

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS  
HEARD BEFORE THE HONOURABLE  
HERMAN J. WILTON-SIEGEL  
held via Arbitration Place Virtual  
on Tuesday, October 25, 2022 at 9:31 a.m.

VOLUME 75

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1 Arbitration Place Virtual

2 --- Upon resuming on Tuesday, October 25, 2022

3 at 9:31 a.m.

4 MS. LAWRENCE: Good morning,  
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good  
7 morning.

8 MS. LAWRENCE: We have our  
9 next witness, Sam Merulla, and he has not yet been  
10 sworn.

11 AFFIRMED: COUNCILLOR SAM MERULLA

12 EXAMINATION BY MS. LAWRENCE:

13 Q. Good morning,  
14 Mr. Merulla. I'm going to ask you a series of  
15 questions this morning and just so that you are  
16 aware, we're starting at 9:30 and we run until  
17 about 11:00 and then we take a break.

18 I'm going to start with some  
19 questions about your profession background,  
20 education and employment history. I understand  
21 you were the outgoing city councillor for Ward 4.  
22 Is that right?

23 A. That's correct, after  
24 22 years, and I'm retiring effective November 15.  
25 I become an OMERS pensioner.

1 Q. And you did not seek  
2 re-election in the last election?

3 A. Absolutely not.

4 Q. Okay. So, you have a  
5 transitionary period?

6 A. Just until November 15.  
7 That's my first day of an OMERS pensioner.

8 Q. Congratulations.

9 A. Thank you. I'm very  
10 proud of it.

11 Q. I understand you were  
12 first elected in 2000. Is that right?

13 A. That's correct.

14 Q. And you held the role of  
15 Ward 4 councillor continuously since then for a  
16 total of six terms?

17 A. That is correct.

18 Q. What was your employment  
19 before becoming a city councillor?

20 A. I was working with  
21 Dominic Agostino, who was the MPP for Hamilton  
22 East, and also Path Employment Services. Do I  
23 need to -- do you want me to expand upon that?

24 Q. Sure.

25 A. Oh, okay. So, Path

1 Employment Services is an agency that was funded  
2 by HRDC and we matched people with disabilities to  
3 employment and with Dominic Agostino, he was  
4 elected in 1995. At that time, I was an  
5 addictions councillor and when he was elected he  
6 offered me the position as his executive assistant  
7 out of Queen's Park and I remained with him until  
8 elected to council in 2000.

9 Prior to that, I was with the  
10 addiction assessment services of Brant, which was  
11 an agency of the Brant County Health Unit, and  
12 part of that, the Hamilton-Wentworth district  
13 catholic school board where I was an educational  
14 assistant and I was educated at Brock University  
15 as well as the Addiction Research Foundation of  
16 addiction studies out of the University of Toronto  
17 back in the early 1990s.

18 Q. Thank you very much.

19 A. You're very welcome.

20 Q. So, it's fair to say that  
21 you don't have any educational or professional  
22 experience in road construction or road  
23 maintenance. Is that right?

24 A. Absolutely not.

25 Q. But over the years, and

1 we'll get into this, you have gained some  
2 knowledge about these issues through your role as  
3 councillor. Is that fair?

4 A. Yes. That would be fair  
5 to say.

6 Q. So, I'm going to ask you  
7 a few questions about Ward 4 now. I understand  
8 that that ward is geographically located in east  
9 Hamilton?

10 A. That is correct.

11 Q. And the Red Hill Valley  
12 Parkway runs on the east border of Ward 4. Is  
13 that correct?

14 A. That's also correct, yes.

15 Q. As a councillor, did you  
16 have a particular interest in matters relating to  
17 the Red Hill as a result of it being adjacent to  
18 your ward?

19 A. Absolutely. It's been an  
20 issue in this city since the 1950s politically, so  
21 when I was first seeking office in 2000 it was a  
22 ballot issue and a very divisive one at that.  
23 Frankly, I was the first elected councillor in the  
24 history of the city to support the road and get  
25 elected, so I do have that understanding.



1 Q. Okay. And for the  
2 benefit of the inquiry, can you explain in  
3 particular what interests you had in the Red Hill?

4 A. What interests I had  
5 personally, why I supported it?

6 Q. Yes, and in particular  
7 how you learned about the Red Hill and what, sort  
8 of, focus you had coming out of your constituency.

9 A. Are we talking when I was  
10 first elected or are we talking about the issues  
11 pertaining to this inquiry?

12 Q. I was talking generally  
13 about your issues in the Red Hill and how you  
14 followed them during the course of your time --

15 A. Okay. So, my first  
16 election, as I mentioned, it was a very divisive  
17 issue and I was elected and the first one to  
18 support the road. At that time, we then went into  
19 another election in 2003 where it was the main  
20 issue of that particular election. It was a wedge  
21 issue and I was faced with Lynda Lukasik, who was  
22 an environmentalist, but was able to handily  
23 defeat her at that time even though the road was a  
24 very divisive issue.

25 So, subsequently, in 2007, the

1 road was completed and the City has experienced a  
2 significant renaissance as a significant result of  
3 that road. Take that road away, we're not  
4 experiencing the growth and all of this  
5 renaissance that we're experiencing today.

6 Q. Thank you. So, starting  
7 from 2007 onwards, what interests did your  
8 constituency want you to focus on as it related to  
9 the Red Hill?

10 A. I'm glad you mentioned  
11 that because there was a distinct difference  
12 between the global benefits of the road and the  
13 local benefits and some of the local negative  
14 aspects. So, the local benefits were related to  
15 the north-south traffic, for instance, on  
16 Kenilworth, where it used to be a highway average  
17 speed about 80 kilometres. Now we've been able to  
18 deduce that down to the first main artery in the  
19 City of Hamilton to go down to 40 kilometres an  
20 hour, eliminate one of the lanes to reduce the  
21 capacity of that road so that we can now have a  
22 hockey game on there any given time of the day.  
23 That's actually a true story. So, that benefit of  
24 lowering that traffic volume. Also, there's  
25 environmental benefits because don't have cars

1 idling constantly going north and south on Ottawa,  
2 Parkdale and Kenilworth.

3 So, those are the two benefits  
4 of the immediate community or the neighbourhoods,  
5 but as I mentioned earlier the benefits regarding  
6 the economic development and all of the associated  
7 benefits far outweigh that globally.

8 Q. Thank you. The  
9 Commissioner is taking notes as part of this  
10 and --

11 A. I'm speaking too fast?

12 Q. A little bit, so maybe if  
13 you could just slow down. I know you're  
14 passionate about the road and its economic  
15 development for Hamilton, but, yeah, if we could  
16 both try to slow down because I know I speak  
17 quickly, too.

18 A. Granted. My apologies.

19 Q. I'm going to ask you  
20 about your role on the public works committee. I  
21 understand you were a member of the public works  
22 committee in your last term, the one that just  
23 ended?

24 A. That's correct.

25 Q. And you were a member of

1 that committee for every term back to 2004. Is  
2 that right?

3 A. That's correct, and even  
4 beyond because prior to 2004 we had committee of  
5 the whole, so in essence I was part of the public  
6 works process of voting, but we didn't have the  
7 standing committee structure at that time.

8 Q. From 2004 when that  
9 structure changed and you went into the standing  
10 committee structure, you were a member of public  
11 works and this may have changed over time but I'll  
12 ask a general question. How does a councillor get  
13 on a standing committee, like public works?

14 A. That's a good question.  
15 And it's really inside baseball, but normally how  
16 it would work and now that we're -- actually, the  
17 day after the election the activity right now  
18 would be to have the mayor, then seek out  
19 interests from all of the elected officials and  
20 provide them through the clerk's office all of the  
21 committees available. They would make their  
22 selection. They would cross-reference it between  
23 the veterans and the rookies and so on and then  
24 deduce it down to filling all the vacancies  
25 accordingly based on their selected interests.

1 Q. Thank you. So, it's by  
2 volunteer?

3 A. Oh, absolutely.

4 Q. Councillors volunteer to  
5 particular committees?

6 A. That's correct.

7 Q. Why did you volunteer for  
8 the public works committee initially and then  
9 continually throughout your term?

10 A. Throughout my -- my first  
11 involvement in politics started 40 years ago in  
12 the north end of Hamilton helping Dominic Agostino  
13 who at that time was a trustee, so I've always  
14 recognized that the front line aspect of politics  
15 is really the most important, that being the  
16 roads, the sidewalks, the sewers, the parks.  
17 Public works, as it's stated, basically speaks for  
18 itself, works for the public. Hence, you want to  
19 be able to be involved in influencing and  
20 directing that accordingly to benefit the public.

21 Q. Thank you. The inquiry  
22 has prepared documents which we call overview  
23 documents, and those are narrative forms of  
24 documents that the inquiry has received from third  
25 parties and we're going to go to some of those. I

1 don't know how your setup is, so we're going to  
2 put it up and then we'll just do a little  
3 technology test.

4 A. No problem.

5 Q. Registrar, can you bring  
6 up OD 3, page 9 and 10.

7 So, just stopping here,  
8 Mr. Merulla, can you see both of the pages that  
9 are up and also the screens where the Commissioner  
10 and you are?

11 A. Yes.

12 Q. Okay. Good, I just  
13 wanted to make sure. So, I'm going to ask you  
14 some questions now and then again in a little  
15 while about the parkway implementation committee,  
16 which was started in 2002. And you'll see at the  
17 bottom of page 9, paragraph 14, it was in 2002  
18 that there was a staff report that recommended the  
19 establishment of what was then called the  
20 expressway implementation committee consisting of  
21 four to six members of council to work with staff  
22 on the implementation of the detailed design,  
23 construction and monitoring phase of the Red Hill.

24 And we'll come to this in a  
25 moment, but you were one of the council members on

1 the expressway implementation committee, which  
2 then became the parkway implementation committee.

3 Is that right?

4 A. That's correct.

5 Q. I'm going to put this  
6 down, the document, Registrar.

7 A. I may have actually been.  
8 I think Chad and I initiated that particular  
9 committee as well, so we're quite proud of that.

10 Q. How did you become a  
11 member of that committee? Was it also volunteer  
12 based, like the public works committee?

13 A. No, that one we focused  
14 in on the affected wards. So, throughout the  
15 construction process, as you can imagine, there  
16 would be complaints coming into the offices, so we  
17 recognized in advance and we're proactive in  
18 establishing this committee so that as problems  
19 became relevant, then we would have at least a  
20 process to address those problems legislatively,  
21 so that committee was so developed.

22 Q. Okay. So, was that a  
23 repository for dealing with public complaints --

24 A. That's exactly, yes --

25 Q. -- that city councillors

1 in those --

2 A. Absolutely.

3 --- (SIMULTANEOUS DIALOGUE)

4 Q. -- deal with the public?

5 A. The public would come as  
6 delegations and others with their concerns. We  
7 would direct that information to staff, who then  
8 would assess the presiding problems accordingly  
9 and come back with either solutions or  
10 non-recommended items.

11 Q. Thank you. So, I'll come  
12 back to that as we go through. I just wanted to  
13 have a quick overview.

14 A. Sure.

15 Q. Turning to the Red Hill,  
16 you have already said you were involved before  
17 construction and then, of course, you were still a  
18 councillor after construction. I have some  
19 general questions for you about complaints and  
20 concerns that you heard from the public about the  
21 Red Hill.

22 The inquiry has received  
23 documents that indicate that as of the first year  
24 of the opening of the Red Hill, members of council  
25 and staff started to receive anecdotal complaints



1 and concerns about the Red Hill.

2 Thinking back to a time before  
3 2019 and recognizing I'm now covering, you know,  
4 sort of, 2018 all the way back to the beginning of  
5 2008, so a ten-year period, was it common for you  
6 or your constituency staff to receive complaints  
7 and concerns about the Red Hill?

8 A. What kind of concerns? I  
9 know we had a lot of concerns surrounding the  
10 grass cutting because there were a lot of weeds.  
11 That's one concern that comes to mind. And the  
12 J-brakes with the trucks. That was another one.  
13 It was a noise aspect. And the volume and the  
14 noise of the vehicles as well, that was a  
15 significant complaint. So, we literally funded  
16 windows after we assessed the neighbourhoods. We  
17 determined through noise studies which homes were  
18 impacted and we set up a subsidy program  
19 specifically to deal with those noise complaints.

20 Q. Okay. So, there was  
21 noise complaints from neighbouring homes --

22 A. Yes, neighbouring homes.  
23 That's correct.

24 Q. -- near the parkway.  
25 Were there other kinds of complaints about the

1 driving experience on the Red Hill?

2 A. No. Actually, we won  
3 awards. The funny thing is we were winning safety  
4 awards back in those days. I can recall even  
5 celebrating it at council, so no, absolutely not.  
6 Nothing became relevant until many years later.

7 Q. Okay. So, we'll  
8 certainly go through over time and maybe as we  
9 come to particular periods where you were involved  
10 with issues with the Red Hill, I invite you to  
11 think back at that time about whether you were  
12 receiving complaints, because I think that there  
13 might have been periods of time that will refresh  
14 your memory.

15 A. Emily, sorry, commission  
16 counsel, with respect to that process, the  
17 complaints would come in formally, so everything  
18 is documented. So, if I'm mistaken, it would be  
19 documented because those complaints were  
20 documented accordingly.

21 Q. When you say they were  
22 documented, do you mean by your constituency  
23 staff?

24 A. At the committee, so  
25 every complaint we received, if I received a

1 complaint via e-mail, I would flip that over to  
2 Chris Murray who then would flip it over to the  
3 clerk and it would become part of the process of  
4 dealing with the public through that committee  
5 structure. So, everything is documented and you  
6 should have that before you.

7 Q. Thank you. I don't think  
8 that's exactly correct in terms of the way the  
9 documentation came from the clerks, but in any  
10 event as we go through we can talk about  
11 particular periods of time and what you recall  
12 about receiving any anecdotal complaints and what  
13 you did with them.

14 A. Sure.

15 Q. As a resident of  
16 Hamilton, did you personally drive the Red Hill?

17 A. I did and I do actually.  
18 I did and I do.

19 Q. So, I'm going to ask you  
20 some questions generally about receiving  
21 complaints from members of the public and in  
22 particular those in your ward, so this is more,  
23 sort of, your general practice as a councillor and  
24 it may have changed over time and you can let us  
25 know if that's the case.

1 A. Okay.

2 Q. Did you and your staff  
3 have a processing for logging and recording  
4 complaints that came in?

5 A. Yes, so how we would log  
6 it is I would receive the complaint. Most of the  
7 time I would be in the middle of the something, so  
8 I would just follow up accordingly, CC my staff,  
9 who would then follow up with staff and we would  
10 get the returned answer and then deal with the  
11 questions that was presented to us. Other times,  
12 there were times when I would respond directly,  
13 more so years ago than recent years.

14 Q. And when you say you  
15 would copy your staff who would follow up with  
16 staff, you mean follow up with appropriate city  
17 staff on what the nature of the complaint was?

18 A. Exactly.

19 Q. Did you or your staff  
20 have specific staff within the City that you  
21 viewed as, sort of, the go to people to assist in  
22 particular types of complaints?

23 A. Yes, yes, of course. We  
24 would have people assigned to us. Right? There's  
25 a process for all councillors to follow who you

1 should be contacting and they gave us names  
2 accordingly.

3 Q. Okay. And were those  
4 generally manager-level names or director-level  
5 names?

6 A. Council deals -- should  
7 only be dealing with managers. They shouldn't be  
8 dealing with the front line.

9 Q. Okay. When you deferred  
10 to your staff or delegated to your staff to  
11 respond, recognizing you have a lot on your plate,  
12 did your staff have a system for tracking  
13 outstanding questions or responses?

14 A. Yes, my assistant, Diane  
15 Piedimonte, was my assistant from day one and she  
16 would have her own system of following up on any,  
17 she would file an appending file per say, and she  
18 would follow up accordingly.

19 Q. Okay. And would she also  
20 do that for you if you took the time to respond  
21 personally?

22 A. Oh, I always CC'd her on  
23 everything, yes. I would always CC'd her on  
24 everything, I believe, for the most part, unless I  
25 was insulting somebody.

1 Q. And how quickly would you  
2 expect city staff to respond to complaints from  
3 members of the public?

4 A. I'm sorry, can you repeat  
5 that question?

6 Q. How quickly would you  
7 expect city staff to respond to complaints from  
8 members of the public?

9 A. Oh, we've had this  
10 discussion with management for years and the  
11 normal protocol for the average complaint to come  
12 in, our expectation was a turnaround of an answer,  
13 not a solution per se, but of an acknowledgement  
14 within 24 hours.

15 Q. Thank you. And then the  
16 actual proposal of a solution, if there was one,  
17 that might take a longer period of time?

18 A. Depending on the  
19 complexity of the issue.

20 Q. Okay. Turning now to  
21 media coverage, the inquiry --

22 A. Oh.

23 Q. The inquiry knows that  
24 there was a fair bit of Red Hill-related coverage  
25 in the Spectator and other media over the years.

1 Would you agree that you had that impression as  
2 well?

3 A. I'm sorry, can you repeat  
4 that again?

5 Q. Sure. The inquiry has  
6 received documents that suggest there was a fair  
7 bit of Red Hill-related coverage in the Spectator  
8 and other media over the years. And would you  
9 agree that was your impression as well?

10 A. I would say it's an  
11 understatement, yes.

12 Q. So, you would say an  
13 understatement, that being that there was --

14 A. Yeah, exactly. Yes.  
15 Even more than what you're stating, yes.

16 Q. Okay. As a general  
17 question, how often did you read the Spectator in  
18 the timeframe between 2008 and 2018?

19 A. Oh, daily. It's part of  
20 our job.

21 Q. And where you had been  
22 interviewed and quoted, would you pay specific  
23 attention to those articles?

24 A. At the beginning of my  
25 career, but not so much towards the latter part,

1 so I can't recall.

2 Q. Okay. More broadly, did  
3 you receive briefings or updates from your staff  
4 about media coverage in a, sort of, daily or  
5 weekly way?

6 A. No. I was responsible  
7 for all that. I was on top of that quite  
8 regularly, yes.

9 Q. Okay. Leaving aside  
10 complaints that may have come into your office and  
11 thinking more about the media, were you aware from  
12 reading the Spectator and other media that the  
13 public had complaints or concerns about the Red  
14 Hill?

15 A. During which period of  
16 time?

17 Q. 2008 to 2018.

18 A. That's a big period of  
19 time.

20 Q. It sure is.

21 A. Towards the latter part I  
22 would say I remember, only because the two girls  
23 who were tragically killed went to school with my  
24 daughters, so that, I vividly recall. But prior  
25 to that, I don't recall. And after that, I don't



1 recall. I just recall that period of time  
2 vividly.

3 Q. Okay. I have some  
4 questions now about working with staff as a  
5 councillor. So, there is a distinction between  
6 the governance of a municipality and the  
7 operational aspects of a municipality. As  
8 councillor, how do you see this distinction and  
9 your role within it?

10 A. The difference between  
11 creating policy and implementing it? It's a world  
12 of difference. So, we as governors are there to  
13 bring forward policy measures in order for staff  
14 to implement to serve the public, and it's a  
15 continual -- it's a cyclical process where  
16 complaints come in, motions are established and we  
17 basically improve the process of governance  
18 accordingly. So, it's a constant, it's a  
19 movement, it's a constant movement of data going  
20 in and motions coming out with implementation of  
21 policy at the staff level. I think that sums it  
22 up.

23 Q. Okay. And so, I think  
24 you said it's a cyclical process. Do you mean  
25 there's a dialogue, not actually a conversation,

1 but there's a dialogue back and forth between  
2 councillors and staff?

3 A. No, between the -- so,  
4 the public -- so, the information coming in is  
5 always from the public. The public is in control.  
6 A lot of people don't realize that, but they are.  
7 All those complaints coming in, it's particularly  
8 those that increase, large volumes. And for me,  
9 if you look back historically, the hundreds, not  
10 thousands of motions I brought forward, were all  
11 based upon listening to people. So, a complaint  
12 comes in, you think, wow, I wonder how I can  
13 improve this. You speak to staff, you draft a  
14 motion, you present the motion openly, it's voted  
15 on, it either passes or it fails. Most of mine  
16 passed, FYI. And then you move forward  
17 accordingly.

18 Q. As a councillor, how  
19 informed did you expect to be about the  
20 operational aspects of the City's functioning?  
21 And this is really just, sort of, a general  
22 question. How informed would you expect to be?

23 A. That's an open-ended  
24 question because we're a \$3 billion entity. I'm  
25 not quite sure. I think we have over 300 services

1 that we provide. I don't know how to answer that  
2 because which one of those 300 services do you  
3 want me to understand?

4 Q. I was asking in a much  
5 more general way at, sort of, a more philosophical  
6 level, if you will. What did you view your role  
7 and how much information you would want in respect  
8 of the day-to-day functioning of the City?

9 A. As long as there isn't  
10 bad news, then things should be moving  
11 accordingly. So, unless we have to act and  
12 formulate a plan of action to improve a presenting  
13 problem, then too much information can become a  
14 burden. So, I would say only as needed and that  
15 means if it's not broken, don't tell us about it.

16 Q. Okay, so only as needed.  
17 I presume sometimes it's good to get good news  
18 about things that are working, especially if  
19 they're based on councillor initiatives or public  
20 initiatives as well. Right?

21 A. That just doesn't happen.  
22 The media is too dishonest these days. True  
23 story.

24 Q. Okay. Is it fair to say  
25 that you rely on city staff as it relates to this

1 operational side of the municipality to determine  
2 what is needed, when you say, you know, as needed,  
3 that that's the information you want?

4 A. I rely on the public.  
5 Again, so it always comes down to input and then  
6 the output becoming the motion which then is  
7 policy gets implemented, so whatever the  
8 presenting problem is, the motion should be  
9 seeking a solution to it and then moving forward  
10 accordingly.

11 Q. Okay. Turning to  
12 interactions with city staff, how frequently did  
13 you interact with city staff as a councillor?

14 A. As needed. So, depending  
15 on the issue, I would communicate accordingly.

16 Q. Okay. So, did that  
17 translate into you working with staff or  
18 interacting with staff daily or weekly?

19 A. No. Well, just as  
20 needed. Like hourly, e-mail. We're not talking  
21 meeting in person. It was always digitally for  
22 the most part, particularly me because City Hall  
23 is a little bit of a cesspool, so I didn't go  
24 there unless I needed to, that meaning committees  
25 and/or council, so most of it was digital.

