

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Monday, October 24, 2022 at 9:00 a.m.

VOLUME 74

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1 Arbitration Place Virtual

2 --- Upon resuming on Monday, October 24, 2022

3 at 9:00 a.m.

4 MS. LAWRENCE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning.

8 MS. LAWRENCE: I would like to
9 open this hearing by acknowledging that the City
10 of Hamilton is situated on the traditional
11 territories of the Erie, Neutral, Huron-Wendat,
12 Haudenosaunee and Mississaugas. This land is
13 covered by the Dish With One Spoon Wampum Belt
14 Covenant, which is an agreement between the
15 Haudenosaunee and Anishinaabek to share and care
16 for the resources around the Great Lakes. We
17 further acknowledge that the land on which
18 Hamilton sits is covered by the Between the Lakes
19 Purchase, 1792, between the Crown and the
20 Mississaugas of the Credit First Nation.

21 Many of the counsel appearing
22 on the hearing today are in Toronto, which is on
23 the traditional land of the Huron-Wendat, the
24 Seneca and most recently the Mississaugas of the
25 Credit River. Today this meeting place is home to

1 many indigenous people from across Turtle Island
2 and I'm grateful to have an opportunity to work on
3 this land.

4 Commissioner, we have the
5 continued examination of Mr. McGuire and he has
6 previously been sworn. May I proceed?

7 JUSTICE WILTON-SIEGEL: Yes,
8 please proceed.

9 MS. LAWRENCE: Thank you.

10 RESUMED: GORD MCGUIRE

11 CONTINUED EXAMINATION BY MS. LAWRENCE:

12 Q. Mr. McGuire, you said
13 last time on Friday that you had not attended the
14 January 23 closed session of council. Is that
15 right?

16 A. That's correct.

17 Q. The inquiry has received
18 documents that between January 30 and February 1,
19 Mr. Malone attended at least two meetings with
20 city staff and Mr. Boghosian. Do you recall being
21 prepped about what had happened in the January 23
22 closed session meeting before those meetings with
23 Mr. Malone?

24 A. I don't have a direct
25 recollection.

1 Q. You don't have a
2 recollection either way?

3 A. No, I do not.

4 Q. Okay. Notes of others
5 that the inquiry has received suggested that you
6 attended at least two calls with Mr. Malone. Do
7 you recall that?

8 A. I do recall, yes, some
9 phone calls.

10 Q. And do you recall there
11 was a number of individuals on some of the calls
12 with Mr. Malone: Mr. Boghosian, communications
13 staff, and you were on those calls. Do you
14 remember those, sort of, large group calls?

15 A. Yeah. Pardon me. I do
16 recall that we had a few larger calls, yes.

17 Q. Okay. And do you also
18 recall speaking with Mr. Malone either alone or
19 just with Mr. Soldo?

20 A. I don't have a
21 recollection of that.

22 Q. Okay. So, the documents
23 that the inquiry has received suggest that the
24 first of these large groups calls was on
25 January 30 and that you were an attendee on that

1 call. Was this the first time that you were
2 involved with or spoke with Mr. Malone about the
3 Tradewind report?

4 A. I can't recall if that
5 was the first conversation or not, but this was
6 obviously a more in-depth one.

7 Q. Okay. Well, this is
8 important evidence. Do you recall speaking to
9 Mr. Malone before having a group call? And I'm
10 not suggesting like on that day, but just
11 generally before January 30.

12 A. I don't recall and I
13 don't recall either way.

14 Q. So, sitting here today
15 you can't say whether you spoke to Mr. Malone
16 about the Tradewind report before January 30?

17 A. No, I don't -- I don't
18 have a recollection of that.

19 Q. Do you have any specific
20 recollection of speaking to Mr. Malone about the
21 Tradewind report before January 30?

22 A. So, I mean, we were
23 having conversations with, you know, CIMA
24 regarding the illumination. We were having
25 conversations with other consultants. I don't

1 have a direct recollection of what conversation
2 took place with which consultant at which time.

3 Q. Did you give any
4 instruction to CIMA in respect of the Tradewind
5 report before January 30?

6 A. I don't believe I did.

7 Q. Okay. We have nothing to
8 suggest that you did, no e-mails to suggest that
9 you did, but if your evidence is you can't recall
10 either way and you don't have confidence about
11 whether you spoke to him, I do feel like I need to
12 keep asking questions about it.

13 What would you have been
14 speaking to him about in respect of the Tradewind
15 report?

16 A. And I don't have a
17 recollection of speaking to Brian, so that's what
18 I'm going to give you for information.

19 Q. Okay. Having prepared
20 for today, did you search back in your memory and
21 try to set out the narrative to see if you had a
22 conversation with him and sitting here today you
23 can't recall either way?

24 A. No, I can't.

25 Q. To your knowledge, was

1 Mr. Malone aware of the Tradewind report before
2 the group call with Mr. Boghosian and other city
3 staff on January 30?

4 A. I'm sorry, are you asking
5 if I knew if Brian had the Tradewind report?

6 Q. Or was aware of it.

7 A. I understand he was.

8 Q. And what's the basis for
9 that understanding?

10 A. Sorry, I'm losing track.
11 The January 30 call was to introduce Brian to the
12 Tradewind report or he already had it, and
13 apologies, there was a lot going on at that time.

14 Q. Sure, so that's exactly
15 my question. This is a large group call with
16 Mr. Boghosian, Mr. Malone, a number of city staff,
17 including you. And I could take you to some notes
18 to try to refresh your memory about the subject
19 matter of that call, and I'll paraphrase here. It
20 was Mr. Boghosian and Mr. Malone both have notes
21 of this and it was about whether the road should
22 be closed, you know, about, sort of, interim
23 safety measures.

24 And so, my question to you is:
25 To your knowledge, before this call, was

1 Mr. Malone aware of the existence of the Tradewind
2 report?

3 A. And I don't have direct
4 knowledge of having a conversation with Brian in
5 advance of that or not.

6 Q. Okay. And you don't have
7 any knowledge either way about whether he knew
8 about the existence of the Tradewind report before
9 this call?

10 A. Not to my knowledge.

11 Q. Okay. Did you understand
12 that this call was flowing from requests from
13 councillors at the January 23 meeting?

14 A. I don't have a
15 recollection of what the -- again, I don't think I
16 was fully aware what took place in the January 23
17 meeting. I think I had some background into it
18 and then this call, but again, I don't recall the
19 call in great detail either.

20 Q. Okay. So, I think I'm
21 taking from your evidence that you don't think
22 that you were debriefed before the January 30 call
23 about what happened at January 23 and this was
24 your introduction to it as well?

25 A. I think that's

1 reasonable. I probably had a hallway conversation
2 or something about what might have taken place,
3 but again, I don't recall.

4 Q. What did you anticipate
5 CIMA's work product would ultimately be coming out
6 of the January 30 call and this series of
7 discussions with Mr. Malone at the end of January?

8 A. My understanding was that
9 in order for us to prepare for the February 6
10 meeting, there was a letter that Brian was going
11 to provide and it would outline, you know, his
12 views or CIMA's views of some of the potential
13 concerns or things that may come up during the
14 meeting.

15 Q. Registrar, could you
16 bring up OD 9A, page 362 to 363, please.

17 So, Mr. McGuire, I'm bringing
18 up 362 because it's the beginning of
19 Mr. Boghosian's notes. You'll see at 585 there's
20 just a reference of what follows and then 363 is
21 the transcription of his notes.

22 Registrar, could you now bring
23 up 363 and 364, please. Thank you. And can you
24 call out 363.

25 See right at the bottom it

1 says "BM" :

2 "BM close the RHVE? Not
3 necessary."

4 Do you recall discussions
5 during this group call about whether Mr. Malone
6 had a view about whether it was necessary to close
7 the Red Hill?

8 A. No, I don't recall.

9 Q. By January 30, had you
10 discussed with city staff the need to consider
11 taking interim safety measures on the Red Hill in
12 advance of repaving?

13 A. There were ongoing
14 conversations around measures that had been, you
15 know, previously suggested and introduced, but I'm
16 not sure what you're asking for interim safety
17 measures.

18 Q. Had you considered the
19 need about whether there was interim safety
20 measures that needed to be put in place in between
21 January 30 and the repaving?

22 A. The interim safety
23 measures were being addressed through operations
24 and through CIMA, and we were again proceeding to
25 make sure that the resurfacing project was ready

1 for tender.

2 Q. Okay. So, apart from
3 measures that CIMA had recommended or was going to
4 recommend in the roadside safety assessment, was
5 there any other discussion about other interim
6 safety measures that should be considered with
7 you?

8 A. At this meeting or just
9 in general?

10 Q. In general before
11 January 30.

12 A. Have I received Golder's
13 second followup yet or I'm not sure the timing on
14 that?

15 Q. You're in the midst of
16 trying to negotiate the final 2017 Golder pavement
17 evaluation, which comes on March 1.

18 A. Okay, so those would have
19 been the conversations that I would have been
20 having at that time.

21 Q. Okay, so you didn't have
22 any other conversations with staff about whether
23 there was other interim safety measures that
24 should be considered?

25 A. Not at this point, not

1 from my perspective, no.

2 Q. Okay. Registrar, could
3 you close this down and go to page 376 of OD 9A,
4 please, and if you could call out 870.

5 So, this is a summary from
6 Mr. Malone to some of his colleagues about a
7 discussion that he had had first with Mr. Soldo
8 and then with a group call that took place between
9 4:30 and after 6:00, you see in the first
10 paragraph, and then follow-on calls with Edward S.
11 and Gord M. directly. And you'll see that he then
12 says in the third paragraph that that data will be
13 sent to me, he's referencing studies held in
14 confidence until now, and that will be sent to me
15 and the City will be asking for the content of
16 those -- if the content of those changes any of
17 our recommendations in our studies.

18 Up to this point, did you have
19 any -- that is, having attended this group call --
20 views about whether there was any steps the City
21 needed to take immediately, that is, before
22 repaving?

23 A. I hadn't had a report
24 from -- I mean, if we went back to Tradewind, it
25 had identified, you know, to do further studies

1 and that potential remedial action. And then I
2 was working with Golders, who had identified, you
3 know, a series of tests that we were trying to
4 resolve with respect to, you know, what the
5 considerations were under the different testing,
6 but at that point most of the roadside safety and
7 other components were with the transportation
8 operations and the engineering group with
9 Mr. Soldo.

10 Q. You said "if we went back
11 to Tradewind." You mean if you went back and
12 looked at the report, not that you went back to
13 Tradewind --

14 A. Correct.

15 Q. Okay. I just wanted to
16 make sure. Here there's this reference to
17 follow-on calls with Edward S. and Gord M. Do you
18 recall speaking with Mr. Malone either with
19 Mr. Soldo or alone, just you and Mr. Malone?

20 A. No, I don't.

21 Q. What was your
22 understanding by January 30 of Mr. Malone's
23 expertise in friction?

24 A. His direct expertise or
25 CIMA?

1 Q. His direct expertise.

2 A. Yeah. My understanding
3 of Brian's background was he's a transportation,
4 you know, engineer and would have, without going
5 into, sort of, credentials, he would have an
6 understanding of the operations of all the roads
7 and facilities and, as a function of that, he had
8 an understanding of friction.

9 Q. Registrar, could you
10 close this and call out page 368 at paragraph 860,
11 please. Thank you.

12 On that same day, Ms. Auty
13 asked you if a draft 2017 Golder pavement
14 evaluation report, if this was the report, the
15 2017 friction testing, to go to CIMA. CIMA had
16 not received a copy of the draft 2017 Golder
17 pavement evaluation before January 30?

18 A. Not to my knowledge.

19 Q. So you hadn't sent it.
20 Is that fair?

21 A. Yeah, correct. I don't
22 think we've gotten to a final version at this
23 point.

24 Q. That's right. Had you
25 had discussions with Mr. Malone about the contents

1 of the draft 2017 Golder pavement evaluation
2 report before January 30?

3 A. I don't recall.

4 Q. You don't recall either
5 way?

6 A. Yeah, I don't recall
7 either way.

8 Q. If you hadn't, why not?

9 A. I'm still working through
10 the deliverables with Golders. I'm not sure where
11 we are here, but it wasn't in a complete form yet.

12 Q. But Ms. Auty, am I
13 reading from this, that it was her recommendation
14 that CIMA be provided with the then current draft
15 of the pavement evaluation report?

16 A. I'm not sure what she's
17 asking here. The quote that says the friction
18 testing to go to CIMA, I don't know the context of
19 the rest of that e-mail.

20 Q. Registrar, could you
21 close this call out. Registrar, can you go to 380
22 and 381, please.

23 You're not copied on this
24 e-mail that's the entirety of 381. It's from a
25 CIMA colleague, Geoff Petzold, to Mr. Malone and

1 it is quite long.

2 If you could pull out the
3 second half of that page, Registrar.

4 So, Mr. Petzold is providing
5 some sort of background information about friction
6 testing to Mr. Malone and he says in the fourth
7 paragraph from the bottom:

8 "The question is whether
9 the road should be
10 closed. The question
11 around whether the road
12 should be closed might be
13 a bit overkill, but I
14 would say that
15 rehabilitation needs to
16 be expedited. Can't do
17 much in the winter other
18 than sand, salt, but if
19 they could do an interim
20 chip seal or something,
21 maybe even mill the
22 pavement so it has
23 texture to it."

24 Did anyone convey this
25 commentary from Mr. Petzold to you?

1 A. I don't recall that.

2 Q. Had you considered
3 whether to do some interim chip seal or mill the
4 pavement so it had some texture?

5 A. Again, with the
6 information that's in front of us and what we end
7 up, you know, seeing or understanding, I don't
8 have a report in front of me telling me to do
9 this, do this immediately or in specific
10 locations, so people are -- it appears here that
11 someone is suggesting something with a question
12 mark on it, so I'm not sure if that's -- you know,
13 does that mean maybe? Maybe not? I can't read
14 into that what he's suggesting.

15 Q. So, my question was: Had
16 you considered whether to do some interim chip
17 seal or mill pavement so it had some texture? Is
18 your answer no?

