

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Wednesday, July 20, 2022 at 9:30 a.m.

VOLUME 48

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INDEX

	PAGE
GARY MOORE; PREVIOUSLY AFFIRMED	8809
EXAMINATION BY MS. LAWRENCE (cont'd)	8809
EXAMINATION BY MS. JENNIFER ROBERTS	8958

1 Arbitration Place Virtual

2 --- Upon resuming on Wednesday, July 20, 2022,

3 at 9:31 a.m.

4 MS. LAWRENCE: Good morning,

5 Mr. Commissioner. May I proceed?

6 JUSTICE WILTON-SIEGEL: Yes,

7 let's proceed.

8 MS. LAWRENCE: Thank you.

9 GARY MOORE; PREVIOUSLY AFFIRMED

10 EXAMINATION BY MS. LAWRENCE (cont'd):

11 Q. Good morning, Mr. Moore.

12 A. Good morning.

13 Q. Yesterday we were
14 discussing events in 2017, and that's where we're
15 going to pick up today.

16 Registrar, can you call out
17 OD8, page 31, please. If you can call out 76.
18 So, Mr. Moore, we've talked in the past few days
19 about lighting issues, and you'll recall in
20 September of 2016 there was a request for an
21 update about lighting. So now we're in 2017.

22 This paragraph doesn't have a
23 date, but the paragraph before makes it clear that
24 we're talking about December 4, 2017. Ms.
25 Cameron, your assistant, e-mailed Mr. McGuire,

1 Mr. Field, copying you, regarding lighting on the
2 Red Hill, and she wrote that Councillor Conley was
3 requesting an information report on lighting as
4 he's still getting complaints, and Mike -- and
5 since Martin -- I spoke to Mike, and since Martin
6 White is doing a report that's responding to the
7 five previous motions that include barriers, he
8 felt a coordinated effort is required.

9 Registrar, can you close that
10 out and can you open up 77, please. Mr. McGuire
11 responds, we're looking at this right now, and
12 then he says:

13 "Lighting needs to be
14 understood in context of the
15 original EA and restrictions
16 placed in that file. Mike is
17 looking into this currently."

18 (As read)

19 So, Mr. Moore, by my count
20 this is the fourth time that the public works
21 committee has requested that lighting be assessed,
22 and PWC, you'll remember from yesterday, had
23 directed engineering services to go -- Councillor
24 Conley said he wanted a report, and by this point
25 in December of 2017 there's been a capital budget

1 funding process to obtain the estimated \$100,000
2 that had been put into the draft -- pardon me,
3 into the staff report for a consultant.

4 Did you take any steps at this
5 point in December 2017 to ensure that Mr. Field or
6 Mr. McGuire was aware that Councillor Collins did
7 not want to wait two years to start having
8 discussions with stakeholders?

9 A. I don't believe so. I'm
10 not sure how involved I was at this time in this
11 issue given my involvement with the LRT, and it
12 appears from this e-mail that Gord is -- has the
13 issue well in hand.

14 Q. Okay. Did you at any
15 point between December 2015 at that PWC meeting,
16 where we watched the video yesterday and this
17 point in December 2017, direct Mr. McGuire or
18 Mr. Field to prioritize the issue of lighting in
19 response to Councillor Conley's comments at the
20 December 2015 meeting?

21 A. It's possible, but I
22 don't -- I don't recall anything in that regard.

23 Q. Registrar, you can close
24 this callout, and if you can go to page 47,
25 please. Perhaps just as a matter of fairness to

1 you, just provide you a bit more context.

2 Mr. Field testified that at various points he was
3 working on a lamp project, which was updating many
4 of the lighting across the city, and that that was
5 keeping him very occupied. Were you aware of
6 that -- of that project that he was working on?

7 A. Yes, I was very aware of
8 that project.

9 Q. Did you give him any
10 direction about what to prioritize in that project
11 versus the Red Hill versus (interruption)?

12 A. I don't believe so. The
13 relamping project for the City was -- we were
14 receiving significant grants from the government
15 on a very tight timeline, and it was a very
16 beneficial and significant project that he was
17 working on, so I'm not sure I had asked him to
18 deviate in any way from that, so -- but I don't
19 recall.

20 Q. So we're moving into
21 2018. The -- originally the PWC meeting where
22 traffic was going to provide that I'm going call
23 it the omnibus, the quite comprehensive staff
24 report that we looked at last time, that was going
25 to be in the December meeting. It got pushed to

1 the January 15th meeting.

2 And first, were you involved
3 in the preparation for that meeting, and by this I
4 don't mean the staff report that we looked at in
5 draft last day, but in any discussions or planning
6 on how to approach the January 15, 2018 meeting.

7 A. Not -- not that I could
8 say with any certainty that I recall anything in
9 that regard, no.

10 Q. Registrar, could you go
11 to the next page, please, 48. If you can pull out
12 132, please. This is an e-mail from Dan McKinnon,
13 who is now general manager, and he sends it to you
14 and to others in traffic and to Ms.
15 Matthews-Malone, and to Mr. McGuire and -- Grant
16 McGuire, and it is a meeting that is scheduled for
17 the 31st at 4 p.m. So this is the follow-up
18 outcome of the January 15th meeting. Do you
19 recall attending this meeting --

20 A. No.

21 Q. -- after the fact?

22 A. No, I don't.

23 Q. You just don't recall
24 either way?

25 A. No.

1 Q. Do you recall -- I'm
2 sorry, I jumped over this and I'm jumping around
3 in time. Do you recall attending the PWC meeting
4 on January 15th?

5 A. No, I don't have any -- I
6 don't have any evidence either way that I was or
7 wasn't there. I don't recall.

8 Q. Can you close this out --
9 close the callout, please, Registrar. Certainly I
10 can suggest that the media coming out of this
11 report was around whether the PWC was going to
12 require installation of median barriers. Does
13 that help you at all with refreshing your memory
14 about whether you attended that meeting? And to
15 be clear, I don't have information either way
16 whether you did or not.

17 A. I do remember one or two
18 meetings where that discussion arose but --

19 Q. That doesn't really
20 narrow it down, does it?

21 A. It doesn't narrow it
22 down. I mean, I know in January, I mean, we're in
23 the middle of a budget cycle. I'm dealing with
24 the LRT, and this is I believe before Dana signed
25 anything else to Gord. So I just can't say for

1 sure.

2 Q. Again, apologies for
3 jumping back and forth in time. The calendar
4 appointment that is at 132 for the 31st, it
5 appears, although I'm not sure, that you might
6 have attended. And just to refresh your memory,
7 Registrar, can you go to page 54 -- actually 53
8 and 54, please.

9 One of the things that was
10 addressed at that meeting was a collision review
11 that Mr. Ferguson would have presented, and at the
12 bottom of 53 at 148 Mr. Ferguson, after the fact,
13 is discussing this with Mr. Izadpanah at CIMA, and
14 at the top at 54 -- Registrar, can you call out
15 the indented text at the top of 54. He says:

16 "Are you comfortable with
17 these numbers and the
18 percentages in which injuries
19 occur?" (As read)

20 And that's because part of the
21 collision memo was about the number of serious
22 injuries or fatalities, that's the defined terms
23 that CIMA had been using and providing to the
24 City. And Mr. Ferguson reports that you
25 questioned that one in two collisions on the

1 facilities resulted in a serious injury or
2 fatality. Does that refresh your memory about
3 whether you attended the January 31 meeting?

4 A. I do remember this issue,
5 so it's possible that that was the meeting at
6 which this issue came up.

7 Q. You can close this
8 callout, Registrar, and if you can go to page 42,
9 please. Thank you.

10 So, Mr. Moore, you'll recall
11 last day that we discussed the -- what we call in
12 the overview document the pavement evaluation, the
13 evaluation that Golder was going to do in respect
14 of polished stone value, British pendulum testing,
15 sand testing. So that was -- we were looking at
16 that in the 2017 period, November primarily.

17 So moving forward in time,
18 you'll see at paragraph 110 Dr. Uzarowski's
19 notebooks have an entry about it, and just says
20 "PSV next week." And then you e-mailed him and
21 said, "How are the tests progressing?" And he
22 wrote back:

23 "We have the friction, British
24 pendulum tester and texture,
25 the sand patch test, results

1 at locations where we took
2 cores. We're completing the
3 extraction and preparing the
4 aggregate samples for PSV
5 testing." (As read)

6 And then he says:

7 "We anticipate having the PSV
8 testing by the end of the
9 month."

10 And he asked -- you asked him
11 in 113 to provide you with the preliminary results
12 from the BPT and the sand patch.

13 Do you recall if you received
14 any preliminary results in response to this
15 request either in writing or orally, in and around
16 this time period, in January?

17 A. I don't recall -- I don't
18 recall seeing -- I'm trying to think if we talked
19 about it. No, I don't know. I couldn't tell you
20 whether I got the preliminary results in that
21 regard. No, I don't know.

22 Q. Registrar, can you go to
23 page 39, please. If you can bring up 40 as well.
24 If you look at the bottom of 39 at paragraph 105,
25 this is a discussion between you and Ms.

1 Matthews-Malone. You e-mail her back and say --
2 we don't have the underlying e-mail as part of
3 this chain:

4 "Right now we're progressing
5 towards a February tender, but
6 I'm waiting to hear back from
7 Ludomir with regard to our
8 testing results, and we have
9 to make a decision about
10 whether to postpone the tender
11 this year in favour of hot
12 in-place instead of a shave
13 and pave." (As read)

14 Just in terms of timing, can
15 you tell me, when was the moment when you were
16 going to have to make that call, when you were
17 going to have to say we're going to -- we don't
18 have -- we no longer have time to do the tender
19 and get to the shave and pave, or we're going to
20 forego doing the assessment of hot in-place and
21 we're going to move to a shave and pave so that we
22 can get it done? Like, when is that pivot point?

23 I'm speaking -- maybe I'll
24 just say more generally before you answer.

25 Speaking sort of generally in

1 terms of what you know about the tendering
2 process, how late into a new year can you go
3 before you lose the ability time-wise to tender
4 and do -- and do work in a given year?

5 A. There's no hard date.
6 There's preferred. We like to get our -- we like
7 to get our tenders out early ahead of other
8 tenders in order to achieve a better price.
9 Sometimes that wasn't possible and things delayed
10 our tender, so we might get them out in May or
11 June. But in other times, council would get a
12 grant or something in June for 15 or \$20 million
13 from some program and have to spend it in that
14 year. We would still be able to get it out and
15 get it done. As long as you can do the work in
16 September or October, it's -- in decent
17 construction weather. In order to do that, you
18 probably have to have the tender out sometime in
19 late June, early July in order to achieve that.

20 So, you know, if you're
21 looking for a drop dead absolutely, sometime
22 midsummer would have been the absolute latest.
23 Would we have preferred before that, yes.

24 Q. Your answer is in respect
25 of doing a tender for a traditional shave and pave

1 using FC2, using mixes and technology you're
2 familiar with?

3 A. That's correct.

4 Q. You say:

5 "We're waiting to hear from
6 Ludomir regarding our test
7 results."

8 At this point you noted that
9 some of the test results are having to be sent to
10 Ireland; is that right? Are you aware of that?

11 A. I was aware of that, yes.

12 Q. And you recall it did in
13 fact take some time to get those test results back
14 from Ireland?

15 A. Ludomir's previous e-mail
16 had said that they were imminent to be sent and
17 they were going to be next month, so I mean, I
18 believe that we were going to get them back in
19 February sometime. I mean, the other tests that
20 he were doing would have given us a clear
21 indication -- if they had have come back and said,
22 listen, even the initial tests indicate that we
23 can't reuse this material, then the decision would
24 have been easy.

25 If this test says yes, it

1 appears we can use this material and we're just
2 waiting for that one more thing, then it becomes a
3 harder decision to -- you know, well, we'll wait
4 for that final bit of information.

5 Q. Do you recall at this
6 point whether Dr. Uzarowski had communicated to
7 you on the first two tests in January of 2018?

8 A. I don't believe so, given
9 my response to Betty that we were still waiting to
10 hear with regard to our test results.

11 Q. I think that's a little
12 bit ambiguous. That could just be the TSB. I'm
13 trying to ask for your memory rather than what
14 you're trying to read from your own past words.

15 A. My sense is we had the
16 test done, but I don't believe we had any
17 assessment of those tests. I don't recall getting
18 too much from Ludomir ahead of time.

19 Q. Registrar, can you pull
20 up 66 and 67, please. If you can pull out 181.
21 This is just orient you to time.

22 On February 15, Golder
23 received the PSV results and said -- at least the
24 sort of preliminary results, and said that a
25 report would follow, and then it followed.

1 Registrar, can you close that down, and can you
2 pull out 186 and 187 on page 67.

3 So the following week you sent
4 a calendar invitation to Dr. Uzarowski and to
5 Claudio Leon for a meeting on February 23rd. I
6 think that that was about the MSCR specs. That
7 was at a maybe different presentation than the one
8 that talked about last time, but part of that work
9 that Golder was doing. And he wrote you back and
10 requested that you meet to discuss the RHVP and
11 other aspects.

12 Do you recall having a
13 one-on-one meeting with Dr. Uzarowski on
14 February 23rd either before his presentation or
15 after his presentation?

16 A. No, I can't say that I
17 do. No, I don't recall.

18 Q. Registrar, can you go to
19 69 and bring out 192, please.

20 We've heard evidence from
21 Dr. Uzarowski and Mike Becke that after the
22 presentation that he did on the 23rd, he stayed
23 and spoke to Mr. Becke, Mr. Renaud and Mr. Oddi to
24 discuss SMA for the RHVP, but that -- does that
25 assist with your memory? I think the evidence is

1 that you didn't attend, but I just want to
2 understand if you have any recollection of having
3 a meeting with those individuals.

4 A. No. I think I knew of
5 this meeting, but I -- and I don't believe I
6 attended it.

7 Q. So you knew about it
8 after the fact or you knew about it --

9 A. No, I knew that they were
10 going to meet to talk about it. I mean, that's
11 the team that was putting together everything and
12 the appropriate people to discuss, you know, in
13 detail the technical things that they would need
14 to ask Ludomir.

15 Q. So the following week
16 Mr. Becke circulated a calendar invite for a
17 meeting to discuss rehab strategy for the Red
18 Hill, and it included a number attendees, Mr.
19 Oddi, Mr. Perusen, Mr. Andoga, Ms. Jacob,
20 Dr. Uzarowski, Mr. Leon, Mr. Vala, Mr. Renaud, and
21 we'll come to it. I think you also attended. In
22 the body of the invitation, he said:

23 "Further to the presentation
24 on Friday, we had a side
25 discussion afterwards

1 regarding hot in-place. It
2 sounds like there will be some
3 challenges with this approach
4 that we need to discuss moving
5 forward." (As read)

6 Do you recall after
7 February 23rd where this side discussion -- when
8 the side discussion took place, if anyone conveyed
9 to you that Dr. Uzarowski thought there would be
10 some challenges with using hot in-place on the Red
11 Hill?

12 A. I think I was made aware
13 that there were going to be challenges. I don't
14 know whether it was at this point and from this
15 meeting or not. I do remember something about
16 that.

17 Q. Well, we're going to get
18 into a meeting that happened on March 9th. That's
19 the one that this calendar invitation is
20 referencing in this paragraph.

21 Did you know before you went
22 to this meeting on March 9th that Dr. Uzarowski
23 had some concerns or thought there were some
24 challenges with using hot in-place on the Red
25 Hill.

1 A. I don't know whether I
2 attended that meeting on March 9th. I thought it
3 was just for the technical people, was my --

4 Q. Okay. Maybe I can ask it
5 differently.

6 A. Yeah.

7 Q. Between February 23rd and
8 March 9th, did anyone tell you that Dr. Uzarowski
9 had some challenges with the potential of using
10 hot in-place on the Red Hill?

11 A. I do recall being made
12 aware of that, but I don't -- I couldn't tell you
13 whether it was before this meeting or after this
14 meeting. I don't know.

15 Q. Registrar, can you close
16 this callout and go to the next call out, which it
17 goes over to the next page but you don't have to
18 pull it out. You can just pull out what's there
19 in 193.

20 Dr. Uzarowski replied to
21 Mr. Becke's calendar invitation just going to him
22 and said that he contacted Pat Wiley and Pat has
23 never done hot in-place recycling of SMA and
24 thinks that this is perhaps not feasible. Did
25 Mr. Becke convey this specific bit of information

1 about Mr. Wiley and Mr. Wiley's views about the
2 potential unfeasibility of recycling SMA?

3 A. I do recall some
4 discussions taking place in that regard, that --

5 Q. With Mr. Becke?

6 A. -- you know, can't we do
7 it, is it possible, is it not possible, and the
8 back and forth several times.

9 Q. With Mr. Becke in
10 particular?

11 A. I don't believe it was
12 with Mr. Becke.

13 Q. Did you have any -- these
14 are one-on-one conversations with Mr. Becke where
15 he communicated this information to you?

16 A. Yeah, he's just
17 transmitting that. I may have asked, you know,
18 well, what does this mean or --

19 Q. I'm not asking about what
20 your response was to this. I'm just asking if he
21 told you, Mr. Becke, if he told you the points
22 that are in this e-mail?

23 A. It's possible, but I
24 don't -- I don't recall a direct conversation with
25 Mike. I'm trying to picture a meeting in his

1 office or in my office or in the hallway for a
2 discussion like this. I know I was aware of this
3 or made aware of this and that there was an
4 ongoing issue for some period of time, but I
5 don't -- I couldn't tell you when or who told me.

6 Q. Let's go forward to the
7 March 9th meeting. At this meeting, I went
8 through the calendar invitation of those who were
9 invited, and it included Mr. Oddi, Mr. Becke,
10 Dr. Uzarowski, Mr. Renaud, Mr. Vala, Ms. Jacob.
11 Do you remember a meeting with those individuals
12 where the topic was the feasibility of hot
13 in-place recycling for SMA?

14 A. I don't.

15 Q. I can tell you that
16 others who attended that meeting, one said you
17 were there, and two said it was quite a typical
18 meeting in that it was -- there was heated
19 discussions. Does that assist your -- refresh
20 your memory in whether you attended this meeting?

21 A. No, not particularly, no.
22 I think I would have remembered something like
23 that but....

24 Q. Registrar, can you close
25 this callout and go to 72 and 73, please.

1 Dr. Uzarowski provided us with
2 notebooks and -- his notebooks, and he testified
3 that he made the majority of the information
4 that's contained on this particular entry in the
5 notebook in advance of this meeting on March 9th,
6 and that he used this as a guide for the
7 information that he wished to convey.

8 Registrar, can you bring up
9 204, please. And you can start just by bringing
10 up -- yeah, that's fine. In fact, just as a
11 matter of fairness, why don't we bring up both
12 sides.

13 While that's coming up, Mr.
14 Moore, this is March of 2018. You're still keen
15 to assess the possibility of doing hot in-place
16 recycling of SMA for the Red Hill, right?

17 A. We're still looking at
18 it, yes.

19 Q. No, I mean, but if it is
20 feasible, you would be keen to do it?

21 A. Yes, it would be the
22 savings of tens of millions of dollars for the
23 roads program while giving, you know, a very good
24 product back on the expressway.

25 Q. I think you were talking

1 about two different things on that answer. You
2 said tens of millions for the road program, and
3 then you said getting a good product back on the
4 expressway. It wouldn't be tens of millions of
5 dollar of savings just for the Red Hill if you did
6 hot in-place, right?

7 A. Yes, it would.

8 Q. For this particular
9 resurfacing, or do you mean over the life?

10 A. For the resurfacing of
11 the LINC and the Red Hill. If we could do it in
12 that, I think the savings was something in the
13 anticipated neighbourhood of \$13 million for the
14 Red Hill alone, if I remember correctly.

15 Q. Going back to these
16 notes, Dr. Uzarowski testified that he did his
17 best to go through the notes that he made and to
18 deliver, one, an oral report on the results of the
19 testing from the 2017 Golder pavement evaluation,
20 and to send his message to you about his views
21 about the feasibility of doing hot in-place. So
22 just starting with under A, it says here that he
23 wrote down "texture okay," and I think texture
24 here is the sand testing.

25 Do you recall Dr. Uzarowski

1 advising you in this meeting that the results of
2 that test were okay?

3 A. No, I don't -- I don't
4 remember the specific discussions.

5 Q. Okay. The second point
6 in his list is the BPN, which I think is the
7 British pendulum testing number. His notes
8 reflect, and he testified, that he conveyed at
9 this meeting that they were variable, the average
10 was good, but that he viewed the test as
11 unreliable because of a weather issue.

12 Do you recall him providing
13 that information to you at this meeting?

14 A. Not specifically, no.

15 Q. Generally?

16 A. If you had asked me out
17 of the blue, I wouldn't have recalled this issue,
18 no.

19 Q. Do you recall
20 Dr. Uzarowski -- do you recall coming to learn in
21 2018 that the British pendulum testing had a
22 reliability issue from Golder's perspective
23 because of a weather issue when the test was
24 taken?

25 A. I'm trying to think if

1 there was any other discussions that we had in
2 that regard and I can't recall anything, so I
3 don't know -- I don't know that I was aware of it,
4 or I can't recall that I was aware of it.

5 Q. Dr. Uzarowski, his notes
6 reflect, and he testified, that he conveyed SN
7 numbers from Tradewind Scientific, the averages,
8 but that they were variable, and SN numbers from
9 the MTO in 2007. The average was good for the new
10 SMA and I think he testified that those numbers
11 might not be -- the numbers put forth that are
12 there are not exactly correct, but had low values
13 under the structure.

14 Do you recall Dr. Uzarowski
15 conveying in this meeting information in respect
16 of the friction numbers from Tradewind and from
17 the MTO in 2007?

18 A. No, I don't recall that.

19 Q. Is that to say that you
20 have confidence that he did not convey that
21 information at the meeting, or you just can't
22 recall either way?

23 A. No, I just can't recall
24 either way. I mean, if these are his notes from
25 his meeting and he says he did that, I can't

1 dispute it. I just don't -- I just don't
2 recall -- recall those being presented, or I don't
3 even recall the specifics of the meeting.

4 Q. His notes reflect, and he
5 said, that he conveyed that the polished stone
6 value result was 45, and then he also gave some
7 context for that, that for traprock, that was a
8 medium finding for trap rock; that 50 was very
9 good; and that for sandstone, the best you would
10 get, 55. Do you recall Dr. Uzarowski conveying
11 that information, that is, the results, and that
12 context?

13 A. I do recall that type of
14 information because it was -- I believe I was
15 confused on what was being presented at that time.
16 Something stands out in my mind about that
17 information, but I don't know what it was now.

18 Q. You don't know what was
19 confusing to you?

20 A. Well, seeing it here as
21 dolomitic sandstone, I believe what he's doing is
22 he's recommending the dolomitic sandstone because
23 it has a 55, and that our current value of what's
24 out there is 45, but if it was new, 50 is good. I
25 think that's what that's saying, and I don't know

1 whether it was discussion -- seems to me there
2 was -- that did generate some discussion at the
3 time.

4 Q. What do you remember
5 about that discussion?

6 A. Well, just that there was
7 some discussion, you know. And it may have been,
8 you know, with regard to the conclusion, can we
9 use it or not use it.

10 Q. Why don't we go there.
11 His notes reflect the message that he said was a
12 hard message that he felt he needed to deliver,
13 that in reviewing all of this testing, his point
14 was that it would be somewhat risky to reuse the
15 SMA in the surface course through hot in-place
16 recycling. He also testified that he thinks he
17 raised the issue of SMA not being -- recycling of
18 SMA not being permitted under the provincial OPSS.
19 I don't know if that refreshes your memory about
20 the content of this part of the conversation.

21 A. I do recall the
22 discussion of this nature.

23 Q. Okay. I realize I asked
24 you things -- or I mentioned two points on my last
25 question. Maybe let's just take them one at a

1 time.

2 A. Sure.

3 Q. The second thing I said
4 was Dr. Uzarowski testified that he thinks he
5 raised the issue of SMA not -- pardon me --
6 recycling of SMA, hot in-place recycling, not
7 being permitted under the provincial OPSS. Does
8 that refresh your memory about this meeting and
9 assist you with whether you recall him raising
10 that issue?

11 A. I do -- I do recall -- I
12 do recall that issue, but I don't know how much
13 regard I took it, knowing that MTO was doing
14 testing of SMA in Thunder Bay as a test case and
15 that they were looking at it -- OPS just would
16 have applied to MTO roads, you know, not to the
17 City. I mean, there's lots of cities that don't
18 even use the OPS standards, so adopting something
19 like that is -- has no meaning other than, by the
20 way, MTO doesn't use it. But they are going to.