1 Q. Okay. And so, I take it  
2 from your answer then that you had regular  
3 interactions over e-mail with city staff. Is that  
4 right?

5 A. Of course, that's  
6 correct, always with my assistant involved.

7 Q. What sorts of issues did  
8 you find you interacted with city staff about the  
9 most?

10 A. Problems.

11 Q. Problems in what areas?  
12 And maybe we can divide it like this: Areas that  
13 would come out of public works? As you said  
14 before, you know, the, sort of, running of  
15 government --

16 A. I understand the  
17 question.

18 Q. -- potholes, sidewalks,  
19 those sorts of things?

20 A. Yeah. That's why  
21 originally those that understand the process would  
22 want to be on public works because they realized  
23 that's your bread and butter. That's where all  
24 your complaints are generated and where you can  
25 build a rapport in a brand of being a good hard

1 working councillor or lack thereof.

2 Q. And is that where you  
3 found that you interacted with staff most, on  
4 issues related to public works?

5 A. Yes.

6 Q. In respect of the Red  
7 Hill, you said earlier that you had go to staff  
8 that you, sort of, considered to be the people  
9 that you or your staff would go to within city  
10 staff to get information or solutions. In respect  
11 of the Red Hill, over the period of time from 2008  
12 when it opened to 2018, who did you view as your  
13 go to city staff members for Red Hill issues?

14 A. Chris Murray was always  
15 my go-to person.

16 Q. And Chris Murray, of  
17 course, moved into roles unrelated to the Red Hill  
18 and became quite senior within the corporation.  
19 Was there anybody else besides Mr. Murray?

20 A. No. Chris was my go-to  
21 person that I recall. And frankly his performance  
22 is what created the opportunity for him to become  
23 city manager, because he was so competent in that  
24 role.

25 Q. Okay. But as city

1 manager, you can expect that he has a lot on his  
2 plate. Were there other people who were closer to  
3 the Red Hill and its day-to-day functioning that  
4 you would also go to?

5 A. No. I don't remember.  
6 Chris was always my go-to guy, even when he was  
7 city manager because we had a great relationship  
8 and being able to communicate with one another  
9 openly. And he knew the history, so I would only  
10 feel comfortable talking to him about it.

11 Q. Mr. Murray wasn't an  
12 engineer. What about for technical questions in  
13 respect of the Red Hill?

14 A. Oh, Gary Moore. Yes. I  
15 see. Yeah. We would always end up in Gary  
16 Moore's hands, but I would always go to Chris and  
17 then from there we would end up in Gary's hands.  
18 Yes.

19 Q. Okay. Thank you.

20 A. That's an important  
21 distinction. I'm glad you mentioned that.

22 Q. What about staff in the  
23 traffic department? Do you remember interacting  
24 with any of them?

25 A. Tyler comes to mind.

1 Q. Tyler Renaud?

2 A. No, Shepherd.

3 Q. Tyler Shepherd?

4 A. Yeah.

5 Q. The inquiry has heard  
6 from David Ferguson, Stephen Cooper, Martin White.  
7 Were those individuals within the traffic  
8 department that you interacted with?

9 A. Yes. I can remember  
10 those names, of course.

11 Q. Okay. Turning now to  
12 some general questions about how you prepare for  
13 committee and council meetings, recognizing it may  
14 have changed over your 22 years on council, what  
15 are your general practices when preparing for  
16 committee or council?

17 A. Well, it starts generally  
18 days, sometimes weeks before, depending if you  
19 have a motion that's on the agenda or a report  
20 that you plan on generating a motion, so on  
21 average what would occur is the agendas would be  
22 released on the Friday. I would review them over  
23 the weekend. I would highlight those areas in  
24 which I wanted to become active in. And then I  
25 would communicate with the appropriate staff and



1 colleagues accordingly to garner support from  
2 council and to seek advice from staff on the  
3 wording of motions and I would be presenting the  
4 motions accordingly.

5 Q. And you said you would  
6 review the agenda over the weekend. Did the  
7 agenda also include the underlying materials that  
8 were going to be referenced in the committee or  
9 council meetings?

10 A. What do you mean by that?

11 Q. Staff reports,  
12 information reports, those sorts of --

13 A. Yeah. Of course, yes.

14 Q. And did you read all of  
15 those or did you pick and choose to --

16 A. Always. Yeah. It would  
17 be really unrealistic to suggest anybody would  
18 read every single word in those reports, and if  
19 they tell you that, they're not telling the truth.  
20 So, the reality is because there are issues that  
21 are more pertinent to your area, so if you have an  
22 agricultural report on the agenda, you have to be  
23 highlighting that to review. You're going to be  
24 highlighting those issues that are pertinent to  
25 your areas, whether that be traffic, air

1 pollution, whether that be noise issues. Again,  
2 the demographics of your ward determine the  
3 interests and focus based on the concerns of your  
4 residents to generate action in order to solve  
5 those problems, which I did quite well over the  
6 last 22 years.

7 Q. In respect of the Red  
8 Hill, was that a topic that you would -- were  
9 there materials that you would review?

10 A. Of course.

11 Q. We know that there's  
12 different types of staff reports, information  
13 reports, recommendation reports, even information  
14 updates that come not necessarily in an agenda.  
15 Did you have a practice of reviewing or deciding  
16 whether to review materials based on what kind of  
17 report it was?

18 A. Again, I don't recall. I  
19 would be guessing.

20 Q. So, you wouldn't say that  
21 you always read a recommendation report but you  
22 never read a staff report --

23 A. Well, information  
24 reports -- okay, so on the pecking order, action  
25 reports are number one priority. Information

1 reports, not so much. So, and we've had this  
2 dialogue with staff over the years because  
3 sometimes staff can be political, sometimes, and  
4 they want to advance something and they put it in  
5 an information report. So, we early on tackled  
6 this issue.

7                               So, when I was first elected,  
8 it was a bureaucratic fiefdom, so we tackled that  
9 issue early on and because of that we ended up  
10 hiring people like Chris Murray, who didn't play  
11 those games. So, whatever was in the report that  
12 was an action item, we knew was essential for us  
13 to know. The information reports were important,  
14 however, weren't action items and were generally  
15 just an analysis of a process that either has been  
16 engaged or is coming to an end.

17                               Q. In your experience, was  
18 it common for reports prepared by consultants to  
19 be appended to staff reports that summarized those  
20 consultant reports?

21                               A. No, and they shouldn't  
22 be.

23                               Q. Why do you say that?

24                               A. Because without insulting  
25 anybody -- well, I guess I would be insulting

1 myself -- we don't have the skill set to interpret  
2 engineering reports. We have a lot people  
3 masquerading as experts out there today more so  
4 than before. The last thing you need is a  
5 councillor masquerading as an expert on data that  
6 they can't decipher, so it would be very dangerous  
7 for us to have that data around for us to  
8 interpret and then put out as conspiracy theories  
9 on social media, particularly if you're an elected  
10 official. So, I more so today than ever before  
11 reject any consultant report that an individual  
12 doesn't understand or can't decipher on his own  
13 what it means.

14 Q. Okay. So, of course the  
15 City does retain consultants and consultants do  
16 provide important information to staff, so how do  
17 you expect to become informed about what a  
18 consultant who is an expert in a particular area  
19 recommends on a particular topic?

20 A. Okay. So, over the years  
21 I've been proud to try to minimize how many  
22 consultants are hired and a number of us sought  
23 consultants as a means of staff to become lazy and  
24 become project managers as opposed to doing the  
25 work themselves. Having said that, there is a

1 cost savings to consultants, so there's a balance  
2 that needs to be struck.

3 Now, in hiring those experts,  
4 we're not suggesting that go and hire these  
5 experts and whatever they say, we're going to  
6 rubber stamp. In fact, those experts are a tool  
7 for our staff who we've hired and trust. So, the  
8 relationship between council and staff is  
9 established by us having that person in our  
10 employ. Now, if that person receives this data  
11 from a so-called expert consultant and determines  
12 that some of that data may not be relevant or may  
13 be foolish, then I, because I was part of a  
14 corporation that hired that individual, would  
15 trust my staff member over a potentially  
16 fly-by-night consultant or any consultant for that  
17 matter.

18 Q. Okay. So, maybe I'll  
19 just understand what I'm taking from that last  
20 answer, that you would look to staff to provide  
21 you with information from the consultant to the  
22 extent they thought that information was relevant?

23 A. So, it's there for a tool  
24 for staff to decipher, to have a peer audit. They  
25 talk amongst themselves and then they determine

1 what the conclusion is and present it to us in  
2 order for us in layman's terms to review.

3 Q. Okay. Thank you.

4 A. You're welcome.

5 Q. I will come back to  
6 consultant reports as we go through. I'm going to  
7 jump a little bit back in time. I know I've been  
8 asking a number of different, sort of, areas of  
9 questions, back to the parkway's implementation  
10 committee and to where we were when we pulled up  
11 that document.

12 Registrar, can you bring up  
13 OD 3, page 9 and 10, please.

14 So, Mr. Merulla, you spoke a  
15 little about the political expediency in having  
16 this parkway committee that would be a place where  
17 the public could come and express their concerns  
18 to all the councils who were adjacent to the Red  
19 Hill, and that certainly, I imagine, that that was  
20 a very useful forum during the construction of the  
21 Red Hill. Is that right? To be able to take in  
22 complaints during construction?

23 A. Yeah. It was helpful,  
24 particularly with the noise issues, yes.

25 Q. Okay. How did the role

1 of the parkway implementation committee differ  
2 from the role of public works or council?

3 A. So, the implementation  
4 committee answered to the public works committee,  
5 who then answered to council. So, it was a  
6 subcommittee of public works.

7 Q. Okay. And did the  
8 parkway implementation committee have the same  
9 level of decision making power as the public works  
10 committee around issues relating to the Red Hill?

11 A. Sorry, can you repeat  
12 that question?

13 Q. Sure. Did the parkway  
14 implementation committee have the same level of  
15 decision making power as the public works  
16 committee around issues related to the Red Hill?

17 A. No. So, again, so how it  
18 worked is that public works brought forward a  
19 motion to create the subcommittee, who now answers  
20 to public works. So, whatever we voted on at that  
21 subcommittee would then have to go to public works  
22 to be ratified and then to committee of the whole  
23 to be ratified and then be ratified finally at  
24 council.

25 Q. I see. And so, the

1 parkway implementation committee, they might bring  
2 matters to the public works committee, but it was  
3 really the public works committee making the  
4 decisions and ratified by council. Have I got  
5 that right?

6 A. Yeah. It was a  
7 subcommittee of public works, so it was just doing  
8 all the grunt stuff that the public works  
9 committee didn't want to get bogged down with, so  
10 we created a subcommittee to deal with it, but  
11 with only members of council who had  
12 geographically impacted areas. Right?

13 Q. Right. Thank you. The  
14 role that parkway implementation committee, it  
15 continued as a subcommittee until 2014?

16 A. Yeah.

17 Q. How did the role of that  
18 committee change in your mind between after  
19 construction and up to 2014?

20 A. Again, the noise. It was  
21 all about the window. So, we took all the  
22 complaints after it was built, so the construction  
23 noise obviously we received complaints about it,  
24 but they recognized it was a short-term problem.  
25 Their long-term concern, the two real issues were



1 always particulate matter or air pollution and  
2 noise related to the vehicular traffic and  
3 J-brakes and so on. So, I recall the primary  
4 focus was always about noise, so the windows  
5 became a very hot topic among a lot of neighbours  
6 because some people were eligible and others  
7 weren't. So, then they started coming to  
8 committee to try to tweak the eligibility criteria  
9 because everybody wanted new windows.

10 So, that's my recollection of  
11 that drama surrounding the post-highway build.  
12 That was the dominating theme and narrative for  
13 years. It was what am I going to get out of this  
14 personally as a resident because that highway was  
15 built because it's impacting my quality of life?

16 Q. Do you recall if the  
17 parkway implementation committee received  
18 complaints from members of the public, both those  
19 who lived in your wards but not necessarily, about  
20 the darkness of the Red Hill?

21 A. I can't recall where. I  
22 do recall the complaints surrounding that issue,  
23 but the source of where I saw those complaints, I  
24 don't recall.

25 Q. Okay. What about

1 complaints that the Red Hill was slippery when  
2 wet?

3 A. That all occurred post  
4 2010. So, again, in and around the time where  
5 those two young ladies passed away, because they  
6 were schoolmates of my daughters, I can vividly  
7 recall that an e-mail came in particularly one  
8 evening where I defended staff's position based on  
9 the trust I had of them in diminishing her  
10 concerns based on my confidence of the data I  
11 received.

12 Q. We will come to that  
13 e-mail. I think I know the one you're talking  
14 about. More generally, around the time that those  
15 two young women died in 2015, did you have an  
16 impression that there was anecdotal concern that  
17 the Red Hill was slippery when wet?

18 A. In and around that time  
19 period, yes, because that's what led to all the  
20 conspiracy theories. Right? So, with the advent  
21 of -- this whole road, when the road was built,  
22 social media wasn't part of the equation  
23 politically, so things changed drastically in  
24 democracy because of the digital age we're living  
25 in. So, as the road progressed to where we are

1 today, the political landscape has changed in  
2 addressing a lot of these issues and we're dealing  
3 with so much fiction today that's become so much  
4 of a distraction that we can't deal with the facts  
5 that are presented before us, and so that's why  
6 we're here today. Can you repeat the question  
7 again?

8 Q. My question was more  
9 generally around the time that the two young women  
10 died in 2015. Did you have an impression that  
11 there was anecdotal concern that the Red Hill was  
12 slippery when wet? And I think you answered  
13 around that time, yes, you did have that  
14 concern --

15 A. Not an impression. I had  
16 heard. I had heard about it, the theories that  
17 there was an issue. But it wasn't an impression I  
18 had; it was an impression being imposed on me.

19 Q. Okay. I'm going to go  
20 back to the pre-digital age slightly, back to  
21 2007, so we'll start there for a moment.

22 Registrar, could you back to  
23 page 36 of OD 3, please. Thank you.

24 So, back in 2007 -- actually,  
25 Registrar, can you bring up page 45 as well as 46,

1 please, and can you call out 91 and 92.

2                               So, Councillor Merulla, we can  
3 always for our overview documents pull out and  
4 make bigger particular paragraphs, so going  
5 forward if you feel you need a little bit larger  
6 font, just let me know. We can't get bigger than  
7 this, but we can get this big.

8                               So, back in 2007, Mr. Murray  
9 was moving from his various roles within public  
10 works into a role of director of housing. And in  
11 and around the same time, you'll see in  
12 paragraph 92, he sent an information update about  
13 the Red Hill to the mayor and to city council and  
14 you were, of course, on council at the time. And  
15 Mr. Murray provided an update on the status of the  
16 paving of the Red Hill and explained that the  
17 project, that is the actual pavement, involved  
18 perpetual pavement and particularly using stone  
19 mastic asphalt as a surface course.

20                              Do you recall knowing at the  
21 time, in 2007, the details of the surface product  
22 that was going to be used on the Red Hill?

23                              A. No.

24                              Q. You'll see at the very  
25 bottom of paragraph 92 Mr. Murray says:

1 "The surface asphalt will be  
2 stone mastic asphalt, which  
3 will improve skid resistance  
4 and lower noise generation."

5 Given what you said about the  
6 information you just received from your  
7 constituents about the noise on the Red Hill once  
8 it was constructed, would you have paid particular  
9 attention to any material that might have reduced  
10 noise generation?

11 A. Probably, but it was  
12 15 years ago, so I can't recall.

13 Q. Okay. In terms of the  
14 particular structure of pavement or the materials  
15 used in the pavement, would you view that as an  
16 operational decision for staff to make?

17 A. Yeah. It would be,  
18 again, the trust of having hired Mr. Murray in  
19 itself, to me, is a blank cheque to him to provide  
20 advice to council. So, we do question, there's no  
21 doubt about it, but when it comes to the technical  
22 merits, that's the key. And this is a technical  
23 issue that is undebatable; hence, does not belong  
24 in a political arena. Although masquerading in  
25 the City as police and as engineers and as

1 whatever, this should not be for public  
2 consumption. This is for experts to talk amongst  
3 themselves, not the masqueraders.

4 Q. You said that this hiring  
5 Mr. Murray was itself a blank cheque for him to  
6 provide advice to council. I think --

7 A. All staff.

8 Q. I think I understood you  
9 to be saying you gave a significant amount of  
10 discretion to staff to make decisions?

11 A. Right.

12 Q. But in terms of an actual  
13 blank cheque, you would agree council actually  
14 does hold the purse strings on the budget, the  
15 budgetary issues. Staff don't actually have a  
16 blank cheque?

17 A. Maybe I shouldn't have  
18 said blank cheque because I'm giving the wrong  
19 impression. I'm not talking financial; I mean  
20 trust. It's about the fact that I trust him so  
21 much that I will give him a blank cheque signed,  
22 is my point.

23 Q. And in terms of the  
24 financial oversight, council did have oversight  
25 over the budgeting around the Red Hill. Is that

1 right?

2 A. Of course, but based on  
3 his recommendations.

4 Q. Right. Okay.

5 A. Okay.

6 Q. Registrar, could you  
7 close the call out and the document and go to  
8 HAM320, please, and can you pull out the second  
9 image as well.

10 Mr. Merulla, this is a  
11 sustainability plan report prepared for the City  
12 by Stantec, a consultant, in 2007, and it's  
13 specifically in respect of the LINC and the Red  
14 Hill projects. It's quite lengthy and it  
15 contained a maintenance plan for the Red Hill and  
16 the LINC. That was different than, sort of,  
17 regular, you know, maintenance of roads.

18 Had you seen this document in  
19 the course of being a councillor, aside from  
20 preparing for the inquiry today?

21 A. I sure did, but do I  
22 actually remember? I would have to say no. But I  
23 can assure you if it was in my agenda -- what year  
24 did we receive this?

25 Q. It was prepared in 2007.

1                   A.    Yeah, of course.  And I  
2    was present, so I would have seen it.

3                   Q.    The inquiry has received  
4    documents to indicate that the budgeting for the  
5    recommendations that are set out in this plan was  
6    ultimately -- was taken to council and not  
7    approved by council.  Do you have any recollection  
8    about that?

9                   A.    No, not at all.

10                  Q.    The sustainability plan  
11   included a recommendation to perform skid  
12   resistance on the Red Hill and the LINC every one  
13   to two years.  Would you have any recollection of  
14   this recommendation being considered by the public  
15   works committee or council in 2007?

16                  A.    No.  And I wouldn't know  
17   how many times they're going to cut the grass  
18   there either.  See, these issues don't become  
19   issues until you have another correlating issue  
20   that everybody wants to know about.  Then all of a  
21   sudden you're hearing impacts.  Everyone has a  
22   vision.  Right?  After the fact.  But the bottom  
23   line is no, absolutely not.  Do you know how many  
24   volumes and volumes and volumes of reports we've  
25   received over the last 15 years?  If I told you



1 that I remember this, you would have to question  
2 my honesty.

3 Q. I recognize that it's  
4 been a long time since you would have received  
5 this and you might not know the details. It's  
6 important for us to ask those questions.

7 A. Okay.

8 Q. Sometimes things do stick  
9 in one's mind, even --

10 A. True story. Yeah, that  
11 is true.

12 Q. Registrar, you can close  
13 this down and if you can go to OD 6, page 7 and 8,  
14 please. And could you call out paragraph 10 at  
15 the bottom of page 7 and paragraph 11. Thank you,  
16 Registrar.

17 So, Mr. Merulla, we're now in  
18 2012 and into 2013 and you'll see in  
19 paragraph 11 -- thank you, Registrar -- that on  
20 January 16, 2013, PWC, including you, passed a  
21 motion that's set out at the bottom of  
22 paragraph 11 where staff were trying to  
23 investigate upgrading the lighting on the Red Hill  
24 in the vicinity of the Mud/Stone Church Road  
25 interchanges and to address it to investigate

1 better reflective signage --

2 A. Didn't I move this? I  
3 think it was my motion, wasn't it?

4 Q. As we understand, it was  
5 Councillor Collins at the time --

6 A. Okay. I must have  
7 seconded this one. Councillor Collins is a good  
8 man.

9 Q. You'll see in  
10 paragraph 10 Councillor Collins says:

11 "I've received a number of  
12 complaints both past and  
13 present regarding the dark  
14 areas of the Red Hill where  
15 the road crosses the edge of  
16 the escarpment. Staff have  
17 consistently advised that they  
18 designed the road to highest  
19 standards. While that may be  
20 the case, I received numerous  
21 requests to improve the area,  
22 especially the lane markings."

23 Then he attached a copy of the  
24 motion, which you certainly supported. I'm not  
25 sure if you were second --

1 A. Yeah, definitely, I would  
2 have seconded that.

3 Q. So, you'll see Councillor  
4 Collins references a particular dark area where  
5 the road crosses the edge of the escarpment?

6 A. Right.

7 Q. That area was in his  
8 ward. Is that right?

9 A. It bordered Ward 9 and 5,  
10 if my memory serves me correctly.

11 Q. Okay. Not your ward?

12 A. No.

13 Q. Okay. So, he had  
14 received a number of complaints about the dark  
15 area. By late 2012, early 2013, had your office  
16 received any complaints about any dark spots or  
17 dark locations or insufficient illumination on the  
18 Red Hill that you recall?

19 A. Not on the surface, I  
20 don't recall, but I do recall the issue. So, it  
21 may have been with my discussion with Councillor  
22 Collins, former Councillor Collins, now MP, or  
23 just a debate itself. I don't recall the source  
24 of how I know that.

25 Q. Okay. So, you'll see

1 that the motion has two directions in terms of  
2 investigation: Lighting, upgrading the lighting,  
3 and better reflective signage and lane markings  
4 and other initiatives to assist motorists in the  
5 same area. And then it ends with a full costing  
6 of all options and alternatives be presented to  
7 committee for their consideration.

