

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Wednesday, October 5, 2022 at 9:31 a.m.

VOLUME 63

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1 Arbitration Place Virtual

2 --- Upon resuming on Wednesday, October 5, 2022 at

3 9:31 a.m.

4 RON SABO: PREVIOUSLY AFFIRMED

5 EXAMINATION BY MS. LIE:

6 Q. Good morning, Mr. Sabo.

7 A. Good morning.

8 Q. Mr. Sabo, when did you
9 first learn about the Tradewind report?

10 A. I don't recall the
11 specific date that I learned of the report. I
12 believe that possibly sometime in November I was
13 aware of it by name and probably had read it
14 sometime in November or early December, but a
15 specific date I don't recall.

16 Q. Registrar, could we turn
17 up HAM64308, image 18.

18 Mr. Sabo, here we have an
19 e-mail -- at the bottom of the page e-mail from
20 Mr. McGuire to Debbie Edwards, October 4, 2018,
21 and it attaches a draft from you. But you'll see
22 on the top of the page there is an e-mail from
23 Ms. Edwards to you on October 5th, 2018. She
24 says:

25 "I have to still connect

1 with Gord McGuire but if
2 possible I would
3 appreciate having a quick
4 discussion with you this
5 afternoon if there
6 appears to be a potential
7 liability issue. I'm
8 hoping you have some time
9 between 2 and 3 p.m. if
10 you are available and
11 maybe we could speak with
12 Gord together, especially
13 since this might carry
14 over into next week when
15 I'm away."

16 Do you recall this e-mail?

17 A. I don't have a specific
18 recall of the e-mail but I have reviewed it in
19 preparation for the inquiry.

20 Q. Okay.

21 And, Registrar, could you go
22 to image 20 -- or maybe you can put up image 20
23 next to this one.

24 So this is the draft review
25 that was attached to Mr. McGuire's e-mail that was

1 then forwarded to you. Do you recall reviewing
2 this document?

3 A. At the time, like
4 October 5th, I don't recall if I reviewed this
5 document.

6 Q. And then do you remember
7 speaking with Ms. Edwards?

8 A. I don't have a specific
9 recall of any discussion with Debbie Edwards at
10 this time.

11 Q. What is your recollection
12 of why Ms. Edwards was forwarding you this e-mail?

13 A. I believe that it was in
14 relation to a meeting that she wanted to have with
15 Gordon McGuire.

16 Q. Why did she want to
17 involve you in that meeting?

18 A. My recollection, like
19 without specific recollection of discussions, was
20 that the meeting that we were going to have or did
21 have was about access to a document possibly under
22 a Freedom of Information request.

23 Q. What was the issue about
24 the access to the document that warranted your
25 attention?

1 A. I believe the question
2 was whether it would be accessible in an FOI
3 request.

4 Q. What was the document?

5 A. I don't recall the
6 specific document. I think I had enough
7 information about it that it was a consultant's
8 report with either factual or statistical
9 information because by the time of the meeting
10 that occurred with Debbie Edwards and Gordon
11 McGuire I was able to answer that the document
12 would be accessible. I'm not sure if I looked at
13 the legislation before the meeting or possibly at
14 the meeting, but I recall there's a section in
15 that legislation that speaks specifically to
16 reports of that nature being accessible, and so my
17 recollection is at the meeting I provided the
18 answer that the document would be accessible.

19 Q. Do you recall if somebody
20 told you that there was an FOI request?

21 A. I don't recall
22 specifically what I was told about the Freedom of
23 Information request. I believe though I was under
24 the impression that there was one for some time
25 during these events until much later I actually

1 called the privacy and access office or messaged
2 them, I can't remember which, and learned that
3 there hadn't been a request at this time.

4 Q. Right. Because we know
5 that the Freedom of Information request comes in
6 on November 8th, 2018?

7 A. Right. I may have been
8 under the impression that there had been a request
9 already around this time, October 5th.

10 Q. And you mentioned that
11 you recall that the document that was in issue was
12 the consultant's report. Do you recall knowing
13 what that consultant's report was about?

14 A. No, I don't have a
15 specific recall of being told what it was about or
16 learning what it was about except that it
17 pertained to the Red Hill Valley Parkway.

18 Q. Do you recall having an
19 understanding of how that document had now become
20 an issue?

21 A. I don't have a specific
22 recall of conversations with either Debbie Edwards
23 or Gord McGuire about the background to that, no.

24 Q. Why was this -- so in the
25 e-mail from Ms. Edwards to you she says that -- as

1 there appears to be a potential liability issue.
2 Do you recall having an understanding of why there
3 was a potential liability issue?

4 A. No, other than that it
5 may have been that there was a request for the
6 document and it either hadn't been supplied or
7 that it wasn't available at the time. Other than
8 that, I don't know.

9 Q. And I think you had said
10 that your understanding was that it was a
11 consultant's report that had to do with the Red
12 Hill Valley Parkway. Did you know -- do you
13 recall if you knew that it was related to
14 friction?

15 A. I don't recall knowing
16 that it was about friction at this time.

17 Q. Yesterday afternoon we
18 had looked at some of the article in the Hamilton
19 Spectator about the friction study. Did you draw
20 any linkage your mind at the time in October
21 of 2018 between the articles and those discussions
22 that you had about those articles in 2017 and this
23 issue that had now come up with Mr. McGuire and
24 Ms. Edwards?

25 A. Well, I'm not sure if I

1 recall drawing that linkage. I believe I had seen
2 a note of Debbie Edwards from the actual meeting
3 with Gord McGuire and she maybe has made a note
4 about that, but I don't recall at the time drawing
5 a linkage, like, I don't have a specific recall of
6 the meeting so I can't say yes to that question.

7 Q. Okay. So why don't we
8 pull up Ms. Edwards' notes of October 5th meeting.

9 Registrar, that is at image 13
10 of the same document.

11 Do you recall if you met with
12 Ms. Edwards before this meeting took place, or
13 this call?

14 A. I don't recall meeting
15 with Ms. Edwards before this call, no.

16 Q. Do you recall if you had
17 any information going into the call about what
18 this was going to be about?

19 A. Beyond the e-mail that
20 you previously had up I don't recall any further
21 information.

22 Q. So it says:
23 "Gord to speak with Gary
24 Moore before finalizing
25 note to Dan McKinnon.

1 Need more context esp
2 since Golder report is
3 draft (eg not final)."

4 Do you recall a discussion
5 about Mr. McGuire speaking with Gary Moore?

6 A. No, I don't.

7 Q. Do you recall Mr. Moore's
8 name coming up in this call?

9 A. No, I don't have a
10 specific recall of the discussions at this meeting
11 except my recollection that I provided that answer
12 about access through Freedom of Information.

13 Q. Okay. So do you recall
14 the name Golder report coming up in that call?

15 A. No, I'm sorry, I don't
16 have a specific recollection of the discussions
17 other than the point I just mentioned about my
18 answer on Freedom of Information.

19 Q. Okay. And so in the
20 third point it says "Ron recalls info on surface
21 quality of road coming up before."

22 Is that the note that you were
23 referring to earlier?

24 A. Yes.

25 Q. And do you recall

1 anything to do with that discussion about this
2 coming up before?

3 A. No. I mean, we did cover
4 yesterday that there was that newspaper article
5 and I knew that staff and public works had
6 prepared reports on the roadway in the past, so
7 this is possibly a reference to either both of
8 those issues but I don't recall the specific
9 discussion.

10 Q. Okay. And there's a note
11 that says "Gord will gather more info and get back
12 to us." Do you recall coming out of the meeting
13 if there were any action items?

14 A. No, I don't.

15 Q. Did you see a copy of the
16 report that was in issue at this time?

17 A. I don't recall seeing a
18 report at this time. I believe there was a point
19 where I had read the Tradewind report but I
20 believe it was later, possibly November, maybe
21 early December but more likely November.

22 Q. Okay. And had you heard
23 of the term Tradewind report before November
24 of 2018?

25 A. I'm not sure. I don't

1 have a recollection of the content of this meeting
2 and I don't recall any sort of follow-up
3 discussions as a result of this meeting.

4 Q. And what about the term
5 Golder report? Had you heard of Golder before?

6 A. In October, I don't
7 recall knowing about Golder at this time.

8 Q. Registrar, could we turn
9 up HAM62475. If we could go to -- if you could
10 put up images 1 and 2.

11 So at the bottom of image 1
12 you'll see an e-mail from you, Mr. Sabo, dated
13 October 11th to Ms. Edwards and Mr. McLennan. The
14 subject is pavement. It says:

15 "FYI and in relation to a
16 recent discussion Debbie
17 and I had over
18 consultants or draft of
19 reports studying the
20 surface of the Red Hill
21 Expressway."

22 Do you recall having any other
23 discussions apart from the one we just talked
24 about between you and Ms. Edwards and Mr. McGuire?

25 A. I don't recall further

1 discussions, no.

2 Q. Does this assist you with
3 recalling your understanding of the nature of the
4 report that was in issue as of October of 2018?

5 A. It makes it seem likely
6 that I had in my mind at the time of this e-mail
7 that friction -- friction study of roadways was
8 raised.

9 Q. It says:
10 "I wonder where numbers
11 for the RHE would put it
12 in comparison to the
13 international standards
14 in the link below."

15 Registrar, could we pull up
16 RHV897 just next to image 2 of this document.

17 So the document at RHV897 is
18 the document from the link and it's a pavement
19 assessment. Why were you sending this link?

20 A. I believe the e-mail sets
21 out the context, and beyond that I don't recall.

22 Q. Did you expect
23 Ms. Edwards or Mr. McLennan to do anything with
24 this information?

25 A. Just -- not with this

1 information. There is a question though to John
2 if he recalls that plaintiff counsel would be
3 requesting information on the Red Hill Expressway.

4 Q. So that's in the second
5 paragraph where it says:

6 "Also John, is your
7 recollection the same as
8 mine, that plaintiffs
9 counsel in recent years
10 had been aware of or
11 requesting information on
12 the RHE studies as a
13 result of some
14 discussions at City
15 Committee or in the
16 press?"

17 So what is your recollection
18 of plaintiff's counsel being aware of or
19 requesting information?

20 A. Just in the context that,
21 as I mentioned, that there had been a staff
22 report -- more than one staff report from public
23 works on the roadway and there had been an article
24 or a series of articles in the press about the
25 roadway that I believe that plaintiff's counsel,

1 local plaintiff's counsel more particularly, would
2 be likely to take note of one or both of those
3 issues and be requesting further information in
4 relation to claims (indiscernible).

5 Q. Had you had any
6 discussions with Mr. McLennan about what you just
7 described?

8 A. I don't recall further
9 discussions beyond this at this time.

10 Q. Okay. So you don't
11 recall having any discussions with Mr. McLennan
12 before this time about this issue?

13 A. No, I don't.

14 Q. Did you discuss the
15 issues that were raised on the call with
16 Mr. McGuire and Ms. Edwards with Ms. Auty at the
17 time?

18 A. I don't recall doing
19 that. I don't believe I did.

20 Q. Did you consider raising
21 it with her?

22 A. I'm not sure if I
23 considered it. I don't think it would have been
24 something that I would have raised. It was a
25 question about Freedom of Information.

1 Q. And so in your mind it
2 hadn't escalated to the level of needing the
3 attention of a City solicitor?

4 A. That's correct.

5 Q. Beyond the e-mail chain
6 we just looked at or the e-mail that you had sent
7 to Mr. McLennan and to Ms. Edwards, were there any
8 discussions about this issue between October 5th,
9 2018, and when the FOI request comes in on
10 November 12th, 2018?

11 A. I don't recall further
12 discussions of this topic in that timeframe, no.

13 Q. And how did you learn of
14 the Freedom of Information request that ultimately
15 comes in on November 8th, 2018?

16 A. I believe Ms. Edwards
17 advised me that there was a request and had asked
18 for assistance with the legal support for public
19 works on documentation or reviewing the request.

20 Q. So, Registrar, could we
21 pull up overview document 9A, image 132.

22 Mr. Sabo, you'll see at
23 paragraph 321 that on November 9th, 2018
24 Ms. Edwards forwards you an e-mail from
25 Mr. McGuire regarding the FOI request and she

1 write:

2 "Ron, Gord McGuire has
3 received this FOI request
4 and is very anxious about
5 it. He would appreciate
6 some advice. I am hoping
7 that you and I can
8 discuss perhaps on
9 Monday. The deadline is
10 the 15th and he is
11 scheduled to be out of
12 the country from the 15th
13 to 26th."

14 And then you will see at
15 paragraph 322 you forward the e-mail the same day
16 to Ms. MacNeil writing "as discussed, touch base
17 with Gord, thanks."

18 Do you recall any discussions
19 with Ms. Edwards about this issue?

20 A. I don't. I believe I
21 responded ultimately to advise that I had asked
22 Byrdena MacNeil to assist with the issues.

23 Q. What was your
24 understanding if why Ms. Edwards was sending this
25 to you?

1 A. I believe she was asking
2 for legal support on the issues raised by the
3 Freedom of Information request.

4 Q. Why would that come to
5 you as opposed to having her deal with it in her
6 department?

7 A. At the time Byrdena
8 MacNeil was probably expert in Freedom of
9 Information matters and it would be typical for
10 Ms. Edwards and I to ask for support from each
11 other's groups, but I don't recall any specific
12 request beyond this.

13 Q. And did you have any
14 understanding of Mr. McGuire's -- the -- about the
15 anxiety or Mr. McGuire being very anxious about
16 it?

17 A. I don't recall having an
18 understanding about that. I believe there was
19 sometime sensitivity to the issue and that's I
20 believe partly the reason why I reached out to
21 Ms. MacNeil the same day.

22 Q. And it looks like you
23 have a discussion with Ms. MacNeil that day. Do
24 you recall that discussion?

25 A. I don't. It would be

1 typical for me though to reach out to my lawyers
2 to make sure that they had capacity to take on new
3 work, especially if there was a short timeframe
4 involved in the request. So that would probably
5 be my normal practice but I don't recall any
6 specific discussion.

7 Q. Do you recall providing
8 Ms. MacNeil any background about this issue?

9 A. I believe I forwarded
10 what Debbie Edwards had sent to me. I don't
11 recall specifically what that was, but I don't
12 recall any discussion with Ms. MacNeil.

13 Q. Ms. Auty's evidence was
14 that she first became aware of the Tradewind
15 report from Ms. MacNeil. Was that at your
16 direction, to have Ms. MacNeil notify Ms. Auty?

17 A. I don't recall giving any
18 direction to Ms. MacNeil about advising Nicole,
19 no.

20 Q. Do you recall any
21 discussion about bringing Ms. Auty into the loop?

22 A. No, I don't.

23 Q. Once Ms. MacNeil was
24 assigned to assist on this matter did she report
25 back to you on what she was doing?

1 A. I don't recall any
2 interim reports. There was a point where
3 Ms. MacNeil was going off work and I got an update
4 from her about the status of the work on the FOI
5 request and had to pick up a couple of minor steps
6 to conclude it.

7 Q. Right. And that was I
8 think November 16th or 17th of 2018. But in the
9 interim in kind of mid-November through to early
10 December who was she discussing these issues with
11 within the legal group?

12 A. I'm not sure who she
13 might have been discussing things with in the
14 legal group. I don't recall any specific
15 communication. I'm not sure if there's something
16 that you want to bring to my attention that I was
17 copied on.

18 Q. I guess I'm just
19 wondering if she was having discussions directly
20 with Ms. Auty about it, with you, or if you have
21 any sense of who she was keeping apprised of what
22 was happening?

23 A. I don't recall her having
24 discussions with me and I don't know if she was
25 having discussions with Nicole, so I can't answer

1 beyond that.

2 Q. Registrar, could we pull
3 up HAM64308, image 3.

4 I just wanted to draw your
5 attention to the little note in the bottom
6 right-hand corner. So this is a handwritten note
7 from Ms. Edwards and it says:

8 "Subsequent discussions
9 with D. McKinnon, M.
10 Zegarac, Ron and Nicole
11 re FOI request and next
12 steps."

13 Do you recall having
14 discussions with any of those individuals?

15 A. I'm sure at some point I
16 had discussions with those staff members or at
17 least was involved in meetings where those persons
18 were present. I don't recall the specific meeting
19 where that might have occurred.

20 Q. Okay. And the date there
21 I think is November 13th, 2018. So do you recall
22 during that time -- so it's just shortly after the
23 FOI request comes in -- if you were involved in
24 discussions with Mr. Zegarac, Mr. McKinnon?

25 A. Would there be a note

1 perhaps of a meeting or a call from myself --

2 Q. Let me actually -- I
3 should put that -- so, Registrar, if you could
4 pull up overview document 9A, image 149.

5 So at paragraph 351 you'll see
6 an e-mail from Mr. Zegarac. You're not copied on
7 this, but it's on November 12th it's Mr. Zegarac
8 asking to arrange a meeting with himself, Dan
9 McKinnon, Ron Sabo, subject MFIPPA expressway,
10 then at paragraph 352 there is a calendar invite.

11 A. And obviously an answer I
12 gave earlier about not recalling discussions, this
13 informs me that there was likely a meeting. My
14 recollection -- it's difficult to recollect any
15 specific meeting, but that staff were quickly
16 organizing to discuss issues related to the
17 parkway and that involved multiple staff. So this
18 may reflect one of those meetings.

19 Q. And in your role as
20 deputy City solicitor dispute resolution how much
21 interaction did you have with public works staff?

22 A. It would depend on the
23 circumstances. I wasn't, for instance, involved
24 in contractual matters, advisory matters for the
25 most part I wasn't generally involved in, but it

1 would depend on the circumstances what my
2 involvement with public works staff would be.

3 Q. So did you have a lot of
4 involvement with Mr. McKinnon?

5 A. I think as a result of
6 this issue there were a number of meetings where
7 he and staff that reported to him were involved in
8 and I was a party to a number of those meetings or
9 calls. So on this issue there was a certain
10 amount of contact that I was involved in, yes.

11 Q. Before this issue?

12 A. I knew who Dan McKinnon
13 was and I knew a number of staff in public works
14 but I don't recall regular contact.

15 Q. And what about with
16 Mr. Zegarac? Before this issue arose were you
17 often having these meetings with Mr. Zegarac?

18 A. Whether it was
19 Mr. Zegarac or other city managers, it wouldn't be
20 unlikely that I would have meetings with them on
21 various issues from time to time. So again it
22 would depend on the circumstances, but certainly
23 over the years I've had many meetings with city
24 managers and that includes Mike Zegarac as well --
25 city manager.

1 Q. So you mentioned that in
2 those early days staff were gathering -- I
3 appreciate you don't have a specific recollection
4 of this -- the November 13th meeting, but what was
5 being discussed at that time in I would say
6 mid-November to late November 2018?

7 A. Again, is there -- and I
8 apologize, is there a specific note that I maybe
9 have made that would help inform me on that?

10 Q. We don't have any notes
11 from any meetings from you from that period.

12 A. All right. Then just
13 looking at what you have up on the screen, it
14 looks like this (skipped audio) meeting was to
15 discuss the FOI request and next steps.

16 Q. Do you recall in those
17 early days if there was a discussion about
18 reporting to council?

19 A. I couldn't say at this
20 specific time, but as I said, my impression was
21 that staff had organized quite quickly and were
22 talking about various reports to council and
23 considering dates that they could reach either a
24 committee or council itself. So I believe the
25 first date that I recall being discussed was

1 December 6th. That's from notes that I made at
2 one of the meetings that I mentioned with multiple
3 staff. So that's a very short timeframe between
4 November 13th and December 6th. At least in
5 report writing terms it's a very short timeframe
6 to report and submit reports between those two
7 dates.

8 Q. So we understand that
9 Ms. Auty became aware of the -- this issue in
10 around mid-November. Ms. MacNeil was considering
11 the -- was working on the FOI request. So what
12 was your role in these meetings?

13 A. I was throughout this
14 primarily support for Nicole. I would attend in
15 her absence. I would basically give whatever
16 support she required of me in these matters.

17 In my role as in dispute
18 resolution I also would have normally been
19 involved if there were any claims of significance
20 or insurance issues, those would be the likely
21 areas of my involvement. But primarily as support
22 for Nicole as I saw her as, on behalf of legal
23 services at least, leading the issues that were
24 raised for -- the legal issues that were raised as
25 opposed to the multiple issues that the Tradewind

1 report raised for the City.