19 A. I don't believe we had
20 considered it in, kind of, a formal perspective.

21 Q. You had considered it in
22 some informal way?

23 A. Sure. I mean, we're
24 hearing a lot about friction and values and things
25 like that, trying to understand what else is going

1 on, but lots of, sort of, hallway conversations or
2 trying to figure out what's happening, but at this
3 point, no, I don't think we've got a formal
4 proposal. And in order for us to do something
5 like this, we would, you know, have to develop a
6 specification and put it into a tender and put it
7 out. So, I don't believe that we have something
8 like this on the shelf that we can pull off and
9 push out, so that would require some work as well.
10 Yeah, that's what I think the state of our
11 understanding at that time.

12 Q. Registrar, can you pull
13 out CIM22419, please, and can you bring up the
14 next image as well.

15 You'll see on the left-hand
16 side, this is from February 1, 10:30, call with
17 Soldo and McGuire. Do you recall speaking to
18 Mr. Malone -- these are Mr. Malone's notes -- at
19 10:30 on February 1? I can tell you just to
20 orient you then there's a conversation, a broader
21 group conversation thereafter, including
22 Mr. Boghosian.

23 A. No, I don't.

24 Q. Registrar, can you go
25 back to OD 9A, page 419, please. My apologies, I

1 realize CIM22419 has not been marked as an exhibit
2 and I would ask that it be marked as the next
3 exhibit, which I think is 199.

4 THE REGISTRAR: Noted,
5 counsel. Thank you.

6 EXHIBIT NO. 199: Notes
7 of Mr. Malone dated
8 February 1, CIM22419.

9 BY MS. LAWRENCE:

10 Q. So, there's some back and
11 forth on February 4. Mr. Malone provides
12 Mr. Boghosian with what we call the February 4
13 memo. He provides him with a draft. And you
14 receive a copy of that February 4 memo at some
15 point.

16 Registrar, could you go to the
17 next page, please. Actually, it's the following
18 page. It's 421. It's at the very top.

19 There's a reference to
20 Ms. Auty sending you and Mr. McKinnon and
21 Mr. Soldo the February 4 memo. Did you provide
22 any comments on the memo?

23 A. I don't believe I did.

24 Q. Did you understand that
25 it would be submitted via legal counsel or was

1 this something, this February 4, something that
2 was your responsibility to determine how and
3 whether it should be provided to council?

4 A. I don't know who was
5 supposed to supply it, but I didn't have the
6 understanding that I was supplying it.

7 Q. Okay. Part of the memo
8 asked whether the road should be closed. I'm not
9 going to go into it just in the interest of time,
10 but that general question of whether the road
11 should be closed, had you sought any assessment
12 from any consultant prior to the February 4 memo
13 about whether the road should be closed?

14 A. Not to my knowledge.

15 Q. Registrar, can you go to
16 page 446 and 447, please.

17 You'll see at the bottom of
18 446 and into 447, Ms. Graham starts to prepare --
19 she finalizes her preparation of a slide deck
20 that's going to be used as part of the
21 presentation for the report to GIC on the 6th.
22 Did you have any involvement in preparing the
23 slides or the timeline that Ms. Graham is working
24 on?

25 A. Sorry, I believe that

1 Jasmine had asked about some of the preliminary
2 timeline and I'm not sure if this was maybe an
3 extract from some of the, sort of, chronologies we
4 had developed, but I don't recall working on the
5 actual presentation.

6 Q. Thank you. Registrar,
7 can you go to the next page, please, 448.

8 At 10:54, which is the top
9 half of this page, Mr. Soldo wrote to you and
10 Mr. McKinnon:

11 "I will say it again.
12 Has anyone checked his
13 e-mails for this sort of
14 material?"

15 And this is in respect of
16 Mr. Moore's e-mails and it's following from your
17 receipt, Mr. White forwarding some e-mails in
18 respect of 2015, the 2015 CIMA report. Prior to
19 February 5, had you instructed anyone to secure
20 Mr. Moore's e-mails or the information he had
21 uploaded to ProjectWise?

22 A. I don't have the ability
23 to instruct anyone to deal with his inbox. That
24 would be with IT. And with respect to the stuff
25 in ProjectWise, we had worked with at this point I

1 think with audit as well as anyone else on this
2 file to ensure that that information, you know,
3 that we had it, that nothing had happened to it.

4 Q. You think audit was
5 ensuring that the ProjectWise documents were
6 secured?

7 A. I believe at some point
8 audit sent a note making sure that we backed
9 everything up and we had confirmed that we had,
10 and that was, sort of, the standard practice
11 anyways.

12 Q. Registrar, could you go
13 to page 408, please, and can you call out 934,
14 please.

15 On February 1, Mr. Soldo
16 contacted Kevin Bentley at the MTO and asked if he
17 had a person the City can contact regarding
18 pavement friction testing and anticipated values
19 for SMA pavements. Did you have any discussions
20 with Mr. Soldo before he reached out to
21 Mr. Bentley?

22 A. Not to my recollection.

23 Q. Registrar, could you
24 close this and go to page 425, please, and if you
25 can call out 989.

1 Mr. Malone contacted one of
2 his colleagues on February 4 and he said:

3 "Gord McGuire in Hamilton
4 is asking if we have any
5 contacts at the MTO in
6 pavements."

7 And referenced Becca Lane.
8 Why did you want to contact MTO at this time?

9 A. I don't have a, sort of,
10 direct recollection of why we're looking to talk
11 to MTO. I do know that they have the -- I guess
12 it's what I would consider to be the bituminous
13 section or they have more background into, sort
14 of, the testing and materials management, so I
15 think we were looking for some insight into, you
16 know, just a little bit more background into some
17 of the information that might have been coming up
18 around SMAs, but that's my recollection at this
19 point.

20 Q. Okay. So, you think it
21 was about trying to get a better understanding of
22 SMA pavement, not about friction?

23 A. Probably -- I mean,
24 obviously the questions with the SMA would then go
25 to the discussion around its -- and I'm not sure

1 when we became aware of their paper regarding
2 early age or what treatments.

3 Q. That was in September of
4 2018.

5 A. Okay. Fair.

6 Q. Had you contacted MTO
7 prior to February 4, 2019?

8 A. Not to my knowledge.

9 Q. And you hadn't instructed
10 any of your staff to do so?

11 A. I don't believe I
12 directly instructed any of them. I do know there
13 was some conversations back and forth between a
14 variety of folks in what I call the industry, but
15 I'm not sure if -- what their specific topics
16 were.

17 Q. Okay. And you don't know
18 whether that actually happened or not?

19 A. That's correct.

20 Q. You certainly didn't
21 direct anyone and expect a response and then not
22 get a response from your staff? That didn't
23 happen?

24 A. That's correct.

25 Q. Okay. Registrar, can you

1 go to 10A, page 19, please.

2 You took notes of the GIC
3 meeting that was on February 6 and I assume from
4 that you attended it?

5 A. Correct.

6 Q. What was your role in the
7 closed session portion of the meeting?

8 A. Fairly limited. I don't
9 believe -- I mean, I was there as a potentially if
10 anyone had a question, but I wasn't leading any of
11 the discussions.

12 Q. And what about in the
13 public session? Did you lead any discussion
14 there?

15 A. No, I don't believe I
16 did.

17 Q. You didn't present
18 PW18008A?

19 A. I can't recall. I know
20 that that was on the agenda and I'm not sure if
21 Dan took that one through or if there was
22 questions. We would have been right there with
23 him in the event that there was a question about a
24 specific on the report.

25 Q. But sitting here today

1 you can't recall if you actually had a speaking
2 role?

3 A. I don't recall presenting
4 and I'm not sure if I responded to any comments,
5 but no, I don't recall have a speaking role.

6 Q. And what about the
7 lighting study? Were you presenting on that? Do
8 you remember having a speaking role on that part?

9 A. No. I don't believe we
10 presented the lighting study formally. It was
11 together with PW18008A, but I'm not sure if anyone
12 had any questions on it.

13 Q. Okay. Registrar, can you
14 bring up HAM29133, please. Can you call out the
15 next image as well.

16 So, this is the final version
17 of PW18008A and we spoke on Friday about that
18 you -- I think your evidence was Mr. Soldo did the
19 drafting on some aspects and you added some
20 paragraphs. Is that right?

21 A. Yeah, correct.

22 Q. Registrar, can you go to
23 image 3 and 4, please.

24 So, the way that it is
25 organized is in respect, I think, both of themes

1 or the OBL items or the motions that are before
2 PWC, and you'll see at the bottom of 3 and into 4
3 is the reference to street lighting. Did you
4 prepare this part of PW18008A?

5 A. Yeah, I would have
6 authored this section.

7 Q. And you said earlier and
8 just a few moments ago that council didn't have
9 any questions about this. Did council have any
10 response at all to that CIMA had found that there
11 was no documentation that previously completed
12 studies had a specific prohibition that would
13 preclude lighting?

14 A. I recall that there was
15 some questions around the cost, which was section
16 D. I don't recall specifically around what you're
17 asking about point B.

18 Q. Yeah. No. I'm asking if
19 council said that's different than what we had
20 previously, you know, been led to understand. No
21 questions like that?

22 A. I don't believe in open
23 session, I don't think I made any notes of that
24 effect.

25 Q. Okay. At the bottom of

1 image 4 is reference to friction testing. It goes
2 on to the next page.

3 Registrar, could you pull out
4 those two paragraphs at the bottom of image 4,
5 please.

6 So, it says:

7 "As identified in report
8 PW18008, Appendix A -- "

9 So, this is one of those
10 appendices that has the countermeasures:

11 " -- friction testing on
12 the parkways was
13 completed. Engineering
14 services retained a
15 consultant in November of
16 2017 to review three
17 elements of the RHVP
18 materials."

19 So, just so the evidence is
20 really clear, in terms of Appendix A, what
21 friction testing did you understand had been
22 completed?

23 A. So, my understanding was
24 that there was, sort of, the three components as
25 identified in the Golder's proposal of

1 November 2017, being the British pendulum test,
2 the macrotexture or measured texture depth and
3 then the polished stone values.

4 Q. You were aware that the
5 drafters of PW18008 didn't know about the Golder
6 pavement evaluation when they marked friction
7 testing as complete. Right?

8 A. I believe that e-mail
9 from Martin was -- I can't remember. Was it,
10 like, February 5 or something or close in time?

11 Q. The e-mail where he says
12 he knew about Mr. Moore completing friction
13 testing?

14 A. Correct.

15 Q. And the one that
16 references the UK standard, which I think is an
17 English test?

18 A. Yes.

19 Q. Sorry, so can you just
20 answer my question, which was: You were aware
21 that the drafters of that report didn't know about
22 the Golder pavement evaluation when they marked
23 friction testing as complete?

24 A. I believe I did, yes.

25 Q. You believe you're aware

1 that they didn't know?

2 A. Correct.

3 Q. Okay. Registrar, you can
4 close this down.

5 Following the GIC meeting on
6 February 6, what were the next steps on your plate
7 regarding the Tradewind report and the Red Hill
8 more generally?

9 A. So, the main focus was
10 the resurfacing project. There was some
11 conversations around that, I believe, and moving
12 it forward. The Tradewind report, to my
13 knowledge, was being managed through legal and
14 CIMA as they continued to move forward with that.

15 Q. Registrar, can you go to
16 OD 10A, page 99 and 100, please.

17 We looked a moment ago at the
18 February 1 e-mail that Mr. Soldo sent to
19 Mr. Bentley. That's at the bottom of 99. And
20 then in the OD there's a further reference to
21 interactions with MTO.

22 Registrar, can you pull out
23 245, please.

24 So, Mr. Soldo followed up on
25 February 4.

1 Registrar, you can close that
2 down.

3 And then there are internally
4 at MTO some back and forth on February 12.

5 Registrar, could you go to the
6 next page, please, and could you bring up 101 and
7 102, and can you call out 247 to 249, please.

8 On February 12, Mr. Van Dongen
9 from the Hamilton Spectator e-mailed Ms. Graham
10 and Mr. McKinnon, enclosing friction test results
11 from 2007 to 2014, and that gets forwarded to you,
12 you'll see at 248. And prior to this date, which
13 was February 12, were you aware that MTO had
14 completed friction testing between 2008 and 2014?

15 A. No, I wasn't aware of
16 that.

17 Q. By this point, had you
18 had any discussions with Mr. Bentley or Ms. Lane
19 or anybody else at MTO?

20 A. I recall having a
21 conversation with both of them, but I don't recall
22 the actual dates.

23 Q. Okay. Do you remember
24 anything about the discussions with either of
25 them?

1 A. At this moment in time,
2 no, I don't recall. I know further on I have a
3 conversation with Ms. Lane, but I'm not sure -- I
4 don't think it was at this point. Is it February?
5 I think this is later on when I think I had that
6 conversation.

7 Q. Okay. You have a couple
8 of references to discussions. I'll take you to
9 them to try to refresh your memory.

10 Registrar, could you close the
11 call out and go to 111 and 112, please.

12 And you'll see at the bottom
13 of 111 at 278, February 26, you e-mailed
14 Mr. Bentley about MTO friction testing data and
15 you said:

16 "Are there maps to
17 identify the limits of
18 this testing? I'm
19 looking for an overlay."

20 Registrar, you don't need to
21 call that out.

22 At 279, Ms. Lane replied:

23 "You can look at tab 2.
24 It's test data."

25 And then you say on March 1:

1 "Can I call you on this
2 matter for a bit of
3 clarity?"

4 And then there's a discussion
5 that's arranged for 3:15, review friction testing
6 processes results. Was that the discussion that
7 you're thinking of with Ms. Lane?

8 A. I would have to say yes.
9 I can't recall how many conversations we had, but
10 yeah.

11 Q. Do you remember whether
12 you had one or more than one conversation with
13 her?

14 A. No, I don't.

15 Q. And do you recall did you
16 actually speak directly to Mr. Bentley?

17 A. I was on a call with I
18 believe it was Mr. Soldo and Mr. Bentley, but I'm
19 not sure if other MTO staff were on it or not.

20 Q. Okay. Registrar, could
21 you go to back one page to 110 and can you call
22 out -- actually, can you call out 274, please.

