updated memorandum to the 2018 collision
6 memorandum. That's the memorandum that CIMA had
7 prepared that compared collision rates on the LINC
8 and the Red Hill to comparator highlights. Do you
9 recall asking Mr. Ferguson to have CIMA update
10 that collision memorandum?

11 A. I think this is a
12 timeframe where I had asked -- we had talked about
13 this earlier, where I had asked for old historical
14 information and other things, and I think I became
15 aware, in this timeframe, of the previous
16 memorandum that was done. I don't necessarily
17 recall seeing it earlier on, and when I looked at
18 it, I thought it would be a good idea to give it
19 an update and see what changed.

20 Q. Did you have some reason
21 to believe that something would change in the
22 course of a year, or just doing your due
23 diligence?

24 A. Just updating it, nothing
25 else. So I had asked for additional -- as it says

1 here, additional roadway to be added, the 403.
2 So, when I first looked at that memo, didn't
3 necessarily feel that it was very comparable, in
4 terms of the roadways that they had picked.
5 Again, it's collision rates, so it's not like it's
6 really looking at items that are -- you know, or
7 segments of roadways that are identical, but I
8 wanted to see what the collision rates on the 403.
9 Given that it's in Hamilton, going down the
10 escarpment, it's probably a little more
11 applicable. It's not 100 percent applicable, but
12 still, but it's a little more applicable as
13 compared to the RHVP.

14 Q. Okay. Do you recall --
15 and I can take you to the underlying memo, if you
16 would like, the 2018 memo -- that the collision
17 rates on the LINC and the Red Hill seemed
18 favourable compared to the comparator highways?

19 A. I don't necessarily
20 recall that conclusion, but yeah, if maybe you
21 want to bring that -- to that but --

22 Q. Well, maybe I can ask it
23 in this way. You do receive a copy of the updated
24 collision memorandum, and it says quite clearly,
25 we've added in some more collisions, self-reported

1 collisions, and that changes the collision rate
2 analysis for the Red Hill and the LINC. Do you
3 remember that?

4 A. Yes, so that was actually
5 a bit of a topic of discussion between Dave,
6 Martin and myself. Not only in this memo. But
7 also how we do -- do the annual collision report.
8 So it's bit of a theme of here, where in the past,
9 the City only looked at police reported
10 collisions, didn't include all collisions. So
11 incorporating that would be a better comparator,
12 somewhat, to the provincial averages and other
13 averages because they do include all the reports.

14 Q. Registrar, you can close
15 this down. You'll see at the next -- sorry, the
16 next page, please, 298, at paragraph 690,
17 Registrar, if you would, thank you -- that
18 Mr. Ferguson advised CIMA that you needed this by
19 the end of the day the following Tuesday ahead of
20 a meeting on Wednesday, January 16th. So that
21 would have been a fairly short turnaround.

22 Do you recall why you needed
23 or why you were asking for this updated memo ahead
24 of a meeting on Wednesday, January 16th, 2019?

25 A. Just collecting

1 information as much as we can at this point. You
2 know, we're heading towards going to council. I
3 wanted to ensure that I had the most up-to-date
4 information, and just going back to my point
5 before, if we don't ask for this information in a
6 fairly timely manner, a short timeframe, this
7 could potentially take weeks to get from a
8 consultant.

9 Q. Registrar, can you bring
10 up HAM28034.

11 THE REGISTRAR: Sorry,
12 counsel, do you mind just repeating the document
13 ID for me.

14 MS. LAWRENCE: HAM28034.

15 THE REGISTRAR: Thank you.

16 BY MS. LAWRENCE:

17 Q. That is not the document
18 that I wanted you to pull up. Why don't we go to
19 311 of OD9, please. Can you bring up 312 as well.
20 Thank you. This is the OD narrative of the memo
21 and -- I do think I want you to bring up -- maybe
22 let's just try it again, Registrar, HAM28034. You
23 can close that down. Can you go back to OD9.
24 Let's use the OD.

25 I see what I've done.

1 Registrar, let's try one more time.

2 CIM10338.0001. Thank you. That was what I was
3 looking for. Mr. Soldo, do you recall this is the
4 memo that CIMA came back with?

5 A. Is that the final
6 version?

7 Q. Yes. I think there was
8 only one version. Do you recall more than one
9 version?

10 A. No, I don't. I'm just
11 checking.

12 Q. So this is -- has the
13 Highway 403 and the other comparator highways.
14 Registrar, can you go to images 2 and 3 now,
15 please. Sorry, can you actually go to 3 and 4,
16 please.

17 I'm not going to take you into
18 the first collision memo, but you'll see that the
19 weighted -- average weighted collision rates for
20 the LINC and the Red Hill are set out, as are for
21 the comparator sites, and the Red Hill is -- has a
22 higher rate, 1.01, compared to all of the other
23 comparator and the LINC. And just so it's very
24 clear, you understood that that was actually a
25 different collision rate than had been found in

1 2018 because of the exclusion in 2018 of the
2 self-reports; is that right?

3 A. Yes, this included all of
4 the reports.

5 Q. So now there is a
6 comparison of apples to apples in that the
7 comparator highways always included self-reports,
8 and now the Red Hill and the LINC also include
9 self reports. Is that how you understood it?

10 A. I wouldn't call it
11 comparative apples to apples. I would say it's a
12 comparison of collision rates, using all the
13 reports, and my understanding is that the MTO 403
14 sections include all of the reports. So Highway 8
15 and 7, 8, 406, I believe we use all the reports as
16 well. I don't call it an apples-to-apples
17 comparison because the geometrics and
18 characteristics of each of these sections is
19 different, right. So it's the methodology, I
20 guess -- it's a methodology approach, yes.

21 Q. But in terms of the
22 underlying dataset, we now have two sets that
23 include all reports, and in that way, the data
24 sets are apples?

25 A. Methodology is apples.

1 Q. Thank you for the clarity
2 in the precise term.

3 Did you find that the
4 collision rate of the Red Hill as compared to the
5 LINC and the comparators was surprisingly high?

6 A. I wouldn't say it's
7 surprisingly high, given, you know, information we
8 had at this point. But did it stand out to me?
9 Yes, it stood out that we had a higher collision
10 rate using this methodology compared to 403,
11 Highway 406 and the others.

12 Q. Thank you. Registrar,
13 you can close this down. Can you go to OD -- no,
14 actually, can you bring up two documents, OD9A,
15 page 313, please, and can you pull HAM28086.
16 Thank you.

17 You'll see on the left-hand
18 side is the OD, and at the last paragraph on that
19 page, Mr. McGuire sends you a draft of the joint
20 report for, at the time, the February 4, 2019 PWC
21 meeting, and then what I have on the other side is
22 that draft report.

23 To your recollection, was this
24 the first version of the draft report that you
25 received from Mr. McGuire? It's certainly the

1 first e-mail, like electronic copy, but I don't
2 know that it's the first copy you received. You
3 may have received it in some sort of handwriting
4 or hard copy.

5 A. Yeah, Mr. McGuire would
6 not have sent it by -- I did not see a paper
7 version before that.

8 Q. Registrar, you can close
9 the left-hand side, and can you pull up the next
10 image on the right-hand side, so we have image 1
11 and 2.

12 So this is quite a lengthy
13 draft report, it's ten pages. It includes, at
14 various points, some highlighting throughout. You
15 had said earlier that you might have sent Mr.
16 McGuire paragraphs to insert into this. I can
17 certainly take you through what this looks like,
18 but I'm just trying to understand if you had
19 actually drafted any aspect of this in this draft?

20 A. So I'm just looking at
21 this. You know, recommendation B, I don't think
22 that would have come from Gord. That would have
23 probably come from myself, right, because it's
24 related to Hamilton Police Services. So he would
25 have either pulled that from either the speed

1 limit report or something else that I would have
2 sent him.

3 Next page, I don't believe I
4 had anything to do with that next page.

5 Q. Registrar, can you go to
6 images 3 and 4. And I don't want to have to go
7 page by page over ten pages, but there's a
8 reference, you'll see on these two pages, that's
9 highlighted to the speed review. Is that draft
10 and the safety review, are those drafts taken from
11 something that you had pre-drafted, like another
12 report?

13 A. He may have taken that
14 from the speed limit site that I had sent him
15 earlier, because I believe that he would have
16 already had that for some time. That looks like
17 the original version of the speed limit report
18 because it speaks to the 90 kilometres an hour.

19 Q. It does look like that.

20 A. Might be something he
21 took from earlier on.

22 Q. So I'm going to take you
23 to the next two pages, but then hopefully we won't
24 have to go further. There is -- sorry, Registrar,
25 that was a direction to you. Can you go to 5 and

1 6, please.

2 There's highlighting on image
3 6, which has, "These test results were not
4 considered conclusive, and in Ontario, there was
5 no definitive guidelines," and this is in respect
6 of the Golder pavement evaluation testing that's
7 set out just above. And you'll see if you go even
8 further, to the top of image 6, it says "friction
9 testing," and it references "friction testing was
10 identified as complete." So it has that. So
11 friction testing, has a reference to the earlier
12 appendix, and then it has a reference to the
13 Golder pavement evaluation, and then a reference
14 to the test results not considered conclusive.

15 So, to your knowledge, at this
16 point, so we're in January of 2019, was the three
17 materials test that Golder completed the reason
18 that your staff noted in appendix A of PW18008
19 that friction testing had been completed?

20 A. In the right, down and
21 over for me. You're saying -- maybe I'll
22 paraphrase. Based on that three bullet points
23 there, are you referring to that as what staff
24 understood as being completed?

25 Q. Yeah. Because that's how

1 I read this document under "friction testing." It
2 says it was completed, and then there's these
3 three tests that are listed, and then the tests
4 are not conclusive, and that's all it says. So I
5 infer from that there's some linkage between the
6 appendix A friction test completed and these three
7 tests.

8 So my question for you is, did
9 Mr. White and Mr. Ferguson understand, to your
10 knowledge, that these were the tests that -- and
11 that's why they marked it as complete? Do you
12 have any sense that that was the case?

13 A. I think it would be
14 better to ask them what they consider. My
15 understanding was -- I did not draw that
16 conclusion, to be honest.

17 Q. Okay. Recognizing you
18 might not have known that, but neither of them
19 conveyed that to you, that -- in fact, I think we
20 just looked at an e-mail that Gary had said they
21 had been completed and that's why they marked it
22 as complete; is that right?

23 A. That's what the e-mail
24 says, yeah.

25 Q. Did you understand these

1 three tests that are listed here to be friction
2 tests?

3 A. Did I understand these to
4 be friction tests? This is a sort of friction
5 testing. I don't define this as the same as
6 running the vehicle out there and taking
7 measurements and all that. This is a different
8 type of friction testing.

9 Q. Thank you. We'll come
10 back to this document when it's actually in its
11 final form, so I'm not going to go through the
12 rest of the drafting. But I think I have heard
13 your evidence to be that Mr. McGuire may have
14 taken work from what you had done or your staff
15 had done in other reports and compiled it into
16 this document. You did not actually draft any of
17 the content of this document for this document; is
18 that right?

19 A. No, at this point I take
20 this document and I re-worked it considerably, I
21 believe, to the final version.

22 Q. I think that was
23 re-worked considerably. I wanted to make sure,
24 given what you said before about providing
25 paragraphs. That doesn't seem to be the case,

1 having gone through a little more than half of it.
2 Does that accord with your recollection, Gord was
3 the compiler?

4 A. Gord was the compiler. I
5 think he took some information from the speed
6 limit report and used that as a starting point for
7 this, the sections that I was going to be
8 responsible for.

9 Q. Thank you. Registrar,
10 you can close this down and go back into OD9A,
11 please. If you can go to paragraph 313 and 314.
12 If you can go to the top of 314, at paragraph 733,
13 Mr. Ferguson distributed -- the OD says broadly
14 distributed, but he distributed it to a number of
15 people within public works, the 2017 annual
16 collision report that was going to PWC --
17 scheduled to go to PWC in February, and gives some
18 credit to some staff, and he copies another one on
19 it because it will fall to him. Registrar, you
20 can close the callout.

21 You'll recall from your
22 earlier testimony that this annual collision --
23 the annual collision report itself, that is, the
24 underlying document, not the staff report, had
25 been completed for several months. Why was it

1 only provided to council in February of 2019?

2 A. Actually I think you're
3 incorrect in that. If you look at the original
4 version and the final version, they are completely
5 different. The analysis that was done had many
6 errors in it. It was done in PowerPoint. I
7 actually had my secretary spend literally weeks
8 redoing that attachment, the annual collision
9 report, updating it. Lots of issues. Numbers in
10 the back didn't match the numbers in the front.
11 So I believe it was only in early January was the
12 actual annual collision report completed.

13 Q. Thank you. I appreciate
14 that clarity. That's helpful. What was your
15 role, recognizing your secretary's role, in
16 actually doing the work to complete the annual
17 collision report? I'll ask a sort of secondary
18 question. Did you advise Mr. Ferguson in the way
19 that you wanted it, or did you actually do the
20 work yourself?

21 A. No, I did not do the work
22 myself. It was an effort between Rebecca and
23 Mr. Ferguson, some of his staff. She was putting
24 it into software itself, so she was holding the
25 pen, moving all the graphics over, creating the

1 report, and working with staff to change the
2 language, update the language, ensure numbers were
3 correct and all that. She was more of -- she had
4 a large role in the actual production of the final
5 document.