2 Q. And the description of
3 your role on this issue, did it change over time
4 at all or what you just described, did that apply
5 through to February of 2019?

6 A. I believe it stayed
7 consistent over time, that from review of the
8 materials that I was involved in I was providing
9 information to Nicole on various issues,
10 commenting on draft reports, draft opinions. So
11 it was pretty much as I described, that there were
12 a range of issues, but it was primarily support
13 for Nicole. And again towards the end of -- or
14 towards the purpose of legal services submitting
15 one of the reports or maybe more than one report
16 to committee and council on the issues raised.

17 Q. What involvement, if any,
18 did Ms. Edwards have in this matter after
19 Ms. MacNeil was assigned to the file?

20 A. I don't recall
21 Ms. Edwards having a further role after that
22 contacting me about the FOI request.

23 Q. Registrar, could you pull
24 up image 135. If we could also pull up 136.

25 So at paragraph 332 there's an

1 e-mail from Mr. McGuire to Ms. MacNeil attaching
2 several documents, and then you'll see at
3 paragraph 334 that Ms. MacNeil forwards this
4 e-mail to you, writing "as discussed, here is what
5 I've received to date."

6 And you'll see paragraph 336
7 that the first attachment is an e-mail from
8 Golder, from Dr. Uzarowski to Dr. Moore. The
9 second is another e-mail at paragraph 337.

10 And then if you go to
11 image 137, Registrar.

12 At paragraph 338 it says the
13 third attachment was a standalone copy of the
14 Tradewind report. So was this the first time you
15 received the Tradewind report?

16 A. It seems likely. From my
17 earlier answer I thought I had actually read the
18 report sometime in November or early December and
19 this informs me that I received it in -- and I
20 forget the date, but -- November.

21 Q. November 14th.

22 A. Yes. So it's clear I
23 received it around that date, and I may have read
24 it at the time or within a couple of days of
25 receiving this e-mail.

1 Q. Why was Ms. MacNeil
2 forwarding this information to you?

3 A. I don't recall giving any
4 instruction that I should receive the information
5 so I'm not sure why she sent it to me. I don't
6 recall if the e-mail that -- I think it's just
7 quoted here in paragraph 334, "as discussed,
8 here's what I received to date." So that implies
9 a discussion about materials related to the FOI
10 request.

11 Q. Do you recall any
12 discussions with Ms. MacNeil at this time?

13 A. No, I don't.

14 Q. Did you form a view on
15 whether or not the Tradewind report would have to
16 be released pursuant to the FOI request?

17 A. I don't recall reviewing
18 the FOI request in detail. That's basically why I
19 had Ms. MacNeil involved because FOI requests,
20 they tend to have a discussion of the type of
21 document, sometimes they have a date range that
22 they want documents that fall within or other
23 specifics, and it does take some matching of the
24 request to a particular document to determine
25 whether a specific document falls within the

1 request. It can be quite labour intensive and
2 again that's one of the reason -- and it can be
3 technical too. That's basically why I involved
4 Byrdena MacNeil.

5 I probably did have in my mind
6 my earlier conclusion that the Tradewind report
7 would be accessible under FOI, but I don't recall
8 spending any particular time with the request that
9 was received on November 8.

10 Q. Registrar, could we pull
11 up HAM62477.

12 Here was have an e-mail from
13 Ms. Auty to you and to Mr. McLennan on
14 November 20th, 2018. It says:

15 "Hi, further to our
16 discussion last week, do
17 we have any concerns with
18 Dan McKinnon speaking to
19 Gary Moore on the issue
20 of the report regarding
21 the friction to get more
22 of his perspective and
23 determine if there are
24 any other documents we
25 need to be aware of."

1 And then it says:
2 "Where are we with
3 regards to speaking to
4 David Boghosian and our
5 assessment of risk/impact
6 on litigation matters and
7 the need for interim?
8 Should we set up a
9 meeting to review with
10 Byrdena the MFIPPA
11 issue?"

12 Do you recall discussions with
13 Mr. McLennan and Ms. Auty around this time?

14 A. I believe we had
15 discussions and what this e-mail, at least the
16 second paragraph, reflects is that there was
17 interest in bringing in David Boghosian, and that
18 I recall that coming through Nicole in respect of
19 wanting an outside legal opinion to assist the
20 City or council of the issue.

21 And so this is a description
22 of seeking out David Boghosian, and I think it
23 suggests to me an indication that we were doing a
24 conflict check to make sure that David would be
25 available to advise the City on the issue.

1 Q. Do you recall what
2 Ms. Auty wanted Mr. Boghosian to do?

3 A. Just generally that for
4 legal services the issue was liability for the
5 City arising from the Tradewind or Golder report,
6 and that David was an expert or is an expert in
7 municipal and road liability and so he was sought
8 out for his expertise on those matters. And
9 again, legal services' role in the process was --
10 it was going to report on liability issues as part
11 of information being provided through committee to
12 council, municipal council.

13 Q. And in the second
14 paragraph it refers to the need for an interim.
15 What was your understanding of what Ms. Auty was
16 referring to there?

17 A. It's not clear to me.
18 I'm not sure what she meant by that. It seems
19 like an incomplete sentence.

20 Q. Had you had any
21 discussions about making an interim report to
22 council at this time?

23 A. Again, I know staff as a
24 group were organizing to prepare reports, so I
25 don't know if anyone -- because I can't recall

1 specific discussions -- if anyone referred to any
2 particular report as an interim report.

3 The context -- I do recall for
4 staff when I'm talking about the series of
5 meetings that I was involved in was that there was
6 a sense of urgency because the Freedom of
7 Information request could result in disclosure of
8 documents and so staff were interested in trying
9 to reach committee or council in an early
10 timeframe.

11 Q. And was it your sense
12 that the sense of urgency was -- arose because of
13 the concern that a report be made to council
14 before the materials were released to the FOI
15 office?

16 A. I'm thinking to my notes
17 of various meetings, and my understanding of my
18 own notes is that staff were not certain at all
19 that the information might not be public or reach
20 the media before it reported -- before staff
21 reported to council.

22 And I know that there would
23 have been interest in trying to reach committee or
24 council before that happened, but I don't believe
25 that staff knew that that timing would be certain.

1 And part of my belief for that as well is that
2 both the internal communication staff and
3 internal -- sorry, an external media consultant
4 were part of the early discussions in part to deal
5 with the City's public responses to the issue that
6 might be needed at a very early stage.

7 Q. When you say the external
8 media consultant, who was that?

9 A. The first name is Taron
10 and I'm struggling to remember the last name.

11 Q. Gordon?

12 A. I believe that's correct.

13 Q. And do you recall when
14 she became involved?

15 A. I believe I was at a
16 meeting where I made a note early on, either
17 November, perhaps early December, that she was
18 part of a meeting either by telephone or part of a
19 telephone call that staff had.

20 Q. We have some notes of
21 meetings with her in January of 2019. So your
22 recollection is that she was involved before that?

23 A. I don't have a specific
24 recollection of the timing. I would be
25 speculating but I believe it would be earlier than

1 that. I'm sure someone can answer accurately when
2 she was retained or involved.

3 Q. Just going back to the
4 phrase "the need for an interim," do you recall if
5 there were any discussions at this time about
6 obtaining an opinion on whether interim safety
7 measures would be required?

8 A. I know staff were looking
9 generally at reporting on the roadway, whether it
10 was safe, whether additional steps could be taken
11 to improve the safety of the roadway, because
12 those would have reasonably been expected to be
13 questions of council when we were updating them.
14 But I don't recall at this time if this is a
15 mention of possibly an interim report given the
16 timing issues or if it was some sort of interim
17 opinion perhaps on safety matters. I can't tell
18 from this e-mail and my recollection of tools,
19 possibilities.

20 Q. And there's --
21 Mr. McLennan is copied on this e-mail. So what
22 discussions did you have with Mr. McLennan?

23 A. In what timeframe?

24 Q. In this timeframe, let's
25 say mid-November to late November 2018.

1 A. I know John was
2 involved firstly because Red Hill motor vehicle
3 claims would be an insurable type of claim that
4 risk management would be involved in, and it
5 developed early on that we wanted to know the
6 number and type of claims that the City was facing
7 already. And also John would have been the avenue
8 through which a report went to the insurer on
9 issues raised by the Tradewind or Golder reports.
10 Also John may have been the source of information
11 on David Boghosian's involvement in any of those
12 existing claims as well, not necessarily
13 indirectly but through his staff in risk
14 management.

15 Q. In terms of the conflict
16 checks that were being run, of course we wanted to
17 ensure that Mr. Boghosian wasn't acting against
18 the City, but was it also important to know if
19 Mr. Boghosian was retained on any of the matters
20 by the City?

21 A. I don't recall any
22 discussion to that effect, but it just may be my
23 thinking of the normal practice that the conflict
24 check is the initial step before you retain
25 someone that the person is able to give advice

1 without being in conflict.

2 Q. Okay. Registrar, could
3 we pull up HAM61984, image 2. We can put image 1
4 and 2 together.

5 So on image 2 you'll see
6 there's an e-mail from Mr. McLennan to you and to
7 Ms. Auty on November 20th, 2018, and he refers to
8 his review, indicating that he had four
9 significant claims which could theoretically be
10 impacted by the FOI request.

11 And then you respond, and this
12 is at the bottom of the first page into the second
13 page, on November 21st, 2018:

14 "I will check with Dan on
15 the issues raised in his
16 matters. The fact that
17 Boghosian is not involved
18 in these claims means if
19 we really wanted to
20 involve him we could."

21 And is Dan, Dan Bartley?

22 A. Yes, I believe that's a
23 reference to a lawyer that reports to me, Dan
24 Bartley.

25 Q. What discussions were you

1 having with Mr. Bartley at this time?

2 A. I don't recall the
3 specific discussions with him or one of my other
4 lawyers who was ultimately found to be involved in
5 Red Hill claims. I know there were multiple
6 interests that I had and part of the reason for
7 reaching out to them, one was whether they had in
8 fact already received either the Tradewind or
9 Golder report that contained it as a relevant
10 document for their productions and Affidavit of
11 Documents, and also to determine the nature of the
12 claim, like what were the causation or claim
13 causation factors in the claim. Probably I would
14 have been interested in the status, like how
15 (skipped audio) the claim was being resolved.
16 Those likely what I was asking about around this
17 time or would have been interested in.

18 And at some point after
19 discussions with the insurer I believe the
20 discussions would have included the idea that all
21 the Red Hill claims would be consolidated with one
22 outside counsel firm, and so would have been
23 discussion with Dan and another one of my lawyers
24 about transferring the files to outside counsel.

25 Q. You mentioned one of your

1 other lawyers. Was that Dana Lezau?

2 A. That's correct.

3 Q. In the early days you
4 were talking to Ms. Lezau and Mr. Bartley I think
5 you said about whether the Tradewind report or the
6 Golder report had been included as relevant
7 document for production?

8 A. Yes.

9 Q. Do you recall what they
10 said?

11 A. I don't recall, no.

12 Q. Did you provide them with
13 the Tradewind report?

14 A. I don't recall if I did
15 at this time.

16 Q. And then on image 1
17 you'll see in the middle of the page there's a
18 response from Mr. McKinnon on November 21. He
19 says:

20 "I think we should let
21 the insurer chime in on
22 this too. If they
23 disagree with a City
24 decision to release the
25 report it might adversely

1 impact coverage."

2 So we know that in February
3 of 2019 ultimately I think you attend a meeting
4 with Mr. McLennan and the insurer. Until February
5 what decision did you have about notifying the
6 insurer?

7 A. I believe I had
8 discussions with John McLennan about updating the
9 insurer, but I don't recall the specific
10 discussions, he might have contacted them
11 initially.

12 Q. Do you recall discussions
13 about whether the insurer should be notified about
14 this before council received the report from
15 staff?

16 A. I don't recall
17 discussions like that. I'm not sure I would have
18 thought that there would be any concern with the
19 timing of reporting to the insurer except, as John
20 pointed out, that involving them early to involve
21 them in decisionmaking would be important.

22 Q. So apart this e-mail from
23 Mr. McLennan having the insurer chime in on this,
24 do you have any other recollection about the
25 timing of when the insurer should be notified?

1 A. I don't recall specifics
2 of that. I'm not sure if there's another document
3 that helps with that, but beyond the idea that the
4 insurer would be involved I don't recall the
5 discussions.

6 Q. Registrar, if we can pull
7 up HAM61987.

8 This is an e-mail from Diana
9 Swaby November 23rd, 2018. Do you recall having
10 any discussions with Ms. Swaby about the Tradewind
11 report around this time?

12 A. I don't recall any direct
13 discussions, but I believe that John McLennan at
14 some point advised me of claims that were being
15 handled through counsel hired by the insurer. And
16 so I think either he or in a previous document,
17 some mention of a claim with Shillingtons, but I
18 don't recall direct discussion with Diana Swaby on
19 the issue at this time.

20 Q. So you'll see in the
21 third paragraph she says:

22 "Shillingtons recently
23 asked about the report,
24 citing that it will have
25 to be produced in the

1 City's Affidavit of
2 Documents in at least one
3 of the claims. An
4 inquiry did come in from
5 Shillington's office
6 concern this report. The
7 inquiry was referred to
8 Gary Moore who indicated
9 the report was not
10 presented to council."

11 So were you aware before this
12 e-mail that Shillingtons had the Tradewind report
13 and had included it in their -- and was proposing
14 to include it in the City's affidavit of
15 documents?

16 A. I don't believe I was
17 aware of that earlier.

18 Q. Do you recall having any
19 discussions about what to do about Shillingtons?

20 A. No, I don't.

21 Q. Did you have any
22 discussions with Shillingtons?

23 A. I don't believe I had any
24 discussions with Shillingtons generally, but I
25 don't recall on this specific claim.

1 Q. Were you aware of what
2 ultimately happened with Shillingtons and whether
3 or not they included the Tradewind report in the
4 City's affidavit of documents?

5 A. No, I'm not. I believe
6 ultimately the Shillington claim was one of the
7 claims that was transferred to a counsel hired by
8 the insurer for all the Red Hill claims.

9 Q. Do you know if
10 Shillingtons produced the affidavit of documents
11 before disclosure to counsel?

12 A. I don't, no.

13 Q. Registrar, if we could
14 pull up HAM61989. If we could also have image 2
15 as well. Thank you.

16 So, Mr. Sabo, you're not
17 actually copied on these e-mails, but you will see
18 at the bottom of image 1 there's an e-mail from
19 Ms. Swaby to Mr. Shillington, or Terry
20 Shillington, and Colleen Crawford. This is dated
21 November 26, 2018. She says:

22 "Hi Terry, this afternoon
23 I am meeting with the GM
24 of public works as well
25 as the director of legal

1 services and John
2 McLennan of our office
3 concerning a FOI request
4 to release this report.
5 I take it they do not
6 want to release this
7 report. Do you have a
8 moment to discuss the
9 implications of its
10 release and how this
11 report affects the
12 litigation we have
13 ongoing on the LINC and
14 the RHVP?"

15 Are you aware of the director
16 of legal services position?

17 A. At this time there wasn't
18 any position with that title. I believe it's
19 likely a reference to the City solicitor because
20 they might be considered at the director level of
21 the City's staff, but there is no director of
22 legal services.

23 Q. I think you had said you
24 don't recall being in any meetings or discussions
25 with Ms. Swaby at the time?

1 A. I don't recall that. I'm
2 not sure if there's a document that -- perhaps
3 notes of any such meeting.

4 Q. No, I'm just -- I was
5 just asking. And do you recall having any
6 discussions where there was some indication that
7 folks in the City did not want to release the
8 report?

9 A. My recollection again is
10 that the Tradewind report, if it fell within an
11 FOI request would be released. So it wouldn't
12 have been up to staff other than the access and
13 privacy office to make that determination. And
14 again I believe staff were preparing for the
15 eventuality, possibly immediate, that the
16 Tradewind, Golder report would be released in the
17 FOI process.

18 Q. When you say staff you're
19 referring to public works staff?

20 A. Staff in general. As I
21 mentioned, there were a number of meetings with
22 senior staff including public works, but often the
23 City manager, legal staff including myself,
24 communication staff. I'm trying to think of
25 others. City manager and -- so just remind me of

1 the question.

2 Q. You were just referring
3 to staff preparing for the eventuality of making
4 the report and -- you know what, that's fine. I
5 can move on.

6 So Registrar, if you could
7 pull up overview document 9A, image 172.

8 At paragraph 414 there's an
9 e-mail from Ms. Auty to you and Mr. McKinnon on
10 November 30th, subject line "meeting with GM re
11 RHVP." She says:

12 "Dan, these are the typed
13 versions of your notes.
14 Any corrections? Ron,
15 when you're back we can
16 discuss."

17 And so this is -- she's
18 referring to notes of a meeting between
19 Mr. McKinnon and Mr. Moore.

20 And Mr. Sabo, you reply the
21 same day. This is at paragraph 416.

22 "If you can forward the
23 attachment that would be
24 great and I will give a
25 copy to Byrdena if she

1 hasn't already seen it (I
2 dropped a package of
3 documents from Gord in
4 her office this
5 morning)."

6 Did you have any involvement
7 in the meeting that took place between
8 Mr. McKinnon and Mr. Moore?

9 A. I don't believe I did. I
10 don't believe I had much contact with Gary Moore,
11 really any contact with him during the course of
12 these events until there is Provincial Offences
13 Act matter where he was called as a witness and I
14 believe I had some preliminary contact with him
15 and actually met him. That might have even been
16 2019 or later. But at this time no, I wasn't
17 meeting with Terry Moore.

18 Q. And the context with
19 Mr. Moore that you're referring to, I take it that
20 was after the disclosure to council had already
21 been made?

22 A. Yes, it was likely well
23 after, a number of months.

24 Q. Do you recall having any
25 discussions with Ms. Auty about the meeting

1 between Mr. McKinnon and Mr. Moore?

2 A. I don't recall offhand.

3 Again I made some notes of meetings. I'm not sure
4 if there's one that you can refer me to, but I
5 don't recall this. And that e-mail I mentioned at
6 414 seems to say when I get back but I respond the
7 same day, so I'm not sure what the absence she
8 would have been referring to in her e-mail.

9 Q. So at paragraph 416
10 you're referring to providing a copy to
11 Ms. MacNeil and that you dropped a package of
12 document from Gord in her office. So what
13 discussions were you having with Ms. MacNeil
14 around this time?

15 A. November 23rd. Other
16 than meetings we might have been called to with
17 other staff, I don't recall specific discussions.
18 I think it was an ongoing process to make sure
19 Byrdena had all relevant documents so that she
20 could consider them, whether they were in scope of
21 the Freedom of Information request.

22 So asking for the attachment
23 to supply it to Byrdena was -- appears to be just
24 part of that process to make sure that she had all
25 the records that she needed to review.

1 Q. And was Ms. MacNeil
2 working directly with public works staff in terms
3 of gathering the relevant documents?

4 A. I believe my recollection
5 of the November 8th FOI request would have been
6 records that fell within public works operations.
7 So she generally would have been working with
8 them. Sometimes an FOI request can have staff
9 trying to locate documents that have been supplied
10 to other departments or held in different places
11 at the City, but the primary source would be
12 public works.

13 Q. And do you recall
14 Ms. MacNeil working directly with public works
15 staff?

16 A. I don't have a specific
17 recollection of that. It just seems reasonable
18 given what I just described.

19 Q. I understand that you
20 were on vacation the week of December 3rd to 7th,
21 2018?

22 A. Yes.

23 Q. During that week while
24 you were on vacation were you involved in any
25 meetings or calls?

1 A. I don't believe I was in
2 contact with work during that period.

3 Q. So were you checking your
4 e-mails during that week?

5 A. I don't believe so.

6 Q. I don't believe we have
7 any e-mails from you during that period, if that
8 helps. So what was the status of the -- this
9 matter at the time you went off on vacation?
10 Where do things stand?

11 A. It's very difficult for
12 me to answer that question. I'm not sure I was
13 necessarily in touch with the complete status of
14 the matters relating to this.

15 In November I know there was
16 still discussion of the potential of reporting to
17 a committee or council in early December;
18 December 6 would be one target date. So my
19 impression of the status is that staff were
20 collecting information in order to report to
21 council, and we know eventually there were
22 multiple reports so there would have been reports
23 being worked on by public works and of course
24 legal services as well.