23 So, there's some back and
24 forth amongst councillors and Mr. McKinnon about
25 how to, sort of, characterize the MTO friction

1 data and the friction values in particular, and
2 Mr. McKinnon sends some language to you. At the
3 bottom, it says:

4 "Generally speaking, the
5 tests observed by MTO are
6 consistent with the
7 results observed through
8 the 2013 Tradewind
9 tests."

10 You can close that down,
11 Registrar.

12 Mr. McKinnon asks about that
13 to you.

14 Registrar, can you bring up
15 276 and 277.

16 It says:

17 "Do you two agree with my
18 last statement that MTO
19 results generally agree
20 with Tradewind?"

21 And you said:

22 "Correct. The Tradewind
23 results are quite close
24 to MTO results."

25 And Mr. Soldo says:

1 "I would concur."

2 What was the basis for your
3 view that the Tradewind results are quite close to
4 the MTO results?

5 A. I believe it was just a
6 straight numeric review of whatever the -- again,
7 I think the numbers were in the 30s or 40s or
8 something along those lines and it seemed to be
9 reasonably close or something along -- you know,
10 within those limits.

11 Q. Okay. And had you had
12 any discussions with anyone, Golder, MTO, anybody
13 else, CIMA, about how to compare the MTO results
14 to the Tradewind results and whether they were
15 comparable?

16 A. So, I think I'm learning
17 either very shortly or potentially getting some
18 understanding that correlating grip test and skid
19 number and British pendulum are difficult and I'm
20 not sure when exactly I find that out.

21 Q. From whom did you find
22 that out?

23 A. I believe that came
24 through from Golder's assignment.

25 Q. Okay. Registrar, could

1 you close this down and go to page 113 and 114,
2 please, and can you pull out 283.

3 Mr. Soldo e-mailed Ms. Auty,
4 Mr. McKinnon and you about friction numbers and he
5 said:

6 "I would like to contact
7 CIMA regarding the new
8 friction data we have
9 from MTO in order for
10 them to review it in the
11 same context and
12 extrapolate a degradation
13 curve based on the data."

14 Did you have discussions with
15 Mr. Soldo about trying to extrapolate some sort of
16 degrading curve?

17 A. I don't recall them
18 directly, but I know once the -- when did we
19 become aware of the MTO data? Around February 12
20 or something?

21 Q. Yeah, a couple days
22 before.

23 A. Yeah. I think this was,
24 sort of, a contextual conversation and trying to
25 understand what, you know, the friction values may

1 or may not be currently because, again, I think
2 the friction sampling from MTO, and it concluded
3 around, I think you said 2014. Correct?

4 Q. Yes. 2008 to 2014 was
5 the new friction data from MTO. Why didn't you
6 just do a new friction test on the road?

7 A. So, it's February. I'm
8 not certain that we would get -- because you have
9 to apply and understand at this point and
10 depending on which testing methodology you're
11 using, you have to apply a wet film. I'm not sure
12 if that would work in the winter in Canada. And
13 at this point in time, I'm not sure -- you know,
14 we got a British pendulum value that we're, sort
15 of, trying to work through and -- so, I think
16 mostly winter related, but it was still trying to
17 understand what kind of testing we would do.

18 Q. Registrar, can you go to
19 HAM49139, please. Can you bring up the next
20 image as well. Thank you.

21 On March 1, you contact Aicha
22 Ghezal from the City of Hamilton and it looks
23 like -- pardon me, on February 25 and she responds
24 on March 1 looking for information on pavement
25 friction testing. What information were you

1 looking for from this other municipality?

2 A. So, if we go through this
3 e-mail, and I don't -- yeah, I don't recall this
4 in intimate detail, but I was having a
5 conversation with a counterpart in Ottawa and
6 that's regarding, kind of, a different program,
7 asked her if she had any inside information that
8 they may be able to provide. We have a lot of
9 conversations about other cities, about what it is
10 or isn't that they do, and that was, I guess, she
11 forwarded it on and this was the response we got.

12 Q. Thank you. Registrar,
13 can you mark this as the next exhibit.

14 Did you have any other
15 discussions with Ottawa apart from this e-mail?

16 A. Not to my knowledge.

17 Q. Registrar, sorry, I'll
18 just wait for confirmation that this is marked as
19 the next exhibit.

20 THE REGISTRAR: Yes, counsel.
21 It's Exhibit 200.

22 EXHIBIT NO. 200: E-mails
23 between Aicha Ghezal and
24 Mr. McGuire, HAM49139.

25 BY MS. LAWRENCE:

1 Q. Registrar, can you go
2 back into OD 10A, page 157 and 158, please.

3 So, you are involved in the
4 resurfacing. Am I right that Ms. Jacob and
5 Mr. Becke have, sort, of project management
6 carriage of the resurfacing and you have
7 oversight?

8 A. Correct.

9 Q. So, on March 5
10 Mr. Norris, who I believe is at AME, who has been
11 retained to assist with the resurfacing. Is that
12 right?

13 A. Correct.

14 Q. So, he e-mailed Mr. Becke
15 with a revised letter on the selection of the
16 pavement mix on the Red Hill. And you'll see just
17 following this e-mail chain from the bottom of 57
18 into 58 there's a suggestion for SMA and FC2, and
19 Ms. Jacob forwards this letter to you and she
20 says:

21 "AME has recommended SMA
22 and, as an alternative,
23 recommended FC2."

24 And you respond:

25 "AME notes a lower

1 initial cost with the SP
2 mix. Given the
3 challenges we've had with
4 SMA on the RHVP, I can't
5 consider going back to
6 that mix."

7 And in the end, the mix that
8 was used for the resurfacing was FSC. Is that
9 right?

10 A. So, the mix that we ended
11 up using was a Superpave, not a stone mastic
12 asphalt, if that's what you're asking.

13 Q. That is what I'm asking,
14 yes.

15 A. Yeah, that's correct.

16 Q. Why did you decide that
17 you couldn't consider going back to SMA?

18 A. So, the SMAs, I mean,
19 obviously there's been ongoing conversations about
20 the characteristics, the performance
21 characteristics of them in particular around the
22 friction. The other, you know, main challenge I
23 have here is that Golder's has ruled it out for a
24 hot in-place. And if I recall correctly, I
25 believe MTO was -- had brought the SMA back on as

1 a mix, but in order to place it, they put a grit
2 or something like that on it early. That didn't
3 appear to be something that I wanted to bring up
4 in order to increase the friction right out of the
5 gate with a project on the Red Hill.

6 Q. Registrar, can you bring
7 up RHV890, please.

8 On March 22, audit services
9 received a copy of an anonymous letter regarding
10 the RHVP and public works generally. Before
11 prehearing for the inquiry, had you seen or read
12 this letter?

13 A. Yes, I have. Yeah, I had
14 seen it and read it.

15 Q. Before preparing for the
16 inquiry?

17 A. Yeah, correct.

18 Q. Okay. And how did you
19 become aware of this letter?

20 A. I recall that
21 Mr. McKinnon had a copy of it and shared it with
22 me. I don't know the date that it arrived, but
23 yeah, it was shared with me, I believe, when it
24 first arrived.

25 Q. Did you write this

1 letter?

2 A. I did not.

3 Q. Do you know who did?

4 A. I do not.

5 Q. Did you take any steps to
6 have any of the assertions set out in it
7 investigated within public works?

8 A. I'm not sure what
9 assertions were made in it.

10 Q. Okay. Did you take any
11 steps to have any investigation arising from it
12 commenced?

13 A. Without -- I mean,
14 without reading it again in detail, we were
15 underway with a number of things, so I'm not sure
16 what specifically you're asking me, but I didn't
17 take this letter and turn it into, you know, an
18 internal review of something or another.

19 Q. I meant, you know, sort
20 of, a conduct, an investigation into the conduct
21 of employees.

22 A. Well, I mean, considering
23 that it's anonymous, I'm not sure what weight to
24 put on it, and it appears to be, you know, some
25 opinions of what happened. No, I did not start,

1 sort of, an investigation into staff as a result
2 of this letter.

3 Q. Thank you. Registrar,
4 can you bring up HAM62826. No, sorry. Let me try
5 that again. HAM62862.

6 This is a public works project
7 management manual.

8 Registrar, could you just go
9 to image 2 and 3.

10 So, this is about project
11 management and how to develop a charter and the
12 phases and transitions. Were you involved in the
13 preparation of this document?

14 A. I believe I was.

15 Q. And what was its purpose?

16 A. Is this -- sorry, is this
17 within engineering services or is this a public
18 works --

19 Q. This is a -- I don't mean
20 to interrupt. I believe this is a public works
21 document.

22 A. Okay. So, my vision had
23 a focus on project management and I believe we
24 were folding into this one a larger overall, sort
25 of, project scope and definitions, roles and

1 responsibilities, stakeholder engagement, across
2 the entire department as well.

3 Q. Thank you. Registrar,
4 could you mark this as the next exhibit.

5 THE REGISTRAR: Noted,
6 counsel. It's Exhibit 201.

7 EXHIBIT NO. 201: Public
8 works project management
9 manual, HAM62862.

10 MS. LAWRENCE: Thank you.
11 Commissioner, I see I took longer than my
12 anticipated time. I can advise those are my
13 questions for Mr. McGuire.

14 JUSTICE WILTON-SIEGEL: Okay.

15 MS. LAWRENCE: I understand
16 that all participants may have questions for him,
17 although I have not discussed that with them
18 today.

19 JUSTICE WILTON-SIEGEL: Well,
20 why don't we begin with Ms. Roberts and Golder.

21 MS. JENNIFER ROBERTS: Thank
22 you. Commissioner, may I begin, then?

23 JUSTICE WILTON-SIEGEL: Yes,
24 please proceed.

25 MS. JENNIFER ROBERTS: Thank

1 you.

2 EXAMINATION BY MS. JENNIFER ROBERTS:

3 Q. Mr. McGuire, hello. I'm
4 Jennifer Roberts, counsel for Golder. I have a
5 number of questions and I'm going to jump around a
6 bit, so if you need me to reframe a question and
7 put a document to you, please let me know so that
8 we're both on the same page.

9 I want to begin with the
10 interaction that you had on August 30 with
11 Mr. Malone when you sent him an e-mail that you
12 found on ProjectWise, which was Dr. Uzarowski's
13 e-mail of January 24, 2014.

14 Registrar, I wonder if you
15 could please put up OD 9A, image 61. Thank you.
16 Okay.

17 So, the bottom of the page,
18 you forward an e-mail.

19 And, Registrar, if you could
20 please go to the next image. Thank you.

21 And there's a summary of the
22 e-mail that you forwarded. And the e-mail says,
23 if you look at just below the first box, it says:

24 "In 2013, the friction
25 numbers were measured on

1 the RHVP in both
2 directions by Tradewind
3 Scientific using a grip
4 tester. The average FN
5 numbers were as follows:"

6 And your evidence, as I recall
7 it, is that you read it quickly and you focused on
8 the aspect of this that was referential to 2007
9 after the Red Hill had just opened. Do I have
10 that right?

11 A. That's my recollection.

12 Q. Okay. And are you saying
13 that you didn't take in and read the fact that a
14 consultant had been identified here who conducted
15 friction testing in 2013?

16 A. Yeah, that would be my
17 summary of what I apparently read and forwarded to
18 Brian.

19 Q. Okay. And the overview
20 document extract doesn't have it, but the bottom
21 of that e-mail actually has an address for
22 Dr. Uzarowski at Golder, and I take it you didn't
23 note that either?

24 A. Correct.

25 Q. All right. Now, the

1 evidence is that Mr. Malone replies to your
2 August 30 e-mail on about September 4.

3 Registrar, that's overview
4 document 9A, pages 72 and 73. Can you please move
5 forward.

6 And I think your evidence is
7 that this exchange is probably the first
8 significant review of friction that you had been
9 getting. Do I have that right?

10 A. I believe that's correct.

11 Q. Okay. And so, you noted
12 in your testimony that Mr. Malone stated that what
13 was missing was an identification of a threshold
14 or relative comparison, and that's what he says in
15 his reply. Do you have that?

16 A. Do I have that where?
17 I'm not sure what you're asking me.

18 Q. Forgive me. It was not a
19 very well-framed question. Do you recall
20 understanding that from Mr. Malone?

21 A. So, I think if I back it
22 up here, you're asking if I read this and
23 understood that Brian had the data but no
24 framework?

25 Q. That's what he's saying

1 in it. So, if you look, let's just pull it out,
2 on page 73, Registrar, if you can please call out
3 that second paragraph, what was missing. Okay.
4 That's what it says.

5 So, you recall reading that
6 and you understood that Mr. Malone was telling you
7 that, from his read, that what was missing was an
8 identification of a threshold or relative
9 comparison. Do I have that right?

10 A. Correct.

11 Q. Okay. And when you
12 received this e-mail back from Mr. Malone and you
13 understood that there was uncertainty about the
14 threshold and what the data meant, why didn't you
15 direct Mr. Malone to go back to Tradewind, go back
16 to the consultant who did these numbers?

17 A. So, at that point in
18 time, you know, I have a four-year old report that
19 Mr. Malone's indicated that he's had this
20 information before. I'm still not sure about
21 connecting which reading with which expected
22 value, and no, I did not direct or ask Mr. Malone
23 to reach out to Golders.

24 Q. Thank you. Registrar,
25 you can take down that call out. I want to go

1 forward in time. Registrar, can we please go to
2 image 90.

3 So, I wanted to go back to the
4 point in which you locate or have the Golder
5 report. Let me just try and summarize my
6 understanding of your evidence. You said in
7 testimony that you located the Tradewind report,
8 and we've got that, you know, located temporally
9 about September 26, and you didn't have a
10 recollection of finding the Golder report and I
11 think, as you had explained it, you thought that
12 Ms. Cameron found in it hard copy and then shared
13 it with you. Do I have that understanding
14 correctly?

15 A. Yeah. I believe I also
16 noted that it may have come from either Michael
17 Becke or Susan Jacob. But I don't have a direct
18 recollection of how the package of the, sort of,
19 year-six performance together with Tradewind all
20 came together.

21 Q. Okay. Thank you. In any
22 event, it was located because Susan Jacob had it
23 on September 27 and she sent it to you along with
24 her cover summary. That's correct?