6 Q. Do you recall, sitting
7 here today, whether there were any changes to the
8 sections of the collision report that dealt with
9 the Red Hill and the LINC? I mean substantive
10 changes rather than graphical changes.

11 A. I don't recall. I think
12 we enhanced the report from the first version. I
13 haven't done a side-by-side comparison of all the
14 changes.

15 Q. Thank you. Registrar,
16 can you call out 734 and -- 734, please.

17 On January 16th, you advised
18 some of your staff that slippery when wet signs
19 were installed and -- in fact, why don't we go to
20 the underlying document because I think it's
21 actually a little confusing to read it this way.
22 It is HAM12209. I'm not sure if that's going to
23 be any more useful, but if you can call that out.
24 Thank you.

25 So you say to your staff, "The

1 slippery when wet signs have been installed on the
2 Red Hill. The report indicated we should install
3 them as well as the flashing lights that would be
4 activated when it is wet. Did you investigate
5 that option? What would it take to implement?
6 Costs and time."

7 So just stopping there, did
8 you -- when you say "the slippery when wet signs
9 have been installed on the Red Hill," was that
10 something that had recently happened and you were
11 advising your staff of the fact that it happened?

12 A. No, the genesis of this
13 actually was a question posed to me by Ms. Auty.
14 She was reviewing the chart that had been
15 developed, you know, all the outstanding
16 countermeasures that had been implemented
17 previously and that had been identified by CIMA.
18 And she identified for me or asked me the
19 question, you know, the flashing lights, were they
20 installed. So that then led me to ask this
21 question, just now.

22 Q. So the flashing lights
23 and the slippery when wet signs, those are two
24 different things that you're referencing here?

25 A. No, the slippery when wet

1 signs, I believe the recommendation was that they
2 have a flashing beacon as well that activated when
3 it's actually wet.

4 Q. What did you understand
5 back from your staff about whether they had
6 done -- installed the flashing lights and why they
7 had not, if they had not?

8 A. I believe they reported
9 back to me that the locations where these signs
10 were installed, there was no electrical outlets.
11 There was no access to electricity in those areas.

12 Q. I'm not a traffic expert,
13 but isn't that fairly common on the parkway, that
14 there's not access to electricity?

15 A. No. Depending on where
16 it is. If it's on overpass, you would have --
17 potentially could have access to electricity,
18 depending on how the bridge was built, but I
19 believe they didn't implement it because there was
20 no place to tie -- tie into electricity.

21 Q. Registrar, can you close
22 this and go to 315, please.

23 A. I think there's another
24 e-mail later on where I asked -- you know, based
25 on that response from them, I say, great, what

1 about putting in solar panels.

2 Q. I think that is right. I
3 won't take you to it, but I think you're quite
4 correct. And do you recall whether that option
5 was feasible?

6 A. We use solar panels on
7 different locations throughout the City, where we
8 don't have access to electricity.

9 Q. Did you do that here, for
10 these flashing lights at some point?

11 A. I believe that's how they
12 were implemented.

13 Q. Do you recall in those
14 discussions that led to this with Ms. Auty if she
15 conveyed that one of the things that she hoped
16 happened would be that anything that CIMA had
17 recommended would be implemented? Did you
18 understand that sort of to be a driving force to
19 implement as much as possible from CIMA's past
20 recommendations?

21 A. Not necessarily. There
22 was short-term, medium-term and long-term options,
23 and many of the items -- some of the items still
24 aren't implemented because they are part of a
25 long-term strategy. They are being looked at

1 through the feasibility study. So I think it was
2 just reviewing all the various options and just
3 seeing sort of the status of them. Some of them
4 take permits and approvals from other agencies and
5 has a different timeframe.

6 Q. Sure. I think you're
7 quite correct about that. I really actually meant
8 in terms of the short-term countermeasures,
9 whether there was an overall drive to implement as
10 many of the short-term countermeasures that had
11 not yet been implemented as possible?

12 A. I think when we reported
13 to counsel on 18008, we had come up with a list of
14 things that were going to implement. So it was
15 just a matter of getting a status update of what's
16 been done.

17 Q. Thank you, Registrar.
18 Can you go to 324, please, of OD9A. Registrar,
19 could you also bring -- actually can you
20 instead -- no, we'll actually start here.

21 At the -- at paragraph 753,
22 your assistant, I believe that's your assistant,
23 sent you the staff and CIMA reports for the speed
24 limit study, and at this time, the staff report
25 recommended that the speed limit be reduced on

1 certain portions. That was your draft of the
2 staff report; is that right?

3 A. That's correct.

4 Q. Registrar, can you now go
5 to 329, and can you call out 369. This is jumping
6 forward just a little in time. You e-mailed Mr.
7 McKinnon and attached a revised draft. Looks like
8 you had had some discussion with him. And you
9 said, "didn't want to introduce the speed versus
10 design concept here. Lots of paragraphs are cut
11 and paste. In terms of the speed differential, I
12 went back to their report and am using their
13 wording and explanation."

14 Just stopping there, what was
15 the discussion about the speed and design concept
16 that you didn't want to introduce here?

17 A. Let's go back to the full
18 e-mail, just so I can get a better context of
19 what's been discussed here.

20 Q. Sure. Registrar, it's
21 HAM12331. I can also call out the revised draft
22 that you're referencing, if you want.

23 A. I would have to brush up
24 on what I was thinking at this point.

25 Q. No problem. We'll come

1 back to the speed study, so if you think of
2 something later, let me know.

3 In terms of the speed
4 differential, is that the difference between the
5 speed on the LINC versus the speed on the Red
6 Hill?

7 A. I would have to go back
8 and look at both reports. I'm actually thinking
9 this speed differential, there's the concept
10 that's introduced in the speed limit study, how on
11 the LINC, the changing of speeds could cause an
12 issue with people coming on and off. Now you have
13 people on the right-hand side of the roadway are
14 going to be at a lower speed versus the left-hand
15 side which would be at a higher speed. I believe
16 that's what I was referring to. When you read the
17 report, I believe that's how they -- that there's
18 this discussion related to that in there.

19 Q. Thank you. I think
20 you're right about that, in that I was trying to
21 use too high level a term to explain what you just
22 explained. I think that is referenced in the
23 report. So that's the speed differential that
24 they reference and then you're referencing here?

25 A. Yeah, I believe so.

1 Q. Registrar, can you close
2 this down and can you go to CIM221 -- pardon me,
3 let me try that again, CIM22412. Can you go to
4 image 4 and 5, please. These are Mr. McGuire's
5 notes. You'll see on the left-hand page, there's
6 a reference to a call where you're referenced, a
7 call from Edward Soldo, up at the top. And
8 yesterday Mr. Malone testified that you discussed
9 the 2019 collision memo during this call. Does
10 that -- recognizing there is not much to go on
11 there. It says "memo update Ham 2017, 2016." Do
12 you recall having a discussion with Mr. Malone
13 about 2019 collision memo?

14 A. What's the date on this?

15 Q. January 15th. It's the
16 same day that you received the collision memo.

17 A. I may have, but I don't
18 have a recollection.

19 Q. On the right-hand side is
20 some notes of a call that appears to reflect a
21 call with you on January 18, and it is a little
22 more detailed, recognizing it's a little difficult
23 to read. Registrar, could you also bring up
24 CIM22412.0003.

25 A. Whose notes are those?

1 Q. Mr. Malone's. This is
2 the transcription of that, just for a little bit
3 of ease of trying to figure out what Mr. Malone's
4 writing says. There's a reference to, it looks
5 like two phone calls with you on the document
6 we're looking at now. It's just the first page.
7 Registrar, can you actually go to the next image
8 on the right-hand side, just so that Mr. Soldo can
9 see it.

10 You'll see that reflects the
11 last box in the transcription. Mr. Malone
12 testified yesterday that you discussed your view
13 that you wanted to drop the speed limit from
14 Greenhill to the QEW to 80, and that that was part
15 of the content of this conversation. Do you
16 remember reaching out to Mr. Malone about that?

17 A. I remember this timeframe
18 we were getting all these reports ready, and we
19 were -- I remember having the discussion with
20 Brian to ensure that he would be potentially
21 available for the meeting as well, because a
22 couple reports obviously were related to his area.
23 So we had the discussion. If that's what's in his
24 notes, I'm assuming that we had that discussion at
25 that time.

1 Q. Just as a matter of a
2 practice, apart from making sure that Mr. Malone
3 might be available to attend a meeting to be a
4 resource for you, did you give him a heads up that
5 staff wasn't going to follow CIMA's report? Was
6 that part of the purpose of this call?

7 A. Well we had the original
8 discussion about -- and the fact that I didn't
9 agree with it back on November 30th. So at this
10 point here, if I'm going to go and bring forward a
11 recommendation to council that's different than --
12 than the consultant has done, I wanted to make
13 sure he was aware of that and that I would be
14 recommending something different.

15 Q. Thank you. Registrar,
16 you can close this down, and can you go to OD9A,
17 page 337, please.

18 Mr. Soldo, this is a reference
19 to the January 23, 2019 closed session council
20 meeting, which was in the evening of that day.
21 The minutes don't reflect your attendance. Did
22 you attend that meeting?

23 A. I don't believe I was
24 there. I was not there.

25 Q. Did you learn about what

1 happened during this meeting after it occurred?

2 That is, the closed session?

3 A. Yeah, I believe we have
4 another meeting of the internal working group
5 coming up, and that's when we were provided an
6 update of what occurred here.

7 Q. There's certainly a
8 meeting with Mr. Boghosian and Mr. Malone and --
9 well, there's a number of meetings on
10 January 30th. Is that the meeting that you're
11 thinking about?

12 A. I believe that's the
13 meeting. There's a couple meetings coming up.
14 There's a couple parts, a bunch of these meetings
15 coming.

16 Q. That is right. I'm going
17 to try to walk you through them. My question was
18 between -- so the meetings I'm going to take you
19 to are on the 30th. Do you recall having meetings
20 between the 23rd and the 30th, where you were
21 updated about what happened at this council
22 meeting? I'm sorry, sir, I missed that?

23 A. Sorry, I'm just trying to
24 think. I don't recall.

25 Q. Okay. Registrar, could

1 you go 342, please. Could you go to the next page
2 as well. Just before I get into this, at the
3 January 23rd meeting, did you understand that
4 legal services had prepared -- or provided an
5 update to council about the existence of a
6 Tradewind report?

7 A. I'm trying to remember
8 when and what here. I believe I knew that
9 legal -- you know, there was something being given
10 to council, but I can't be sure at this point.

11 Q. Just trying to understand
12 what you knew and the way that you understood this
13 to unfold. So you'll see at the bottom of 342,
14 there is a calendar invitation for the February 4
15 public works committee meeting. And then there's
16 a number of discussions between Mr. Zegarac,
17 Ms. Auty, Mr. McKinnon, Ms. Paparella from the
18 clerk's office, about where -- and the mayor --
19 about where and when Red Hill and LINC related
20 reports were going to be submitted, you know,
21 which committee or which body of councillors. So
22 I'm just trying to understand if you knew on
23 January 23rd that there was sort of a
24 pre-discussion with councillors happening and then
25 that was going to lead to some other later

1 session. Did you know that before January 23rd?

2 A. I can't recall, but given
3 report was a legal report, it was a closed -- I
4 most likely wasn't really aware of what they were
5 doing. I wouldn't necessarily be party to a
6 legal, confidential report. It was always my
7 understanding that we were heading towards
8 February 4th as the date, and public works in
9 particular.

10 Q. Okay. And then at some
11 point you came to learn that, in fact, the reports
12 that you had been preparing were actually going to
13 go to council. Do you recall that?

14 A. Yeah, I think there are
15 some e-mails in here where, yeah, I think I was a
16 bit surprised by the fact we were going to GIC
17 versus --

18 Q. There are. There are a
19 number of e-mails, none of which you're copied on,
20 until I think at some point you're made aware.
21 I'm not going to go through those. I presume you
22 weren't involved in the decision-making process
23 about which body to whom these reports should be
24 delivered; is that right?

25 A. That's a decision of the

1 clerk.

2 Q. On January 30, you
3 attend, I think a series of meetings that day.
4 Registrar, can you go to OD9A, page 376, please.
5 Can you call out the first paragraph. 870, down
6 to just the first paragraph of the imbedded
7 e-mail. Sorry, Registrar, that was directed to
8 you. I didn't think I identified you. Can you
9 call out the first paragraph of 870.

10 I think we might have lost the
11 Registrar for a minute there. Registrar, are you
12 back?

13 THE REGISTRAR: Yeah, sorry,
14 my one computer just seemed to disconnect, but I'm
15 still here with this computer. Sorry, if you
16 could just repeat what you just said?

17 MS. LAWRENCE: Of course.
18 Glad we didn't lose you. If you could call out
19 paragraph 870, the top, down to the first full
20 paragraph. Yes, that's perfect. Great. Thank
21 you.