25 Q. Apart from the e-mail

1 that we saw on November 20th where Mr. Boghosian's
2 name is referenced and also where you confirm that
3 there are no conflicts, did you have any
4 discussions with Ms. Auty and/or Ms. MacNeil about
5 the retainer of Mr. Boghosian before you went off
6 on vacation?

7 A. You refer to I think it
8 was November 20th e-mail where basically I was
9 saying it looks like David basically cleared the
10 conflict check. I don't recall specific decision
11 other than that one.

12 Q. Did you have an
13 understanding before you went off on vacation of
14 where -- what the status was of Mr. Boghosian's
15 retainer?

16 A. I believe Nicole was
17 dealing directly with David, other than the
18 understanding that the purpose of involving him
19 was to assess the City's liability in relation to
20 claims or future claims involving the Red Hill
21 parkway. I don't recall specific details, no.

22 Q. Registrar, could we go to
23 image 182.

24 At paragraph 427 it looks like
25 there's a recording of a meeting that takes place.

1 This is paragraph 427 and 428. It's a recording
2 of a meeting that takes place with Mr. McGuire
3 with Diana Cameron and appears to be Ms. MacNeil
4 on December 3rd (sic), 2018. I appreciate you are
5 off on vacation at this point and you're not a
6 party to this meeting. But if you go to the next
7 --

8 If you could put up image 184,
9 Registrar.

10 This is just -- I wanted to
11 give you that context for what we're looking at.
12 So there was a transcription made of the
13 recording, and if you see in the third
14 paragraph where it says "speaker 2" who we believe
15 to be Ms. MacNeil says:

16 "That's what Ron was
17 asking. He said is there
18 not in some sort of
19 report because that's a
20 pretty big chunk of
21 change to go to council
22 and get approval, is it
23 not? Like how did
24 somebody just get 15
25 million without a report

1 to committee or council?"

2 (As read).

3 Again I appreciate that you
4 were not at this meeting, but do you recall having
5 that question about whether or not there was a
6 report that went to council about this issue,
7 because council had already decided to repave the
8 road and to incur that \$15 million expense?

9 A. I don't recall asking a
10 specific question. It's possible that this was
11 part of the effort to make sure that all relevant
12 documents were available, but I can't tell from
13 this and I don't recall specific direction to
14 Byrdena or raising that question with anyone.

15 Q. Registrar, if we could go
16 to image 189.

17 In the fourth paragraph it
18 says:

19 "So certainly, any
20 earlier litigation that
21 settled, depending on
22 what if this came out,
23 remember, there was just
24 one comment that" -- and
25 then she said "oh, Ron

1 thinks maybe one of these
2 reports came out in the
3 course of litigation. We
4 weren't sure. So it may
5 be that the Tradewind or
6 Golder report were known
7 to risk and Ron."

8 Do you recall believing that
9 one of the reports had come out in the course of
10 litigation?

11 A. Can you either show me or
12 refresh me what is the date of this --

13 Q. December 3rd, 2018.

14 A. I believe we had referred
15 to it in your earlier questions of the e-mail from
16 Diana Swaby advising that Shillingtons had a copy
17 of the report and that it was in their affidavit
18 of documents. So that would be the likely
19 connection to me if I had made these statements to
20 Byrdena before this meeting.

21 Q. I see, okay. Because it
22 turns out that the City's affidavit of documents
23 hadn't yet been served in the Shillingtons matter,
24 but you may have been under the impression that it
25 was included. Is that --

1 A. Yes, it's very hard to
2 remember the specifics and I'm not sure I picked
3 up on necessarily the point that it was in an
4 affidavit of documents either unsworn or unserved,
5 just understanding that Shillingtons had it and
6 that it was -- that they were going to produce it
7 as part of the City's affidavit of documents in a
8 claim.

9 Q. Registrar, if you can
10 pull up HAM64375.

11 Mr. Sabo, this is a
12 transcription of one of your notes, undated. If
13 it can assist we can pull up a handwritten
14 version. Why don't we do that so you can see what
15 it looks like in its original form.

16 Registrar, if you can pull up
17 HAM64299 next to this one.

18 So I understand that the first
19 three lines of the note are unrelated to the RHVP;
20 is that correct?

21 A. I believe that, that they
22 are irrelevant to this issue.

23 Q. And I understand that
24 having looked at this note, you believe that the
25 remaining note may relate to a discussion with

1 Mr. McLennan sometime between November 2018 and
2 early December 2018?

3 A. Yes, I believe that
4 because there's still mention of I believe a
5 report to council on the 6th and so that's still
6 likely December 6th. And of course, the context
7 or the content of the note also includes what I
8 believe are details of the number of claims that
9 various lawyers or risk are handling related to
10 the Red Hill, so I believe this note from John and
11 down (ph) is related to the Red Hill.

12 Q. And so when you refer to
13 the 6th, that's the note where it says "John" and
14 then in the third bullet "litigation aspect MFIPPA
15 timing," and then it says "telling council on
16 6th." So you believe that as of this time there
17 was some consideration of reporting to council on
18 December 6th?

19 A. Yes. I'm not sure if
20 that was the only reference to December report,
21 but that's what I believe, that this is --
22 December 6th was still a potential date.

23 Q. And then you mentioned
24 that there was reference to the number of claims
25 and that's where it says "risk DS, one or two,

1 Dana two Dan two"?

2 A. Yes, and the DS is just
3 initials for Diana Swaby.

4 Q. Okay. And just under --
5 just actually above the DS note where it says "has
6 OC considered this," what is that referring to?

7 A. I believe OC is my short
8 form for outside counsel. I'm not sure
9 specifically what the note is asking, like, what
10 has been considered, but it's a reference to some
11 issue that outside counsel and whether they had
12 considered it or not.

13 Q. Okay. And the note, the
14 three bullet points above that, do you recall what
15 you were talking to Mr. McLennan about?

16 A. No, other than what is
17 shown in the notes, and it's not very descriptive,
18 I don't recall the discussions related to this.

19 Q. And then it says "Dana
20 has seen the reports, may not be friction
21 testing." What's that referring to?

22 A. Well, I know that CIMA is
23 a consultant used by public works and I know that
24 from reviewing for the inquiry refresh my memory
25 that CIMA had been involved in one or more of the

1 prior staff reports that staff had presented to
2 council on the Red Hill. And so it's a notation I
3 believe reflecting that the Dana for her
4 litigation file had copies of those reports.

5 Q. And I think that you had
6 testified that you couldn't recall if Ms. Lezau or
7 Mr. Bartley had the Tradewind reports?

8 A. Yes, I don't recall what
9 their answers were, but I know that again the
10 purpose of reaching out to them was to let them
11 know that there were reports and that it may be
12 relevant to their claims.

13 Q. Registrar, could you pull
14 images 1 and 2 of 64375.

15 So we can take down the
16 handwritten version, but, Mr. Sabo, if you would
17 like we could always put them back up. So at the
18 bottom of image 1 where it says page 2 and there's
19 some notes where it says "alt's - remedial
20 resurface." Do you recall what that -- any of
21 those notes are referring to?

22 A. No, I don't recall the
23 specific discussions. This doesn't help me
24 remember the details here.

25 Q. On the second page where

1 it says:

2 "Higher demand for
3 since??? the type of
4 road. Heard Gary talked
5 about polished -
6 (Ireland) stone analysis.
7 Did Golder get finalized?
8 Got paid. Anything
9 done/reported."

10 A. Sorry, the question?

11 Q. Do you recall what those
12 notes were referring to?

13 A. The part where Gary
14 talked about polished stone, Ireland stone
15 analysis. I'm not sure who is telling me this
16 information but I recall that there was a step
17 while Gary Moore was involved in the SMA analysis
18 that some of the aggregate was sent away for
19 testing. So I believe that's a reference to that.

20 Did Golder get the
21 finalized/got paid, I believe is a question
22 relating to whether the Golder report that
23 contained the Tradewind report was a final report
24 or just a draft report. And so I can see the
25 question there, and that they were paid for the

1 work. So that's my explanation of that.

2 Q. And so your notes refer
3 to Gary and I take it that's Gary Moore?

4 A. Yes, I believe it's a
5 reference to Gary Moore.

6 Q. Where had you gotten the
7 information about Mr. Moore from, whether it was
8 about the polished Ireland stone analysis or on
9 the first page where it says "Gary was studying
10 hot in-place but the type is not here"?

11 A. The notes aren't detailed
12 enough for me to know who was speaking, was
13 supplying this information, and I don't recall who
14 told me that during this either the call or
15 meeting.

16 Q. Do you recall meetings or
17 calls with public works staff where they were
18 conveying this type of information to you?

19 A. I was certainly present
20 at meetings where public works staff were
21 discussing generally Golder, Tradewind, that sort
22 of thing, but I can't pinpoint a specific meeting.
23 Maybe there's a note that's dated that might help
24 with that but I don't recall.

25 Q. Okay. Well, do you

1 recall if it would have been Mr. McLennan
2 conveying this information to you?

3 A. It's hard to tell from
4 this note. I think when we looked at it there
5 were two different inks, blue and black. I can't
6 really explain that. But I can't be certain that
7 all this information is coming from John. It
8 certainly indicates that he supplied some
9 information but I can't tell beyond -- I believe
10 the information on the number of claims each
11 lawyer had or Diana Swaby had was coming through
12 John, but other than that I can't be certain if
13 it's John telling me this information.

14 Q. Registrar, if we could
15 pull up HAM64372. And then maybe we can put
16 another document next to it, 64 -- HAM64348.

17 So here we have on the left
18 the transcription of the handwritten note that's
19 on the right and it's undated notes again. And I
20 understand that you having reviewed these notes,
21 you believe that the notes may have been taken
22 before December 6th, 2018 possibly of a meeting?

23 A. Would it be possible just
24 to scroll through -- there's more than one page
25 obviously --

1 Q. So can we take down
2 handwritten version for now and -- or would it
3 help for you to look at the handwritten one?

4 A. Either. If you can
5 scroll through probably the handwritten note.
6 Sometimes the spacing is more explanatory.

7 Okay. So yes, your question
8 was the timing of this. So clearly from this
9 there's still discussion of a December 6th looks
10 like public works committee report, so I believe
11 that's probably a target date for one or more
12 staff reports so that suggests the timing is
13 likely still in November or perhaps the first few
14 days of December.

15 Q. Okay. And because we
16 heard from you that you were away on vacation
17 starting December 3rd and you weren't at any
18 meeting, so this likely occurred before
19 December 3rd?

20 A. Yes, it's hard to put all
21 that together myself in recollection, but yes,
22 that makes sense. So we're talking November then
23 instead of early December.

24 Q. So just looking at the
25 transcription, it refers to:

1 "MFIPPA three to five
2 weeks collect what we
3 have prior reports if
4 public released what will
5 it cost us. User
6 required in litigation
7 implications for current
8 or even past litigation."

9 Do you recall what you are
10 recording here?

11 A. Well, the Red Hill, that
12 first line on page 2 is obviously a reference to
13 application of freedom of information to the
14 document or documents. Three to five weeks, I'm
15 not absolutely sure, but that may be an estimate
16 of the timing that staff wanted to report within
17 to collect what we have. Prior reports question
18 mark is possibly just my question, whether there
19 are previous reports that staff need to build on.
20 The way the City does reporting, if you're
21 reporting on the same topic then you add a letter
22 to the initial report number but the history of
23 prior reports is usually relevant.

24 If public release what will it
25 cost us, I believe that's maybe a point someone is

1 making at this call or meeting that possibly
2 referring to staff reports or possibly referring
3 to the Golder Tradewind report what cost the City
4 would face upon their release.

5 And used or required in
6 litigation as possibly a reference to litigation
7 privilege. And implications for current or even
8 past litigation, I believe that's just noting an
9 issue that release of documents relating to the
10 Red Hill may affect the outcome of litigation
11 that's current and may even raise past
12 litigation -- re-raise past litigation depending
13 on the circumstances.

14 Q. And then in the line that
15 says "David Boghosian has one active claim," I had
16 understood that Mr. Boghosian wasn't involved in
17 the RHVP litigation. Do you know what this might
18 be referring to?

19 A. It's possible that he's
20 involved for the City in a claim. Normally I
21 would think the conflict check is only about
22 whether outside counsel who has a conflict of
23 interest with representing the City. So I'm not
24 exactly sure what the details behind this are.
25 Probably Dave Boghosian could identify that.

1 Q. Just looking at this
2 note, do you have any recollection of who could
3 have been at this meeting or call, assuming that
4 is what you're recording?

5 A. I would typically write
6 down who is in attendance and obviously I didn't
7 here so it's difficult. But other than the
8 timing, it's really difficult to -- I don't have a
9 specific recall of, this being a call or meeting,
10 who was involved.

11 Q. Okay. And there's a note
12 about discussions with Gary Moore and a few
13 bullets under that. Do you recall any discussions
14 about -- discussions with Gary Moore around this
15 time? We've now placed this into before
16 December 3rd, 2018.

17 A. I don't recall that. I
18 mean, the note gives some indication. I do have a
19 recollection perhaps based on a document I
20 reviewed that some staff were going to reach out
21 to Mr. Moore to get more information about the
22 handling of the Golder or Tradewind report or
23 other activities he might have been involved in.
24 But I'm not sure who's providing this at this
25 time.

1 Q. Just on the second page
2 of the transcription. Registrar, if you could go
3 to image 2 of the transcription. Thank you.

4 "Attended vicariously
5 (indiscernible) steps
6 implications for use on
7 roadway or speed limit."

8 (As read)

9 Do you have a recollection of
10 what that might be referring to?

11 A. Vicarious liability is to
12 me obviously a reference that the City would have
13 responsibility for Gary's decisions and work as he
14 was employed by the City at the time. And
15 implications for use of roadway or speed limit,
16 December 6th, PW. Other than what's written
17 there, it doesn't add anything to my recollection.

18 Q. Do you recall having
19 discussions about the implication for the use of
20 the roadway or speed limit before December 3rd,
21 2018?

22 A. No specific recollection.
23 Again, I know public works staff -- a variety of
24 public works staff were involved in meetings and
25 the intent to report to council, so this is

1 possibly a reference related to that work. I
2 don't know if it's coming from public works staff
3 but it seems related to the work I expected them
4 to be doing as far as a report or reports they
5 would supply to committee and council.

6 Again, we're seeing right
7 below it helps with that. The December 6 is my
8 question mark. I think there was a public works
9 committee on that date as opposed to a council
10 meeting. And we would as staff typically make our
11 reports to a standing committee, that will be a
12 public works or general issues committee, and then
13 the decisions or recommendations of that committee
14 would go to council for final approval.

15 MS. LIE: Commissioner, I'm
16 sorry, I realize I went a few minutes over but I'm
17 happy to take our morning break now.

18 JUSTICE WILTON-SIEGEL: That's
19 fine. It's just about 5 past so let's return at
20 20 past. Adjourned until 11:20.

21 --- Recess taken at 11:04 a.m.

22 --- Upon resuming at 11:24 a.m.

23 MS. LIE: Registrar, before we
24 went off the break we were looking at HAM64372. I
25 don't believe that document is in the overview

1 document, so I would appreciate if we could mark
2 it as Exhibit 164.

3 THE REGISTRAR: Thank you.

4 Sorry, the handwritten notes?

5 MS. LIE: The transcription.

6 THE REGISTRAR: HAM64372.

7 MS. LIE: That's correct.

8 Thank you.

9 JUSTICE WILTON-SIEGEL: What
10 exhibit number is that?

11 THE REGISTRAR: 164.

12 EXHIBIT NO. 164: Two-page

13 document titled

14 Solicitor-Client Privileged;

15 HAM64372.

16 BY MS. LIE:

17 Q. Mr. Sabo, we were looking

18 at two of your handwritten notes before the break.

19 We did find a reference to a calendar invite for a

20 meeting on November 26th so why don't we pull that

21 up and see if that helps in terms of situating the

22 notes that we were looking at.

23 Registrar, if you could pull

24 up overview document 9A, image 156.

25 At paragraph 369 you'll see on

1 November 20th there's a calendar invite sent to
2 Ms. Auty, to yourself, Mr. McLennan and
3 Mr. McKinnon for a meeting on November 26th, 2018.

4 Registrar, if we could pull up
5 HAM64375 next to this one.

6 THE REGISTRAR: Do you mind
7 just repeating the second document.

8 MS. LIE: HAM64375.

9 THE REGISTRAR: Thank you.

10 BY MS. LIE:

11 Q. Mr. Sabo, we already
12 looked at the notes on the right-hand side, but
13 I'm just wondering if knowing about this calendar
14 invite for the meeting on November 26th, 2018,
15 might help place this note in terms of the
16 chronology.

17 A. I can't be certain. We
18 already resolved that these notes were around that
19 timeframe so it is a possibility. I just can't be
20 certain because I didn't write down the attendees
21 for the November 20th meeting.

22 Q. Okay. But it's possible
23 these notes were from November 26 and the meeting
24 with Mr. McLennan and Mr. McKinnon but you can't
25 say for sure?

1 A. It is possible, yes. I'm
2 sorry, I misspoke. The November 26 meeting that's
3 reflected in the calendar invite. I just can't be
4 certain, but the timeframe fits.

5 Q. Okay. Thank you.

6 Registrar, you could take down
7 these documents, but if you could pull up
8 HAM61855.

9 Mr. Sabo, here's an e-mail
10 from Ms. MacNeil to Ms. Auty with a copy to you on
11 December 4, 2018. And she says:

12 "Further to our
13 discussion of this
14 afternoon, here are two
15 of the four key reports."

16 And the two reports she
17 attaches are the Tradewind report and the 2015
18 CIMA report. I appreciate that you are on
19 vacation at this time, but would this have been
20 the first time you received the 2015 CIMA report.

21 A. I don't recall
22 specifically the first time I received it so I
23 can't say for sure.

24 Q. What did you know about
25 the 2015 CIMA report in the late November/early

1 December 2018 timeframe?

2 A. I can't be certain what I
3 knew in that timeframe. I think over the course
4 of preparation I may have pieced together that it
5 was background to a staff report to public works
6 on the Red Hill but I'm not sure what I knew about
7 it at that time.

8 Q. Do you recall having any
9 discussions with public works staff about the 2015
10 CIMA report?

11 A. No, I don't.

12 Q. Do you recall if you knew
13 if CIMA had the Tradewind report at the time it
14 prepared its 2015 report?

15 A. No, I don't.

16 Q. Just to clarify in terms
17 of your past two answers, did you ever have that
18 understanding or is it just as of early December?

19 A. The question being did I
20 ever understand that CIMA had the Tradewind
21 report?

22 Q. Yes.

23 A. I believe at a certain
24 point I was told possibly by David Boghosian in an
25 e-mail that he had supplied the Tradewind report

1 to CIMA, but I don't have any recollection whether
2 that was the first time or the only time.

3 Q. And so the date that
4 Mr. Boghosian supplied the Tradewind report to
5 CIMA was January 30th, 2019?

6 A. I believe that's correct.

7 Q. Okay. And so before that
8 e-mail did you have an understanding of whether or
9 not CIMA had the Tradewind report?

10 A. I don't believe I had any
11 understanding or discussion. I don't recall that
12 issue coming up.

13 Q. Do you recall any
14 discussions about supplying the Tradewind report
15 to CIMA?

16 A. I'm not sure if there's a
17 document that you maybe are referring to. I'm
18 just trying to recollect the draft opinion that
19 David Boghosian supplied -- draft legal opinion.
20 I believe I saw that around December 13th. I
21 can't remember if that has CIMA looking at the
22 content of the Tradewind report. That wouldn't
23 necessarily mean I have the whole report, but I
24 just can't recall now whether the draft opinion
25 from David Boghosian had indicated any analysis by

1 CIMA of Tradewind work.

2 Q. Why don't we park this
3 question. We'll get to the draft opinion. Thank
4 you.

5 Registrar, if we could pull up
6 HAM62485.

7 So Mr. Sabo, the second e-mail
8 on this document is an e-mail from Mr. McGuire to
9 Domenic Pellegrini and Dipankar Sharma on
10 December 3rd, 2018, and there is a reference from
11 Mr. McGuire about withholding -- that's the
12 paragraph of that e-mail:

13 "The data we have
14 withheld, at legal
15 services advise, is
16 related to friction
17 testing and subject to an
18 FOI/MFIPPA request on
19 that subject."