21 Q. So just before we get to
22 the second point that I raised in my question, two
23 questions back. Do you have any further
24 information in respect of a notation that
25 Dr. Uzarowski said he made during the meeting

1 where it says, "Gary, results inconclusive"?

2 Can you assist the inquiry in
3 any way to explain what your thinking was and what
4 of those results you considered to be
5 inconclusive, if in fact you did hold that view?

6 A. I -- I don't have any
7 recollection of what stood out in my mind at that
8 time, other than if someone had presented to me
9 it's somewhat risky, you know, that's
10 inconclusive. What does that mean?

11 Q. I'm stopping you right
12 there.

13 A. Yeah.

14 Q. It says "results
15 inconclusive." The somewhat risky, that's his
16 conclusion. So as I understand it -- and I'm not
17 going to go back to Dr. Uzarowski's testimony -- I
18 think he was quite clear that he thought that you
19 had some concern with the results that are set out
20 between points 1 and 6?

21 A. Not that I can see here.

22 Q. Not that you recall?

23 A. Not that I recall.

24 Q. So now let's turn to that
25 conclusion. This is Golder's -- Dr. Uzarowski's

1 conclusion, it would be somewhat risky to reuse
2 the SMA in the surface course. So I'm going to
3 suggest to you that you became quite frustrated
4 with that assessment of feasibility. Do you
5 recall that?

6 A. I do recall -- I do
7 recall the issue between, you know, can we do SMA
8 or can't we do SMA, can we do hot in-place or not.
9 Everyone knew going forward that we were going to
10 do SMA, and yet now I'm being told we can't do
11 SMA. Well, if I can't do SMA and do a hot
12 in-place, why did I bother doing all these tests
13 and waiting all this time? I believe that was the
14 sense of frustration at that time, because I do
15 recall that discussion.

16 Q. You do recall being
17 frustrated?

18 A. I do -- concerned, yes,
19 that we'd gone down a road that, you know, wasn't
20 achievable.

21 Q. On the right-hand side of
22 the callout it says:

23 "Pat Wiley says he's never
24 done hot in-place recycling of
25 SMA, so he didn't want to do

1 it on the Red Hill in
2 Hamilton." (As read)
3 That's the same information
4 that he had provided to Mike Becke the week
5 before. Do you recall Dr. Uzarowski conveying
6 that point about Pat Wiley's view in this meeting?

7 A. I believe that was --
8 that was the catalyst for the discussion, because
9 that seemed consistent with what Pat had told me
10 in Halifax and what we had been progressing on the
11 basis of. So I believe I was made aware of that,
12 although I don't -- I mean, I don't specifically
13 remember him saying it.

14 Q. Dr. Uzarowski testified
15 that Mr. Oddi piped up and agreed with him that
16 hot in-place recycling didn't seem to be feasible
17 for SMA. Do you recall Mr. Oddi making that
18 contribution at this meeting?

19 A. I do recall that Marco
20 had some concerns with adopting of the new
21 technology, but I don't -- I don't know that it
22 was, you know, here or in general.

23 Q. Okay. Others who
24 attended that meeting who have given evidence in
25 the inquiry, Mr. Andoga, Mr. Becke, Mr. Vala and

1 Dr. Uzarowski, have variously reported their
2 perceptions of this meeting, and some of what they
3 said was that it was heated, that you were
4 frustrated, that at least one person testified
5 there was yelling; others said it was heated with
6 animus in the conversation. Were you yelling at
7 Dr. Uzarowski during this meeting?

8 A. I don't -- I don't recall
9 yelling at him. Was I frustrated? I believe I
10 was. I don't know that it was directed at anyone
11 in particular.

12 Q. So it wasn't -- your
13 frustration wasn't directed at Dr. Uzarowski in
14 particular?

15 A. Well, I mean, we had gone
16 through all this process. I don't -- I don't know
17 that the yelling at someone is a proper
18 description.

19 Q. Okay. But put a
20 different way, you dispute that you were yelling
21 at anybody?

22 A. No, I tended to -- I
23 tended to get excited at a meeting, passionate
24 about something. So, you know, if I was placing
25 emphasis on my opinion, that's not out of the

1 question but -- you know, we're talking about tens
2 of millions of dollars in time and resources that
3 may have been spent chasing something, you know,
4 that someone had told me was possible and now
5 wasn't.

6 Q. Do you recall directing
7 your frustration towards Mr. Oddi who also had
8 these concerns about the feasibility of hot
9 in-place, and, in particular, do you remember
10 actually exchanging a heated discussion with Mr.
11 Oddi about this?

12 A. No, I don't. Marco and I
13 have worked together for a long, long time. We're
14 very familiar with each other.

15 Q. Did you use profanity
16 during this meeting?

17 A. I don't -- I don't
18 recall.

19 Q. Turning to the options
20 that are set out on the right-hand side.
21 Dr. Uzarowski testified that he provided two
22 recommendations, two options. One was a mill
23 overlay, and there he does mention using sandstone
24 if possible. And the second was hot in-place
25 recycle of SMA as a binder course, and then a very

1 thin surface course layer, which he described as a
2 microsurfacing layer to be put on top.

3 And he testified that he
4 thought doing so would make the surface uniform
5 and would provide skid resistance. That certainly
6 was his -- the reason he was making those
7 recommendations.

8 Do you recall him making
9 those -- providing those two options at this
10 meeting?

11 A. I don't -- I don't recall
12 them.

13 Q. You say you don't recall
14 them. Is that to say you don't think that he did
15 raise those two options while you --

16 A. No, I'm not disputing
17 that he may have made those options; I just don't
18 recall.

19 Q. Okay. If he did
20 recommend option 2, the hot in-place recycling
21 plus a very thin layer of microsurfacing course,
22 would you have been amenable to that as an option?

23 A. I don't believe so. It
24 wasn't our practice. We had done something like
25 that on two other jobs unsuccessfully on lower

1 speed and lower volume roadways, so it's unlikely
2 that we'd adopted that. It was our preference to,
3 you know, place a new hot surface.

4 Q. Mr. Becke said that he
5 made some notes and his practice is if it's a
6 definitive note from someone, he underlines no,
7 and I can take you to the notes in a moment, but
8 he's underlined no.

9 Do you recall being definitive
10 in your view that option 2 was not going to be an
11 option that the City went for?

12 A. Yeah, I believe that we
13 wouldn't have accepted that. So if that was
14 proposed, then --

15 Q. Let's stay away from the
16 royal "we." I'm not interested in what the City
17 would do, I'm just interested in what you said at
18 the meeting.

19 A. Well, I don't recall what
20 I said.

21 Q. Okay. So you don't
22 recall being definitive in your view that option 2
23 was not an option that the City was going to
24 pursue?

25 A. I didn't recall seeing

1 these options, so I don't recall that I might have
2 said definitively in regard to that.

3 Q. But it wouldn't be
4 inconsistent with what you view -- your view on
5 microsurfacing generally to say, no, that's not
6 going to be the option that we take. Is that
7 fair?

8 A. That we take, yes,
9 correct.

10 Q. That we, the City, take?

11 A. Yes.

12 Q. Dr. Uzarowski at the very
13 bottom in his notes says:

14 "Neither option 1 or 2 will
15 solve the accident hazard
16 issue. The speed has to be
17 controlled. Skid hazard
18 increases drastically when
19 speed increases." (As read)

20 Those are what is in his
21 notes. Do you recall if he conveyed anything like
22 that in this meeting to you and the other
23 attendees?

24 A. No, I can't say that I
25 do.

1 Q. He testified that you
2 left the meeting at some point. Do you recall
3 leaving this meeting while others remained to
4 continue the discussion?

5 A. I don't, but it's not
6 unlikely that I had something else to attend to.
7 So it's very possible. If my input or attendance
8 wasn't needed then it could be that I left, so....

9 Q. Sitting here today, you
10 don't have any recollection that you left for any
11 reason except the meeting was over, from your
12 perspective, or you had somewhere else to go. You
13 didn't leave in a huff, you weren't pissed off,
14 nothing like that?

15 A. I don't believe so, no.

16 Q. Dr. Uzarowski testified
17 that his last item was to recommend shot blasting
18 or skidabrading in the interim as a way to improve
19 friction on the Red Hill and that he conveyed this
20 recommendation after you left the meeting. Did
21 anybody after the meeting report back to you about
22 this recommendation to do shot blasting or
23 skidabrading in the interim before resurfacing?

24 A. I don't believe so. I
25 don't recall anything like that.

1 Q. Would you have considered
2 an interim measure for shot blasting or
3 skidabrading if that recommendation had been
4 forwarded on to you?

5 A. It's very difficult to
6 say now what I might have done then. I don't know
7 what else I knew at the time or what else was
8 happening and where we were with everything, so I
9 can't speculate on what I might have done at that
10 time.

11 Q. Is it fair to say as of
12 March of 2018 you were either going to start
13 looking more deeply into the feasibility of hot
14 in-place recycling and that might delay the
15 eventual resurfacing by a year, or you were going
16 to move and pivot into doing a tender and a shave
17 and pave in 2018? I'm trying to provide you with
18 some context. If that was the case, would you
19 have considered an interim measure for shot
20 blasting or skidabrading? That is, to put it on
21 the surface before any resurfacing?

22 A. I could tell you it's not
23 something we had ever done. It was not something
24 we were familiar with. I still wasn't aware of
25 anything from anyone that the surface of the

1 roadway had contributed to anything or that there
2 was any need to expedite. I heard nothing of
3 this -- in that regard before that. So if I had
4 taken all of that information in at that time,
5 it's unlikely, you know, that even if we were
6 going for a year, we -- to make that expenditure,
7 unless it was going to be even a longer term. But
8 I -- that's the best I can do.

9 Q. Thank you. Let's move
10 forward from this. Can you close these out,
11 Registrar, and if you can go to page 80, please.

12 So on March 15, 2018, so
13 that's about a week after -- less than a week
14 after the meeting that we were just talking about,
15 Dr. Uzarowski sends you, copied to Mr. Becke and
16 Mr. Oddi, a lengthy e-mail about talking to Pat
17 Wiley a few times, exchanged a few e-mails, and he
18 thinks it is possible -- he, Pat, thinks it's
19 possible to do hot in-place recycle of SMA, and
20 then he suggested the contributions that Golder
21 could make to assist Mr. Wiley in those efforts.
22 Do you remember receiving and reviewing this
23 e-mail from Dr. Uzarowski?

24 A. I -- I believe I do.

25 Q. The big change, the big

1 shift in what he had said about Mr. Wiley's view
2 in any event, right?

3 A. Yeah, I believe that was
4 what caught my attention and makes me remember....

5 Q. Registrar, can you pull
6 up the next page as well, please, 81.

7 You respond and say, I'm good
8 with the sampling and testing. So that is part of
9 what he's suggesting Golder could do. And you
10 say, but he has to know we have to tender this
11 work, in respect of Mr. Wiley. And that's just
12 because that's -- for a project of this size, that
13 it's a requirement to tender; is that right?

14 A. I --

15 (Speaker overlap)

16 Q. -- a very good practice?

17 A. Yes, I was under the
18 impression that, you know, we would need to tender
19 this.

20 Q. At this point, at least
21 according to Dr. Uzarowski, he's provided you with
22 the oral results of all of the testing that he did
23 and the pavement evaluation at that meeting the
24 week before. Did you still want Dr. Uzarowski to
25 give you a report on the testing, or was his

1 presentation, and now his apparent agreement in
2 this e-mail that hot in-place was sufficient, was
3 that -- did you want a report from him, or was
4 sort of the things that had happened over the
5 course of that week sufficient for you to move
6 forward without a written report?

7 A. I don't know whether I
8 was, you know, pressing him for the written
9 report.

10 Q. I wasn't asking about
11 pressing. I just mean generally. Were you
12 expecting and did you anticipate getting a written
13 report? Did you need one and did you want one?

14 A. I likely needed one.

15 Q. Why would you need a
16 written report?

17 A. Well, if I was going to
18 go to council and explain that we were going to
19 adopt a new technology and there may be a delay in
20 delivering, then I would likely need all of the
21 requisite backup for that and that I could proceed
22 with, as well as the testing would have been
23 provided to any contractor so that they could rely
24 on our information. So that's typically any
25 geotechnical information we provide the contractor

1 when we're going forward from something like this.

2 So --

3 Q. Understood. Okay.

4 Paragraph 223. You e-mailed Mr. McGuire, who I
5 understand at this point was really taking the
6 lead on capital budget projects; is that right?

7 A. I believe this is after
8 the time that he is now leading asset management,
9 so that would be consistent with that.

10 Q. So you say:

11 "The attachment that's in
12 Susan's chart --" which is
13 just a chart of projects
14 "-- indicates a number of
15 projects that have not been
16 signed off for the capital
17 program, and without fairly
18 quick confirmation of scope
19 and sign off to design these,
20 outstanding projects are in
21 jeopardy of not being
22 delivered in 2019." (As read)

23 I'm not going to take you into
24 the chart, but I can tell you the Red Hill
25 resurfacing was listed as in the programming

1 stage. Did you have concerns in March of 2018
2 that without a very quick move to design, that
3 those projects, in particular the resurfacing, was
4 not going to happen in -- first in 2018?

5 A. I'm not sure that this
6 note infers that.

7 Q. I don't think it does,
8 and I'm sorry if I left you with the impression
9 that was my question. I meant generally by March,
10 were you of the view that the resurfacing project
11 for the Red Hill was not likely going to happen in
12 the summer of 2018?

13 A. By March, I don't know
14 whether I had any --

15 Q. You didn't --
16 (Speaker overlap)

17 A. -- real involvement in
18 that, in that I was looking towards the LRT and
19 leaving the discussion up to staff. I do -- I do
20 know what's behind this note, in that asset
21 management and design used to work together under
22 a single director, and hence any discrepancy or
23 discussion between the two was brought to me, and
24 now they are sort of pushing back and forth to
25 each other, if you don't get me this, I can't do

1 my job. So that's what this note is more about.

2 Q. I see. Registrar, can
3 you go to page 88, please. Can you also bring up
4 the next page, please, at the same time.
5 Apologies. Can you bring up 87 and 88, please.
6 Thank you.

7 So we are now in April. It's
8 getting close to your last day as a -- in your
9 role as director of engineering, which is May 25.
10 That last day is going to be announced on April
11 13th, so we're sort of right in that period of
12 time.

13 Did people know -- Mr. Andoga,
14 Mr. Becke, Mr. McGuire -- did they know that you
15 were going to be retiring before it was officially
16 announced?

17 A. I believe it was common
18 knowledge that I was destined for the LRT, but I
19 don't know -- I don't know that anyone knew what
20 the date was until we announced it. It was sort
21 of, okay, here's the date, now we -- you know,
22 this is what we can handle. It was announced,
23 so....

24 Q. Okay. Just taking you
25 through the bottom of 87, there's a note from Mr.

1 McGuire, and it has a number of points. And he on
2 the same day e-mailed Mr. Andoga asking for a
3 status update about the Red Hill repaving. And
4 Mr. Becke on April 23rd says:

5 "Overall Ludomir project with
6 Gary? Where is it at? Get
7 PO." (As read)

8 Is it fair to say as of this
9 point you're starting to -- they're starting to
10 take on the transitional matters with relation to
11 the RHVP repaving?

12 A. I believe that's the
13 case.

14 Q. Registrar, can you go to
15 OD9, page 10 and 11, please. Thank you.

16 In May, May 14, there's
17 notebooks from Dr. Uzarowski and from Mr. Becke at
18 paragraphs 13 and 14, and both of them reference
19 you at the top of -- a quarter down on 11, it
20 says:

21 "Gary, what is outstanding?
22 Breakdown for Mike. PSV
23 report inconclusive. MSCR."
24 (As read)

25 And then under Mr. Beck's

1 notes, it says "Gary work."

2 Do you recall having a meeting
3 with Dr. Uzarowski and Mr. Becke where you gave
4 them a download of things that were outstanding in
5 respect of repaving?

6 A. I can't say that I do,
7 no.

8 Q. Did you do any particular
9 transition in respect of the hot in-place
10 feasibility project or the Red Hill repaving
11 project more generally?

12 A. I can't recall, you know,
13 a hard stop, okay, here's everything I know. It
14 was more of a transition over time more. More and
15 more that Mike got up to speed and it's, okay, you
16 can run with this now, maybe. But I don't recall
17 a hard meeting that says here you go.

18 Q. Do you recall asking for
19 a signed final report from Golder in respect of
20 the 2017 pavement evaluation, that is, the British
21 pendulum, the polished stone value, the sand test,
22 before you left the City on May 25?

23 A. I don't know whether I
24 did or not. No, I don't.

25 Q. For the purposes of

1 transitioning knowledge about the Red Hill, did
2 you give anyone a copy of the Golder report, and
3 here I mean the seven page Golder report?

4 A. The seven-page Golder
5 report. Which --

6 Q. Yes, the first seven
7 pages of the Golder report, and then there's a
8 number of appendices, one of which is the
9 Tradewind report. I'm just talking about the
10 Golder content.

11 A. Oh, rather than all the
12 other appendices?

13 Q. Yeah.

14 A. Well, I didn't have them
15 separate from each other. They were all -- I
16 believe the only thing I had was the 2-inch-thick
17 binder type of thing that appended everything
18 together. I thought I cleaned everything -- I
19 know I cleaned everything out of my desk and off
20 the book shelf and went around to people, do you
21 need this, do you want this. If not, I'm going to
22 put it in the back, type of thing.

23 Q. I'm going to come back to
24 that more broadly. In particular, what did you do
25 with the bound copy of the Golder report, that is

1 the 120-page bound copy, as you were cleaning and
2 purging?

3 A. I -- I can't say for
4 absolute surety (ph) what I did or didn't do with
5 it.

6 Q. All right. Well, can you
7 tell me with any confidence what you did with it,
8 if not 100 percent?

9 A. No. It was just another
10 report that was on my shelf. So like I said
11 before, I either showed them to people or offered
12 them to people. If they thought they had an
13 interest, they would take a copy; if not, I would
14 put it in the back on the -- in the library.

15 Q. But you have no
16 recollection about what you did with the 2014
17 Golder report in particular?

18 A. No, I don't.

19 Q. Did you provide a copy of
20 the Tradewind report? So that's the copy, you
21 received it electronically separately, so it's
22 the -- I can't remember. I think it's 13 pages.
23 Did you provide that to anybody?

24 A. I don't recall what I did
25 with -- electronic copies typically went into

1 the --

2 Q. We'll get back to what
3 you do with the electronic copy. I just want to
4 know, did you give it to anybody?

5 A. I don't recall.

6 Q. Going back just for a
7 moment to lighting. Registrar, can you bring up
8 OD8, page 50, please. If you can call out 139.
9 Actually, can you call out 138 and 139 just for
10 some context.

11 Do you recall having a back
12 and forth with Ms. DiDomenico about retaining
13 documents relating to lighting in case the City
14 moved forward with opening up the EA? You'll see
15 it's more in 139 than 130, but just to refresh
16 your memory about it, this is in the context of an
17 e-mail regarding document destruction.

18 A. I do remember talking to
19 Jennifer about the management of files, ones that
20 may or may not be destroyed.

21 Q. Okay.

22 A. I didn't recall
23 specifically whether they were -- you know,
24 whether I had mentioned lighting or not but....

25 Q. Can you close this down.

1 I'm not going to take you to it, just for timing,
2 but in February of 2018 Mr. Field starts the
3 process to retain CIMA, which is finalized in
4 April of 2018, to do a study on lighting. Were
5 you involved -- stopping there.

6 The study that comes out of
7 the September 2016 request for lighting where you
8 get the capital funds. Were you involved in the
9 decision to retain a consultant?

10 A. I don't believe so,
11 because I don't have any recollection of anything
12 in that regard.

13 Q. Were you involved in the
14 decision to retain CIMA in particular?

15 A. I don't believe so. I
16 don't recall any discussions or meeting, you know,
17 Brian or anybody like that in that timeframe.

18 Q. Were you involved at all
19 in setting the scope of what the consultant would
20 do to respond to the numerous requests from public
21 works committee to investigate lighting?

22 A. I don't recall, but given
23 that Gord was now a director and in charge of that
24 section, it's unlikely I would be -- I would have
25 been involved in any regard.

1 Q. Thank you. Registrar,
2 can you go to OD9, page 153, please. Actually if
3 you can bring up 153 and 154.

4 Fast forward to December
5 of 2018. Mr. Malone prepared an executive summary
6 of the report that CIMA had done on lighting,
7 which we call in the overview document the RHVP
8 lighting study. And you'll see the executive
9 summary is excerpted.

10 And if you can call out,
11 Registrar, page 1 -- actually, before I turn to
12 any callouts, you'll see that the executive
13 summary sets out the findings of the study, but it
14 also has the subsets of what they did,
15 environmental studies review, a collision
16 analysis, illumination warrants, review of peer
17 facilities to the extent they could, lighting
18 system options, and a benefit-cost analysis.

19 You had said earlier that you
20 didn't think that the other CIMA reports were a
21 comprehensive, you know, sort of well-informed
22 view of lighting issues. Are these the kind of
23 topics that you would have expected to see?

24 Sorry, just for full
25 knowledge, on the next page there's a reference to

1 human factors assessment and environmental impact
2 of lighting. I'm not going to make the Registrar
3 move, but just so there's a few other things.

4 A. Well, if it includes the
5 environmental studies and the status of prior
6 approvals, then it's more fulsome than was done
7 before.

8 Q. Let's pull out that
9 environmental studies review. I'll give you a
10 moment to read it.

11 A. Okay.

12 Q. Do you believe that your
13 understanding or memory of the illumination
14 assessment undertaken during the original EA
15 process is consistent with CIMA's findings set out
16 here?

17 A. Well, this -- this isn't
18 a status of the EA process and the negotiations
19 and all of the decision-making that led to the
20 illumination decision. This is based on -- this
21 is based on the review of the environmental
22 studies that would or would not have taken place
23 on what was decided to be implemented.

24 Q. Thanks. You can close
25 this down. Registrar, can you go to OD9, page 12.

1 Can you call out 15 and 16, please.

2 This is on May 4th before your
3 last day as director on May 25, and Ms. Crawford
4 forwarded back an e-mail that she had received
5 from you in 2017 back to you copying Ms. Swayby.
6 As I say, I think it actually might be easier to
7 go into the document itself just so that it's
8 clear.

9 Registrar, can you -- leave
10 page 12 up. But if you can bring up HAM62249, and
11 if you can scroll down to image 2.

12 So you'll see from
13 August 2017 -- we talked about this yesterday --
14 "as requested, the testing was done in late 2103.
15 I received in early 2014," and that's the one
16 where you attach the Tradewind report. Registrar,
17 can you scroll to image 1.

18 And then May 4th you have the
19 back and forth, which we have in the opposite
20 order on page 12. I'm just going to close down
21 the HAM document and back to page 12, please.

22 So Ms. Crawford says -- can
23 you call out 15 and 16, please. Ms. Crawford says
24 in this e-mail to you, copying Ms Swayby, says:

25 "You may recall speaking to

1 Mr. Shillington and myself
2 last August. We're in the
3 process of preparing the
4 City's Affidavit of Documents
5 with respect to a litigation
6 matter involving a median
7 crossover on the LINC." (As
8 read)

9 Just stopping there. Do you
10 know Diana Swaby who Ms. Crawford copies?

11 A. I don't -- oh, Diana
12 Savos (ph)? Yes -- well, I know the name, yes.

13 Q. And you know she's in
14 risk, she works with John McLellan?

15 A. Yes.

16 Q. In the other
17 circumstances in which you assisted City lawyers
18 with litigation, had you been involved in the
19 process to prepare affidavits of documents?

20 A. We had sent them
21 documents that they were looking for.

22 Q. An Affidavit of Documents
23 is a particular form; it's an affidavit that
24 someone will swear to and say this is all the
25 documents that the City has. Have you ever been

1 involved in that process?

2 A. I believe I (sic) was in
3 regard to the -- the City legal challenge to the
4 Court of Appeal --

5 Q. You don't to have tell me
6 which one it was.

7 A. Yeah.

8 Q. I just want to understand
9 if when you saw the word "Affidavit of Documents,"
10 that phrase, if that would have meant anything to
11 you?

12 A. Probably not, no.

13 Q. Ms. Crawford goes on to
14 says:

15 "Plaintiff's counsel has
16 specifically asked us about
17 friction testing. We will
18 likely need to produce a copy
19 of this report in the City's
20 Affidavit of Documents." (As
21 read)

22 So stopping there. Did you
23 understand Ms. Crawford's comments in this
24 paragraph to mean that Shillingtons was likely
25 going to have to provide a copy of the Tradewind

1 report that you had sent to her to the plaintiff's
2 counsel?