22 BY MS. LAWRENCE:

23 Q. So Mr. Malone, after
24 these series of meetings, gave an update to his
25 colleagues, and that's what you're looking at now,

1 and so he identifies this series of events in the
2 first paragraph. He says he got a call from you
3 late in the day on January 30th asking him to
4 participate in a teleconference with the
5 management team. Then that happened. So Dan
6 McKinnon down, city solicitor Mr. Zegarac,
7 communications people, and Mr. Boghosian, and the
8 call took place from 4:30 to 6 -- actually, I
9 think it might have been 4, and then with
10 follow-on calls from Edward S and Gord M directly.

11 Is that how you recall the
12 series of -- I'm just going to call them series of
13 meetings, to go? You first spoke to Mr. Malone,
14 then there was a large group session, and then
15 there was calls after?

16 A. My discussion with Mr.
17 Malone was solely just to get telephone numbers
18 correct so that he had the right number to call
19 in. That was it. That was a very short dialogue
20 there. Then January 30th, this is the meeting
21 where I believe there was two meetings. There was
22 the meeting that had legal staff and Boghosian
23 internally, and then there was a larger group
24 meeting that was held after that.

25 Q. I think that is right.

1 And did you attend -- sorry, so there's a legal --
2 there's two meetings. There's legal staff, then
3 there's a larger group that includes -- the larger
4 group, and then there's a meeting with Mr. Malone;
5 is that right?

6 A. No, I believe he was part
7 of the second meeting.

8 Q. Thank you. I just wanted
9 to confirm that. Registrar, can you close this
10 and go to 9A, page 358, please. Could you go --
11 actually, we'll stop here. Can you call out the
12 table above 855. Thank you.

13 You'll see this is
14 Mr. Boghosian's notes of a call -- Registrar, I
15 just want to make sure you're on-line. I just saw
16 someone else become the host. Registrar?

17 THE REGISTRAR: Sorry, yes,
18 that was me. I just re-signed in. Yeah, thanks.

19 BY MS. LAWRENCE:

20 Q. Okay. Do let us know if
21 you need a technical break. We're getting close
22 to lunch in any event.

23 So this is 10:30 in the
24 morning on the 30th, and this is an e-mail just
25 with Ms. Auty, Mr. Sabo, and these are

1 Mr. Boghosian's notes. You didn't attend this
2 meeting, and Mr. Boghosian writes in his notes
3 that council wants to know if Brian Malone/CIMA
4 had the Tradewind report, and if there's anything
5 else CIMA thinks needs to be done to address
6 safety, slipperiness, as interim measures pending
7 repaving. And you aren't copied on these notes.
8 They don't go anywhere; they're just
9 Mr. Boghosian's notes. Did anyone advise you
10 before January 30th that council wanted to know
11 answers to these two questions?

12 A. I don't believe so. I
13 don't recall.

14 Q. Registrar, you can close
15 that. And if you could pull out the next page of
16 OD9A, and if you can call out the notes at the top
17 of 359.

18 So earlier you said there's
19 two meetings, there's one with the legal staff,
20 and then there's one with the larger group. Were
21 you saying that there was a meeting in which you
22 attended with legal staff before the larger group,
23 or were you referencing the fact that
24 Mr. Boghosian had spoken to Ms. Auty and Mr. Sabo?
25 Just trying to understand what you meant by those

1 two meetings.

2 A. What I meant was I was
3 out in the hall with Mr. McGuire and Mrs. Graham
4 during the first meeting, so I was not in the
5 first meeting.

6 Q. Registrar, you can close
7 this down. At some point someone asked you to
8 call Mr. Malone, see if you could patch him in for
9 a call with him; is that right?

10 A. Yeah, I believe that's
11 something along those lines, yeah. Or get the
12 right number so they can call in.

13 Q. Okay. Registrar, could
14 you close this and go to page 365. If you could
15 call out the content of that page, please.

16 This is a transcript of Mr.
17 Sabo's notes, and you'll see there's a reference
18 at the top to -- I think it's to you, Edmund S.
19 Not quite but close. Along with Dan McKinnon,
20 Gord McGuire, Ms. Graham, and Jen Recine. Is that
21 who you recall being at the meeting, in addition
22 of course to Mr. Malone once he joins?

23 A. Gord, myself, Dan,
24 Yasmin. I don't recall -- and Nicole would have
25 been there, but I don't recall Jen. I think

1 communication staff, depending on which meeting,
2 they would send representatives.

3 Q. If you can go right down
4 to the -- actually, I'll ask you a more broad
5 question. This call with Mr. Malone, did you
6 understand it to be to provide information to
7 Mr. Malone, or did you understand it to be to get
8 information from Mr. Malone, or both?

9 A. I don't think I had an
10 understanding either way. Just set up the meeting
11 with him. I don't think I could say either one of
12 those.

13 Q. You didn't know why the
14 meeting was set up, like you didn't know what the
15 content would be?

16 A. Yeah, to have a
17 discussion with him, but to say it was to get
18 information or give information, I don't think I
19 was aware of that.

20 Q. Okay. It does look like
21 there's some back and forth. It does look like
22 Mr. Boghosian asked a number questions of
23 Mr. Malone. Is that your recollection?

24 A. Your previous question
25 was, you know, what did I know going into the

1 meeting. You're saying about the meeting itself?

2 Q. Yeah, I am saying the
3 meeting itself.

4 A. Yes, in terms of the
5 meeting itself, there was some back and forth.

6 Q. Was it Mr. Boghosian
7 primarily who was asking questions of Mr. Malone?

8 A. I want to say it was
9 mostly Nicole, but again, I don't have like a
10 vivid recollection of this meeting.

11 Q. At the bottom of this
12 page, this is Mr. Sabo's notes, it says ES. It's
13 not clear to me from these notes which meeting
14 we're in now. I think we're in the pre-Brian
15 Malone meeting. Do you remember having some
16 discussions with this group of City staff before
17 Mr. Malone joined?

18 A. I don't recall.

19 Q. No? Okay. Registrar,
20 can you go to the next page, please. That's
21 great. Thank you.

22 So there's now references to
23 T/C with David Boghosian, T/C with Brian Malone,
24 and you say -- it says "Q by Soldo details with
25 pending reopening." And looks like A, Brian says

1 "enforce police never too much."

2 Do you recall having any
3 discussions during this call with Mr. Malone about
4 whether there were additional details that should
5 be done pending reopening -- pending repaving --
6 I'm going to say repaving?

7 A. I'm trying to decipher
8 these notes. I would say he might be referring to
9 the speed limit report where it's -- you know,
10 we're reducing the speed from 90 to 80 and we're
11 asking for, not just increased but enhanced police
12 presence and enforcement there. That might be
13 what he's referring to.

14 Q. Registrar, can you close
15 this and go to the next page, please. Could you
16 call the whole page out.

17 So this is just more of the
18 back and forth, and here there's references to Mr.
19 Boghosian referencing wet and dry, which I think
20 is referencing collisions, and referencing a UK
21 standard, and Brian said, "comparison shouldn't
22 compare Ontario to UK, has been some friction
23 tests for some time in Ontario, MTO has used a
24 threshold number." Do you recall some back and
25 forth between Mr. Boghosian and Mr. Malone in

1 which Mr. Boghosian was asking questions about
2 collision rates for UK standards in respect of
3 friction?

4 A. I don't recall specifics
5 of the conversation. They were going back and
6 forth on various items, but these are pretty
7 specific and I don't just have a recollection of
8 that.

9 Q. Thank you. I'm not
10 trying to be specific; I'm trying to sort of give
11 you little details to maybe refresh your memory
12 about this. I actually have quite a general
13 question, which is did you understand that
14 Mr. Boghosian was seeking particular information
15 from Mr. Malone?

16 A. I think that's the
17 outcome of the meeting, was having Brian provide
18 answers to some questions.

19 Q. Last question on this.
20 At the very bottom of this page, it says "Edward
21 use of TAC, geo design concepts guidelines." Do
22 you recall either you or Mr. Malone talking about
23 the use of TAC geometric design concepts as they
24 related to friction numbers?

25 A. I don't understand what

1 is written here. Use of TAC.

2 Q. I think it's geometric
3 design concepts.

4 A. Again, that might refer
5 to -- I'm not going to guess what that refers to.
6 I really don't know what Ron wrote in his notes.

7 Q. So referencing that to
8 ask the sort of broader question, did you or
9 Mr. Malone in this meeting talk about the use of
10 TAC geometric design concepts as they related to
11 friction numbers, to your recollection?

12 A. I don't recall.

13 Q. Do you remember
14 Mr. Malone asking -- pardon me, Mr. Boghosian
15 asking Mr. Malone if the -- if he could consider
16 whether the Red Hill should be closed?

17 A. I do believe there was
18 that discussion, yes.

19 Q. Do you recall Mr. Malone
20 providing a preliminary opinion about that?
21 Again, at this meeting which is the first of two
22 meetings.

23 A. That one sort of stands
24 out. It's a pretty important question. I believe
25 Dan McKinnon actually is the one who asked that,

1 and the answer was no.

2 Q. What do you remember
3 about the follow-on meetings, as Mr. Malone called
4 them, after this large group meeting? He
5 identified in his note to his colleagues follow-on
6 meetings with you and with Mr. McGuire.

7 A. Very brief. Probably
8 called just to see if he needed any other
9 information or like that. It would've been a
10 phone call, very short. I don't recall having any
11 significant discussion with Mr. Malone.

12 Q. Thank you. Registrar,
13 could you close this and go to page 368, please.
14 Can you -- no, we don't need that. Thank you,
15 Mr. Registrar. Can you call out the bottom of
16 this page, 861, please. That's actually not what
17 I'm looking for. Can you keep that up with the
18 callout but then call out the next page and finish
19 the -- calling out the remainder of this e-mail.
20 Thank you, Registrar.

21 Following the call with
22 Mr. Boghosian and Mr. Malone, Mr. Boghosian sent
23 an e-mail to -- thank you -- to Mr. Malone. In
24 fact, this is Ms. Auty's draft of it. But you'll
25 see -- I know it's a little hard to read -- on the

1 second callout it says once -- it includes the
2 Tradewind report, the Golder evaluation, and this
3 is to Mr. Malone, "Once you have reviewed the
4 above, can you please consider the following," and
5 then she sets out three questions.

6 Did you have any input into
7 the specific questions that Mr. Malone was asked?

8 A. I think these questions
9 were actually discussed at the meeting, to be
10 honest. This is just maybe a follow-up of the
11 questions that were asked.

12 Q. Well, you're calling out
13 Mr. Malone I think out of the blue and asking him
14 to attend a call and then this call happens, and I
15 don't think it's prescheduled. Is that right? I
16 know -- the column, the 30th. I know it's
17 scheduled some time in advance, but this is not a
18 long planned call. Did you understand that
19 Mr. Malone already had these questions or --

20 A. Sorry, what I was
21 referring to, I believe these were the questions
22 that we had discussed. These questions were
23 discussed in that meeting with Mr. Malone. So I'm
24 not sure we're in the same context there.

25 Q. Were these questions

1 asked of Mr. Malone? Is that what you mean by
2 they were discussed?

3 A. Meeting with Mr. Malone?

4 Q. Yeah.

5 A. I believe so.

6 Q. Maybe I'm confused now.

7 When you said these questions were discussed at
8 the meeting, was that the meeting with Mr. Malone
9 that they were discussed?

10 A. Yes.

11 Q. I have one more question,
12 then we're going to go on lunch. Registrar, could
13 you close this down, and can you call out 395,
14 please. Actually, you know what, I see it's three
15 minutes after 1 already. I can hold this until
16 after the lunch break. Commissioner, it's just a
17 little after 1. I would suggest that we take our
18 usual lunch break, please.

19 JUSTICE WILTON-SIEGEL: Okay.

20 Why don't we take our lunch break, and we'll
21 return at 2:15.

22 MS. LAWRENCE: Thank you.

23 --- Recess taken at 1:03 p.m.

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

25 MS. LAWRENCE: Commissioner,

1 may I proceed?

2 JUSTICE WILTON-SIEGEL: Yes,
3 please do.

4 BY MS. LAWRENCE:

5 Q. Registrar, could you call
6 out OD9A, page 395, please. Mr. Soldo, in the end
7 of January, January 31, Mr. Zegarac, Mr. McKinnon,
8 Ms. Fontana and Mr. Moore met to discuss the Red
9 Hill. Were you made aware in advance that this
10 meeting was going to happen?

11 A. I believe so.

12 Q. I'm sorry, you're a
13 little under the sea.

14 A. Sorry, I believe so.

15 Q. Registrar, could you go
16 OD10A page 55. Can you call out 121, please. So
17 this is a little out of order in our OD but this
18 is an e-mail that I think is forwarding Mr.
19 McKinnon, Mr. McGuire's discussions about
20 potential questions to ask Mr. Moore and you
21 replied with the following questions. Do you
22 remember providing those questions?

23 A. I do.

24 Q. Were you ever provided
25 with information about answers to those questions

1 or to the questions that Mr. McKinnon, Mr. McGuire
2 had been discussing?

3 A. I don't believe -- I
4 don't recall having a debrief of what occurred in
5 that --

6 Q. Thank you. You can close
7 this down and go back to overview document 9A
8 page 401, please. And 402, please.

9 So on February 1
10 Mr. Boghosian, Mr. Moore and several staff members
11 spoke again. You're not listed at the top but I
12 think you come in late. Is that your
13 recollection?

14 A. No, I wasn't at that
15 meeting, February 1st is a Friday and I was taking
16 the afternoon off to go onto a hockey game in
17 Buffalo.