25 A. That's correct.

1 Q. Okay. And at some point
2 you read it. That's correct?

3 A. Read what?

4 Q. The Golder report.

5 A. It's a significant
6 report. I think it's 100 pages or something. So,
7 I believe that I've gone through -- I wouldn't
8 have read it in its entirety, no.

9 Q. Sorry, but you would have
10 read the actual report section, which is quite
11 short?

12 A. I believe I -- yeah, I
13 believe I would have reviewed it. I'm not sure if
14 I read it in detail.

15 Q. Well, by September 3
16 you're summarizing it pretty accurately, so I'm
17 going to make --

18 A. By September 3 or --

19 Q. By December 3, you're
20 certainly summarizing it accurately, so I put it
21 to you, sir, that at some time you read it with
22 more than cursory detail?

23 A. Correct, but I think I'm
24 trying to understand you're asking me about
25 September 27 and whether I had read it and I don't

1 believe I read it in detail on September 27.

2 Q. That's fair. You were
3 asked in questioning by commission counsel whether
4 you recalled a discussion with Mr. Moore about why
5 the Golder report was identified as being draft.
6 Do you remember that? She asked you that
7 question. Do you remember?

8 A. Sorry, you're asking what
9 my understanding is of why the report was left in
10 draft?

11 Q. No. I'm asking you a
12 question. Sorry. I'm putting to you, just to
13 frame this in reference to your prior testimony,
14 that commission counsel asked you whether you
15 recalled discussing with Mr. Gary Moore about why
16 the Golder report was in draft. Do you remember
17 that question being asked of you?

18 A. I recall --

19 Q. I think it was Thursday.

20 A. Yeah. Fair. I recall
21 over the last three days a lot of questions being
22 asked of me, so I don't recall each question
23 exactly.

24 Q. No, no. That's fine.
25 And if I can just take you, you said at the time

1 that you didn't recall whether you'd had a
2 discussion with Mr. Moore about why the report is
3 draft. Does that help you and is that an accurate
4 summary of the evidence you gave?

5 A. So, I mean, considering
6 I'm having a challenge recalling a lot of the
7 stuff that came through, if you're telling me
8 that's what I said two days ago, then I'll agree
9 with you. And I don't recall understanding why
10 the report was left in draft, if that's, sort of,
11 the high-level question that you're asking me.

12 Q. Okay. Well, it was about
13 a conversation with Mr. Moore, but I'll move on.
14 But once you had the Golder report and you saw it
15 was in draft, you didn't contact Golder, did you?

16 A. I did not, no.

17 Q. And you didn't ask
18 Golder, you didn't ask Dr. Uzarowski why the
19 report was marked draft and not signed, did you?

20 A. I did not, no.

21 Q. And you didn't ask
22 Dr. Uzarowski or anyone at Golder to finalize the
23 report, did you?

24 A. The 2014 report?

25 Q. Correct.

1 A. I'm not certain if staff
2 had that communication with him, but I don't
3 recall that -- I don't recall having that
4 conversation.

5 Q. Well, let me just ask
6 that. Do you have any evidence that you can put
7 forward today that someone from Hamilton contacted
8 Dr. Uzarowski and asked that he deliver a
9 finalized version of the Golder report with his
10 signature on it? Do you have --

11 A. I don't recall. No, I
12 don't recall that.

13 Q. Thank you. You can take
14 out that call out, Registrar.

15 I just want to go to it
16 briefly. Registrar, can you please go to -- I'm
17 going to go back in time here -- overview
18 document 6, page 97 and paragraph 253. I just
19 want you take you, sort of, briefly to the Golder
20 report, which is summarized. There we go. Thank
21 you.

22 So, this is an extract from
23 the Analysis and Recommendations, section 6, so
24 this is part of the report. And the report
25 identifies and repeats here the finding of

1 longitudinal top-down cracking and makes a series
2 of recommendations for the remedial work needed or
3 which Dr. Uzarowski is recommending, including
4 that sections be mill and paved and a new surface
5 mix be placed. Do you see that?

6 A. Yeah. It's in these two
7 paragraphs. Correct?

8 Q. Yes, it is.

9 A. Yeah.

10 Q. And then milling and
11 paving those sections. And then if you look at
12 the second paragraph, you've got Dr. Uzarowski's
13 recommendation that the existing cracks in the
14 surface should be routed and sealed and that
15 following the routing and sealing, it's
16 recommended that a single layer of microsurfacing
17 be applied. Do you see that?

18 A. Yes, I do.

19 Q. And you recall reading
20 those recommendations?

21 A. Not directly, but I
22 believe Susan summarized a bunch of this and that
23 became a part of that overview document or
24 whatever. That's probably the wrong phrase for
25 that sort of review document that I had.

1 Q. I think actually you
2 summarized it more accurately in your telephone
3 conversation on December 3, but okay.

4 A. I mean, so maybe let's go
5 through this. You know, in the first paragraph,
6 in 2014, the second sentence starting with based
7 on, he notes that there may be a mill and overlay
8 required for around two and a half kilometres, but
9 at this point in 2018, that's changed to a full
10 resurfacing, and I'm not sure if it's two and a
11 half lane kilometres or two and a half total
12 kilometres of work. So, fair enough. It looks
13 like things have changed a bit in the last four
14 years.

15 Q. Well, I think we're
16 talking -- those are different things, so let's
17 just stay here. I'm just trying to look at the
18 recommendations that were made to the City of
19 Hamilton in 2014, sir. Okay.

20 In your --

21 A. Sorry. I mean, the
22 recommendations was to mill and overlay about two
23 and a half K. Right?

24 Q. Yes.

25 A. I can't remember the --

1 sorry, again, I think the total length in lane
2 kilometres is -- and I've lost track and I should
3 know this, but it's 25 K or something.

4 Q. Right. So, it's about
5 seven and a half or something for the whole Red
6 Hill?

7 A. Fair.

8 Q. That is right? Okay.
9 And, just to go to it, it says after the routing
10 and sealing, that you've got the recommendation to
11 use the microsurfacing. You saw that?

12 A. Yes, correct.

13 Q. Okay. You were asked in
14 your testimony by commission counsel whether you
15 had a concern and she asked you about the
16 Tradewind report and she said, "Did you have a
17 concern that the Tradewind report said to do more
18 testing and that there had not been more testing
19 between 2014 and 2017?" and you said you didn't
20 have concern about that. Do you remember that
21 testimony?

22 A. Not directly, but, you
23 know, I believe we've had that conversation.

24 Q. Okay. So, my question to
25 you is: But here you have the opinion of a

1 pavement consultant that the pavement on an
2 important asset for the City of Hamilton has
3 deteriorated and required remediation. Does it
4 concern you that there are recommendations to
5 implement remedial work and that's not
6 implemented?

7 A. So, I'm unaware of what's
8 taken place, I think, in that four-year window. I
9 would rely on staff and that would be, you know,
10 Susan and Michael Becke and the folks in asset
11 management who have the, sort of, more in-depth
12 materials background to identify what's coming out
13 of these reports that needs to be -- that would
14 need to be programmed and addressed.

15 Q. Okay. So, you're relying
16 on other people as to whether something needs to
17 be implemented, but my question was slightly
18 different. Let's go forward in the evidence. So,
19 on December 3, you have -- there's audio from the
20 value for money audit meeting you have with
21 Ms. MacNeil.

22 Registrar, let's go forward in
23 the chronology, can we, please, to OD 9A,
24 beginning image 182. Yes, so the bottom of the
25 page at paragraph 428, it references the

1 recording. Thank you. And then, Registrar, we
2 can go to the next page, please.

3 So, this begins at 183
4 beginning the extract of the recording. Do you
5 remember going to this in your testimony?

6 A. Yes, correct.

7 Q. Thank you. So, can we
8 please turn up image 184. Thank you. Okay.

9 So, I had asked you whether it
10 concerned you whether none of the recommendations
11 had been implemented on the Red Hill between 2014
12 and 2017, and you said you'd rely on other people,
13 but I suggest to you, sir, that by the time you're
14 having this conversation with Ms. MacNeil, that,
15 you know, that none of those recommendations have
16 been implemented. That's correct?

17 A. It said provide further
18 followup and I do know that we have additional
19 work taking place with Golders around both the
20 study for the hot in-place, and this is December,
21 so I was aware of it in sort of early November, I
22 believe. And I'm also aware that you've got an
23 assignment for some of the other aspects.

24 Q. So, that's got that.
25 Those are different questions or different answers

1 to a different question, sir. I'm going to stick
2 with the question I've asked you, which is: By
3 December 3, you know that none of the
4 recommendations for remedial work on the Red Hill
5 had been carried out. That's true?

6 A. So, which recommendations
7 are those? The microsurfacing?

8 Q. The microsurfacing, the
9 route and seal and the mill and overlay. Those
10 are the three ones.

11 A. So, I'm not aware that
12 the route and seal hasn't taken place and, you
13 know, I think I am aware that there hasn't been
14 milling or microsurfacing at this point. Yes,
15 you're correct.

16 Q. Thank you. And let me go
17 back to my question. Does it concern you that you
18 have recommendations for remedial work on an
19 important asset that just have not been
20 implemented for three years?

21 A. So, do those
22 recommendations have a timeframe on them? Did
23 they say they need to be done immediately or were
24 they time bound or was I -- I'm trying to cast my
25 mind back to that. Did they --

1 Q. It's your asset, sir.
2 Sorry, your asset. It's City of Hamilton's asset.
3 Are you saying you don't have to take
4 recommendations unless there's a timeline on it?
5 Surely you're not suggesting that?

6 A. In general, I would
7 expect a consultant to identify if there was an
8 immediate need, a medium-term need or a long-term
9 need, and then that would get programmed into your
10 capital program or your operating programs.

11 Q. Okay. So, absent a
12 specific temporal recommendation, you're saying
13 that City of Hamilton doesn't need to concern
14 itself with when recommendations get implemented.
15 Is that what you're saying?

16 A. I would never say that.
17 That's not -- no. But in general, we would expect
18 to see, you know, kind of, a let's get on this
19 immediately, let's consider this in a medium term,
20 let's push this to a longer term program.

21 Q. Okay. Let's just go to
22 some of these statements that are made here. This
23 extract is ascribed to you, sir.

24 Registrar, can you please call
25 out that second paragraph beginning strange

1 offering we have here:

2 "The strange offering
3 that happened here is
4 that we've known about
5 this friction issue for a
6 while. Our consultants
7 recommended whether or
8 not to microsurface this
9 thing, basically, put a
10 tack coat on and up the
11 friction."

12 And then you go on and you
13 talk about the programming and you say:

14 "We hadn't had the Red
15 Hill programmed for a
16 resurfacing through any
17 of that cycle and
18 normally we program work
19 like that like ten years
20 ago. So, we would
21 say -- "

22 And you go into the details of
23 the capital budget. And then you note that in
24 year ten and 2017, you've got 15 million bucks
25 that are bumped into the Red Hill unbeknownst to

1 anyone. Do you see all of that?

2 A. I do.

3 Q. Yeah. Okay. And then --
4 does it concern you, pardon me, that Hamilton has
5 paid this premium for this perpetual pavement
6 intended to give it longevity, so it's not
7 necessary to do a full restoration on the highway,
8 and yet the highway hasn't been maintained?
9 Doesn't that concern you?

10 A. So, I think you asked me
11 a couple of things here. One, about the perpetual
12 pavement, and then, two, about the maintenance
13 program?

14 Q. Yeah, and the fact that
15 you've got this \$15 million for remediation and
16 you haven't taken steps to maintain your highway.

17 A. So, I'm going to be
18 cautious about the response to maintaining the
19 highway. I don't -- that wasn't my role. We're
20 in the capital program side. And the perpetual
21 pavement, I think from the work done with Golders,
22 identified that the bottom layers were still
23 performing as they needed to and that the surface
24 course appeared to require a resurfacing.

25 Q. But you're saying it

1 wasn't your role to concern yourself with the
2 maintenance because that was somebody else's job.
3 Do I have that right?

4 A. Correct. I mean,
5 engineering services was the capital delivery side
6 of it, not the operating and maintenance side.

7 Q. Okay. Thank you.

8 Registrar, you can take down that call out.

9 MS. CONTRACTOR: I'm sorry to
10 interrupt, Ms. Roberts. Commissioner, we've been
11 going for about an hour and a half and this is a
12 bit of an impromptu hearing schedule. I just want
13 to keep in mind we may want to take a break when
14 Ms. Roberts thinks it's appropriate and of course
15 when you think it's appropriate.

16 MS. JENNIFER ROBERTS:
17 Commissioner, I'm in your hands.

18 JUSTICE WILTON-SIEGEL: I was
19 going to suggest that we take our break at 10:30.

20 MS. JENNIFER ROBERTS: Where
21 are we now? Okay. Thank you. I'll finish this
22 line of questioning and we'll get pretty close to
23 that time, Commissioner. Thank you.

24 MS. CONTRACTOR: Thank you.
25 Okay.

1 BY MS. JENNIFER ROBERTS:

2 Q. Okay. Sorry, forgive me.

3 I'm just orienting myself. Okay. I just want to
4 go through -- not your concern.

5 Okay. So, Registrar, forgive
6 me. I'm going to ask you to move to the middle of
7 the bottom paragraph. Actually, call out the
8 whole paragraph, please.

9 Again, this section has been
10 ascribed to your voice, Mr. McGuire. I'm going
11 to -- okay. So, we've got here --

12 Registrar, can you please call
13 out the highlight and if you can please go to the
14 right side of this page.

15 So, you put this rich bottom
16 layer on, the rich bottom layer, so they did was
17 cracking, something indecipherable.

18 Can you highlight that,
19 please, Registrar. Do you see it?

20 THE REGISTRAR: Sorry, how
21 many lines down is it? I'm not seeing it.

22 MS. JENNIFER ROBERTS: Eight.
23 It's on the ninth line on the right side. There
24 you go. Thank you. And go down to, "It seems odd
25 to me." If you can go to that. Yeah. Okay.

1 BY MS. JENNIFER ROBERTS:

2 Q. So, in this conversation
3 with Ms. MacNeil you're describing the pavement,
4 so you're noting the rich bottom mix and you're
5 noting the cracking. And then you identify the
6 riding surface, which is getting top-down
7 cracking. And I think what you're getting here,
8 too, is that if you don't remediate, you'll have
9 to do a full restoration of the entire highway and
10 that would be a lot more expensive. Am I
11 understanding that correctly?