20 And then Ms. MacNeil forwards
21 you -- forwards this e-mail to Ms. Auty with a
22 copy to you on December 3rd, 2018.

23 Again I appreciate you are on
24 vacation at this time, but before you went off on
25 vacation do you recall having any involvement in

1 any requests made by audit services to public
2 works staff?

3 A. I don't recall that issue
4 coming up prior to my vacation. I don't believe I
5 would have given any advice to either public works
6 or Byrdena to withhold documents from audit, but I
7 don't recall any discussion of audit being
8 involved prior to my vacation.

9 Q. Registrar, if we could
10 pull up HAM62498.

11 So here is an e-mail from
12 Ms. Auty to you on December 7th, 2018, in the
13 afternoon. It says:

14 "Ron, when you're in
15 Monday, can we meet so I
16 can update you on this
17 and where we are. I
18 think we need to bring
19 Dana and Dan into the
20 loop on their matters."

21 So this is Friday,
22 December 7th, the last day of your vacation.

23 Going into your vacation, I
24 think you had testified that the status of
25 Mr. Boghosian's retainer was in the hands of

1 Ms. Auty; is that fair?

2 A. That's my belief, yes, it
3 was.

4 Q. I think you testified
5 that you had some understanding that (skipped
6 audio) wanted to retain Mr. Boghosian for a
7 general liability assessment?

8 A. Yes.

9 Q. So do you recall meeting
10 with Ms. Auty when you came back from vacation?
11 That would have been on Monday, December 10th,
12 2018?

13 A. No, I don't have a
14 recollection of a meeting.

15 Q. Do you recall when you
16 came back from vacation what was the status of
17 Mr. Boghosian's retainer at that time?

18 A. I'm not sure exactly on
19 December 10th, but I believe I was told or it was
20 confirmed that David would be involved in
21 providing an opinion within a day or two of my
22 return from vacation.

23 Q. Do you recall any
24 discussion about bringing Dana and Dan into the
25 loop on their matters?

1 A. Per my previous answer, I
2 know that there were multiple reasons why we were
3 reaching out to Dana and Dan on the Red Hill
4 claims. And I don't recall specific discussions
5 with them. I know the purpose -- the multiple
6 purposes that were involved in that discussion,
7 just not sure of the timing of that.

8 Q. Do you recall any
9 discussions with Ms. Auty about what (skipped
10 audio) doing with Dana and Dan?

11 A. I don't recall specific
12 discussions, but I'm sure I would have raised the
13 issues that I provided previously, that we had the
14 obligation to make sure our affidavit of documents
15 was complete so we needed to talk to Dana and Dan
16 about documentation. Tradewind and Golder.

17 I know that we wanted to
18 understand the basics of their claim, what its
19 status, what the claim was based on. And at some
20 point, it may not have been the initial
21 conversation, but we wanted ultimately to reassign
22 the files to a single firm and lawyer to handle
23 the claims.

24 Q. Registrar, if we could
25 pull up HAM62101, images 2 and 3, please. It's

1 HAM62010, images 2 and 3. Thank you.

2 At the bottom of the screen on
3 the left there's an e-mail from Ms. MacNeil on
4 December 10th, 2018. So this is on the Monday
5 that you get back from your vacation.

6 And you will see in the first
7 paragraph of her e-mail she says that Gord McGuire
8 telephoned her this morning:

9 "He has a meeting today
10 with Domenic Pellegrini
11 from audit at 1:30 p.m.
12 He is concerned about
13 answering any of
14 Domenic's questions which
15 are attached, but also
16 doesn't want to be
17 criticized for
18 obstructing the audit
19 office in their job. I
20 advised him that it was
21 far better for Domenic to
22 be upset about not
23 getting any answers today
24 than it would be for Gord
25 to try and provide even

1 limited information. I
2 advised Gord that he
3 should cancel the
4 meeting. If he doesn't
5 cancel the meeting, he
6 should simply listen to
7 Domenic's concerns and
8 questions but his answer
9 to all of the pertinent
10 questions needs to be 'I
11 am not in a position
12 today to provide you with
13 any answers to those
14 questions.'

15 You've got a response on the
16 left-hand side, December 10th, 2018. And you say
17 at the end of the first line:

18 "I don't like the optics
19 if Gord goes away saying
20 legal said to cancel but
21 I agree he should
22 postpone if he's not
23 actually able to answer
24 and give that as his
25 reason. Audit here is

1 internal and just doing
2 their work. If he hasn't
3 already, he should bump
4 this up within PW as the
5 questions posed are ones
6 the City may have to
7 answer internally in
8 short term and possibly
9 transparently in near
10 term. It would be much
11 better for PW to get on
12 top of full background
13 and decisions on any
14 reporting that needs to
15 be done. There will
16 certainly be legal issues
17 raised in potential and
18 existing, possibly even
19 concluded, litigation of
20 multiple sorts, but the
21 road engineers, et
22 cetera, need to weigh in
23 on circumstances and
24 appropriate responses."

25 So were you -- I guess before

1 Ms. MacNeil had advised Mr. McGuire it was far
2 better to cancel the meeting, did you have any
3 discussions with Ms. MacNeil about this issue with
4 audit?

5 A. I don't believe I had
6 discussions with Ms. MacNeil about the audit
7 interest in the documents prior to receiving this
8 communication.

9 Q. And when you say "I don't
10 like the optics if Gord goes away saying legal had
11 to cancel," what was your concern there?

12 A. Optics is probably the
13 wrong word. I don't -- I didn't want legal being
14 given as the reason or supporting that there
15 couldn't be a discussion with Gord McGuire.

16 So it really wasn't correct
17 that -- it was a poor choice of words, the optics
18 part, and it wasn't correct. I didn't want legal
19 to be even stated as the reason. If Gord wasn't
20 able to answer questions, well, that's a valid
21 basis but he should have communicated that.

22 So that's -- you can see my
23 response there is pretty literal about my view of
24 Gord -- public works in general responding to the
25 audit request.

1 Q. And when you say it would
2 be much better for public works to get on top of
3 full background decisions on any reporting that
4 needs to be done, what are you referring to there?

5 A. I knew generally even
6 returning from my vacation that staff were working
7 on collecting background and with the intent of
8 reporting to council, and I believe I'm referring
9 to the fact that if Gord isn't able to answer that
10 public works should be striving to collect the
11 information and come up with necessary answers or
12 information for council. It was all I'm sure the
13 same issue. So I think it's more a comment on
14 timing that there should be some priority to
15 getting a complete picture and reporting.

16 Q. Apart from this e-mail
17 exchange and other e-mails that you may have seen
18 from Ms. MacNeil about the audit issue, do you
19 recall any discussions about the approach that
20 public works should be taking to audit with
21 Ms. MacNeil or anyone else?

22 A. I don't recall
23 discussions with Ms. MacNeil or anyone from public
24 works. I may have commented to Ms. Auty on the
25 aspect of availability of reports, but I can't

1 recall if that referred to audit. I think there
2 was an e-mail around the end of January, if that
3 puts it in reference, I may have come to Ms. Auty
4 about upcoming records and I may have referred to
5 audit, but sorry, my recollection is not clear.
6 But I don't recall any discussions with Byrdena or
7 anyone else aside from that about this audit
8 issue.

9 Q. In Ms. MacNeil's e-mail
10 to you on December 10th -- this is on the right
11 side -- in the second paragraph she says:

12 "Of note, Gord mentioned
13 that, over the weekend,
14 he reviewed a draft 2018
15 CIMA report dealing with
16 a safety analysis/review
17 of the RHVP. It appears
18 that the report indicates
19 that wet weather
20 performance of the RHVP
21 has worsened since CIMA's
22 2015 report."

23 Do you recall knowing about
24 the roadside safety assessment that public works
25 was conducting?

1 A. I'm not sure by that name
2 that I have any recollection about that, just the
3 general recollection again that on its own public
4 works were reporting -- like, preparing a report
5 or reports on the Red Hill Valley Parkway, and
6 that included the safety aspects, repaving, work
7 that they would do to make the roadway safer. But
8 I don't recall that -- even with this e-mail, I
9 don't recall connecting it to CIMA's ongoing work
10 with public works.

11 Q. So did you know that CIMA
12 was engaged in ongoing work with public works?

13 A. I have this e-mail here
14 that suggests I would have read it and I would
15 then have knowledge that they were currently
16 working with CIMA, but I don't have a particular
17 recall of why there is -- there may be some note
18 in meetings I attended following this that maybe
19 added to that knowledge, but this might be the
20 first I knew that they were working with CIMA. I
21 wouldn't have been surprised that they were
22 working with consultants given the issues, but I
23 don't have the specific recall of what I thought
24 about CIMA being involved with public works.

25 Q. Did you have any

1 understanding of the scope of CIMA's work with
2 public works?

3 A. Again, I apologize, I'm
4 referring to notes. I seem to recall making at
5 one or more meetings that staff are trying to
6 anticipate questions that council would have of
7 staff when reports were presented. So I believe
8 public works was answering questions about the
9 safety of the roadway, work that they would do or
10 recommend doing, the status of repaving and
11 updates to the roadway. So there were several
12 issues that public works would have been working
13 on.

14 Q. But that -- when you're
15 referring to notes, is that later in time? Is
16 that the end of January 2019?

17 A. It is hard to keep track
18 of things in my mind of the various meetings I
19 attended and made notes at. There could well be
20 notes early on, like before the beginning of
21 December or in December. But your question was
22 could there be notes I'm referring to in January.
23 There could well be content in those notes that
24 supports what I just said, that I think public
25 works was working on improvements of the safety of

1 the roadway.

2 Q. In the let's say
3 mid-December 2018 timeframe, did you have an
4 understanding that the work -- any work that the
5 consultants were doing was on safety generally or
6 was it a more limited scope?

7 A. I don't believe I was
8 involved in discussions of the scope of
9 consultants work. Public works would have been I
10 imagine dealing with those issues on its own so I
11 don't recall any discussions about scoping that
12 work.

13 Q. Could we look at image 1
14 of this document. Very bottom of this page you'll
15 see an e-mail response from Ms. MacNeil to you.
16 This is on the same day, December 10th.

17 In the second paragraph she
18 refers to a potential conflict of issue that Mr.
19 Soldo had raised about CIMA because Brian Malone
20 of CIMA's wife was the former question mark
21 director operations at the City of Hamilton during
22 the years in question.

23 Do you recall having any
24 discussions about this issue of potential conflict
25 of interest?

1 A. I don't recall
2 discussions about this. I believe that persons
3 followed up on this but I don't recall any
4 involvement in how that conflict of interest issue
5 was dealt with.

6 Q. Do you recall who
7 followed up on this?

8 A. No, I don't.

9 Q. Do you recall if there
10 was any discussions about hiring another or --
11 another safety consultant?

12 A. I don't recall
13 discussions. One of my notes -- and I can't
14 pinpoint the time, we may cover it today -- has a
15 notation Golder plus CIMA, and that suggests to me
16 that Golder maybe was still involved in the
17 analysis of the roadway, or perhaps that was just
18 a reference to their prior report. But I hadn't
19 really turned my mind to who is hiring consultants
20 through public works.

21 Q. Thank you.

22 Registrar, could we pull up
23 overview document 9A, image 220.

24 So, Mr. Sabo, at
25 paragraphs 520 to 522 there's some references to

1 e-mails between Mr. McGuire and Ms. MacNeil dated
2 December 8th to the 10th, 2018. You're not copied
3 on these e-mails. But you'll see in paragraph 521
4 Mr. McGuire asks Ms. MacNeil:

5 "Did you get a hold of
6 the CIMA contact via
7 Edward? I was wondering
8 and if so could I talk to
9 CIMA confidentially."

10 And Ms. MacNeil responds.

11 This is at paragraph 522. And she says:

12 "No, we have not
13 contacted CIMA yet
14 because we are still
15 working on how we're
16 going to put the request
17 to them in order to best
18 move forward from a legal
19 perspective. I would
20 strongly advise that you
21 not speak with CIMA about
22 this matter until you
23 have heard back from
24 us/Nicole. We should be
25 able to update you by

1 midweek."

2 Do you have any understanding
3 why Ms. MacNeil would respond to Mr. McGuire in
4 this way?

5 A. No, I don't. This is an
6 exchange between Byrdena and Gord and there's
7 mention of Nicole, but I don't have any
8 recollection of this issue coming up with me.

9 Q. Registrar, if we could
10 pull up HAM64323. Could we have images 1 and 2.

11 Mr. Sabo, at the bottom of the
12 first page of this e-mail chain you'll see an
13 e-mail from Ms. Auty to you and to Ms. MacNeil on
14 December 11th, 2018, and she's forwarding an
15 e-mail exchange that she's had with Mr. Boghosian
16 to set up a call.

17 Registrar, if we could pull up
18 images 2 and 3. Maybe we should do 3 and 4.
19 Thank you.

20 These are e-mails in the
21 exchange ultimately forwarded to you from
22 Ms. Auty. You'll see in the e-mail from Ms. Auty
23 to Mr. Boghosian, this is on the right-hand side,
24 that this is an e-mail dated December 7th, 2018,
25 and she's asking for Mr. Boghosian's advice on

1 three matters, and there's one, two, three. And
2 number 2 is:

3 "How to approach
4 obtaining CIMA consultant
5 input on whether interim
6 measures are needed to
7 protect safety before the
8 resurfacing is completed
9 in June 2019 (litigation
10 privilege?)."

11 And I think you've testified
12 that you don't recall any discussions about who
13 should be contacting CIMA?

14 A. That's correct.
15 Obviously I was copied with this e-mail but that
16 first page is referring to a discussion that
17 occurred during my absence.

18 Q. You'll see Mr. Boghosian
19 responds in a e-mail December 10th, 2018, and in
20 the second paragraph -- this has on the -- the
21 e-mail on the left-hand side -- you'll see in the
22 second paragraph it says:

23 "I thought over the
24 weekend about the issue
25 of how to obtain an

1 opinion from CIMA
2 regarding interim safety
3 measures regarding the
4 condition of the RHVP
5 pending resurfacing in
6 June of 2019. I think
7 the only way we could
8 prevent access to any
9 correspondence they send
10 conferring their opinion
11 is if I contact them and
12 obtain their advice, then
13 communicate it to you as
14 part of my opinion
15 letter."

16 So you recall any discussions
17 around how to obtain an opinion from CIMA in a way
18 that could prevent any access to any
19 correspondence?

20 A. No, I don't recall
21 discussions of that. I know at a certain point I
22 think even at the beginning of this e-mail chain
23 that the latest e-mails on that were about
24 arranging a meeting where we would receive
25 information from Brian Malone of CIMA either

1 directly or through David Boghosian.

2 So your question maybe relates
3 to that so I would have expected -- involved in
4 that telephone call from this, but other than that
5 I don't have a recollection of discussions of
6 (inaudible).

7 Q. We're going to get to the
8 December 11th call momentarily, but did you have
9 any understanding of why Mr. Boghosian was
10 reaching out to Mr. Malone?

11 A. I don't recall an
12 understanding of that issue. Obviously this
13 e-mail would have been in, copied to me, and I
14 responded to it, but I don't recall discussing
15 the -- that issue.

16 Q. Registrar, could you pull
17 up HAM62500. Mr. Sabo, this is a draft of the
18 retainer letter that went to Mr. Boghosian. Have
19 you seen this document apart from in your
20 preparation for testifying at the inquiry?

21 A. I don't recall seeing it
22 earlier than my preparation.

23 Q. I take it you were not
24 involved in any discussions about what would go
25 into the retainer letter?

1 A. As far as the content for
2 David's work, I don't recall any discussions.
3 It's possible, because I recall we've had a number
4 City solicitors. I recall supplying City
5 solicitors with a sample retainer document, but
6 that's just the standard clauses about how they
7 bill, the frequency, and limiting billings to the
8 senior lawyer and things of that sort that are
9 probably on the following pages of this. But as
10 far as the content regarding David's work, no,
11 just my general impression that legal was going to
12 report to council on liability and David's opinion
13 was going to cover the aspects involved in
14 liability, the exposures, and implications.

15 Q. Registrar, could you pull
16 up HAM64366. This is a transcription of your note
17 dated December 11th, 2018. Do you recall having a
18 call with Mr. Boghosian and Ms. Auty?

19 A. I believe I did have a
20 call, possibly even more than one, with Ms. Auty
21 and Mr. Boghosian, but I don't have a specific
22 recall of the discussions of those meetings.

23 Q. So let's go back to the
24 December 11th, 2018 call. So this is the Tuesday
25 after you get back from vacation. This is the

1 call that we had seen the e-mail exchange between
2 you and Ms. Auty about setting up a call with
3 Mr. Boghosian. Do you recall if Ms. MacNeil was
4 on the call with you and Ms. Auty and
5 Mr. Boghosian?

6 A. I don't recall.

7 Q. Do you recall ever being
8 in any calls or meetings where Ms. MacNeil and
9 Mr. Boghosian were present?

10 A. No, I don't. If there's
11 a note where I listed attendees that you're
12 referring to, I would look at that, but I don't
13 have an independent recollection of that type of
14 call involving Ms. MacNeil.

15 Q. There is not, and my
16 understanding is that Ms. MacNeil was not on this
17 call; I just wanted to see if you had a
18 recollection. And also because it looked as
19 though Ms. Auty had sent the e-mail to both you
20 and to Ms. MacNeil about setting up the call with
21 Mr. Boghosian?

22 A. Yes, and it was just up
23 on the screen, I apologize, but I think in my
24 e-mail back to Nicole, I might have said that
25 Ms. MacNeil wasn't available at the time that was

1 suggested.

2 Q. So on this note, there's
3 a line that goes through the page and there's a
4 few lines above it. If you would like, we can
5 pull up the handwritten ones as well, if that
6 assists you.

7 A. No, I think I recall
8 reviewing the handwritten notes, and I believe the
9 information above the line, except for the date
10 obviously, is something of a to-do list of -- the
11 stuff on the left-hand side, "John, Dan and Dana
12 with Nicole discussion." I think that's a
13 reference to we would have a discussion together
14 about the Red Hill claims that Dan and Dana were
15 involved in, and on the right-hand side, "John
16 insurance and notice," I think that's a note
17 referencing that John would have that to do in his
18 normal role as manager of risk management. And
19 I'm not quite sure what "historical claims
20 involving the City" means, except that we knew
21 that the disclosure of reports through FOI or
22 otherwise may affect historical claims as well as
23 ongoing claims that Dan and Dana had.

24 Q. And then the notes under
25 the line, are those the notes of your call with

1 Mr. Boghosian and Ms. Auty?

2 A. I believe so. That would
3 follow the format of the call where David
4 Boghosian was supplying information to -- as part
5 of the call.

6 Q. With the benefit of your
7 notes, what did Mr. Boghosian convey to you?

8 A. The first few lines is
9 that I believe this is David saying he spoke with
10 Brian Malone for 45 minutes, that he learned that
11 Mr. Malone had been involved in 2015. And the
12 mention of the median barrier, I believe one of
13 the issues the City had looked at prior to this
14 issue with the Tradewind report was whether parts
15 or that parkway should have a median barrier down
16 the middle. "Study and draft last week plus
17 illumination study."

18 I'm not absolutely sure, but
19 it sounds like Mr. Malone had ongoing studies
20 either concluded or in progress that were close to
21 being finished. "Studying draft last week"
22 suggests he was close to finishing a study. And
23 then it says "no change in interim recommendation
24 in 2015," so that suggests to me in the context
25 that seeing this recommendation through Brian

1 Malone in 2015 were still recommendations, like he
2 was saying that he wouldn't change those
3 recommendations from that earlier work.

4 Q. Just to pause there. Did
5 Mr. Boghosian tell you that he had shared the
6 Tradewind report or the results from the Tradewind
7 report with Mr. Malone?

8 A. I don't have an
9 independent recollection of the actual
10 conversation, and I'm not seeing anything in this
11 note that -- so far on this page that suggests
12 that Brian was working with the Tradewind report,
13 although I'm not absolutely sure. There's that
14 word on the -- or words on the left-hand side
15 chart, 9.2, page 50. I should know what that
16 refers to. I don't know just right at this second
17 if it's CIMA or Tradewind.

18 Q. So my understanding is
19 that the chart 9.2 is actually a chart that's in
20 the 2015 CIMA report that sets out CIMA's
21 recommendations at the time, in 2015?

22 A. Okay, then that helps. I
23 don't recall from these notes any indication that
24 CIMA, Brian Malone had a copy of the Tradewind
25 report.