18 Q. Do you remember getting a
19 debrief from anyone after that meeting, presumably
20 on the Monday?

21 A. I don't recall.

22 Q. Registrar, can you bring
23 up CIM22419. This is another no book entry from
24 Mr. Malone and it references -- on February 1
25 references at 10:30 call with Soldo and McGuire.

1 Do you recall speaking to Mr. Malone separately in
2 advance of the discussion that Mr. Boghosian and
3 others had with him?

4 A. What's the date on this?

5 Q. February 1st.

6 A. February 1st. I don't
7 recall.

8 Q. So you took the afternoon
9 off to go to a hockey game but you don't remember
10 in the morning whether you made an attempt to
11 reach out to Mr. Malone because you wouldn't be
12 able to make the later call?

13 A. That morning I was
14 actually at an event -- public works event so I'm
15 not sure -- I don't recall going this but if
16 that's Brian's notes, 10:30, it would have been
17 middle of the event.

18 Q. Doesn't have any details
19 so I'm just asking about your recollection, but I
20 think I have your evidence.

21 Registrar, could you close
22 this down and go back to OD9, page 408, please.
23 Sorry, can you go 424, please. Can you call out
24 the top underlined section on 424.

25 So Mr. Soldo, there is a

1 meeting that happens on February 4th with City
2 staff at which you may have been updated about the
3 contents of the discussion on February 1st. Just
4 looking at this, this is an opinion that
5 Mr. Boghosian prepares. Did anyone tell you that
6 Mr. Malone had made these comments, and you can go
7 through each bullet point if you like, at the call
8 in February 1st?

9 A. I don't recall being
10 updated on this.

11 Q. Close this down and go to
12 page 408, please. If you could pull out 934. On
13 February 1st you contacted Mr. Bentley at -- he's
14 executive director and chief engineer at the
15 highway standards branch at the MTO, and you said
16 you have a person who -- can contact regarding
17 pavement friction testing and anticipated values
18 for SMA pavements. So maybe I'll start with your
19 relationship with Mr. Bentley.

20 Did you know him prior to
21 sending this e-mail to him?

22 A. Mr. Bentley used to be
23 director in the southwest region and him and I sat
24 on the chief engineers council at TACC --
25 relationship.

1 Q. Thank you. So why did
2 you contact Mr. Bentley on February 1?

3 A. So I believe at that time
4 as a group we were still discussing potentially
5 friction testing. There's still information that
6 Gord was looking into. I had the contact with
7 Mr. Bentley. Gord didn't necessarily have the
8 contacts within MTO like I did, hence I offered to
9 reach out and make that connection on behalf of
10 Gord and Dan.

11 Q. So there's a reference
12 here to anticipated values for SMA pavements.
13 Were you also hoping that the MTO could provide
14 some insight into what they expected in terms of
15 friction values on their SMA pavements?

16 A. Well, MDR experts at
17 different types of pavements, they obviously have
18 a larger network than the City of Hamilton does so
19 we're looking to tap into their expertise and any
20 kind of help they can provide us with in terms of
21 moving forward.

22 Q. Thank you. So I know
23 Mr. Billing doesn't get back to you until after
24 February 6 GIC meeting so I'm going to turn to
25 that first.

1 Registrar, you can close this
2 down. If you could go to page 446 and 447,
3 please.

4 So you'll see at the bottom of
5 446 Ms. Graham sent to a number people, including
6 you, presentation slides, a timeline and a
7 communications plan for February 6th. Do you
8 recall reviewing those documents when Ms. Graham
9 e-mailed them?

10 A. She would have sent me
11 the documents. I'm not exactly sure when but I
12 would have reviewed them.

13 Q. She's doing it February 5
14 at 5:04 p.m. for a meeting that's going to be the
15 next day so I presume in less than 24 hours you
16 reviewed them; is that fair?

17 A. I would have reviewed
18 them before the February 6th, yeah.

19 Q. One of the things she
20 includes is a preliminary timeline. I think we
21 discussed this at your last day of evidence. Do
22 you recall being involved with -- trying to
23 prepare a draft timeline with Ms. Graham and other
24 staff?

25 A. Yeah, I was involved with

1 her at the beginning to put together timeline and
2 I think others started adding to it.

3 Q. Thank you. I presume any
4 part of the timeline that referenced you or your
5 involvement you confirmed for accuracy?

6 A. There's still that issue.
7 There's a couple entries in there where I'm not
8 sure was exactly correct. There were
9 (indiscernible) initial on there. We talked about
10 that last time about the report, finding the
11 report.

12 Q. In fact, just so we're
13 clear. The time limit that I've been putting up
14 on occasion is actually one that's created a
15 little bit later, it's not this one. It's an
16 update to that one. But I think that part is
17 still in there, in any event, but I certainly
18 understand your caveat on that point.

19 Registrar, can you go to
20 page 421, please. Thank you.

21 So at the very top on 974 on
22 February 4 in the evening Ms. Auty e-mailed Mr.
23 McKinnon, Mr. McGuire and you attaching a
24 memorandum from CIMA dated February 4th, and it
25 was -- it's the draft that Mr. Malone had just

1 prepared that day and it says:

2 "Please see the attached at
3 this time. We're keeping this
4 confidential and for in camera
5 purposes."

6 Before receiving this document
7 did you understand that Mr. Malone would be
8 preparing something in writing to assist the GIC
9 meeting the following day?

10 A. I believe that was the
11 purpose of that other meeting. We talked about
12 three questions.

13 Q. Did you understand as he
14 was preparing it, either at that January 30th
15 meeting or any time before getting this, that Ms.
16 Auty's intention was that this was going to be a
17 confidential document for in camera purposes?

18 A. I believe counsel was
19 looking for some information so my understanding
20 was his memorandum was going to be presented to
21 council.

22 Q. Okay. And did you
23 understand it was going to be presented to council
24 in camera?

25 A. I'm not sure what my

1 thought there was.

2 Q. Did you intend to -- I'm
3 trying to I understand what you thought your role
4 was in respect of this memorandum. Did you intend
5 to append it to any of your reports? How did you
6 think it was going to get to council?

7 A. I believe going to
8 council there was multiple sort of segments that
9 were being presented to council. There was the
10 staff reports from myself and Gord, and then there
11 was other follow-up reports. I did not -- I
12 presume this memorandum from CIMA was going to be
13 attached to something that the legal department
14 was putting together.

15 Q. Registrar, can you go to
16 page 433.

17 You'll see at paragraph 1011,
18 we're in the middle of the page, underlined page,
19 it says Ms. Auty e-mailed you and said, "can you
20 take a quick call with me please, I want to
21 confirm your concerns regarding the report," which
22 I believe is the report that's referenced above,
23 that is the CIMA report. At least I think that's
24 what it is.

25 Do you recall having any

1 concerns about the February 4th, CIMA report when
2 you reviewed it?

3 A. So when you say report
4 you're referring to the memo in response to three
5 questions?

6 Q. Yeah, and I'm happy to go
7 into the document to make it more clear, also
8 because I find the underlining hard to read.

9 Registrar, could you go to
10 HAM62569. I'm not trying to be opaque in the
11 reference, this is Ms. Auty's e-mail. What I know
12 is by this point Ms. Auty from the OD is trying to
13 finalize the CIMA memorandum and says, I want to
14 confirm your concerns regarding the report. So
15 I'm just hoping you'll have some insight what --

16 A. I believe the report, and
17 what she's referring to is the memo from CIMA
18 regarding -- in response to three questions. So
19 three questions were responded to but they also
20 had it in a whole section about reducing the speed
21 limit and the fact they didn't agree with that.

22 So I was a bit -- I didn't
23 understand why that was in there. There's a
24 separate report that's going forward on the speed
25 limits. We're catching CIMA's report there and

1 providing a rationale to council why the speed
2 limit is contrary to the recommendations of the
3 (indiscernible). So I was kind of confused on why
4 CIMA had added the section about the speed limits
5 in their response to the three questions.

6 Q. I see. Registrar, can go
7 close this and go back into OD9A and go to
8 paragraph 432. If you could pull out 1006,
9 paragraph 1006.

10 So I won't go into the
11 underlying documents but Ms. Auty asked
12 Mr. Boghosian to ask Mr. Malone to take out part
13 of the text and Mr. Malone responds okay, I'll
14 leave the green part and I'll remove the yellow
15 part. Pardon me. Then the response comes no,
16 just take both of these out.

17 Is this in reference to the
18 concerns that you were just talking about?

19 A. I believe so, otherwise
20 we would have two different reports, two different
21 -- having the same issue being discussed in two
22 different reports. Already a report on the speed
23 limit reduction.

24 Q. Thank you. Registrar,
25 could you close this. I'm going to take you to

1 the final version, which doesn't have those two
2 documents. HAM54382. And if you can call out
3 next images as well, please. There's several more
4 pages after this but this is at least the start.

5 So this is the final version
6 and you're right, there's three questions we
7 looked at earlier in your evidence. Registrar,
8 can you go and bring up image 2 and image 3.

9 So in terms of the second and
10 third question about additional safety measures
11 and about the Red Hill be closed, did you consider
12 getting a peer review or getting someone else is
13 probably a better way to put it, getting some
14 other consultant to review these two questions.

15 A. No, at this point we're
16 moving to go to council really quickly and there
17 wouldn't be the time to get anyone to look at
18 that. We didn't see it as group, we didn't see a
19 need for that to happen.

20 Q. Thank you. What did you
21 understand about CIMA's ability to address these
22 questions from a pavement materials perspective?

23 A. CIMA is a very large
24 company. They have specialists in multiple areas.
25 I would expect they would have either access to

1 within their own company or associates that could
2 answer the questions.

3 Q. Registrar, you can close
4 this down and go to OD10A, page 19 and 20, please.
5 This wasn't exactly the document that I wanted to
6 bring up. These are references to Mr. McGuire's
7 notes. Let me just go up a little.

8 It's paragraph -- page 15,
9 paragraph 33. You don't have to call it out,
10 that's fine. If you can bring up page 16 as well
11 please.

12 So this is just a series of
13 some of the minutes of the open session of GIC.
14 So just going through -- I'm not going to go
15 through all of them, hopefully there's enough here
16 you can see. We understand that there was a
17 number of discussion items, both in the open
18 session and closed session. One was the actual
19 collision report that you prepared that we talked
20 about earlier in your evidence today; is that
21 right?

22 A. That's correct.

23 Q. And did you present
24 personally on that or was that Mr. Ferguson?

25 A. No, I went back to look

1 -- that meeting, I presented an overview of the
2 that report.

3 Q. And then there was
4 PW18008A, and it might not be helpful to have this
5 particular page up. That was a joint report with
6 you and -- that you and Mr. McGuire submitted, and
7 we looked at the draft earlier. What was your
8 role in presenting that?

9 A. I believe Mr. McGuire
10 presented this and there was some questions. I
11 believe I took a question or two on it.

12 Q. Then there was the speed
13 limit reduction feasibility study, and you
14 presented on that as well?

15 A. I believe so.

16 Q. I'm going to come back to
17 each of those. I just wanted to confirm that.

18 Then you stayed for the closed
19 session portion of the meeting as well; is that
20 right?

21 A. I did. There was --
22 wasn't in the entire closed session. This is one
23 of those items I've been trying to remember what
24 portions I was in, what portions I wasn't. I
25 believe actually they are both in session late in

1 the evening. That meeting started quite early in
2 the day.

3 My recollection -- been trying
4 to recall exactly what portion of the closed
5 meeting that was in. I don't have a very specific
6 recollection of it. I believe that the closed
7 session was booking on the parts and I was in
8 parts of it but not a all of it because I recall
9 sitting for hours at the end of the day while they
10 were still in closed session in the anti-room
11 which is next to the council chambers.

12 Q. Okay. I think the closed
13 session is from about 4 o'clock to 10 o'clock. I
14 don't know if that helps. Maybe I can just
15 understand it.

16 Were there parts of the closed
17 session that you were excused from, like you
18 weren't allowed to attend, or did you just come in
19 and out because you didn't need to be there for
20 all of it, or something else? What you mean by
21 you weren't for the entire time?

22 A. I believe the closed
23 session was broken down into four parts, looking
24 at the documentation now. There was a
25 presentation by Mr. McKinnon, there was a

1 presentation on the audit it and then there was
2 legal presentation and calm section.

3 Q. That's exactly right.

4 A. I am pretty confident
5 that I wasn't in the last two. When they go into
6 closed session it's generally tend -- only keep
7 staff in there who are going to speak or can
8 provide the input into the section or the report
9 that is talking about. Hence, I don't believe I
10 was either in the calms or the legal report
11 section.

12 Q. Thank you. Do you recall
13 being in outside the council chamber with staff as
14 a press release was drafted?

15 A. I remember sitting inside
16 the anti-room with Yasmin and Gord quite a long
17 time, and then Mssrs. Garrick, Dan McKinnon,
18 Nicole Auty and others came into the room and they
19 were drafting up I guess a press release at that
20 point. It was in the room while they were
21 drafting up the press release.

22 Q. I'm just asking because
23 I'm trying to understand the timing. You think
24 you were out of the closed session for the audit
25 update and the communications update and then --

1 and then in anti-room during the drafting?