3 A. Yeah, sure.

4 Q. And she asks for
5 confirmation if at any time this report was
6 presented to council, and then you respond 15
7 minutes later and you say:

8 "No, this report was never
9 reported to council."

10 So a few questions on that.
11 Just going back to Diana.

12 At the time she went by Diana
13 Swaby. Did you have any discussions with her or
14 with anyone else internal to legal or risk after
15 this e-mail exchange with Ms. Crawford?

16 A. I don't believe so.

17 Q. Did you have any
18 discussions with Ms. Crawford after this e-mail
19 exchange?

20 A. Not that I recall, no.

21 Q. You don't include any
22 caveats in your response about any concerns about
23 the usefulness or the value of the Tradewind
24 report, the ones that you mentioned in the last
25 few days here with the inquiry. Didn't you think

1 that the analysis of -- your analysis of the
2 apparent deficiencies in the Tradewind report
3 would be relevant and helpful to the City's
4 lawyers?

5 A. I thought it was a
6 straightforward question, did you write a report
7 to council with regard to the Tradewind report,
8 and the answer was no. That's -- that was the
9 information I was asked, so I hope that I
10 provided, you know, what was needed.

11 Q. So you weren't going to
12 provide anything extra, context, that sort of
13 thing? Just answer the question (skipped audio).

14 A. I'm used to being asked,
15 you know, directly what the information you're
16 looking for. So I thought I provided the answer
17 to the question they had asked.

18 Q. Well, over the course of
19 the three days, every time I've asked you about
20 the Tradewind report, you have given your views
21 about your concerns with it, which just doesn't
22 seem to square with, in talking to external legal
23 team, that you wouldn't raise that you had issues
24 with the report?

25 MR. LEDERMAN: I'm sorry,

1 Mr. Commissioner, I'm not sure how that question
2 is a fair characterization in light of the earlier
3 e-mail exchange that Ms. Lawrence had previously
4 asked Mr. Moore about in 2017 regarding his
5 exchange with Shillingtons around the Tradewind
6 report.

7 MS. LAWRENCE: I'm sorry,
8 Mr. Commissioner, I don't understand Mr.
9 Lederman's objection.

10 JUSTICE WILTON-SIEGEL: I'm
11 having trouble understanding. What is it you
12 think was expressed in respect of that
13 correspondence, Mr. Lederman?

14 MR. LEDERMAN: As I understood
15 the evidence, I believe it was yesterday, Ms.
16 Lawrence put to Mr. Moore an exchange of
17 correspondence where Mr. Moore testified as to the
18 discussions that he had with Ms. Crawford and
19 Shillingtons about the provision and the context
20 in which the Tradewind report was obtained. So to
21 suggest that there was no discussion about that in
22 his response now to -- to Shillingtons in saying,
23 no, this report was never reported to council,
24 fails to take into account the fact that there was
25 a previous discussion relating to the context of

1 that report which she took Mr. Moore to yesterday.

2 JUSTICE WILTON-SIEGEL: I
3 think the specific question was with respect to
4 identifying or stating his limitations with
5 respect to that report. I don't recall, but could
6 well be wrong, that those were expressed to Ms.
7 Crawford in August 2017. Are you suggesting that
8 they were?

9 MR. LEDERMAN: I'm suggesting
10 that in fairness to the witness, if he's being
11 asked a question that is different than the
12 context relating to that discussion that he had
13 with Ms. Crawford back in August of 2017, he
14 should be brought to that communication, because
15 the suggestion in Ms. Lawrence's question to Mr.
16 Moore is that he didn't provide any context or
17 further elaboration on his understanding of the
18 Tradewind report or any of its limitations.

19 JUSTICE WILTON-SIEGEL: Well,
20 specifically we're talking about limitations here,
21 not context. So, perhaps we might proceed in this
22 way rather than get bogged down at this point.
23 Can we set this aside and have an opportunity to
24 look at this during the break and then return to
25 it afterwards? I would like to refresh my memory

1 by reviewing my notes as to what was actually
2 stated at that time.

3 MS. LAWRENCE: Certainly.
4 Commissioner, I'm content to do that. I have a
5 fairly clear recollection that -- I have a clear
6 recollection that Mr. Moore did not have a clear
7 recollection about that, but of course we can all
8 go back and look at the transcripts from yesterday
9 and I can pick this up after the break.

10 JUSTICE WILTON-SIEGEL: Good.
11 I think that's what we should do.

12 BY MS. LAWRENCE:

13 Q. You didn't provide the
14 MTO 2007 Red Hill friction testing results to Ms.
15 Crawford. Why didn't you provide those to her?

16 A. I don't know now.

17 Q. In fairness, this is a
18 median crossover collision on the LINC, but you
19 also didn't provide the old LINC testing either.
20 Had you forgotten about that at this point?

21 A. I thought I was providing
22 what was being asked for. I believe the original
23 one was the -- they were -- had referred to the
24 testing we had done that I had -- that was
25 reported in the paper and they were made aware of

1 that, which was the Golder and Tradewind report,
2 so I -- I didn't --

3 Q. You didn't turn your mind
4 to the LINC -- to the LINC testing, the original
5 testing?

6 A. I don't know what
7 you're -- was that the original testing?

8 Q. Yeah. (Skipped audio).

9 A. Yeah, but I guess we
10 resurfaced it in 2011 so....

11 Q. Okay. That's fair.

12 Thank you.

13 Turning to a topic that you
14 had -- that I think you had started giving a bit
15 of evidence on, how you went about cleaning out
16 your office in advance of May 25.

17 I asked you some questions
18 about transition in respect of the Red Hill.
19 Apart from that, did you prepare a list of
20 projects for transition for your non-LRT files so
21 that they could be distributed to others in
22 engineering services?

23 A. I'm not sure what I did
24 with those, whether I had reviewed them --

25 Q. My question was, did you

1 create a list of projects?

2 A. I don't know.

3 Q. Registrar, you can close
4 this down. You can close down the overview
5 document as well.

6 Did you have a meeting with
7 Mr. McGuire to hand off work to him? Actually,
8 let me rephrase that. Did you understand that Mr.
9 McGuire was going to be taking on your roles and
10 responsibilities after June 1?

11 A. I don't believe that I
12 was aware, no.

13 Q. Did you do any transition
14 memos or detailed e-mails that explained the
15 status of your projects?

16 A. I don't believe -- I -- I
17 don't believe I did. I don't recall specifically,
18 no.

19 Q. So you said earlier in
20 respect of the hard copy documents that were on
21 your bookshelf -- at the very beginning of your
22 evidence on Friday, you said that you thought most
23 of the documents on the bookshelf in your office
24 were duplicates, not originals. Do you recall as
25 you were cleaning out your office if you found any

1 original documents that related to the Red Hill on
2 your bookshelf?

3 A. I don't believe there was
4 any originals.

5 Q. I ask because I
6 anticipate that -- I didn't mean to interrupt you.

7 A. No, I'm trying -- usually
8 there was a sticker, you know, that said "copy" on
9 it type of thing, and I don't -- I don't recall
10 seeing anything that had original or an indication
11 that it was the original.

12 Q. I anticipate that
13 Ms. Cameron, your then assistant, may provide
14 evidence to the inquiry that you handed her a
15 stack of documents, you said they were originals
16 for the Red Hill, and you told her not to destroy
17 them and to put them in a safe place. Do you
18 recall that?

19 A. I know I had some of my
20 files from correspondence with regard to the
21 lawsuit and that type of thing, but I don't -- I
22 don't recall any other documents, like, you know,
23 reports or that type of thing.

24 Q. Drawings?

25 A. Drawings?

1 Q. She said it was like a
2 big stack of documents, just loose, not in a box,
3 not in -- I mean, there may have been some bound
4 documents in there, but it wasn't some sort of
5 container. Does that refresh your memory at all?
6 Apologies. That's what I anticipate her evidence
7 to be. Does that assist your memory at all?

8 A. It doesn't, I'm sorry.

9 Q. In terms of the
10 non-original documents, the ones that have the
11 stickers with the copies, do you recall what you
12 did with any Red Hill-related documents? Before I
13 ask you to answer, you said you went around and
14 you handed things out, you put item in the
15 bookshelf. Specifically for Red Hill, who did you
16 go to, who did you give things to, and what did
17 you give them?

18 A. Well, the Red Hill
19 reports that I'm referring to are the ones that
20 related to the approvals, the design and the
21 construction, so they were at that time 11 years
22 old, and they were interest documents, so it's
23 likely I simply put them back on the reference
24 library shelf.

25 Q. Do you have a specific

1 recollection of doing that?

2 A. I recall taking documents
3 back or reports back there and putting them on the
4 shelf. I don't know which ones they were or
5 whether they included other sets of copies of EAs.

6 Q. I already asked you this,
7 but just so that the record is clear. Do you
8 recall when you were cleaning your bookshelf if
9 you came across a hard copy of the bound Golder
10 report, of which the Tradewind report is an
11 appendix?

12 A. Specifically that report,
13 no, I don't.

14 Q. If you had come across
15 it, is there someone or some people within
16 engineering services that you would have given
17 that document to?

18 A. I would have likely
19 offered it to asset management and/or our Geotech
20 rep, Tyler.

21 Q. Do you recall offering it
22 to either anyone in asset management or to
23 Mr. Renaud?

24 A. No, I don't -- again, I
25 had a stack of books in my arms and went around

1 the office, so I don't recall who I offered what
2 to.

3 Q. Did you expect that you
4 were going to have the same Hamilton.ca e-mail
5 after you moved into the LRT role as you had as
6 director?

7 A. I don't know whether I
8 had that expectation or not. I mean, it was -- we
9 did do a lot of administrative things when I got
10 back, so --

11 Q. I guess my question is,
12 though, like, did you have a different e-mail?

13 A. I think I had the same --
14 I had the same e-mail, but not with the same
15 permissions or attached to the same drives as -- I
16 had to get attached to the LRT drive and detached
17 from the other drives that were within the office
18 and that type thing.

19 Q. I see. Did you continue
20 to have access to the same M drive before and
21 after you changed positions?

22 A. As I understand, the M
23 drive is each person's own drive attached to their
24 computer, so it just doesn't reside on your
25 computer. It's your personal drive that resides

1 on the cloud or on the servers of information
2 services.

3 Q. So that's a helpful
4 reminder about what the M drive is. Did you have
5 access to the M drive with any content that you
6 left there when you were a director? Could you go
7 back in -- when you started on your first day for
8 LRT, did you have access to the stuff that was in
9 the M drive?

10 A. I didn't have anything in
11 the M -- I emptied everything out with regard to
12 my previous position.

13 Q. In terms of your in-box,
14 we talked last time about how you had a whole
15 filing system for reference materials. Did that
16 filing system be maintained between one or the
17 other, or did you also expect that you would not
18 have access and so you dealt with the electronic
19 documents in that folder system?

20 A. I purged that system. I
21 had no need for anything after I left. The fact
22 that I was coming back as a contract position in
23 LRT, I mean, it was as if I was leaving entirely,
24 so that I would never have it back again.

25 Q. So you came back with

1 in-box zero and nothing in your folder system?

2 A. Well, the in-box wasn't
3 empty.

4 Q. By the time you got back
5 on June 1, it wasn't empty?

6 A. Because people kept --
7 you know, not knowing that I was gone, and so I
8 had to, you know, forward things and tell people,
9 no, no, I don't do that any more, I'm not here,
10 this is who you contact now. Or I would simply
11 put Diana's name on them and forward them to her
12 for, you know, direction to whomever.

13 Q. Well, that's unfortunate,
14 not even a day of the satisfaction of in-box zero.

15 A. Yeah.

16 Q. But when you left on your
17 last day on May 25, you had nothing in your in-box
18 in terms of e-mails?

19 A. I believe so, unless it
20 was LRT related.

21 Q. Sure. Of course.

22 A. May have carried forward
23 LRT-related files and been receiving LRT-related
24 e-mails at that time. So my in-box would have
25 been populated with LRT-related stuff, but nothing

1 else.

2 Q. Did you have access to
3 the M drive after you moved to the LRT, to your
4 knowledge?

5 A. I don't know. I couldn't
6 say. I don't know that I actively sought it out,
7 so I wouldn't know.

8 Q. You say you don't know if
9 you actively sought it out. I think the inquiry
10 will receive evidence, I anticipate, that you
11 actually did continue to have access to the M
12 drive until February 2019. So you said, I don't
13 know that I actively sought it out. Casting your
14 mind back between May or June of 2018 and February
15 of 2019, did you have any -- did you make any
16 attempts to access the M drive?

17 A. We were dealing with
18 asset management as the LRT, and I was dealing
19 with Chris McCafferty, so it's possible that I
20 used the M drive to transfer files, large format
21 files.

22 Q. Okay.

23 A. At that time. Something
24 it would have been used for.

25 Q. Did you have ongoing

1 access to ProjectWise after you left your position
2 as director of engineering and when you started
3 with the LRT?

4 A. Again, I don't -- I don't
5 know.

6 Q. Did LRT have its own
7 folder in ProjectWise?

8 A. I don't know. I don't
9 recall how we handled those files.

10 Q. Did you have ongoing
11 access to the director's office, folder and
12 ProjectWise after June 1, 2018?

13 A. I wouldn't expect so.

14 Q. Did you try to access any
15 documents from that folder?

16 A. There would be a record
17 if I did, but I don't recall.

18 Q. I'm asking for your
19 memory. You don't recall?

20 A. No, I don't recall.

21 Q. Did you delete any
22 documents from the director's office folder after
23 June 1, 2018?

24 A. I don't recall whether I
25 went there, so no, I don't -- I don't know why I

1 would.

2 Q. I'm just going to ask the
3 questions and get the answers.

4 A. Yeah.

5 Q. Did you move any
6 documents from that folder?

7 A. I don't know.

8 Q. Did you instruct anyone
9 to delete or move any documents from the
10 director's office folder?

11 A. I don't know. I don't
12 know why I would.

13 Q. Okay. Your M drive was
14 archived. I anticipate the inquiry will hear
15 evidence about that. It was -- try to finish my
16 sentence. Your M drive was archived on May 24th,
17 2018. I anticipate the inquiry will receive
18 evidence about that. Did you take steps to
19 archive your M drive on that day?

20 A. Given that it was empty
21 and it only had LRT, I don't believe so. I
22 don't -- I don't recall. It wasn't something I
23 did routinely. I didn't have success in previous
24 attempts to try and move stuff to a PST file and
25 be able to recall it.

1 Q. This is a pretty big
2 transition. Did you ask anyone to help you with
3 it as you were in your last day or two as
4 director, to archive your M drive?

5 A. I believed it was cleaned
6 out of anything public works related.

7 Q. Registrar, can you bring
8 up OD9, page 58. Registrar, can you pull out 135,
9 please. It's not sufficient context. Registrar,
10 can you close that out, and you can pull up 134
11 and 135 together.

12 So ProjectWise -- pardon me --
13 the City has provided a copy of Dr. Uzarowski's
14 December 17, 2015 e-mail to you in which he
15 provides you with a copy of the Tradewind report,
16 so this is the second time he provides you with a
17 copy of the Tradewind report, and this time it's
18 just the Tradewind report. You'll recall lots of
19 discussion about that, that period of time, in
20 this e-mail, right?

21 A. Okay.

22 Q. Do you remember this back
23 and forth? This e-mail is familiar to you from
24 yesterday?

25 A. I believe so, yes.

1 Q. At 1:30 -- at
2 paragraph 135, the ProjectWise information is that
3 this e-mail, which included the attachment which
4 was the Tradewind report, was saved within a
5 ProjectWise folder and the folder path was
6 "director's office", and then the next folder path
7 was "RHV background and audit 2018", and then the
8 next folder path is "Red Hill correspondence
9 former director", the next one is "pavements", and
10 then the next one is the document.

11 So just casting your mind
12 back. Did you create a folder called "RHVP
13 background and audit 2018" in which you put
14 information as you were purging?

15 A. I don't believe so.

16 Q. Do you know --

17 A. Background and audit.

18 I....

19 Q. Did you create any of
20 those folders in or about May of 2018 for the
21 purpose of putting background information into
22 ProjectWise?

23 A. No. Mine tended to be
24 very rudimentary or simple, you know,
25 correspondence, design, construction, legal type

1 of things. These are -- seems to be quite a tree.

2 Q. Yeah, I presume the tree
3 is folders that you click through and each of the
4 sub folder?

5 A. Yeah.

6 Q. I can tell you absolutely
7 that you saved this in the pavements folder, and
8 so my question is really narrow. Did you create
9 all of those other folders to put other documents
10 in?

11 A. I --

12 Q. Don't recall either way?

13 A. I don't recall either
14 way, but it doesn't -- I don't believe that that's
15 something I would have done.

16 Q. Do you remember making a
17 folder that was to deal with a 2018 audit?

18 A. No, I don't know that I
19 was aware of any 2018 audit but....

20 Q. Why did you save this
21 document into ProjectWise?

22 A. Well, it's the Tradewind
23 report, right?

24 Q. Yeah, it is.

25 A. So it's applicable to

1 the -- to all the Red Hill information.

2 Q. Okay. Did you tell
3 anyone that you had saved this e-mail with this
4 attachment into ProjectWise after you did so?

5 A. I just put everything in
6 there. There was a whole -- I believe there was
7 an extensive list of documents and e-mails and
8 correspondence that I put in that file, so I don't
9 believe I -- I don't recall reviewing it with
10 anyone.

11 Q. Why didn't you save it
12 here in this file path in the director's office
13 folder instead of a folder that related to the Red
14 Hill resurfacing?

15 A. I don't know that I did.

16 Q. Well, I can tell you, we
17 have the audit trail, it says that this is where
18 it was saved.

19 A. Right.

20 Q. And my question is, do
21 you recall saving it in an RHVP folder within
22 ProjectWise that was housing information about the
23 Red Hill resurfacing project? Is that your
24 evidence?

25 A. I don't --

1 Q. Is that your evidence?

2 A. I don't -- I don't recall
3 what the trees were that were created within the
4 director's folder and where I might have put it
5 but....

6 Q. The director's office
7 folder can only be accessed by people with
8 permissions to that folder, and you told me on
9 Friday morning that you thought you understood
10 that at the time. Why did you save documents in
11 the director's office folder instead of in
12 project-specific folders within ProjectWise?

13 A. There weren't any
14 project-specific folders within ProjectWise that
15 related to this. They were capital works. This
16 is general information, background,
17 correspondence, specialized designs or approvals
18 or whatever they were that related to the Red Hill
19 specifically.

20 Q. So you chose to save it
21 in a folder that very few people had access to
22 instead of saving it as a sub folder within the
23 Red Hill restructuring project because it was
24 background?

25 A. It was background.

1 Q. I was asking about the
2 reason that you saved it here instead of in the
3 resurfacing project folder.

4 A. The Tradewind report had
5 nothing to do with the resurfacing project.

6 Q. Okay. This audit trail
7 shows the e-mail that Dr. Uzarowski sent to you in
8 December of 2015. Do you recall whether or not
9 you saved a copy of the initial e-mail that
10 Dr. Uzarowski had sent you that just had the MTO
11 chart and then the reference to the Tradewind
12 averages? I can take you back to that document if
13 you want, but I think that you know what I mean.

14 A. I know the one you mean.
15 I assume I had a copy of it somewhere because I
16 believe I sent it back to Ludomir at some point in
17 time and I shared it with a number of other
18 people. So I don't recall specifically where or
19 how, but it's likely that I did have a copy of
20 that e-mail.

21 Q. If you had a copy, would
22 you have saved it?

23 A. Yes.

24 Q. You said, I shared it
25 with a number other people. That is that e-mail

1 from Ludomir. So we have Tom Dziedziejka, Brian
2 Malone. Anybody else?

3 A. I believe that's the
4 information I sent Brian Malone.

5 Q. Yeah. Tom Dziedziejka,
6 Brian Malone. Anybody else?

7 A. No.

8 Q. If you had a copy --
9 pardon me. The next in that chain. So you got
10 the initial one with the chart that you sent to
11 Tom and then much later you sent to Brian. You
12 have the actual -- the e-mail where Ludomir sends
13 you the large PDF with the Golder report and
14 draft. Do you recall saving that e-mail and
15 attachment into ProjectWise?

16 A. Specifically, no, I
17 don't.

18 Q. Do you remember saving
19 that electronic copy of the Golder report into
20 ProjectWise?

21 A. No, I don't.

22 Q. You don't recall either
23 way for those two?

24 A. Either way. If I had it,
25 it got saved.

1 Q. To your knowledge, did
2 you save all of the documents that we've just gone
3 through? Did you save them all in the same
4 folder?

5 A. I don't know. I couldn't
6 say. I don't recall the tree or the type of
7 context for the correspondence. I know I had a
8 quite extensive file. A lot of it was legal,
9 related to a number of challenges and things that
10 I had saved that I thought were, you know,
11 important background. So how I divvied them up
12 and saved them, I couldn't tell you.

13 Q. Do you recall actually
14 going in and creating on your own folders that you
15 were going to use within ProjectWise, or did you
16 have to have someone assist you to create the
17 folders?

18 A. I believe it was a little
19 bit of both. I think initially I had to have help
20 creating those folders, and I don't know whether I
21 had permissions at some point in time, but I think
22 eventually it got so that I could create some
23 folders or sub folders.

24 Q. I'm sorry, my question
25 wasn't clear. I meant as you're going through the

1 purging process in May of 2018, did you create
2 folders specifically to be able to file things
3 that you wanted to file into ProjectWise through
4 that -- while you were cleaning up your in-box?

5 A. I have no idea. I don't
6 recall. I don't recall specific actions or, you
7 know, the tree or files I may have created or
8 placed. I don't.

9 Q. Do you recall if you
10 needed any help from anybody in terms of saving
11 the documents you wanted to save from your in-box
12 into ProjectWise in May of 2018?

13 A. I don't specifically
14 recall asking anyone for help.

15 Q. And specifically can you
16 recall whether or not you asked Charlie
17 Lauricella?

18 A. I don't recall. If I
19 needed help, Charlie would have been one of the
20 people that I approached, but I don't -- I don't
21 recall.

22 Q. Okay. Registrar, can you
23 close this down, and can you go to page 15 of OD9,
24 please. If you can pull up 23 to 25.

25 This is on your very last day,

1 May 25. Ms. O'Reilly from the Spectator e-mailed
2 you and said she was looking for an update on the
3 asphalt testing on the RHVP and what's happening
4 with the plans to shave and pave, and you forward
5 it to Ms. Graham and you say, "I'll let you run
6 with this." And Ms. Graham responds to you, "Do
7 you know who has the intel?"

8 And then it gets forwarded
9 over to Mr. Oddi.

10 Do you remember providing
11 Ms. Graham with any specific response to
12 Ms. O'Reilly's request for looking -- on looking
13 for an asphalt testing update?

14 A. No, I don't. I think I
15 understood -- she was aware -- I recall that she
16 was aware, and she had asked me before about the
17 PSV testing that was sent to Ireland and its
18 relationship to the shave and pave, so....

19 Q. You can't recall if you
20 responded to her?

21 (Speaker overlap)

22 Q. There's no e-mail. You
23 can't recall if you provided Ms. Graham with any
24 specific response?

25 A. I may have walked around

1 the corner and given her additional information,
2 but I don't recall.

3 Q. When you moved to the LRT
4 project, is it correct that you continued to work
5 in the same building on the same floor as your
6 office?

7 A. That's correct.

8 Q. The office where the
9 director's office was situated?

10 A. Yeah, I was down the
11 other end of the office.

12 Q. Did you still field
13 questions from staff and engineering services when
14 they were looking for background information they
15 thought you might have?

16 A. I was there. If someone
17 stuck their head in the door and asked me a
18 question I knew the answer to, then I don't know
19 why I wouldn't have provided that assistance, but
20 I don't recall any specific things.

21 Q. From June 1, 2018, you
22 were not working on advancing any of the
23 engineering services projects; is that right?

24 A. No, that's correct.

25 Q. In any discussions that

1 you had with anyone in engineering services who
2 poked their head in, did you tell any City
3 employee that Golder had prepared a report for you
4 in 2014?

5 A. I don't recall -- I don't
6 recall any question in that regard, so no, I don't
7 believe so. Not that I recall.

8 Q. Did you ever tell any
9 city employee that there was a report authored by
10 Tradewind in 2014 in ProjectWise?

11 A. No, but there was
12 hundreds of stuff in ProjectWise, so I don't know
13 why I would pick that to simply say, hey, oh, by
14 the way there's this.