1 Q. Do you recall coming out
2 of that conversation if you had any understanding
3 of whether or not CIMA had the Tradewind report?

4 A. I don't have a
5 recollection of that, no.

6 Q. So where it says chart
7 9.2, as I mentioned, that's actually the list of
8 safety recommendations. Do you recall
9 Mr. Boghosian going through that list with you on
10 the call?

11 A. Not specifically. I
12 probably wrote that down as a reference that I
13 could look at it if I had that document to give me
14 that information, but there might be notes here
15 that reflect those recommendations. I'm not sure
16 on the first page. Maybe the second or following
17 pages might --

18 Q. Registrar, could we put
19 up image 1 and 2. On image 2, you'll see near the
20 top of the page, it says:

21 "Slippery when wet signs
22 not enough. No flashing
23 beacons. Was enhanced
24 police inf."

25 Is that referring to the CIMA

1 safety recommendations?

2 A. I don't recall the
3 specific recommendations from CIMA. Again this is
4 information that's coming through David, probably
5 based on information from Brian Malone, but I
6 don't recall which of these refer to specific
7 recommendations, if any.

8 Q. At the bottom of the
9 first page there's a reference to SMA and there's
10 some notes -- and there's a note that says "OT, Q
11 is there an MSA, STD".

12 A. Yeah, that OT reflects
13 something I add to notes as own thought, and I
14 often do that when I have a question that maybe I
15 need to consider later. So this is saying my own
16 thought is a question of whether there is a
17 standard for MSA asphalt.

18 Q. And then where it says:
19 "Brian somewhat
20 experimental and maybe
21 not best choice for curvy
22 plus hilly road. Brian
23 isn't an expert in
24 materials."

25 And then it goes over and says

1 "Geotech eng." Is that something that
2 Mr. Boghosian conveyed?

3 A. I believe so. If I
4 understand correctly, I believe this call was only
5 with David Boghosian externally, Nicole and myself
6 and David. Sometimes I make a note, like a note
7 Brian that way as a speaker, but I believe this is
8 information coming through David Boghosian about
9 MSA being experimental and commenting on its
10 choice for curvy or hilly roads, but also
11 indicating Brian isn't an expert and maybe that
12 even the standards that Brian holds or perhaps
13 what the necessary qualifications a person would
14 have to have to a materials expert.

15 Q. And then on the second
16 page where it says -- in the middle of page, it
17 says:

18 "Updated
19 collision/accident
20 history, didn't improve
21 at all, even though City
22 has implemented many
23 recs."

24 Is that something that -- I
25 take it that Mr. Boghosian conveyed that to you on

1 the call.

2 A. Again, I believe this is
3 all information coming from Mr. Boghosian. Not
4 absolutely sure of the source of that collision
5 accident history, at this time anyways.

6 Q. Where it says about two
7 points down from there:

8 "Brian, maybe even some
9 elements of road worse?
10 Believes most accidents
11 in wet, which should be
12 reversed given number of
13 days it's dry"?

14 A. And again I believe this
15 is information coming from Brian to David, so the
16 comment being maybe even some elements of the road
17 worse, and I put a question mark. I don't know if
18 it was not understanding what "elements" means or
19 just trying to -- it's my question mark, not
20 knowing for sure what we were talking about with
21 that sentence.

22 And the next comment, "believe
23 most accidents in wet, which should be reversed
24 given number of days it's dry."

25 I believe the point it's

1 conveying is when you look at statistics of
2 roadways, that the higher proportion of accidents
3 on a roadway should be in dry weather given the
4 limited number of days of wet roads, but with the
5 Red Hill Valley Parkway that was actually
6 reversed, that there was a higher percentage of
7 accidents in wet conditions on that roadway
8 compared to the number of dry.

9 Q. And then it says:
10 "Q does PW have standby
11 trucks to repair guard
12 rails when wet?"

13 Asking a question --

14 A. Yeah, it's my
15 abbreviation for a question, and it may have been
16 David either relaying a question from Brian or his
17 own question of whether the frequency of accidents
18 has public works actually having repair vehicles
19 waiting to do repairs when there's wet weather.

20 Q. And then you'll see -- it
21 says "FOI," and then it says number sign "under 40
22 versus 30 as substandard." What is that referring
23 to?

24 A. I believe those are
25 separate points. FOI to me is obviously a

1 reference to the Freedom of Information process in
2 progress. The number under 40 versus 30 as
3 substandard, I believe that is information coming
4 from David or through Brian to David that is
5 considering either the Tradewind report perhaps or
6 UK standards.

7 My recollection is that there
8 was a certain level in the UK standards that was
9 -- I believe the term was "investigatory" where
10 further looking would be done, and one that used a
11 different word that was more suggested that action
12 needed to be taken. So I believe that line is
13 reflecting some discussion of that.

14 Q. Does that note help
15 refresh your memory about whether or not
16 Mr. Boghosian said that he had shared the results
17 of the Tradewind report with Mr. Malone?

18 A. I can't be certain. I
19 just don't know if this is something David is
20 discussing or if it's a continuation of discussion
21 of information from Brian that might suggest he
22 had either the UK standards or the actual
23 Tradewind details available, so I'm sorry....

24 Q. Do you recall if
25 Mr. Boghosian gave you a recommendation with

1 respect to his liability assessment on this call?

2 A. Is there a continuation
3 of these notes beyond -- thank you.

4 Q. Registrar, if you could
5 put up images 2 and 3.

6 A. I believe at the bottom
7 of the first page, the word damage and exposure,
8 range of, number of claims, and media with the
9 following point messaging to limit liability would
10 at least be topics of liability that I expect
11 David would be involved in, so that that's
12 possible that this is David touching on those
13 points.

14 Q. Registrar, could we pull
15 up HAM64355. If we could put up both images 1 and
16 2.

17 Mr. Sabo, these are actually
18 Ms. Auty's notes of the call with Mr. Boghosian on
19 December 11th, 2018. I just wanted to put them up
20 for you in case they assist you in recalling this
21 conversation. I will let you just have a quick
22 look at them.

23 A. All right. Thank you.

24 Q. So having looked at these
25 notes, does that assist in refreshing your

1 recollection of whether or not Mr. Boghosian
2 conveyed to you that whether or not he had shared
3 the Tradewind results or the Tradewind report with
4 Mr. Malone?

5 A. I can't tell from this if
6 there's particular wording. I can't read every
7 word, but nothing is jumping out at me that
8 answers that question.

9 Q. I mean, if it helps,
10 there's a note on the first page where it says
11 "everything they would recommend is in 2015
12 report."

13 A. That doesn't help me. I
14 don't have an independent recollection of the
15 actual discussion of the meeting.

16 Q. Were there any action
17 items from you coming out of this call with
18 Mr. Boghosian and Ms. Auty?

19 A. I don't recall any coming
20 out of this meeting. My notes at the top, the
21 first page, I believe that's something of a to-do
22 list for myself and John Mr. McLennan to follow up
23 on. But this meeting, no, I don't recall any
24 action items that I was to deal with after this.

25 MS. HALE: And I don't know if

1 it would be helpful, but maybe we can take Mr.
2 Sabo to the transcriptions if he's having
3 difficulty reviewing Ms. Auty's notes.

4 MS. LIE: Sure. So that is
5 at --

6 MS. HALE: I think
7 (indiscernible) HAM64364.

8 BY MS. LIE:

9 Q. I don't know if you got
10 that, Registrar. It's HAM64364.

11 A. That's helpful to see
12 what the words are, but no, it doesn't add to the
13 answers I gave.

14 Q. Thank you. Registrar,
15 could we pull up HAM62509.

16 Mr. Sabo, this is an e-mail
17 exchange between Mr. Soldo and Ms. Auty on
18 December 11th and 12th, 2018. You're not copied
19 on these e-mails. You'll see in the second page,
20 Ms. Auty writes to Mr. Soldo -- this is December
21 11th, 2018:

22 "Hi Edward, Tried calling
23 you back, sorry today got
24 away from me. Was the
25 contact Brian Malone?"

1 And then Mr. Soldo responds on
2 the morning of December 12 saying, "Yes, he is
3 expecting your call."

4 Do you have any understanding
5 of why Mr. Soldo would be under the impression
6 that Mr. -- that Ms. Auty would be calling
7 Mr. Malone?

8 A. No, I don't.

9 Q. Registrar, could we pull
10 up HAM62510. This is an e-mail exchange between
11 Mr. McGuire sent to Ms. Auty and Ms. MacNeil, so
12 you're not copied on this exchange. This is
13 December 12th, 2018.

14 In the beginning of the chain
15 Mr. McGuire asks, "Should we get a call going with
16 Brian? He's in office." And then Ms. MacNeil
17 responds on December 12th:

18 "I haven't received any
19 direction on this yet, so
20 we won't be in a position
21 to speak with Brian
22 today. Thanks for the
23 head's up though."

24 Do you have any understanding
25 of why Ms. MacNeil would respond in the way that

1 she did?

2 A. No, I don't. I can't
3 tell what this is about specifically, but I don't
4 have any understanding of what this is reflecting.

5 Q. Who was Ms. MacNeil
6 taking direction from on the RHVP matters at this
7 time?

8 A. If anyone, it would have
9 been Nicole Auty. From my perspective, Byrdena
10 had been assigned to complete the Freedom of
11 Information work and would have been capable of
12 dealing with that on her own, so I wouldn't have
13 felt the need to direct her on any step. So I
14 don't know for sure who's giving direction, but
15 I'm sure it's not me, and I would expect it then
16 would be Nicole. That makes sense in particular
17 here because I see Nicole cc'd on this, on both
18 communications from Gord and Byrdena MacNeil.

19 Q. So coming out of the call
20 with Mr. Boghosian on December 11th, do you recall
21 if you updated Ms. MacNeil about your conversation
22 with Mr. Boghosian?

23 A. I don't recall doing that
24 and I don't expect I would have needed to because
25 I felt Byrdena's work was a discrete exercise or a

1 discrete piece of work in reviewing documentation
2 that public works had supplied in relation to the
3 Freedom of Information request.

4 Q. Registrar, could we pull
5 up HAM61884. If you could put up images 1 and 2.
6 You'll see at the bottom of the first page there's
7 and e-mail from Ms. MacNeil that just says,
8 "Another FYI...Nicole was copied on the original
9 e-mail," and you'll see couple forwards.

10 But on the right side you'll
11 see an e-mail from Mr. -- actually the e-mail at
12 the bottom of the second page, you'll see an
13 e-mail from Mr. Brown, who's contacting Mr.
14 McKinnon about a situation that they have in their
15 audit. He says:

16 "We've reached an impasse
17 in the issue of fulsome
18 access to information
19 respecting certain
20 testing of pavement
21 friction on Red Hill."

22 So do you recall having any
23 discussions about this impasse issue? Just before
24 you answer that, you'll see on the first page, in
25 your response on December 12th, 2018, you do say:

1 "I discussed some
2 possible coordination
3 with Audit, FOI office
4 and Clerks on the
5 upcoming council report
6 very briefly yesterday.
7 Maybe we can discuss that
8 further. I'm thinking we
9 share documents with
10 Audit and FOI that we
11 have already. It's clear
12 though Audit's request
13 has a much wider scope
14 and they may even need to
15 interview current or
16 former staff to get full
17 info."

18 A. The first line suggests
19 the -- in relation to reports, that I had some
20 discussion about the connection between these
21 issues, or at least relating to audit and a
22 report, but I don't have specific recollections of
23 what those discussions were.

24 Q. Do you recall who they
25 were with?

1 A. I'm just wondering, and I
2 don't recall, but there is a series of my notes
3 that relate to a draft agenda for general issues
4 committee, something that would have been
5 discussed at an agenda review meeting, and it's
6 quite possible that relevant clerk staff and audit
7 staff would have been in that agenda review
8 meeting, but I can't recall the date of that.

9 Q. At this time, December
10 12th, 2018, was the thinking that all of these --
11 the audit, FOI, and the report would all go
12 together around the same time?

13 A. FOI office would not
14 report to council on -- sorry, they do annual
15 reports or possibly semi-annual reports of the
16 status of outstanding requests, but they wouldn't
17 report on a specific FOI request to committee.
18 They have authority, delegated authority just to
19 act on those.

20 Q. Sorry, I think I wasn't
21 clear in my question. In terms of the -- what did
22 you mean by the coordination at this point? Was
23 it the coordination in terms of the disclosure of
24 the Tradewind report to audit, FOI office, and
25 council?

1 A. The way I read that
2 sentence is it's discussing a report going to
3 council, not information to audit or otherwise.
4 It's specific to a staff report to council.

5 Q. Okay. So then in that
6 context, what's the coordination with the FOI
7 office?

8 A. I don't recall.

9 Q. So we had seen the --

10 A. Pardon me. It does say
11 possible coordination, so I'm not absolutely sure
12 that that's saying I had those discussions with
13 each of those groups. I'm just a little uncertain
14 that that is suggesting to say I had a discussion
15 with the auditor, with the FOI office and clerks,
16 I had a discussion about it. It's not quite
17 clear.

18 Q. We had seen some
19 references to December 6th as a potential report
20 to council. We know that that didn't happen.
21 Around this time, in mid-December of 2018, do you
22 recall if there was discussion about when the
23 report would be made to council?

24 A. I don't recall specific
25 discussions. Staff would have available to them

1 the calendar of upcoming committee and council
2 meetings and if -- and it happens not infrequently
3 that we have a target date, and if we don't meet
4 that date, we have to look further on into
5 possible dates to pick, but I don't recall at this
6 time having a specific target date in mind. I
7 think new target dates came up for staff reporting
8 to committee and council, but at this time I don't
9 recall a specific one coming up.

10 Q. Did you have an
11 understanding of what was driving the timing of
12 the report?

13 A. Not a specific
14 understanding. I mean, the process to report to
15 council is -- by staff, is to try to give them
16 sufficient information to be informed on an issue,
17 especially if there was a decision to be made. So
18 I know in my own work it frequently happens that
19 collecting and confirming that information takes
20 some time, but I don't recall discussions of what
21 was taking time. I believe I answered earlier
22 there was some urgency because staff believed that
23 the FOI request could result in information
24 becoming public in the immediate future.

25 Q. Registrar, could you pull

1 up overview document 9A, image 240. You'll see at
2 paragraph 563 that there's an e-mail from
3 Ms. MacNeil to Mr. McGuire, with a copy to you, on
4 December 12th, 2018. She says:

5 "Ron and I were speaking
6 about the RHVP FOI
7 request after you and I
8 had spoken yesterday. I
9 had advised him that we
10 have the records relevant
11 to the first part of the
12 request, friction
13 testing, from your office
14 already but that the
15 documents from the second
16 part of the request,
17 asphalt pavement testing,
18 are coming from Mike
19 Beck's office."

20 You'll see she lists a couple
21 factors. She says:

22 "It needs to be a top
23 priority for Mike Beck's
24 office at this point in
25 time given the request

1 was submitted by access
2 and privacy back in
3 October."

4 Do you recall having
5 discussions with Ms. MacNeil about the FOI request
6 around this time?

7 A. I don't recall those
8 discussions. This e-mail is reflecting that there
9 was a conversation per Byrdena, I put emphasis on
10 the timing of collecting documents, but I don't
11 recall that conversation.

12 Q. There's a reference to
13 "the request that was submitted by access and
14 privacy back in October." Do you know what that's
15 referring to? Because the FOI request came in in
16 November, we know.

17 A. I don't know what that's
18 referring to. I believe it could just be a
19 mistake of Byrdena in referencing the date of the
20 FOI request. Each request is numbered, and this
21 seems to be talking about -- from the content
22 that's above in Byrdena's e-mail, this seems to be
23 clearly referring to the November 8th request
24 based on the two components that she mentions
25 there in the request.

1 Q. Registrar, could you pull
2 up HAM64354. Mr. Sabo, this is a copy of the
3 draft opinion that Mr. Boghosian sends to
4 Ms. Auty, which she then sends to you on
5 December 13th, 2018. This version includes
6 handwritten notes by you. Do you recall when you
7 made your notes?

8 A. I believe the
9 December 13th date reflects when this was supplied
10 to the City and Ms. Auty requested that I review
11 the document and provide comments. I believe I
12 did it right away.

13 Q. So in terms of the notes
14 that you made, do you recall when?

15 A. If there's an e-mail that
16 shows it was given to me on a different date than
17 December 13th, that might refresh my memory, but
18 what I'm looking at suggests something I did on
19 the 13th.

20 Q. And then you'll see in
21 the note it says "wet/dry," and it says "NB should
22 read this between wet and dry friction
23 throughout."

24 A. Yes.

25 Q. So in terms of the note,

1 so you made these notes. Did you share the notes
2 with Ms. Auty, or did you talk to her about them,
3 the comments you had made?

4 A. One or the other. I know
5 Ms. Auty requested that I provide comments, and I
6 don't know if I supplied this document or an
7 explanation or both in some discussion, but I'm
8 certain that I would have relayed the comments on
9 the report back to Nicole.

10 Q. On the first page, it
11 says -- there's an underline where it says "which
12 had not been disclosed on a previous FOI." So I
13 think you had testified that you had been under
14 the misunderstanding that there may have been a
15 previous FOI request made?

16 A. Yes, and I know
17 ultimately I checked and confirmed that that
18 wasn't the case, like something previous to
19 November 8th. I contacted the access and privacy
20 office directly to confirm that. But this is
21 underlining that point, and possibly maybe
22 questioning that aspect of it or just noting it.

23 Q. Did you -- do you recall
24 if that misunderstanding was conveyed to
25 Mr. Boghosian on the December 11th call?

1 A. I don't recall that. It
2 is quite possible that I supplied information in
3 that call and because I was under the
4 misunderstanding about that particular issue of
5 there being a prior request, then it may have been
6 me who supplied that to David in some fashion or
7 date, not necessarily December 11th, just because
8 I was under that understanding that there might
9 have been a previous FOI request.

10 Q. Registrar, could you pull
11 up image 2. Maybe we can put two and three
12 together actually. You'll see on the second page,
13 point number one, Mr. Boghosian summarizes the
14 six-year performance review of RHVP by Golder
15 Associates dated January 2014, and this is what we
16 often call the 2014 Golder report.

17 A. Pardon me, sorry, which
18 page were you referring me to? I didn't catch it
19 right away.

20 Q. Sorry, the page on left.
21 So page 2 of the opinion.

22 A. Right.

23 Q. Under section 1. It says
24 "Summary of the 2014 Golder Report."

25 A. Oh.

1 Q. Did you ever get a copy
2 of the 2014 Golder report?

3 A. I'm not sure if around
4 this time, if I had a copy of the Golder report.
5 I may have had an extract of it and read part of
6 it. I believe by the time Byrdena MacNeil
7 transferred the remainder of the work on the
8 Freedom of Information request to me, I expect it
9 would have contained a copy of the Golder report,
10 but I don't recall if I read it at that time
11 because it was something that Byrdena would
12 already have reviewed and commented on.

13 Q. So you don't recall if
14 you read the Golder report?

15 A. No. Possibly a portion
16 of it, but I don't recall if I saw or read the
17 whole report at this time.

18 Q. Do you recall if there
19 were any discussions about the Golder -- the 2014
20 Golder report in your call with Mr. Boghosian?

21 A. The December 11th call?

22 Q. Yes.

23 A. I don't recall. I don't
24 have an independent recollection of it, and in
25 looking at the notes today and previously, I don't

1 see a notation to that effect.

2 Q. Do you recall any
3 discussions about the 2014 Golder report with
4 public works staff in December of 2018?

5 A. I don't recall any
6 discussions. If there's a note wherein possibly I
7 made a note of it, that might be an indication,
8 like within (inaudible) public works staff, but I
9 don't recall any discussions with public works
10 staff in December about the Golder report.

11 Q. And then if we could go
12 to images -- go to images 5 and 6. Actually,
13 sorry, before we leave that, just in terms of the
14 draft opinion, to give you some context.

15 You'll see then there's -- on
16 page 3 of the draft opinion, then there's a
17 summary of the 2015 CIMA report, and I think you
18 had gotten a copy of the 2015 CIMA report, we saw,
19 and I think that you've testified that you may
20 have reviewed it.