2 A. No, minor correct there.

3 I don't believe I was in the legal report or
4 communications.

5 Q. Thank you. I
6 mis-remembered your four points. So you weren't
7 in with the legal or communications but you were
8 there for the audit?

9 A. I have a real strong
10 recollection but in reviewing the notes that
11 Mr. McGuire has in the evidence there's few things
12 in there that kind of triggered memory, so I
13 believe I was in there for the audit part.

14 Q. Do you recall presenting
15 a role during the closed session?

16 A. No, it would have been
17 Mr. MacKinnon that did the representing. Mr.
18 McGuire and I, if I remember correctly, were
19 actually a number of rows back even so we weren't
20 there to answer questions.

21 Q. Just in terms of trying
22 to sort out your memory. Do you recall presenting
23 on the open session items that we talked about
24 just a few moments ago before going into closed
25 session, or were those deferred and also addressed

1 in closed session, to your recollection?

2 A. Now you got me confused.

3 I actually thought the open session items were
4 done after the closed session.

5 Q. I think I actually did
6 confuse you unintentionally. I think I misspoke.
7 What I meant to say was, do you recall presenting
8 the open session items that we talked about before
9 the closed session or after the closed session?
10 Like, were they deferred from before the closed
11 session and addressed after the closed session?

12 A. I guess you have me
13 confused. After the closed session. I looked at
14 the video the other day, I should have kept notes
15 better, but I thought they were done afterwards.

16 Q. I think were but maybe
17 they were raised first and went into closed
18 session and deferred into after the closed
19 session. I may be wrong about that. I may not
20 understand the legislative aspects. That doesn't
21 ring a bell to you?

22 A. I think we're saying the
23 same thing. They were raised -- deferred till
24 after the closed session and that's when they went
25 back out and open.

1 Q. Fantastic. I think we
2 are saying the same thing, it just took us a while
3 to get there. I know it was me causing confusion
4 and apologies for that.

5 Registrar, can you go to
6 HAM29133, please. So this is the final version of
7 the PW18008A that was presented after the closed
8 session. So I think fairly late. The first
9 recommendation is that staff be directed to
10 develop the terms of reference for a functional
11 design. And we talked a little bit about that at
12 your last day of evidence, I believe.

13 By February, understanding
14 where you were with the speed study, where McGuire
15 was with the light study and that repaving was
16 coming up, what did you hope that the terms of
17 reference for a functional design and a functional
18 design itself would accomplish?

19 A. So the functional design
20 -- always look at the long term of what these two
21 facilities would look like. Not to get into a lot
22 of detail here, but we previously talked about
23 lighting, how would lighting be accommodated. You
24 would to have do an environmental assessment.

25 We're aware at that time that

1 the LINC required a future rehab as well. The
2 lighting would then also potentially trigger
3 changes to the storm water management along both
4 the LINC and the RHVP. There was the issue of do
5 we introduce the median as well as -- we can't
6 really look at any of those items in isolation of
7 each other. Each of them could trigger
8 (indiscernible) just on their own as well.

9 So looking at those longer
10 term recommendations -- the lighting, median,
11 storm water management, which kind of gets
12 triggered when you start looking at the other
13 two -- what is a long term future there. Is this
14 a facility that needs to be widened. We had a
15 number of business list items related to traffic
16 and how it's being dealt at both the 403 and QEW.

17 The wording there kind of
18 encapsulates all of it -- lighting, medians,
19 geometrics, any transit improvements that might
20 require how do we deal with trucks in the future.
21 And the fact that we also had to -- rehabilitation
22 sometime in the future on the LINC.

23 So looking at developing what
24 I'll call medium and long term vision for both of
25 these two corridors.

1 Q. Could you go to image 5
2 of this document, and image 6, please.

3 Mr. Soldo, I should've taken
4 you to this before you gave that answer because I
5 think it addresses much of what you said, under
6 expression of the Red Hill and LINC. Is that the
7 topic under which the functional study would be --
8 is most relevant? Not that it's just about the
9 expansion but that's one of the purposes in
10 completing the functional study?

11 A. It's the primary one so
12 it's a good question to ask, is it going to
13 expand. But the functional study also needs to
14 look at, in conjunction with this, the other three
15 items that I talked about.

16 Q. I ask because there's a
17 reference to the a complex RFP and I'm wasn't sure
18 if those are related the functional study terms of
19 reference request for funding. Are those
20 different? Sorry, it's the last paragraph on the
21 left-hand side.

22 A. Could you repeat your
23 question? I'm not sure I understand your
24 question.

25 Q. Sure. In fact -- I wish

1 we could have three pages up at once. Registrar,
2 it's there. If you could call out it out that
3 would be great.

4 So there's a reference here to
5 public works recommends initiating this process,
6 which I think -- I'm not sure what this process is
7 but I think it's just generally thinking through
8 this, as it will be a complex RFP to prepare.

9 And I was trying to understand
10 whether the functional study -- sorry, the terms
11 of reference for the functional study would be
12 related to an RFP, the one that's referenced here.

13 A. Yes.

14 Q. Registrar, you can close
15 that down. If you can call out that second
16 paragraph under "Expansion of Red Hill." Thank
17 you. This the other reference to the request for
18 proposal.

19 Were you aware having reviewed
20 the earlier staff reports relating to the 2015
21 CIMA report, that there had been some discussion
22 about deferring some of the long term options that
23 CIMA had recommend the pending the assessment of
24 the transportation master plan?

25 A. Again, these things all

1 go hand in hand. They are not done in isolation.

2 Q. I don't mean to
3 interrupt. I meant factually. Did you know in
4 the past before you started at the City that there
5 had been a staff report which recommended deferral
6 of some of the long term and medium term safety
7 options that CIMA had recommended pending the
8 finalization of the transportation master plan?

9 A. I don't recall.

10 Q. You don't recall whether
11 you knew that or not?

12 A. I mean, they are all
13 interlinked, so it's kind of an odd question. I'm
14 not sure how to answer that. To say we are
15 waiting until the master plan is done, till long
16 term improvements -- it's not a chicken and egg
17 thing, they all go together.

18 Q. I understand. I just
19 wanted to understand what your knowledge was
20 coming and drafting this report. Registrar, you
21 can close that callout, and you can close this
22 document.

23 Mr. Soldo, there are a couple
24 of documents that relate to ones that you put in
25 -- the February 6th GIC. We already talked for a

1 moment about the annual collision report that you
2 put in, and was in respect of the 2017 annual
3 collision statistics; is that right?

4 A. Correct.

5 Q. And then in that report
6 one of the expressed intentions of staff was be to
7 continue to have actual annual collision reports;
8 is that right?

9 A. That was a direction from
10 council through the road safety action plan. The
11 purpose of that thing was to utilize that
12 information to -- within our road safety program
13 to look at different ways of improving safety
14 using a database approach.

15 Q. So the inquiry has a
16 document that's not yet in evidence because it's
17 not in any of our ODs. I don't have any questions
18 for you but I just want to take you to it so you
19 can confirm that you are familiar with it.

20 Registrar, can you go to
21 RVH778. Sorry, I think I made a typo. You can
22 close this, it's RVH597.

23 So, Mr. Soldo, this is an
24 information report from December 2, 2019 and it's
25 submitted by you. It's an eight-page document and

1 one of the appendices is the 2018 collision report
2 and you'll see that right under "Information".

3 Very briefly about this,
4 because I suspect you haven't looked at it for
5 some time. You were involved in the annual
6 preparation of the collision report in 2018 that
7 was submitted in 2019.

8 A. Yes, staff members
9 prepared it and it's the annual version of the
10 reports every day.

11 Q. Thank you. Registrar,
12 can you make this the next exhibit, please.

13 THE REGISTRAR: Thank you,
14 Counsel. That's Exhibit 209.

15 EXHIBIT NO. 209: Information
16 report for Committee Date of
17 Dec. 2, 2019; RVH597

18 BY MS. LAWRENCE:

19 Q. Registrar, you can close
20 this.

21 Mr. Soldo, we also talked a
22 number of times about the speed limit feasibility
23 study. I'm not going to take you to that report.
24 Suffice to say it included a recommendation that
25 part of the parkway be reduced to 80 kilometres an

1 hour; is that right?

2 A. That's right.

3 Q. Can you remind me of your
4 evidence of why the particular portion that was
5 reduced was the one that staff recommended the
6 reduction on?

7 A. So going back to the
8 speed limit report based on one of the
9 alternatives -- Northwestern. They identified a
10 very short section that could -- it meets the
11 criteria to be lowered, but you want it lower --
12 just one really small section.

13 As staff we looked at, okay,
14 if -- there's Northwestern identified it, there
15 was geometric issues that we previously talked
16 about as well. We identified a longer stretch
17 that would start from the end of our jurisdiction
18 with MTO up to I believe just past or just south
19 of Greenhill.

20 Q. Thank you. The inquiry
21 understands that more recently in May of 2021 the
22 entirety of the parkway was reduced to 80
23 kilometres per hour; is that right?

24 A. Correct.

25 Q. Are were you involved in

1 that decision?

2 A. I was.

3 Q. Registrar, can you go to
4 RVH1029, please, and can you bring the next image
5 as well, please.

6 This just happens to be a
7 press release that has Councillor Paul Danko's
8 name at the top but it is a very concise summary
9 of the changes, and it's really just to give you
10 the date. It's May 13, 2020 and it's beginning
11 May 17 -- I think I misspoke -- 2021 that the
12 speed limit would be reduced between Dartnall Road
13 and Greenhill Ave to 80 kilometres an hour. Is
14 that your recollection as well in terms of timing
15 and content?

16 A. I believe that's correct.

17 Q. I would like to make this
18 press release the next exhibit, please?

19 THE REGISTRAR: Noted,
20 Counsel, thank you. Exhibit 210.

21 EXHIBIT NO. 210: Article
22 titled "Speed Limit Reduction
23 on the RHVP starting May 17";
24 RVH1029

25 BY MS. LAWRENCE:

1 Q. Mr. Soldo, we've jumped a
2 little out of the timeline just because I wanted
3 to connect these more recent documents with
4 documents that you previously were involved in in
5 2019.

6 Registrar, you can close that
7 down. If you can go to paragraph -- to OD10A,
8 page 32. Can you bring up 31 as well, please.

9 You'll see at the bottom of 31
10 on page 56 you e-mail Jennifer DiDimenico and
11 Mr. Ferguson and Mr. White saying that corporate
12 audit is undertaken internal audit of processes
13 related to their friction testing on the Red Hill,
14 and you ask for some documents. So this is the
15 day coming out of the GIC meeting and there has
16 been direction to that effect.

17 Prior to that direction had
18 your staff been involved in the value for money
19 audit that Mr. Pellegrini had previously been
20 conducting?

21 A. I would say there was
22 very marginal, very minor role in the value for
23 money. I believe one of the recommendations was
24 related to the transportation operations and
25 maintenance division, but the majority of the

1 recommendations are related to the engineering
2 division. So fairly minor role there,
3 involvement.

4 Q. Thank you. Registrar,
5 can you go to page 100 of OD10, please.

6 You followed up with Mr.
7 Bentley on February 11 and then on February 12
8 Ms. Envoy (ph), his executive resistant, e-mailed
9 Ms. Lane, some questions from CHCH news. So part
10 of what is happening is the information that was
11 released at the February 6 GIC, is making its way
12 over to the press and then to the MTO.

13 Registrar, could you go to
14 pages 101 and 102 now, please.

15 It seems on February 12th you
16 arrange a call to speak with Mr. Bentley and can
17 you recall whether that was a pre-planned call
18 from your follow-up on the 11th or if that was an
19 impromptu call because of the press around
20 friction testing on the Red Hill?

21 A. I was just following up
22 my earlier e-mail.

23 Q. I understand the e-mail
24 followup, but you had a call the next day on
25 February 12th. I was wondering how that came to

1 be, if you recall.

2 A. Maybe I'm confused. I'm
3 just following up, trying to connect with Mr.
4 Bentley as per my earlier e-mails.

5 Q. Sorry, I am looking
6 somewhere but maybe not directing you
7 appropriately. At the top of 202, 250, you say,
8 "I was literally talking on the phone with MTO
9 when this e-mail came in." And that's the MTO
10 friction testing results from 2008 to 2014, which
11 I'll get into in a minute.

12 I also have a memo from you
13 about your discussions with Mr. Bentley. So I
14 know you speak to him on the 12th. My question,
15 before we get into the content of those
16 conversations is, do you recall if he just picked
17 up the phone or if this was a pre-planned call?

18 A. I'm just following up on
19 previous e-mails. Now, I don't remember who
20 called who at that point. Probably Kevin called
21 me because I'm not sure I even know what number I
22 would call him at.

23 Q. Fair. So I'm going to go
24 to summary of the call because I think it sort of
25 explains at least a summary of what you later said

1 your discussion was.

2 Registrar, can you close this
3 down and go to 103, please. If you could call out
4 255.

5 So you e-mail Mr. McKinnon,
6 and further to that e-mail we just looked at, in
7 the midst of that discussion it sounds like Mr.
8 Bentley gave you further information about MTO's
9 testing on the Red Hill, and apart from what's in
10 this e-mail what do you recall, if anything, about
11 your discussion with Mr. Bentley?