12 A. Yeah. So, from a
13 contextual perspective, this is a capture of a
14 conversation that I had. You know, I don't recall
15 it in detail and I didn't write this out, so it
16 was just, sort of, some observations and a
17 conversation.

18 So, what you're asking me here
19 is if we don't do the surface course, if we'll
20 start having issues occurring in the base? I
21 believe that's my understanding, yes.

22 Q. Okay. And I'm going to
23 suggest to you in fact that that really does
24 concern you, that if you don't maintain the asset,
25 that you may have to do a complete restoration.

1 That's your worry, isn't it?

2 A. I mean, so that's the
3 theory behind that perpetual pavement, and yes, I
4 mean, you would want to protect that, so yeah, I
5 would agree with that.

6 Q. Thank you. You can take
7 out that call out and that highlight. Thank you,
8 Registrar. Can we please go forward to image 188.
9 Registrar, can you please call out from the bottom
10 half of that page from "and Hamilton is advanced,"
11 beginning with "and Hamilton is advanced," and
12 then call out the rest of it. Thanks. Okay.

13 So, here you're recorded as
14 noting that Hamilton is advanced in terms of its
15 asphalt design, construction, and that's a lot due
16 to Gary. And then you say:

17 "And there's this
18 friction issue with that
19 facility that we haven't
20 dealt with and I don't
21 know why."

22 Do you see that?

23 A. I do.

24 Q. Okay. And the back and
25 forth with Ms. MacNeil she asks how quickly could

1 it have been dealt with, and you respond
2 microsurface it, and you note that that could have
3 been done within a year. Do you see that?

4 A. Yes, I do.

5 Q. So that was your
6 understanding, that in fact that microsurfacing
7 that was recommended in 2014 could have been done
8 within a year. That's correct?

9 A. That was my
10 understanding.

11 Q. Thank you. And then you
12 go on in the bottom to say -- ask you describe
13 microsurfacing in that paragraph:

14 "It's like a protective
15 coat. It's an emulsive
16 bonding crushed stone for
17 traction. It's like a
18 driveway sealer. You put
19 it on and it's tack coat
20 with a different granular
21 with high friction
22 characteristics."

23 Do you see that?

24 A. I do.

25 Q. So, you understood at the

1 time that microsurfacing would offer these high
2 frictional characteristics?

3 A. Yes, I believe -- yes.

4 Q. And Ms. MacNeil says:

5 "And that would have
6 bought us time."

7 And you said:

8 "Yes, absolutely."

9 That was your response, that
10 it would have bought Hamilton time?

11 A. Correct.

12 Q. Okay. And that's time
13 both on the preserved surface of the SMA asphalt
14 as well as an improved surface friction, wouldn't
15 it?

16 A. That's my understanding
17 of microsurfacing. And I'm not sure when, but I
18 believe one of the staff from asset management
19 brought some information forward. I can't
20 remember the name of the contractor, either, who
21 had a process that I think that was considered.

22 Q. Yeah. They did in 2016
23 and it just didn't get done. But the point is
24 here, going back to this discussion, that you're
25 noting, sir, that if it had been done within a

1 year of the time that recommendation would have
2 been made, that you would have had more time both
3 with improved surface condition and improved
4 friction. That's correct?

5 A. That's my understanding
6 of microsurfacing and what it would have brought
7 as an application, correct.

8 Q. Thank you. So,
9 Commissioner, I've taken us to 10:30 and if we
10 could take our morning break?

11 JUSTICE WILTON-SIEGEL: Yes,
12 that's fine. Let's take a 15-minute break and
13 we'll return at quarter to 11:00.

14 --- Recess taken at 10:31 a.m.

15 --- Upon resuming at 10:45 a.m.

16 JUSTICE WILTON-SIEGEL:
17 Ms. Roberts?

18 MS. JENNIFER ROBERTS: Thank
19 you.

20 BY MS. JENNIFER ROBERTS:

21 Q. Mr. McGuire, a couple
22 more questions. So, just a question on some
23 uncertainty on my part. As the manager of
24 geometrics, is that the department that would have
25 kept copies of the Red Hill drawings?

1 A. Pardon me?

2 Q. Sorry, you can take out
3 the call out, Registrar. Thank you.

4 A. Yeah. Sorry, you're
5 asking where the repository for all of the
6 engineering records would be?

7 Q. Yes.

8 A. Yes, that's correct.

9 Q. Okay. And so, can we
10 just go, Registrar, back to OD 9A to image 190.

11 And, Mr. McGuire, this is a
12 continuation of those notes of the conversation.
13 I just want to address one small point. Were you
14 aware that going back to 2013 and then again in
15 2015 that CIMA had requested drawings for the Red
16 Hill? Was that something that came across your
17 desk?

18 A. Sorry, where are you
19 pointing?

20 Q. I'm not. This is a
21 question, an open question, right now.

22 A. No, I'm not aware of
23 that. And, sorry, they're asking for drawings?

24 Q. Yes, they had asked for
25 drawings of the Red Hill.

1 A. Okay.

2 Q. All right. So, looking
3 at this page at the very top -- actually,
4 Registrar, can you go back to 189 first just so we
5 can see the beginning of it. Thank you.

6 So, at the bottom of 189,
7 you're talking about speed on the Red Hill and
8 some excessive speeding. And then the last
9 sentence on 189 says:

10 "People seem to be
11 travelling at a very high
12 rate of speed and posted
13 is 90, and it was
14 designed at 90, you know,
15 so what's going on?"

16 So, did you -- that designed
17 at 90, are you referring to the one turn on the
18 Red Hill that, under current TAC guidance, has a
19 design speed of 90 kilometres per hour?

20 A. No. I'm not sure. I
21 wouldn't have been referring to one specific.
22 Part of my understanding was that was the overall
23 design speed and that would be the information I
24 had.

25 Q. Okay. That's

1 interesting. Okay. Thank you. Registrar, you
2 can come out of that call out.

3 Mr. McGuire, I want to go
4 forward to the Boghosian opinion and I understand
5 your evidence is that you weren't provided a draft
6 of the opinion. I'm going to go to it nonetheless
7 because there are two questions in it I just want
8 to ask of you.

9 Registrar, it's overview
10 document 9A at image 246.

11 So, there's a draft opinion
12 December 13. I think your evidence is you didn't
13 see that but at some point you do see the draft.
14 The opinion is largely unchanged into its final
15 draft, except for a couple of things that aren't
16 relevant to the questions I want to ask you.

17 If we could please go forward,
18 Registrar, to continuation of the summary. Well,
19 let me go first and then I'll frame it.

20 At paragraph 584 the draft
21 Boghosian opinion references a call with
22 Mr. Malone on December 11, and you can see that at
23 the bottom of the page. And this is encaptured,
24 actually, in the Boghosian opinion.

25 Registrar, can you please go

1 forward to 248. Thank you. And could you just
2 call out 248 beginning with the paragraph, "SMA
3 has been known." That's about middle of the page.
4 Yeah. Thank you.

5 Okay. So, this is a
6 discussion about SMA. And then Mr. Malone is
7 quoted as saying that because of the large
8 aggregates, SMA holds much more water on the road
9 and doesn't drain away rather than conventional
10 asphalt, because the water sits in pockets between
11 the aggregates creating microponds, and he
12 speculates that that's the reason for the high
13 number of accidents.

14 Did anyone come to you and ask
15 you to go back to your subject matter experts on
16 pavement and verify whether, in fact, this was a
17 characteristic of SMA?

18 A. Sorry, this is an
19 exchange between Mr. Boghosian and Mr. Malone and
20 I don't believe I'm on it and I don't know --

21 Q. No, you're not.

22 A. Okay. So, you're asking
23 did somebody ask us to go back?

24 Q. To verify whether, in
25 fact, this was a characteristic of SMA a

1 speculated by Mr. Malone?

2 A. No, I don't -- no one
3 reached out to me, if that's what you're asking.

4 Q. And then in that
5 sentence:

6 "SMA is used in Europe so
7 then United States.

8 However, it's largely
9 experimental in Ontario
10 and Canada generally."

11 Did anyone, Mr. Malone, anyone
12 from the legal services, ask you to verify whether
13 in fact SMA was largely experimental, as is stated
14 here?

15 A. No, not to my knowledge.

16 Q. Thank you. Registrar,
17 you can take out the call out.

18 I want to go forward to one
19 last topic that I think I can address quite
20 quickly. December 14, there's a discussion in
21 which you're a participant and Ms. Auty has notes.

22 That's at OD 9A, image 254.
23 Registrar, can you also pull up 255. Oh, geez.
24 That's hard to see. Isn't it? Let's just put up
25 255 and if you can make that all a bit bigger.

1 Thank you. That helps. All right.

2 And you were taken to this by
3 commission counsel and there's a statement here
4 halfway through these notes in which it's
5 attributed to you and says:

6 "Gord - can't to anything
7 to the surface. Did
8 prelim review, tender
9 timing."

10 Do you see that? It's hard to
11 see.

12 A. I do.

13 Q. Okay. And your time on
14 Friday, you explained that that was because in
15 winter there was little you could do. Paving
16 operations were stopped and there was not much you
17 could do to the surface until warmer weather, and
18 I think you repeated that. And, you know, you've
19 identified microsurfacing as a technique that
20 can't be applied without good weather conditions,
21 and I think that -- I'm not going to have an
22 argument with you on that one.

23 Did you explore whether
24 skidabrading or blast tracking contractors worked
25 through wet weather conditions?

1 A. Sorry, yeah. I recall --
2 so, I don't believe I've had my meeting yet with
3 Golder staff. I think that's on the 18th. Is
4 that correct?

5 Q. It is.

6 A. Yeah. And at that point
7 I believe I get a bit more information on it and I
8 ask again for some sort of Ontario -- you used the
9 term references, but I guess that was Ontario
10 clients, I think, would be kind of a better --

11 Q. Okay. And we got --

12 A. -- summary.

13 Q. So, when you make the
14 statement there's nothing you can do to the
15 surface, you can't do anything to the surface, at
16 that point you're just contemplating the
17 treatments you know about, which would be
18 microsurfacing?

19 A. Sorry, are these Nicole's
20 notes?

21 Q. Yes.

22 A. Okay. So, I think we're
23 reading, you know, Nicole's summary of what I said
24 and my belief at the time was, you know, we were
25 having a conversation about the paving and what

1 may be available to us in the immediate term and
2 we were still, you know, having that conversation
3 with your team.

4 Q. Right. But my point is
5 is that when you had that conversation with
6 Ms. Auty, what you're telling me is that you
7 didn't know that there were other treatments, such
8 as blast tracking or skidabrading. Am I
9 understanding you correctly?

10 A. And I'm gapping a little
11 bit on timing, but, you know, I'm not 100 percent
12 sure when Golder sent the brochures and the other
13 documentation. I think it's within a few days.

14 Q. I think that's right.
15 But amongst the questions you don't seem to ask is
16 you don't seem to ask as to whether any of them
17 could be used in winter conditions. You don't ask
18 that question, do you?

19 A. So, where do you -- who
20 am I asking that question of?

21 Q. Dr. Uzarowski, who has
22 made the recommendation for blast tracking and
23 skidabrading.

24 A. Okay. Correct. And I
25 believe, you know, if I paraphrase this, that I

1 asked him for Ontario clients so we could ask how
2 this process worked.

3 Q. Okay. That's your
4 evidence. Okay. Thank you for your patience,
5 Mr. McGuire. Those are my questions.

6 Thank you, Commissioner.

7 JUSTICE WILTON-SIEGEL:

8 Ms. McIvor, I think, is probably next for the MTO.

9 MS. MCIVOR: Thank you,
10 Mr. Commissioner. May I proceed?

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

13 MS. MCIVOR: Okay. Thank you.

14 EXAMINATION BY MS. MCIVOR:

15 Q. Hello, Mr. McGuire.

16 A. Hello.

17 Q. We heard today a little
18 bit about the discussions between you and MTO
19 personnel, Ms. Lane and Mr. Bentley, in respect of
20 the MTO data, the MTO test results. During those
21 discussions, I take it that they informed you
22 about the purpose of the testing, why it was
23 carried out?

24 A. Sorry, back to the period
25 of the 2008 to 2014 --

1 Q. That's right.

2 A. Yeah. Correct. Yes,
3 someone -- I can't remember whether it was
4 Mr. Bentley or Ms. Lane or both.

5 Q. Okay. But you would have
6 been aware that it was carried out in the context
7 of the designated sources materials list to screen
8 the aggregate for its long-term performance. Is
9 that fair?

10 A. That's my understanding,
11 correct.

12 Q. Okay. And also during
13 the discussions, I take it that Ms. Lane and
14 Mr. Bentley discussed the actual test results with
15 you and the testing numbers. Is that correct?

16 A. So, I recall having a
17 conversation with Ms. Lane about testing. I can't
18 recall the direct conversation about the numbers,
19 but I'm sure we had it.

20 Q. Okay. Were you aware,
21 for instance, that this aggregate was ultimately
22 approved for the MTO DSM list?

23 A. Yeah. I do become aware
24 of that.

25 Q. Okay. And also that it

1 remained on that list throughout all the years of
2 the testing. Were you aware of that?

3 A. Yes, I am. I'm aware of
4 it now and I'm not sure when I got that knowledge,
5 but yes.

6 Q. Okay. Fair enough. And
7 I also take it that neither Ms. Lane nor
8 Mr. Bentley flagged any significant concerns with
9 those friction testing results themselves?

10 A. Yeah. I don't recall
11 they raised any significant red flags about what
12 they had observed. Again, it's sort of anecdotal
13 of what I recall with their conversations, but no,
14 they did not.

15 Q. Right. Okay. I think
16 we've seen in some of the communications, for
17 instance, between MTO and the City's
18 communications personnel confirmation that the
19 results were within the MTO acceptable range, that
20 they were trending slowly downwards, but that was
21 relatively consistent with normal wear and tear.
22 Do you recall having that discussion with the MTO
23 representatives?

24 A. In general, yes. As I
25 noted, they didn't bring up any significant, you

1 know, concern.