8                   So, just recognizing this was  
9 not your actual drafting in this motion, as a  
10 member of PWC, having passed this motion, what did  
11 you expect city staff would return to the  
12 committee with? Generally, what would it look  
13 like? What would be the package be that would  
14 come back to you?

15                   A. Can you repeat the  
16 question again?

17                   Q. Sure. As a member of  
18 public works committee, seeing this motion and  
19 having this motion be passed, what did you expect  
20 city staff were going to return to the committee  
21 with?

22                   A. With a report outlining  
23 what we're requesting. So, do you want me to  
24 itemize them? They would take exactly verbatim  
25 what we're asking and then come back accordingly

1 with options to fulfil the need.

2 Q. In a staff report?

3 A. Yeah.

4 Q. Okay.

5 A. Because there would be --  
6 anything related to a financial obligation would  
7 have to come back as a staff recommendation either  
8 in favour or against because it's an action  
9 item with a budgetary impact.

10 Q. I see. Registrar, could  
11 you close this down and go to page 48 and 49,  
12 please.

13 As a result of this motion,  
14 CIMA, a consultant, was retained to complete a  
15 safety report on the section of the Red Hill that  
16 is referenced in the motion. And in the inquiry  
17 we refer to that report that CIMA created as the  
18 2013 CIMA report.

19 Registrar, can you pull out  
20 paragraph 114 to 116, please.

21 So, in September that year, so  
22 the motion was in January, so by September, CIMA  
23 has prepared a draft report. Mr. Ferguson, that's  
24 Dave Ferguson, superintendant in traffic, not  
25 Councillor Ferguson, he forwarded a draft report

1 to Councillor Collins and he said staff are  
2 working to finalize the report to be presented to  
3 council shortly and invited Councillor Collins to  
4 sit down with Mr. Ferguson and Mr. Cooper, both  
5 from traffic, to discuss the report with you and  
6 the information we intend to bring forward in the  
7 council report, that is in the staff report.

8 Had you had experience where  
9 city staff would share a draft consultant report  
10 with you as a councillor?

11 A. On any given major  
12 item like Red Hill or let's say the stadium or  
13 let's say area, any issue that's really divisive  
14 and we create a subcommittee for speaks volumes of  
15 the sensitivity. So, as I mentioned to you, today  
16 more so than ever we used to have a time where  
17 there was one narrative per day in the City.  
18 Spectator would come out with their narrative and  
19 every other lazy media would follow and then it  
20 would just continue every day with the Spectator  
21 creating every narrative. We now have 600,000  
22 narratives. Right?

23 So, because of that, we need  
24 to create these types of committees in order to  
25 control the message because people do get very

1 concerned about misinformation and we're drowning  
2 in misinformation, so we started and we recognized  
3 this even before the extreme keyboard moronic  
4 digital age that we need to control that message.  
5 So, staff understands that type of sensitivity.  
6 They sat down with us and they would give us the  
7 heads-up in case we want to communicate with our  
8 residents about what's forthcoming. That's all  
9 that is. And we would expect that because we  
10 would need them to interpret what the data means  
11 and how we can service the public accordingly.

12 Q. Thank you. So, I  
13 appreciate your context around misinformation and  
14 the media. We can stick to my questions.

15 A. I'm sorry. I'm just  
16 trying to give you context of what we're doing.

17 Q. It's all right and I  
18 think you've provided the context around  
19 misinformation and around narratives and around  
20 the digital age, so if we can focus on the  
21 particular issues.

22 My question was: Had you had  
23 experience as a councillor where city staff would  
24 share a draft consultant report with you?

25 A. I'm sure they have, yeah,

1 because of my residents having to be informed if  
2 there was something they needed to be informed  
3 about in advance of it becoming public.

4 Q. Okay. And had you had  
5 the experience where staff would share a draft  
6 staff report with you?

7 A. I don't recall, but I'm  
8 sure that with the Red Hill Creek, anything that  
9 we have a subcommittee established like this,  
10 yes --

11 Q. There's no subcommittee  
12 established. I'm sorry to interrupt you. I don't  
13 know what you mean by subcommittee established.

14 A. The expressway committee.

15 Q. But this came from public  
16 works, the initial motion?

17 A. But we also have this  
18 subcommittee established, so he's a member of that  
19 subcommittee which gives him additional leeway  
20 with respect these types of discussions. We were  
21 appointed by public works to specifically deal  
22 with these issues on behalf of our residents, so  
23 what Chad is doing here, he's doing his job.

24 Q. I understand that. I'm  
25 not questioning whether he's doing his job. I'm



1 questioning whether you had an experience where  
2 city staff provided you with a draft staff report  
3 before they finalized it?

4 A. Probably related to the  
5 expressway because I'm a member of that  
6 committee --

7 Q. Just generally I'm asking  
8 about your general experience --

9 A. No, I don't remember.

10 Q. -- as a councillor.

11 A. I don't remember.

12 Q. Don't remember? Okay.

13 In this case, Councillor Clark is not a member of  
14 the public works committee. Did you have any  
15 concerns that Councillor Clark, who eventually  
16 gets brought into this discussion with Councillors  
17 Jackson and Collins, any concern with a non-public  
18 works committee member receiving a report that is  
19 being prepared pursuant to a PWC motion?

20 A. Okay. Again, I need to  
21 remind you that Ward 9 is an impacted area.  
22 Councillor Clark represents that area, so he would  
23 be part of the implementation committee. Hence,  
24 although he's not part public works, he should be  
25 part of that committee because by sheer geography,

1 he should be part of that committee.

2 Q. I see. And you're not  
3 brought into this --

4 A. I was. I didn't want to  
5 go. Just so, you know, as I mentioned to you  
6 before, City Hall is a cesspool, so I only  
7 attended there when I attended meetings. So, Chad  
8 would have reached out saying, hey, buddy, I'm  
9 doing this, go forward, give me a briefing and we  
10 can move forward. That's how we operated. That's  
11 how we accomplished as much as we did.

12 Q. Thank you. Your volume  
13 has dropped a little just in the last five minutes  
14 or so.

15 A. Sorry, I didn't want to  
16 breathe heavy through the mic.

17 Q. No problem. Thank you  
18 very much.

19 Registrar, could you close  
20 this call out and go to page 75 and 76, please.

21 So, this is the November 13  
22 public works committee meeting in which a staff  
23 report responding to the motion that we were just  
24 looking at was presented, and you'll see that's at  
25 192 of page 75. And so, I think I have your

1 evidence that you didn't have any concern that the  
2 underlying consultant report was not provided at  
3 the same time as the staff report. Is that right?

4 A. That's correct. I  
5 wouldn't expect that.

6 Q. Okay. The staff report  
7 said that the consultant report was available upon  
8 request. Was this the kind of issue or the kind  
9 of topic where you would actually go and dig into  
10 a consultant report?

11 A. Absolutely not.

12 Q. Okay. Registrar, could  
13 you close this and can you go to RHV668, please,  
14 and can you call out the next -- thank you.

15 So, Mr. Merulla, this is the  
16 staff report that was provided to council and  
17 you'll see it's an information report?

18 A. Mm-hmm.

19 Q. Registrar, could you  
20 bring up image 4 and 5, please.

21 So, the actual information  
22 report is only two pages, but then there are  
23 several pages of -- sorry, Registrar. Could you  
24 call up again image -- I'm sorry. I think I  
25 misspoke. Image 3 and 4 is what I meant to say.



1 just don't remember.

2 Q. That's fair. So, you  
3 think you did read the information report --

4 A. I read everything. I  
5 just don't remember everything I read. I probably  
6 remember better from then than I do yesterday, I'm  
7 at that age, but I really don't remember.

8 Q. Fair enough. My question  
9 was really about your practice and if you would  
10 focus on --

11 A. Yes.

12 Q. -- charts that are set  
13 out in information reports?

14 A. Yes, of course. During a  
15 meeting. Those meetings are very protracted,  
16 right, so we have a lot of time to read a lot of  
17 information, so everything is read. The question  
18 becomes how much of it is absorbed unless there's  
19 something really pertinent. Right?

20 Q. Fair enough. Registrar,  
21 could you go back to image 2 of this document,  
22 please. Thank you. And can you call out the  
23 third paragraph from the bottom, the report also  
24 reviewed.

25 So, recognizing, Mr. Merulla,

1 that it was really Councillor Collins who was  
2 pushing the issue of assessing the lighting on the  
3 Red Hill, the one that led to the motion --

4 A. He's a good man.

5 Q. -- the report says:

6 "The report always reviewed  
7 roadway lighting and while the  
8 report did not recommend the  
9 installation of lighting along  
10 the entire road segment, the  
11 consultant's report  
12 recommended that lighting be  
13 installed on the westbound Mud  
14 Street on-ramp."

15 Do you recall being left with  
16 the understanding, having read this information  
17 report, that there was no recommendation for  
18 illumination on the mainline of the Red Hill?

19 A. I don't remember.

20 Q. Okay. Registrar, you can  
21 close this down and could you go back to image 4  
22 and 5, please, and can you call out the second  
23 half of image 5.

24 So, Mr. Merulla, this is just  
25 one example of some of the information that's in

1 the chart that is attached to the information  
2 report. So, you'll see here there's a reference  
3 on the far left to Mud Street interchange and then  
4 two different ramps and then it says in the next  
5 column over:

6 "65 percent of all ramp  
7 collisions, high proportion  
8 and frequency of SMB,  
9 non-daylight and wet surface."

10 And then it has some  
11 recommendations, some costing, and it says ST,  
12 which stands for short-term. Do you recall  
13 getting a particular brief about what CIMA had  
14 found in relation to what the cause was for  
15 different types of collisions on the roadway?

16 A. In what year?

17 Q. 2013.

18 A. No. I don't remember.

19 No.

20 Q. You don't remember either  
21 way?

22 A. I don't. 2013, we're  
23 talking ten years ago. I don't. Do you know how  
24 many issues we have to deal with on a day-to-day  
25 basis?

1 Q. I do. Registrar, you can  
2 close this down and if you can go to OD 7, page 3  
3 and 4, please.

4 So, just for context,  
5 Mr. Merulla, it is in May of 2015 where those two  
6 young women die on the parkway, just for context  
7 because we're going to be talking about the period  
8 of time, so really just to orient you. As a  
9 result of that November 2013 report that we were  
10 just looking at, there was a number of  
11 recommendations set out in those charts that were  
12 approved by public works and then approved by  
13 council and that staff started to do. So, again,  
14 I'm just providing you some context about 2013 and  
15 2014.

16 In May of 2015, staff  
17 presented a follow-up report about the work they  
18 had done on those countermeasures, again, just to  
19 provide you with a bit of context here.

20 You'll see -- Registrar, could  
21 you bring up 3 and 4. Pardon me, paragraphs 3 and  
22 4. I actually just meant to bring up 4. You can  
23 close that down.

24 So, I know, Mr. Merulla, that  
25 you said you recall the deaths of those two young



1 women quite well given your children's connections  
2 to them, sharing a same school. Just for context,  
3 just as a reminder, as the Spectator suggests in  
4 this article, these two young women, both 19, were  
5 killed when their car crossed the grassy median,  
6 colliding with a minivan.

7 Do you recall this was a  
8 crossover collision?

9 A. I do, yes.

10 Q. Registrar, you can close  
11 that down.

12 Do you recall the news  
13 coverage relating to this collision and  
14 fatalities?

15 A. I do.

16 Q. Just going back to how  
17 and when complaints would flow into your  
18 constituency office, did you find that events like  
19 accidents or rain storms or floods or those sorts  
20 of things would increase the number of complaints  
21 that you would receive about the Red Hill?

22 A. We're now in 2015, so  
23 this is when all of the conspiracy narratives were  
24 developed. So, there was a lot of misinformation  
25 out there at this time. This is when things

1 really started heating up and I think committee  
2 became defensive only because of all the  
3 misinformation. So, yeah, I remember this  
4 vividly.

5 Q. Okay. You said  
6 conspiracy narratives a few times. I'm going to  
7 ask you to explain that because it's not obvious  
8 what you mean by that.

9 A. Just that somehow council  
10 is hiding stuff, you know, this whole secrecy  
11 nonsense. It's laughable. It's actually  
12 concerning, because the vast majority of people  
13 are believing the nonsense and the vast majority  
14 of time it's just legal staff providing council a  
15 recommendation to keep it confidential to not  
16 expose the City to liability, and suddenly they  
17 have generated this conspiracy narrative that  
18 council suppressed all this information. It's so  
19 laughable, it's actually laughable to a point  
20 where it's concerning and it's diminishing the  
21 quality of our democratic process.

22 Q. In 2015, do you recall  
23 there being any concerns that council or PWC was  
24 somehow hiding stuff or not explaining stuff?

25 A. No. It was all on social

1 media. So, there was --

2 Q. In 2015 you recall that?

3 A. Yeah, I do. Because at  
4 the meeting if you recall when I went up to speak  
5 to Gary Moore, I asked him if any of the nonsense  
6 was true on social media. So, 2015 really is the  
7 defining moment of when literally 300 people  
8 started dictating some of the agenda at City Hall  
9 and the media started using them as an assignment  
10 editor and it really, really contributed to  
11 spending tens of millions of dollars on this  
12 inquiry, which is going to be a waste of money and  
13 it's going to be proven accordingly.

14 Q. Thank you for that  
15 commentary. I will take you to the discussions  
16 you had with Mr. Moore, which happened a little  
17 bit later in 2015. In May of 2015 when these two  
18 young women died, you'll see that you are  
19 referenced as quoted in a Spectator article.

20 Registrar, could you go to  
21 that at page 11 and 12, please. Registrar, can  
22 you call out paragraph 33, please.

23 So, you'll see this is an  
24 article about the death of these two young women  
25 and you're quoted as saying in the fourth

1 paragraph down:

2 "I'm not saying the parkway is  
3 unsafe, but there have been  
4 complaints and there have been  
5 other traffic fatalities. We  
6 can look at things like  
7 lighting and guard rails and  
8 get a report back from the  
9 expert. That's the  
10 responsible thing to do."

11 You'll agree, not that you can  
12 remember right now, but that's --

13 A. No, I actually do  
14 remember.

15 Q. You do remember making  
16 that quote?

17 A. Yeah. That era, I told  
18 you, is vivid to me as a result of how close it  
19 was to my family. Yeah, I do recall that.

20 Q. And so, at the time your  
21 position was it was important to look into  
22 lighting and guide rails and other things and get  
23 a report in terms of the safety of the Red Hill.  
24 Is that right?

25 A. No. In order to dismiss

1 all the conspiracy nonsense through the keyboard  
2 morons. It was out control. The allegations were  
3 out of this world and just to suggest some of the  
4 stuff being made needed to be addressed, so we  
5 needed to report again. We started governing to  
6 try to manage misinformation and that's the world  
7 we're living at right now at City Hall. People  
8 voted yesterday based on the belief that city  
9 council suppressed information. It never  
10 happened. Legal gave us a recommendation that we  
11 supported because of liability, and that's what  
12 corporations do, but yet everybody in the City  
13 voted yesterday believing that. We're in a  
14 crisis, folks.

15 Q. So, sir, I just want to  
16 make sure that your evidence is very clear. In  
17 2015, after these women died, it was your view  
18 that the road was safe and that you needed a  
19 report to confirm that. Is that right?

20 A. We needed a report to  
21 confirm it was safe and to dismiss the nonsense.  
22 That's correct.

23 Q. And, in particular, to  
24 dismiss the complaints from members of the public  
25 about darkness or slipperiness or other --

1                   A.    No, no, no, not  
2    complaints, to dismiss the allegations that we  
3    somehow are part of this conspiracy to make the  
4    road unsafe and not communicating it accordingly.

5                   Q.    Okay.  And so, sitting as  
6    an elected official, you of course wanted to  
7    ensure that if there were public complaints about  
8    darkness or slipperiness on the Red Hill, that  
9    those were being considered by people with  
10   expertise.  Is that right?

11                  A.    That's true.  We wanted  
12   the truth to prevail.  That's exactly what we're  
13   looking for, the truth.

14                  Q.    Did you personally have  
15   any concerns about the safety of the road when you  
16   made that quote?

17                  A.    Of course not.  I drove  
18   the road, so no, I personally didn't.

19                  Q.    And the deaths of those  
20   two young women didn't cause you to question the  
21   safety of the roadway?

22                  A.    See, we were being --  
23   there was allegations being made that somehow --

24                  Q.    Sir, it's actually a yes  
25   or no question.

1                   A.    What was the question  
2    again?

3                   Q.    The question was:  Did  
4    the deaths of those two young ladies cause you to  
5    question the safety of the roadway?

6                   A.    No.  It was a question of  
7    the intelligence of people making the allegations  
8    against us and their motives.

9                   Q.    So, your answer to that  
10   question is no?

11                  A.    No.

12                  Q.    Okay.  Registrar, you can  
13   close that down and can you go to page 13 and 14,  
14   please.  Thank you.  And can you call out 39,  
15   please.

16                  So, at the May 21, 2015  
17   meeting, you brought a motion that is titled  
18   "Additional Safety Measures on the Red Hill Valley  
19   Parkway and the LINC," and this is the substance  
20   of the motion.  Do you recall the preparation for  
21   and then making this motion?

22                  A.    Yeah.  I spoke with  
23   staff.  I would have spoken with Chad.  I would  
24   have spoken with other committee members and we  
25   needed to get ahead of this issue because, again,

1 of the growing narratives of misinformation. So,  
2 we needed to ensure that because, especially the  
3 mainstream media and their demise, using a lot of  
4 the misinformation as actual fact, we needed to  
5 clean house and say, listen, you folks are  
6 misrepresenting the facts, this public is being  
7 lied to, and we as a council had to stand up and  
8 take all this action in order not only protect the  
9 public from the media and their nonsense and their  
10 misinformation, but also to protect the perception  
11 of this road being unsafe.

12 And, as I've said a thousand  
13 times during my tenure, the feeling of being  
14 unsafe is as dangerous as being unsafe. So, we as  
15 a council have an obligation to follow through and  
16 if you look at all these motions, we did not take  
17 no for an answer from staff. The more the public  
18 were concerned, the more answers we were seeking.  
19 We weren't suppressing anything. These motions  
20 were opening up discussion and transparency, yet  
21 the dishonest media decides that we're providing  
22 secrecy and people believe it. It really, really  
23 is a devastating crisis that we're faced with in  
24 the City, if not a problem for the country.

25 Q. Sir, you included



1 additional guide rails, lighting, lane markings  
2 and other means as aspects that staff were  
3 directed to investigate for the purpose of to help  
4 prevent further fatalities and serious injuries?

5 A. And further  
6 misinformation.

7 Q. How did you land on those  
8 particular components to be listed in this: Guide  
9 rails, lighting, lane markings and other means?  
10 Was that through discussions with staff?

11 A. Yes, definitely. I would  
12 not have come up with that on my own. I would  
13 have consulted with staff and/or Chad, Chad  
14 particularly because as, you know, he and I were  
15 very close, so we were our go-to guys, so we would  
16 have put together that motion and I wouldn't have  
17 done it on my own. It would have been a  
18 consultative process.

19 Q. Recognizing so you're  
20 asking for a report back to public works committee  
21 with recommendations by December 7, 2015, so you  
22 put a specific timeframe for staff to do this  
23 investigation, did you have a view when you made  
24 this motion about what kinds of improvements you  
25 thought staff would recommend when they came back

1 in December?

2 A. No. I had no idea. At  
3 the end of the day, we were just trying to cover  
4 our bases and (audio distortion) be ensured that  
5 we were following due diligence and not just  
6 taking staff's word for it that everything was  
7 fine. Clearly we went over and above the call of  
8 duty on this as councillors because we continually  
9 brought forward the same question over and over  
10 just in a different format because we were  
11 concerned about the perception of the unsafety  
12 aspect of that road more so than the road being  
13 unsafe, and there's a distinctive difference  
14 between the two and in politics it matters because  
15 we do act on even financially on the perception of  
16 danger and we mitigate that through action as  
17 politicians.

18 But it depends on the  
19 magnitude of the cost. Right? So, you can  
20 address an issue of perception as long as you're  
21 not going to be entirely irresponsible  
22 financially. So, this what the balance we needed  
23 on this particular file, but I was prepared  
24 because of the significance of the perceptual  
25 dangers that we needed to take action in order to

1 combat the misinformation that this new digital  
2 age of politics has created.

3 Q. Registrar, could you  
4 close this down and go to 13 and 14, please.  
5 Thank you.

6 At the same meeting, the  
7 public works staff had already prepared to provide  
8 an update arising out of the 2013 staff report  
9 around the Red Hill, and the staff report is set  
10 out in some detail at paragraph 40.

11 Registrar, could you call out  
12 all of paragraph 40, please.

13 So, this being an update, the  
14 very last paragraph that's here:

15 "The report -- "

16 So, this is a reference to the  
17 2013 report:

18 " -- also included a review of  
19 the current lighting along the  
20 Red Hill between Dartnall Road  
21 and Greenhill Avenue. The  
22 original RHVP design and  
23 council approval omitted the  
24 use of roadway lighting as a  
25 result of various

1 environmental concerns within  
2 its area. As a result, the  
3 consultant's report recommends  
4 the installation of raised  
5 permanent pavement markings,  
6 i.e., cat's eyes, to assist  
7 with positive guidance for  
8 motorists. Staff completed  
9 the installation in  
10 January 2015 and have since  
11 received positive feedback  
12 from the public."

13 So, leaving aside the  
14 reference to the cat's eyes for the moment and the  
15 first part, the original RHVP design and council  
16 approval omitted the use of roadway lighting as a  
17 result of various environmental concerns within  
18 its area and given, as you say, there had been a  
19 fair bit of political machination around the Red  
20 Hill for years and years, decades, what did you  
21 understand about whether lighting could be changed  
22 on the Red Hill in 2015?

23 A. Okay. So, the common  
24 theme or understanding at that time was that the  
25 lighting was prohibited based on the environmental

1 assessment. I know that Lynda Lukasik and  
2 Environment Hamilton were very strong proponents  
3 of keeping that roadway dark for environmental  
4 reasons, particularly the bird migrations. So, a  
5 combination of their advocacy and then staff's  
6 language made us believe that it was actually  
7 built into the EA. Obviously we found out later  
8 that it wasn't.