12 A. I think this e-mail
13 pretty much covers it there. I find out after the
14 fact, but I wasn't aware that Charles Brown had
15 actually connected. That's actually identified
16 here as well. Pam tells me that Charles are
17 already connected with them. There's obviously
18 some dialogue between MTO and various media
19 outlets as well.

20 I'm not aware of all of that
21 given this -- in that vacuum. That's really why
22 some of my surprise -- you will see my surprise in
23 the e-mails I sent off to Ms. Graham. This is
24 pretty comprehensive, I would say, overview of
25 what we talked about.

1 Q. Registrar, you can close
2 this down. Go to 106, please.

3 So in interest of time, Mr.
4 Soldo, I'm hoping to just sort of jump along and
5 give you some markers of things that the OG says
6 happen.

7 So while you're talking on the
8 phone Matthew Van Donngen from the Spec also
9 contacts the City and says the MTO's just released
10 this information, and Mr. Bentley also tells you
11 he's going to release that information and then
12 does. And you ask for a little bit more
13 understanding. Then at the bottom of 106 is I
14 believe Mr. Bentley's response. Is that how you
15 recall the back and forth?

16 A. Yeah, it's you're in a
17 conversation, I asked for more information and
18 that's his follow-up response there.

19 Q. The e-mails the inquiry
20 has received seems to be fairly clear that no one
21 at the City was aware that the MTO had completed
22 testing in 2008 to 2014.

23 A. Sorry, is that a
24 question?

25 Q. It was. I'm just asking

1 for confirmation.

2 A. I can only speak for
3 myself. I was unaware that testing was....

4 Q. Prior to your discussions
5 with Mr. Bentley were you also unaware MTO had
6 completed friction testing in 2007?

7 A. I was unaware MTO played
8 (ph) any testing.

9 Q. Okay. Go ahead. Maybe a
10 broader question. When you reached out to Mr.
11 Bentley you were aware that MTO conducted friction
12 testing on their own roads, right?

13 A. I was aware they have the
14 the capabilities of doing that. I'm assuming they
15 do in certain areas. You have a whole payment
16 management group that does this sort of work and
17 that's one of the reasons I kind of reached out to
18 him.

19 Registrar, go to page 108,
20 please. If you can call out 266.

21 You asked Ms. Auty about the
22 process to use to contact CIMA. You mentioned the
23 last memo was through your office and the external
24 lawyer.

25 "I would like to contact CIMA

1 regarding the new friction
2 data we have from the MTO in
3 order to review them it and
4 extrapolate degradation
5 curve."

6 Why were you asking Ms. Auty
7 about which process to use in respect of CIMA.

8 A. Through the normal
9 process we would have contacted CIMA ourselves.
10 The legal department went through Mr. Boghosian
11 last time. So I just wanted to make sure that
12 this is not something that legal wanted to handle
13 again.

14 Q. By February had you
15 received any indication that legal had a
16 preference to handle dealings with CIMA around
17 friction issues?

18 A. I think at this point,
19 given the risk management and legal issues that we
20 were going through, I want to make sure I wasn't
21 doing something that the legal department wanted
22 to stick handle.

23 Q. I think Ms. Auty said no,
24 go ahead, and you did reach out the CIMA.
25 Registrar, you can close this callout.

1 Just stopping there. Why did
2 you want a degradation curve done?

3 A. Just trying to get as
4 much information as possible so we have the --
5 this is new data, never seen it before. I was
6 just thinking is it possible to give us -- utilize
7 this data to give us some more information.

8 Q. Why did you select CIMA
9 to complete this review? You don't have the same
10 pressure you had before going to GIC, which I
11 understand you said before I was one of -- there
12 was a timing issue. So why do you go back to CIMA
13 now?

14 A. They have been doing all
15 the work to this point so no reason to think they
16 couldn't do this work. They are already
17 underneath contract. So a lot of maybe things --
18 people don't appreciate but to hire someone,
19 different consultants, entire different process
20 for that, we could just go to CIMA utilizing the
21 procurement posters that we already utilize at
22 this point and have them undertake that work.

23 Q. To avoid having to go
24 through the roster process and POs and those sorts
25 of things?

1 A. They are also processes
2 that are going to take time, and we have to bring
3 someone on board. I know that utilizing the
4 existing PO that we have and adding it to that
5 scope of work, it will be probably a month, two
6 months quicker to go through.

7 Q. Did you consider
8 contacting Tradewind to conduct the analysis,
9 given that you knew they had done friction testing
10 on the roadway in the past?

11 A. Tradewinds is not on our
12 roster of approved consultants, and we had the
13 same issue but did not consider it as they haven't
14 worked for us in the past and CIMA has done all
15 that work.

16 Q. Okay. Were you looking
17 specifically for a payment materials expert to
18 complete this analysis?

19 A. Well, the scope of work
20 here is pretty straightforward. It's looking at
21 the degradation curves. Can you come up with a
22 degradation curve based on the pavement here is
23 the numbers that we have. So I'm assuming this
24 may add experts in the field that could do this.

25 Q. How were you hoping to

1 use the information that CIMA, or the analysis
2 that CIMA did? Sort of, for what purpose were you
3 seeking it?

4 A. Just another information
5 point to how to give us a better understanding of
6 what we have...

7 Q. Unlike the February 4th
8 memo that was produced and made public at the GIC
9 meeting, this memo that CIMA eventually prepared
10 was not made public. Was it provided to counsel?

11 A. I would have to go back
12 and look. I believe there's some e-mails in here
13 where I forward items to legal and ask the
14 question should these be forwarded to counsel.
15 I'm not sure if this was part of that package or
16 not.

17 Q. I recall you doing that
18 in respect of the RSA which had been summarized
19 within PW18008A and you ask about -- you said you
20 have some sensitivity to release that to the media
21 because it hadn't been formally appended to the
22 staff report, it had only been references in it.
23 Is that what you're thinking about?

24 A. I would have to go back
25 and check. I'm not going to guess now.

1 Q. Do you have any specific
2 recollection of whether there was any discussion
3 with anybody in the City about whether to make
4 public the -- what becomes the February 26th memo?

5 A. Just to be real clear.
6 Now I'm confused. What are you referring to when
7 you say the February 26th memo?

8 Q. We'll certainly get there
9 and I'm sorry if I'm doing this a little out of
10 step.

11 Eventually CIMA does provide a
12 memo in response to your request, right?

13 A. Yes.

14 Q. And I'm asking, was there
15 any discussion about making that memo that that
16 CIMA provided on February 26 public the way that
17 the February 4th memo that CIMA had prepared had
18 been made public?

19 A. I don't recall the
20 conversation.

21 Q. I don't mean to ask the
22 same question twice but I'm not sure I quite
23 understood your answer.

24 What were you hoping to use
25 the information that would be contained in the

1 analysis for from CIMA?

2 A. It's just another
3 information point.

4 Q. Then I did understand
5 your evidence. But to what end? An information
6 point for what consideration?

7 A. I'm not sure I understand
8 your question. Why would I not want to know if
9 this information provides us with -- what this
10 information provides us.

11 Q. So we know the memo says
12 that there was a reduction based on the
13 extrapolation and the (indiscernible) reduction in
14 friction. So I guess I'm trying to understand
15 what did you think you were going to do with the
16 results if they demonstrated that there was a
17 significant reduction?

18 A. Well, this one I don't
19 know what the results are. So until I see the
20 results I really don't have a plan of action, what
21 I'm going to do with them.

22 Q. I understand. I'm trying
23 to ask a question in a way where you're asking for
24 this information. What are the possible options
25 that you think is -- the outcomes and how do you

1 use this information to help you make decisions?

2 A. This is a forecast on
3 (indiscernible). If it came back showing that it
4 was below a certain level I think we would
5 investigate more.

6 Q. That wasn't a forecast.
7 It was an extrapolation. Not forecast going
8 forward but an extrapolation instead of doing a
9 field test, right?

10 A. Right. Extrapolation,
11 forecast. You know, it's regression analysis. So
12 it's going to give us a better understanding of
13 what the current state is.

14 Q. The other way to
15 understand where the current state is would be to
16 do a friction test; is that right?

17 A. That's correct.

18 Q. Did you consider doing
19 that?

20 A. We did, but it's the
21 middle February and that's not going to help us
22 very much.

23 Q. Registrar, could you go
24 to 186 and 187, please. If you can call out the
25 bottom of 186, paragraph 481. So I'm picking up a

1 little bit later in time. In fact, I think I
2 might be picking up too late in time.

3 In any event, on March 20th
4 Mr. McGuire e-mailed Ms. Lane about a follow-up
5 and he says, we spoke last month on the Red Hill.

6 Just going back to your
7 discussions with Ms. Bentley. Did he refer you to
8 Ms. Lane?

9 A. He did because I believe
10 there's some documentation in here where I asked
11 about the capabilities of MTO and undertake
12 testing and those kind of things.

13 MS. LAWRENCE: I think there
14 is too. And I'm also noting that it is 3:17, so
15 we've been going for about an hour which is our
16 current short break schedule. I think it might be
17 an appropriate time to take a break. I don't have
18 very much left, Commissioner, but I do think I'm
19 missing a citation so we may as well take a break.

20 JUSTICE WILTON-SIEGEL: Let's
21 take a break, we'll return at 3:30.

22 --- Recess taken at 3:17 p.m.

23 --- Upon resuming at 3:30 p.m.

24 MS. LAWRENCE: Commissioner,
25 may I proceed.

1 JUSTICE WILTON-SIEGEL: Yes,
2 please do.

3 BY MS. LAWRENCE:

4 Q. Mr. Soldo, we were just
5 talking about some interactions with the MTO
6 before the break and I had jumped over some
7 references to discussions in February. Let's go
8 to that.

9 Registrar, could you bring up
10 OD10A, page 108, please. If you can call out 268,
11 please. 269 please. Thank you, Registrar.

12 I think just before the break
13 I had asked if Mr. Bentley referred you to Ms.
14 Lane as a potential contact, and I think you said
15 that you had; is that right?

16 A. That's correct.

17 Q. And I see on
18 February 22nd you e-mail Mr. Bentley and asked to
19 arrange a call with your pavement specialist to
20 talk about what pavement should be used on this
21 facility. We're interested as well in any history
22 MTO has with high friction pavement along
23 curvilinear roadways.

24 Stopping on that second point.
25 Was the City considering the application of a high

1 friction pavement along any part of the Red Hill
2 as part of the Red Hill resurfacing?

3 A. If you go back to the
4 CIMA roadside safety audit I believe one of the
5 recommendations that we consider the use of higher
6 friction along certain sections of the roadway
7 itself. So here I was just trying to put Gord's
8 engineering group in contact with the right
9 specialists at MTO.

10 Q. Thank you. Do you recall
11 did you have discussions with Mr. Bentley in
12 February either in connection with those e-mails
13 that we looked at just before the break or in
14 connection with this e-mail that you sent to him?

15 A. Sorry, I missed the
16 question. Are you asking about any other
17 discussions?

18 Q. Yeah. We went to the --
19 your summary of the telephone call you had with
20 him on the 12th and I was wondering if you had any
21 other discussions him by phone in February?

22 A. I believe there may have
23 been. Trying to follow up with Mr. Bentley. I'm
24 not a 100 percent clear but may have followed up
25 with Mr. Bentley about who the data was previously

1 sent to at the City. Those were things -- I may
2 be confusing things at this point but I believe
3 there was a followup.

4 Q. When you say who the data
5 was sent, you mean in respect of that e-mail that
6 we looked at where Mr. Bentley is trying to
7 provide you with a bit more information about the
8 2007 testing and then the subsequent testing and
9 sort of how that testing came to be, around that?

10 A. I may be confusing
11 conversation versus e-mail. I believe I reached
12 out to MTO to find out was there any documentation
13 about the previous testing and where it got sent
14 to.

15 Q. So you're trying to
16 determine if anyone at the City did have knowledge
17 of the MTO testing in 2008 to 2014?

18 A. Yes, I believe so.

19 Q. Registrar, you can close
20 this. I didn't actually take you to the second
21 paragraph that was pulled out where Mr. Bentley
22 copied Ms. Lane and cc'd her to arrange a meeting
23 with her and her staff.

24 Registrar, can you to page 111
25 and 112. You will see at the bottom of page 111

1 Mr. McGuire e-mailed Mr. Bentley about MTO
2 friction testing data. Registrar, could you pull
3 out the top of page 112 and also 279 and 280.

4 You'll see Mr. McGuire asking
5 for an overlay, or to overlay the independent --
6 or independent results directly with the MTO
7 results. Was that something that Mr. McGuire was
8 taking the lead on or did you want to have an
9 overlay of the MTO data versus the independent
10 results?

11 A. Mr. McGuire was leading
12 this. The geometrics group reports to him and I
13 remember him mentioning to me that he was trying
14 to take the data and correlate it down to sections
15 of roadway and things like that, but he was having
16 his geometrics group look at that.

17 Q. You'll see at 280 Mr.
18 McGuire asks for a call for a bit of clarity. I'm
19 now March 1st. Do you call did you attend that
20 call out with Mr. McGuire and Ms. Lane?

21 A. I recall having a
22 conversation with Ms. Lane in a meeting. I'm not
23 sure this is what we talked about, but it may have
24 been.