2 Q. Okay. And so, I would
3 like to move on to the extrapolation that CIMA was
4 involved in in terms of analyzing the MTO data.
5 We see in some of the communications that you're
6 copied on the very initial communications. It
7 does seem to be Mr. Soldo who was, sort of,
8 spearheading that process, but did you have input
9 into the decision to engage CIMA for that purpose?

10 A. I was aware of it. It
11 wasn't my assignment, so by your phrase "input" I
12 would say, you know, I know what's going on, but
13 no, I'm not driving or directing it.

14 Q. And so, you didn't have
15 any conversations with Mr. Soldo about performing
16 that extrapolation or the need to perform it or
17 what to do with those MTO results?

18 A. So, kind of a
19 two-phase question there. The MTO results, you
20 know, end, sort of, definitively in 2014 and the
21 CIMA results extend through, you know, an
22 algorithm or a determination of what the friction
23 values may be. So, yeah, I didn't -- sorry, I'm
24 not really answering your question, but maybe you
25 can come back at it again.

1 Q. Sure. My question was
2 whether you and Mr. Soldo discussed what to do
3 with the MTO results such that CIMA was going to
4 be requested to do the extrapolation. Were there
5 any discussions prior to engaging CIMA with
6 Mr. Soldo?

7 A. So, if I get the time
8 frames correct, we are in front of council in the
9 early February. Then we were made aware from MTO
10 mid-February. Is that correct?

11 Q. That's correct,
12 February 12.

13 A. So, I think the
14 assignment from that perspective was to determine,
15 like, what does the trend line look like and what,
16 you know, is the materials status or calculated
17 status at that time.

18 Q. Okay. Did you ever
19 consider requesting MTO's assistance in terms of
20 conducting that analysis of its own data? I'm
21 asking just because, you know, there were these
22 communications, there was some assistance back and
23 forth going on, and it doesn't seem that MTO was
24 asked about perhaps carrying out this
25 extrapolation.

1 A. Okay. And I don't have
2 any insight into that.

3 Q. Okay. And so, then, to
4 your knowledge, you wouldn't, I assume, have
5 insight into whether MTO was asked for their views
6 on the methodology of performing such an
7 extrapolation. Is that fair?

8 A. That's correct.

9 Q. Okay. And did you
10 ultimately see a copy of the findings that were
11 compiled by CIMA? It was issued at the end of
12 February, I believe.

13 A. Yeah. I believe there
14 was a late February, early March, either letter or
15 memo from CIMA.

16 Q. Okay. And were you aware
17 that CIMA ultimately recommended in-field friction
18 testing?

19 A. Yes, I believe I am aware
20 of that. I'm not 100 percent sure. I mean, I
21 think by this time we're having a conversation
22 about pre and post resurfacing friction testing,
23 so I'm not sure if it arose from CIMA or if it
24 was, you know, an internal conversation that was
25 still captured by CIMA. But yes.

1 Q. Okay. And you would have
2 been aware that MTO offered to perform follow up
3 friction testing on the Red Hill. Is that fair?

4 A. Yeah. Correct. I
5 believe in a conversation with Ms. Lane she noted
6 that MTO had one or two trailers, was potentially
7 getting another newer model or newer one and may
8 have availability. That's what I recall.

9 Q. Okay. But you didn't
10 take them up on that offer ultimately. Correct?

11 A. Ultimately, no. I don't
12 know -- I believe the testing was done by a
13 different company.

14 Q. Okay. But at this point,
15 at the end of February 2019, would it be fair to
16 say that there had been no decision to conduct
17 testing after the winter months? No one had been
18 retained at that point. That's, sort of, later on
19 in May. Is that accurate?

20 A. I think it's correct. I
21 don't think we've retained anybody to friction
22 test at that point.

23 Q. Okay. And you hadn't
24 gotten back to MTO to say definitively, no, we
25 don't need your assistance in this regard?

1 A. I don't believe we did,
2 no.

3 Q. Okay. And, Mr. McGuire,
4 I'm just going to move on to the overlay.

5 And, perhaps, Registrar, if we
6 could pull up overview document 10A at 111,
7 please. And I believe actually, Registrar, we're
8 looking for page 112. Okay. Thank you very much.

9 So, Mr. McGuire, I see here at
10 paragraph 280, this is March 1, 2019, you ask to
11 call Ms. Lane for a bit of clarity. And this is,
12 as you can see at the very top of page 112:

13 "I'm looking to overlay
14 our independent results
15 directly with the MTO
16 results. So, far, the
17 numbers appear to line
18 up, but some assumptions
19 have been made about the
20 start points."

21 Do you recall having a
22 discussion with Ms. Lane? I don't believe we
23 really passed through this piece in your testimony
24 yet.

25 A. So, I believe I did have

1 a conversation with Ms. Lane. I thought it was
2 later on in April, but maybe it was earlier.

3 Q. Okay. What do you recall
4 about a conversation with Ms. Lane in the context
5 of this overlay analysis?

6 A. I think she answered my
7 question fairly quickly. I thought we were
8 looking for the positional information here, the
9 latitude and longitude, or that was the -- I think
10 that was the discussion we were looking at.

11 Q. Okay. You mentioned
12 earlier today that at some point you learned that
13 correlating the British pendulum test friction
14 values with the grip tester values with the ASTM
15 direct values weren't necessarily able to be
16 correlated with each other. Do you recall any
17 discussion about the correlation with Ms. Lane?

18 A. Yeah. I recall having a
19 conversation with her and she's, you know, been
20 engaged with this industry for a long period of
21 time. I think I'm finding out from Golders later
22 in February that there's, you know, challenges in
23 correlating the different methodologies, so I'm
24 not sure, sorry, here if I had that conversation
25 directly with Ms. Lane or if it was something that

1 was still, sort of, arising.

2 Q. Okay. Fair enough. But
3 your evidence is that it likely happened sometime
4 later in February, but you can't pinpoint the
5 specific conversation. Did I get that right?

6 A. That's reasonable.
7 Correct.

8 Q. Okay. Registrar, if we
9 could please pull up HAM54844. Okay.

10 And so, this is the
11 communication in and around February 27,
12 February 28. Mr. McKinnon suggests that the MTO
13 results are somewhat akin to the Tradewind
14 friction results. You've told us that you were
15 just thinking about numbers, just focused on
16 numbers, and for that reason your response was:

17 "Correct, the Tradewind
18 results are quite close
19 to the MTO results."

20 And then Mr. Soldo said he
21 would concur.

22 But you've also told us that
23 you subsequently or in and around this time found
24 out that it's not an apples-to-apples comparison.
25 You've mentioned a lot that, you know, you're

1 aware that it was the UK kind of testing that
2 occurred in the Tradewind. By this time, you've
3 had conversations with MTO about the MTO results.

4 Why didn't you follow back up
5 with Mr. McKinnon or did you follow up with
6 Mr. McKinnon to let him know?

7 A. And I'm not sure that
8 I've got a direct recollection, but I do remember
9 that we were trying to understand after a few of
10 these instances about whether or not these numbers
11 did line up, so I don't think I followed up with
12 an e-mail, but I believe we did have some
13 conversations about the testing and the protocols
14 as we got further out with the Golder's study,
15 which I think comes up shortly, it indicates that
16 there isn't an easy correlation. So, I'm not sure
17 if it came up in the conversation with, you know,
18 Golder's numbers or if it was just something we
19 may have had a conversation of. It was another
20 one of the factors that continued to arise around
21 testing and evaluation.

22 Q. Right. Okay. But fair
23 to say, then, you don't have a recollection of
24 specifically ensuring this information was passed
25 on to city council to correct, if you will, the

1 initial information that was provided to them?

2 A. So, this wasn't provided
3 to city council, was it? Or it went to --

4 Q. It was provided to --
5 sorry, Registrar, if we could go to the third page
6 of this e-mail, that would be helpful.

7 So, you'll see here that it
8 was provided in response to an enquiry from
9 Councillor Merulla. And then Mr. McKinnon
10 responds to Councillor Merulla. And then the
11 following part of the chain says:

12 "Sam appears to want this
13 as part of a
14 communications strategy.
15 Can you tell me if you
16 have concerns with this?"

17 Then there's discussion about,
18 well, who said, you know, the test results were
19 consistent? Was this MTO or someone else? And
20 then ultimately there's a decision that, well, Sam
21 already used the e-mail, but in any event:

22 "Do you two -- "

23 This is directed to you and
24 Mr. Soldo:

25 " -- agree with my last

1 statement that the MTO
2 results generally agree
3 with Tradewind?"

4 And so, my question for you
5 is, and perhaps you didn't notice or recall, but
6 there was no steps taken to correct this
7 information that was passed on to Councillor
8 Merulla?

9 A. So, post resurfacing, we
10 do friction testing and we retained CIMA and we
11 supply a fairly detailed summary in, I believe
12 it's in 2020, which outlines the differential
13 methods and the ability to rely on testing
14 methodologies and the responses, but not
15 immediately we hadn't come back to this.

16 Q. Okay. Registrar, could
17 we please pull up OD 10A again and this should be
18 at page 187. Sorry, actually, it's not at 187.
19 It's at paragraph 574, I don't have the page
20 number handy, but if we could just scroll forward
21 a bit, that would be helpful. Okay. Thank you
22 very much. Perfect. Thank you, Registrar.

23 So, you'll see here at
24 paragraph 574 there is reference to this request
25 for apology that was directed to the Province of

1 Ontario. I assume that you became aware of this
2 request for apology at some point. Do you recall
3 when that was?

4 A. No, I don't.

5 Q. Okay. Would it have been
6 shortly after it was issued, which was, I believe,
7 March 20, 2019?

8 A. If you're asking my
9 involvement in either the council or mayor's
10 conversations with the MTO, I had none --

11 Q. No. I'm simply asking
12 when you became aware that this request for an
13 apology had been issued.

14 A. Probably around the time
15 that it was being issued.

16 Q. Okay. Registrar, could
17 you pull out the last main paragraph on page 219,
18 please. Yes, perfect.

19 Okay. So, here we see that
20 the basis for the request for an apology is
21 respecting the MTO's friction testing results
22 which concurred with the results of the City of
23 Hamilton report, meaning the Tradewind report,
24 during the same period of time and, in doing so,
25 in terms of not disclosing at the time, compounded

1 the betrayal to city council.

2 Do you recall seeing that
3 statement, essentially that the MTO results
4 aligned with the Tradewind results?

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

6 Q. Okay. All right. I'll
7 just take you to one last piece.

8 Registrar, I believe that this
9 is at page 187 of this overview document. Yes.
10 Thank you.

11 Okay, so at paragraph 483 here
12 we see it's now March 29, so nine days after this
13 request for an apology was issued. At MTO's
14 direction, Mr. Bentley and Ms. Lane are reaching
15 out to coordinate a meeting about MTO doing
16 friction testing for the City, and the meeting is
17 ultimately set for April 2, 2019, but doesn't go
18 forward.

19 Do you recall why the meeting
20 did not go forward?

21 A. No, I don't. In my
22 recollection, I did have a conversation with
23 Ms. Lane, but I don't -- I thought it was early
24 April, but I'm not sure what happened here.

25 Q. Okay. But by this time,

1 had you informed the MTO definitively that you
2 were not interested in their offer to friction
3 test?

4 A. I don't believe -- no, I
5 don't believe we have.

6 Q. And do you recall why
7 communications with MTO stopped around this point?

8 A. No, I don't.

9 Q. Okay. Thank you,
10 Mr. McGuire. Those are my questions.

11 JUSTICE WILTON-SIEGEL: Okay.
12 Thank you, Ms. McIvor. Then it's over to
13 Ms. Contractor on behalf of the City.

14 MS. CONTRACTOR: Thank you,
15 Mr. Commissioner.

16 EXAMINATION BY MS. CONTRACTOR:

17 Q. Good morning,
18 Mr. McGuire. I have a few questions for you
19 following the evidence you've provided over the
20 last few days. I'm going to start with the issue
21 of continuous lighting on the Red Hill.

22 Mr. Registrar, could you
23 please go to HAM702.

24 While he's pulling that up,
25 Mr. McGuire, you'll recall that commission counsel

1 asked you about a report to council that was
2 penned by yourself and Mr. Field and authorized by
3 Mr. McGuire with respect to lighting on the Red
4 Hill around September 2016? Do you recall that?

5 A. I do.

6 Q. Okay. And your evidence
7 was that prior to preparing that report to
8 council, you would have reviewed at some point at
9 least the illumination references in the 2015 CIMA
10 report. Is that correct?

11 A. That's correct.

12 Q. Okay. So, you weren't
13 actually taken to that report, so this is what
14 that report is. And if we go to image 38, this is
15 the section entitled Illumination Review. Is this
16 the section that you would have reviewed prior to
17 the September 2016 report?

18 A. I would have reviewed
19 this section and I believe there's also, kind of,
20 a summary or action section further on.

21 Q. That's right. And
22 commission counsel asked you about your
23 understanding of the limitations around continuous
24 illumination on the Red Hill, and your evidence
25 was that your understanding was that lighting had

1 been considered in the origins of the Red Hill
2 project and that it wasn't included in the overall
3 project and you were not sure if it was
4 specifically excluded or just not included, but
5 either way after the EA there was decision point
6 lighting. Do I have that right?

7 A. That's correct.

8 Q. Okay. So, you were not
9 sure if continuous illumination was prohibited by
10 the EA or just not included. Is that correct?

11 A. Correct. My
12 understanding of, sort of, the totality of the
13 review of the Red Hill included a lot of
14 stakeholder engagement, which considered a number
15 of environmental factors. Lighting was one of
16 them. Again, I wasn't involved in the project at
17 the very beginning stages, but my understanding is
18 it was considered but only decision point lighting
19 was delivered.

20 Q. Okay. Did you have an
21 understanding as to whether a new EA would be
22 required depending on whether continuous
23 illumination was prohibited or just not included?

24 A. My understanding is and
25 was at the time that the environmental assessment

1 process would require a new EA for continuous
2 lighting at this moment in time.

3 Q. Right. But did you have
4 a sense of whether that turned on if continuous
5 illumination was prohibited or just not included
6 or that it would be required regardless?