15 Q. Well, I don't know
16 either. I'm asking, was there any context to any
17 discussion that led you to tell any City employee,
18 after you were working on the LRT, that there was
19 a report authored by Tradewind from 2014 in
20 ProjectWise?

21 A. I wasn't aware of any
22 conversation that would have precipitated that
23 type of information, not that I recall.

24 MS. LAWRENCE: Thank you.
25 Commissioner, I see it is 11:34, and I suggest

1 that we take our morning break.

2 JUSTICE WILTON-SIEGEL: Okay.

3 So we'll return at 10 to 12.

4 MS. LAWRENCE: Thank you.

5 --- Recess taken at 11:34 a.m.

6 --- Upon resuming at 11:50 a.m.

7 MS. LAWRENCE: Commissioner,
8 may I proceed, or did you want deal with Mr.
9 Lederman's objection?

10 JUSTICE WILTON-SIEGEL: Yes, I
11 wanted to deal with the question that Mr. Lederman
12 raised. Mr. Lederman, is there anything that you
13 wish to bring to my attention after reviewing your
14 notes?

15 MR. LEDERMAN: Well, I thought
16 it was that Ms. Lawrence was going to go back over
17 the testimony from yesterday to address that
18 question. I think it may have been the way in
19 which the question was put to Mr. Moore which
20 implied that there had been no other discussion of
21 his views about the Tradewind report when he spoke
22 with -- or when he sent that information to
23 Shillington's in 2018. It may be a matter of the
24 way the question was framed that had that
25 implication.

1 JUSTICE WILTON-SIEGEL: Well,
2 I think the implication was, as you suggest, that
3 this matter of limitations to the Tradewind report
4 was not discussed with Shillingtons in August
5 of 2017. That's certainly the way I understood
6 your objection. I think that's what you're
7 reiterating.

8 MR. LEDERMAN: Yes.

9 JUSTICE WILTON-SIEGEL: I've
10 had a chance to read my notes, which are fairly
11 extensive.

12 My notes are, first of all,
13 that Mr. Moore does not remember anything of that
14 conversation, but he was taken through notes of
15 Ms. Crawford which dealt with a certain number of
16 specific matters, but those did not include any
17 views of Mr. Moore on limitations of the Tradewind
18 report.

19 So the bottom line is that it
20 does not appear that there was any discussion or
21 any mention by Mr. Moore of any limitations with
22 respect to the use of the Tradewind report in his
23 conversation on August -- in August 30th I guess
24 it is -- sorry, August 15th with Ms. Crawford. So
25 on that basis, I think the question can be put in

1 the manner in which it was put.

2 MR. LEDERMAN: Well, I think
3 it's a matter -- I think that's a fair summary of
4 the discussion, but those notes that Mr. Moore was
5 taken to of Ms. Crawford's provide additional
6 information, including a reference to I believe
7 the British standard, or UK standard, which was
8 obviously part of the discussion that Mr. Moore
9 purportedly had with Ms. Crawford at that time.

10 JUSTICE WILTON-SIEGEL: Now
11 you are into two things. One, I've rendered a
12 ruling and I don't propose to adjudicate an
13 appeal. Secondly, I think what you're now
14 suggesting is in the nature of inference, and if
15 you wish to make that argument at some later stage
16 when it's more appropriate, by all means.

17 MR. LEDERMAN: No, no, I
18 apologize, Mr. Commissioner. I'm certainly not
19 seeking an appeal of your ruling. I wanted to
20 clarify what I was asking Ms. Lawrence to do,
21 which was to put those notes back in front of Mr.
22 Moore.

23 JUSTICE WILTON-SIEGEL: Well,
24 I think that the question can be put in the manner
25 in which it was put. I'll leave it to Mr. Moore

1 to respond.

2 MR. LEDERMAN: Very well.

3 BY MS. LAWRENCE:

4 Q. Thank you.

5 Mr. Moore, I'm going to put up
6 OD on page 12 for you. Registrar, if you could
7 put that up. And at 15 and 16, that's what we
8 were looking at. This is the May 2018 discussion,
9 and Ms. Crawford asked for confirmation if this
10 report was presented to council, and you reply,
11 no, this report was never reported to council. My
12 question before the break was about providing
13 information to her about your views of the
14 deficiencies in the Tradewind report.

15 So I'm going to ask my
16 question slightly differently than I did before.

17 In May of 2018, why didn't you
18 provide specific information to Ms. Crawford about
19 the deficiencies that you saw in respect of the --
20 you said the UK standard, to the City's external
21 legal team?

22 A. Other than the
23 information that's presented in front of me here,
24 I don't -- I don't recall the discussion, but I
25 believe I responded in a fashion to the question

1 that was simply asked.

2 Q. Okay. I think I hear you
3 saying that you answered the question that was
4 asked, and certainly it appears from this e-mail
5 exchange that you did ask (sic) the question.
6 But why didn't you go above and beyond that, given
7 the evidence that you have provided to the
8 inquiry, that for years you had a problem, you had
9 a concern about the deficiencies in the Tradewind
10 report that Dr. Uzarowski was asked to review it
11 and never got back to you on? Why didn't you
12 raise that with -- why didn't you put that context
13 to the City's external legal counsel?

14 A. This wasn't -- as far as
15 I knew at that time, the discussion had been held.
16 This was a question -- a follow-up question: Did
17 anyone -- did you send this to counsel. It wasn't
18 a discussion as I understand, but I don't recall
19 any details of the discussion. Why would I
20 provide it when I wasn't asked?

21 Q. I didn't mean to
22 interrupt you, Mr. Moore.

23 Just so I understand your
24 response here. So you said it wasn't a discussion
25 as I understand -- pardon me -- as far as I knew

1 at the time, this session had been held. You're
2 referencing what Mr. Lederman was just talking
3 about, is that -- that there was some discussion
4 in 2017 --

5 A. In our view yesterday --
6 sorry.

7 Q. The discussion in 2017,
8 are you suggesting now that you did provide Ms.
9 Crawford with a view of your view of the
10 deficiencies in the Tradewind report when you
11 spoke to her in 2017? Is that your evidence now?

12 A. I don't know now what I
13 knew then in my response to her in this regard.

14 Q. Let's take it out of
15 timing. Why didn't in 2017 or 2018 set out an
16 e-mail in which you said, I have some real
17 concerns about this investigatory standard; if
18 you're going to use this in an Affidavit of
19 Documents or in any litigation, you should really
20 understand that I don't think that this report is
21 worth the paper it's written on? Why didn't you
22 provide that information to external legal
23 counsel?

24 A. I don't know that I
25 didn't.

1 Q. And do you agree with me
2 that that would be a very helpful bit of context
3 for external legal counsel to have?

4 A. I don't know. I'm not
5 purporting to be legal counsel on what was useful
6 to them or not. They usually ask me for what they
7 needed.

8 Q. Thank you, Mr. Moore.
9 Registrar, can you go to
10 page 33 of OD9, please. Can you pull up 80 and
11 81.

12 In July of 2018, Mr. McGuire
13 sent you an invitation, along with Ms. Graham, and
14 Ms. Cameron sent an e-mail to you in response --
15 Ms. Cameron your former assistant, now Mr.
16 McGuire's assistant -- saying:

17 "Yasmin needs this meeting to
18 take place tomorrow morning,
19 and this seems to be the only
20 time you're all available."

21 (As read)

22 Can you close out that callout
23 and go to page 33 and 34, please.

24 The next day Mr. McGuire --
25 pardon me. The next day the Spectator publishes

1 an article from Ms. O'Reilly in which Mr. McGuire
2 is quoted, and Mr. McGuire was in fact interviewed
3 on that day. Do you recall having a meeting with
4 Mr. McGuire and Ms. Graham in order for you to
5 provide some context for Mr. McGuire in advance of
6 this interview?

7 A. No, I'm afraid I don't.

8 Q. Five paragraphs up from
9 the bottom on page 34, paragraph 82, can you call
10 that out, Registrar, "McGuire said."

11 So Mr. McGuire is quoted as
12 saying:

13 "Those results came back
14 inconclusive, but the City
15 believes hot in-place is
16 possible." (As read)
17 Registrar, if you can close
18 that out.

19 This is -- those test results
20 is in reference I think to the paragraph before
21 which references smaller samples taken at last
22 December, which would have been in December 2017.

23 Did you provide Mr. McGuire
24 with the information that is contained in this
25 quote, and specifically that the results from

1 December of 2017 had come back inconclusive?

2 A. I don't believe so, but I
3 don't -- I don't recall specifically one way or
4 the other. I don't know why Gord would come to me
5 for that type of information but....

6 Q. Well, he clearly came to
7 you. He sent you this calendar appointment with
8 Ms. Graham, so he was looking to you. So leaving
9 aside why he came to you. In a meeting did you
10 provide information about the December 2017
11 results?

12 A. I don't believe so, but I
13 don't recall specifically.

14 Q. Okay. Registrar, can you
15 bring up page 66 of this document, please. I'm
16 sorry, I don't think my reference is correct.
17 Give me a moment. Sorry, 61, please. And if you
18 can bring up 61 and 62 at the same time.

19 In August of 2018 you're still
20 working on the same floor in the same building as
21 the engineering services group, right?

22 A. I'm sorry, at what date?

23 Q. August of 2018.

24 A. I believe so, yes.

25 Q. At that time did any of

1 your former colleagues from engineering services
2 tell you that after you moved to the LRT, audit
3 services was looking into perpetual pavement as
4 part of an audit on pavement?

5 A. I believe I was aware
6 that audit was doing a review of pavements in
7 general, but I don't recall any other specifics
8 from that.

9 Q. Did you come to learn
10 over time that that audit in fact was -- also
11 encompassed friction testing issues?

12 A. I recall audit came in to
13 see me, but I don't --

14 Q. My question -- I think
15 you're right that you did meet with folks from
16 audit services in January of 2019, but more
17 specifically at the time in 2018, did you -- so
18 not in the lead-up to the disclosure of the
19 Tradewind report but months before that, did you
20 come to learn that audit services was looking into
21 friction testing as part of one of its audits
22 around pavement?

23 A. I don't believe so. I
24 don't -- other than I knew they were doing
25 something, I don't believe I was aware of any of

1 their scope of work.

2 Q. Do you recall who told
3 you that they were doing -- that they were doing
4 an audit in respect of pavement?

5 A. I don't -- I don't
6 recall. I don't recall who told me.

7 Q. Okay. Registrar, can you
8 bring up 138 and 139, please. If you can call out
9 332 on both those pages.

10 These are e-mail exchanges
11 between Mr. Becke and Dr. Uzarowski in respect of
12 setting up a call in respect of some pavement
13 specifications -- or pavement sample test reports,
14 pardon me. And Mr. Becke says -- Dr. Uzarowski at
15 the top of the right-hand callout says:

16 "I'm planning to come to
17 Hamilton at the end of the
18 week to meet with you, Gary
19 and Tyler. If it can wait,
20 I'll bring the reports with
21 me. Let me know." (As read)

22 And then Mr. Becke says:

23 "I hope you're feeling
24 better." He'd been ill.

25 He says:

1 "Gary and I are away the rest
2 of the week. We're both at an
3 MEA conference and I'm
4 presenting." (As read)
5 Just stopping there. Were you
6 a board member of the municipal --

7 A. Engineers association.

8 Q. -- association of
9 Ontario?

10 A. Yes.

11 Q. So that Gary there is
12 referencing you?

13 A. Most likely.

14 Q. At the top it says:
15 "I'm planning to come to
16 Hamilton at the end of this
17 week to meet with you, Gary
18 and Tyler."

19 Do you recall any plans in
20 place for Dr. Uzarowski to come and meet with
21 you -- with Mr. Becke and you and Mr. Renaud?
22 This is in November 2018.

23 A. Yeah, I don't -- I don't
24 recall any meeting with Ludomir after I left
25 public works.

1 Q. Thank you. That's
2 helpful. Registrar, you can close this down, and
3 if you can go to page 118 and 119, please. If you
4 could call out 294.

5 This is a series of text
6 messages between you and Mr. McGuire. You and Mr.
7 McGuire didn't have a texting relationship, did
8 you?

9 A. No. I barely texted
10 anyone.

11 Q. Okay.

12 A. It might have been the
13 first text I ever received.

14 Q. Okay. So in July --
15 July 19th, 2018, there are some back and forth.
16 This is right after Mr. McGuire has that interview
17 with the Spec, the one where you had the meeting
18 with him in advance. I'm not going to ask you
19 questions about that. Then it says November 11,
20 2018, and he says:

21 "Gary, have you seen the FOI
22 request on friction testing?

23 It's due next week."

24 And you say:

25 "Nope."

1 And he says:
2 "Diana sent it to you. I just
3 re-sent it asking for friction
4 testing five years back."
5 And you say:
6 "I've been off since Wednesday
7 afternoon. For some reason
8 I'm not getting any e-mail on
9 my phone. Anything I had I
10 have to Rick or Tyler, and I
11 put everything in the files.
12 I have nothing." (As read)
13 And then he responds:
14 "There is a 2014 draft by
15 Golder with an appendix from
16 Tradewind Scientific that is
17 in ProjectWise. Rick and
18 Tyler haven't seen those. The
19 FOI asked for these records.
20 Are you in tomorrow? We
21 should review this." (As
22 read)
23 Just so that I'm clear about
24 the people who are identified. "Tyler" is Tyler
25 Renaud?

1 A. I assume so. I don't
2 have any other information.

3 Q. And "Rick", is that Mr.
4 Andoga or someone else?

5 A. It's likely -- I don't
6 know any other Rick in the office.

7 Q. Thank you. Had you given
8 a copy of any friction testing results or reports
9 to Mr. Andoga or Mr. Tyler?

10 A. I don't know.

11 Q. This is November of 2018.
12 I anticipate that Mr. McKinnon's evidence will be
13 that you and he had a quick discussion in October
14 in your office about the Tradewind report. Do you
15 remember that -- just a very short 10 minute
16 discussion with Mr. McKinnon in your office about
17 this in October?

18 A. No, I can't -- I can't
19 say that I do.

20 Q. Okay. Well, I'm going to
21 suggest that November 11th a meeting that -- quick
22 meeting with Mr. McKinnon that happened four or
23 six weeks before probably would be much fresher in
24 your mind than it is today. Do you agree with
25 that?

1 A. Probably, yes.

2 Q. Recognize I'm making an
3 assumption that you would have remembered this
4 meeting with Mr. McKinnon. Why don't you mention
5 the Tradewind report when Mr. McGuire first
6 references it in the FOI about friction testing?

7 A. Where -- I don't know
8 where I would reference it.

9 Q. He says:
10 "Have you seen the FOI asking
11 for friction testing five
12 years back?"

13 And you say:

14 "Anything I had I gave to Rick
15 or Tyler. I put everything in
16 the file. I have nothing."

17 (As read)

18 Why didn't you say, oh, yeah,
19 you can go look in ProjectWise? Or, yes, happy to
20 chat with you, there was a bunch of friction
21 testing. Or, yeah, you should look for Golder's
22 report? Why weren't you offering information to
23 your former colleague when you had a discussion a
24 month before with Mr. McKinnon about the Tradewind
25 report?

1 A. Yeah, I don't know that
2 I -- I don't recall that discussion with
3 Mr. McKinnon at all, so I don't -- I don't know
4 what it was about or why my -- my mind was 100
5 percent LRT at that point in time and....

6 Q. Thank you. Did you meet
7 with Mr. McGuire on November 12th? He says at the
8 end, "Are you in tomorrow? We should review
9 this."

10 For your assistance, we don't
11 have any meeting minutes or notes or calendar
12 appointments to suggest that you did.

13 A. It's possible that I did,
14 but I don't recall.

15 Q. Okay. Do you recall
16 having a meeting with Mr. McKinnon and Mr. McGuire
17 on November 27, 2018, so a few weeks after this
18 text exchange?

19 A. I do remember a meeting
20 with Dan and Gord. I couldn't -- if that's the
21 date, then -- I don't know when it was.

22 Q. Is this the only meeting
23 you had with Mr. McKinnon and Mr. McGuire together
24 in respect of the Red Hill?

25 A. To my recollection, yes.

1 I don't believe there was any other meeting.

2 Q. Mr. McKinnon is now in
3 the general manager role. And just stopping here,
4 just because I want to make sure your evidence of
5 the last few days is clear. Had you before this
6 point ever given Mr. McKinnon a copy of the
7 Tradewind report?

8 A. I don't believe so, no.

9 Q. Had he ever asked you for
10 results of friction testing? Mr. McKinnon.

11 A. I couldn't say. I don't
12 know. Not that I can recall.

13 Q. Registrar, you can take
14 this down. Can you go to page 47 -- pardon me --
15 147. These are, at 352, Mr. McKinnon's
16 typewritten notes of handwritten notes that he
17 took during the meeting. Registrar, can you call
18 those out.

19 This clearly is not a verbatim
20 transcript of the back and forth at this meeting.
21 These are not your notes. There's a reference at
22 the top to 2013, 2014, Golders and Tradewind, and
23 then you say:

24 "Ultimately Gary felt it was
25 inconclusive, but recommend we

1 should do more testing. 2017,
2 the CTAA and Halifax came home
3 and programmed the
4 resurfacing." (As read)
5 Just stopping there. What
6 information, if any, did you give Mr. McKinnon and
7 Mr. McGuire about the period of time between
8 receipt of the Tradewind report in 2014 and going
9 to this CTAA conference in 2017, if any?

10 A. I don't know whether I
11 was responding to asked questions or whether it
12 was left open. I don't know.

13 Q. I understand. That
14 wasn't my question. What information did you
15 provide them, regardless of how it was elicited?

16 A. I don't know.

17 Q. You can't remember?

18 A. No, I don't -- I remember
19 meeting with them but -- and it was on the Red
20 Hill, but I don't -- I don't recall the specifics
21 of the conversation.

22 Q. Registrar, you can close
23 this callout, and if you can go to page 294. And
24 if you can also bring up 295, please. Thank you.

25 So at the very bottom of 294

1 at 726, Mr. Zegarac sent a calendar invitation to
2 you and to Mr. McGuire and to Mr. McKinnon with a
3 subject line "RHVP discussion." The meeting was
4 scheduled for January 31, 2019. And you
5 responded, accepting the invite, and wrote:

6 "Sure, but what's the subject
7 of the discussion?"

8 And Ms. Malady responded:

9 "Gary, the meeting invite is
10 RHVP discussion."

11 Do you remember attending a
12 meeting with Mr. Zegarac and others on January 31,
13 2019?

14 A. I remember meeting with
15 Mr. Zegarac and others about that time period, but
16 I couldn't be sure on the 29th whether it was that
17 day or not.

18 Q. Between the meeting that
19 you had, Mr. McKinnon and Mr. McGuire in November
20 and this meeting, did you have any meetings with
21 anyone else at a senior staff level about the Red
22 Hill in the fall of 2018?

23 A. I don't -- I don't know
24 whether that was the time period that I met with
25 audit or not, but that's the only other meeting

1 that I had with anybody in public works that I
2 recall.

3 Q. That was in 2019, and I
4 was trying to distinguish the senior staff level,
5 to exclude them, but thank you for clarifying.

6 So you had three meetings with
7 City employees about the Red Hill in 2018 and
8 2019: The first with Mr. McKinnon and
9 Mr. McGuire; the second with Mr. Zegarac, and I
10 can say it was with Ms. Fontana and Mr. McKinnon.
11 And then the third, was that with Charles Brown
12 and Domenic Pelligrini.

13 A. I believe so, yes.

14 Q. Did you only have one
15 meeting with audit services, or more than one
16 meeting?

17 A. No, I'm pretty sure it
18 was only one meeting. I remember those kind of
19 guys.

20 Q. Registrar, can you bring
21 up HAM26114, please. I misspoke. HAM62114. If
22 you can bring up the next image too. Thank you.

23 So in advance of this meeting,
24 the other attendees were to put together a list of
25 questions that they were going to ask you. I just

1 wanted to allow you a moment to review them
2 before -- to refresh your memory about the
3 discussion.

4 A. Okay.

5 Q. So we saw -- I'm sorry,
6 you can take that down. Thank you.

7 We saw in the e-mail back and
8 forth with the calendar invitation that you asked
9 what's the purpose of this meeting. Were you
10 given any other information about what the purpose
11 of the meeting was besides the subject line?

12 A. No.

13 Q. Knowing that it was an
14 RHVP discussion, what, if anything, did you do to
15 prepare for this meeting?

16 A. Nothing. I had no
17 information. All of the information was back --
18 you know, in the files of public works. I had no
19 idea what they were looking for. I had asked
20 twice and given no information, so I assumed that
21 they were good with going with what I knew off the
22 top of my head.

23 Q. Okay. I took you to
24 those questions to attempt to refresh your memory.
25 But just more for format, do you recall that it

1 was a meeting in which the other attendees asked
2 you a number of detailed questions to get
3 information from you?

4 A. My sense is that Mike
5 asked all the questions and the other attendees
6 just sat there taking notes.

7 Q. Did it feel like it was a
8 bit -- it was an interview and an
9 information-gathering process more than a
10 discussion or more than --

11 A. More like an inquisition,
12 yeah.

13 Q. Okay. So felt like an
14 inquisition. But it was fact gathering -- a
15 fact-gathering discussion from your perspective?
16 May not have been comfortable, but did it feel
17 like they were trying to obtain information from
18 you rather than --

19 A. City manager, the general
20 manager and somebody from HR sitting there asking
21 you questions with no one prepared -- with not
22 being able to prepare was not comfortable, and
23 trying to answer them to the best of my ability
24 off the top of my head was what I did.

25 Q. I understand. My

1 question really was were you on information
2 transmission mode and they were on information
3 receive mode or was it more of a dialogue?

4 A. I was answering questions
5 that the City manager was putting to me.

6 Q. Do you recall Mr.
7 McKinnon also -- I think you said both of them
8 took notes, Ms. Fontana and Mr. McKinnon; is that
9 right?

10 A. I believe they were the
11 other attendees, yes.

12 Q. And both of them were
13 taking notes to your recollection?

14 A. That's my sense of what
15 was happening.

16 Q. Okay. And Ms. Fontana is
17 in HR. Did you know that coming into the meeting,
18 that that's the department in which she works?

19 A. Yes, I had dealt with
20 Laura on my retirement and the setup of my
21 agreement and all of that, so I dealt with her
22 over a number of years, so I was quite well aware
23 of who she has.

24 Q. Registrar, can you go to
25 HAM61795, please. Apologies. That is definitely

1 not the reference that I wanted to bring up. Let
2 me grab it. Registrar, in the meantime, you can
3 put this down. Let's try HAM35869. If you can
4 pull up two images at the same time, please, image
5 1 and image 2. Thank you, Registrar.

6 So the inquiry understands
7 that Ms. Fontana took notes and that these are a
8 transcription of her notes. Did any of the
9 attendees provide you with an opportunity to
10 review notes that were made during this meeting?

11 A. No.

12 Q. On image 1, Registrar, if
13 you can call out the bottom half of the page.
14 Maybe a little bit higher than that. Yeah, that's
15 perfect.

16 So I've just called out the
17 bottom half of the page which occurs after you've
18 gone through a little bit of preliminary matters,
19 and there's a reference at the top of this callout
20 to 2007:

21 "They were good numbers, no
22 concerns. It was anecdotal
23 stuff. It's slippery. Not
24 the same test done as for
25 MTO." (As read)

1 Do you recall what you meant
2 by "not the same test as done for MTO"?

3 A. No, I don't know -- it
4 doesn't seem to be the correct reference.

5 Q. Okay. So in January
6 of 2019, what did you understand the differences,
7 if any, to be between the MTO test done in 2007
8 and the 2013 Tradewind test?

9 A. Only that they were two
10 different ways of measuring the friction on the
11 road.

12 Q. You say there is no
13 standard test for asphalt friction, and then it is
14 recorded that you -- that Gary relied on the
15 consultants for test results. Do you agree that
16 you made a comment that you relied on the
17 consultant for test results?

18 A. I can't dispute it either
19 way. I don't recall what -- what I said
20 specifically.

21 Q. Was it your view at the
22 time in January of 2019 that you relied on
23 consultants for test results?

24 A. I don't know whether
25 that's the right wording. I don't know that I

1 didn't say that then under those conditions and
2 whether it's correct or not. I can't speculate.

3 Q. Okay. Well, just moving
4 away from what you said at this meeting. Was it
5 your view in January of 2019 that you relied on
6 consultants for test results?