25 Q. I'm going to close this

1 down and go to another document and you can
2 perhaps try to identify when it was based on
3 these. We were just looking at some exchanges
4 between Mr. McGuire and Ms. Lane at the end of
5 February, beginning of March. And then Registrar,
6 can you go 186 and 187.

7 You'll see at the bottom of
8 186 at 481 Mr. McGuire e-mailed Ms. Lane under the
9 subject line "Followup with the City of Hamilton,"
10 and "he said we talked -- about the RHVP issue and
11 I wanted to say thanks."

12 Registrar, just for ease of
13 review could you call out the content at page 187.
14 Just to make it a little but bigger. Perfect.
15 Thank you.

16 So there's a reference to
17 Mr. McGuire, Ms. Lane talking last month. Then
18 just as we go through there's some back and forth
19 and then you'll see at the bottom at 484 Mr.
20 Bentley circulated a calendar invitation for
21 April 2, 2019, and you're listed among the
22 invitees.

23 Does that assist in terms of
24 your timeline of when you spoke to Ms. Lane? That
25 is, was it in February or March, at the beginning,

1 or was it the April 2nd call?

2 A. I just don't recall. I
3 remember having -- being involved in a meeting
4 where we talked about friction testing but I don't
5 necessarily remember how we meet about something
6 else with Mrs. Lane. So I'm not sure how many
7 times Mr. McGuire met with her.

8 Q. You only met with her or
9 spoke to her on the phone once?

10 A. I can't be certain, but I
11 don't recall having many meetings with her.

12 Q. So you'll see at 483
13 there's a reference to scheduling a 30 minute call
14 to talk to you about MTO undertaking friction
15 testing. Were you aware that MTO -- about the
16 possibility of MTO conducting friction testing on
17 the Red Hill in March of 2019?

18 A. I believe I talked to
19 Kevin earlier on about testing, how they test,
20 what equipment they have. Your question -- I'm
21 sorry, what was your question?

22 Q. My question was were you
23 aware that the MTO -- about the possibility of the
24 MTO conducting friction testing. But I can narrow
25 that question down which was, were you hoping that

1 MTO could conduct friction testing on the Red
2 Hill?

3 A. I think we were exploring
4 the possibility friction testing through the MTO,
5 and again I don't know which meeting exactly this
6 falls underneath, but one of the issues that was
7 given to us back from MTO was that it all depends
8 on the conditions outside, the temperature and
9 that they had a specific recollection that they
10 had changed equipment and they were worried about
11 being able to calibrate that equipment. Where
12 that falls into the timeline, I'm not exactly
13 sure.

14 Q. In the end did MTO
15 conduct friction testing on the Red Hill in 2019?

16 A. Not to my knowledge.

17 Q. What was your rationale
18 for seeking friction testing or seeking to see if
19 the MTO could do friction testing in 2019?

20 A. I think there was an open
21 question of should we get testing done before we
22 do to the research thing so we know what the final
23 state of the values are.

24 At this point I believe it's
25 kind more a risk management legal issue and --

1 there was that question. Should we or shouldn't
2 we undertake that so we have a firm value.

3 Q. Thank you. Just going
4 back to an answer you gave a moment ago about the
5 MTO calibrating their machines.

6 Were you concerned about
7 having -- ensuring that the analysis or that the
8 friction testing that you did conduct before
9 resurfacing was going to be consistent with the
10 same methodology as past testing? I'm just trying
11 to understand what the calibration issue was.

12 A. The way I understand it
13 from the ministry was that they had changed
14 equipment, but they hadn't run this equipment on
15 their own roads so they hadn't calibrated it yet
16 to ensure that that equipment was working
17 properly.

18 Q. I see. Thank you, that's
19 helpful.

20 Who told you about the need to
21 -- from the MTO about the need to calibrate their
22 equipment, if you recall.

23 A. I want to say it's either
24 Kevin or Mr. Bentley or Mrs. Lane. Those are the
25 two people I would have talked to.

1 Q. In fact, the City did do
2 friction testing before resurfacing, right?

3 A. I believe so, that was
4 carried out through (indiscernible) department.

5 Q. Did you ask CIMA to
6 complete any analysis of the pre-resurfacing
7 friction testing?

8 A. I did not, no.

9 Q. I ask because CIMA did do
10 some work for the City in 2020. One related to
11 friction and one related to collision analysis.

12 Registrar, can you go to --
13 you can close this down and go to page 232,
14 please. Call out 599 and 600. I'm not going to
15 ask you any specific questions about this but just
16 to draw your attention to it.

17 In February there was first a
18 discussion and then a meeting about reviewing the
19 September 2019 friction testing and there's a
20 proposal setting out the questions, in particular
21 whether CIMA recommended any changes to its
22 previous reports as a result of friction testing
23 conducted post resurfacing, and if there are any
24 safety measure or monitoring steps that CIMA would
25 recommend.

1 Were you involved in the
2 decision to retain CIMA in respect of these two
3 questions?

4 A. I believe this work was
5 being undertaken through engineering. When you
6 look at this it's to review the new friction
7 results on the new pavement, so engineering was
8 looking to confirm, review the recommendations of
9 the previous report so...

10 Q. But in dealing with sort
11 of the recommendations from previous CIMA reports,
12 those were always recommendations that were about
13 road safety and in the past they have gone through
14 traffic.

15 A. Correct.

16 Q. So why the change for
17 which department was dealing with this?

18 A. That's something you are
19 going have to ask Mr. McGuire. He initiated that
20 work just as a review of the repayment.

21 Q. And then paragraph 600
22 there's a reference to a meeting ,The stated
23 purpose of which was to review the collision
24 numbers on the main line from 2013 to -- 2013 to
25 2018, and I understand that this meeting resulted

1 in an analysis that included an updated collision
2 analysis. Was that something that you and your
3 team were seeking?

4 A. I believe we did a post
5 reconstruction analysis at CIMA. It looked at
6 both impacts of the construction on the traffic as
7 well as what has changed since the reconstruction
8 on the collision data. So we took a report to
9 counsel on this -- I want to say sometime in 2020.

10 Q. I think this is the
11 origins of that. Registrar, if you could close
12 this down and go to the next page and call out the
13 following page as well, 234.

14 So this is the CIMA report
15 that I think you're referring to and it has a
16 collision analysis. Looking at the number of
17 collisions after changing the speed limit with
18 increased police enforcement and after
19 resurfacing. Is that the report you were thinking
20 of?

21 A. Yeah, it was to look at
22 the outcomes, I guess, based on all the
23 improvements that the City had made; three that
24 you mentioned but also installation of the new
25 pavement markings, chevrons, the full package that

1 we had put in place as part of the reconstruction.

2 Q. I'm recognizing that this
3 was -- I had a number caveats, there's a big red
4 box there about the short period of time that was
5 being analyzed.

6 Is it fair that you were left
7 with the impression that collisions overall were
8 -- had decreased after the resurfacing as compared
9 to the proportion before the resurfacing?

10 A. I think it's fair to say
11 we saw a reduction in collisions along the
12 facility.

13 Q. Have the trends in terms
14 of the proportion of collisions post resurfacing
15 continued since April of 2020 when CIMA finalized
16 this report?

17 A. That's a really difficult
18 answer actually to provide because of the impacts
19 of COVID.

20 Q. Fair enough.

21 A. We've been putting
22 together collision reports every year but the
23 impacts from COVID drastically reduced collision
24 -- drastically reduced the amount of volume on the
25 facility as well. So I would say there's a

1 general trend at the lower collisions, but it's
2 really hard to ascertain the impact given the
3 impacts of COVID.

4 Q. Fair enough, thank you.
5 Commissioner, those are my questions.

6 JUSTICE WILTON-SIEGEL: Okay.
7 Ms. Lawrence, is Ms. McIvor the first?

8 MS. LAWRENCE: She is. Ms.
9 Roberts does not have any questions for this
10 witness, although she will once Mr. Soldo is done,
11 want to make two documents that were dealt with
12 yesterday as exhibits that were missed yesterday
13 but I think we should do that after Mr. Malone's
14 evidence.

15 So it's Ms. McIvor, then I
16 understand Ms. Contractor may have some questions.

17 MS. MCIVOR: May I proceed?

18 JUSTICE WILTON-SIEGEL: Yes.

19 EXAMINATION BY MS. MCIVOR:

20 Q. I just have a few
21 questions for you today regarding your testimony.
22 You mentioned just a short while ago that when you
23 received the MTO results, so mid-February 2019,
24 you didn't do any in field testing at that time
25 because it was the middle of February; is that

1 correct?

2 A. At that point given the
3 fact we were in winter I had a discussion, and I
4 want state that it was Mr. Bentley that I had a
5 discussion with about the right conditions for
6 testing. So we were still considering it but at
7 that point that would kind of preclude us from
8 doing that testing being in the middle of winter.

9 Q. And so in terms of your
10 discussions with Mr. Bentley and the ability to
11 test during the winter, I assumed that those
12 related to the MTO friction trailer specifically?

13 A. That's correct. It did
14 not reference anyone else's....

15 Q. Did you take any steps to
16 confirm whether any other sorts of friction
17 testing could be carried out during winter months?

18 A. Can I ask what you're
19 referring to?

20 Q. I'm just asking if you
21 took any steps, if you reached out to anybody else
22 to inquire about other methodolgies beyond the MTO
23 friction trailer that might give you friction
24 results in the winter?

25 A. I did not.

1 Q. I'm sorry, just give me
2 one second. So we did -- we heard a bit about
3 your discussions with Mr. Bentley, with Ms. Lane,
4 and you would agree that the extended -- an offer
5 of assistance to help with interpreting the MTO
6 test results; is that fair?

7 A. Mr. Bentley, Mrs. Lane
8 were very helpful. They asked us whatever -- they
9 provided us with whatever assistance we asked for
10 so I was very appreciative of them reaching out to
11 us.

12 Q. Did you ever consider
13 involving them in the extrapolation exercise that
14 CIMA carried out?

15 A. To honest, no. We
16 already had CIMA, as I indicated earlier, on
17 board. I felt they had the necessary skill set to
18 undertake the work.

19 Q. You mentioned that before
20 in terms of -- in terms of their skill set. You
21 said your -- because it was a very large company
22 they have a very lot of expertise in various
23 areas, that there was an assumption they had this
24 pavement expertise.

25 Did you actually ask any

1 specific questions about that to Mr. Malone or
2 anyone else at CIMA?

3 A. I would say that if CIMA
4 did not have the expertise it would be upon them
5 as a consultant, and that's professional years,
6 for them to tell the City that they don't have
7 those qualifications.

8 Q. And so I take it by that
9 comment the assumption was that they would advise
10 you, so you didn't specifically check into this
11 pavement-related expertise?

12 A. That's correct. They
13 should be advising us if they are not capable of
14 undertaking the work.

15 Q. Registrar, could you
16 please pull HAM36336, please. So Mr. Soldo you'll
17 see this is the February 26 memo from CIMA. And
18 Registrar, if you could please pull up the chart
19 on page 2, if you could call out that would be
20 great.

21 So you would have reviewed
22 this CIMA's chart of course when you received and
23 reviewed the memo; is that right?

24 A. That's correct.

25 Q. So we can see here that

1 as the years go on the rate of decline in friction
2 to my eyes seems to be lessening, the curve is
3 evening out. Did CIMA ever opine on whether that
4 rate of degradation was within an acceptable range
5 for an aging pavement?

6 A. Sorry, can you repeat the
7 question.

8 Q. Yeah. Maybe I'll reframe
9 it. Did CIMA ever provide you with an opinion
10 about whether this was, for instance, a standard
11 normal kind of degradation with pavement age or
12 whether it was a concern?

13 A. The only information I
14 got from CIMA was the memo itself, so whatever is
15 contained in this memo is what they...

16 Q. Registrar, could we
17 please move to page 3 of the memo, and then if you
18 could call out the fourth paragraph there.

19 So we see here that CIMA has
20 made the comment that it is also normal for
21 pavement friction values to reduce during the
22 lifecycle of a road. Did you ever make any
23 inquiries that that statement, into what CIMA
24 meant by "normal" in terms of the reduction during
25 a lifecycle?

1 A. I'm not clear exactly
2 your question is.

3 Q. I'm just wondering if you
4 ever followed up with CIMA about this statement,
5 because it seems that they are saying it's normal
6 for pavement friction values to drop obviously
7 with age. There's going to be some decline. So I
8 guess it's a bit further to my last question, I
9 want to confirm that you had no further
10 conversations about this subject.

11 A. I didn't have any further
12 conversations on this, no.

13 Q. Now, there are also a
14 couple of places in the report where CIMA
15 expresses caution about comparing the MTO results
16 with the Tradewind results.

17 So Registrar, can you pull
18 page 4 of this memo, please. So one is at the top
19 here just as an example. We can see it says:

20 "Again, we note that the
21 testing protocols from
22 Tradewinds and MTO testing
23 have not been compared so the
24 comparison of friction values
25 should also be viewed with

1 caution."

2 So at this point when you
3 reviewed the memo did you appreciate that the
4 Tradewind results and the MTO results perhaps
5 wouldn't be an apples to apples comparison?

6 A. I was well aware that
7 they are not an apples to apples comparison, they
8 are different methodology.

9 Q. And do you recall when
10 you became aware that they weren't an apples to
11 apples comparison?

12 A. Tradewind report is done
13 on a different methodology completely, so I wasn't
14 anticipating that the MTO was a comparison to
15 those values.