21 A. I believe that's correct,
22 my answer, yes.

23 Q. And then if you could go
24 to image 4. This is a continuation of the summary
25 of the 2015 CIMA report, and you'll see that

1 there's a summary in the bottom half of the page
2 of CIMA's recommendations. And then at the top of
3 the page, it also includes a conclusion from CIMA
4 about the potential causes of the higher than
5 expected proportion of wet surface condition
6 accidents. And it says that it might be the
7 first -- the first bullet is "inadequate skid
8 resistance."

9 A. Yes, I see that.

10 Q. And then if we could go
11 to image 5. So then you'll see in point number 4,
12 it refers to the e-mail from Golder to the City
13 dated November 28th, 2018. So that e-mail refers
14 to a pavement evaluation that was done by Golder.
15 Do you recall any discussions about Golder's
16 pavement evaluation in December of 2017?

17 A. I recall discussions
18 about Golder's work at some point that I made
19 notes of, like my recollection is in the notes.
20 But I can't say for sure it was December. I would
21 have to look at the notes themselves.

22 Q. Just in the first
23 paragraph it says that the author points out that
24 the testing was carried out in January 2018 and
25 was presented to the City in March of 2018, which

1 the new director of works, Gord McGuire, was
2 apparently unaware of. Did you supply that
3 information to Mr. Boghosian?

4 A. No, I don't believe I
5 supplied information on that to Mr. Boghosian.

6 Q. If we could look at
7 images 5 and 6. There's a note on page 6 from you
8 and I think it says:

9 "Locate tests as may be
10 relevant to FOI
11 responsive completion or
12 verify if it's just
13 Tradewind"?

14 A. Yes.

15 Q. What are you noting
16 there?

17 A. I believe that's me just
18 making note or comment that we want some certainty
19 on the documents that need to be reviewed for the
20 FOI request. In particular, is that saying there
21 are other tests that maybe we don't know of and we
22 either need to locate them or just confirm that
23 that's a reference to the Tradewind report only.

24 Q. If we can look at images
25 6 and 7. You'll see a summary under point 6 of

1 the draft RHVP roadside safety assessment by CIMA?
2 Did you get a copy of the draft CIMA roadside
3 safety assessment?

4 A. I'm not sure if I had a
5 copy of that report at this time.

6 Q. Having looked at what's
7 under Mr. Boghosian's summary of the draft
8 roadside safety assessment, does that assist with
9 your recollection of the scope -- if you had an
10 understanding of the scope of that review by CIMA?

11 A. As I answered previously,
12 I'm not sure that I understood what the scope of
13 that work of CIMA was in relation to this opinion,
14 so no, it doesn't help. I mean, obviously it puts
15 things in context, but I couldn't say that that
16 was my understanding of CIMA's (inaudible).

17 Q. If we could go to images
18 7 and 8. There's a summary of Mr. Boghosian's
19 telephone conversation with Mr. Malone on
20 December 11th, 2018. And you'll see that
21 Mr. Boghosian summarizes whether or not the
22 recommendations that were made by CIMA had been
23 fully implemented, partially implemented, not
24 implemented, and implementation unknown.

25 And then you'll see in the

1 second full paragraph it says "when asked to rank
2 in order of greatest contribution." What does
3 that note say there?

4 A. The triangle or delta is
5 change. Would you be able to pull up the
6 transcription?

7 Q. Yeah, sorry, I can do
8 that. I think -- so HAM64371.

9 A. I can see like "change,"
10 a word, then "speed" and question mark.

11 Q. Oh, I see. Okay. Sorry.
12 So it's "change," "speed," question mark?

13 A. There's a word in between
14 and that's what I'm looking for, if I was able to
15 discern that before. It's right at the bottom of
16 the page on the right, and it has "change" and a
17 series of question marks and then "speed" and a
18 question mark. So that the middle question marks,
19 as now, I can't quite make out that word.

20 Q. But then it goes -- in
21 the -- going back to the draft opinion, it says
22 "when asked to rank in order of greatest
23 contribution to the inordinate number of wet road
24 crashes, Mr. Malone advised as follows," and then
25 he ranked slipperiness of the road surface as the

1 greatest contribution, then speeds exceeding the
2 capability of the highway given the curvature of
3 the road, curves in the road, and the close
4 proximity of on/off ramps to each other leading to
5 losses of control and/or drivers' errors.

6 Do you recall if Mr. Boghosian
7 gave you this ranking of the contributions to the
8 inordinate number of wet road crashes on the call
9 that you had with him on December 11th, 2018?

10 A. I don't have an
11 independent recollection of the discussions, and
12 we did just review the notes. I don't think that
13 -- I shouldn't say -- I know there were a couple
14 of lists in those notes, but this isn't reminding
15 me of any discussions from the call.

16 Q. Was it concerning to you
17 that Mr. Malone had ranked slipperiness of the
18 road surface as the greatest contributing factor?

19 A. I think my overall
20 impression of this opinion that it leaves you with
21 is that the condition of the roadway when it's wet
22 is a concern, and that there are a number of steps
23 that are recommended to follow through on to
24 improve the safety of it. But you can see from my
25 notes that I found it a bit confusing, the

1 description and the statistics that were used. If
2 you take it at face value, it talks about the
3 comparison to other highways. I don't know how
4 they chose other highways, but a comparison and
5 it's like two-and-a-half or three times. Yeah,
6 that's a concern that you're left with after
7 reading this.

8 Q. I think you said that you
9 found it confusing. You mean the opinion, there
10 were parts of the opinion that you found
11 confusing?

12 A. Yeah. I think it's
13 page 2. It starts there in the sense that they
14 start pulling out statistics or percentages, and I
15 looked at two numbers, one in the 30 percent range
16 and one in the 50 percent range, and I couldn't
17 distinguish between them. It wasn't clear to me,
18 and it makes me wonder now whether David is
19 relying on statistical information and maybe not
20 explaining it fully.

21 And so when I had reviewed the
22 report, you could see -- and you read it out -- my
23 comment right at the top of page 1 -- sorry, it's
24 not page 2. It's got to be --

25 Q. I think it might have

1 been on --

2 A. There we are. Yes,
3 page 3. So on the left-hand side, the first notes
4 are 33.7 or 50.4. I couldn't -- I'm no
5 statistical or technical expert, but I couldn't
6 distinguish between those two numbers, on what
7 they were based. Why are they different when, to
8 me, they seemed to be talking about the same
9 thing? So I found that confusing, and there's
10 other notes related to wet, dry.

11 But the comments I put at the
12 top were, if you will, on page 1, overall comments
13 that it needed clarity on these points. Point
14 being, while I had concerns, I had questions about
15 what it was saying at particular points, and it
16 made me wonder about some of the numbers in it and
17 if the opinion couldn't be clearer if they gave a
18 focus of, you know, completely separate lines of
19 issues and the drying issues in wet conditions.
20 That's my answer.

21 Q. Did you discuss -- I
22 think you said that you may have -- you had
23 discussed your comments with Ms. Auty, but in
24 terms of what you just described here, was that
25 part of the discussion you had with Ms. Auty?

1 A. I don't recall the
2 specific discussions. I believe I would have
3 relayed information about all my comments to
4 Ms. Auty, and as I said, reading it in
5 preparation for this, you are left with that
6 information. I don't think that anyone would
7 necessarily get to the end of this and not say,
8 oh, how can we improve the safety of the highway
9 when it's wet. I mean, there are recommendations
10 there, but the conclusion at this point, it would
11 be hard to miss in my view.

12 Q. Do you recall talking
13 about that issue with Ms. Auty in terms of this is
14 concerning, what can we do to improve the safety
15 of the roadway when it's wet?

16 A. I don't recall the
17 specific discussions, and it's actually the
18 opinion itself that I believe is making the
19 recommendation -- recommendations on things like
20 speed enforcement, etc. I can't recall the list,
21 but it's contained within David Boghosian's
22 opinion itself.

23 Q. Right. In terms of what
24 further steps the City should take? Because I
25 think that there had been a number CIMA

1 recommendations that were only partially
2 implemented or fully implemented.

3 A. Yes.

4 Q. Is that what you mean?

5 A. What I mean is that the
6 draft opinion here itself, you were asking me did
7 I convey those issues to Nicole, and specifically
8 the remedial measures, and my answer was the draft
9 opinion conveys that.

10 Q. I see. But I'm just
11 wondering if you also had a discussion with her
12 where you said, you know what, this is concerning,
13 the condition -- what is concerning -- if you had
14 a discussion with Ms. Auty where you conveyed the
15 fact that you took away from this opinion that
16 there were concerns with the safety of the roadway
17 in wet weather conditions?

18 MS. HALE: I think it might
19 also be helpful to take Mr. Sabo to the mitigation
20 section of Mr. Boghosian's opinion.

21 BY MS. LIE:

22 Q. Sure. That's page 12.

23 A. I mean, I don't really
24 need to refer to this. My answer was that the
25 opinion conveys the steps that are recommended in

1 the context of mitigating the City's exposure to
2 damages and -- of course it's not just legal
3 looking at the condition of the highway. I
4 knew -- we knew that public works was working on
5 their own report or reports on various aspects in
6 general dealing with safety improvements or needs
7 for the highway.

8 Q. So it was your
9 understanding public works was doing its own
10 safety review in terms of what further measures
11 might be needed to protect safety of
12 (indiscernible)?

13 A. In general as time went
14 on, went beyond this date, it became more clear
15 the various aspects that public works was
16 reporting on, but I know the initial effort again
17 of all staff was to fully report on the Red Hill
18 Valley Parkway and the implications of the
19 Tradewind report. So legal was involved in its
20 part and public works in its part and later the
21 auditor in the issues that they raised.

22 Q. Was it your understanding
23 that public works had shared the Tradewind report
24 with CIMA at this time, this is in mid-December
25 of 2018?

1 A. I wasn't directly
2 involved in any arrangements public works had for
3 their assessments whether with consultants or
4 through their own staff. So I didn't know what
5 specific information public works might be
6 sharing.

7 Q. I think you testified
8 that you don't recall any discussions where the
9 issue of who would share the report with CIMA came
10 up?

11 A. I don't recall
12 discussions about that, no.

13 Q. Did you talk to Ms. Auty
14 about sharing this draft opinion with public works
15 staff?

16 A. I don't recall the
17 discussions with Ms. Auty about this draft
18 opinion. I know I would have had discussions, but
19 I couldn't say that it included sharing it with
20 public works.

21 Q. Just before we leave the
22 draft opinion, if we could go back to page 8. I
23 had already taken you to this ranking of the
24 contributing factors to the inordinate number of
25 wet road crashes. Do you recall having any

1 further discussions with -- do you recall having
2 any discussions with Ms. Auty and/or Mr. Boghosian
3 about this ranking?

4 A. I don't recall specific
5 discussions. I know there were -- was more than
6 one call that I was involved in with Nicole and
7 Mr. Boghosian, but I don't recall the discussions
8 there.

9 Q. I understand that Ms.
10 Auty's evidence was that there was a later
11 discussion between her and Mr. Boghosian where
12 Mr. Boghosian conveyed the sentiment that in fact
13 this list of factors wasn't a ranking. Does that
14 sound familiar to you at all?

15 A. I don't recall being
16 involved or advised of that discussion, no.

17 MS. LIE: I know it's 1:01,
18 but I just have a couple more questions to ask
19 before I move on to another topic.

20 So, Registrar, if we could
21 pull up overview document 9A, image 249.
22 Paragraph 586 -- so just to give you some context.
23 This is your reply -- subparagraph 586, you're
24 replying to an e-mail from Ms. Auty attaching the
25 draft opinion from Mr. Boghosian.

1 You say, "Can I share with
2 John?" And she says, "Do you think he would have
3 comments on the draft or just the final version?"
4 And then you respond, "I haven't cracked the
5 attachment open but I'm about to, I know John
6 would like David to help with the approach to
7 giving notice to the City's current and former
8 insurers for one." And then she responds, "Let's
9 you and I speak about it tomorrow once you've had
10 a chance to read it and see where it goes. Needs
11 to go."

12 Do you recall any discussions
13 with Mr. McLennan about sharing -- or the approach
14 to giving notice to the City's current and former
15 insurers?

16 A. I don't recall those
17 discussions. I know that I was interested, and I
18 think we agreed that the insurer would be put on
19 notice because the Tradewind report may have an
20 implication for our claims on the Red Hill as well
21 as the issue of who we have representing the City
22 on the claims, but I don't recall the specific
23 discussions referred to here.

24 Q. You had described -- you
25 said that you had shared the comments of -- that

1 you had made on the draft opinion with Ms. Auty.

2 Do you recall if that would have been on

3 December 14th, 2018?

4 A. I don't recall the date
5 of that. This exchange, though, if can you remind
6 me what date this exchange occurs on.

7 Q. That's on December 13th,
8 2018.

9 A. All right. So as of 4:02
10 p.m., I'm indicating to Nicole that I hadn't yet
11 opened the attachment, so I couldn't say for sure
12 I completed the comments and then went right to
13 Nicole, so I'm not sure of the date. It could
14 well have been the 14th.

15 Q. Just having reviewed the
16 draft opinion and the concerns that you had talked
17 about, did you have a view on whether additional
18 steps should be taken by the City to ensure the
19 safety of the road?

20 A. I don't think I formed a
21 view of that. I lack technical expertise in the
22 issues raised. There were like a number of
23 comments that were included. One was bleeding,
24 which I don't quite understand, but in the same
25 line it said contamination of the roadway, which I

1 do understand. So I don't believe I had an
2 understanding of what steps other than were
3 recommended in the report and the draft opinion
4 itself that came through CIMA.

5 I know that again public works
6 at some point was looking at the issue in a bigger
7 context, and I know ultimately that included in
8 the repaving project that they would update the
9 standards of the roadway to what the current
10 requirements were as opposed to just the
11 requirements that were in place when the highway
12 was originally constructed. I knew other people
13 were working on those issues is my answer.

14 MS. LIE: Thank you.
15 Commissioner, I'm happy to take our break now.
16 Thank you.

17 JUSTICE WILTON-SIEGEL: So
18 we'll stand adjourned until 2:20.

19 --- Recess taken at 1:05 p.m.

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

21 BY MS. LIE:

22 Q. Registrar, could you put
23 HAM64354 back on the screen, please.

24 Mr. Sabo, just before I leave
25 the draft opinion, this morning you had -- I had

1 asked you about whether or not Mr. Boghosian
2 conveyed to you and Ms. Auty that he had shared
3 the Tradewind report or the Tradewind results with
4 Mr. Malone, and I think you had mentioned you
5 couldn't recall if there was something in your
6 draft opinion about that.

7 So I'm just wondering if with
8 the benefit of your draft opinion -- if you would
9 like, we can scroll through it and have you review
10 it -- if you can let us know if it helps in
11 refreshing your memory on whether or not you knew
12 that Mr. Malone had obtained the Tradewind results
13 from Mr. Boghosian.

14 Perhaps you can put images 1
15 and 2 up, and, Mr. Sabo, you can let the Registrar
16 know if you want to go to the next page.

17 A. I'm waiting for the next
18 page, next pages. Ready for the next pages.
19 Ready for the next pages. Ready for the next
20 pages. Ready for the next pages.

21 So I see no reference that I
22 can pick out that identifies CIMA having the
23 Tradewind report.

24 Q. Just having reviewed it,
25 this doesn't assist with your recollection of

1 whether or not you knew if CIMA had the Tradewind
2 results or the Tradewind report?

3 A. It doesn't, no.

4 Q. Thank you. Registrar, if
5 we could pull up overview document 9A, images 242
6 and 243.

7 Mr. Sabo, you'll see at
8 paragraph 570 there's a calendar invite that is
9 sent by Mr. Zegarac to Ms. Auty, Mr. McGuire, Mr.
10 Soldo and Mr. McKinnon, for a meeting on
11 December 14th, 2018, and you'll see at
12 paragraph 571 that Ms. Auty later forwards the
13 calendar invitation to you indicating you as a
14 required attendee.

15 Then at paragraph 572 and at
16 the top of the page of 243, you'll see an undated
17 note or transcription of one of the notes that you
18 had made.

19 Do you recall having a meeting
20 with Mr. Zegarac, Ms. Auty, Mr. McGuire, Mr. Soldo
21 and Mr. McKinnon on December 14th, 2018.

22 A. I don't have an
23 independent recollection of attending a meeting on
24 that date, no.

25 Q. Were you attending many

1 meetings involving Mr. Zegarac, Mr. McKinnon, Mr.
2 McGuire and Mr. Soldo?

3 A. I'm not sure how to
4 address "many." I may have attended meetings
5 where some or perhaps all of those persons were in
6 attendance, but I'm not sure how many.

7 Q. Was it very frequent in
8 terms of your contact with these individuals
9 around that time?

10 A. Outside of Red Hill, no,
11 it wasn't.

12 Q. But within the Red Hill
13 matter? Was it once every couple weeks? Was it
14 every day? I'm just trying to get a sense of
15 whether or not we can try to place this note.

16 A. Yes, I don't have a
17 recollection of other meetings. The fact that --
18 I believe where you're going -- the fact that the
19 list of attendees in my notes matches the
20 December 14th date make it more likely that these
21 are notes from that meeting of myself. I just
22 can't confirm that absolutely.

23 Q. So you believe that the
24 notes at the top of 243 are likely from the
25 December 14th meeting but you're not sure?

1 A. That's right.

2 Q. Registrar, could we call
3 out the notes that are at the top of 243. I think
4 you testified that you don't have an independent
5 recollection of this meeting; is that right?

6 A. That's right.

7 Q. The top note says
8 "getting info from CIMA to be current of safety
9 std's." Do you know what "std's" would be?

10 A. Standards.

11 Q. Looking with the benefit
12 of your notes here, do you recall any discussions
13 with public works staff about getting info from
14 CIMA to be current of safety standards?

15 A. I don't recall
16 discussions from this meeting. The first couple
17 of points, it may be some speculation, seemed to
18 be information that public works might supply,
19 what they would be involved in the tendering for
20 that sort of work, and updating us on the timing
21 of it.

22 Q. In terms of the note that
23 says "getting info from CIMA," do you recall who
24 was getting info from CIMA?

25 A. Not specifically, no.

1 Q. Then it says "tender
2 approximately Jan, April to Aug for work." Do you
3 recall what that would be referring to?

4 A. Again I believe that is
5 an indication of the timing of tendering for the
6 repaving of the Red Hill and also the timing of
7 the actual work being done.

8 Q. Then where it says "all
9 CIMA changes plus exceeding," and then there's an
10 equal sign, "so what we know about we were dealing
11 with." Do you recall what that is referring to?

12 A. I don't have a specific
13 recollection of this discussion. I believe at
14 some point there's a note that indicates that they
15 are updating -- well, actually the first line is
16 an indication that they are updating to current
17 safety standards, so instead of just repaving the
18 highway as is, then they are looking at safety
19 standards that would apply if they were building
20 that roadway as of that timeframe. So I think
21 that's what that means is that the CIMA changes
22 are being referred to plus additional standards.

23 Q. So the first note -- so
24 is it your best recollection that the first note
25 might be referring to getting info from CIMA in

1 relation to the repaving that's happening?

2 A. That appears to be what
3 it's indicating, that CIMA is going to advise on
4 the standards that would apply to the roadway as
5 if it were being built at that time.

6 Q. What does "all CIMA
7 changes" refer to?

8 A. I'm not absolutely sure,
9 but I believe it would be any of their
10 recommendations on measures to take to improve
11 safety of the roadway.

12 Q. And then it says "what we
13 know about we were dealing with." What does that
14 refer to?

15 A. I'm not sure what that is
16 referring to.

17 Q. And then there's a
18 reference to Golder 2017, 1, 2, 3. Do you recall
19 discussions about the Golder pavement evaluation
20 that they did in 2017?

21 A. I don't recall the
22 discussions on that, no.

23 Q. Then there's a note that
24 says "one factor test approximately 2013/14." Do
25 you know what that's referring to?

1 A. If the word were
2 friction, then that might be a reference to the
3 Tradewind (skipped audio).

4 Q. I see. So the
5 transcription may be off. It may be friction, one
6 friction test?

7 A. My writing is admittedly
8 horrendous, and that's a possibility, but at the
9 time we did the transcription I was doing my best
10 to --

11 Q. Okay. So why don't I
12 take you quickly to the handwritten note, but
13 before I do that, it says "legal letter." Do you
14 recall if there was a discussion about
15 Mr. Boghosian's draft opinion with public works at
16 any point?

17 A. I don't recall the
18 discussions from this meeting or outside of this
19 meeting other discussions. I was supporting
20 Nicole -- Nicole's work on legal services' role in
21 this, but I can't say that I was familiar with all
22 the communications that may have occurred.