7 A. Results of tests,
8 possibly that's -- I can agree with that. I don't
9 think it's entirely comprehensive.

10 Q. So if we're talking about
11 the Red Hill and the testing, the Tradewind
12 testing report, do you agree that you relied on
13 Tradewind to provide accurate friction values from
14 their testing, the numbers?

15 A. I didn't rely on
16 Tradewind for anything. They weren't my
17 consultant. Golder was my consultant. As far as
18 I was concerned, the test results, the indications
19 of the numbers were correct. It was the analysis
20 of the comparison that I had the problem with.

21 Q. I understand. We'll get
22 to that. So just on the numbers, you understood
23 those numbers to be accurately obtained, right?

24 A. I understood them to be
25 apples for apples too.

1 Q. No, no, that wasn't my
2 question. The measuring, you understood that the
3 measuring of those numbers using the device that
4 Tradewind used, you expected that that device
5 would accurately measure the friction in the way
6 that the device was supposed to measure friction?

7 A. I had no information to
8 the contrary.

9 Q. You relied on that
10 assumption that there was nothing wrong with the
11 numbers; is that fair to say?

12 A. I relied on Golder to
13 provide me with an accurate way --

14 Q. Please answer my
15 question. You relied on the numbers -- you relied
16 on the fact that there was nothing wrong with
17 those numbers; is that fair to say?

18 A. No.

19 Q. The numbers themselves.

20 A. I relied on the
21 consultant to achieve the test results. The
22 analysis of those results is not the same.

23 Q. Okay. I understand.
24 We're not talking about the analysis, just talking
25 about the numbers. When you looked at the big

1 chart at the end of the Tradewind report, you
2 understood that -- you assumed that those numbers
3 were accurate measurements of the friction, right?

4 A. I had hoped they were,
5 yes.

6 Q. Okay. Registrar, can you
7 close this down and go to HAM61795. This time I
8 didn't need to bring this one up.

9 Registrar, can you go to image
10 7, please -- pardon me -- image 8. Image 10,
11 please. Well, now this is getting ridiculous.
12 Apologies, Commissioner. Page 13, please. Thank
13 you. I'm not sure how I got that so wrong.

14 Mr. Moore, we looked at this
15 earlier in your evidence, and you'll recall the
16 recommendation that Tradewind included.
17 Registrar, can you pull out the middle paragraph,
18 please.

19 "We recommend that a more
20 detailed investigation be
21 conducted and possible
22 remedial action be considered
23 to enhance the surface texture
24 and friction characteristics
25 of the Parkway based on the

1 friction measurements recorded
2 in the current survey."

3 The inquiry has heard your
4 evidence over the last several days that you had
5 concerns about the application of the UK standard
6 and that -- your evidence that you sent Golder
7 back to go do more investigation in respect of
8 that standard, and that you were waiting to hear
9 back from him, from Dr. Uzarowski, and that while
10 you were waiting to hear back you didn't accept
11 the results of the Tradewind report as valid.

12 Have I accurately captured
13 your -- I'm just trying to do a summary -- your
14 evidence on this point?

15 A. In general I would --
16 it's their assessment -- it was their assessment
17 of the numbers they achieved and the
18 recommendation on that basis that I had the
19 problem with.

20 Q. So I think that we came
21 to the place that you didn't have any concerns
22 about the accuracy of the numbers; you just
23 assumed that they were accurately measured. And
24 as I understand it, you had some concerns about
25 the applicability of the UK standard to a Canadian

1 road; is that right?

2 A. Yes, I did.

3 Q. But you certainly didn't
4 have any concern about the math of -- if they came
5 up with a particular friction number, they didn't
6 -- they accurately correlated it to the UK
7 investigatory standard, right? They came up with
8 35 and 35 was below or well below UK standard.
9 Like, you didn't have any problems with that
10 aspect of the analysis, there was no errors like
11 that, right?

12 A. I had no reason to
13 believe there was errors in that regard.

14 Q. Okay.

15 A. Reading it in -- I had to
16 read it in the context that Golder provided, that
17 it was an apples-to-apples comparison from what we
18 had previously had, was the implication to me in
19 their report. So I didn't have at that time any
20 other concern.

21 Q. Okay. I don't think I've
22 asked today, during course of the period of time
23 that we've been talking about today, which is from
24 November 2017 to -- really all the way up to 2019,
25 did you ever receive information from

1 Dr. Uzarowski that provided you with clarity or
2 more information about the UK investigatory
3 standard?

4 A. I don't believe I
5 received anything from Ludomir after I left public
6 works.

7 Q. What about before you
8 left public works, late 2017, early 2019?

9 A. No, I don't believe I
10 received clarification on the UK standards
11 applicability.

12 Q. When you say
13 "clarification," either written clarification or
14 oral clarification?

15 A. Or otherwise.

16 Q. Okay. Mr. Moore, you
17 have this consultant, sub consultant, I'll call
18 them Tradewind, who does friction testing as their
19 job, and you have Dr. Uzarowski who has assessed
20 Tradewind's report and made recommendations to
21 you. Don't you think that having two consultants
22 expressing the same recommendation that possible
23 remedial action be considered, wouldn't it be
24 prudent to accept those recommendations and be
25 conservative instead of waiting to hear back from

1 Dr. Uzarowski for five years?

2 A. I would have thought that
3 had there been any urgency in that, that that
4 would have been brought to my attention or been
5 part of the recommendation. Nowhere was I aware
6 that friction was a problem, other than the
7 numbers, you know, that were being shown here. I
8 had asked him and if he had been concerned I
9 assume that he would have provided that
10 information in a more hasty manner. But I assumed
11 that it wasn't correct and that we couldn't find
12 anything, and I'm not going to take action on
13 something that's nebulous and unsupportable,
14 especially when it would have meant the
15 expenditure of large numbers of capital dollars.

16 Q. You say you assumed it
17 wasn't correct. But you have Tradewind who is
18 saying this doesn't meet a standard that we,
19 Tradewind, think apply. Doesn't -- didn't that --
20 doesn't that count? Doesn't that actually have a
21 fair bit of weight when you have a company who
22 does this kind of work saying, this is the
23 standard we think is applicable and this road is
24 below or well below that standard? Why would you
25 not take that and instead make an assumption that

1 it wasn't correct?

2 A. I asked a simple question
3 in response: How does this apply and how does it
4 apply to these roads, and is it a standard that
5 can be explained? I got nothing. If there's no
6 explanation of that and there's no consultant that
7 is going to come back and say, yes, Mr. Moore, you
8 know, it's something here, but it's used here, and
9 this is how it is, and all of these roads over
10 there are designed with the same standard, they
11 are the same speed, they are the same width --
12 nothing. I received nothing in that regard,
13 nothing to help me understand how or if they would
14 have been applicable.

15 Q. I think we hear your
16 evidence that you say you received nothing, which
17 is in contrast -- I think I've put to you is in
18 contrast with Dr. Uzarowski's evidence. And I
19 just -- as a matter of fairness, I just want to
20 give you -- make sure that you understand that
21 there is contradictory evidence on that point.
22 You understand that, right?

23 A. Whatever. It doesn't --
24 my evidence is my evidence.

25 Q. Thank you. Registrar,

1 can you close this down. Can you go back to OD9,
2 page 294. Just to reorient you back to what we
3 were talking about because we went and strayed for
4 a moment. We're coming back to Ms. Fontana's
5 notes. So this is the notes from the 31st. I'm
6 just putting this up just in the interest of time.

7 And then, Registrar, can you
8 bring up HAM359 -- pardon me -- 35869. These are
9 the notes that we were looking at just a moment
10 ago. Can you pull up image 1 and 2, please, of
11 869.

12 Mr. Moore, did I give you a
13 chance to review these before I started asking
14 questions before? Because I am going to sort of
15 dig into them, and I just want to make sure you've
16 had a chance to review them.

17 MR. LEDERMAN: No, I don't
18 believe he did have a chance to go through them
19 before you were asking questions.

20 BY MS. LAWRENCE:

21 Q. No, I believe I didn't,
22 and apologies for that. I do want to give you the
23 opportunity. So, Mr. Moore, just let me know when
24 you're ready.

25 A. I'm not memorizing them,

1 am I?

2 Q. That's fair. You don't
3 have the memorize them.

4 A. Okay.

5 Q. I was hoping that it
6 may -- just like the questions that I had you
7 skim, I'm just hoping this might help to bring to
8 the surface the memory that you have of this
9 meeting.

10 MR. LEDERMAN: Ms. Lawrence,
11 is there a third page or does it end there?

12 MS. LAWRENCE: I'm sorry,
13 there is a third page. I think we only have the
14 technical ability to put up two at once.
15 Registrar, can you bring up 2 and 3.

16 THE WITNESS: Okay, I've seen
17 them.

18 BY MS. LAWRENCE:

19 Q. Okay. At the very top of
20 image 2, it says:

21 "2013 report said further
22 investigation, premium
23 aggregate versus rubber
24 building up on road." (As
25 read)

1 Just stopping here. I think I
2 raised this with you yesterday, that Dr. Uzarowski
3 had said that you mentioned something about rubber
4 on the road, and I'm going to take you to another
5 e-mail from Mr. White that suggests you said
6 something about rubber within the asphalt.

7 Can you shed any light on if
8 you had any concerns about there being either
9 rubber on the road or rubber within the asphalt
10 that -- or anything that is like that? Because it
11 does seem to come up more than once.

12 A. I know there's a
13 condition on most roads that there is rubber
14 placed on the surface, and during initial
15 rainfalls that rubber is freed from the road and
16 can cause, quote/unquote, slippery conditions. So
17 I don't know whether -- I didn't think that we
18 ever -- I might have asked that question, you
19 know, is that what's happening out here, but I
20 don't recall anything that we were specific that
21 we were going to look at or could look at.

22 Q. I think I might have
23 misheard you or not understood. You said there's
24 a condition on most roads that where there is
25 rubber placed on the road, and then after initial

1 rainfall the rubber is freed from the road?

2 A. Yeah. When the cars
3 drive down the road, the rubber off your tire goes
4 onto the road. There's oils and everything else.

5 Q. Okay. It's not an
6 application that's placed on --

7 A. It's not an application
8 of rubber, no.

9 Q. Okay. And it's not
10 rubber within the asphalt?

11 A. No?

12 Q. As part of the mix?

13 A. No, not part of the mix.
14 There was never any rubber in the mix.

15 Q. I didn't think so. And
16 that's not what you were concerned about?

17 A. No.

18 Q. Never concerned about
19 that. You were concerned about that -- the
20 existence of rubber material on the road because
21 of drivers driving on the road; is that right?

22 A. Yes, I believe that -- I
23 know I asked that question.

24 Q. I think that can
25 certainly be an issue with airport runways where

1 high velocity there will be pieces of rubber on a
2 runway.

3 A. You'll see it.

4 Q. Is that the kind of that
5 thing you're concerned about, but on a --

6 A. No, I don't. May have
7 been trying to address, you know, why it felt
8 slippery or when it felt slippery or if it was,
9 you know, indeed....

10 Q. Okay. On image 2, eight
11 lines down, says:

12 "DM. Question. Is that
13 between 2014 and 2017...."

14 (As read)

15 Registrar, can you call that
16 out. Actually, sorry, can you call that out and
17 the next line as well. Thank you.

18 Recognizing these are not your
19 notes and these are not verbatim transcriptions,

20 "DM" I believe is Mr. McKinnon here:

21 "Question: Is that between
22 2014 and 2017 nothing was
23 done, no testing done?"

24 And you say:

25 "Other things done such as

1 bigger signs, cat's eyes."

2 (As read)

3 I don't know if that's et

4 cetera or TEC.

5 A. Probably et cetera.

6 Q. Probably. TEC doesn't

7 mean anything to you?

8 A. No.

9 Q. Okay. So you can close
10 that down. Just so that the inquiry has your
11 evidence, is your evidence that you had no
12 obligation to initiate the recommendations in the
13 Golder report because traffic engineering and
14 operations were doing things like bigger signs and
15 cat's eyes?

16 MR. LEDERMAN: Sorry. Can I
17 just understand that question. You said "is your
18 evidence." Are you asking -- it's not clear to me
19 from that question as to whether the question is
20 being posed to Mr. Moore as to whether he
21 expressed that at this meeting.

22 MS. LAWRENCE: No, I don't
23 care if he expressed it at the meeting. I'm
24 asking about his evidence now.

25 MR. LEDERMAN: As to what he

1 understood his obligation to be, is that the
2 question?

3 MS. LAWRENCE: Yes.

4 BY MS. LAWRENCE:

5 Q. My question, Mr. Moore,
6 was, is it your evidence that you had no
7 obligation to initiate the recommendations in the
8 Golder report because traffic engineering and
9 operations were doing things like bigger signs and
10 installing cat's eyes?

11 A. I'm troubled by the
12 obligation portion of it.

13 Q. How about proposal --

14 MR. LEDERMAN: I just hope
15 you're not suggesting there was a legal -- are you
16 suggesting there was a legal obligation or....

17 BY MS. LAWRENCE:

18 Q. No, I'm suggesting your
19 responsibility as director of engineering.

20 A. As my responsibility of
21 director of engineering, I had asked for this work
22 to be done. As trying to be a knowledgeable
23 client, I was not convinced that what they were
24 recommending to be done, which was basically
25 further testing and then possible remediation, be

1 considered following that possible additional
2 testing, had any relationship to any of the safety
3 issues out there, as friction had never been
4 identified as anything that needed to be
5 addressed --

6 Q. Sir, I'm going to stop
7 you. You're not answering -- my question was on
8 an entirely different point. I don't mean to
9 interrupt you, and you can certainly come back to
10 this, but I really would like you to listen. I'm
11 almost at the end of my examination, and I really
12 would like you to listen to my question, if you
13 would.

14 My question was -- and I can
15 rephrase it because maybe you didn't understand
16 it. Traffic engineering and operations were doing
17 things like putting bigger signs and installing
18 cat's eyes. Is it your evidence that as a result,
19 you didn't have a responsibility to implement
20 Golder's recommendations because traffic and --
21 traffic engineering and operations was doing the
22 other countermeasures recommended by CIMA?

23 A. I'm going to say no.

24 Q. Mr. Moore, we were
25 talking a little earlier and I think you said that

1 you met with audit services in -- with Mr. Brown
2 and Mr. Pelligrini; is that right?

3 A. I believe that's correct.

4 Q. I'm going to suggest to
5 you that was February 4, 2019. And you might not
6 remember the day, but do you remember it was
7 actually very close in time to when council
8 released a copy of the Tradewind report?

9 A. Sorry, is that a
10 question?

11 Q. Yeah, I'm just trying to
12 orient you to -- maybe you do remember that it was
13 February 4th, 2019.

14 A. No, I'm afraid I don't.

15 Q. Okay. So to the extent
16 that you don't remember that, do you remember it
17 was only within days, days later, that council
18 released a copy of the Tradewind report? Those
19 two things, are they connected in time for you?

20 A. Not particularly, no.

21 Q. Was the meeting that you
22 had with Mr. Brown and Mr. Pelligrini about
23 friction testing and friction testing results on
24 the parkway?

25 A. No, I don't recall what

1 their -- what the nature of their questions were.

2 Q. Do you recall anything
3 about the tone of that meeting?

4 A. I seem to remember them
5 coming to see me and sitting in my office and
6 asking a bunch of questions. I don't -- I don't
7 specifically recall a tone, you know, other than
8 they were looking -- audit, you know,
9 traditionally has a certain flair for asking
10 questions.

11 Q. Sorry, I think I missed
12 that last part. Did you say Mr. Brown has a flair
13 for asking --

14 A. No, audit in general.

15 Q. Audit in general. All
16 right. Given that flair for asking questions, do
17 you recall feeling confronted or sort of back on
18 your heels at that meeting?

19 A. Not -- I don't recall
20 that for that meeting in particular, not that I
21 can recall. I don't -- remember them coming to
22 see me and sitting in my office asking questions,
23 but I don't -- it's not -- it doesn't seem like it
24 was confrontational or something, anything like
25 that, to my recollection.

1 Q. Was it uncomfortable,
2 like the meeting with Mr. Zegarac and Mr.
3 McKinnon?

4 A. Given that I don't have a
5 recollection of that nature, I would say no, I
6 don't believe so. It's not like meeting with the
7 City manager and your boss.

8 Q. Okay. Was it
9 inquisitorial?

10 A. I couldn't tell you.

11 Q. Is that what you meant by
12 has a certain flair in asking questions, that they
13 do engage in inquisitorial interviews?

14 A. They tend to go all over
15 the place, because they are not necessarily
16 subject matter experts and they're looking to find
17 out everything they can.

18 Q. Do you recall that part
19 of this meeting was that they were trying to find
20 out more information about pavement conditions and
21 how it related to friction testing?

22 A. I don't recall that.

23 MS. LAWRENCE: Commissioner, I
24 have one more series of questions, which,
25 depending on answers, I think will run about 10 to

1 minutes. But I think it would also be useful for
2 me to take some time to review my notes and make
3 sure there's nothing else I would like to raise
4 with Mr. Moore before I come to the end of my
5 examination.

6 I would propose -- it's now
7 12:59 -- that we take the lunch break and I'll use
8 the first 15 minutes after lunch to finish up my
9 examination, and then we can turn it over to any
10 other participants' counsel who have examinations
11 of their own. You're muted.

12 JUSTICE WILTON-SIEGEL: Thank
13 you. Well, on that basis, unless counsel think
14 that we should be shortening the lunch, I'm
15 inclined to say let's take the normal lunch of an
16 hour and 15 minutes. We'll return at 2:15.

17 --- Recess taken at 1:00 p.m.

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

19 MS. LAWRENCE:
20 Mr. Commissioner, may I proceed?

21 JUSTICE WILTON-SIEGEL: Yes,
22 please do.

23 MS. LAWRENCE: Thank you.

24 BY MS. LAWRENCE:

25 Q. Mr. Moore, an anonymous

1 letter was sent to the City auditor and to others
2 in council in 2019.

3 Registrar, can you bring up
4 RHV890, please. Can you pull up both images.

5 Mr. Moore, have you seen that
6 letter before today?

7 A. I believe I have, yes.

8 Q. Okay. There's a third
9 page. Just for completeness, just to make sure
10 this is something you've seen before, can you
11 bring up the third image in place of the second
12 image. Thank you. Thank you.

13 So Mr. Moore, you have seen
14 this letter before?

15 A. Yes, I have.

16 Q. For the record, are you
17 the author of this letter?

18 A. No, I'm not.

19 Q. Do you know who wrote it?

20 A. No, I do not.

21 Q. Okay. Registrar, can you
22 go back to just image 1, please.

23 There are a number of
24 assertions in this report about you and your
25 conduct or your intentions. As a matter of

1 fairness I would like to put them to you so that
2 you can provide a response if you wish.

3 Registrar, can you pull out
4 the second paragraph, public works staff. The
5 second paragraph. Thank you.

6 I'll just give you a chance to
7 read that, Mr. Moore.

8 A. (Witness reviews
9 document). Okay.

10 Q. Did you purposely
11 withhold taking any further action regarding a
12 consultant's report? Here I'll just stop. I mean
13 either the Golder report or the Tradewind report
14 after you received the Golder report and the
15 Tradewind report in 2014.

16 A. I did, pending
17 clarification of the report.

18 Q. Okay. Did you decide not
19 to do anything further after receiving the Golder
20 report and the Tradewind report because it didn't
21 give you the answer that you wanted?

22 A. It didn't give me an
23 answer.

24 Q. Is there any other
25 comments that you would like to provide to the

1 inquiry in respect of the assertions in this
2 paragraph?

3 A. Other than they are
4 untrue.

5 Q. Thank you. Registrar,
6 can you close this callout and call out the second
7 bullet point.

8 I'll just give you a moment to
9 read that.

10 A. (Witness reviews
11 document). Okay. Yeah. I'm done.

12 Q. Did you implement minimum
13 engineering/construction requirements in respect
14 of the design or construction of the Red Hill in
15 order to save costs?

16 A. No, I did not. In fact
17 we went beyond the minimum or even any reasonable.
18 I mean, with the implementation of the Superpave
19 specifications, the additional on-site inspection
20 and insurance to try and make sure that what we
21 were spending the money on we were being
22 delivered. The lighting that we put in there as
23 decision point lighting. Typically MTO would put
24 three lights; we put four. All those things
25 exceeded the minimum design standards.

1 Q. Okay. Registrar, can you
2 go to image 2, please. And can you call out the
3 paragraph before the italicized text and then the
4 italicized text, please.

5 These are comments that are --
6 that I interpret this anonymous letter attributing
7 to you, and let's assume that it is. First, do
8 you use profanity in the workplace?

9 A. I have used it
10 occasionally yes, in 30 years.

11 Q. Have you over the course
12 of the last 30 years used language such as that
13 set out in the italicized text?

14 MR. LEDERMAN: Sorry, I'm not
15 sure I understand that question. Has he used that
16 language? These seem to be quotations and so --

17 MS. LAWRENCE: They do seem to
18 be quotations, and I think that they are
19 attributed to Mr. Moore, and I'm asking Mr. Moore
20 if he ever said words to the effect of the quotes
21 that I believe are attributed to him.

22 MR. LEDERMAN: Well, that's a
23 different question. If the question is --

24 MS. LAWRENCE: That's the
25 question I intended to ask.

1 MR. LEDERMAN: I'm sorry?

2 MS. LAWRENCE: That's the
3 question I intended to ask.

4 MR. LEDERMAN: I know. But
5 the difficulty I'm having is "words to the effect
6 of" or "language similar to." If that's the
7 question that you're asking, I'm not sure I
8 understand that question for this witness to
9 answer and what is meant by that.

10 MS. LAWRENCE: Commissioner,
11 my concern is, as we've seen over the last
12 three-and-a-half days, I'm trying to give
13 Mr. Moore the opportunity to not simply reflect
14 that he has used this particular language or not,
15 but rather trying to ask a broader question about
16 whether he's used this language or language that
17 is very similar to this language in tone and
18 substance because I think it will result in a more
19 fulsome answer. I don't think it's unclear as
20 question.

21 MR. LEDERMAN: No, it's not a
22 matter of clarity. It's a matter of fairness, and
23 it's a matter of relevance. And so if the
24 question that is being put to him is has he made
25 these statements that are put in quotes, I think

1 that's a question that the witness can answer.
2 But a question that is stated in way that says
3 "words to the effect of" or "words that are
4 similar to," that's -- that doesn't allow the
5 witness to properly answer the question, or I
6 don't see how it assists the work of this inquiry.

7 JUSTICE WILTON-SIEGEL: Okay.
8 I think the question should be framed in terms of
9 whether any of these statements -- whether he
10 accepts that he made any of these statements. Go
11 from there.

12 BY MS. LAWRENCE:

13 Q. Okay. Mr. Moore, do you
14 accept or acknowledge that you made any of the
15 statements that the anonymous letter attributes to
16 you set out in the italicized text?

17 A. The only thing that I
18 would recognize is "when I want your opinion, I'll
19 tell you what it was." I know in a joking manner
20 I might have said that in a reference to a -- a
21 reference to a movie where that came out of. But
22 the other ones in substance or in language are not
23 something that I would have said.

24 Q. Okay. I'm going to pull
25 out a couple of them. The sixth one down, "you

1 can't design to prevent stupid." Have you ever
2 made comments to colleagues that reflect that you
3 can do all you can with design, but the way people
4 use the "design" may result in injury or harm?

5 A. More likely in the latter
6 fashion. I don't -- I don't believe in the
7 language that is here.

8 Q. Yes. I was asking for a
9 perhaps less inflammatory phrasing than the one
10 that I just put to you. You can design a good
11 road, but you can't actually stop people from
12 misusing it. Did you ever make comments like
13 that?

14 MR. LEDERMAN: Sorry. I'm
15 sorry, Mr. Commissioner. Is this question tied to
16 the Red Hill Parkway, or are we speaking
17 generally? And if we're speaking generally,
18 again, I've got a question --

19 JUSTICE WILTON-SIEGEL: Right.
20 I accept the point. I think the question is made
21 with reference to the Red Hill Valley Parkway.

22 MS. LAWRENCE: It was, and
23 apologies for not being clear.

24 JUSTICE WILTON-SIEGEL: And I
25 think it should be clarified that it is.

1 BY MS. LAWRENCE:

2 Q. Mr. Moore, in respect of
3 comments that you made in relation to the Red Hill
4 have you made comments to the effect of "you can
5 design a good road, but you can't actually stop
6 people from misusing it"?

7 A. I can't ever remember
8 saying that. It doesn't mean I -- it's not
9 possible, but I don't think I regarded the roadway
10 design in that fashion.