16 Q. Is that why you didn't
17 ask for the 2013 Tradewind results to be analyzed
18 in this degradation curve along with the MTO
19 results?

20 A. I was strictly looking at
21 the MTO results, given that it's something -- that
22 is an approach that's being utilized in Ontario.
23 It's not based on a different standard or a
24 non-Canadian standard. Not saying there is an
25 Ontario standard, but I was looking to utilize the

1 methodology that the provincial ministry uses
2 here.

3 Q. And so it sounds like
4 you're saying you wanted to be consistent in terms
5 of the types of results that were analyzed by CIMA
6 in this report; is that fair?

7 A. Yes, I was concerned only
8 about the MTO approach.

9 Q. Now, we've seen as a
10 result of this memo any field testing was
11 recommended by CIMA. Did you take any immediate
12 steps to arrange for any field testing,
13 appreciating that it's still the end of February
14 at this point. But do you recall taking steps to
15 arrange for it at a future date?

16 A. The infield testing that
17 was eventually undertaken was undertaken through
18 the legal department. So at this point we were
19 exploring options, but the testing and the
20 decision to undertake the testing was being
21 determined, I would say, at our legal department.

22 Q. Registrar, if you could
23 take this down please that would be appreciated.
24 If you could turn up Hamilton 54844, please. If
25 you have that. Thank you.

1 So, Mr. Soldo, this is an
2 e-mail chain from February 26 to February 28 where
3 Mr. McKinnon reaches out to you and to Mr. McGuire
4 and asks if you would agree that the MTO results
5 corroborate the results of the Tradewind report.

6 And we see that Mr. McGuire
7 responds. Correct, the Tradewind results are
8 quite close to the MTO results. You respond, I
9 would concur.

10 But you've just told us that
11 you're aware that the two aren't an apples to
12 apples comparison, they are not comparable. So on
13 what basis did you make that statement?

14 A. So just to clear what I'm
15 concurring to here. I would concur that they are
16 on the lower end of the range.

17 Q. And on what basis did you
18 reach that conclusion?

19 A. Well, the Tradewind ones
20 are low, the investigatory level, and the value
21 that we're seeing from MTO are on the lower end --
22 can't recall the number exactly but showing
23 friction of 30 or 29, somewhere in there, based on
24 the memo from Brian. So they are on the lower
25 end.

1 Q. So you were relying on
2 the extrapolated number into 2019 in making that
3 statement?

4 A. Now you're getting me
5 confused here.

6 Q. I can reframe. It was
7 just because you just mentioned the number 29 and
8 we see that in the CIMA report. The projected
9 average friction value in CIMA's opinion into 2019
10 is 29. Is that what you were referring to?

11 A. What I'm referring to is
12 they are at a lower level. So when did we get the
13 MTO results if you brought back the previous
14 report?

15 Q. The MTO results were
16 provided on February 12th. Is that what you're
17 asking?

18 A. And the CIMA report on
19 the MTO results?

20 Q. That was February 26.

21 A. So again on February 26
22 we get them and we're talking February 28. So I
23 believe at this point I've seen the CIMA results
24 with the extrapolation.

25 Q. Mr. Soldo, did you take

1 note of any of the other caveats in the CIMA
2 report in terms of using the numbers relying on
3 the outcome? We can revisit the report if you
4 would like to, but I'm just wondering if you
5 recall those or took note of them?

6 A. I would say there is a
7 lot of caveats in that. It is an extrapolation,
8 it's based on all of the data. It's not a
9 comparison. They don't necessarily have all the
10 information of how those results were undertaken.
11 So you have to take that memo, it's an information
12 point, but it's not something you would probably
13 issue decisions on. You would want do be more
14 investigation.

15 Q. Right. And you would
16 recall that CIMA recommends conducting in friction
17 testing specifically to validate those results?

18 A. That's correct.

19 Q. We've heard that the
20 matter is -- sorry, Registrar, you can take this
21 down. If you could call up, please, document 10A
22 at page 190.

23 At paragraph 494 here we're
24 getting into the followup request for friction
25 testing. And I appreciate that you've said this

1 was given over the legal, although I'll note that
2 -- and we can take you there -- that you are
3 copied on the request that goes out to ARA. So in
4 some capacity were you monitoring this request for
5 friction testing?

6 A. That would have been done
7 as a freedom -- FOI, for my own information. I
8 wasn't involved with hiring the consultant or
9 anything like that, but I'm monitoring to see what
10 legal has decided, yes.

11 Q. So you -- forgive me if
12 Ms. Lawrence covered this earlier -- you wouldn't
13 have been involved in the decision to retain ARA
14 specifically?

15 A. No, I was involved in
16 that.

17 Q. Are you aware of any
18 conversations or did anyone have a conversation
19 with you about providing the ARA results to CIMA
20 so that they could, as they recommended, validate
21 their results from the February 26 memo?

22 A. I don't recall any
23 conversation (indiscernible).

24 Q. Finally just in terms of
25 the MTO offer to conduct friction testing. We

1 heard that it was something that was, I guess for
2 lack of a better term, out for debate during the
3 winter months. You knew it wouldn't occur at that
4 time in any event. Were you involved in the
5 decision not to proceed with their engagement in
6 that exercise?

7 A. I was involved in hiring
8 the individuals, ARA. So did they consider MTO
9 versus ARA? I don't know.

10 Q. I guess I'm asking
11 because as of at least March 20th, 2019 Mr.
12 McGuire is reaching out to MTO to ask if a
13 discussion could be had about the potential for
14 testing, and is your evidence that you are not
15 aware of those discussions or had no discussions
16 with Mr. McGuire about whether to go that route?

17 A. No, I believe I sat in on
18 one of the meetings about MTO potentially
19 providing that, but a decision to hire MTO or
20 someone else was done through legal.

21 MS. MCIVOR: Thank you, Mr.
22 Soldo. Those are my questions.

23 JUSTICE WILTON-SIEGEL: Ms.
24 Contractor?

25 EXAMINATION BY MS. CONTRACTOR:

1 Q. Thank you. Good
2 afternoon, Mr. Soldo. I just have a handful of
3 questions for you.

4 Commission counsel asked you
5 about why you didn't provide a copy of the
6 Tradewind report to Mr. Ferguson or Mr. White in
7 October of 2018 once you were made aware of it.

8 In your answer you stated that
9 the report was still in draft, that Mr. McGuire
10 was following up with Golder to understand what
11 the report meant and the next steps required and
12 that there was nothing in the Tradewind report
13 that you looked at from a roadway safety
14 perspective that really involved traffic.

15 So I just wanted to understand
16 that a little bit more. In your view did
17 Mr. Ferguson or Mr. White need a copy of the
18 Tradewind report in the fall of 2018, or certainly
19 through early 2019?

20 A. I believe they required a
21 copy of the report. We had conversations about
22 its contents. Pretty sure they understood the
23 next steps in terms of who was leading the
24 followup through engineering. Never asked for a
25 report either. So we had pretty fulsome

1 conversations throughout the course of the fall
2 related to that.

3 The Tradewind report was I
4 want to say common knowledge, own step (ph). Once
5 it was uncovered, I guess, or whatever you want to
6 -- terminology you want to use by Mr. McGuire. So
7 I don't see a need for them to have gotten a copy
8 because they already knew what was inside.

9 Q. Thank you.

10 Mr. Registrar, we go to GOL2981, please, to image
11 102. This is of course the Tradewind report that
12 was appended to the draft Golder report.

13 Mr. Registrar, if we could go
14 to image 114. If we could make that a little bit
15 bigger so he can see the conclusions and
16 recommendations section there. Can you see that
17 okay, Mr. Soldo?

18 A. Yes.

19 Q. You gave some evidence
20 about this throughout your two days but I just
21 want to make sure your evidence is clear on this
22 point. Did the Tradewind report raise any safety
23 concerns for you about the Red Hill?

24 A. No, it did not. When I
25 read this report and some of the other reports

1 that we received here, when I look at these
2 reports I look at the recommendations and when I
3 look at these here, need to investigate. So
4 that's what we did. We went further and started
5 investigating what do these values mean.

6 I don't see anywhere in this
7 report that there's immediate safety concern. I
8 would expect if this is a report we getting from
9 engineering company there was something that was
10 immediately had to be done, that would be
11 identified. It doesn't say the road is unsafe.
12 It doesn't identify any immediate actions.

13 Q. Thank you. Did you
14 consider from a traffic and road safety
15 perspective whether any steps needed to be taken
16 in light of the findings of the Tradewind report
17 pending the resurfacing?

18 A. Well, if we go back to
19 the CIMA report and the previous work that was
20 under done, there was already a number of measures
21 already put in place back from the 2015 report
22 putting up signage related to slippery when wet,
23 looking at reductions in speed limit, all those
24 sort of things.

25 So when you look at the

1 cumulative body of work that had been on the Red
2 Hill there are many measures that were put in
3 place that were somewhat addressing some of these
4 issues that were identified here.

5 Q. Thank you. You gave some
6 evidence about a call you had with Mr. Malone and
7 -- Mr. Registrar, you can take that down.

8 You gave evidence about a call
9 that you had with Mr. Malone on November 30th
10 during which you stated your impression was he was
11 aware of the Tradewind report but you confirmed
12 you did not send him a copy of the Tradewind
13 report; is that right?

14 A. That's correct.

15 Q. Why didn't send him a
16 copy of the Tradewind report?

17 A. I didn't think it was
18 relevant. He was aware of the data and that's
19 what he's going to be making decisions based on,
20 is the data that he has.

21 Q. I take it -- did he ask
22 you for copy of the report?

23 A. He did not ask me for a
24 copy of the report.

25 MS. CONTRACTOR: Thank you,

1 Mr. Soldo. Those my questions.

2 JUSTICE WILTON-SIEGEL: Thank
3 you, Mr. Soldo. I appreciate you're appearing
4 today. You're excused. You can sign off if you
5 like at this point. Have a good evening.

6 THE WITNESS: Thank you.

7 (Witness retires).

8 JUSTICE WILTON-SIEGEL: I
9 think we have a few housekeeping matters to
10 attend; is that correct?

11 Who is going first, Ms.
12 Roberts?

13 MS. JENNIFER ROBERTS: Yes,
14 Commissioner, I do have a housekeeping matter to
15 address.

16 I identified two documents
17 yesterday that should have been marked as
18 exhibits. Those are MT053 and GOL3902. Could
19 these, please, be marked as Exhibits 209 and 210
20 respectively.

21 MS. LAWRENCE: 211 and 210.

22 MS. JENNIFER ROBERTS: Thank
23 you. I missed that. 212, MT053. Do I have that
24 right? That will now be Exhibit 211? Do I have
25 that right?

1 THE REGISTRAR: Yes, 211.

2 EXHIBIT NO. 211: Ministry
3 Directive, 12 pages, revised
4 03/08/2006; GOL3902

5 MS. JENNIFER ROBERTS: Second
6 exhibit, GOL3902, and I ask that that be marked as
7 Exhibit 212, please.

8 THE REGISTRAR: Great. Thank
9 you, noted.

10 EXHIBIT NO. 212: Ministry
11 Directive, 12 pages, revised
12 12/12/2014; GOL3902

13 JUSTICE WILTON-SIEGEL: I got
14 it. Next, Ms. Lawrence.

15 MS. LAWRENCE: Thank you.
16 Commissioner, I would like to introduce as an
17 exhibit the affidavit of Ludomir Uzarowski,
18 affirmed September 30, 2022, which is doc ID
19 RVH1024. Copies were previously provided to
20 participants' counsel, all of whom advised they
21 will not be cross-examining on the affidavit, and
22 this affidavit details the approval of the
23 Demix-Varenes quarry aggregate, source from Demix
24 Aggregates in Quebec, for use in the SMA mainline
25 surface course on the RHVP in compliance with the

1 aggregate -- pardon me -- in compliance of the
2 aggregate with the contract specifications and the
3 supplements OD3 and Dr. Uzarowski's evidence on
4 April 28 and 29. Again, the doc ID RVH1024.

5 The Registrar should have a
6 copy of that and I would like it to be made the
7 next exhibit, which is 213.

8 THE REGISTRAR: Noted,
9 Counsel, thank you.

10 EXHIBIT NO. 213: Affidavit of
11 Ludomir Uzarowski dated
12 September 30, 2022; RVH1024

13 JUSTICE WILTON-SIEGEL: Does
14 that take care of the housekeeping for today?

15 MS. LAWRENCE: It does.

16 JUSTICE WILTON-SIEGEL: Good.
17 Then we will stand adjourned -- there's no witness
18 tomorrow. The next witness will appear Thursday
19 morning at 9:30, so we'll stand adjourned until
20 that time.

21 MS. LAWRENCE: Sorry to
22 interrupt. In fact, we're starting at 10:15 on
23 Thursday, as this is the date we rescheduled due
24 to illness from last week. As a result of
25 accommodating counsel we're having a bit of a late

1 start. 10:15 on Thursday.

2 JUSTICE WILTON-SIEGEL: So I

3 stand corrected. We stand adjourned until 10:15

4 on Thursday. Have a good evening.

5 --- Whereupon at 4:19 p.m. the proceedings were

6 adjourned until Thursday, November 3 at

7 10:15 a.m.

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