9 Q. Thank you. And the  
10 reference to Ms., I'm sorry, Lynda Lukasik?

11 A. Lukasik, yes. She's a --

12 Q. She was the person who  
13 ran against you?

14 A. Yes, in 2003, but not  
15 during that period of time. That was years later.

16 Q. Yes, I understand.

17 A. They created the  
18 Environment Hamilton, right, so she was the  
19 advocate of keeping that road dark, is my point.  
20 That whole group was.

21 Q. I understand. I just  
22 wanted to confirm that it was clear who the  
23 reference to her was.

24 A. No problem.

25 Q. So, you understand in

1 2015 that there was some sort of prohibition or  
2 restriction on the type of lighting that could be  
3 on the Red Hill as a result of environmental  
4 concerns?

5 A. Yeah, that's correct.  
6 The lighting issue was all directly related to  
7 bird migration and we were told because of the  
8 birds, we needed to keep it dark.

9 Q. Okay. And do you  
10 remember who told you that?

11 A. Again, Lynda Lukasik,  
12 that group, Environment Hamilton, were advocating  
13 that, Don McLean. There were delegates coming,  
14 hundreds of them, coming forward. And as well as  
15 staff alluding to it as well.

16 Q. Thank you. Registrar,  
17 could you close this down and call out  
18 paragraph 38 on page 13.

19 And we're still at that same  
20 meeting, just after the deaths of these two young  
21 women, where you make a motion and also where the  
22 public works staff is updating from the 2013  
23 report. At that meeting, Councillor Conley asked  
24 for a timeline for a future repaving of the Red  
25 Hill and Mr. Moore, who was in attendance,

1 informed the committee that the first wholesale  
2 resurfacing of the Red Hill would occur in 2021.

3                                    You were on council at the  
4 time of the construction of the Red Hill. Do you  
5 remember having a sense of what your expectations  
6 were about when the first resurfacing would happen  
7 after construction? Did you have a sense of that  
8 timeline?

9                                    A. I don't, not  
10 automatically, no.

11                                   Q. Okay. And by 2015, did a  
12 resurfacing happening in 2021 --

13                                   A. Yeah.

14                                   Q. -- make sense to you in  
15 terms of what you thought would unfold or was that  
16 just not on your radar?

17                                   A. You know, I don't recall.  
18 Did they explain what the delay was? Because I  
19 don't recall in detail.

20                                   Q. Well, I haven't said it  
21 was a delay. Did you feel that a resurfacing in  
22 2021 was a delayed resurfacing? My question is  
23 what you understood -- and maybe I should ask this  
24 better.

25                                   In 2008, did you have a sense

1 of when the first resurfacing would have to happen  
2 on the Red Hill?

3 A. Oh, no. I don't remember  
4 that. I don't. I would have suspected the  
5 average -- see, in my eyes, my understanding, it's  
6 always been between 20 and 25 years. So, that's  
7 for our regular roads, the life cycle. Mind you,  
8 I wish they were all within that, but they're not.  
9 But having said that, that would be my answer of  
10 my understanding at that time, but not directly  
11 correlated to this question, just my general  
12 understanding.

13 Q. Okay. So, in 2015, when  
14 Mr. Moore said that the first wholesale  
15 resurfacing of the Red Hill would occur in 2021,  
16 do you recall having any view about whether that  
17 seemed early or seemed late?

18 A. I think that's public  
19 pressure. That probably would -- I'm guessing, so  
20 I'm not going to say anything. I don't know. I  
21 don't want to go down a line of guessing, so --

22 Q. That's fair. So, I take  
23 it from your evidence my question was: Did you  
24 have a view about whether 2021 for resurfacing  
25 seemed early or late, and I think I'm taking from



1 your evidence that you don't recall --

2 A. I don't.

3 Q. -- and you don't want to  
4 guess what was in your mind at the time. Is that  
5 right?

6 A. That's exactly what I  
7 started doing, was guessing, and I don't want to  
8 do that.

9 Q. Commissioner, it is 11:00  
10 and I'm moving to a slightly different topic, so I  
11 suggest this might be an appropriate time for our  
12 morning break.

13 JUSTICE WILTON-SIEGEL: I  
14 agree. Let's take a 15-minute break and we'll  
15 return at 11:15.

16 --- Recess taken at 11:00 a.m.

17 --- Upon resuming at 11:17 a.m.

18 MS. LAWRENCE: Commissioner,  
19 may I proceed?

20 JUSTICE WILTON-SIEGEL: Please  
21 do.

22 MS. LAWRENCE: Thank you.

23 BY MS. LAWRENCE:

24 Q. Mr. Merulla, we were  
25 talking before the break about the 2015 fatalities

1 and the public works committee motion and the  
2 report that the public works committee received  
3 all in May of 2015. We will come to a number of  
4 other motions and requests that public works makes  
5 of staff in respect of the Red Hill over the  
6 years, between 2015 and into 2018, so my question  
7 is more general than specific at this point.

8                   Was it your view that the work  
9 that was completed on the Red Hill was being  
10 propelled by staff or was it being propelled by  
11 council or the public works committee?

12                   A. Okay. Can you repeat  
13 that question again?

14                   Q. Sure. Maybe I'll reframe  
15 it. Who as between the public works committee or  
16 staff was propelling the work that was done on the  
17 Red Hill between 2015 and 2018?

18                   A. Who was propelling it?  
19 So, it would be a combination of public input,  
20 council direction, staff implementation and a  
21 combination of both, I would suspect.

22                   Q. Did you view the staff  
23 work on the Red Hill to be reactionary to council  
24 making requests or did you see staff as being  
25 proactive in taking steps or both? It's not

1 really a binary.

2 A. They were just reacting  
3 to council's reaction. Right? So, again, every  
4 time an incident or any time one of these  
5 narratives grew a life, we would literally have to  
6 combat it by getting more information and have to  
7 try to combat the misinformation. It was just a  
8 cyclical process that continued on, until we are  
9 where we are now.

10 Q. Registrar, can you go to  
11 OD 7, page 73, please, and can you pull up 230.

12 So, this call out won't be  
13 helpful without a bit of context. You'll recall  
14 the motion from May was to report back by the  
15 December 7, 2015 PWC meeting and, in the course of  
16 2015, CIMA was retained to respond to the  
17 investigation that was requested in those motions  
18 and CIMA prepared two consultant reports, one  
19 about the LINC and one about the Red Hill; the Red  
20 Hill being the one that was in response to that  
21 motion.

22 In advance of the December 7  
23 public works committee meeting, Ms. Leduc from the  
24 clerk's office e-mailed a copy of the 2015 Red  
25 Hill report and the 2015 LINC report to members of

1 council. So, just so that we're very clear, I'm  
2 talking about the underlying consultant reports,  
3 and that's the reference here.

4 A. Right.

5 Q. Registrar, you can close  
6 that down and can you go to HAM56684, please, and  
7 can you keep image 1 up and can you also bring  
8 image 4 up, please. Thank you.

9 So, this is a lengthy  
10 document. I can take you through it, although I  
11 know we've provided it to you for your preparation  
12 today. What I'm showing you now is the cover page  
13 on the left-hand side and then the beginning of  
14 the index on the right-hand side.

15 Is this document familiar to  
16 you prior to your preparation for your attendance  
17 today?

18 A. Yes, I do remember  
19 receiving this particular document.

20 Q. Did you review it at the  
21 time that Ms. Leduc sent it?

22 A. I think I would have,  
23 yeah, because I do remember that front page and I  
24 also remember the issue and the tying to my  
25 daughters. Yeah, this whole era is more vivid to

1 me that any other period of time you're talking  
2 about.

3 Q. Okay. And so, you had  
4 said earlier that you normally would not review  
5 consultant reports that were provided to you from  
6 staff, but in this case I understand your evidence  
7 just now to be that you did actually review the  
8 consultant report. Is that right?

9 A. Only because it was  
10 e-mailed. So, I was very responsive to e-mails.  
11 I literally would receive and respond almost  
12 automatically to everyone. So, because of that,  
13 that's why I remember the front page of this and I  
14 would have glanced through this for sure.

15 Q. Okay. So, you say you  
16 would have glanced through it. You might have  
17 skimmed it, you were not --

18 A. Yeah, I didn't study it.  
19 I didn't study it, but I remember -- I only  
20 remember because it was e-mailed. I still am very  
21 responsive via e-mail, literally instantly, so I  
22 remember receiving this and I remember opening it  
23 up.

24 Q. Thank you. Registrar,  
25 you can close that down and if you can go to

1 HAM2470, please. Sorry, I misspoke. HAM24700.

2 Thank you.

3 Mr. Merulla, so this is the  
4 public works staff report, it's a recommendation  
5 report, prepared for the December 7, 2015 public  
6 works committee meeting. It's quite lengthy, so  
7 I'm just showing you the first two pages. It also  
8 has two appendices, which I'll come to in a  
9 moment. And this is a recommendation report. You  
10 would have reviewed this in detail. Is that fair  
11 to say?

12 A. I don't -- I wouldn't say  
13 detail. I don't remember this one in detail, but,  
14 yeah, probably.

15 Q. Okay. So, you'll see the  
16 recommendations.

17 Registrar, could you pull out  
18 the four recommendations on the bottom of the  
19 left-hand side, please.

20 A. Oh, I do remember this  
21 one. Yes, I do.

22 Q. Okay. So, the first  
23 recommendation is that the general manager of  
24 public works be directed to implement the  
25 short-term measures that are on Appendix A, which

1 I'll go to in a moment. And that they were going  
2 to be funded at the red light camera reserve and  
3 report back to the public works committee on the  
4 results of the implementation of those short-term  
5 measures.

6 The next is that the design  
7 with respect to the medium and long-term items on  
8 the report in Appendix B would be deferred pending  
9 the outcome of the transportation master plan.

10 The next is that the Hamilton  
11 Chief of Police and Hamilton Police Service would  
12 be asked to undertake regular speed and aggressive  
13 driving enforcement and that a copy of this report  
14 be provided to the joint stewardship board.

15 A. Right.

16 Q. Registrar, could you  
17 close that call out. Can you leave up image 1,  
18 the left-hand image, and on the right image could  
19 you bring up HAM24701, please.

20 So, Mr. Merulla, I'm just  
21 showing you the appendices and we will come back  
22 to them. You'll see these are short-term options.  
23 It says zero to two years and it has a number of  
24 installing some signs, trimming vegetation,  
25 installing object markers, permanent raised

1 pavement markings. And then closer to the bottom,  
2 conducting a study to install a queue-end warning  
3 system.

4 Recognizing you might not have  
5 specifics of knowing about these short-term  
6 measures at the time, but do you generally recall  
7 that city staff had recommended installing a  
8 number of signage and other traffic-related  
9 countermeasures?

10 A. I do, because this, I  
11 think, would have been in reaction to one of our  
12 motions.

13 Q. That's right. This is  
14 the response to the motion from May of 2015  
15 when --

16 A. So, of course, yeah. Of  
17 course I would have, yes.

18 Q. Of course you would have  
19 reviewed this and --

20 A. Yes. For some reason I  
21 don't remember, but I would have. But the items  
22 before me, I remember, but I don't remember this  
23 specific report.

24 Q. That's fair. But you do  
25 have a recollection that staff were saying that



1 there was things that they could do in the short  
2 term?

3 A. Yes, absolutely.

4 Q. Registrar, on the  
5 right-hand side can you now bring up HAM24702.  
6 Thank you.

7 So, this is Appendix B and it  
8 has two different sets. It has medium-term  
9 options, two to five years, and then it has  
10 long-term options, six plus years. And you'll see  
11 under medium-term there's two different items?

12 A. Yeah.

13 Q. Would you like me to get  
14 the registrar to call it out to make it a little  
15 bigger?

16 A. You know what? It  
17 doesn't really matter because I can't decipher  
18 what this means.

19 Q. That's fair. I would  
20 like you to be able to read the words, though.

21 A. Okay.

22 Q. Is it too small for you  
23 to read the words?

24 A. You could put it in a  
25 different language and it would still have the

1 same meaning to me. That's my point.

2 Q. So, on the medium-term  
3 options, conduct pavement friction, and the  
4 estimated cost is \$40,000, and then the second is  
5 shield rock cuts in a particular area and the  
6 estimated cost is just over \$240,000.

7 Then there's long-term  
8 measures, and those are providing shoulder rumble  
9 strips, installing a median barrier on the LINC,  
10 on the Red Hill and end-to-end illumination.

11 So, just looking back to the  
12 recommendations side on the left-hand side, these  
13 items, because they're in Appendix B, the  
14 recommendation was that the design with respect to  
15 the medium and long-term items in this report, in  
16 Appendix B, be deferred pending the outcome of the  
17 transportation master plan update.

18 So, I can take you into the  
19 actual information report, but just generally,  
20 maybe I'll test your recollection. Do you recall  
21 the transportation master plan process and what  
22 that entailed?

23 A. Yeah. I was part of it  
24 and met with staff. There is an issue that we met  
25 with staff a lot on as an example in private

1 before the reports were being made, and that's an  
2 example of remember we were talking earlier about  
3 do you ever meet with staff? Well, I do recall a  
4 number of times meeting with staff privately in  
5 advance of the release of the report because of  
6 the sensitivity surrounding some of the  
7 neighbourhood impacts, and that's how they garner  
8 consultation with council and the community in  
9 putting a report together.

10 Q. Just related to those  
11 earlier questions, did staff provide you with a  
12 draft of the TMP report in those discussions or  
13 was it just conversations?

14 A. We would have had -- no,  
15 I don't think we were able to keep it, but we  
16 would have had it before us. I think there would  
17 be documents before us, but we wouldn't leave with  
18 them, is kind of the thing.

19 Q. I see. The  
20 transportation master plan, I understand, was  
21 really a traffic plan not just about the Red Hill  
22 but about the City as a whole. Is that fair?

23 A. Right. That's correct.

24 Q. And so, here the  
25 transportation master plan was in progress in

1 2015. Is that your recollection?

2 A. I guess, yeah. I don't  
3 remember, but I'll take your word for it.

4 Q. Okay. So, the  
5 recommendation here was to defer both the medium  
6 and the long-term items that are set out on the  
7 right-hand side pending the outcome of the  
8 transportation master plan. Do you recall staff  
9 explaining to you why they were making a  
10 recommendation to defer the design of these medium  
11 and long-term options?

12 A. I don't remember, but if  
13 you want a guess, I'll give you one.

14 Q. Sure.

15 A. Maybe financial.

16 Q. Okay. I can take you  
17 into the report itself, which you reviewed at the  
18 time and so you probably have -- that might at  
19 least provide some context and I haven't done that  
20 yet. I'm going to suggest, and we can go into the  
21 report, that it was in part because some of the  
22 long-term options at least would require a  
23 potential widening of the Red Hill. Does that --

24 A. Right. That does ring a  
25 bell. That's right.

1 Q. Does that ring a bell?

2 A. And that's why we tied  
3 the EA process to that. I do recall that.

4 Q. In terms of the conduct  
5 pavement friction testing as a medium-term option,  
6 do you recall if anyone explained to you why that  
7 would also be deferred pending the outcome of the  
8 transportation master plan?

9 A. No, no idea.

10 Q. Okay. The conduct  
11 pavement friction testing that's listed as a  
12 medium option here, at two to five years, in  
13 CIMA's underlying the report, the title page that  
14 we were just looking at, it's listed as  
15 categorized as a short-term measure. Did staff  
16 make you aware that there was a distinction in the  
17 words used by staff and by CIMA about when this  
18 case recommendation should be completed?

19 A. I don't remember.

20 Q. And speaking more  
21 generally and not specifically about this  
22 particular recommendation and whether it was  
23 medium-term or short-term, just more generally,  
24 would you expect that staff would provide an  
25 explanation if they had a differentiate of

1 recommendation between what the consultant was  
2 recommending versus what they were recommending?

3 A. No. The staff -- again,  
4 staff always trumps everyone, so the only trust  
5 relationship we as a council or committee have is  
6 with the employees that we employ. If that  
7 employee then subcontracts a portion of his  
8 mandate to a consultant, the buck still sits with  
9 the staff. That's where the trust is. So, what  
10 staff interprets is what I trust, not what the  
11 consultant says, what staff says, because we know  
12 that there's politics in everything, including  
13 consultant reports. So, that staff member is the  
14 person we, who is in our employ, trust, and if he  
15 says that consultant, that data in that consultant  
16 report was amended or ignored and this is why,  
17 then we as a council, I know for a fact we would  
18 support staff over the consultant's opinion.

19 Q. Thank you. That's  
20 helpful. So, what I hear you saying is that you  
21 would look to staff for a recommendation that's  
22 actually being made to you and it's --

23 A. That's correct.

24 Q. -- the staff  
25 recommendation that you're interested in?

1                   A.     That's the only one we  
2     care about.

3                   Q.     Okay.  So, my question  
4     was slightly different.  It was:  Would you expect  
5     that staff would tell you if the consultant had a  
6     different recommendation than staff --

7                   A.     No, because that's --

8                   Q.     Would you expect staff to  
9     say consultant suggested this, we think this is  
10    and this is what we're recommending.  Would you  
11    expect that level of transparency?

12                  A.     Absolutely not.  And I'll  
13    explain again going back to this misinformation.  
14    Because now staff are targets, too, right, in this  
15    is whole new digital age, so you start doing that  
16    and then it just really creates a lot of problems  
17    because now you have certain council members that  
18    may want to politicize it based on an opinion that  
19    canvass our staff, and then it becomes a question  
20    of whether or not our staff should be believed  
21    over a consultant.  We hire our staff, our staff  
22    hired consultant, the consultant is basically  
23    accountable to our staff member, our staff member  
24    is accountable to us.  What their relationship is,  
25    I could care less so long as the information given

1 to me is the best expert opinion of that staff  
2 member.

3 Q. Thank you. Given the  
4 deferral pending the outcome of the transportation  
5 master plan, so just looking at what the  
6 recommendations are here in medium and long-term,  
7 one of the them is shield rock cuts, that's  
8 \$240,000. And then the long-term options, the  
9 rumble strips are \$105,000. But the median  
10 barriers are \$5 million and \$2 million, and then  
11 the end-to-end illumination is \$810,000. So, all  
12 of those, I'm going to say, relatively high-value  
13 options, they're being deferred pending the  
14 outcome of the transportation master plan.

15 Sitting in 2015, what did you  
16 or how long did you expect this deferral to last?

17 A. I would be guessing. I  
18 don't know if I even thought about it, so I don't  
19 know.

20 Q. All right. So, looking  
21 at the nature of particularly the long-term  
22 recommendations regarding median barriers and  
23 end-to-end illumination, to the extent that those  
24 were related to the widening of the parkway, how  
25 feasible did you think it was going to be that the



1 Red Hill was going to be widened? Did you have a  
2 sense of that in 2015?

3 A. When or if it was going  
4 to happen then?

5 Q. My question was: How  
6 feasible did you think that widening was?

7 A. At that time?

8 Q. That it would ever happen  
9 frankly?

10 A. I think it will  
11 ultimately. I supported it and made it publicly  
12 known that it should, particularly with the advent  
13 of electrical vehicles. But having said that, no,  
14 we believed that there's a direct -- realistically  
15 we need to pursue it, not only for economic  
16 purposes but also for public safety because at  
17 this point the traffic congestion, the  
18 environmental concerns associated, until we have  
19 electrical vehicles, needs to be addressed.

20 Q. Okay. So, in 2015,  
21 recognizing it's hard to put yourself back in that  
22 time, but if you can, in 2015, could you  
23 anticipate whether widening would actually happen,  
24 you know, in a decade? In 20 years? In 40 years?  
25 Like, what did you think the horizon for widening

1 actually happening would be?

2 A. Well, knowing how  
3 protracted of a discussion the actual building of  
4 the LINC and Red Hill was, which took 50 years,  
5 53 years, I believe, or 57 to actually build, I  
6 knew it was going to be a protracted period of  
7 time, but we also know that the EA process is a  
8 protracted period of time. Nothing moves quickly  
9 within government, and rightfully so, because of  
10 all the layers and layers of oversight that exist.  
11 So, nobody in their right mind, nobody on council,  
12 because they know the process, would have believed  
13 that this was a five-year plan. You're looking  
14 more 10, 15 years, 20 years potentially.

15 Q. Okay. And so, reading  
16 between the lines of these two reports but reading  
17 them together, did you understand that the  
18 suggestion of median barriers or end-to-end  
19 illumination was not likely to actually be  
20 implemented until, you know, 15 or 20 years, when  
21 the roadway was widened? Did you understand that  
22 in 2015?

23 A. Again, I don't know. I  
24 don't remember the context, that particular  
25 context of the two items correlated. I don't

1 remember.

2 Q. Okay. Registrar, you can  
3 close this down and can you go back into OD 7,  
4 page 73 and 74, please.

5 So, the report that we were  
6 just looking at, the recommendations and those  
7 appendices and of course that is actually an eight  
8 page report, I haven't taken it you to it, but it  
9 was presented at the public works committee  
10 meeting on December 7 and you were in attendance  
11 and we have a video recording of that public works  
12 committee meeting --

13 A. Right.

14 Q. -- and the overview  
15 document summarizes some of the back and forth,  
16 and so I'm just going to highlight some of the  
17 video recording and then I may take you to it.

18 So, you'll see you asked  
19 Mr. Ferguson, who was presenting the CIMA Red Hill  
20 report and the with CIMA LINC report within the  
21 staff report, to reply to public comments  
22 questioning the quality of the asphalt used in the  
23 construction of the Red Hill.

24 And just stopping there, you  
25 asked him to reply to public comments. What was

1 the nature of the public comments you were talking  
2 about? Was that from Spectator articles? Was it  
3 from tweets? Calls to your office? What does  
4 public comments mean?

5 A. It's exactly what I was  
6 referencing, all the misinformation on social  
7 media, and that's what triggered my -- and if you  
8 have the video, then you'll have the portion in  
9 which I'm actually reading the nonsense and then  
10 saying, okay, I've got to address this, because  
11 these allegations are just -- like, it was so  
12 ridiculous, but we now live in a world where you  
13 have to address all of these things no matter how  
14 ridiculous because people end up believing it. We  
15 have a cognitive deficit.