11 Q. Okay. And the very last
12 italicized text sentence that is here, "there's
13 nothing wrong with the design." Just stopping
14 there without the rest of it. Did you convey that
15 to colleagues in respect of the Red Hill?

16 A. I believe we seen
17 somewhere in some e-mail that I referred to the
18 lighting design that there wasn't anything wrong
19 with the lighting design. It was designed for
20 partial illumination, so it's possible I said
21 something in that regard for that portion of that,
22 but not in the context of the rest of it.

23 Q. Okay. And so you deny
24 that you said statements like I'm going to change
25 it, that being the design of the parkway?

1 A. I didn't have the ability
2 to make that decision whether or not to change it.

3 Q. I understand that.
4 You've made that point before. I was asking about
5 whether you made statements like that.

6 MR. LEDERMAN: Well, he's
7 already answered that. I'll say,
8 Mr. Commissioner, I've got --

9 JUSTICE WILTON-SIEGEL: I'm
10 not sure in what -- I think this is a very
11 important point, Mr. Lederman, and I don't think
12 he's answered it. His answer was that he doesn't
13 have the ability to change it. But that's
14 different from the question which was put which
15 was simply would he ever have made a statement
16 like that in respect of....

17 MR. LEDERMAN: But he
18 previously said that he didn't make these
19 statements that were attributed to him other than
20 perhaps the reference to "when I want your
21 opinion, I'll tell you what it is."

22 JUSTICE WILTON-SIEGEL: Right.
23 Well, I think this is important enough that it's
24 worth drawing his attention to this particular
25 question and to put the question to him with

1 respect to that sort of phrasing.

2 MS. LAWRENCE: Thank you.

3 BY MS. LAWRENCE:

4 Q. My question was, do you
5 deny that you made statements like, I'm going to
6 change it? "It" being the design of the parkway.

7 A. I don't ever recall
8 making a statement like that, no.

9 Q. Okay. Do you agree that
10 you have a direct communications style?

11 A. Yes.

12 Q. Do you agree that you
13 express your opinions forcefully if you hold them
14 forcefully?

15 A. As it applies I would
16 express my opinion, yes.

17 Q. Not just expressing your
18 opinion, but expressing it in a forceful manner.
19 Do you agree that you do that?

20 A. You would have to ask
21 someone else that. I don't consider it to be a
22 forceful manner.

23 Q. Okay. That's not your
24 self perception?

25 A. No.

1 Q. Are you quick to anger?

2 MR. LEDERMAN:

3 Mr. Commissioner, I'm sorry.

4 JUSTICE WILTON-SIEGEL: Okay.

5 I accept. I don't think we have to go here,
6 Ms. Lawrence.

7 MS. LAWRENCE: That particular
8 question, Commissioner?

9 JUSTICE WILTON-SIEGEL: That
10 particular question. And I would say questions
11 that fall in the same vein.

12 MS. LAWRENCE: Okay. You can
13 certainly cut me off as I go through the next
14 series of questions.

15 BY MS. LAWRENCE:

16 Q. Mr. Moore, at least two
17 of your colleagues have suggested that they viewed
18 you to be -- to blow off steam and to sort of
19 react, and then -- and they perceive it as you
20 blowing off steam. Do you agree that that is a
21 part of the way that you communicate?

22 MR. LEDERMAN:

23 Mr. Commissioner, sorry. I've expressed my
24 concerns about Commission counsel's effort to
25 elicit character evidence, and this falls right

1 into that category.

2 MS. LAWRENCE:

3 Mr. Commissioner, blowing off steam was made by
4 Mr. Lupton and Mr. Mater in the context of two
5 communications that were about the Red Hill. This
6 is not character evidence. This is evidence that
7 went specifically to it. And I can take
8 Mr. Moore --

9 JUSTICE WILTON-SIEGEL: Yeah,
10 I think --

11 MS. LAWRENCE: -- to those
12 documents, but I just don't think this is
13 character evidence, Commissioner.

14 JUSTICE WILTON-SIEGEL: Right.
15 I agree, but I do think you have to mention or
16 take him to the specific circumstances in which
17 those comments were made and invite him to
18 respond.

19 MS. LAWRENCE: Okay. Perhaps
20 I can do it just with -- rather than going to the
21 documents --

22 JUSTICE WILTON-SIEGEL: Yeah.

23 MS. LAWRENCE: -- because I
24 think that they were fairly memorable.

25 BY MS. LAWRENCE:

1 Q. Mr. Moore, do you recall
2 when I took you to the back and forth that you had
3 with Mr. Lupton where you said -- where he said, I
4 bring a horse to water; you say, I would shoot the
5 horse.

6 A. I remember that evidence,
7 yes.

8 Q. Mr. Lupton said I think
9 you might have just been blowing off steam. Would
10 you agree that that back and forth was an example
11 of you blowing off steam?

12 A. I don't know whether I
13 perceived it as that. If that's what Geoff did, I
14 can't comment on that.

15 Q. Okay. And the other
16 example is when you said what part of one, two,
17 three, four, five, did the committee not get in
18 respect of lighting. Do you remember when I took
19 you to that?

20 A. I do.

21 Q. Mr. Mater took the view
22 that he was just blowing off steam. Did you
23 perceive writing that e-mail to be a cathartic way
24 to blow off steam?

25 A. Seeing it now, yeah. I

1 might had some level of frustration with those
2 issues at that time.

3 Q. Have any of your
4 colleagues ever suggested to you that your
5 communication style may not facilitate
6 collaboration?

7 A. No, I don't -- I don't
8 ever recall anyone ever -- um, it was always my
9 effort to try and clarify issues so that
10 collaboration was more possible.

11 Q. Okay. Registrar, you can
12 take this down. You can take this document down.

13 Mr. Moore, I know that some of
14 the events that I've asked you about were a long
15 time ago. In looking through my notes of the last
16 few days it strikes me that there was one area
17 where I really feel like there needs to some
18 clarification in terms of what your evidence is.
19 And so I'm going to ask you a series of questions,
20 and I hope you can assist me in the most concise
21 way.

22 The area is who exactly you
23 provided information to about friction test
24 results amongst your colleagues. And I asked you
25 a number times on a number of occasions. There's

1 one e-mail that I don't believe I've taken you to
2 yet.

3 Registrar, can you bring up
4 OD9, page 247, and can you call out 597, please.

5 So this is in response to an
6 e-mail from Edward Soldo who took over
7 Ms. Matthews-Malone's position, and he's asking
8 Mr. White if Mr. White had ever seen a copy of or
9 had ever seen the Tradewind report. And Mr. White
10 responds:

11 "I can confirm that I have
12 never seen the report. I did
13 ask for it several times. I
14 can also state that Gary did
15 admit it was done at one
16 point, but he discounted the
17 results and minimized the
18 value of the tests. At a
19 meeting with Mater, Dan --
20 which I believe was Dan
21 McKinnon -- Dave -- Mr.
22 Ferguson -- and myself, I
23 recollect him saying something
24 about it being an English test
25 or standard or something

1 similar, and then he declined
2 to share the results with Dan
3 and John Mater. He had also
4 stated that the asphalt was
5 filled with rubber from tires.
6 I never saw the test results
7 or reports from anybody." (As
8 read)

9 So I just wanted to provide
10 you with that before -- and I'm going to leave
11 this up -- before I ask you my questions.

12 So if we can talk about
13 friction test results and just say results is
14 not -- it's not the report, it's not the
15 numbers -- just what were the results of that and
16 the answer would be a thumbs up, a thumbs down,
17 all good, not good, that kind of high level of
18 analysis or high level of quality.

19 Did you -- did Mr. Ferguson
20 ask you for the results of friction tests at any
21 point before you retired?

22 A. I believe we seen minutes
23 from one meeting that seemed to indicate that he
24 had asked me and I had told him we had the
25 result -- we had the report done, but I was

1 waiting for clarification. That's the only time I
2 ever remember anyone asking me specifically for
3 the report other than the legal group.

4 Q. Okay. So I was asking
5 specifically about Dave Ferguson, which may be
6 confusing because this is an e-mail from Martin
7 White.

8 So you said, I believe
9 you've -- we've seen the minutes from one meeting.
10 Do you mean that meeting with CIMA where you
11 said -- where it said "results satisfactory," that
12 one that we went to?

13 A. There was one meeting
14 there that indicated that I was waiting for
15 clarification.

16 Q. Okay. Do you agree with
17 Mr. White's comment here that he did ask for it,
18 and, again, we're just talking about results,
19 thumbs, thumbs down kind of results. I did ask
20 for -- that he asked for results several times.
21 Does that accord with your recollection?

22 Mr. White.

23 A. No, I don't recall Martin
24 asking for it several times, no.

25 Q. Okay. Do you recall him

1 asking for a copy of the Tradewind -- the friction
2 test report one or more times?

3 A. No, I don't, not outside
4 of that meeting that we had previously reviewed.

5 Q. Okay. And I'm very
6 sorry. I know I've taken you to many, many
7 documents. I'm just not quite sure what you mean
8 by there was minutes of meeting where you said you
9 were waiting on --

10 A. I believe --

11 Q. Can you give us just a
12 bit more context?

13 A. I believe there was one
14 meeting that we reviewed, and I'm not sure whether
15 it was with CIMA, where the minutes seemed to
16 indicate or the notes seemed to indicate that I
17 had confirmed the report had been done, but I
18 couldn't share it until I was -- because I was
19 waiting for clarification on the analysis. I
20 believe that was to paraphrase what was in there.
21 And other than that I don't know any other time I
22 was asked for it.

23 Q. Okay. I think it's in an
24 e-mail where you said some roughness -- from
25 roughness skid testing, I'm trying to get context,

1 including whether there's highways we can apply it
2 to. That one? That e-mail?

3 A. That could have been the
4 one, yes.

5 Q. Okay. All right. And
6 apart from that e-mail exchange that you had, you
7 don't recall anybody asking you for thumbs
8 up/thumbs down friction test results?

9 A. No, no, I don't.

10 Q. Do you recall this
11 meeting that Mr. White references here, a meeting
12 with Mr. Mater, Mr. Ferguson, Mr. McKinnon,
13 Mr. White and you, where you said something about
14 an English test or standard or something similar,
15 and then you declined to share the results with
16 Mr. McKinnon, Mr. Mater. Do you recall that?

17 A. No, and that makes no
18 sense whatsoever. When the general manager and
19 the deputy general manager ask you for a report,
20 you give them the report.

21 Q. And so I think just
22 following from that, your evidence is that
23 Mr. McKinnon never asked you for either thumbs up
24 or thumbs down results?

25 A. I don't remember any

1 thumbs up or thumbs down results. They either
2 asked me for the report or they didn't, and I
3 don't believe they did because I would have given
4 it to them.

5 Q. Well, you can see that if
6 they're in the dark about what you'd done exactly,
7 they might not even know there is a report, which
8 is why I'm trying to be a bit more broad when
9 we're talking about results.

10 A. Right.

11 Q. You know, someone who is
12 a layperson might say, what are the friction test
13 results, and they might not have any idea what the
14 appropriate answer to that is, what it would look
15 like, what results would look like. So if someone
16 who doesn't know anything about friction comes to
17 you and wants results, they may just want a thumbs
18 up and thumbs down. Very much like Ludomir gave
19 to you about the MTO 2007. That's what I'm
20 getting at.

21 And I think I have your
22 evidence that nobody asked for that except for the
23 points -- except for the circumstances that you've
24 already mentioned?

25 A. Not that I recall. I

1 don't recall anyone ever asking for it.

2 Q. Okay. What about in
3 engineering services? Just because I was focusing
4 on people in traffic, to your recollection no one
5 asked, again, just a broad definition of --

6 A. I don't recall anyone
7 ever asking for it.

8 Q. Okay. And did you ever
9 tell anyone at the City that the results of the
10 friction tests were satisfactory or adequate or
11 sufficient, words to that effect, apart from the
12 PWC meeting in 2015?

13 A. Without a specific
14 reference I -- you know, I don't -- I don't recall
15 anything of that nature.

16 Q. You don't recall doing
17 that?

18 A. I thought that that's the
19 indication I gave the committee that --

20 Q. Yeah. Apart from that --
21 apart from when we went to that video, excluding
22 that was there any other circumstance where you
23 told someone that the results were satisfactory,
24 adequate, sufficient, appropriate, anything in
25 that --

1 A. The information that I
2 provided to Mr. Malone that we looked at as well,
3 those are the only times that come to mind that I
4 would have shared that information in that regard.

5 Q. Okay. And we just saw
6 today that you provided a copy of the Tradewind
7 report itself to Ms. Crawford. Do you recall
8 providing a copy of the Tradewind report, the
9 actual Tradewind report, to anybody else within
10 the City?

11 A. I -- I can't confirm or
12 deny any -- I just don't recall, no.

13 Q. Okay. And the last
14 clarification. Did anyone at any time advise you
15 of a safety issue on the Red Hill relating to
16 friction levels or pavement condition?

17 A. Not that I'm aware of,
18 no.

19 Q. Okay. Thank you. Thank
20 you, Mr. Moore. Those are my questions, and I
21 appreciate your time and attention over the last
22 several days.

23 JUSTICE WILTON-SIEGEL: Okay.

24 MS. LAWRENCE: Commissioner, I
25 did have an opportunity to speak with the

1 participants' counsel during the break, and I
2 understand that Ms. Roberts has 1.5 hours.
3 Ms. Roberts, have I got that correct? That's your
4 estimate.

5 MS. JENNIFER ROBERTS: That's
6 my estimate.

7 MS. LAWRENCE: Fair enough.
8 And that all participants agreed that she should
9 begin today, and we have an order of operation for
10 tomorrow as well.

11 JUSTICE WILTON-SIEGEL: Okay.
12 So go ahead, Ms. Roberts.

13 MS. JENNIFER ROBERTS: Thank
14 you, sir.

15 EXAMINATION BY MS. JENNIFER ROBERTS:

16 Q. Mr. Moore, we have met.
17 I'm counsel for Golder.

18 A. Yes.

19 Q. Hello.

20 A. Hello.

21 Q. I'll try and keep this as
22 short as we can. I am going to jump around. So
23 if it's not clear what I'm referring to, please
24 just please let me know and we can go do documents
25 and ground it. Okay?

1 A. Okay.

2 Q. You gave testimony
3 yesterday that the design speed of the Red Hill
4 Valley Parkway was 100 kilometres in some place
5 and 110 in others. That's right?

6 A. That's -- that's what I
7 said yes.

8 Q. I want to go to the
9 overview document 3.1. Can we please go to
10 image 9. So this is a compilation of the evidence
11 from -- this is a compilation -- sorry, go to 7,
12 please -- of the evidence from the design
13 documents. The preliminary design reports. Here
14 we go. Sorry, one back, 6. Forgive me. Not an
15 auspicious start. Let's see if I can get this
16 right. Okay.

17 So on page 6, paragraph 12 it
18 says the November 2003 PDR provided that the RHVP
19 would have a design speed of 100 kilometres per
20 hour. Do you see that?

21 A. I see that, yep.

22 Q. Assisted by the registrar
23 calling it up. Thank you. Okay.

24 And it looks when you read
25 this as though you identified from the beginning

1 that the speed and the alignment is very much top
2 of mind. If you read that quotation it says:

3 "The design speed for the
4 north/south section 100
5 kilometres per hour. Speed
6 has been set based on the
7 topography and spacing the
8 interchanges. The posted
9 speed is 90. While a
10 reduction of the posted speed
11 would likely raise traffic
12 operational concerns, strict
13 enforcement of the speed limit
14 for trucks is recommended for
15 safety reasons in view of the
16 curvilinear alignment and the
17 current practice of many truck
18 drivers to exceed the posted
19 speed limits." (As read)

20 And it suggests radar
21 enforcement. I'm not sure that that observation
22 should be confined to trucks, but there we have
23 it, that's what they say.

24 So I take it, sir, that this
25 is a document that you will have read, you know,

1 in going back to the design of the Red Hill, I
2 appreciate it's a long time ago. But does this
3 ring bells for concerns that were raised at the
4 time?

5 A. No, I don't believe it
6 raised any alarm bells, no.

7 Q. Sorry, maybe let me
8 rephrase. That the -- first of all, I take it
9 there's no argument that the design speed is in
10 fact 100 kilometres per hour on the Red Hill?

11 A. Well, typically you refer
12 to the design speed for the lowest design speed.
13 There could be sections where the design speed is
14 180 kilometres per hour because it's dead straight
15 as in the LINC, but -- so when you're summarizing
16 a report of this fashion, you would refer to the
17 design speed of the lowest. So the 100 kilometres
18 an hour would apply.

19 Q. Thank you. And that, as
20 is said here, and the posted speed at 90 reflects
21 the fact that it is a curvilinear alignment, and
22 therefore a little more difficult to drive along
23 than straight line would be.

24 A. I'm sorry, is that a
25 question?

1 Q. Yeah. Do you agree or
2 don't you agree? I'm saying the posted speed and
3 the design speed reflect the geometry. That's
4 correct, is it not?

5 A. That's what it says, yes.

6 Q. Okay. And can we please
7 go to image 7. And in your evidence yesterday I
8 think you referred to -- well, looking at
9 (indiscernible) and I'll get to it of a larger
10 radius, but you'll agree with me if we look at
11 paragraph 14, that we've got geometry identified
12 as having a maximum superelevation of .06, maximum
13 grades of 4 percent and a minimum radius of turns
14 of 420 metres and a posted speed of 90. You see
15 that?

16 A. I see that.

17 Q. Okay. And was the
18 minimum radius of 420, is that something that you
19 remembered from the design because it ends up I
20 think being important later on or at least in our
21 assessment of what's going on here? Were you
22 aware of how tight that turn was?

23 A. No.

24 Q. Okay.

25 A. I believe this is for the

1 entire geometry from Pritchard Road to Brampton
2 Street that there is a minimum radius of 420
3 somewhere along that area.

4 Q. Yeah, that's right.
5 That's right. And as we get towards you're going
6 northbound as you go towards King, you've got four
7 turns in a row.

8 Could we please go to
9 image 11. No. Sorry, 13. There we are. Can you
10 please call out the drawing at the top.

11 This is a Phelps drawing, and
12 I think I've taken it to you before. But when you
13 look at that, you can see the curvilinear
14 alignment that we've been talking about.

15 A. Yeah, I see that, yep.

16 Q. Okay. And you're exactly
17 right. There is one turn, that's the 420, and you
18 can see that, assuming you're going northbound
19 which is towards the right, towards King Street
20 here, that's the first turn and that sequence of
21 what ends up being four turns. Do you see that?

22 A. I do see that.

23 Q. Okay. And in fact, and
24 this is relevant, it's only the fourth turn there
25 past Queenston where you've got a radius of the

1 525. You've got a 690 to a 525.

2 Can we take that down the now,
3 please, Registrar.

4 Were you aware that under the
5 1985 Ontario Design Guide that there were -- there
6 are -- that a design speed of no higher than 100
7 kilometres is recommended for a tightest turn of
8 420 metres? Is that something that you knew?

9 A. No, it's not.

10 Q. Okay. Okay. I would
11 like to go to the CIMA 2015 report. That's
12 Hamilton 702, please. First of all, image 9.
13 Yeah. Last sentence on that. If you can call
14 that out, Registrar, please. Yeah, that's
15 helpful. Thank you. Okay.

16 This is the description of the
17 study area, and it talks about the parkway, and
18 controlled access is provided to interchanges with
19 on and off ramps, and then it says the posted of
20 the road is 90 kilometres per hour, and the design
21 speed is assumed to be 110. In other words, CIMA
22 at this point in 2015, having already delivered
23 one report, is trying to deduce what the design
24 speed is from the fact that the posted speed is
25 90. Do you see that?

1 A. I see that.

2 Q. Okay. Let's go -- can we
3 please go forward to image 26. Thank you. And
4 here if we can call out -- this is potential
5 contributing factors. If you could please call
6 out the paragraph beginning "another indication of
7 high speeds."

8 So here:

9 "Another indication of high
10 speeds may be involved -- that
11 is in causing collisions -- is
12 the fact that some curves
13 within the study area in
14 particular the four curves in
15 the vicinity of King Street
16 and Queenston Road appear have
17 to curve radii of
18 approximately 525 metres."

19 (As read)

20 And there's a footnote there,
21 11.

22 Registrar, are you able to
23 call out footnote 11 at the same time?

24 THE REGISTRAR: Sorry, I can't
25 call up two things on the same document for some

1 reason. So I can switch to the footnote and
2 switch back to the paragraph.

3 MS. JENNIFER ROBERTS: Thank
4 you.

5 BY MS. JENNIFER ROBERTS:

6 Q. Okay. There we have
7 footnote 11:

8 "Design information was not
9 provided for these curves.

10 Approximate measurements were
11 taken from satellite imagery."

12 (As read)

13 In other words, and I haven't
14 taken you to it, but CIMA has asked for the design
15 records, and here, again, the second report
16 they're having to -- trying to estimate what the
17 curves are because they don't have the data, and
18 they have taken it from satellite imagery. Okay.

19 You can go back up to the
20 paragraph. Thank you, Registrar.

21 And they get it wrong. So
22 they said that the tight turn appears to be of a
23 radii of approximately 525 metres, which is the
24 minimum under provincial standards for a design
25 speed of 110 and a maximum superelevation of

1 6 percent. Do you see that?

2 A. I see that.

3 Q. Okay. I think they are
4 right. But what they are missing here is in fact
5 that the smallest turn is 420 which has a maximum
6 design speed of a hundred at the time. Okay.

7 And, sorry, Registrar, you can
8 take that down.

9 And, Mr. Moore, you've read
10 the CIMA report. That's true? The 2015 CIMA
11 report.

12 A. At some point in time I
13 believe I did.

14 Q. Well, in fact you
15 annotated it?

16 A. Is this the one I made
17 comment on? Okay.

18 Q. It is.

19 A. I've seen so many
20 reports, I -- it's all a blur.

21 Q. Okay. And so -- and here
22 Hamilton is engaged in investigation as to why
23 there were disproportionate number of collisions
24 on the Red Hill, and you've got a consultant here,
25 CIMA, who's trying to provide an analysis by

1 deducing what the design state is for the Red
2 Hill. But, sir, you in engineering services have
3 the design reports. That's true; isn't it?

4 A. They were available.
5 They were available online as well.

6 Q. Well, let's just leave
7 that for a second. You've got the drawings?

8 A. Yeah, the drawings were
9 in the records, yes.

10 Q. Okay. And I'm going to
11 suggest to you that the preliminary design
12 reports, whether they might have been published at
13 some point, they weren't available in 2013, 2015
14 otherwise CIMA would have had them?

15 A. No, they were published
16 before we finished building the roadway.

17 Q. Right. So that goes back
18 to 2007?

19 A. Right.

20 Q. Right. What we have
21 here -- so let me just put this another way. When
22 you read this, and you see that CIMA has two
23 points that are I think important to an analysis
24 of collisions, that is, design speed and the
25 design state of the radius, and it's wrong, and

1 you don't correct it, do you, sir?

2 A. Geometry of the roadway
3 was not something that I was intimately familiar
4 with. I wasn't involved in the development of it,
5 so I don't know whether that would have come to
6 me, but, again, I wasn't directing this
7 consultant.

8 Q. Well, I get that you
9 weren't directing them. I wasn't suggesting that.
10 But you are reading a report from a consultant
11 retained to investigate collisions, and there's
12 information about the design state that you don't
13 provide information for. Do you ever provide the
14 preliminary design reports or the drawings to
15 CIMA?

16 A. No, I mean, it would have
17 been a simple question, can we have the background
18 for the freeway, the geometrics and -- again, I'm
19 not involved in this or the direction or where
20 they're going or what they want. My review was a
21 cursory review in regard to what was appropriate
22 to me at the time.

23 Q. In fact it's not until
24 2018 that Serof Malam (ph) is asked to find the
25 design drawings and he provides them to CIMA. So

1 by that time they've done a number of reports in
2 which they are trying to deduce the design state.
3 I'm going to go to a different point.

4 In your evidence you
5 repeatedly identify speed as a factor in causing
6 collisions on the Red Hill. And I'm not going to
7 diminish that as a factor because, frankly, I
8 think that's highly likely. But I want to note
9 something.

10 When the highway was designed
11 going back in the early 2000s, so it was designed
12 pursuant to the Ontario 1985 Design Guide, and as
13 I said earlier the minimum radius -- the design
14 speed for a minimum radius turn of 420 metres was
15 100 kilometres per hour with the superelevation of
16 6 under that guidance. Did you know that in 2017
17 that TAC changes the guidance for design speed and
18 turns?