23 Q. So your evidence is you
24 don't recall if there was any discussion about
25 Mr. Boghosian's opinion?

1 A. I don't recall, no.

2 Q. Do you have any
3 recollection of why "legal letter" is in this
4 note?

5 A. No, I don't.

6 Q. Why don't we just pull up
7 your handwritten note just very quickly to confirm
8 if you think it might be friction test, just for
9 the record. So, Registrar, could we pull up
10 HAM64352.

11 A. It's possible the word is
12 friction.

13 Q. That would be referring
14 to the Tradewind report then?

15 A. Yes.

16 Q. Mr. Sabo, you said that
17 you don't have an independent recollection or a
18 specific recollection of this meeting, but do you
19 have a general recollection of what you and
20 Ms. Auty may have been talking to public works
21 about during this time?

22 A. I don't recall specific
23 or even generally discussions with public works at
24 this time. I'm not sure if the meeting invite
25 indicated the nature of the conversation, but I

1 don't have a recollection of that.

2 Q. The meeting invite just
3 said Red Hill Expressway. Do you recall any
4 discussions around this time about the safety of
5 the road?

6 A. This is?

7 Q. December 14th.

8 A. December 14th. I don't
9 recall specific discussions about that. My notes
10 are basically what my recollections of the events
11 at this meeting were.

12 Q. But not just this
13 specific meeting but just generally, do you recall
14 discussions with public works staff about public
15 safety?

16 A. I don't recall
17 discussions, no. Again, generally I understood
18 multiple staff were working on multiple reports
19 and that was the subject matter of the public
20 works reports, but I don't recall specific
21 discussions.

22 Q. Registrar, could we pull
23 up HAM64355. Go to image 3.

24 MS. HALE: It may be helpful
25 to bring up the transcription of this as well.

1 BY MS. LIE:

2 Q. I was just about to do
3 that. If you could put up HAM64364 next to it,
4 image 2.

5 So, Mr. Sabo, these are notes
6 that Ms. Auty made of a December 14th meeting with
7 Mr. McGuire, Mr. Soldo, Mr. McKinnon, Mr. Zegarac.
8 You're not actually listed as an attendee on her
9 notes. But I would appreciate it if you would
10 have a quick review of these notes and then let me
11 know if you think that this is the same meeting
12 that we were just talking about.

13 A. I don't see similarities
14 in this note of Nicole recording items and mine of
15 December 14th, so it makes me believe that this is
16 a different meeting.

17 Q. If it helps in terms of
18 similarities, I do note that in Ms. Auty's note
19 there's a reference to the Golder -- November
20 2017, this is near the bottom of the page on the
21 transcription, where it refers to the 1, 2, 3rd
22 pendulum test. And you'll recall that there was a
23 reference to the Golder 2017 in your note, if that
24 helps you.

25 A. Yes, that's correct, that

1 is a similarity. I just don't see similarity with
2 the content of my notes.

3 Q. Okay, but just in terms
4 of even putting side any similarities, when you
5 review this does it assist your recollection of
6 whether or not you may have been at this meeting?

7 A. No, it doesn't assist.

8 Q. Do you recall any
9 discussions in which there was a discussion about
10 having Mr. Boghosian share the friction testing
11 with CIMA?

12 A. In what timeframe?

13 Q. December of 2018.

14 A. No, I don't recall
15 discussions around that point.

16 Q. Thank you. Do you recall
17 any discussions with public works staff about what
18 Mr. Boghosian had conveyed to you about his
19 conversation with Mr. Malone?

20 A. I don't recall having
21 discussions with public works where I was
22 conveying information to them about Boghosian's
23 work.

24 Q. Who was providing advice
25 to public works staff at the time from legal

1 services?

2 A. At this time I would
3 assume Nicole was the lead on issues related to
4 the reports coming up that were planned to go to
5 council.

6 Q. I understand that
7 Ms. MacNeil went off work on or about
8 December 17th, 2018. Is that consistent with your
9 recollection?

10 A. Yes.

11 Q. So do you recall what was
12 the status of the FOI request at that time, and
13 what were you asked to do about it once she went
14 off work?

15 A. I don't recall all the
16 details of the information she gave me. My
17 recollection was that the work was essentially
18 complete, but there were I believe two documents
19 referred to that weren't included in the package
20 of materials that was going to -- that were going
21 to access and privacy as public works submission
22 of materials. I believe the materials were
23 basically tabbed, and so I was to locate the two
24 documents, add them to (skipped audio) materials,
25 and then forward it on to access and privacy.

1 Q. Registrar, could we pull
2 up overview document 9A. Image 258. If we could
3 also pull up 259 as well.

4 At paragraph 609 you'll see
5 that there's an e-mail from Ms. MacNeil to Mr.
6 McGuire, Ms. Auty, yourself and Mr. McLennan.

7 You'll see at page 259, at
8 paragraph 610, there's a response from Mr. McGuire
9 attaching two staff reports. And then if we could
10 then pull up image 260.

11 You'll see at paragraph 611
12 Ms. MacNeil replies, and then ultimately at the
13 end of her e-mail which is on page 260, she says:

14 "Finally, unfortunately,
15 I'm going to be away from
16 work after tonight for
17 some time due to a
18 personal situation. In
19 my absence, please be
20 sure to contact Ron
21 Sabo."

22 A. Yes, I see that. I
23 haven't read all of her e-mail here just now, but
24 I see that part.

25 Q. I was just wondering if

1 the e-mail from Mr. McGuire attaching the two
2 staff reports, if that's the two reports that you
3 were referring to in terms of what needed to be
4 done?

5 A. I myself don't recall the
6 specifics of the documents that were to be
7 attached, but it seems unlikely if Byrdena had
8 them in this correspondence that I would have to
9 locate copies of them.

10 Q. You know what, actually,
11 in Ms. MacNeil's e-mail, directly above "Contact
12 will be Ron Sabo," it refers to "Mike Beck's
13 office still working on locating obtaining
14 relevant documents."

15 So that may be what you were
16 referring to then in terms of the identification
17 of additional documents.

18 A. As I said, I can't
19 remember the two -- I believe it was two, I can't
20 remember the specific documents, but it was left
21 to me to get copies of them and include them in
22 the brief of materials that was responding to the
23 FOI request.

24 Q. Did you go back and
25 review any of the documents that she had compiled

1 already, or was it you just got the additional
2 reports, put them into the brief, and then your --
3 and then passed them on?

4 A. I don't recall how much
5 if any of the brief I reviewed in that final
6 couple of steps I was taking care of. I wouldn't
7 have felt it necessary to review Byrdena's work on
8 the matter, so I may not have. I'm not saying I
9 didn't read any of it. I just don't think I would
10 have needed to.

11 Q. Could we go to image 265.
12 If we could also put up 266 as well. You'll see
13 at paragraph 623, on December 18th, Mr. McGuire
14 forwards a scan of the draft 2017 Golder pavement
15 evaluation to you and to Ms. Auty. And then there
16 is the draft of it reproduced in paragraph 623.
17 Do you recall why Mr. McGuire was sharing the
18 draft Golder report with you?

19 A. I'm assuming it must go
20 on a number of pages.

21 Q. Yeah. We can go to --
22 maybe we can put up 266 and 267.

23 A. I don't recall why or --
24 I don't recall knowing why Gord was sending this
25 to Nicole and I.

1 Q. Do you recall having any
2 discussions about this draft report? Apart
3 from -- I know we looked at the note that may have
4 been on December 14th that talked about the test
5 results.

6 A. Thank you. I was going
7 to mention that. No, I don't have a recollection
8 of other discussions of this report.

9 Q. And in the paragraph
10 immediately before "closure," it says, "As
11 discussed with the City, if there is a concern" --
12 maybe we can call that out, make it a little bit
13 easier. It says:

14 "If there is a concern
15 with frictional
16 characteristics of the
17 SMA surface course on the
18 RHVP, and immediate
19 effective solution would
20 be to carry out shot
21 blasting/skid abrading of
22 areas of concern on the
23 existing pavement
24 surface. This treatment
25 is quick and relatively

1 low cost."

2 Do you recall any discussions
3 about skid -- shot blasting or skidabrading?

4 A. I don't recall
5 discussions on this, no.

6 Q. Do you recall being aware
7 that this was a potential measure that could be
8 taken?

9 A. I don't recall whether
10 that was a step that could be taken or not.

11 Q. So we know that there was
12 a meeting with the mayor on December 18th, 2018.
13 I don't believe that you were at that meeting,
14 were you?

15 A. I'm wondering if there's
16 a note. It doesn't sound like there is a note, so
17 I don't recall being at a meeting on
18 December 18th.

19 Q. Do you recall having any
20 discussions about that meeting with the mayor in
21 terms of either before or after?

22 A. I don't recall having any
23 direct discussions with the mayor at any point.

24 Q. Do you recall having
25 discussions with Ms. Auty about that meeting,

1 either before or after?

2 A. I don't recall
3 discussions about that meeting, no. I'm not sure
4 if there's an e-mail or something that maybe makes
5 reference to it that was sent to me, but I don't
6 recall discussions.

7 Q. Registrar, could we pull
8 up HAM62520. Mr. Sabo, that's a calendar
9 invitation that you send to yourself
10 December 19th, 2018, and the subject is a "pos PW
11 meeting re Red Hill" for January 28th, 2019. Do
12 you recall why you were sending yourself this
13 appointment?

14 A. I don't have a
15 recollection. This would be the type of thing I
16 might do to hold a date in anticipation of having
17 to do something that day, attend a meeting, so
18 that nobody else got booked on that date. So that
19 would make me think that the PW meeting reference
20 is me holding a date for a public works committee
21 meeting on January 28th.

22 Q. Do you recall going into
23 the holidays, so let's say mid to late December
24 of 2018, if there was a date in mind as to when a
25 report would be made to council?

1 A. I know there were
2 obviously discussions about dates right from, you
3 know, pinpointing the December 6 date on until
4 reports were presented, but I don't recall at that
5 time a specific date for any particular report.

6 Q. Apart from a specific
7 date, do you recall generally if there were
8 discussions about roughly when the report would be
9 made?

10 A. No, I don't recall -- I
11 mean, as I have said probably too many times
12 already, staff were intending on trying to get in
13 front of committee or council fairly quickly, but
14 as to specific dates before the end of year
15 holidays, I don't recall what was in mind at that
16 time.

17 Q. Registrar, could we pull
18 up HAM62035. Here is an e-mail exchange between
19 you and Mr. McGuire on January 3rd, 2019, and in
20 the first e-mail in the chain, Mr. McGuire is
21 writing to you and to Ms. Auty, and he says:

22 "Did either of you
23 connect with Brian Malone
24 on this matter? I'm
25 meeting today on this and

1 wanted to understand next
2 steps."

3 And then you respond:
4 "I'm in the office if you
5 wanted to discuss."

6 So this is now coming out of
7 the holidays. Do you recall speaking with Mr.
8 McGuire about this?

9 A. No, I don't.

10 Q. Do you recall why Mr.
11 McGuire may have been under the impression that
12 you or Ms. Auty would be connecting with
13 Mr. Malone?

14 A. No, I don't.

15 Q. Is it possible that he
16 had an understanding coming out of the
17 December 14th meeting that someone from legal
18 would be contacting Mr. Malone?

19 A. I don't have a specific
20 recollection of the discussions at that meeting
21 and I don't believe my notes reflected that, but
22 if you were to pull it up, I could just make sure
23 of that.

24 Q. Sure. Maybe we can put
25 it side-by-side. That is overview document 9A,

1 image 242. Sorry, 243. We can call that out.

2 A. The first line I think
3 raises the point you asked about in my prior
4 answer, and I believe it is speculation but I
5 think reasonable speculation that this is
6 information that is coming from public works staff
7 about the steps they are taking in relation to Red
8 Hill, more generally or more specifically work
9 they are going to do.

10 What makes me conclude that is
11 we're talking about the tender, so a critical part
12 of the tender are the specifications that you
13 build into the document, and so I could reasonably
14 see that CIMA's recommendations on current safety
15 standards would be incorporated into a tender
16 document as specifications for the work to be
17 done.

18 Q. But -- so you're saying
19 that -- but you don't recall any mention of legal
20 contacting Mr. Malone coming out of that meeting?

21 A. I do not recall that, no.

22 Q. Registrar, could we pull
23 up overview document 9A, image 283. So you'll see
24 at paragraph 657 that on January 7th, 2019
25 Ms. Auty exchanges e-mails with Mr. Boghosian

1 where she asks to set up a time to go over some
2 questions, discuss his draft opinion.

3 And then you'll see at
4 paragraph 658 and 659 there are some calendar
5 invitations that are ultimately sent for a meeting
6 on January the 8th, 2019.

7 A. Yes, the text there says
8 "a call on January 11th with 'Meeting to review
9 opinion' in the body." So it's either a call or a
10 meeting.

11 Q. Sure. Sorry. Thank you.
12 So then if we could go to the next page, at
13 paragraph 661 you'll see that there is then a
14 separate calendar invitation to you for 9 a.m., so
15 it's just half an hour before the meeting with --
16 or the appointment with Mr. Boghosian, and he
17 says, "If we can speak first before speaking to
18 David," and then you accept the invitation.

19 Do you recall speaking with
20 Ms. Auty and/or Mr. Boghosian on January 8th,
21 2019?

22 A. I don't believe I have an
23 independent recollection of discussions with
24 Nicole leading up to that meeting or in the call
25 itself.

1 Q. So, Registrar, if you
2 could also put up 285. You'll see at
3 paragraph 662 your notes appear to include two
4 entries dated January 8th. There's some notes and
5 then a line and then some further notes.

6 A. Yes, I see that.

7 Q. Do you recall if the
8 notes above the line may have been a meeting or
9 the discussion with Ms. Auty?

10 A. I don't recall if that's
11 a separate discussion or a separate call. I'm not
12 sure.

13 Q. There's a reference to
14 GIC on Wednesday 16th and council on Jan 23rd?

15 A. Yes.

16 Q. And then it says, "What
17 did you know? What was done? Is road safe?" Do
18 you recall discussions about whether the road was
19 safe around this time?

20 A. No, I don't recall
21 discussions from this time.

22 Q. And then there's a line
23 and then it says "David Jan 8." Do you believe
24 that the notes below the line were taken during
25 your call with Mr. Boghosian and Ms. Auty?

1 A. I believe so. That would
2 be consistent with how I kept notes, general notes
3 of a call.

4 Q. Where it says "X spoke to
5 any staff?" What is that referring to?

6 A. I'm not sure.

7 Q. There's a note that says
8 "Why more testing if results okay?"

9 A. Yes.

10 Q. What does that refer to?

11 A. I couldn't tell you the
12 discussions it referred to. I think that point
13 and maybe a couple of points above the line
14 potentially are questions staff are anticipating
15 answering in reports to council or getting asked
16 if they didn't answer them.

17 Q. I see. So it was
18 potentially anticipating council asking if the
19 road is safe and also why more testing if the
20 results were okay?

21 A. Especially that last
22 point, that's how I would interpret that, that
23 someone is anticipating that question being asked.

24 Q. Do you recall what steps
25 staff were taking to deal with those anticipated

1 questions?

2 A. Not specifically. At
3 this time I knew staff were working on multiple
4 reports, public works, of course legals' report on
5 liability, but specifically I couldn't name the
6 staff or the content of the reports that I was
7 expecting.

8 Q. In terms of the
9 anticipated question of whether the road is safe,
10 apart from what you've told us, which is that your
11 understanding is that public works was working on
12 that side of things, do you have any further
13 evidence about that point?

14 A. Can you maybe rephrase
15 the question, or maybe I'm just not getting not.

16 Q. I guess I just want to
17 make sure I have a complete understanding of what
18 you had in your mind about what steps were being
19 taken to answer the proposed question of whether
20 the road is safe.

21 A. Just generally that a
22 certain amount of information had been collected
23 and would be collected. I knew from the early
24 meetings with Dan McKinnon and I believe Gord that
25 these are similar questions -- or the purpose of

1 these meetings is to prepare reports to address
2 these points. But as to specific evidence, I'm
3 not sure.

4 Q. Do you recall if you knew
5 if public works had given CIMA the Tradewind
6 report by this time?

7 A. I didn't have any
8 information on that, so I don't.

9 Q. At page 284 there's a
10 transcription of Mr. Boghosian's notes of the call
11 on January 8th, 2019, so if you could just have a
12 quick look at those notes.

13 A. Would it be possible to
14 make those bigger.

15 Q. Of course. Thank you,
16 Registrar.

17 A. Thank you. I'm sorry.
18 Do I need to read the whole note, or you had a
19 specific question?

20 Q. Why don't you review the
21 whole note and let me know if it refreshes your
22 memory about that call.

23 A. It doesn't refresh my
24 memory of discussions.

25 Q. Did Mr. Boghosian --

1 actually, let me re-start the question.

2 Did you have any discussions
3 on this call about Mr. Malone's rankings of the
4 contributing factors to wet weather collisions?

5 A. I don't have an
6 independent recollection of discussions on this
7 call.

8 Q. But do you recall
9 Mr. Boghosian ever telling you and Ms. Auty that
10 Mr. Malone had not ranked slipperiness of the road
11 surface as the greatest contributing factor?

12 A. Beyond this meeting? I
13 just want to be sure that I'm answering whether
14 it's just this meeting or beyond the meeting.

15 Q. Why don't we start with
16 this meeting?

17 A. No, I don't recall
18 discussions from this meeting.

19 Q. And do you recall
20 Mr. Boghosian ever telling you or Ms. Auty that
21 Mr. Malone had not ranked slipperiness of the road
22 surface as the greatest contributing factor to wet
23 weather collisions?

24 A. I don't have a
25 recollection of discussions. If there is some

1 note of mine that you believe raises that point, I
2 would look at it and try to answer, but
3 discussions, no, I don't recall.

4 Q. Well, you don't recall
5 ever knowing that Mr. Malone had not ranked
6 slipperiness of the road surface as the greatest
7 contributing factor to wet weather collisions?

8 A. No, I don't remember
9 Mr. Malone giving a ranking.

10 Q. Well, in the draft
11 opinion that Mr. Boghosian sent there was a
12 ranking. Do you recall that?

13 A. Sorry, it's a long
14 document.

15 Q. Okay. It's fine. If you
16 have no recollection of the issue, that's fine.

17 So could we go to overview
18 document 9A, image 287. If we could also have
19 288. You'll see at paragraph 668 that you forward
20 the draft Boghosian opinion to Mr. McLennan on
21 January 8th, 2019.

22 And then at paragraph 671,
23 Mr. McLennan writes in a response in his -- in the
24 third paragraph, it says:

25 "At this point I think it

1 is incumbent on us to
2 bring in JLT. They will
3 be extremely concerned,
4 understandably, about
5 David's findings, and I
6 believe we would face
7 allegations of bad faith
8 if we don't bring them
9 in. The timing is not
10 ideal, as we are
11 presently awaiting
12 renewal figures; however,
13 I don't think we can let
14 that influence our
15 decision."

16 Then you respond -- Registrar
17 if you could pull up 288 and 289. You respond --
18 this is at paragraph 672 -- that:

19 "This is a draft and we
20 are getting comments back
21 to David this week get a
22 final version late this
23 week or Monday. If we
24 need to call JLT now we
25 can as we would want to

1 council we have insurance
2 on notice. We can send
3 them the letter when it's
4 finalized or give them
5 the gist and supply a
6 later a more complete
7 chronology."

8 So my understanding is that
9 the notification to the insurer happens in
10 February 2019 after disclosure to council and to
11 the public of the Tradewind report. Does that
12 accord with your recollection, that at this point
13 you don't actually contact the insurer?

14 A. I don't have a
15 recollection of that. Clearly this e-mail is
16 indicating that they hadn't been contacted yet,
17 but I know that the issue came up earlier. So I
18 don't have a recollection of the specific timing
19 of it.

20 Q. Do you have any
21 recollection of any discussions about when the
22 report should be -- when the City should notify
23 the insurer?

24 A. I believe it was
25 identified in one of my notes from November that

1 John -- I think I might have just said insurance,
2 like a short form for insurance. It may have said
3 insurance plus notice. That I believe that that
4 was something that John was assigned to.