16 So, I went over to staff and  
17 this particular staff member was Gary and I said,  
18 Gary, just confirm with me, although I know it's  
19 not true, that this is not true. So, he read it,  
20 he said yeah, it's all ridiculous. So, I said I'm  
21 going to ask you the question about the 400-series  
22 highway. The 400-series highways are actually --  
23 because again I would think the thrust of this was  
24 that road exceeded the 400-series highways or was  
25 equivalent to, something along those lines. So, I

1 said, okay, that's the information I need to be  
2 made public in order to combat all the keyboard  
3 moronic stuff going on. So, I went back to the  
4 mic and asked a question to a staff member to get  
5 the answer I knew was forthcoming to address the  
6 nonsense being communicated of misinformation in  
7 hashtag Hamilton Ontario.

8 Q. Okay. So, just to be  
9 more specific, do you recall sitting here today  
10 what exactly the concern was, what you call the  
11 nonsense was, in the public comments about the  
12 quality of the asphalt? Do you remember what --

13 A. I remember I think it was  
14 something about we knew all the stuff and we were  
15 hiding it. Again, this whole nonsense of secrecy.  
16 Right? Along those lines of these guys are  
17 covering it up or they knew. Now you're reading  
18 them in the headlines. Before you used to hear  
19 the one guy in Tim Hortons screaming all the  
20 conspiracy theories and now you're reading it on  
21 the front page of the newspaper. But that's the  
22 kind of stuff I was dealing with. This is when  
23 really the rise of the keyboard morons occurred in  
24 the City of Hamilton.

25 Q. Thank you. Mr. Merulla,

1 if you could try to limit your inflammatory  
2 characterizations --

3 A. I'm not trying to be  
4 inflammatory. I'm just trying to be factual.

5 Q. In particular, and we  
6 will go into the recording in a moment, but you'll  
7 see at the bottom of 73 and into the top of 74 you  
8 asked Mr. Ferguson to reply to public comments  
9 questioning the quality of the asphalt. That, and  
10 recognizing you may not have mentioned it, that  
11 doesn't say anything about what council knew or  
12 what council didn't know, so my question is more  
13 specific. What do you recall about the public  
14 comments questioning the quality of the asphalt?  
15 Was it that it was slippery when wet or something  
16 else?

17 A. No, that somehow we knew  
18 it was bad and we just ignored it. It was  
19 something along those lines.

20 Q. That's what you recall?  
21 So, it wasn't about the quality itself, it was  
22 about what council knew about the quality?

23 A. Yeah, the cover up, the  
24 secret, this whole secret stuff that is pretty  
25 laughable.

1 Q. I understand. I  
2 obviously don't know what public comments you were  
3 looking at --

4 A. Well, just read the  
5 Spectator. You'll see all the nonsense.

6 Q. I have. I've read many,  
7 many Spectator article reports. I don't see  
8 anything in 2015 that suggests that there was some  
9 suggestion --

10 A. Oh, no --

11 Q. Please let me finish.  
12 Council covering up the asphalt. I do see reports  
13 of potentially slippery when wet, and so I'm  
14 really trying to understand, recognizing it was a  
15 long time ago, what exactly the quality of the  
16 asphalt concerns were, not about what council knew  
17 or what council was covering up, but what was the  
18 underlying concern about the quality of the  
19 asphalt that you were asking Mr. Ferguson to  
20 respond to, if you recall?

21 A. Ma'am, I'm telling you I  
22 had no concerns about the quality of the  
23 asphalt --

24 Q. That's not my question.  
25 My question is what were the public comments

1 saying about the asphalt of the asphalt?

2 A. They were lying about the  
3 fact that we knew that the quality was bad, so  
4 those lies needed to be addressed. That's it.

5 Q. Was the quality of the  
6 asphalt that the public comments were addressing  
7 that it was bad --

8 A. Yeah, that somehow we  
9 knew it was bad and we voluntarily allowed it to  
10 be sustainable accordingly, which is nonsense.

11 Q. Thank you.

12 A. Yes.

13 Q. Registrar, I hope I'm  
14 properly identifying this. I believe you just  
15 have the recording by the hearing date and not by  
16 a doc ID. It's December 7, 2015 meeting and if  
17 you could pull up the meeting starting at one  
18 minute, one hour and 18 minutes, please.

19 Registrar, I know it may take some time to get to  
20 the particular section. I just want to confirm  
21 you're not having trouble and I don't have to  
22 provide you with a different identifier for the  
23 video.

24 THE REGISTRAR: Sorry,  
25 counsel. It's the December meeting. Right?



1 MS. LAWRENCE: December 7,  
2 2015.

3 THE REGISTRAR: Yeah. I have  
4 it at about an hour and 20, so say an hour and 19.

5 MS. LAWRENCE: I need it  
6 particularly at an hour and 18.

7 THE REGISTRAR: Okay.

8 MS. LAWRENCE: Thank you,  
9 Registrar.

10 THE REGISTRAR: Yes. It might  
11 be a little loud, so just --

12 MS. LAWRENCE: Thank you.  
13 Let's try it out.

14 --- (VIDEO RECORDING PLAYED)

15 MS. LAWRENCE: Registrar, you  
16 can stop. Thank you.

17 BY MS. LAWRENCE:

18 Q. So, Mr. Merulla, just  
19 stopping there, your comments just then were about  
20 speed, stunt driving and human behaviour. Was  
21 that your takeaway from reading the staff report,  
22 that those were the primary contributing factors  
23 to collisions on the Red Hill?

24 A. It would've partly, but  
25 it would have been a bunch of -- it would have

1    been a collective amount of information I would  
2    have received from various sources, including  
3    police, colleagues and staff. I wouldn't in any  
4    way suggest it was just one source. It would have  
5    been a combination of many.

6                    Q.    Okay. So, the source was  
7    not just the report, but that was your overall  
8    conclusion taken from multiple sources, is that  
9    the most significant contributing factors to  
10   collisions were speed, stunt driving and human  
11   behaviour?

12                   A.    Yes, and I think I said  
13   that prior to this meeting. I was saying that  
14   quite regularly during that period of time while  
15   this issue was brewing.

16                   Q.    Okay. Registrar, can you  
17   go to one hour and 27 minutes. Perfect.  
18   27 minutes, perfect.

19   --- (VIDEO RECORDING PLAYED)

20                   MS. LAWRENCE: Registrar, you  
21   can stop that. Thank you. And you can close the  
22   video.

23                   BY MS. LAWRENCE:

24                   Q.    So, Mr. Merulla, that's  
25   your reference to nonsense, which I think is what

1 we were talking about earlier, and --

2 A. I think I almost said it  
3 verbatim.

4 Q. I don't think you did.

5 A. Nonsense, I mean.

6 Q. You said nonsense for  
7 sure, but you said nonsense relating to the  
8 quality of the asphalt and the City putting down  
9 low-grade asphalt?

10 A. Yeah.

11 Q. You didn't say anything  
12 about city council having knowledge or covering up  
13 anything --

14 A. That's one and the same.

15 Q. Does that refresh your  
16 memory about what you were concerned about in  
17 2015?

18 A. That's exactly what I  
19 said earlier. I said they were claiming that we  
20 put down bad asphalt and we were suppressing that  
21 information, that we were hiding it, covering it  
22 up. How does that differ from what you just said?

23 Q. Okay. So, what do you  
24 remember, and maybe this might not refresh your  
25 memory, but having listened to it, what exactly

1 the concerns were in the public about the asphalt  
2 being low quality?

3 A. About it being a coverup.  
4 That was the catalyst to my asking the question to  
5 combat the keyboard morons providing  
6 misinformation in the City of Hamilton.

7 JUSTICE WILTON-SIEGEL: If I  
8 can just interject for a moment, Mr. Merulla, I  
9 think we've got that point loud and clear.

10 THE WITNESS: Thank you.

11 JUSTICE WILTON-SIEGEL: But  
12 let me just remind you of a couple things. One,  
13 the city council has called this inquiry.

14 THE WITNESS: Yes.

15 JUSTICE WILTON-SIEGEL: Two,  
16 the city council has given us some specific terms  
17 of reference.

18 THE WITNESS: Yes.

19 JUSTICE WILTON-SIEGEL: In  
20 respect of non-disclosure, they don't go to that  
21 point. They go to two specific questions which  
22 we've been asked to look into. One was why was  
23 the Tradewind report not made available or the  
24 substance of it not communicated to council prior  
25 to 2019, and the second, what does one make, I'm

1 speaking generally, of the actions of staff when  
2 it was discovered in or about September of 2018 by  
3 Mr. McGuire. Okay?

4 All the other questions  
5 effectively go to the safety of the road. Okay?  
6 Whether or not it was safe, whether or not there  
7 were things that could have been done that weren't  
8 done. That's the context in which commission  
9 counsel is asking these questions and I would ask  
10 that you listen to them.

11 And if I can give you an  
12 example, the issue which you yourself identified  
13 in the meeting but somehow have difficulty  
14 articulating today is that the concern about the  
15 low asphalt wasn't merely that city council was  
16 concealing that, which might perhaps go to a  
17 financial question or whatever, but rather that  
18 the low asphalt was contributing to accidents on  
19 the highway.

20 THE WITNESS: Sir, what I'm  
21 saying to you is --

22 JUSTICE WILTON-SIEGEL: I'm  
23 just trying to describe the difference, that it's  
24 that question that we're trying to understand.  
25 We're only trying to get the facts. We're trying

1 to understand how you understood this issue about  
2 the low asphalt in the context of the terms of  
3 reference we have, and so the questions that  
4 counsel will ask are directed towards that and  
5 that alone.

6 THE WITNESS: Okay. So, I was  
7 reading social media as I was chairing that  
8 particular meeting, sir, and I was reading the  
9 allegations that we as a City, we as a council,  
10 knowingly put down low-grade asphalt, knowingly  
11 covered up the fact that we put down this  
12 low-grade asphalt. I asked the city staff, I  
13 said, look at this nonsense that's being  
14 distributed in our communities, this  
15 misinformation. I let them read it. It was Gary  
16 actually that read it. So, I'm going to ask you  
17 to clarify this because this might grow legs. And  
18 in 2015, this was just when it started beginning,  
19 all these narratives. So, I went back to the mic  
20 and I asked that question. That's exactly how  
21 that --

22 JUSTICE WILTON-SIEGEL: I  
23 understand that, but that's not, if I may say,  
24 that point is well understood.

25 THE WITNESS: Okay.

1 JUSTICE WILTON-SIEGEL: Okay?  
2 You've made it very clear a number of times. But  
3 counsel is asking you a different question.

4 THE WITNESS: I'm not  
5 understanding the different question. What's the  
6 different question?

7 JUSTICE WILTON-SIEGEL: The  
8 different question is: The public, as you  
9 understand it, said that the asphalt was low  
10 quality and the question is, well, what has that  
11 got to do in your mind, if anything, with safety?  
12 And you said in that meeting that the social media  
13 take was that there was low-quality asphalt and  
14 that was contributing to accidents on the highway.

15 Now, that is the point that  
16 counsel has been asking you to consider: Was that  
17 what you believed at the time or is that  
18 extraneous? The real question was just in social  
19 media there was some alleged coverup associated  
20 with low-quality asphalt.

21 THE WITNESS: Yeah. So, ask  
22 me the question again, because I don't know what  
23 the distinction is here.

24 JUSTICE WILTON-SIEGEL: Which  
25 is it? Is it that there was a coverup and you

1 were concerned that council was alleged to be  
2 participating in a coverup with respect to  
3 low-quality asphalt, or was it that there was a  
4 coverup that there was low-quality asphalt that  
5 was contributing to accidents on the highway?

6 THE WITNESS: Oh, I see what  
7 you're saying. Okay, that distinction, it's about  
8 we as a council were covering it up and that the  
9 community --

10 JUSTICE WILTON-SIEGEL:  
11 Another way of putting it is what were you  
12 allegedly covering up?

13 THE WITNESS: Oh, the fact  
14 that we knew it was dangerous and we allowed the  
15 road to be open.

16 JUSTICE WILTON-SIEGEL: Okay.  
17 Well, we spent 15 to 20 minutes trying to  
18 understand exactly that point. That is the  
19 distinction that counsel was trying to address and  
20 I intervened solely for the purposes of  
21 understanding the questioning further on.

22 THE WITNESS: Maybe it was me.  
23 I really was confused --

24 JUSTICE WILTON-SIEGEL: That  
25 is the issue that we're trying to address --



1 THE WITNESS: Okay.

2 JUSTICE WILTON-SIEGEL: -- is  
3 the significance of any allegation of coverup for  
4 safety, potential safety on the highway, and for  
5 the actions of council, and to the extent it  
6 motivated them, and the actions of staff, to the  
7 extent it motivated them.

8 THE WITNESS: Okay. Thank  
9 you, sir. My apologies if I made this more  
10 difficult than it should have been.

11 JUSTICE WILTON-SIEGEL: Thank  
12 you. Okay. Ms. Lawrence.

13 MS. LAWRENCE: Thank you.

14 BY MS. LAWRENCE:

15 Q. Registrar, could you go  
16 back into OD 7, page 96. I'm sorry, I utterly  
17 misspoke. Page 73 and 74. Thank you.

18 Mr. Merulla, I'm not going to  
19 take you back into the video recording itself.  
20 We're just going to rely on the summary that is  
21 here at page 74 about your back and forth with  
22 Mr. Moore and what he said. If you would like to  
23 go back into the video, I can --

24 A. No, no. I prefer this.

25 Q. Good. So, Registrar,



1 specific knowledge in advance that it was SMA or  
2 he was going to mention --

3 A. No, no idea. And Gary  
4 would know better than to mention it because I  
5 wouldn't even know not SMA is.

6 Q. Fair. So, in  
7 paragraph 234, Mr. Moore informed you and everyone  
8 else at PWC that the MTO had performed initial  
9 friction testing and received results that were at  
10 or above what the MTO typically expected from  
11 high-grade friction mixes, and he informed PWC  
12 that they had performed subsequent testing five  
13 years after, in approximately 2012 to 2013,  
14 finding that the road was holding up exceptionally  
15 well and that we have no concerns about the  
16 surface mix.

17 Do you remember Mr. Moore  
18 telling you about the friction testing that MTO  
19 had completed at around construction and then  
20 subsequent testing that had been completed in 2012  
21 to 2013?

22 A. Ask me that again? I'm  
23 sorry.

24 Q. Do you recall the  
25 interaction that's referenced at paragraph 234?

1 A. Yes, I do.

2 Q. Okay. And do you  
3 remember specifically Mr. Moore saying there was  
4 friction testing done twice and we have no  
5 concerns about the surface mix?

6 A. Only because I reheard  
7 that video within the last year, which refreshed  
8 my memory of that entire discussion.

9 Q. Okay. And do you mean in  
10 the last year or do you mean in preparation for  
11 the inquiry or do you mean --

12 A. Yeah, in -- my own  
13 research in going back and looking at that video  
14 on YouTube.

15 Q. I think in fact you might  
16 have looked at it back in early 2019 when the  
17 Tradewind report was disclosed. Is that right?

18 A. Maybe, yeah.

19 Q. Would you have expected  
20 Mr. Moore to provide the underlying results of the  
21 friction test that he was referencing to the  
22 members of the public works committee or council  
23 in response to your questions back in 2015?

24 A. Sorry?

25 Q. Would you have expected

1 Mr. Moore to provide the results of the friction  
2 tests that he was referencing to public works?

3 A. No, because we -- again,  
4 it wouldn't mean anything to us.

5 Q. Sure. You relied on the  
6 oral statements of Mr. Moore?

7 A. Yes, absolutely.

8 Q. We have tread this ground  
9 before, but just as a matter to close up this  
10 questioning, did you personally have concerns  
11 about the asphalt quality or pavement quality  
12 coming out of the December 7 meeting?

13 A. No.

14 Q. Okay. From your  
15 perspective, how did the assurances or the  
16 responses you received from staff at that meeting  
17 impact your assessment on whether the RHVP was  
18 safe to drive on?

19 A. I never had any doubt  
20 because we were never informed that there was an  
21 issue. The only input we received that there was  
22 a concern was from outside forces that we believed  
23 were politically driven where we needed to combat.  
24 None of these motions, I think, were ever created  
25 by my believing that staff were misleading me and

1 the road was unsafe. It was all politically  
2 driven to deal with the messaging. We really  
3 didn't believe it was dangerous.

4 Q. Okay.

5 A. If it was, we would have  
6 closed it.

7 Q. You didn't believe it was  
8 dangerous?

9 A. Well, when I say "we,"  
10 Councillor Collins and I.

11 Q. Okay. Registrar, can you  
12 go to 77 and 78 of OD 7, please. Thank you.

13 You'll see at the bottom of 77  
14 the Lakewood Beach Community Council e-mailed the  
15 mayor and council, including you, about a request  
16 they were making in advance of ratification of the  
17 decisions made at PWC, so there's a council  
18 meeting on December 9 flowing from the PWC meeting  
19 on December 7. And Lakewood Beach Community  
20 Council, are you familiar with that community  
21 group?

22 A. Very much. They're a  
23 political group more than a community group.

24 Q. Okay.

25 A. It's important to

1 recognize that. They're actively engaged in  
2 defeating the local candidates there.

3 Q. Okay. So, they say:  
4 "We're too late to have this  
5 as an agenda item, but we're  
6 writing to you directly to  
7 have you consider adding one  
8 recommendation from the  
9 consultant's review to the  
10 list of improvements."

11 Registrar, can you pull out  
12 the top of 78 just so we can see it a bit more  
13 clearly.

14 In particular, the LBCC asks  
15 that pavement friction testing be a short-term  
16 measure rather than a medium-term measure, and  
17 they mention their views on why, which is the  
18 majority of the types of collisions that are found  
19 in the consultant report, and they say, second  
20 paragraph to the bottom:

21 "When speaking to the public,  
22 most state the road feels  
23 slippery on the Red Hill. We  
24 have not heard this about the  
25 LINC."

1                                   And so, they conclude with  
2    saying:  
3                                   "Since the majority of the  
4                                   collisions are single car  
5                                   occurring in the daylight in  
6                                   clear weather but with wet  
7                                   road surfaces, we are  
8                                   respectfully requesting you  
9                                   consider adding this friction  
10                                  test to the short-term  
11                                  recommendations."

12                                 You can close that down.

13                                 Mr. Merulla, sitting here  
14    today, do you recall receiving that e-mail from  
15    the LBCC, which was copied to you?

16                                 A.    I don't recall, but I  
17    would have seen it as just political nonsense  
18    because they're not a legitimate community group.  
19    They are a political entity, politically  
20    motivated, and frankly had I seen that I would  
21    have been more concerned about it being on the  
22    agenda as misinformation than anything else.  
23    Because no different than the truck convoy and  
24    following the anti-vaccination process, if we were  
25    to start looking at all these makeshift community



1 groups that are politically motivated and started  
2 taking their recommendations in government, we  
3 would all not be vaccinated. So, it's important  
4 that we recognize --

5 Q. Sir, I'm going to  
6 interrupt you, sir. You're getting off topic.

7 A. No. I just want to focus  
8 in on the experts. They're not experts, my staff  
9 are, and that's why I would not consider this to  
10 be legitimate.

11 Q. So, at the time, if you  
12 reviewed it, you would have disregarded it because  
13 it came from the Lakewood Beach Community Council.  
14 Is that your evidence?

15 A. They have no  
16 legitimate --

17 Q. It was a yes or no  
18 question. Is that right?

19 A. Because they're not  
20 legitimate.

21 Q. Okay. Even though  
22 they're referencing information from the  
23 consultant report, that would not have swayed your  
24 view about whether to consider the request that  
25 they're making. Right?

1                   A.    You have to consider the  
2    source.  And because they have tainted their  
3    behaviour towards council, the source is not a  
4    credible one and I'm surprised you're bringing it  
5    forward publicly.  I'll be honest with you.

6                   Q.    Okay.  Councillor  
7    Jackson, you'll see at 247, moved the LBCC's  
8    correspondence to be referred to the next public  
9    works committee meeting, and that's a process that  
10   councillors can undertake.  Right?  Rather than  
11   having it brought directly to council, which is  
12   not the appropriate way, you take it back to the  
13   committee who should be looking at it?

14                  A.    Of course.  That is the  
15   appropriate means of addressing it.

16                  Q.    Okay.  Registrar, could  
17   you close this down and go to page 109 and 110,  
18   please.

19                         In the lead-up to the next  
20   public works committee meeting, so the  
21   correspondence had been deferred to the next  
22   public works committee meeting, you'll see at the  
23   bottom of 109 and the top of 110, Councillor  
24   Jackson, who is the one that moved to  
25   correspondence back to PWC, e-mailed Mr. Ferguson,

1 again, Dave Ferguson, superintendant of traffic,  
2 about the agenda and he copied Mr. Moore and  
3 Ms. Leduc and he asked to look over the item, this  
4 reference to the correspondence in which LBCC  
5 suggests that friction testing should be a  
6 short-term measure based on the recommendations of  
7 the consultant, CIMA. And he says --

8 In fact, Registrar, could you  
9 bring it up because my eyes are getting tired,  
10 Councillor Jackson's e-mail at the bottom of 343,  
11 please. Thank you.

12 So, he says:

13 "I suggest to this group when  
14 I refer this correspondence  
15 that even though a number of  
16 their suggestions were already  
17 being considered by your  
18 department and on council  
19 to-do list, I would still  
20 consult with you to determine  
21 if their correspondence had  
22 any new suggestions that were  
23 worthy of your review and a  
24 possible report back to  
25 committee in the future.

1 Thoughts on what I should do?  
2 Other recommendations? Et  
3 cetera."

4 You can close that down. And  
5 then if you could call up 345 to 349, please.

6 So, Mr. Ferguson says:

7 "I believe that part of the  
8 overall works, this is already  
9 being covered off, road  
10 testing, friction."

11 And he copied Mr. Moore for  
12 clarification. Councillor Jackson responded:

13 "Thanks, and if Mr. Moore  
14 concurs, then we will move the  
15 LBCC correspondence to receive  
16 the correspondence only."

17 So, just stopping there,  
18 receiving the correspondence only means that PWC  
19 is not going to have a discussion about it. Is  
20 that right?

21 A. It's not going to be an  
22 action item.

23 Q. Okay. And so,

24 Mr. Ferguson says:

25 "Yes, I concur with that."