19 A. Oh, I wasn't involved in
20 that.

21 Q. Okay. So in 2017 a
22 420-metre radius turn is consistent with a
23 recommended design speed of 90 kilometres per
24 hour. You didn't know that, did you?

25 A. No.

1 Q. Okay. So let's just
2 think about the consequence of that. So that
3 means that anyone going faster than 90 on the Red
4 Hill is in fact going faster than modern highway
5 guidance would recommend appropriate for the turn.
6 So when we say people are -- when the observation
7 is that people are speeding, anything faster than
8 90 is in fact not only speeding but in excess of
9 what the modern guidance is for the speed given
10 the geometry. Did you know that?

11 A. No.

12 Q. I want to go to a
13 different topic.

14 You gave testimony, I think,
15 on Monday -- although I confess my days are
16 probably getting scrambled at this point -- about
17 the beginnings of the Golder report which is the
18 five-year then it says six-year condition
19 evaluation. You were asked questions about
20 flooding damage on the Red Hill, and you had a
21 recollection that was the case but couldn't
22 identify when that was -- when that happened. Do
23 I have that right? Your evidence is correct on
24 that?

25 A. Other than I know it was

1 early on in the expressway's life.

2 Q. Yeah, it was July 2009
3 and then again July 2010. Did you observe damage
4 to the surface asphalt after the flooding?

5 A. No, I don't believe so.
6 There was some shoulder damage that was seen. I'm
7 not -- I don't believe there was any damage to the
8 pavement that was visible at that time.

9 Q. Okay. So one of the
10 things that I think happens at that point is that
11 the sensors imbedded to some of the different
12 layers of the pavement are knocked out by the
13 flooding. Does that fit with your recollection of
14 the sequence of events? So there are two levels
15 of sensor. There's sensors on the top that are
16 monitoring traffic, and then there's another set
17 of sensors underneath that are actually monitoring
18 the pavement performance, so the deflection,
19 weight, heat of the different layers.

20 A. I was aware that there
21 was one or two of the sensors at the -- at what I
22 recall was the intermediate depths.

23 Q. Okay.

24 A. That they had gone out,
25 but that was after the initial -- my understanding

1 is that was after the initial two-year period, and
2 I don't know that I was aware that it was a result
3 of flooding because it wasn't really in the
4 flooded area to my recollection.

5 Q. Okay. It got there
6 throughout. But in any event, as we see going
7 forward into 2013 that there -- to reconnect the
8 sensors for the monitoring becomes an issue.

9 So I want to go please to
10 overview document 6, please, Registrar. And you
11 gave testimony on Monday about the origins of the
12 five-year condition review.

13 Can we please go to image 7.
14 There we are. So paragraph 8 and paragraph 9
15 please. Can you pull those out. Okay.

16 So here we have notes, the
17 transcription of notes from Dr. Uzarowski's
18 notebook, and we've got an entry on October 25
19 noting "Hamilton RHVP" and there's phase three of
20 the -- I think must be the PMTR. And then another
21 entry dated November 21, 2012 saying Hamilton
22 "RHVP monitoring station start" and "five years
23 later."

24 Okay. You can take down that
25 callout.

1 I'm going to -- in your
2 testimony you suggested that the origins of the
3 five-year condition review was a proposal for --
4 or an abstract for a paper that was delivered in
5 February of 2013.

6 I'm going to suggest to you
7 that the origins actually go back to the late fall
8 of 2012 in which you got discussions with
9 Dr. Uzarowski about the RHVP five years later. Do
10 you have any recollection that would call that
11 into question?

12 A. No, I can't dispute --

13 Q. Okay.

14 A. I don't recall that at
15 all.

16 Q. I would like to please
17 go -- you can take that down, Registrar.

18 So that Tradewind report is
19 produced in a number documents, and rather than go
20 to image 105 within the Golder reference, let's
21 use the one that Kaitlyn (ph) has called up today.

22 Hamilton 61795. If we can
23 have a look at that please, Registrar. Hopefully
24 I've got it right. Thank you.

25 You described it yesterday as

1 a chart with lots of numbers, but I'm going to
2 suggest to you in fact there's a lot of narrative.

3 Registrar, can you go please
4 go to image 2. So there's an introduction and
5 then a survey description.

6 Registrar, can you please call
7 up that paragraph "in Canada and the U.S." Thank
8 you. Let's make this easier. Okay.

9 So in this introduction
10 there's a description of the work, and in this
11 Tradewind says off the bat:

12 "In Canada and the U.S. there
13 are currently no directly
14 applicable reference standards
15 of guidelines with which to
16 compare data by the CFME --
17 that is the Continuous
18 Friction Measurement Equipment
19 for Roads and Highways --
20 although they are well
21 established for airport
22 runways." (As read)

23 And then he goes to refer to
24 the UK transportation authority developed
25 reference investigatory guide. And Ms. Lawrence

1 took you to that, and I'm not going to go over
2 that evidence.

3 But what I want to point out
4 is that it is clear and in writing from the very
5 beginning that there are not applicable published
6 reference standards for the grip tester. You see
7 that.

8 A. Hm-hmm.

9 Q. You agree with that?
10 That's what it says.

11 A. I wasn't aware that there
12 were any different. I don't know. That was my
13 information, that there were no standards.

14 Q. Thank you. And, again,
15 you've given this testimony -- Ms. Lawrence took
16 you to it -- that the Tradewind findings were that
17 the friction levels on the Red Hill were well
18 below or below the UK investigatory level. You've
19 gone through that. I'm not going to take you back
20 to it right now.

21 Your evidence is that you read
22 that in early 2014 and you had questions about the
23 reliance of Tradewind on a UK investigatory
24 standard. You've testified over the last couple
25 of days to that. Do I have that framed correctly?

1 A. That's correct.

2 Q. All right. And you said
3 that you described the Tradewind analysis as
4 confusing because of its reliance on the UK
5 standard?

6 A. That's consistent with my
7 understanding.

8 Q. Okay. Okay. You've said
9 and testified that you were looking to Golder to
10 provide an explanation of the reference standard
11 and whether there were standards in Canada and the
12 U.S.

13 A. I believe it was more
14 appropriately that I was asking for clarification
15 on why and how we can use the British standards or
16 why we should use the them.

17 Q. Okay. Okay. And,
18 Mr. Moore, we have a number of instances in the
19 evidence in which it's clear that you're looking
20 for a response for Golder, and that's reflected in
21 the documents. I'm just going to go through some
22 of them briefly.

23 So, Registrar, you can take
24 down this document, please. Can we please go to
25 overview document 6, 83.

1 So there are a number of
2 instances, so I'm not going to capture them all,
3 but I think I can get a flavour for this quite
4 easily.

5 So paragraph 216, January 7,
6 2014 Dr. Henderson's e-mail to Mr. Taylor -- he's
7 Tradewind -- and asked him for his anticipated
8 timeline for providing the Hamilton test results.
9 And Mr. Taylor responded Dr. Henderson replied and
10 she -- that she understood, but that the client
11 was starting to bug me. I think that means you,
12 Mr. Moore.

13 A. I believe so.

14 Q. Okay, can we please go
15 forward to -- paragraph -- sorry, page --
16 image 87, 230? And, again, this is end of
17 January, January 24. Let's go to 230. Thank you.

18 Dr. Uzarowski wrote to
19 Mr. Taylor:

20 "Good morning, Leonard. I
21 received a message from my
22 client this morning. He needs
23 friction testing results this
24 morning. He has a meeting
25 with management to discuss the

1 pavement issue. I would
2 appreciate if I can receive
3 the report this morning. It
4 cannot be delayed anymore."

5 (As read)

6 Do you see that?

7 Q. I take it that there's no
8 question that you followed up with Dr. Uzarowski
9 and requested -- and followed up requesting the
10 test results?

11 A. I don't know that I did.
12 I don't -- I don't doubt that Dr. Uzarowski said
13 that I contacted him in the morning. I don't have
14 any evidence either way that I did or didn't. I
15 don't have any recollection of a specific
16 conversation with him.

17 Q. Right. And in following
18 up on deliverables with a consultant, would that
19 be you or would that be your resistant
20 Ms. Cameron? Or both?

21 A. It could be either. If I
22 was tied up in a meeting or going to be busy
23 otherwise and I was looking for something, I may
24 have occasionally asked her to contact whoever it
25 was in regard to what I had expectation, whether

1 it was an invoice correspondence or report or
2 whatever.

3 Q. Okay. But if you -- but
4 you'll agree with me if you wanted something, you
5 would follow up and look for it, wouldn't you?

6 A. If I was looking for it
7 and it was overdue, it would be my practice to
8 take an opportunity to find out where it was.

9 Q. Okay. Let's go down to
10 the next paragraph, 231. Again, this is a further
11 follow-up from Dr. Uzarowski. And he's chasing
12 pretty hard, so you must have got that message
13 across very strongly. My client needs a
14 comparison of the friction numbers on the Red Hill
15 from 2007, 2013. I need the numbers for 2013.
16 And he needs my summary before noon.

17 So you conveyed that. You
18 clearly conveyed a strong message that you really
19 needed this data. Isn't that true?

20 A. Well, it appears that
21 that's Ludomir's understanding of my need, yes.

22 Q. Quite clearly conveyed,
23 Mr. Moore. Okay.

24 And I'm going to jump forward
25 to February 24, 2016. This is overview

1 document 7, image 85. This is a totally different
2 context. 268. There we go.

3 February 24, 2016 Mr. Moore
4 e-mailed Dr. Uzarowski in response to -- this is
5 an invoice, invoice for the -- that is actually
6 for the inertial profiler. That's not the point
7 of the question. The observation I want to make
8 here is you write:

9 "I have asked twice now, but I
10 have not seen a proposal, any
11 proposal for this work. I
12 approved it in principle for
13 you to proceed as time is time
14 sensitive." (As read)

15 Again, sir, I suggest to you
16 that when you want that proposal you're following
17 up in writing and you already made calls. That's
18 true?

19 A. When I'm being chased,
20 yes.

21 Q. Well, when you're chasing
22 you're pretty effective?

23 A. When someone has asked me
24 for this, they are asking me; I'm asking him.

25 Q. Let me just pause on that

1 one. I don't see there's any -- anything that
2 you're being asked for. I see you asking for the
3 proposal so that can you deal with the billing.

4 MR. LEDERMAN: Well, I think
5 in fairness to the witness to that question, that
6 he should be put the full chain of that e-mail.

7 MS. JENNIFER ROBERTS: Sure.
8 Let's see if we can do that. Maybe let's go to
9 the e-mail. That would be Golder 2996. Let's see
10 if that helps.

11 BY MS. JENNIFER ROBERTS:

12 Q. So there's a bill from
13 Ms. Charter, and it's -- can't be reconciled with
14 the PO, so this is an accounting issue, and what
15 you need is the proposal in order to issue a
16 purchase order so that the billing can be
17 allocated to the right project. And this is the
18 sequence. Do you see that?

19 A. I see that.

20 Q. Okay. So when you say
21 that you're being chased, I don't see that
22 context. I see just you're trying to tidy up the
23 invoicing here, and you've called twice and then
24 you sent an e-mail?

25 A. So Golder's sending me an

1 invoice?

2 Q. Yeah.

3 A. Asking me to pay an

4 invoice --

5 Q. Yeah.

6 A. -- for something I

7 haven't seen a proposal for yet.

8 Q. Right.

9 A. So how can you send me an

10 invoice on something I haven't seen a proposal

11 for.

12 Q. Right.

13 A. So if you want me to pay

14 the invoice, send me the proposal.

15 Q. And so you chase up to

16 get it?

17 A. Right.

18 Q. Got it. Okay. Let's go

19 to a different document. November 21, 2017. This

20 is overview document 8. Let's go to image 16.

21 I'm looking for the -- yeah, it's 16 and 17,

22 paragraph 37.

23 This is the back and forth.

24 You went to this evidence yesterday. This is in

25 reference to the proposal for what becomes the

1 pavement evaluation project. And on November 21
2 you write Dr. Uzarowski on the subject line "Red
3 Hill - testing for possible hot in-place." And
4 you write:

5 "I was expecting to see a
6 proposal and timeframes....
7 This has to get done before
8 snowfall and freeze up." (As
9 read)

10 So, again, sir, I suggest to
11 you that when you wanted a proposal, when you
12 wanted something from Golder, you had no
13 hesitation to call and to follow up in writing if
14 necessary to get it. You'll agree with that?

15 A. When I had incentive,
16 initiative. In this case I knew that there was a
17 deadline in timing in order to have things done,
18 yes, I was following up to see where it was.

19 Q. Okay. You can take that
20 down, Registrar, thank you. Okay.

21 And we went this morning --
22 and I won't go to it because I think I've got the
23 flavour here -- is that there was evidence this
24 morning about getting results on the polished
25 stone value and BPN in 2017, and there's some more

1 chasing around that one.

2 Can we please go to overview
3 document 7.

4 MR. LEDERMAN:

5 Mr. Commissioner, if we're moving into a new area,
6 I was wondering whether we're going to have our
7 usual break. It's 10 minutes past our usual time.

8 MS. JENNIFER ROBERTS: I'm so
9 sorry. Thank you very much, Mr. Lederman.
10 Forgive me, Commissioner.

11 JUSTICE WILTON-SIEGEL: I just
12 in attempting to unmute appeared to delete myself
13 from the screen. I'm back. I concur. Let's take
14 a 15-minute break. We'll return at 20 to 4:00.

15 --- Recess taken at 3:25 p.m.

16 --- Upon resuming at 3:40 p.m.

17 MS. JENNIFER ROBERTS: Thank
18 you. Commissioner, may I please begin?

19 JUSTICE WILTON-SIEGEL: Please
20 proceed.

21 MS. JENNIFER ROBERTS: Thank
22 you.

23 BY MS. JENNIFER ROBERTS:

24 Q. Mr. Moore, I want to go
25 please to events of December 2015. So first

1 there's a public works committee meeting on
2 December 7 in which you identified that subsequent
3 testing had been conducted five years after, and
4 you say that the road's holding up exceptionally
5 well. But then on December 17 you send
6 Dr. Uzarowski a version of an e-mail that he'd
7 sent you in January 24, 2013 with friction data.

8 Can we please go to overview
9 document 7, pages 81, 82. There we go.

10 So on 255 you e-mail him that
11 summary of data that we've talked about, and then
12 December 17 he sends you back the Tradewind
13 report, and he writes --

14 If we could please call out
15 256, please. Here we are.

16 So he -- Dr. Uzarowski
17 attaches the Tradewind Scientific report on
18 friction testing, and then he seems to be
19 responding to a question from you, and he says:

20 "I will look at some standards
21 or anticipated values and call
22 you."

23 Do you see that?

24 A. I see that.

25 Q. But this is the only

1 reference in the records to a question about the
2 Tradewind report, and Dr. Uzarowski's evidence is
3 that you asked two things. One, whether locked
4 wheel could be correlated with grip tester
5 numbers, and two, whether there were standards for
6 grip tester.

7 There is no record of a call
8 or a meeting or a follow-up e-mail between
9 December 17, 2015 and your meeting with
10 Dr. Uzarowski on February 7, 2014 in which he
11 presented, delivered and went over the Golder
12 report and the Tradewind report. There's no --
13 nothing in there to suggest that you had any
14 questions whatsoever about the Tradewind report,
15 sir.

16 I'm going to suggest to you
17 that if you did, you were not shy about having a
18 follow-up call or an e-mail and that would be in
19 the records. You shook your head.

20 A. I don't know what the
21 question is.

22 Q. Okay. I'm suggesting,
23 sir, that you're mistaken in your recollection.
24 Do you disagree with that?

25 A. I do disagree with that.

1 Q. Okay. Now,
2 Dr. Uzarowski's evidence is that he responds to
3 the questions on -- by March 4 of 2015, and I
4 understand and Ms. Lawrence took you it to this
5 morning, that there's a contest in recollection as
6 to whether that was answered or not, and
7 Dr. Uzarowski's evidence is that it was, and you
8 say, no, you had questions and they weren't
9 answered.

10 My point is is that after this
11 there's no further followup from you identifying a
12 question or complaining about the Tradewind report
13 or saying that it's the source of confusion.
14 Again, I'm going to suggest to you that if it had
15 been -- if you had a question, there would be a
16 record for it.

17 A. I don't -- I don't know
18 specifically what your -- what the question is
19 there.

20 Q. Well, it's the same
21 question, sir. The question is, is whether you
22 disagree with my assertion that there would be a
23 record?

24 A. I don't know whether
25 there would be a record or not. Ludomir had and I

1 had several meetings on several issues. I don't
2 know whether, you know, I asked him. The fact
3 that the report remained unfinalized, the fact
4 that there's no way that I would have accepted the
5 British standard and the report was never modified
6 to direct or identify that in any way, shape or
7 form, I beg to differ that my question remained
8 unanswered.

9 Q. I'll come back to it, but
10 I'll leave this and go to a different topic now.
11 I want to talk about the microsurfacing
12 recommendation.

13 Registrar, can you please take
14 that down.

15 First of all, let me just
16 touch a piece of evidence that hasn't been raised
17 at least with you, and that is: Dr. Uzarowski's
18 evidence is that he obtained brochures from Miller
19 Paving in December of 2013 about microsurfacing
20 and provided them to you when you met on
21 February 7, 2014. Do you remember that?

22 A. I don't, no.

23 Q. And you were familiar
24 with microsurfacing as a pavement treatment?

25 A. I was.

1 Q. Okay. Can we please go
2 to Golder 7440.

3 I'm going to take you to the
4 pavement and material technology review phase 2.

5 There we go. Registrar, can
6 we please turn up image 49. There we go.

7 So this is identified a number
8 of pavement preservation techniques that are -- do
9 you see that?

10 A. I see that.

11 Q. Okay. Let's go to the
12 next page, 50 -- sorry, image, forgive me. I
13 think it's the next page. Hold on. 51. Sorry.
14 There we go. Microsurfacing.

15 So in that PMTR Phase 2 you've
16 got a description about the application of
17 microsurfacing and description here.

18 A. Right.

19 Q. And if you see on the
20 third paragraph Dr. Uzarowski and Dr. Henderson
21 identified as being an appropriate treatment for
22 roads carrying medium to high volume traffic. Do
23 you see that?

24 A. I see that.

25 Q. Okay. Can you take that

1 down please, Registrar. You can actually take
2 down the whole document. You can take down the
3 document. Thank you.

4 And you've testified -- I'm
5 not going to belabour it -- but microsurfacing was
6 one of the recommendations made in the Golder
7 report. Do you remember that?

8 A. In which report?

9 Q. The Golder report. Let's
10 go to it.

11 A. The five-year -- the
12 five-year review.

13 Q. Yeah, this ends up being
14 a six-year condition evaluation.

15 A. As a recommendation to
16 do?

17 Q. Microsurfacing.

18 A. For what? To address
19 what, I'm sorry?

20 Q. Let's go to it. Let's go
21 to Golder 2981. Image 10. There we go.

22 So this is the six-year
23 review. We've been calling it the Golder report.
24 The analysis and recommendations.

25 And if we go to the next --

1 sorry, that page. So can we please go to -- go to
2 the next page, please, image 10. Here we are.
3 Okay.

4 And you've been taken to these
5 already, so I don't intend to belabour this.

6 And we call up the paragraphs
7 beginning "In order to remedy" and the one below.
8 Those two. Thank you. There we go.

9 "In order to remedy the
10 longitudinal top down
11 cracking." (As read)

12 And there's the recommendation
13 that the surface course milled and paved, and
14 that's for about a 2.5 kilometre section. Do you
15 see that?

16 A. I see that, yep.

17 Q. Okay. And:

18 "On the remaining portion the
19 existing cracks in the surface
20 course should be routed and
21 sealed to prevent ingress of
22 water and incompressible
23 material in the pavement
24 structure. Following routing
25 and sealing it is recommended

1 that a single layer of
2 microsurfacing be applied by
3 carrying out the mill and
4 overlay where required and
5 applying microsurfacing. The
6 issue of relatively low FN on
7 the Red Hill Valley Parkway
8 would also be addressed." (As
9 read)

10 Do you remember that?

11 A. I do now that I see it,
12 yes.

13 Q. Okay. Thank you. Do you
14 remember that recommendation?

15 A. I do now that I see it,
16 yes.

17 Q. Okay. Thank you. And
18 later in 2016 Miller Paving provides virtually the
19 identical recommendation.

20 Can we please go to overview
21 document 7, image 122. 391. Can you please call
22 paragraph 391. There we have it. Okay.

23 Now, this goes to Mr. Andoga,
24 and I'm not sure that -- so he's -- Cifelli is
25 reporting to Mr. Andoga saying that they drove the

1 LINC and Red Hill, took notes, and they found some
2 bad paver joints. They may need to repair areas,
3 crack seal, cold mix, hot mix, before micro. And
4 then the last paragraph is:

5 "Brad feels that micro is a
6 good option. However, we need
7 to allow for some
8 pre-construction repairs,
9 potholes, crack sealing, base,
10 et cetera, and perhaps some
11 crack sealing the year after
12 the micro in case some cracks
13 return."

14 Do you see that?

15 A. I see that.

16 Q. Were you aware of
17 Mr. Cifelli's assessment of the Red Hill, and the
18 advice that they provided as to the application or
19 the appropriate applicability of micro?

20 A. I assume Mr. Cifelli is
21 an employee of MSO Construction giving us his
22 advice on what we should buy from him.

23 Q. Yeah, it's Miller Paving.
24 Yes, that's right. And my question was whether
25 you were aware of that in 2016?

1 A. I don't -- I don't recall
2 specifically, no.

3 Q. Okay. So but here -- so
4 you've got advice from Noah -- your pavement
5 expert, and you've got advice from a specialist
6 contractor both of whom have a great deal of
7 expertise in surface treatments who are
8 recommending microsurfacing as an appropriate
9 treatment, and that advice is not taken, sir.

10 A. Question?

11 MR. LEDERMAN: Sorry, I didn't
12 hear a question there, and I don't believe it's a
13 fair question in any event given that the witness
14 has just said that he was not aware of advice from
15 Mr. Cifelli.

16 MS. JENNIFER ROBERTS: Thank
17 you.

18 BY MS. JENNIFER ROBERTS:

19 Q. You testified earlier
20 that you didn't have good experience with
21 microsurfacing. Did I hear you right?

22 A. That's correct.

23 Q. Okay. And here when
24 Golder provides you the recommendation in
25 microsurfacing, is it the case that you just

1 didn't agree with it?

2 A. It -- I don't know. I
3 don't know what my response was or if we have any
4 information on what I responded or how I responded
5 to Ludomir in that regard.

6 Q. There isn't any response.
7 So -- but my question is more specific, I think,
8 and not temporal. Did you -- you've received
9 advice on a number of occasions that
10 microsurfacing is appropriate. You do in the
11 Golder report, and in the pavement and materials
12 technology reviewed this discussion about it as an
13 appropriate technique for high surface -- sorry,
14 high speed roads. And my question is, did you
15 disagree that it would have been appropriate for
16 the Red Hill?

17 A. I don't believe I
18 rejected it out of hand. I believe that I was
19 still looking for other information at the time on
20 whether it was the appropriate way to deal with
21 it.

22 Q. So leave the issue of
23 friction. We're just dealing with the -- we're
24 just dealing with a pavement treatment as a
25 remedial measure for a surface that has damage.

1 You've got a recommendation. Did you disagree
2 with it?

3 A. I believe the -- I
4 believe the recommendation for the placement of
5 the microsurfacing was to place it -- you can
6 place it over top of those areas that you route
7 and seal. I don't know that I found it necessary
8 to do that, and in light of my previous history I
9 don't know that it was going to be a
10 cost-effective or appropriate in dealing with the
11 issues that had been identified. So I don't
12 believe at the time it was, no, we're not doing
13 that because I don't like it. I don't believe
14 that's indicated anywhere in any correspondence.

15 Q. No, there's just --
16 there's silence. But let me just follow up on a
17 point. So are you saying, sir, that to route and
18 seal the Red Hill and perhaps to do the shave and
19 pave where the worst areas of cracking and
20 deformation were would have been a sufficient
21 remedial response?

22 A. It's one thing we could
23 have done, yes, but I don't know whether we were
24 prepared to do it at the time.

25 Q. Okay. I want to go to --

1 can we take this down, please, Registrar.

2 I just want to pursue that a
3 little bit.

4 That -- I think you can pull
5 that down. Thank you. There we go.

6 You'll agree with me that from
7 your own observation and the findings in the
8 Golder report that you knew there was top down
9 cracking and surface deformation.