7 A. I think it was required
8 regardless.

9 Q. Okay. And,
10 Mr. Registrar, if you could please pull out the
11 second paragraph in that section.

12 So, this section of the CIMA
13 report provides a bit of a historical background
14 on the limitations of continuous illumination, and
15 you'll see that it says:

16 "It should be noted that
17 design choices that were
18 made during the design
19 phase were intimately
20 linked to approvals.
21 Reference materials note
22 that the sole reason for
23 making design choices was
24 to reduce environmental
25 impacts."

1 And then goes on to say:
2 "Because of this unique
3 area and because of the
4 costs associated with
5 building a roadway on the
6 escarpment, the City
7 identified several design
8 refinements that included
9 restricting illumination
10 to intersections and on
11 and off-ramps."

12 And was your understanding
13 regarding continuous illumination that we just
14 talked about consistent with this paragraph?

15 A. Yes.

16 Q. Did you understand this
17 paragraph to mean that the EA prohibited lighting?

18 A. No.

19 Q. Okay. Thank you,
20 Mr. Registrar. You can pull that down.

21 Mr. McGuire, the 2013 CIMA
22 report has very similar or identical language to
23 the 2015 report on the design choices around
24 continuous illumination. I'm not going to take
25 you to it in the interest of time, but do you

1 recall whether you would have reviewed the 2013
2 CIMA report or at least the portions related to
3 illumination prior to September 2016?

4 A. My recollection is I was
5 aware of it, but if I remember correctly, the 2013
6 CIMA report was a fairly limited geographic scope.
7 It wasn't the entire Red Hill. It was, I believe,
8 just the southbound or the ramps. That's what I
9 recall.

10 Q. Okay, so not sure either
11 way whether you would have looked at it?

12 A. Not -- yeah, not
13 definitely.

14 Q. Okay. Mr. Registrar,
15 could we please go to HAM58680.

16 A. Sorry, before we leave
17 this.

18 Q. Yeah.

19 A. Is there not, like, a
20 recommendations section?

21 Q. There is a table at the
22 end. Is that what you're referring to?

23 A. Yeah. I thought there
24 was a section that referred to, you know, a bit
25 more of a summary on this. I think it also

1 contained costs or something like that.

2 Q. Sure. I think that's at
3 image 57, I think. Yeah. And if you go to the
4 bottom of that, Mr. Registrar, you'll see that it
5 says install continuous illumination?

6 A. In the summary part.

7 Q. And under Comment, it
8 says:

9 "Requires sound
10 evaluation in the context
11 of the surrounding
12 network and environment,
13 an environmental
14 assessment will be
15 required."

16 Is that what you're referring
17 to?

18 A. Yeah. There's a couple
19 things here. I thought maybe in a previous page
20 or two that there was a bit more of a summary that
21 spoke directly to illumination. Am I
22 misremembering here?

23 Q. No. So, the page before
24 that, on page 56, there is a section that says
25 install continuous illumination. Is that what

1 you're referring to?

2 A. I think so, correct.

3 Q. Okay. Did you want to go
4 to that?

5 A. Sure, if you don't mind.

6 Q. Sure.

7 A. So, a couple of things
8 here and one of the things that I do, kind of,
9 recall about this report is continuous
10 illumination along the Red Hill for \$800,000 is a
11 very low number. I think that number jumps to 12
12 to 18 in the follow-up study, I think, three years
13 later, and that's million, so assuming the Red
14 Hill is half of that and you take the low number,
15 that's around \$6 million. So, that number was
16 surprising, I think.

17 This report also found it to
18 be, sort of, a higher proportion of non-daylight
19 collisions. And the other thing I do note is they
20 say in this, install continuous illumination, I
21 think the second or third sentence from the
22 bottom, it says:

23 "It doesn't appear to be
24 the most adequate
25 solution for the Red

1 Hill."

2 So, that's probably where we
3 should have referred to in the 2016 study and I
4 apologize I'm trying to stitch all this stuff
5 together.

6 Q. That's fine. I think
7 you're actually heading to a direction that I
8 wanted to talk you to.

9 So, if we can close that call
10 out, Mr. Registrar, but keep that page up and also
11 pull out HAM58680 to image 3 or the last page of
12 that. Okay. And if we pull out the last
13 paragraph, it says that:

14 "The consultant review
15 included a high-level
16 discussion related to
17 lighting. The high-level
18 review is not
19 comprehensive enough to
20 guide any staff
21 recommendations and in
22 order to fully understand
23 the benefits, risks and
24 challenges of adding
25 continuous lighting."

1 Is that what you're referring
2 to when you're reviewing the 2015 CIMA report with
3 respect to illumination?

4 A. Yeah, correct.

5 Q. Okay. And we can pull
6 that call out down and close out the CIMA report,
7 the document on the left, Mr. Registrar, and go to
8 the start of this report on page 1. Okay. Can
9 you please pull out the first two paragraphs in
10 the section entitled Council Direction. And, I'm
11 sorry, actually, can you pull out the last two
12 paragraphs under Information. Okay.

13 So, Mr. McGuire, here the
14 report, the second paragraph really, talks about
15 the original environmental assessments, which were
16 completed for the LINC and the Red Hill, which
17 included a review of lighting. And it states:

18 "It was identified that
19 through the Red Hill
20 Creek valley that
21 lighting would have a
22 detrimental environmental
23 impact and lighting
24 restrictions were
25 imposed. Decisions

1 regarding adding lighting
2 on the LINC or Red Hill
3 would require renewing
4 and updating the original
5 EA so the impacts of
6 lighting could be
7 re-examined."

8 And is the information that
9 you're providing here consistent with what we just
10 talked about, being your understanding of the
11 limitations around continuous illumination and the
12 section in the 2015 CIMA report that we looked at?

13 A. Yes, correct.

14 Q. In these paragraphs, are
15 you advising council that the EA prohibited
16 continuous illumination on the Red Hill?

17 A. So, no. I think what
18 we're trying to portray here is that -- I'm
19 cautious around, you know, the word "environmental
20 assessment." Maybe it would have been better off
21 to say, you know, project assessments. But what
22 we're trying to identify is that adding lighting
23 will require updating the environmental
24 assessments in the area and so that we can
25 understand it, because there was obviously a lot

1 of conversation around the environmental impact.

2 Q. Thank you. And,
3 Mr. Registrar, if we could now call up the Council
4 Direction section that you had up previously.
5 Okay.

6 So, this is the direction that
7 council provided to staff which led to this
8 information report, and you'll see here it
9 references the December 7, 2015 PWC committee
10 during which the 2013 CIMA report, 2015 CIMA
11 report, excuse me, that we were just looking at
12 was presented. And, at that meeting, the
13 direction was for staff to report to the committee
14 with information on the cost and process of
15 investigating an improved lighting system on the
16 Red Hill and LINC.

17 So, here, the council
18 direction is for information from staff. Is that
19 correct?

20 A. That's correct.

21 Q. And they're asking for
22 information on how much it would cost to
23 investigate improved lighting?

24 A. Correct.

25 Q. And also for information

1 on the process around investigating improved
2 lighting?

3 A. Correct.

4 Q. Did you understand
5 council to be asking for a recommendation?

6 A. No.

7 Q. If we go to the last
8 paragraph of the document, so the second page,
9 please, Mr. Registrar, starting on the last page
10 of the document, thank you, so, we looked at this
11 just before. It states that a more fulsome
12 consultant report would be needed as the
13 high-level discussion related to lighting was not
14 comprehensive enough and estimates that the study
15 would be \$100,000 approximately.

16 And, again, Ms. Lawrence spent
17 some time asking why staff did not make a
18 recommendation to proceed with the more fulsome
19 consultant report. And, again, Mr. McGuire, what
20 did you understand council's direction was here
21 for this report?

22 A. So, council, you know,
23 in, sort of, paraphrasing, was looking to
24 understand with what the, sort of, cycle time and
25 process would be to investigate continuous

1 lighting on the facility. My understanding was
2 council was not asking us for a recommendation on
3 whether it was or wasn't an item that we would
4 consider and to budget. So, that's what I took
5 from it.

6 Q. Okay. We can call that
7 down.

8 And commission counsel spent
9 some time asking you about your response to CIMA's
10 finding in the illumination report, and I just
11 want to ask you a few follow-up questions about
12 that.

13 So, first she asked if you
14 recalled becoming aware from CIMA that the former
15 EA or the EA documentation did not include any
16 preclusion of continuous illumination. And,
17 again, your evidence on this was that your
18 understanding of the Red Hill project and back to
19 the original design and design reviews was that
20 lighting was considered and you were not sure if
21 there was a separate report or part of a larger
22 design review and that the decision was made to do
23 lighting in the form that it was installed and
24 that that's what was brought forward in the
25 project. And you referred back to the evidence

1 you gave the previous day about not being sure if
2 it was prohibited or not included.

3 Ms. Lawrence asked if your
4 understanding about continuous illumination was
5 different after CIMA completed its review of the
6 historical EA documentation and, again, your
7 evidence was that you understood that there was
8 sensitivity to environmental factors and a variety
9 of other things that the EA or previous document
10 had considered, and that the CIMA report was
11 advising that whatever took place prior did not
12 prohibit lighting in the valley.

13 And, again, as we've
14 previously discussed, your understanding was that
15 the EA -- you weren't sure whether the EA
16 prohibited or was not included in the EA. Either
17 way, your understanding was that a new
18 environmental assessment would be required going
19 forward. Is that right?

20 A. That's correct.

21 Q. Okay. And so, was the
22 information that CIMA was providing in its draft
23 illumination report that the EA did not prohibit
24 continuous illumination, was that inconsistent
25 with your initial understanding?

1 A. No. Again, you know,
2 we're probably mixing up the project studies
3 because I know there was a lot of them in what
4 ended up in the final Red Hill Valley EA, but no,
5 I understood that lighting had been considered as
6 a variety of other things had been considered
7 through the project, and then, you know, certain
8 aspects were delivered. But yeah, probably just
9 paraphrasing there, but that's what I understood.

10 Q. Thank you. And
11 commission counsel then asked you about a meeting
12 that you had with Mr. McKinnon on June 11, 2018
13 after receiving a draft or after a progress
14 meeting with CIMA on the illumination project, and
15 the calendar invite for that meeting was LINC/Red
16 Hill Lighting. Commission counsel suggested that
17 at that meeting you provided Mr. McKinnon an
18 update because the EA historical review actually
19 did represent a change from what the City had
20 previously conveyed in past reports about the EA.

21 Now, she didn't identify which
22 report she was referring to or take you to any of
23 them, so I just want to make sure your evidence on
24 this point is clear. And so, forgive me if I'm
25 repeating myself, but did you understand that the

1 2015 CIMA reports stated that the continuous
2 illumination was prohibited?

3 A. No. That wasn't my
4 understanding. Again, you know, my understanding
5 of the lighting was considered not executed and
6 would require, you know, follow-up studies and
7 assessments.

8 Q. Okay. And as we
9 discussed earlier, your understanding of the
10 September 2016 report to council also did not
11 state that continuous illumination was prohibited?

12 A. Yeah, correct.

13 Q. Okay. Thank you. We're
14 going to move on now to the fall of 2018 period.

15 Mr. Registrar, if you could
16 please go to CIM16870. Okay.

17 This is Mr. Malone's e-mail to
18 you on September 4 replying to your e-mail from
19 August 30, during which you sent him the friction
20 testing results that you found.

21 Could we pull out the first
22 paragraph, please, Mr. Registrar. Okay.

23 So, Mr. Malone says:

24 "Gord, this appears to be
25 the test results from

1 and he had unfortunately, he says, they failed to
2 quantify, et cetera, et cetera, so it looks like
3 to me like he's received them and done some
4 processing with them.

5 Q. And received them prior
6 to the two safety reports in 2015. Correct?

7 A. Yeah, correct.

8 Q. Okay. We can call that
9 down or close that call out, Mr. Registrar. Okay.

10 And you'll recall,
11 Mr. McGuire, that in your initial e-mail to
12 Mr. Malone on August 30 to which this e-mail is in
13 response to you stated:

14 "This is a study of the
15 Red Hill prior to
16 opening."

17 And your evidence was that it
18 doesn't look like you reviewed the e-mail in its
19 entirety and you didn't note that there were
20 friction testing results from 2013. Is that
21 correct?

22 A. That's correct.

23 Q. And it looks like
24 Mr. Malone missed that as well. And Ms. Roberts,
25 in her examination, asked you whether when you

1 received this e-mail from Mr. Malone and you
2 understood that there was uncertainty about the
3 threshold and what the data meant, why didn't you
4 direct Mr. Malone to go back to Tradewind to go
5 back to the consultant who did these numbers?

6 And, as of September 4, were
7 you aware of the Tradewind report?

8 A. No. And, sorry, back to
9 the exchange with Brian, it appears that I did it,
10 you know, 6:00 or 7:00 at night and when I sent it
11 out, so I don't appear to have read it and I
12 flipped him some information and, you know, when
13 he responded back, no, I did not --

14 Q. And at this point --
15 thank you. At this point, were you aware of a
16 company called Tradewind and them doing friction
17 testing in 2013 at this point?

18 A. No, not to my -- no, not
19 to my knowledge.

20 Q. Thank you. And,
21 Mr. Registrar, could you please go to GOL2981,
22 please, and to image 8.

23 Mr. McGuire, this is the draft
24 Golder report -- sorry, image 8 and 9. Thank you.
25 No, excuse me. I think I have my references

1 replace or materially alter the surface of the Red
2 Hill, of the entire surface of the Red Hill? Is
3 that fair?

4 A. I'm just rereading this.

5 Q. Sure. We can call out on
6 the second page the paragraph starting with, "In
7 order to," if that would be useful and the other
8 paragraphs as well, that whole section. Thank
9 you.

10 A. And applying
11 microsurface. So, Susan picks up on the polished
12 stone value in the surface course mix, which I'm
13 reading this to apply to the two and a half
14 kilometres where they're suggesting a mill and
15 overlay.