1                   And then the PWC does receive  
2 the correspondence with no further discussion.  
3 You don't remember any further discussion about  
4 that. Right?

5                   A. If it was received, you  
6 can't discuss items that are being received.

7                   Q. I see. Thank you.  
8 Registrar, you can close that down and can you go  
9 to page 111, please, and if you can call out 350.

10                   Mr. Ferguson e-mailed the LBCC  
11 on February 16 and he copied the office of the  
12 mayor, the public works committee, which would  
13 have included you, some of his superiors within  
14 traffic and Mr. Moore, and he says:

15                   "Your e-mail was requesting  
16 that the identified friction  
17 test on the Red Hill be  
18 considered for short-term  
19 testing. Through the support  
20 from public works committee,  
21 I'm pleased to inform you that  
22 this testing will be completed  
23 by engineering services in  
24 2016."

25                   So, stopping there, do you

1 know what support from the public works committee  
2 Mr. Ferguson would be referring to if the  
3 correspondence had only been received?

4 A. Okay. Can you ask me  
5 that question again?

6 Q. Sure. So, you'll see the  
7 second line in the second paragraph says:

8 "Through support from public  
9 works committee, I'm pleased  
10 to inform you this testing  
11 will be completed in 2016."

12 And you said earlier that  
13 receiving correspondence means there's no  
14 discussion about it. Do you know what support  
15 from public works committee Mr. Ferguson is  
16 referring to?

17 A. Okay. When I say  
18 "discussion," just for clarity purposes, I meant  
19 on the floor of council.

20 Q. Sure.

21 A. Okay. So, we can have  
22 those discussions outside, but once you receive  
23 something, you can't discuss it. And now you're  
24 asking me if I recall this?

25 Q. I'm just asking -- and,

1 again, this is not your language. This is  
2 Mr. Ferguson's, but it says:

3 "Through support from public  
4 works committee --"

5 And I was wondering if you had  
6 any insight into what support public works  
7 committee gave to friction testing being completed  
8 in 2016?

9 A. Be completed. I don't  
10 remember, unless it was built in. See, sometimes  
11 we'll get a large report and within those large  
12 reports, unless somebody highlights it, we're not  
13 aware of other aspects. So, it could be buried in  
14 a larger report where testing was built into a  
15 process, a protracted process, and then they're  
16 referencing that particular report that could have  
17 been born at the beginning of the discussion of  
18 the expressway or it could have been born years  
19 before, is my point.

20 Q. Is it sounds like you're  
21 speculating a little. Do you have any  
22 recollection of public works or yourself providing  
23 any support in any form to having friction testing  
24 being completed in 2016?

25 A. You know, I don't

1 remember any of this, to be honest with you.

2 Q. Okay. Thank you.

3 Registrar, can you go to page 177 and 178 of OD 7,  
4 please.

5 In 2017, Mr. White, Martin  
6 White from traffic, sent an information report to  
7 all of council.

8 Registrar, actually, can you  
9 bring up the actual document. It's HAM25870,  
10 please. Thank you.

11 So, this is an information  
12 update and it's to members of city council from  
13 transportation. Is this the kind of document that  
14 you would have reviewed carefully upon receipt in  
15 terms of what you call the pecking order?

16 A. Information updates  
17 aren't on the pecking order or priority pecking  
18 order, so it would be probably third on the list.  
19 So, everything, as I mentioned to you, is read  
20 because some of these meetings are very  
21 protracted, 12, 14, 15 hours, so we're actually  
22 seeking things to read. I can confirm that I've  
23 read it. I just don't remember reading it.

24 Q. Okay. This is an  
25 information update. It's not related necessarily



1 to a public works committee meeting. I think it  
2 just gets forwarded to you rather than being part  
3 of an agenda. Am I understanding how information  
4 updates work, that they can just be sent absent  
5 some agenda that they might be connected to?

6 A. Yeah, they can come  
7 individually on their own just to provide an  
8 update on an issue that somebody might be very  
9 closely aligned with. And this one really doesn't  
10 provide you -- nothing in this particular report  
11 would slap you and say, okay, you need to take the  
12 action because things are moving forward. Right?  
13 There's a plan in place. It's just giving us an  
14 update.

15 Q. So, this is a good news  
16 story --

17 A. Yeah.

18 Q. There's a bunch --

19 A. Yeah.

20 Q. -- of safety measures --

21 A. Essentially.

22 Q. -- that have been done?

23 A. Yeah, essentially.

24 Q. It might be useful for  
25 you if a member of the public contacts you, you

1 can say --

2 A. That's --

3 Q. -- they're doing their

4 work? Okay.

5 So, you'll see on Appendix A

6 that there's a number of things that have been

7 completed and there's also reference to

8 completion, you know, in the spring or the summer,

9 and then there's reference, you'll see, about

10 halfway down:

11 "Works to be completed during

12 resurfacing, 2018 to 2021."

13 Do you see that?

14 A. Sorry. We're on --

15 Q. Registrar, could you --

16 A. We're on 2 of 3, right?

17 We're on page 2 of 3?

18 Q. Yeah, on the right-hand

19 side and it's about six up from the bottom:

20 "Install recess pavement

21 markings from Greenhill -- "

22 A. Yes, I see that.

23 Q. And then on the other

24 side it says:

25 "Works to be completed during



1 close that down and go to the next page, please.

2 So, this is Appendix B, which

3 we looked at before, you'll remember. It's the

4 same things and there's, again, reference to

5 review and be considered during resurfacing on

6 some of the long-term options, and the conduct

7 pavement friction testing is listed as complete.

8 From what your evidence has been today, I expect

9 your answer to whether you noted that is no. Is

10 that right?

11 A. I would concur, yes.

12 Q. Okay. Registrar, you can

13 close this down and can you bring up RHV720 and

14 RHV847, please, and you can call them up side by

15 side.

16 THE REGISTRAR: Sorry,

17 counsel. You said the second one a little too

18 fast for me.

19 MS. LAWRENCE: Of course.

20 RHV847.

21 THE REGISTRAR: Thank you.

22 BY MS. LAWRENCE:

23 Q. Mr. Merulla, these are

24 two motions that you moved at public works, one in

25 November of 2016 and one in August of 2017, and

1 they both relate to speed or speeding on the Red  
2 Hill. One is about photo radar or, pardon me,  
3 it's about when photo radar was available to use  
4 it, and then the other is about speeding being an  
5 ongoing concern and directing a study of the  
6 feasibility of reducing speed.

7 Do you remember making these  
8 two motions in --

9 A. Yes, vividly.

10 Q. Okay. And why did you  
11 bring forward these motions, recognizing they're  
12 different motions at different times, but they do  
13 seem to be connected to speeding?

14 A. Okay. So, in all the  
15 studies that I read and in discussing the issue of  
16 accidents on both LINC and the Red Hill with  
17 staff, police, colleagues, the public, again,  
18 getting back to the speed, the wetness and the  
19 geography of the road was really my response  
20 consistently with everyone that presented to me an  
21 allegation that there was an issue with the  
22 pavement and/or the road by extension.

23 So, in my belief that the  
24 speed, geometry and wetness, that I asked staff  
25 what part of the road was more vulnerable to those

1 three elements. And the section that presently is  
2 80 kilometres is the section of road in which they  
3 said would be a good idea. So, in my consultation  
4 with them, I said, could you support something  
5 like that? They said, well, we'll see, kind of  
6 thing. Bring forward the motion, which I did,  
7 which I'm very proud of and which today exists  
8 because of it. So, that's the reason why I did  
9 the speed.

10 And on the -- what was the  
11 other question? Sorry.

12 Q. My question was: Why did  
13 you bring forward these motions?

14 A. Because of the geometry,  
15 the speed, the wetness, and this to me was a  
16 countermeasure to all of that because speed is in  
17 all collisions the number one contributing factor.

18 Q. Were you in favour of the  
19 speed limit being reduced when you sought the  
20 second motion on the right-hand side or did you  
21 just want to understand if it was an advisable  
22 course of action?

23 A. No, no. I wanted it  
24 reduced because clearly the police are saying and  
25 staff and others that the combination of speed,

1 wet road and geometry played a role. So, we knew  
2 already based on the reports that's we had to date  
3 anecdotally, verbally and formally that those were  
4 the three elements that played a role in most of  
5 these collisions. So, what better way of dealing  
6 with that presenting problem than trying to  
7 mitigate one of those elements, and speed would be  
8 the one that would mitigate it the most.

9 Q. Okay. So, by bringing  
10 the motion on the right-hand side, you wanted a  
11 study for the feasibility and the safety benefits  
12 of reducing the speed limit, but if I'm hearing  
13 you correctly your ultimate goal was to have the  
14 speed reduced?

15 A. Yes. The wording of that  
16 is we need to have a study. Nobody would get  
17 support on council without studying an issue.  
18 Right? Unless of course it's a stop sign. That,  
19 we have been able to change because that we don't  
20 need reports for anymore. But having said that,  
21 on this one you always need to look at the  
22 feasibility or else you won't get support of  
23 council, because then you're boxing everybody into  
24 the issue without even knowing what the potential  
25 consequences are.

1 Q. Thank you. You said just  
2 a moment ago the section that is presently 80  
3 kilometres is the section of road where they said  
4 it would be a good idea, I think, to reduce the  
5 speed, is what you're saying?

6 A. Yeah.

7 Q. Now, just to confirm, the  
8 entirety of the Red Hill has the same speed limit.  
9 Right?

10 A. Yes, I believe so. Now  
11 it's 90 and 80, yes. But there was a period of  
12 time where there was only one section, but then in  
13 all fairness it ended up almost becoming like an  
14 entrapment for speed, so they've made it  
15 consistent throughout.

16 Q. They made it consistent  
17 at 80 kilometres an hour. Right?

18 A. On the one and 90 on the  
19 other.

20 Q. Do you mean the LINC?

21 A. Yeah.

22 Q. Okay.

23 A. Sorry.

24 Q. That's all right. I just  
25 wanted to make sure I understood your evidence.



1 It did change over time. We'll get there. In  
2 fact, let's talk a little bit about the speed  
3 limit study that came out of this motion.

4 Registrar, could you go to  
5 OD 8, page 89, please.

6 THE REGISTRAR: Sorry,  
7 council. Which OD?

8 MS. LAWRENCE: 8, page 89.  
9 That, I think, is not what I'm looking for. Why  
10 don't you try 69. Maybe that was a typographical  
11 error. 49. Apologies, it was a typographical  
12 error. Thank you. Registrar, can you pull out  
13 134, please. Actually, 134 and 135.

14 BY MS. LAWRENCE:

15 Q. So, we were just looking  
16 at a motion, your motion, from August of 2017 and  
17 it looks like there was some period of time before  
18 the speed limit study was initiated, i.e., by  
19 actually contacting an expert. This is a  
20 reference that we have to you that relates, it  
21 appears, to this motion. On January 22, 2018  
22 Mr. Ferguson e-mailed your assistant to arrange a  
23 meeting with you regarding his motion relating to  
24 reducing the speed on the parkway, and the meeting  
25 was arranged for February 7. And we don't have

1 any notes from that meeting or any further  
2 information about it.

3 Do you remember attending a  
4 meeting with Mr. Ferguson and perhaps others in  
5 traffic about your motion to reduce the speed  
6 limit on the parkways?

7 A. Yeah. I think I  
8 referenced that earlier. You know what? I  
9 couldn't remember who was part of that meeting,  
10 but as I mentioned earlier, when I had that  
11 thought of bringing this forward, I didn't meet  
12 with staff to try to determine the geometry.  
13 Remember the wetness, the geometry and the speed,  
14 they did -- I recall someone showing me, I don't  
15 remember who or whom, that that section would  
16 probably be prime for that type of theory where  
17 the geometry was the most complex in maneuvering.

18 Q. Thank you. I think you  
19 need to move your mic back up to your mouth.

20 A. Sorry.

21 Q. I did hear what you had  
22 to say. As a matter of clarity, this is about six  
23 months after your August 2017 motion --

24 A. Oh, sorry. That would  
25 have been before, so I met with --

1 Q. That would have been  
2 before --

3 A. Yeah.

4 Q. Okay. So, do you  
5 remember six months after you made the motion --

6 A. No.

7 Q. -- why they would be  
8 meeting with you?

9 A. No, I don't. No idea.

10 Q. Registrar, could you  
11 close this and go to page 60 and can you pull out  
12 161.

13 So, the meeting that was  
14 scheduled on February 7 and then on February 22  
15 Mr. Cooper was talking to CIMA consultants about  
16 the speed limit study that had not yet been  
17 started and he said the project was on hold until  
18 they had a chance to discuss with a member of  
19 council. It looks like there had already been a  
20 meeting scheduled, so I don't really understand  
21 the chronology, but does this assist at all with  
22 discussions that you had with either Mr. Cooper or  
23 Mr. Ferguson about the speed limit reduction  
24 motion that you made?

25 A. No. Well, maybe. It

1 could have been. I don't remember.

2 Q. It's okay. I know it was  
3 a long time ago. Do you remember any circumstance  
4 in which staff said they were going to delay  
5 proceeding until they got input from you or  
6 anything like that?

7 A. No, they wouldn't do  
8 that, they would probably -- unless it was a  
9 consultation -- well, maybe. No, you know what?  
10 I would remember that and there would be a reason  
11 for that, unless another councillor wanted to get  
12 more information on it.

13 Q. Sure. It doesn't say  
14 it's you. I recognize that. So, the speed limit  
15 study is eventually initiated. Did you have any  
16 concerns with the staff taking, it looked like six  
17 months, before they really started to move to  
18 retain an expert and investigate the feasibility  
19 of reducing the speed limit, as you had suggested  
20 in your motion?

21 A. See, I don't want to  
22 second guess the timeframes. There must be an  
23 explanation. I don't know what that explanation  
24 is, but I don't want to be unfair and suggest  
25 something without understanding if it was by

1 design or not and why.

2 Q. Fair enough. And so, my  
3 question really is: After six months or so, would  
4 it pop into your head, huh, I haven't, sort of,  
5 heard anything about that --

6 A. Yeah. That happens a lot  
7 with a lot of issues.

8 Q. Okay. Recognizing there  
9 may have been lots of reasons for the lack of  
10 initiation, just generally your expectations as a  
11 councillor, how quickly would you expect staff to  
12 initiate information in response to a motion by  
13 PWC?

14 A. You know, I don't have an  
15 actual timeframe in my mind, but if you were to  
16 ask me, I would say sooner rather than later, but  
17 I wouldn't have the internal understanding of the  
18 process of the queuing these types of reports,  
19 unless of course we as a council provide a certain  
20 timeframe, which we do. So, if I would have said  
21 we need this report by a certain date, then it  
22 would meet that obligation. If not, they would in  
23 advance tell us.

24 The other thing that we  
25 changed, if you look at our agendas today, we have

1 pending items. So, although it took six months,  
2 it would have been on the agenda as a pending  
3 item with a projected date of completion. So,  
4 although it took six months, we would have all  
5 knowingly been accepting that and approving it at  
6 every public works committee meeting because it's  
7 right on the agenda, pending items, and then the  
8 date of projected completion.

9                   So, if somebody had an issue,  
10 including myself, I should have brought it up,  
11 which I didn't, nor did anyone else.

12                   Q. I see. When did that  
13 change to adding pending items happen, if you have  
14 any recollection? Was it --

15                   A. I don't know.

16                   Q. -- in this past term of  
17 council? Was it the term before?

18                   A. No. It's been a while.  
19 We're talking 15 years if not longer, yeah.

20                   Q. I see. Registrar, you  
21 can close that down and can you go to OD 9A,  
22 page 79 and 80, please. Thank you. Registrar,  
23 could you call up 197, please. Thank you.

24                   So, on September 11 you  
25 received an e-mail from a member of the public --

1 in fact, sorry, you received it on September 10  
2 and you forwarded it thereafter to Mr. McKinnon.  
3 The e-mail from the member of the public on  
4 September 10 includes the following information:  
5 So, they reference a scary moment today where the  
6 car slid out of control, spun a 180 and went up  
7 over the curb on to the grass:

8 "I was only going 40  
9 kilometres an hour and  
10 obviously no ice. How could  
11 this happen?"

12 And then the member of the  
13 public references a tow truck driver who said the  
14 road is paved with some material that is  
15 notoriously slippery when wet. He had already had  
16 numerous incidents this morning and she witnessed  
17 two incidents while she was waiting. "Thankfully  
18 I'm fine, I had a good cry when I got home," the  
19 member of the public says. And then she, at the  
20 bottom, says:

21 "The City knows about this  
22 troublesome paving. Why  
23 aren't they informing us? Why  
24 are there no warning signs?  
25 Why isn't the road closed when

1                   it rains? What kind of  
2                   tragedy needs to unfold before  
3                   the City is held accountable?"

4                   And then at the very bottom:

5                   "I'll be contacting the local  
6                   media. Despite  
7                   'inconclusive' -- "

8                   She says in quotes:

9                   " -- asphalt testing, the  
10                  realty is the staring us in  
11                  the face this road is unsafe."

12                  Do you remember receiving this  
13                  e-mail?

14                  A.    Vividly, and I was  
15                  sitting where I'm sitting now, literally.

16                  Q.    Okay. Registrar, you can  
17                  close this down. I'm not sure if you're sitting  
18                  at home or --

19                  A.    I'm sitting at home.

20                  Q.    And then you can see your  
21                  response at 198.

22                  Registrar, could you pull that  
23                  out.

24                  You say:

25                  "There's absolutely no truth



1 to that statement. By copy of  
2 this e-mail, I will have our  
3 professional staff provide  
4 input on the asphalt quality."

5 So, what statement in the  
6 e-mail you received are you referring to when you  
7 say there's absolutely no truth to that statement?

8 A. That the City knows  
9 there's a problem and we're covering it up.  
10 That's the narrative that triggered that response.

11 Q. Okay. And so, there is  
12 reference in that e-mail about the material being  
13 notoriously slippery when wet. That's reported as  
14 a tow truck driver saying that. What was your  
15 view of whether the pavement surface was safe at  
16 the time --

17 A. Again, I thought the  
18 pavement was fine. I had no concern about the  
19 pavement, hence my response.

20 Q. Okay. And so, why did  
21 you provide the copy of the e-mail to professional  
22 staff to provide input?

23 A. So, that we can, again --  
24 because I was concerned at that time because of  
25 the narratives that were created on social media

1 that this was a by-product of that, because it was  
2 the same kind of theme. Right? So, then I flip  
3 it over to staff so that they can be informed to  
4 clear up the misinformation.

5 Q. I see. So, by  
6 September 2018, you in fact had been informed  
7 through all these public complaints that people  
8 had concerns about the underlying pavement on the  
9 Red Hill. Is that right?

10 A. Right, but we weren't  
11 covering anything up --

12 Q. I understand. By  
13 September 2018, you're aware that there's  
14 anecdotal concerns about the pavement surface?

15 A. Anecdotal concerns that  
16 weren't being covered up, that's correct.

17 Q. Okay. The member of the  
18 public also references inconclusive asphalt  
19 testing. Were you aware of what asphalt testing  
20 she was referring to?

21 A. I think she was referring  
22 to an article that was being -- that was written  
23 and the content of that article would have alluded  
24 to that. That's my recollection of how she would  
25 know that.

1 Q. And how would you know  
2 that she was referencing that?

3 A. Just because I know  
4 that -- because in all the years -- the timing of  
5 this, the references, that's how it works. Again,  
6 going back to the narrative, the story would be  
7 printed, she would be reading it, she would have  
8 an issue and tie the two together and compound the  
9 allegation that we're covering it up and the  
10 City's responsible.

11 Q. Thank you. So, there  
12 were some Spectator articles in July of 2017 and  
13 then in August of 2018 that reference inconclusive  
14 friction testing with quotations attributed to  
15 Mr. Moore and later Mr. McGuire. Do you recall  
16 reviewing those Spectator articles?

17 A. No, but I told you.

18 Q. But somehow you were  
19 aware that the reference to, quote, unquote,  
20 inconclusive asphalt testing, that those were from  
21 Spectator articles?

22 A. Absolutely.

23 Q. I'm sorry to --

24 A. It comes with experience.  
25 It really does. It's an intuition.

1 Q. Okay. It's an intuition.  
2 Because it was in quotations?

3 A. Because I know how news  
4 is deciphered in the City. I've been running for  
5 office for 25 years, so I get an e-mail, I can  
6 read it and I'll tell you exactly the source of  
7 the information, where they got it and how it was  
8 distributed and why and it just comes naturally to  
9 me now after all these years. It's been 40 years  
10 since I worked on my first campaign, so there's  
11 not much people can pull over my eyes.

12 Q. Okay. I have to say --

13 A. In this case, nobody is  
14 pulling anything over my eyes. She was being  
15 misinformed by the Spectator and that  
16 misinformation was sent to me and I had to respond  
17 to our professional staff to clear up the  
18 misinformation. That's what I was doing here.

19 Q. So, recognizing you may  
20 have a talent for this that I'm not seeing, what  
21 about the, quote, unquote, inconclusive asphalt  
22 testing that's referenced in this public  
23 complaint, what about that led you to believe that  
24 that had been referenced in a Spectator article?

25 A. Because that was probably

1 in the headline.

2 Q. You just said "probably,"  
3 so --

4 A. Just telling you how I --  
5 when I receive information, I just have an ability  
6 to understand where it's coming from and most of  
7 the information is coming from social media. It  
8 used to only come from there and the mainstream  
9 media would correct it. Now the mainstream media  
10 uses that as an assignment editor; hence, what we  
11 have here before us now. That's what I know.  
12 That's my statement. That's what I believe.  
13 That's my opinion.

14 Q. Okay. So, how did you  
15 know that the reference to inconclusive asphalt  
16 testing was misinformation?

17 A. Misinformation in the  
18 sense that they're creating hysteria. By  
19 suggesting it's inconclusive isn't so much that  
20 it's misinformation. What it does, it creates the  
21 anxiety that ties into the public's angst about  
22 the road. So, rather than trying to say the data  
23 is inconclusive, other studies, it doesn't mean  
24 it's unsafe, the story leans toward oh, my god,  
25 don't drive that road perhaps because we don't

1 know. We've had studies and it's inconclusive;  
2 hence, let's all assume the road is going to kill  
3 you. Because if it doesn't bleed, it doesn't  
4 leak. That's how the media operates. They want  
5 nothing to do with good news, everything to do  
6 with bad news, hence why I can decipher fiction  
7 from fact and when narratives are being created  
8 intentionally.