10 A. I believe that's correct.

11 Q. Okay. And you knew that
12 it was important to protect the deeper layers of
13 the asphalt of the perpetual pavement in order to
14 get the benefit of the investment that Hamilton
15 had put into the premium design and construction?

16 A. That's correct.

17 Q. And here's the issue.
18 You've got recommendations for steps to implement
19 remedial work to protect the -- to treat the
20 surface to protect those layers. Sorry, let me go
21 in a different direction.

22 So you've got the advice as to
23 what to do to treat, and you're saying you didn't
24 disagree with it, but you don't think that --
25 well, it was one thing you could have done, but it

1 wasn't done. I've got -- it looks as though from
2 the chronology that there's discussions about
3 surface treatment, and then in 2017 that the City
4 makes a decision to shave and pave, and I don't
5 know -- quite follow the decision-making. It's
6 rather opaque in the documents.

7 Were you a participant in the
8 decision to resurface and not use a surface
9 treatment?

10 A. The resurfacing needed --
11 or was recommended. The ability to undertake the
12 work in terms of the funding for that work became
13 available through other things that were happening
14 in the City's budgeting process.

15 Q. Okay.

16 A. And the decision to
17 resurface came out of those discussions and how to
18 use that money effectively, efficiently and with
19 the speed it needed to be used.

20 Q. So do I have that right?
21 That once funding became available, that it
22 wasn't -- well, you didn't think that it was
23 useful to do an interim measure. You might as
24 well just do a shave and pave of the whole
25 facility. Do I understand you?

1 A. That's correct.

2 Q. Okay.

3 A. That's correct.

4 Q. I want to go forward to
5 your exchange with Mr. Malone in August of 2015.

6 And this is in overview
7 document 7, pages -- I think it's 39. Registrar,
8 can you please go to that. No, can you go to the
9 previous page, 38, and 39. Okay. Sorry, you've
10 got to go to 37. Right.

11 Q. So you provide
12 information to Mr. Malone. You basically forward
13 a slightly revised version of the e-mail that
14 Dr. Uzarowski sent you on January 24, 2014 in a
15 revised version, and then you have a discussion or
16 an e-mail exchange with Mr. Malone here. And,
17 again, I'm not going to -- you've gone through
18 this evidence, and I'm not going to go through it
19 in detail.

20 So you provide a summary to
21 Mr. Malone, and you say that --

22 And sorry, now we need to go
23 forward to 39.

24 This is your response in red.
25 This is where you say the testing was done by MTO

1 both times, and so I would say it was comparable,
2 and you gave evidence that that was an error, and
3 you don't know why that happened.

4 I'm going to suggest to you
5 that here you've got in August of 2015, you have
6 access to another expert. So you said that you
7 found the Tradewind data confusing and you didn't
8 accept the finding because you didn't accept the
9 UK standard, and you said -- you've said the
10 numbers made no sense. But here you've got access
11 to another consultant with expertise in safety,
12 and if you are unsatisfied about the explanation
13 that Dr. Uzarowski had provided, you could have
14 given it to Mr. Malone, couldn't you have?

15 A. I don't know that I knew
16 that Mr. Malone was an expert in friction or in
17 this regard. I don't -- he --

18 Q. Did you know --

19 A. -- was asking me all of
20 these numbers so I don't know that he had very
21 much more knowledge on the subject than I did.

22 Q. Right. So in 2019 did
23 you know that Hamilton in fact asked Mr. Malone to
24 review and interpret the Tradewind report? Did
25 you know that?

1 A. I believe I was aware of
2 that.

3 Q. Okay. So you've got a
4 consultant who is at CIMA with abundant expertise.
5 Here was your moment to get an explanation. If
6 you didn't like what Dr. Uzarowski was giving you,
7 you had a moment here to go to a different
8 consulting firm and get the explanation that you
9 were looking for, didn't you?

10 A. I don't believe it would
11 be my practice to ask a consultant that wasn't
12 working for me, that was asking me on questions
13 with regard to the subject.

14 Q. Wait a second here. Not
15 working for you. Mr. Malone is working for the
16 City of Hamilton.

17 A. The City is a big city.
18 He's not working for me. I didn't set his terms
19 of reference and I don't know what he was asked to
20 do.

21 Q. Right. So wouldn't this
22 have been the opportunity to give him the
23 Tradewind report to perform his own analysis so
24 that he could carry out his engagement with the
25 City of Hamilton?

1 A. If he had asked me for
2 the report, we would have discussed it.

3 Q. Okay. Can you take that
4 down, please.

5 So by at least February 7 of
6 2014 you have an expert opinion from Tradewind, a
7 friction expert, that nearly all areas of the Red
8 Hill have friction values below or well below the
9 standard they consider helpful which is the UK
10 investigatory level, and Tradewind has recommended
11 further investigation, and you have the opinion of
12 a pavement expert that friction on the Red Hill is
13 relatively low and a recommendation to take
14 remedial steps both to improve pavement condition
15 and also to address the relatively low friction.

16 You said that you were waiting
17 on further information, and you'd made that
18 evidence clear. My point is different.

19 You've got two opinions about
20 the state of the surface and you don't take steps
21 to action either of them. You decide that you're
22 not satisfied, and you don't do anything. Let's
23 look at this differently. Can we -- I want to go
24 to the CIMA report, the safety analysis. You'll
25 agree with me, and we've gone to it, that you've

1 read it and that finding is of a disproportionate
2 number of wet weather collisions. Do you remember
3 that.

4 A. I remember something like
5 that, yes.

6 Q. Okay. Don't you know
7 when you read the CIMA report that whatever the
8 number for surface friction, whether it's low or
9 relatively low or just meh, that you are not
10 seeing frictional performance that you would want
11 to be seeing on this road. Don't you know that?

12 A. No.

13 Q. Really. Okay. But you
14 know -- okay. So let's just -- there are lots of
15 factors that go into frictional performance. Do
16 we agree on that?

17 A. There are lots of factors
18 that go into frictional performance.

19 Q. Maybe let me rephrase.
20 If there's evidence that the performance of -- the
21 frictional performance of a highway is not what we
22 would want, in other words that there are
23 collisions just as CIMA's observed, that could be
24 attributed to a whole litany of factors. And you
25 in your own correspondence identify speed as a

1 relevant factor. Do you remember that?

2 A. Yeah. Maybe I'm sort of
3 misunderstanding of -- you know, there are a
4 number of factors that would go into explaining
5 the occurrence of accidents, condition of the car,
6 condition of -- the environmental conditions, the
7 speed that was -- the driver, so there are a
8 number of things. I wouldn't attribute those to
9 frictional properties or thereof. They are
10 conditions that go -- contributing to the accident
11 or whatever you're measuring.

12 Q. Okay. I see here you're
13 thinking about it. Okay. So I framed this rather
14 differently. I framed it as frictional
15 performance. So the experience road holding (ph)
16 can be affected by the speed at which you're
17 travelling the road, driver distraction, any of
18 those other things. So I'm not sure we actually
19 disagree, but I am framing it in terms of
20 frictional performance.

21 A. Yeah, I just don't know
22 whether that's correct or not.

23 Q. Okay. That's fine. But
24 you will agree with me that surface friction may
25 be a contributing factor -- and I'll use your

1 language -- to collisions.

2 A. It could be.

3 Q. Okay. So if you're
4 not -- if you weren't content with the Tradewind
5 report, why didn't you just ask for another one?

6 A. I don't know what I would
7 have got. I simply asked a question. You've done
8 the testing. You've told me there's no standard
9 here in North America that we can rely on. We're
10 going to give you a comparison to a British
11 standard and then give me no explanation
12 whatsoever on how it might be applied whether
13 their roads are the same as our roads or anything
14 else.

15 Q. But you could have gone
16 back to MTO or John Emery or Stantec or ARA, any
17 number of the plethora of consultants that you and
18 City of Hamilton used and asked for a different
19 analysis, a different report. Why didn't you do
20 that?

21 A. I already paid Golder for
22 that information and to undertake that work. I
23 expected them to fulfill their obligation and give
24 me what I needed.

25 Q. And if they couldn't give

1 you an answer, why didn't --

2 A. Then they shouldn't have
3 done the work.

4 Q. Okay. If they couldn't
5 provide you with an answer, and according to your
6 evidence that they haven't at this point, why
7 didn't you go somewhere else?

8 A. I guess I could have done
9 a lot of things, but I don't know -- you know, at
10 this point hindsight is --

11 Q. I'm going to go.

12 A. -- 20/20.

13 Q. I'm just trying to figure
14 out where I am in my notes. I want to go to a
15 different topic.

16 So March 4, 2016. This is a
17 discussion about -- this is the delivery of the
18 inertial profiler and locating the bumps and dips.
19 Just a frame of reference in the chronology of
20 events here.

21 A. Yeah.

22 Q. And there's the
23 discussion and recommendation about the
24 microsurfacing and the skid abrader. Do you
25 remember that exchange? In March of 2016 there's

1 an e-mail exchange. Sorry, let's go to it.

2 A. If you can take me to it
3 there, it would be better.

4 Q. No problem. Let's go to
5 overview document 7, 117 to 118. Okay. Here's
6 the exchange beginning paragraph 376 and going
7 forward to 378. Is it possible, Registrar, to
8 call those out. Thank you. There we go.

9 And you've gone through this.
10 And, again, I'm not going to take you through it
11 in detail. There is, as you noted, a
12 misunderstanding about whether Dr. Uzarowski was
13 providing you with an opportunity for further
14 friction testing or as he -- his response is about
15 what methods are available to improve friction at
16 least in the short term. And I just want to go to
17 something.

18 So you say in your -- the last
19 e-mail in the chain at 378. You say "I thought
20 you were talking about more testing." And you
21 say:

22 "I have never heard of this
23 technology or what it does.
24 Besides it doesn't address the
25 cracking and need to address

1 the surface distresses and
2 deformations, so I don't think
3 we are interested. Thanks."

4 You remember that?

5 A. I do.

6 Q. So it appears that you
7 saw two ships passing in the night on some of this
8 because you seem to be inquiring about friction
9 testing and Dr. Uzarowski is giving you methods to
10 improve friction.

11 And one of the things he says
12 in his e-mail of March 15 is he responds to your
13 question about friction testing. He said:

14 "I know a local company in
15 Cambridge who bought the NAC
16 machine to measure skid
17 resistance at airports. If
18 you are interested I can get
19 them to run it on the Red Hill
20 Valley Parkway and determine
21 the worst locations and then
22 it can be done with a small
23 machine."

24 That is "done with small
25 machine", I think he means a Skidabrader.

1 "Would you like me to check
2 the cost?"

3 Do you see that?

4 A. I see that.

5 Q. So if your interest was
6 friction, Dr. Uzarowski is proposing a
7 supplemental friction testing. And there's no
8 response to this, sir. It looks as though you
9 don't respond at all.

10 A. From the correspondence
11 here it appears that I responded to the 300,000 as
12 a ridiculous amount for road testing.

13 Q. Right. That's where it
14 starts.

15 A. That's where it starts.
16 And then Dr. Uzarowski comes back about doing
17 something different for a lesser amount. And then
18 I respond back, I thought we were talking about
19 testing. And it's pretty clear what my response
20 is in that 378, is that I didn't know we were
21 talking about remedial measures. I thought maybe
22 we were talking about testing, although I do not
23 for the life of me recall planning more testing,
24 but it appears that at some point in 16 I was
25 looking for that, or had anticipated that,

1 possibly to identify more remediation. But the
2 fact that we needed to do the humps and sumps and
3 the cracking -- I don't know at that time what
4 value it was going to present, so that's clear in
5 my response.

6 Q. At this point in 2016
7 you're focused on the remediation of the Red Hill
8 and the correction to the humps and bumps and
9 cracking. Is that the focus?

10 A. From the correspondence
11 here I believe that's correct.

12 Q. I want to go to a
13 different topic, please. Registrar, can you take
14 that down.

15 I'm going to go the topic of
16 the Golder pavement evaluation. Registrar, you
17 can take that whole thing down. I'm going to go
18 to OD8 next.

19 You recall that the Golder
20 pavement evaluation -- and we've gone to it a
21 number of times so again I'm going to try and ask
22 a couple of questions on the points that I'm
23 interested in.

24 That's the work that entailed
25 three sets: The sand patch, which is

1 macrotexture, polished stone value, and British
2 pendulum method test. Do you remember that?

3 A. I believe so, yes.

4 Q. You were asked this
5 morning whether you expected a written report and
6 you replied that you likely needed one. Do you
7 remember that?

8 A. I do.

9 Q. And you explained that if
10 you had to go to council about a new technology
11 you would likely have needed backup. You said
12 that?

13 A. I believe that's what I
14 said, yes.

15 Q. It was only this morning
16 but it might seem ancient.

17 A. Yes.

18 Q. You write that the
19 polished stone value testing was rolled into the
20 feasibility study. You were asked whether you
21 recalled --

22 THE REGISTRAR: Sorry,
23 Counsel, I don't mean to interrupt. It looks like
24 we just lost the Commissioner.

25 (DISCUSSION OFF THE RECORD)

1 JUSTICE WILTON-SIEGEL: Okay.
2 We seem to have lost you at this end. I just want
3 to make sure that everyone else is back, including
4 Ms. Lawrence.

5 THE REGISTRAR: Sorry,
6 Mr. Commissioner. I have you, I don't have Ms.
7 Lawrence. I'm still here, Mr. Commissioner.

8 JUSTICE WILTON-SIEGEL: We
9 should go back live, is that correct? I take it
10 we went off.

11 THE REGISTRAR: We're still on
12 the record, so we can continue.

13 JUSTICE WILTON-SIEGEL: Let's
14 then proceed.

15 BY MS. JENNIFER ROBERTS:

16 Q. I lost my train of
17 thought. Okay. Ms. Lawrence asked you this
18 morning whether you recall asking for a report on
19 the pavement evaluation and you said you didn't
20 know whether you did or not. Do you remember
21 that?

22 A. I do.

23 Q. There was a conversation
24 what to do with the pavement evaluation results
25 and whether Hamilton wanted a report.

1 Dr. Uzarowski's note of a
2 conversation with Mr. Becke. Registrar, can we
3 please go to overview document 8, image 79, 218.

4 I think at this time March --
5 Mr. Becke is transitioning to take up project
6 management of the pavement resurfacing; is that
7 right?

8 A. I believe so.

9 Q. And Dr. Uzarowski's notes
10 of a conversation, and that is paragraph 218 --
11 Registrar, can you please call that out.
12 "Hamilton, Mike Becke, test results - leave them."
13 Goes on to "HIR" and "CIREAM."

14 Dr. Uzarowski's evidence is
15 that he had a conversation with Mike Becke about
16 what to do, and Mr. Becke said don't bother
17 retesting and they didn't need a report. Do you
18 have any evidence to dispute that there's (sic)
19 instructions were provided by Mr. Becke?

20 A. No, I have no
21 (indiscernible) that.

22 Q. In December 2018 there's
23 a meeting between Dr. Uzarowski and Mr. McGuire,
24 and you said this morning you didn't meet with
25 Dr. Uzarowski after you left public works. Do you

1 recall that?

2 A. I do.

3 Q. Dr. Uzarowski's evidence
4 was that during the meeting with Mr. McGuire he
5 had the sense that there was somebody -- he could
6 hear that there was somebody listening through the
7 intercom. Did you listen to Dr. Uzarowski's
8 conversation with Mr. Becke on December 18, 2018?

9 A. I don't know. I don't
10 believe so. I don't -- like I said before, I
11 don't recall having any contact with Ludomir after
12 I left public works.

13 Q. That's not a contact,
14 that's not a meeting between you. It's a question
15 whether you sat in and listened in on a meeting
16 between Mr. McGuire and Dr. Uzarowski. Do you
17 have a recollection of that?

18 A. No.

19 Q. Registrar, you can take
20 that document down that's on the screen.

21 There's a number of places in
22 the evidence where you described the friction
23 testing results as inconclusive.

24 First of all, can we go to
25 overview document 7, 188. This is the first one I

1 can see. This is in the context of Ms. O'Reilly's
2 article "How We Traffic Tragedies," July 15, 2017.
3 Can we please call out that summary, that
4 quotation?

5 Again, I recognize that this
6 is (indiscernible) article. You're quoted here as
7 saying -- sentence is, "No official report, Moore
8 said, only an informal chart." And we'll come
9 back to this point.

10 The friction testing was not
11 fulsome and the results were inconclusive. That's
12 what you quoted as saying.

13 A. Yeah, that's....

14 Q. That language
15 "inconclusive" gets consistently repeated on a
16 number of occasions going forward.

17 First of all, it's obviously
18 not true that there's no -- sorry, let me just say
19 this. In your evidence you seem to suggest that
20 official report meant a staff report. Do I
21 understand you correctly?

22 A. I don't know what she
23 meant by official report, you know....

24 Q. Right, but --

25 A. -- final report or

1 whether I was referring to a staff report, I don't
2 -- I don't know what she was referring to at the
3 time.

4 Q. But it's obviously not
5 true that there's no report on friction testing
6 because you've got the Tradewind report. That's
7 true?

8 A. I have an incomplete
9 report, yes.

10 Q. Wait a second. Wait a
11 second. The Tradewind report is a final report,
12 sir. You've gone through that.

13 A. To whom?

14 Q. It's to Golder.

15 A. Okay.

16 Q. Your evidence is that
17 because it's not directed to you specifically that
18 means it's somehow not a final report?

19 A. I didn't have an
20 opportunity to finalize that report and the
21 questions in which regard weren't addressed. I
22 don't consider it a final report until all of my
23 questions are addressed. If you give me a final
24 report it doesn't mean anything to me, I shouldn't
25 be paying for it.

1 Q. And I want to go back
2 over the evidence that there's no -- there is no
3 evidence of that follow-up. We've got your
4 evidence. We're going to leave it.

5 When you use the term, the
6 word "inconclusive" to apply to friction testing
7 that's your assessment, isn't it, in your mind, in
8 your view, the friction testing is inconclusive?

9 A. The comparison of what
10 was achieved in the field to some unknown standard
11 and the results or recommendations thereof without
12 full address of my questions, yes, that's
13 inconclusive.

14 Q. You'll agree with me that
15 that's not a finding of either the friction expert
16 or the pavement expert here, is it?

17 A. I'm not in the habit of
18 blindly accepting recommendations without
19 clarification of my understanding.

20 MS. JENNIFER ROBERTS:
21 Commissioner, I see that it's 4:30. I have one
22 line of -- like, one topic to address, if I might
23 have indulgence to proceed? And I apologize, Mr.
24 Moore, if I might -- on your patience a little
25 longer?

1 THE WITNESS: Okay.

2 JUSTICE WILTON-SIEGEL: Okay.

3 If Mr. Moore is good then I think we should
4 proceed.

5 BY MS. JENNIFER ROBERTS:

6 Q. There's another theme in
7 the evidence that you didn't think -- friction
8 should be circulated, and you reference on a
9 number of occasions MTO's treatment about their
10 friction testing, that they don't publish it. I
11 think your language at one point is keep it very
12 close to the vest.

13 Can we please go to overview
14 document 7, image 45. 134, 135. There we go.

15 So this is in the context of
16 the draft staff report on the CIMA report
17 recommending friction. Do you remember -- I think
18 you went through this evidence on Monday.

19 A. I believe I've seen this
20 before, yes.

21 Q. In item 2 -- can we
22 please call that up, Registrar.

23 "What is friction going to
24 tell you if you don't have
25 anything to compare it to?

1 There's no provincial database
2 or guideline. The MTO won't
3 discuss it with you because it
4 opens up an entire line of
5 liability on every road."

6 Do you see that?

7 A. I see that.

8 Q. And then again let's go
9 to OD7, 52, October 29, 2017. Paragraph 159. You
10 write -- call that out. Straining to see.

11 This is in your commentary on
12 the 2015 CIMA report. You write:

13 "There's no basis, nothing to
14 compare to and no agency in
15 Ontario, including the MTO,
16 doing this. It means nothing
17 except proving potential
18 exposure to legal actions and
19 confusion."

20 Do you remember that note?

21 A. I remember seeing that
22 note, yes.

23 Q. Do you remember writing
24 it?

25 A. I -- I don't

1 specifically, no.

2 Q. Let's go to Hamilton 690
3 at image 41. That note. That's the one we want.
4 Can you call that out, Registrar?

5 THE REGISTRAR: Sorry, I'm
6 going to have to pull up the native. I realize
7 that --

8 MS. JENNIFER ROBERTS: I
9 apologize, I should have identified that.

10 BY MS. JENNIFER ROBERTS:

11 Q. There you go. You see
12 the note on the side? It says "G. Moore
13 October 29."

14 A. Yeah. I don't dispute
15 those are my notes. I just don't specifically
16 recall.

17 Q. Thank you. Sorry,
18 Registrar, I'm going to make you dizzy here. You
19 can take that down and go to OD7, 112, February
20 25, 2016, 3:56.

21 This is in response to Mr.
22 Ferguson's e-mail to the -- I'm not going to get
23 this right, the Lakewood -- the Lakewood
24 committee.

25 A. I know who you are

1 referring to.

2 Q. You do?

3 A. Yes.

4 Q. Thank you. They have
5 requested that the CIMA recommendation for
6 friction testing may move to a short term
7 countermeasure. That's the context for this. And
8 you write to Mr. Ferguson, copying Mr. Lupton:

9 "FYI - the roughness, skid
10 resistance, friction testing
11 has been done. I'm still
12 waiting for the analysis to
13 put into context."

14 You write:

15 "MTO is very guarded of this
16 information and does not share
17 numbers due to liability and
18 concerns. It will form part
19 of a legal action. We should
20 be similarly wary."

21 In other words, I read that as
22 saying that the MTO -- what you understand to be
23 MTO's policy of being close to the chest with
24 their friction data is something that you're
25 recommending for the City of Hamilton. Am I

1 following your statement here correctly?

2 A. I would say yes.

3 Q. Was it -- you can take
4 that down, Registrar. Was it your view that as a
5 risk management strategy that it was unwise to
6 publish friction numbers?

7 A. In the absence of
8 anything else other than my understanding of how
9 the MTO treated that information, but that's what
10 -- this similar -- that we should adopt a similar
11 fashion.

12 Q. I take it the concern is
13 that the numbers might be misunderstood in the
14 relevance of friction, just as we discussed
15 earlier, in an overall assessment of cause, might
16 create sort of a distorted risk of liability. Am
17 I following the reasoning?

18 A. I -- that sounds
19 reasonable to me, but other than MTO wouldn't talk
20 about those numbers. I'm sure there's several
21 very good reasons for -- some of which you've just
22 outlined, that they don't discuss them with anyone
23 so that was the best information I had.

24 Q. Is that risk management
25 strategy, was something that was discussed

1 internally within the City?

2 A. I don't -- I don't
3 believe there was an opportunity to discuss it. I
4 don't believe there was anything from risk at that
5 initial discussion about we ought to have stuff
6 other than, you know, it would be in risk's or
7 legal's files for future reference.

8 Q. I'm talking about how you
9 deal with this data and wondering whether -- what
10 you perceive as the appropriate risk management
11 strategy something that was internally discussed
12 or not?

13 A. Not that I'm aware of,
14 no.

15 Q. Later in this chronology
16 Dr. Uzarowski's evidence is that he raised the
17 utility of techniques such as skidabrading and
18 shot blasting with Mr. Becke and Mr. Oddi and was
19 told that the City couldn't take steps to address
20 friction because it might be taken as an admission
21 that friction was inadequate.

22 Is that part of the same
23 strategy? Is that something you would agree with?

24 A. I wasn't involved in that
25 discussion. It doesn't sound like something we've

1 ever done. I mean, if we needed to address
2 potholes we addressed potholes, whether there were
3 claims from those potholes or not. If we had the
4 ability to rebuild a road we rebuilt the road,
5 regardless of what claims or, you know, actions
6 might have come from that. So I don't know where
7 that came from.

8 Q. You don't recall
9 discussing it with Mr. Becke or Mr. Oddi?

10 A. No.

11 Q. Thank you. Those are my
12 questions, Mr. Moore. Thank you for your
13 patience. I've kept you a little bit longer.

14 A. That's okay, thank you.

15 JUSTICE WILTON-SIEGEL:

16 There's nothing further, and I take it there's no
17 need for counsel to meet in a separate breakout
18 room.

19 We will stand adjourned until
20 9:30 tomorrow morning. Thank you. Have a good
21 evening.

22 --- Whereupon at 4:42 p.m. the proceedings were
23 adjourned until Thursday, July 21, 2022 at
24 9:30 a.m.

25