16 Q. Right.

17 A. And then there appears to
18 be a recommendation for a single layer of
19 microsurfacing.

20 Q. Right. And so, my
21 question is: When you reviewed this report, so I
22 know initially Ms. Jacob provided you with a
23 summary and that's what you put in your briefing
24 memo, but when you ultimately reviewed this
25 report, did you understand that the recommendation

1 here essentially would lead to either replacing or
2 materially altering the surface of the Red Hill?
3 Is that fair?

4 A. Yeah, correct.

5 Q. Okay. Commission counsel
6 asked whether you considered implementing Golder's
7 recommendation once you learned and reviewed the
8 report as an interim measure prior to resurfacing,
9 and your evidence was that the Tradewind report
10 conclusion was to do further investigation and
11 possible remedial measures and that the
12 resurfacing was a significant remedial activity.

13 What did you mean by
14 significant there?

15 A. Well, so in context, I
16 mean, in looking at a we've got a four-year old
17 report here I think at this time, I'm not -- I
18 think this is still late September. I'm not
19 certain of the activities that have taken place.
20 I know that Tradewind has identified further
21 testing and potential remedial action.

22 So, by remediating the entire
23 surface of the facility, that's a significant
24 activity. I mean, it's the most -- it's the
25 largest activity that can take place, with the

1 exception of if we had a conversation with Golders
2 about getting down into the base. So, it's a
3 significant, I'll use the term "intervention" or
4 "activity."

5 Q. Okay. And would applying
6 Golder's recommendation here, which, again, you
7 know, was to replace or materially alter the
8 surface of the Red Hill prior to the resurfacing
9 as an interim measure, be economically or
10 logistically feasible?

11 A. Yeah. And I don't know
12 if I have the economics, but from a logistics
13 perspective, I think by the time I learn about
14 this we're into the October/November timeframe.
15 My recollection of the record is that in exchange
16 with Golders, it's identified that, you know, we
17 need good weather. Good generally refers to some
18 minimum temperature threshold so that these
19 activities can take place on the facility. So,
20 yeah, I don't think from a logistical perspective,
21 given where we were in time, that looking at some
22 of these was feasible.

23 Q. Okay. Thank you. And,
24 Mr. Registrar, can you please go to HAM1073.

25 So, this document that the

1 Registrar is going to pull up, Mr. McGuire, is the
2 proposal from Golder from 2017, which you learn
3 about sometime in November 2018.

4 And if we could please pull
5 out the first paragraph of that on the first page.

6 You'll see here in the project
7 description it says:

8 "As part of this
9 assignment, Golder will
10 also provide
11 recommendations for
12 methods to improve the
13 skid resistance if such
14 improvement is required
15 and the project proposal
16 details are scope of work
17 for this assignment."

18 And what did you take from
19 reviewing this proposal?

20 MS. JENNIFER ROBERTS: Sorry,
21 may I just intercede at this point. This document
22 is the one that's signed, but there is an exchange
23 of drafts that updates this paragraph and isn't
24 reflected in the signed version.

25 MS. CONTRACTOR: So, I

1 understand that, but I believe the version that
2 Mr. McGuire looks at is this version.

3 MS. JENNIFER ROBERTS: Okay.
4 Forgive me. Thank you.

5 THE WITNESS: So, first, maybe
6 I can provide a little clarity on the versioning.
7 I don't think I've ever -- I mean, to my
8 knowledge, I haven't seen the other version or I
9 hadn't seen it. This, sort of, the genesis of
10 seeing this proposal, was in response to the
11 freedom of information request, and so I read it
12 and obviously I'm alive to the questions around
13 material properties on the Red Hill and I see that
14 Golders has another assignment and in that
15 assignment they will determine skid resistance
16 methodologies if such improvement is required.
17 So, yes, correct.

18 BY MS. CONTRACTOR:

19 Q. And what did that tell
20 you about, at least based on this proposal, about
21 whether Golder had concerns about the skid
22 resistance or had formed any conclusions about the
23 need for improvements to the skid resistance on
24 the Red Hill?

25 A. So, what I'm reading from

1 this is that they haven't -- I mean, they're going
2 to determine if there is a skid resistance concern
3 or issue and, if such a determination is made,
4 then they'll provide recommendations.

5 Q. Okay. Perhaps if we can
6 keep that page up, Mr. Registrar, and go to
7 HAM62030.

8 So, you'll recognize this,
9 Mr. McGuire. It's the document that you prepared
10 trying to keep track of all the various things
11 that were going on at the time.

12 And if we go to image 9 and
13 pull out lines 130 to 136.

14 So, here you say:

15 "Recently and because of
16 the FOI activity, we have
17 uncovered a 2017
18 assignment to Golder
19 Associates that was to
20 determine investigating
21 the skid resistance of
22 the existing pavement
23 surface of the Red Hill
24 and provide
25 recommendations to

1 improve the skid
2 resistance if such
3 improvement is required.
4 This statement seems at
5 odds with the statement
6 made by Golders in 2014
7 that there was relatively
8 low friction and that the
9 City should address it
10 through a microsurfacing
11 program."

12 What inconsistency were you
13 referring to here?

14 A. So, I mean, we just
15 reviewed, I guess, the opening part of the
16 proposal. And the proposal says if there's an
17 issue, we will find a solution for it, but the
18 2014 report indicates that there's a relatively
19 low friction number and we should do something.
20 You know, I'm paraphrasing that report.

21 So, I guess I'm not sure if
22 something has happened in the interim between 2014
23 and 2017 and it feels inconsistent between the two
24 reports.

25 Q. Thank you. And if we

1 could, please, Mr. Registrar, go to OD 9A,
2 image 299 and also HAM54182. Okay.

3 So, we moved forward a little
4 bit. Commission counsel took you through the back
5 and forth with Dr. Uzarowski, you know, following
6 your meeting with him in December of 2018. You'll
7 see at paragraph 694 you send him an e-mail on
8 January 13.

9 And if we could go to the next
10 page, please, and pull out the entire top excerpt
11 of the e-mail.

12 So, I'm not going to take you
13 through the full chain because we spent some time
14 on that, but you note here in your response below
15 in point 3, you indicate that the concern about
16 skid potential on the Red Hill is still valid and
17 the City should consider how to address this.
18 However, in the draft report on the bottom of
19 page 2, you wrote:

20 "As discussed with the
21 City, if there is a
22 concern with the
23 frictional
24 characteristics of the
25 SMA surface course on the

1 Red Hill, can you please
2 provide clarity on these
3 statements?"

4 And if we can go to that
5 section, which is in the other document,
6 Mr. Registrar, that you pulled up, at page 2. So,
7 you go under Analysis and Interpretation right at
8 the bottom of that, "As discussed with the City."
9 Right at the bottom of that section, you'll see,
10 "As discussed with the City." Right. Thank you.

11 Okay. So, first, you see the
12 proposal from 2017 which says if there is a
13 concern with skid resistance, we'll make
14 recommendations. Now, you get a draft copy of the
15 report and it says, again:

16 "As discussed with the
17 City, if there is a
18 concern with frictional
19 characteristics of the
20 SMA surface course on the
21 Red Hill, an immediate
22 and effective solution
23 would be to carry out
24 shot blasting and
25 skidabrading."

1 And, as we saw in your e-mail
2 moments ago, you're asking for clarity from
3 Dr. Uzarowski to reconcile those statements. Is
4 that correct?

5 A. Yeah, that's correct.
6 And I believe -- this is in December now?

7 Q. Yeah.

8 A. December 17?

9 Q. So, this is a draft you
10 get in December 17. You exchange an e-mail with
11 him, he responds, and then you send another
12 response on January 13, which is what we were just
13 looking at.

14 A. Okay. So, again, for
15 clarity, is this the report that he brings to our
16 meeting? I think it was on December 18.

17 Q. That's right.

18 A. Okay. Yeah, correct.
19 Yeah. Again, I mean, in the meeting, and I'm not
20 sure if we're jumping around a bit here, but he
21 identified that there was concerns with the
22 friction, but in the report he's saying if there
23 is a concern, and so I'm looking for a definitive
24 go-forward statement here.

25 Q. Right. And if we go to

1 GOL6612, so this is the final version that you
2 receive from Golder. And if we go to image 3, the
3 section underneath the table, pull that out,
4 please, so based on your request for clarification
5 in that January 13 e-mail, Golder makes edits to
6 the report and this is the revised version. And
7 it says:

8 "As was brought to the
9 City's attention a number
10 of times previously, an
11 immediate effective
12 treatment to address a
13 concern with frictional
14 characteristics of the
15 SMA surface would be to
16 carry out shot blasting
17 and skidabrading."

18 And did you get the clarity
19 you were looking for in the final version of the
20 report?

21 A. Maybe we can close this
22 call out for a second. And so, this, I would
23 characterize that as a recommendation, but if you
24 go back a page, that appears to be captured in a
25 section called Analysis and Interpretation. So,

1 I'm not sure what to do with this because it's not
2 a conclusion or a recommendation. It appears to
3 be an analysis and an interpretation.

4 And let me just express a
5 little bit of frustration here in that there was a
6 lengthy exchange with Golders trying to put
7 frameworks and goal posts around some of their
8 measurements. I ended up with, you know, some
9 results, but if we go to the next page, I get a
10 table from TAC that represents a skid number, but
11 I don't know how that correlates to any of the
12 numbers that are being presented to me. I do
13 learn that the grip number, skid number and
14 British pendulum values don't correlate. So yes,
15 I got this report, and no, it didn't provide me
16 any further insight into what, if any, concerns
17 were being brought forward.

18 Q. And what would you have
19 expected Golder to do if they had concerns about
20 the skid potential on the Red Hill?

21 A. I think really what I'm
22 looking for in going through and I think, you
23 know, continuous with CIMA, we continue with a few
24 other groups, is yes, we're getting measurements
25 and yes, we're aware of the fact that there's a

1 concern, but no, we don't have -- I don't have a
2 framework to fit it into. And if there was a
3 framework by which this material wasn't performing
4 as referenced with this approved standard or this
5 approved guide or something, then that's what I
6 would expect. And I'm not seeing it here. And
7 apologies, it's been a little while since I've
8 been through this, but there was a lot going on in
9 this report. You know, if I look at that one
10 comment about measured texture depth, it says it's
11 generally considered good. I asked for frameworks
12 around that, but it doesn't seem to be easy to put
13 your arms around it.

14 Q. Thank you.

15 A. Apologies.

16 Q. No, that's fine. And if
17 we can go to OD 9A, image 188 and 189.

18 Ms. Roberts took you to some
19 of the excerpts from the recording of your
20 discussion with Ms. MacNeil and Ms. Cameron, and
21 on page 88 you make some comments about saying
22 microsurfacing could have been done in a year, and
23 she asked you a couple of questions about that.

24 You'll see at the top of 189
25 you go on to say:

1 "Microsurfacing could
2 arguably be throwing away
3 money, but it would
4 increase the frictional
5 characteristics of this
6 asset."

7 Why did you think that it
8 could arguably be throwing away money?

9 A. Again, I'm not certain
10 when I'm aware, but I know that we've had a
11 contractor come in with a proposal and one of the
12 things that I don't know is the durability of
13 microsurfacing and whether it would have
14 withstood, you know, the truck traffic or, you
15 know, significant volumes on the Red Hill. So, I
16 wasn't aware of the application of it on that sort
17 of facility and whether or not it would persist.

18 Q. Okay. And we can close
19 that call out, Mr. Registrar.

20 And I want to ask you,
21 Mr. McGuire, just a few general questions about
22 your role in engineering services and the
23 department generally compared to traffic and
24 Mr. Soldo's role.

25 Generally speaking, is it fair

1 to say that traffic dealt with the road safety
2 side of things and engineering dealt with the
3 durability of the roadway?

4 A. Yeah, that's correct.

5 Q. Okay. And your
6 background, Mr. McGuire, is in geomatics.
7 Correct?

8 A. Correct.

9 Q. You don't have a
10 background in traffic engineering safety?

11 A. Correct.

12 Q. By October 2018, and
13 specifically after Mr. McKinnon and Mr. Soldo were
14 aware of the Tradewind report, what was your
15 understanding of Mr. Soldo's role in assessing the
16 Tradewind report and roadway safety?

17 A. So, my understanding was
18 that we were running, sort of, parallel streams in
19 that he was working with CIMA on the roadside
20 safety audit, which would provide a lot of insight
21 or a lot of inputs into the resurfacing of the
22 capital project, but he would lead and did lead
23 any and all of the conversations around, you know,
24 the countermeasures, immediate countermeasures,
25 and anything else that was required to address the

1 facility from an operations perspective.

2 Q. And when you say
3 "operational perspective," what do you mean
4 specifically?

5 A. Daily operations as
6 opposed to, sort of, program capital.

7 Q. Understood. Thank you,
8 Mr. McGuire. Those are my questions.

9 Thank you, Mr. Commissioner.

10 JUSTICE WILTON-SIEGEL: Okay.
11 Thank you, Ms. Lawrence. Do you have any
12 follow-up questions?

13 MS. LAWRENCE: I do. And I
14 would seek, Commissioner, to have a brief
15 indulgence to take five minutes before I proceed
16 with them. I think it might be useful to have
17 that time just to narrow the questions to make
18 this as efficient as possible.

19 JUSTICE WILTON-SIEGEL: Okay.
20 Why don't we do that. Let's take a five-minute
21 break. We'll come back at ten past 12:00.

22 --- Recess taken at 12:05 p.m.

23 --- Upon resuming at 12:11 p.m.

24 JUSTICE WILTON-SIEGEL:

25 Ms. Lawrence?

1 MS. LAWRENCE: Commissioner, I
2 have no questions in reply.

3 JUSTICE WILTON-SIEGEL: Okay.
4 Well, in that event, Mr. McGuire, thank you very
5 much for attending the inquiry. I'm sure you'll
6 be pleased to know that you're now excused.

7 THE WITNESS: Thank you, and I
8 am pleased to know that. Thank you.

9 JUSTICE WILTON-SIEGEL: Thank
10 you. Have a good day.

11 THE WITNESS: Yeah. Take
12 care.

13 JUSTICE WILTON-SIEGEL: And
14 the rest of us will stand adjourned until 9:30
15 tomorrow morning. Thank you. Have a good
16 afternoon.

17 --- Whereupon the proceedings adjourned at
18 12:12 p.m. until Tuesday, October 25, 2022 at
19 9:30 a.m.

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