9 Q. Okay. So, did you, in  
10 September of 2018, know whether or not friction  
11 testing had been done on the Red Hill?

12 A. I can't recall, but I  
13 really don't remember.

14 Q. Okay. And did you know  
15 that asphalt testing that had been done had been  
16 deemed inconclusive?

17 A. I do remember reading  
18 that in the Spectator, I believe.

19 Q. You do?

20 A. Probably from the  
21 Spectator, but not from a report. My frustration  
22 about this is inconclusive is being narrated as it  
23 being unsafe rather than potentially safe. They  
24 lean towards the worst-case scenario in their  
25 stories rather than the best-case scenario, which

1 creates the hysteria which led to this  
2 multimillion dollar waste of time. My apologies,  
3 but I really believe that.

4 Q. In terms of your evidence  
5 before, it was a little unclear, but now I think  
6 I'm hearing that you read in the Spectator that  
7 there was reference to inconclusive asphalt  
8 testing and that's how you were able to piece the  
9 reference in this e-mail back to a media report.  
10 Is that --

11 A. Either that or I assumed  
12 it based on my ability to do that. I don't  
13 remember. I just know that that particular  
14 item would have been born within the nonsense of  
15 the way news is delivered in the City. That's all  
16 I'm saying.

17 Q. I think I have your --

18 A. So, the main culprit of  
19 that is the Hamilton Spectator, so --

20 Q. I think I have your  
21 evidence on that. Thank you.

22 A. Thank you.

23 Q. Registrar, could you go  
24 to OD 9A, page 91. Mr. McGuire responds.  
25 Registrar, could you pull out 231, please.

1                   So, at this point, Mr. McGuire  
2    had taken over the role of director of engineering  
3    from Mr. Moore. Had you, prior to September of  
4    2018, had you had many dealings with Mr. McGuire?  
5    He had, of course, been in the City before, but  
6    this was a new role for him.

7                   A.    Yeah, of course I would  
8    have.

9                   Q.    Okay. So, Mr. McGuire  
10   responded to the member of the public, the one  
11   e-mail we were just looking at, and he says:

12                                "As you mentioned, this  
13                                testing has come back with  
14                                inconclusive results."

15                                That's in the second full  
16   paragraph:

17                                "And as a result, we're  
18                                expediting the resurfacing of  
19                                the roadway to occur in 2019."

20                   And you are copied on this  
21   e-mail. I was just triple checking that. Did you  
22   understand that there was any relationship between  
23   inconclusive test results and the City's decision  
24   to expedite resurfacing on the roadway?

25                   A.    No. I don't think there



1 was -- there wasn't a technical correlation.  
2 There may have been maybe a public one because of  
3 the public pressure. But, again, inconclusive  
4 means it's not safe, it's not unsafe. It just  
5 means no one knows.

6 Q. Sir, I'm just trying to  
7 understand what your knowledge was at the time.

8 A. I'm just trying to  
9 emphasize. So, sometimes we act based upon a  
10 perceptual problem rather than an actual problem,  
11 and that's an important distinction that people  
12 need to recognize because the perception of it  
13 being unsafe is as dangerous as being unsafe  
14 because they believe they are. So, we make  
15 decisions every day and spend money every day to  
16 protect people from perceptual dangers because  
17 it's the right thing to do.

18 Q. In September of 2018,  
19 when Mr. McGuire sends this e-mail back to the  
20 member of the public, what insight did you have  
21 about the timing of the Red Hill repaving process?

22 A. I had no issues about the  
23 repaving process.

24 Q. My question was what  
25 insight did you have about the timing?

1 A. Insight as in --

2 Q. When you thought it was  
3 going to occur, if you knew?

4 A. I thought within -- I'm  
5 guessing. I would say as soon as possible would  
6 be my answer.

7 Q. Okay. Mr. McGuire  
8 references a resurfacing in 2019 and I was, sort  
9 of, asking apart from this e-mail from  
10 Mr. McGuire, did you have a clear view about when  
11 resurfacing was going to occur?

12 A. Knowing that everything  
13 has to go through a procurement process, we know  
14 those things can't happen overnight, so a period  
15 of time in order to be open and transparent about  
16 the process. Now, if we start sourcing, we could  
17 have done a lot quicker, but then we have to deal  
18 with whole other narratives and nonsense. So, he  
19 did what he did within policy and within the  
20 timeframes allotted to him to do it appropriately.

21 Q. Sure. So, my question is  
22 not about this e-mail about Mr. McGuire --

23 A. I'm just trying to  
24 clarify the issue.

25 Q. Apart from this reference

1 that resurfacing was going to happen in 2019, did  
2 you, as a member of council or the PWC, have a  
3 sense in September of 2018 when resurfacing was  
4 going to happen?

5 A. Well, knowing it was just  
6 before an election, I would have probably hoped it  
7 would be tomorrow, but I don't recall.

8 Q. Okay. Well, I understand  
9 hopes and prayers, but did you have any sense of  
10 whether it was actually going to happen sometime  
11 at least to be announced before the election --

12 A. Just based on experience,  
13 we know it has to go through finance and  
14 procurement process, and that takes time. So, we  
15 know it can't happen quickly, but we always want  
16 it done sooner rather than later.

17 Q. I see. We know in early  
18 2019 Mr. McGuire -- pardon me. We know that in  
19 early 2019 the existence of the Tradewind report  
20 came to the attention of the council, including  
21 you, and you're now familiar with the Tradewind  
22 report. Is that right?

23 A. I'm familiar with it,  
24 yeah.

25 Q. The inquiry has received

1 evidence that Mr. McGuire accessed the Tradewind  
2 report through a City document management system  
3 on September 26, 2018, two days before he sent  
4 this e-mail back to this member of the public.  
5 Would you have expected that the findings of the  
6 Tradewind report would have been brought to your  
7 attention by Mr. McGuire as part of the e-mails  
8 that you had leading up to this response that he  
9 eventually sent?

10 A. Why would he -- that  
11 would be not protocol.

12 Q. So, no?

13 A. No. That would be a no.  
14 That would be insubordination. He would have to  
15 go to his superior, not council.

16 Q. I don't --

17 A. He can't circumvent  
18 superiority and go to directly to council with any  
19 information. It's a management issue. Right?  
20 So, if he would have found the report and gone to  
21 council, it's just not the proper channel of  
22 communicating.

23 Q. Okay. I think you're  
24 saying Mr. McGuire would have followed a channel  
25 within city staff rather than reporting to you

1 directly?

2 A. That's correct. That  
3 would be inappropriate for him to come to us, yes.

4 Q. Okay. All right.  
5 Registrar, could you go to OD 9A, page 14, please,  
6 and can you call out paragraph 22.

7 So, this is an e-mail amongst  
8 city staff. You're not copied on it. It's from  
9 May of 2018 and it's an administrative assistant  
10 who notes in respect of the impact of the  
11 October 2018 (audio distortion) on what reports  
12 should be and should not be brought to council,  
13 and the administrative assistant confirms that no  
14 reports of a sensitive nature are to be brought  
15 forward past July 27 as there is a possibility of  
16 a lame duck council due to elections.

17 You're familiar with the  
18 concept of lame duck councils?

19 A. We're in it right now.

20 Q. We are indeed. The  
21 election was in October of 2018. Were you aware  
22 in 2018 of a policy or a practice by staff not to  
23 bring reports of a sensitive nature to council  
24 past a particular date in advance of an election?

25 A. No. That had nothing to

1 do with a date. It has everything to do with lame  
2 council. So, even -- so, it's really responsible  
3 because think about this for a moment. Had staff,  
4 knowing that we had no ability or control or  
5 authority to make any decision, bring that  
6 item publicly to only be part of the fodder  
7 politically would be astute in creating circuses  
8 but not governing, so they did what is in the best  
9 interests of this community.

10 Q. I was not asking anything  
11 about the Tradewind report or anything --

12 A. I thought you asked me  
13 the question.

14 Q. No. More generally, were  
15 you aware of a policy or practice within staff in  
16 2018 not to bring reports of a sensitive nature to  
17 council --

18 A. No.

19 Q. -- past July 27?

20 A. No.

21 Q. Okay. And July 27 is  
22 months before the election. What was your  
23 understanding of when council stopped decision  
24 making, as it were, in advance of the  
25 October 2018 --

1                   A.     We would have been  
2     informed via e-mail, so I can't remember when, but  
3     I would have received the e-mail and we would have  
4     known at that time.

5                   Q.     Okay.  And do you recall  
6     it being as early as middle of July?

7                   A.     No idea.  I honestly  
8     don't remember.  It would have to be within a  
9     certain period of time from nomination date, so --

10                  Q.     Right.  Before the  
11     nomination date or after the nomination date?

12                  A.     After, I think.  And the  
13     nomination date last time in 2018 was January, so  
14     it changed.  Right?  So, prior to this -- the  
15     closing of the nominations were in August, sorry,  
16     but you could actually register.  I used to do it  
17     the first day in January.  Nominations closed in  
18     the summer, so yeah, so it would have been the  
19     nominations would have been closed.

20                  Q.     Okay.  But you don't have  
21     a particular understanding of the relationship  
22     between the close of nomination dates and any  
23     policy or practice that reports of a sensitive  
24     nature are not brought forward after the close of  
25     nominations?

1                   A.    No.  That would be  
2    staff's prerogative, really.  Because there would  
3    be no -- if they could have council make a  
4    decision, then they would be withholding  
5    information.  But to just simply give it to a  
6    council that had been literally muted and has no  
7    authority, it's just for political fodder and it  
8    would be irresponsible.  They did the right thing.

9                   Q.    Registrar, can you close  
10   this down and go to OD 9A, page 337, please, and  
11   can you call this out, this being paragraph 796,  
12   please.

13                   So, on January 23, 2019, this  
14   is after you had been speed limit study re-elected  
15   in the October election, on January 23, 2019 there  
16   is a council meeting and a report from legal  
17   services is presented to council at this council  
18   meeting in a closed session that took place  
19   between 9:43 and 10:45 p.m.

20                   Looking at the list of  
21   attendees from the minutes, you are not listed.  
22   And just maybe for a bit more context, this is the  
23   meeting in which the report that's referenced at  
24   the top of this paragraph gives -- I'm just going  
25   to paraphrase and call it a heads-up about the



1 existence of the Tradewind report. And then on  
2 February 6, 2019 at a closed session of GIC,  
3 council receives more information, more reports, a  
4 different legal services report and some  
5 information from audit services and some of the  
6 public works staff.

7                                 So, just to orient you to  
8 those two things, there are two meetings of  
9 councillors in which the Tradewind report is  
10 discussed. It does not appear that you attend the  
11 first of the two meetings. Is that your  
12 recollection?

13                                 A. I believe I left. I  
14 think -- was that a -- that was a council meeting  
15 and I think I left right when we went into camera  
16 and it was a -- I think I had to go home. It was  
17 a family issue.

18                                 Q. Family issue of some  
19 kind?

20                                 A. Yeah. I left. I know  
21 for a fact I left that day, so I wasn't there, to  
22 confirm your question.

23                                 Q. Okay. Registrar, could  
24 you close this down and go to HAM61921. And can  
25 you call out the next page as well.

1                   So, this is a couple days  
2 after the two pages that are up now, but this is  
3 the litigation update that Ms. Auty, as City  
4 solicitor, provided to the closed session of  
5 council on January 23, 2019 and it, you'll see  
6 just in the executive summary at the bottom --

7                   Registrar, could you call out  
8 the last paragraph of the left-hand page.

9                   The purpose is to advise  
10 council of the potential of litigation arising  
11 from the release of City records relating to  
12 friction testing on the Red Hill as a result of a  
13 freedom of information request, and it's unknown  
14 when the information would be released pursuant to  
15 the freedom of information request, and so staff  
16 is bringing this to the council's attention.

17                   So, there's a lot of  
18 information in there. One, the City had received  
19 an FOI request. Two, there might be a release of  
20 City records relating to friction testing. And  
21 then, three, and it's not clear in the executive  
22 summary here, the friction testing that's being  
23 referred to is the Tradewind report, which had  
24 been discovered by Mr. McGuire.

25                   So, all of those pieces of

1 information are in this legal services update. Do  
2 you receive a copy of this legal services update  
3 after January 23?

4 A. No, but I would have  
5 received an entire briefing from Chad, so although  
6 I'm not there, I'm there, because he would be  
7 sending me info amounts. We always worked  
8 collectively like that.

9 Q. That was my next  
10 question. Did you receive updates from --

11 A. Yeah, all the time.

12 Q. -- Councillor Collins.  
13 And on that evening --

14 A. Like, in real-time. We  
15 used to do it in real-time even when I wasn't  
16 there.

17 Q. Okay. And so, do you  
18 recall knowing on the evening on January 23 that  
19 legal services had provided this information about  
20 the existence of the Tradewind report and that it  
21 was anticipated it would be released in a freedom  
22 of information request?

23 A. I don't remember that.  
24 That, I don't remember. It would have been more  
25 or less that a report was disclosed, this is

1 what's in it. It's more the content as opposed to  
2 any of the sidebar kind of stuff.

3 Q. None of that is sidebar.

4 The existence of the Tradewind report and the fact  
5 that it was going to be released --

6 A. No. I mean motive.

7 Q. -- pursuant to the FOI --

8 A. There's no motives.

9 Yeah. I don't know.

10 Q. But those two pieces of  
11 information that are set out in this report, did  
12 Councillor Collins tell you that on that night?

13 A. I don't recall. But  
14 again, the kind of discussion he and I would have  
15 would be related to the content of the report  
16 surrounding the road, but not anything outside of  
17 that. I don't remember that.

18 Q. Okay. So, you don't  
19 remember either way whether Councillor Collins  
20 updated you that evening about the events he was  
21 learning in real-time at the closed session?

22 A. No. I mean the freedom  
23 of information item does not ring a bell.

24 Q. Okay. I see.

25 A. Yeah.

1 Q. What about the existence  
2 of the Tradewind report? Did he communicate that  
3 to you that evening?

4 A. I'm guessing, but I would  
5 say yes, absolutely. There's no way that report  
6 was released without my being informed by him and  
7 others on council about what's going on.

8 Q. Okay. So, the FOI  
9 request, do you recall -- part of the heads-up in  
10 this legal services document is that not only is  
11 there existence of friction testing about the Red  
12 Hill, but also that this friction testing was  
13 going to be released as a result of a freedom of  
14 information request. When did you learn that  
15 latter piece of information?

16 A. I don't know. Did that  
17 become public that night? Did we come out of  
18 camera and make something public?

19 Q. No.

20 A. So, everything remained  
21 confidential after that night?

22 Q. So, this is really  
23 just -- I keep calling it, sort of, the heads-up.  
24 And then on February 6 there is a GIC meeting.  
25 It's quite a lengthy closed session meeting and at

1 the end of that the Tradewind report and other  
2 documents which we'll get to were made public and  
3 there was a press release in which staff  
4 apologized?

5 A. To council rather --  
6 okay. Just very important. Can we talk about  
7 that?

8 Q. We can absolutely talk  
9 about that after lunch.

10 A. Okay.

11 Q. I'm just trying to give  
12 you some context for the two different meetings  
13 that we're talking about. So, nothing is released  
14 after January 23. This is a heads-up and then it  
15 comes back on February 6.

16 A. I remember the February 6  
17 meeting.

18 Q. I'm sure you do --

19 A. Vividly.

20 Q. Do you remember knowing  
21 before the February 6 meeting about the FOI  
22 request and that the Tradewind report was going to  
23 be released?

24 A. Again, I can't remember,  
25 but there's no way Chad didn't tell them that.

1 Let's put it that way.

2 Q. Okay. Commissioner, I  
3 see that it's two minutes to 1:00 and that is our  
4 usual lunch break and my suggestion is that we  
5 take our lunch break now and come back at 2:15,  
6 even though it's a minute or two early.

7 JUSTICE WILTON-SIEGEL: That  
8 seems a good suggestion. Let's adjourn until --  
9 Mr. Merulla, do you have a question?

10 THE WITNESS: No. I was just  
11 trying to listen. All good.

12 JUSTICE WILTON-SIEGEL: We'll  
13 stand adjourned at 2:15. We'll start on the dot  
14 at 2:15.

15 --- Luncheon recess taken at 12:59 p.m.

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

17 MS. LAWRENCE: Good afternoon,  
18 Commissioner. May I proceed?

19 JUSTICE WILTON-SIEGEL: Yes,  
20 please do.

21 MS. LAWRENCE: Thank you.

22 BY MS. LAWRENCE:

23 Q. Mr. Merulla, the court  
24 reporter has asked both you and I to try not to  
25 speak over each other, and if you can wait until I

1 finish asking my question to respond and I will  
2 try to do the same. Okay?

3 A. Okay.

4 Q. Thank you. I'm going to  
5 take you now to the period of time between the  
6 January 23 council meeting where council is given  
7 a heads-up about the existence of the Tradewind  
8 report and the February 6 meeting, the GIC  
9 meeting, where there's a long closed session.

10 Registrar, could you pull up  
11 OD 9A, page 349 and 350, please. Thank you.

12 So, the underline on this page  
13 is not of importance, but I am going to direct you  
14 to the underlying portions starting at page 349,  
15 paragraph 826.

16 Registrar, could you pull out  
17 826 that's on 349. Thank you.

18 So, Mr. Merulla, this  
19 continues past the part that's called out, but  
20 we'll focus on this for the moment. So, this is  
21 on January 28, 2019. Mayor Eisenberger exchanges  
22 e-mails with Mike Zegarac, who is the acting  
23 senior project manager at the time. You know,  
24 Mr. Zegarac. Right?

25 A. Of course, yes.



1 Q. So, this is a back and  
2 forth, you'll see. It starts with the mayor. His  
3 name is in square brackets at the top:

4 "Mike, just hearing about the  
5 request for a special meeting.  
6 I'm tied up in meetings in  
7 Ottawa. Please advise of the  
8 need and what we can expect to  
9 have as an outcome from this  
10 meeting."

11 And Mr. Zegarac responds:

12 "At a meeting on Friday with  
13 Councillors Merulla, Collins  
14 and Jackson, the councillors  
15 requested that the three  
16 reports that staff are  
17 expecting to bring to the  
18 February 4 PW standing  
19 committee be pulled and  
20 brought to a special GIC for a  
21 potential in-camera  
22 discussion."

23 So, just stopping there and  
24 then we'll work through the rest of this e-mail,  
25 do you recall meeting with Mr. Zegarac on a

1 Friday, which would have been Friday, January 25?

2 A. I do recall that meeting,  
3 yes.

4 Q. How was that meeting  
5 arranged?

6 A. That, I can't recall.

7 Q. Okay. Do you recall if  
8 you or other councillors initiated that meeting  
9 with Mr. Zegarac, or was it staff or Mr. Zegarac  
10 that initiated it with you?

11 A. I can't confirm either  
12 way. All I recall is that I was present with, I  
13 believe, Councillor Jackson and Councillor  
14 Collins.

15 Q. Mr. Zegarac was there?

16 A. Yes, of course. Yes.

17 Q. And do you recall if any  
18 other staff members were there?

19 A. Yes. The general manager  
20 of public works.

21 Q. Dan McKinnon?

22 A. Thank you. Yes.

23 Q. To your recollection,  
24 what was the purpose of this meeting?

25 A. To give us in essence a

1 heads-up that this was forthcoming and he wanted  
2 to know procedurally what he thought would be the  
3 scenario, because collectively we've been there  
4 100 years, what we thought would be the best  
5 process procedurally to deliver the news to  
6 council. And based on my recollection, I think we  
7 or I or us concluded that the best route would be  
8 to go to GIC and as a result of it being a larger  
9 audience as opposed to a smaller audience at  
10 public works. That's it.

11 Q. Thank you. For the  
12 inquiry's benefit, you and Councillor Collins and  
13 Councillor Jackson, were you all members of the  
14 public works committee coming out of the  
15 October 2018 election into the most recent term?

16 A. I believe so, yes.

17 Q. Okay. So, all three of  
18 you are public works committee members, but your  
19 preference is to go to a sitting of the full  
20 council. Is that right?

21 A. I'm sorry, can you repeat  
22 that again?

23 Q. So, although the three of  
24 you are public works committee members, your  
25 preference is to go to a sitting of the full

1 council. Is that right?

2 A. That's correct, yeah.

3 So, we thought the best approach to deal with this  
4 rather than going to public works, which obviously  
5 has a smaller audience councillor wide and City  
6 wide, that we go directly to GIC for that purpose,  
7 to be more open and transparent.

8 Q. So, you were not at the  
9 January 23 meeting where this matter, that is the  
10 existence of the Tradewind report, was first  
11 brought to the attention of the councillors who  
12 attended. Is it fair to say that at some point  
13 between January 23 and January 25 when you attend  
14 this meeting, you are advised about the existence  
15 of the Tradewind report?

16 A. I didn't know what it was  
17 called. I think at that time, I believe at that  
18 time, there wasn't really a title attached to it  
19 and it was referred to as a report that -- there  
20 was this report that was found kind of thing, but  
21 there wasn't a title attached to it.

22 Q. Okay. Did you understand  
23 that it was a report that dealt with friction  
24 values on the Red Hill?

25 A. I recall that it had

1 something to do with Red Hill and the controversy,  
2 but not specifically friction.

3 Q. Okay. And between  
4 January 23, that meeting that was in the evening,  
5 and January 25, when you met with Mr. Zegarac and  
6 Mr. McKinnon and Councillor Collins and Councillor  
7 Jackson, did anyone update you about the fact that  
8 there was an FOI request for which this report  
9 would be responsive?

10 A. I don't remember that. I  
11 still don't remember what the source was that led  
12 me to my conclusion or my understanding of the  
13 FOI.

14 Q. Okay. You'll see that  
15 Mr. Zegarac provides to the mayor a set of three  
16 different numbered topics with bullet points  
17 underneath and he says:

18 "We also discussed the  
19 following as to how to  
20 proceed. The councillors  
21 discussed a public motion  
22 directing the work below."