5 Q. So you don't recall any
6 discussions with Mr. McLennan about that issue?

7 A. Discussions, no, I don't
8 recall.

9 Q. Registrar, could we go to
10 image 295. Could you pull up 295 and 296.
11 Actually, I apologize. I should probably do 294
12 and 295 first just to give you some context.

13 At 294, paragraph 685, there's
14 a meeting scheduled for January 11th with Mr.
15 McKinnon, Mr. McGuire, Ms. Racine, Ms. Auty, Mr.
16 Hertel, Karen Gordon, Mr. Soldo and yourself. And
17 then we've got the notes -- the transcription of
18 the notes on page 295. Do you recall meeting with
19 these individuals on January 11th, 2019?

20 A. I don't have an
21 independent recollection of the meeting.

22 Q. With the benefit -- why
23 don't we now put up 295 and 296 so can you get the
24 notes. In the top half of the notes on image
25 295 -- Registrar perhaps we could call out the

1 note up until "call." Do you recall what -- where
2 it says "Council on 23rd" and then "unknown
3 timelines re poss press."

4 A. I believe that note would
5 reflect that at that time staff didn't know when
6 the Tradewind report or media would be posting
7 stories.

8 Q. Where it says "O?
9 Surprise. Gary inside/helping yes. But Gord/Dan
10 need to say + lead." What is that referring to?

11 A. The latter part of it,
12 "Gary inside helping yes," so I think that's
13 confirming that Gary Moore is responding to
14 questions or need for information from him
15 regarding the history of the events. And the "but
16 Gord and Dan need to say + lead what they are
17 doing as more info," I think that this is an
18 indication or direction that Gord McGuire and Dan
19 McKinnon are going to be the ones presenting the
20 report on behalf of public works as opposed to
21 Gary Moore.

22 Q. And then, Registrar, if
23 you could go back to the notes. At the very
24 bottom of 296 it said "Gord releasing info to FOI
25 internal auditor" -- and then if we could go to

1 the next page as well -- "at same time."

2 Do you recall a decision being
3 made to have Mr. McGuire release materials to the
4 FOI office and to the internal auditor at the same
5 time?

6 A. I don't know.

7 Q. Was that your decision?

8 A. I don't believe so. I
9 believe that I was delivering materials to access
10 and privacy that Byrdena had worked on, so I'm not
11 sure what this is referring to in relation to FOI.
12 Clearly there had been discussions between the
13 auditor and public works about their document
14 needs but -- so I'm not sure what this is
15 referring to in respect of Freedom of Information.

16 MS. LIE: Commissioner, I note
17 that it's 3:17, if you wanted to take the
18 afternoon break.

19 JUSTICE WILTON-SIEGEL: Let's
20 take a break till 3:30. Do you want to have a
21 breakout with counsel at this point?

22 MS. LIE: Yes, that would be
23 great. Thank you.

24 JUSTICE WILTON-SIEGEL: Mr.
25 Registrar, I'll just ask that you arrange that.

1 --- Recess taken at 3:18 p.m.

2 --- Upon resuming at 3:30 p.m.

3 BY MS. LIE:

4 Q. Registrar, could you pull
5 up overview document 9A. Image 27. Mr. Sabo, at
6 paragraph 766 you'll see an undated note, a
7 transcription of an undated note by you.

8 If we could call out that
9 paragraph, Registrar. It just says, "Edward,
10 Gord, Dan, + Mike re strategy for in camera,
11 PW18008, PW Gord McGuire's report re friction
12 testing."

13 Do you recall discussions with
14 public works staff in the lead-up to January 23rd,
15 2019 council meeting?

16 A. No, I don't.

17 Q. Do you have any -- are
18 you able to place the timing of this note in any
19 way?

20 A. The only reference I see
21 there that may have a time relevant to it is the
22 report number, W18008, is more likely a reference
23 to a report of that number with an A or a B or a
24 C, I'm not sure how many in the series there were,
25 and that report might give some indication of the

1 time reference. I know that public works made a
2 report to either general issues committee or
3 public works committee on February 6, so if that's
4 the report here, then this note would be ahead of
5 that date.

6 Q. We do have some e-mails
7 where it appears that you reviewed the PW18008A
8 report. Do you recall any discussions around that
9 with public works staff?

10 A. Aside from e-mails?

11 Q. Correct.

12 A. No, I don't.

13 Q. So you don't have any
14 recollection of what discussions, if any, you were
15 having with public works staff around that time?
16 This is in the lead-up to the January 23rd
17 meeting?

18 A. No, I don't.

19 Q. Thank you. Registrar,
20 you can take this document down. Thank you. I
21 want to turn to the January 23rd, 2019 council
22 meeting. Do you recall that meeting?

23 A. I don't have any
24 recollection of that meeting at all. I actually
25 looked at the records that the clerks department

1 keeps to find that I was there, but I just don't
2 have a recollection of being there.

3 Q. So you have no
4 recollection of that meeting at all?

5 A. No.

6 Q. Do you recall having any
7 discussions with Ms. Auty about whether or not a
8 copy of the Tradewind report should be provided to
9 council at that meeting?

10 A. I don't recall a
11 discussion with Ms. Auty about that point, no.

12 Q. Do you recall coming out
13 of the January 23rd meeting if there was any to-do
14 items?

15 A. I don't have any recall
16 of the results of that meeting, no.

17 Q. Do you recall having any
18 discussion with Ms. Auty about sharing the draft
19 Boghosian opinion letter with council at the
20 January 23rd meeting?

21 A. I don't recall any
22 discussions about that point, no.

23 Q. Registrar, could we go to
24 overview document 9A, image 358. If we could also
25 put up 359. So, Mr. Sabo, I understand that you

1 had a call with Ms. Auty and Mr. Boghosian on
2 January 30th, 2019. Do you recall that call?

3 A. I believe I have notes of
4 it, but I don't recall the telephone call, like
5 the conversation.

6 Q. Do you recall anything
7 between January 23rd and January 30th, 2019, what
8 you or staff were doing at the time?

9 A. I couldn't speak for
10 other staff. I would have been doing my regular
11 work and anything that Nicole asked me to assist
12 with in relation to her work on this matter.

13 Q. Registrar, if we could
14 call out the note on page 359. Do you recall why
15 Mr. Boghosian was getting involved at this time?

16 A. Pardon me, are these my
17 notes of Jan 30?

18 Q. Yes.

19 A. Okay. Thank you.

20 Q. They are a transcription
21 of your notes.

22 A. Thank you. I'm sorry,
23 can you ask the question again. I just wanted to
24 look at the note itself.

25 Q. Do you recall why

1 Mr. Boghosian was becoming involved again on
2 January 30th of 2019?

3 A. I don't recall. I
4 thought he was to be a participant in follow-up
5 reports to committee or council in February, but I
6 don't recall any discussions about his role
7 specifically.

8 Q. Do you recall council
9 asking staff to get an opinion from CIMA on
10 whether there would be additional safety
11 recommendations in light of the Tradewind report
12 coming out of the January 23rd, 2019 council
13 meeting?

14 A. I don't have a recall of
15 that meeting or the council's directions or
16 requests that may have come out of it.

17 Q. Do you recall having any
18 understanding coming out of the January 23rd, 2019
19 meeting if CIMA had a copy of the Tradewind report
20 by that time?

21 A. I don't know.

22 Q. Do you have any
23 recollection, apart from what's stated in your
24 notes, about the call with Mr. Boghosian on
25 January 30th, 2019?

1 A. No, I don't.

2 Q. Registrar, if we could go
3 to image 350 -- sorry, we are on 359. If we could
4 go to paragraph 856. You'll see that there's a
5 meeting organized for January 30th with
6 Mr. Zegarac, Mr. McKinnon, Mr. Hertel, Ms. Racine,
7 Ms. Gordon, Mr. McGuire, Mr. Soldo, Ms. Fontana,
8 Ms. Auty and yourself?

9 A. Yes.

10 Q. And then, Registrar, if
11 you could remove the callout, and then if we could
12 pull up 359 and 360. Actually, this is --
13 actually if we could go to -- I apologize. If we
14 could go to HAM64370. Registrar? Thank you.

15 So here is a transcription of
16 your handwritten notes from a January 30th, 2019
17 meeting. If we could put up the second page as
18 well.

19 A. I'm sorry, if there's a
20 question --

21 Q. Yeah, I just was giving
22 you an opportunity to review it. Do you have any
23 recollection of this meeting?

24 A. I don't have an
25 independent recollection of this meeting, no.

1 Q. Registrar, if you could
2 go to image 3. Put up 3 and 4. Here there's a
3 transcription of a call with Mr. Boghosian and
4 others on January 30th, 2018 -- sorry, 2019.
5 These are your notes, just to be clear.

6 A. Thank you.

7 Q. It indicates there's a
8 call with Mr. Boghosian. This is on the image 3.
9 And then underneath it there's some lines and then
10 it says "TC Brian Malone."

11 A. Yes.

12 Q. Do you recall speaking
13 with Mr. Boghosian and then having a call with
14 Mr. Malone?

15 A. I don't have an
16 independent recollection of that call, no.

17 Q. Do you have a
18 recollection of being on a call with Mr. Malone?

19 A. Not a specific
20 recollection. It's not these notes, but I believe
21 there was a call with Nicole Auty and I passed her
22 a question. That may have been with Mr. Malone.

23 Q. So the only thing you
24 remember from any calls with Mr. Malone is
25 potentially -- is passing a note to Ms. Auty?

1 A. Yes.

2 Q. So do you recall if at
3 any point you had an understanding if Mr. Malone
4 had seen the Tradewind report before January 30th,
5 2019?

6 A. Before that date, no, I
7 don't have an understanding about whether
8 Mr. Malone received that report.

9 Q. Registrar, could we pull
10 up overview document 9A, image 434. At paragraph
11 1015 you'll see the undated note that says:

12 "Q for Brian? Does it
13 make sense if considering
14 speed reduction to apply
15 reduced speed to RHVE +
16 LINC? Would signage etc
17 done by City be
18 reasonable or even
19 appropriate
20 intervention?"

21 Then says it says, "Yes."

22 Is this the note that you're
23 referring to?

24 A. Yes. Most of that note
25 was my note, and the "yes" I believe was Nicole's

1 response.

2 Q. Your recollection is that
3 you -- why don't we pull up the handwritten one
4 next to it. I think that's at HAM64350. Your
5 recollection is that you handed this note to
6 Ms. Auty and she wrote "yes"?

7 A. Yes. The reason why this
8 one stands out to me is this is my printing.
9 There's a real effort on my part to make this
10 readable by someone else, so that's why I remember
11 the context of it.

12 Q. Okay. I understand that
13 you had another call with Mr. Malone on
14 February 1st, 2019. We're going to -- I'm going
15 to pull up those notes. Do you recall if this
16 handing up note happened on January 30th or
17 February 1st?

18 A. I think it's more likely
19 a call where it was just Nicole and I together and
20 Brian Malone and possibly David Boghosian on the
21 phone as opposed to the larger meeting that the
22 January 30th notes refer to. So it's more likely
23 the one meeting or call when it's Nicole and I in
24 the call.

25 Q. Registrar, if you could

1 pull up HAM64370, image 6. If we could see the
2 second page as well.

3 These are your notes from a
4 February 1st, 2019 conference call involving
5 Mr. Boghosian and Mr. Malone?

6 A. I don't recall. I
7 haven't read all of those notes, but just the very
8 start of it indicates that Gord, likely being Gord
9 McGuire; Jasmine, Jasmine Graham; and Dan McKinnon
10 are part of this conference call, so it wasn't
11 just Nicole. I'm not sure if there's another call
12 referred to on these notes.

13 Sorry, you should ask me your
14 question again just so I make sure.

15 Q. Do you recall having a
16 call with just Mr. Malone, Mr. Boghosian and
17 Ms. Auty?

18 A. I had more than one call
19 where Brian Malone was on the phone, but a
20 specific recollection of it, I don't recall.

21 Q. Do you have a
22 recollection of the February 1st, 2019 call?

23 A. No independent
24 recollection, just whatever I recorded my notes at
25 the time.

1 Q. Sitting here today, you
2 have no recollection of what was discussed on this
3 call, apart from what is set out in your notes?

4 A. That's correct.

5 Q. Just at the beginning of
6 the note it says:

7 "Brian and David
8 forwarded reports
9 including
10 Golder/Tradewind. Can
11 comment on report. David
12 gave him Q's to answer."

13 Do you recall if you had an
14 understanding if Mr. Malone was receiving the
15 Golder and Tradewind reports for the first time?

16 A. I don't recall an
17 understanding if that was the first time. I'm
18 just not sure when Mr. Malone received the
19 Tradewind report or when he received it, unless
20 there's an e-mail that he may refer to. I'm not
21 sure if there's one from David Boghosian to
22 Mr. Malone with the report that perhaps I'm copied
23 on.

24 Q. Yeah, there is an e-mail
25 of Mr. Boghosian sending Mr. Malone the report. I

1 don't believe you're copied on it, and that is
2 dated January 30th, 2019. I'm just trying to see
3 if you can recall when you made learn for the
4 first time that CIMA had the Tradewind results and
5 whether or not they had them before the
6 January 30th, 2019 e-mail?

7 A. Yeah, I don't recall
8 that.

9 Q. Okay. Registrar, if you
10 can go to image 9. Here are the transcription of
11 your notes from February 4th, and it looks like
12 from February 5th. Do you recall having a meeting
13 on February 4th with those individuals who are
14 identified?

15 A. No, I don't.

16 Q. There's a line and then
17 it says Feb 5 calls, and it says "call with
18 Nicole, David Boghosian." Do you recall speaking
19 with Ms. Auty or Mr. Boghosian on February 5th,
20 2019?

21 A. No, I don't.

22 Q. Says "TW - inaccurate or
23 misleading so don't release it." Do you know what
24 that note is referring to?

25 A. TW I think is a reference

1 to the Tradewind report, and I'm not certain, but
2 the "inaccurate or misleading so don't release it"
3 is something that Mr. Boghosian maybe had said or
4 responded to.

5 Q. Do you recall discussions
6 about the Tradewind report being inaccurate or
7 misleading?

8 A. I don't recall
9 discussions. There may have been some content on
10 whether the UK standard or Tradewind's, Golder's
11 approach to using it was correct, and I can't
12 recall if that was possibly one of the subjects
13 covered in the draft opinion of December 13th. I
14 don't recall discussions.

15 Q. Do you recall any
16 discussions about not releasing the Tradewind
17 report?

18 A. I don't. If we're
19 talking about the FOI process, there wouldn't be
20 any opportunity for someone to make that decision
21 other than access and privacy, and I had already
22 indicated my view that it would be would
23 releasable if a request was made that covered it
24 in scope or date.

25 Q. Then it says "concern

1 with reducing speed could have done that anytime -
2 red flag - instead speed report review." Do you
3 recall any discussions about the reduction of the
4 speed limit?

5 A. At this date of call?

6 Q. Yes.

7 A. No, I don't recall the
8 discussions around these notes.

9 Q. Do you recall that public
10 works was recommending that the speed limit be
11 reduced?

12 A. Yes, I do recall that
13 Edward Soldo was working on a report and a
14 recommendation in that report was a reduction of
15 the speed limit over part of the Red
16 (indiscernible).

17 Q. Do you recall any
18 discussions of Ms. Auty or Mr. Boghosian about
19 that issue?

20 A. No, I don't.

21 Q. Registrar, could we pull
22 up overview document 9A, image 444. If we could
23 put up 445 as well.

24 So, Mr. Sabo, just to give you
25 some context, at paragraph 1047 there's a reply

1 from you to Ms. Auty, and this is in reply to
2 Ms. Auty sending you her draft report to council
3 and so you're providing your comments. And then
4 you'll see at paragraph 1048 there's a further
5 e-mail from you with your comments. And then if
6 we could pull up 446. I'm not going to go through
7 all of your comments. I just wanted to give you
8 some context.

9 At page 446, in the second
10 bullet, it says a "Comment on 3rd paragraph" --
11 thank you, Registrar:

12 "Sorry I didn't stay at
13 the meeting to the end.
14 One of the issues I hoped
15 the meeting would cover
16 is clarifying what was
17 and was not done versus
18 recommended. That is my
19 concern with this
20 paragraph, specifically,
21 I don't think the
22 abrasive coating was ever
23 contemplated, and I don't
24 think light or median
25 barrier issues are being

1 addressed in the repaving
2 project at all."

3 Do you recall where you got
4 this information from about abrasive coating not
5 ever being contemplated?

6 A. No, I don't.

7 Q. Registrar, if you could
8 pull up HAM64370. Image 10. Mr. Sabo, we do have
9 your notes from the February 6th, 2019 GIC
10 meeting, and they're I think 12 pages long,
11 they're quite lengthy. I'm not going to take you
12 through all of them, but I'm just wondering if you
13 have a recollection of that meeting?

14 A. I don't have much
15 recollection of that meeting. I believe it was
16 very long, but the part I do remember is that
17 there was either a break or some staff went out of
18 the room to work on a statement, an apology that
19 was directed of staff, and I recall being part of
20 that group of staff and help in drafting that
21 document.

22 Q. Apart from helping to
23 draft the apology, did you play any other role in
24 that GIC meeting?

25 A. I don't believe I was

1 presenting or answering questions. I was just
2 present. I believe it was various staff from
3 public works, from the auditor's office, and
4 Nicole Auty and David Boghosian who were
5 presenting and answering questions on the reports
6 that were there at the date.

7 Q. Do you recall how -- what
8 council was told about the Tradewind report?

9 A. I don't have a
10 recollection of the discussions. In that there
11 were written reports. The general preference to
12 aid council is to submit a written document so
13 that they have something to read in advance of the
14 committee date or council date. So those reports
15 might help answer your question, but I didn't
16 write those and I don't have a recollection of the
17 content of the Tradewind report.

18 Q. If you'd like, you can
19 have a review of your notes from this February 6
20 meeting, because I'm just wondering if apart from
21 what is set out in your notes, if you have any
22 additional recollection of the February 6, 2019
23 meeting beyond what you just described in terms of
24 your role?

25 A. I have reviewed these

1 notes before, and I believe that's my
2 recollection. I'll read them again if you want me
3 to, but that is I believe my total recollection,
4 that the meeting was long, that there were various
5 presenters not including me, and that I went out
6 of the room at a certain point with other staff to
7 draft a document.

8 MS. LIE: Commissioner, could
9 you just give me one moment to just reviewing my
10 notes?

11 JUSTICE WILTON-SIEGEL: Yes,
12 of course.

13 MS. LIE: Thank you. Thank
14 you, Mr. Sabo, I don't have any further questions
15 for you. I'm not sure if counsel for the City
16 might.

17 JUSTICE WILTON-SIEGEL: Ms.
18 Hale, do you have questions for Mr. Sabo?

19 MS. HALE: I have no
20 questions. Thank you very much.

21 JUSTICE WILTON-SIEGEL: Okay.
22 And I understand that neither the MTO nor Golders
23 have any questions; is that correct?

24 MS. RAMASWAMY: Commissioner,
25 I can confirm that we do not have any questions.

1 JUSTICE WILTON-SIEGEL: That's
2 fine. I'm not sure that I see Golders, Ms.
3 Roberts or anyone else, on the line. I'm going to
4 take that to mean --

5 MS. RAMASWAMY: Sorry,
6 Commissioner, I'm counsel for Golder.

7 JUSTICE WILTON-SIEGEL: Oh,
8 I'm sorry. Of course, of course.

9 MS. RAMASWAMY: We do not have
10 any questions.

11 JUSTICE WILTON-SIEGEL: You
12 don't have any questions.

13 MS. RAMASWAMY: I understand
14 it's a long day.

15 JUSTICE WILTON-SIEGEL: And
16 I've got a blank screen for Ms. McIvor. I'm going
17 to take it that Ms. McIvor does not have any
18 questions.

19 So, Mr. Sabo, thank you very
20 much for attending over the last I guess it's been
21 two days. You're excused. There's Ms. McIvor.

22 MS. MCIVOR: Sorry, Mr.
23 Commissioner, my computer was freezing, but I can
24 confirm that the MTO does not have any questions.

25 JUSTICE WILTON-SIEGEL: Thank

1 you. That's appreciated since we've already
2 excused Mr. Sabo. And we'll stand adjourned,
3 then, for the rest of us until 9:30 tomorrow
4 morning. Thank you very much.

5 --- Whereupon at 4:02 p.m. the proceedings were
6 adjourned until Thursday, October 6, 2022 at
7 9:30 a.m.

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