23 And the work below was  
24 employee considerations, council relationship with  
25 director of public media, meet with employee,

1 former director of engineering, consideration of  
2 current employment agreement.

3 So, just stopping there, do  
4 you recall having discussions with Councillor  
5 Collins and Councillor Jackson and Mr. Zegarac and  
6 Mr. McKinnon about, at a high level, employee  
7 considerations involving Mr. Moore?

8 A. No. I don't know what  
9 any of this is.

10 Q. Okay. Well, I'm taking  
11 you through because I do think this e-mail is a  
12 little confusing in the way that it's drafted.

13 A. Okay.

14 Q. Sitting here today, are  
15 you confident that you did not have discussions  
16 about Mr. Moore's employee considerations, using  
17 the phrase there --

18 A. What does that mean?

19 Q. It's not my language.

20 A. I don't know what it  
21 means.

22 Q. So, I'll ask a more  
23 open-ended question. I said do you recall having  
24 conversations at a high level about employee  
25 conversations involving Mr. Moore, and you said,

1 "I don't know what any of this is"?

2 A. I don't know what  
3 employee considerations means. Like, what does  
4 that mean?

5 Q. So, I can provide you  
6 with a bit of context to refresh your memory.  
7 Mr. Moore was the director of engineering until  
8 May of 2018 and then he took on a position with  
9 the Hamilton LRT office.

10 A. Right. Okay. I don't  
11 remember talking about that.

12 Q. Okay. Are you confident  
13 that you did not have discussions with Mr. Zegarac  
14 and Mr. McKinnon and the other councillors about  
15 Mr. Moore at this meeting on January --

16 A. No. Mr. Moore came up at  
17 this meeting, there's no doubt about it, about the  
18 fact that he had this report and the report that  
19 he had was found after Mr. McGuire arrived. I  
20 thought that was what we were told that day.

21 Q. Okay. Did you know that  
22 chronology before this meeting on January 25?

23 A. What chronology?

24 Q. That Mr. Moore had left,  
25 he had a report before he left and then

1 Mr. McGuire found it after he left.

2 A. That's what -- no, I  
3 didn't know prior to that. No. That was the  
4 purpose of the meeting.

5 Q. Okay. I ask because of  
6 course some of your colleagues were at the  
7 January 23 meeting where some of this information  
8 was provided, so I'm trying to understand when you  
9 were brought up to speed.

10 In respect of Mr. Moore, do  
11 you recall discussing looking forward,  
12 future-looking discussions, about his employment  
13 relationship with the City?

14 A. In the event that we, I  
15 think -- no. Again, I don't want to be guessing.

16 Q. I'm just trying to  
17 understand --

18 A. I'm not sure if I was  
19 thinking this or I actually said it. That's why  
20 I'm trying to think back. But the moment that it  
21 was disclosed, I thought to myself, if indeed the  
22 allegations are true, then we need an exit plan  
23 for him. But that's the only thing I can recall.

24 Q. Okay. So, you can't  
25 recall sitting here today whether that issue, that



1 is his going forward employment agreement, was  
2 discussed amongst the councillors and these staff  
3 members. Is that fair?

4 A. No, because we wouldn't  
5 have been able to -- no, we didn't, because what  
6 the heck could we do as a group? That's something  
7 that would be talked about in more of an open and  
8 bigger audience.

9 Q. I understand. Okay. You  
10 said that you were thinking to yourself if indeed  
11 the allegations with true, then we need an exit  
12 plan. What at this time, this is January 25, did  
13 you understand, using your word, the allegations  
14 to be?

15 A. That's a good question.  
16 Because I'm not sure -- all we knew was a report  
17 was hidden. We didn't know what was hidden.  
18 Again, these types of mysterious narratives that  
19 just lend credence to the conspiracies, but it was  
20 one of those -- they found this report after Gary  
21 left and it's related to something related to the  
22 expressway and the controversy. So, tie all those  
23 things together without actually knowing the  
24 details, then that's how all these stories get  
25 blown out of proportion.

1 Q. Thank you. Did  
2 Mr. Zegarac or Mr. McKinnon or the councillors who  
3 were there with you, did they tell you about any  
4 inconsistent statements made by Mr. Moore in  
5 media?

6 A. No, not to me. Nothing  
7 like that. No recollection of that.

8 Q. Okay. So, this second  
9 point here, which Mr. Zegarac appears to say was  
10 discussed with you and your fellow councillors,  
11 was technical/engineering safety, action plan to  
12 assess technical review with third party, further  
13 engagement of external legal to engage third party  
14 for overall assessment and a litigations and  
15 liability review finalization. Do you recall --

16 A. I'm sorry to interrupt,  
17 because it's a very important distinction. I  
18 think the first thing we all said is the roads --  
19 I think that's when we all realized is the road  
20 safe and it's hidden? Even we were concerned. If  
21 so, do we need to shut it down? We did have that  
22 discussion that day.

23 Q. At this meeting on  
24 January 25?

25 A. It was not that one. At

1 one point we had a discussion. Okay. I'm not  
2 sure. Sorry to interrupt. I just needed to --  
3 okay, go ahead. Sorry.

4 Q. No problem. So, you  
5 don't recall having a discussion about whether the  
6 road was safe and what needed to be done to  
7 confirm it was safe at this meeting?

8 A. I'm not sure when that  
9 meeting occurred, like, when that -- when that  
10 information, I'm not sure when I received that  
11 information.

12 Q. Okay. I'll take you  
13 through some of the details of other events and  
14 other meetings that you had and maybe I invite you  
15 to, if you can narrow down when you remember  
16 having discussions about whether the road being  
17 safe, just let me know.

18 A. Okay.

19 Q. Do you remember at this  
20 meeting having a discussion about an action plan  
21 to assess a technical review with a third party?

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

23 Q. Okay. And then the last  
24 that's listed here, which actually does continue  
25 into the next page, is communication plan with

1 external support, public confidence, technical  
2 assessment, council confidence. Do you recall  
3 have discussions about any of those points with  
4 Mr. Zegarac, Mr. McKinnon and the --

5 A. I know I led on the  
6 public relation aspect of it or the public  
7 statement, understanding we needed to be very  
8 clear on what the issues are and what our  
9 perceived versus actual problem, so that was the  
10 kind of narrative I was discussing even at that  
11 time.

12 Q. Okay. And at this point,  
13 it was clear and obvious to you that the Tradewind  
14 report would be released to the public at some  
15 point. Is that right?

16 A. I don't remember that.  
17 It would have been -- well, obviously because I'm  
18 talking about a public statement, so yes, I would  
19 be -- of course. For us to be preparing for a  
20 public statement, then obviously it's ultimately  
21 going to be released. Right?

22 Q. Thank you. I just wanted  
23 your confirmation.

24 A. Yeah.

25 Q. Did you provide any

1 direction or advice to staff at this meeting,  
2 aside from suggesting that the forum for which to  
3 address this would be a special GIC?

4 A. No. Procedurally, we  
5 discussed the standing versus GIC, in camera  
6 versus out of camera, that kind of stuff.

7 Q. Registrar, could you  
8 close this down and can you call up paragraph 827,  
9 please.

10 So, this is further in the  
11 exchange between the mayor and Mr. Zegarac. You  
12 with not copied on this e-mail. This is in  
13 respect of whether to have a special GIC or some  
14 other form in which this was brought -- staff  
15 reports were brought to council. And Mr. Zegarac  
16 says:

17 "At the Friday meeting,  
18 councillors expressed concern  
19 of staff reports being public  
20 for days before staff had an  
21 opportunity to speak to them  
22 with committee."

23 So, just stopping there, just  
24 to orient you, there were several reports that  
25 staff were preparing to provide to public works.

1 One about the speed limit feasibility study that  
2 you had further to your motion, one about  
3 lighting, there had been some motions on lighting  
4 that had been subject to a consultant study, and  
5 then there was a followup on, sort of, traffic  
6 safety issues from some of the past reports that  
7 we have looked at and also there had been a  
8 roadside safety assessment that CIMA had conducted  
9 in advance of resurfacing. So, there was a number  
10 of pieces of information that public works staff  
11 wanted to provide to the public works committee,  
12 and I think that is the reference here to the  
13 staff reports in addition to legal or audit  
14 reports.

15 Does that help refresh your  
16 memory? Do you remember learning about the fact  
17 that staff wanted to bring a number of different  
18 topics and reports to your attention?

19 A. Not in detail.  
20 Superficially, I do recall -- obviously we were  
21 there for probably about half hour to 40 minutes,  
22 so we touched upon a few issues, but I can't  
23 confirm in detail.

24 Q. So, here where it says  
25 from Mr. Zegarac:

1 "Councillors expressed concern  
2 of the staff reports being  
3 public for days before staff  
4 had an opportunity to speak to  
5 committee."

6 Do you recall having that  
7 concern and expressing it to Mr. Zegarac?

8 A. My concerns run into  
9 public message, so if we have these reports  
10 floating out there to create all the narratives  
11 for people to run with, we need to get ahead of  
12 that, so that's where I think that might be going.  
13 I could be mistaken. Again, I don't know for  
14 certain, but that makes sense to me.

15 Q. Registrar, could you  
16 close this down and call out 831 and 832, please.

17 Mayor Eisenberger and his  
18 chief of staff exchanged e-mails separately. She  
19 forwarded Mr. Zegarac's e-mail, the one we were  
20 just looking at, writing:

21 "Mayor says it was requested  
22 by councillors."

23 And this is in -- sorry, just  
24 for context, I'm not going to take this out to  
25 give you the context, but some discussions with

1 Ms. Paparella in the clerk's office about where  
2 and when reports should be put on particular  
3 agendas, so there's some back and forth about how  
4 this is going to go forward. And she e-mails one  
5 of those to the mayor and says:

6 "Mike has said it was  
7 requested by councillors."

8 And the mayor responds:

9 "Chad and Sam, I figured -- "  
10 Which I think would be you and  
11 Councillor Collins?

12 A. Yeah.

13 Q.

14 "They want to have a forensic  
15 audit, suggesting  
16 criminality."

17 Just stopping at the phrase  
18 "forensic audit," recognizing that's not your  
19 word, that's the mayor's, did you want to have a  
20 forensic audit of the circumstances that were  
21 going to be presented to council?

22 A. Okay. So, again, based  
23 on trying to get ahead of all the narratives and  
24 people running with them, my intent here, and I  
25 did say -- I'm not sure if I said forensic, but I



1 said we need to turn over every stone, which means  
2 if we don't suggest that the criminality  
3 potential, that somehow we're covering that up,  
4 too. That's how ridiculous the City has become.  
5 So, we have to go over and above and even when we  
6 do that, they still think we're hiding something.  
7 But, so yeah, I would have probably -- yes, I  
8 would have said that. I think I specifically  
9 recall saying that.

10 Q. Okay. Registrar, you can  
11 close that down and can you go to page 356 and  
12 pull out 850. Thank you.

13 So, it's not obvious from this  
14 call out what the date is, but I can tell you it's  
15 on January 30. Mr. Zegarac e-mails the mayor and  
16 says:

17 "Dan -- "

18 That being Mr. McKinnon:

19 " -- and I had a follow-up  
20 discussion with the  
21 councillors we met with  
22 yesterday proposing a  
23 reporting process. The  
24 councillors were not in  
25 alignment with what we

1 propose. The councillors  
2 suggest a special GIC followed  
3 by special council followed by  
4 a communications release.  
5 I've asked Rosanna if she can  
6 find some time with you to  
7 discuss today. Also, we're  
8 engaging outside legal  
9 support."

10 And the mayor says:

11 "Thanks. What did you  
12 propose?"

13 And Mr. Zegarac said:

14 "Propose going in camera at  
15 February 6 GIC to further  
16 previous in-camera discussion.  
17 This would be comprised of a  
18 series of in-camera  
19 presentations."

20 So, stopping there, do you  
21 recall having a follow-up discussion with  
22 councillors, Mr. Zegarac and Mr. McKinnon on  
23 January 29?

24 A. No. I thought we decided  
25 all of this in one meeting, but I could be wrong.

1 So, I don't --

2 Q. Sorry, can you pull up  
3 your microphone?

4 A. Sorry. I recall all of  
5 this because that was basically my contribution.  
6 The communication release and all of that was my  
7 contribution to this discussion. But I recall  
8 this all happening in one meeting, not in two  
9 separate meetings, so I don't know. My memory  
10 perhaps isn't serving me properly.

11 Q. Mr. Zegarac recalls two  
12 meetings with you, but that is the thing with  
13 memory, so you do recall one meeting?

14 A. Yeah. I thought we dealt  
15 with all of this in one meeting in his office with  
16 the four of us.

17 Q. Okay. Did you have any  
18 concern about going in camera at the February 6  
19 GIC meeting rather than having a special GIC  
20 meeting?

21 A. An automatic issue going  
22 to public works, not GIC. No. I'm sorry, what  
23 was the question again?

24 Q. The question was: Did  
25 you have a concern with going in camera at the

1 February 6 GIC meeting instead of doing a special  
2 GIC meeting?

3 A. No. There's no  
4 difference. I'm not sure why.

5 Q. I ask because Mr. Zegarac  
6 says that councillors were not in alignment with  
7 what we proposed, and the mayor says, "What did  
8 you propose?" and Mr. Zegarac says:

9 "Propose going in camera  
10 February 6 GIC with these  
11 presentations."

12 If you go back to the first  
13 e-mail, Mr. Zegarac said:

14 "The councillors suggest a  
15 special GIC followed by a  
16 special council followed by a  
17 communications -- "

18 A. Right. I get it. I  
19 think what happened there -- sorry to interrupt.

20 Q. No.

21 A. So, I think we wanted  
22 everything to happen in one day rather than having  
23 the meeting, the decision and then a gap, which is  
24 ratified and then communication, so we wanted all  
25 wham, bam, and then once we leave all in one day

1 so we can contain the message because messages go  
2 awry and that's what was the intent for the  
3 strategy.

4 Q. Thank you. That's  
5 helpful. Were you aware that the mayor had  
6 received a briefing about the report, the  
7 Tradewind report, from staff on December 18, 2018?

8 A. No.

9 Q. Registrar, could you  
10 close this and go to page 378, please, and could  
11 you call out 876 and 877.

12 Several staff met with  
13 Mr. Moore on January 31, 2019. In advance of this  
14 meeting, staff worked on compiling a list of  
15 questions to ask Mr. Moore. And you'll see  
16 Ms. Auty was e-mailing with external legal  
17 council, Mr. Boghosian, on January 30, and she  
18 wrote:

19 "Mike Zegarac is meeting with  
20 Gary Moore tomorrow to follow  
21 up on some discussions and  
22 council questions."

23 On that last part, do you have  
24 any insight into which council questions Ms. Auty  
25 is referring to?

1 A. No.

2 Q. Registrar, you can close  
3 this down. You can close this document down, too.  
4 Can you call out HAM62635 and could you pull out  
5 the next image, please. Thank you.

6 So, Mr. Merulla, I'm not sure  
7 if you have seen this document before. I'm not  
8 going to spend any time on the details of it, but  
9 I just wanted to orient you to February 6 and that  
10 GIC meeting. You'll see at the very top, this is  
11 a closed session minutes and it has time in, 4:18,  
12 time out, 10:03 p.m. Do you see that?

13 A. Yes.

14 Q. And it was quite a  
15 lengthy closed session meeting. Do you recall  
16 receiving a number of presentations from various  
17 staff, including legal, audit and public works?

18 A. No. I don't recall.

19 Q. You don't recall this  
20 meeting?

21 A. On the surface, what day  
22 was this? This was February 6, 2019. Oh, yes, I  
23 do. So, this is when everybody -- yes, I do  
24 remember this one.

25 Q. You're in closed session

1 for six hours, you receive a number of documents.

2 Do you remember receiving presentations from

3 public works staff, audit and legal?

4 A. Yes.

5 Q. Okay. I'm just going to

6 close this down.

7 So, recognizing that you had

8 talked to Mr. Zegarac about the report on

9 January 25 and perhaps on January 29, so you had a

10 bit of a heads-up about what was coming, did you

11 learn new information at the February 6 GIC

12 meeting?

13 A. New information. You

14 know, because again we have such constant streams

15 of information coming to and from, I can never,

16 ever source who, when and where I obtained

17 information because these days particularly we're

18 always getting information, so I don't know.

19 Q. Okay. So, I'm asking

20 because I'm going to ask you about your reaction

21 and about the tone of the meeting, and I'm just

22 trying to understand how informed you were before

23 the meeting started. And so, that's really the

24 crux of my question.

25 Did you feel like you went

1 into the GIC meeting and you didn't learn anything  
2 new, you were just having this meeting with your  
3 colleagues for the first time, or did you walk in  
4 and learn much more of the details than you had  
5 before you walked into the meeting?

6 A. I think I knew pretty  
7 well what the thrust of the issue was.

8 Q. Okay. What was your  
9 reaction to the information that staff shared with  
10 you either in advance or at this meeting?

11 A. My reaction was how --  
12 the communication plan, like, how are we going to  
13 get ahead of this thing to ensure that it can be  
14 communicated so it can be accurately distributed  
15 to the community in a factual manner, because my  
16 concern was always what we were communicating was  
17 always spun a certain way. It wasn't spun, it was  
18 literally fabricated, like the alternative fact  
19 scenario. We were always very cognizant of that  
20 and that was the thrust of my concern at that  
21 time.

22 Q. Thank you. So, that  
23 seems like what your immediate proposed solution  
24 or what your plan of action would be. What I  
25 asked for was what your reaction was. What were



1 your emotions?

2 A. Well, you know, they're  
3 one and the same in this job. I'll be honest with  
4 you. Sometimes you lose the emotional component.  
5 But no, I just really -- I had a job to do. I  
6 didn't have emotions about it. We had an issue  
7 before us and we had to do it. I don't even know  
8 what that means, emotion. Was I angry? Was I  
9 happy? No. We had an issue and we needed to deal  
10 with it.

11 Q. You weren't angry?

12 A. No.

13 Q. You weren't betrayed?

14 A. No.

15 Q. You weren't --

16 A. At that point I didn't  
17 know what was happening. What we needed to do was  
18 have it made public, but in a manner conducive  
19 that it could incrementally get to the factual  
20 component without it losing control, which it did.  
21 At the end of the day, I think we're in a system  
22 right now where you can't control it, so that's a  
23 whole other issue and maybe a whole other inquiry.

24 Q. So, you sat there, and I  
25 absolutely understand why you would want to put a

1 plan in place, you would want to understand what  
2 the next steps were, you didn't have any feelings,  
3 reactions, emotions, thoughts, about the  
4 information that you were receiving. That can't  
5 be right?

6 A. See, by then I already  
7 dealt with it, so you're asking me of that day of  
8 the meeting --

9 Q. No, that's why I was  
10 asking if you learned new information coming into  
11 this meeting. I'm asking when you learned new  
12 information about this, what was your reaction?

13 A. Shocked. I was actually  
14 in disbelief. That's all.

15 Q. What were you shocked  
16 about?

17 A. That the allegation might  
18 be true, but not knowing that it is. It was just  
19 an allegation. But, again, and this is the world  
20 we're living in right now, I've dealt with  
21 hundreds of allegations, so as much as I was  
22 shocked, I was still cognizant of the fact that it  
23 was just an allegation and we had to sort through  
24 it all.

25 Q. What allegation were you

1 shocked about?

2 A. The fact that it was  
3 covered up, because I had to understand the  
4 answer -- the question is was it covered up or was  
5 it just simply put aside because it wasn't  
6 necessary, is the question. So, we didn't have  
7 the answer at that time. We needed to follow due  
8 diligence accordingly.

9 Q. What was shocking about  
10 the allegation that the report may have been  
11 covered up, to use your words?

12 A. It was shocking to me  
13 that the allegation was being made to begin with  
14 in the manner it was being made. It's all in the  
15 wording. The sky was falling. Suddenly we find  
16 this report. To me, it almost seemed, I don't  
17 know, orchestrated to some degree, but I wasn't  
18 overly concerned immediately. I needed to find  
19 out the facts before I drew any conclusions.

20 Q. So, you said earlier that  
21 one of the things I think you said you discussed  
22 with your fellow councillors at some point, and  
23 you couldn't remember when earlier in your  
24 testimony today, was a question about whether the  
25 road was safe. Do you recall did this happen at

1 the February 6 GIC meeting or did it happen at  
2 some earlier time?

3 A. It happened the moment we  
4 were told and Mr. Zegarac -- the first thing we  
5 said is, do we need to close the road? Because  
6 that's what I thought the urgency of this thing  
7 was. And they said, no, no, nothing like that. I  
8 thought, okay, that's all we need to know.

9 And then we went from there to  
10 more of the political aspect of it all. That's  
11 where I think the shock was because at first we  
12 thought is it true, do we need to shut the road  
13 down? And they said, no, no, nothing like that.  
14 That's when we went into more of an operational or  
15 work type of mentality as opposed to an emotions  
16 associated with my perception of what the intent  
17 or motive was.

18 Q. Okay. And do you think  
19 that that interaction where you and your fellow  
20 councillors said, do we need to shut the road  
21 down, and I think I'm hearing from you Mr. Zegarac  
22 and Mr. McKinnon said, no, no, nothing like that,  
23 do you think that that was on January 25?

24 A. I don't know when that  
25 was.

1 Q. Okay. Registrar, can you  
2 bring up OD 10A, 202 -- sorry, I misspoke. 20 to  
3 21. Registrar, do you need that again because  
4 that was a little mangled? No. Thank you.

5 Mr. Merulla, this is  
6 Mr. McGuire's handwritten notes from the  
7 February 6 GIC meeting. We do, thankfully for all  
8 of us, have transcripts of this meeting.

9 Registrar, could you pull up  
10 on the right-hand side RHV1004, please.

11 So, we're just looking at the  
12 transcript and the handwriting.

13 Registrar, could you call out  
14 the transcript, please.

15 So, you'll see at the very top  
16 it says:

17 "4:30, Dan moves through  
18 slides quickly."

19 Do you recall a slide deck  
20 presentation that included Mr. McKinnon going  
21 through some of the background of the chronology  
22 in respect of the Tradewind report?

23 A. No. No. I don't  
24 remember that, but I'm sure he did the  
25 presentation.

1 Q. Okay. You'll see there's  
2 reference to Councillor Ferguson speaking,  
3 Councillor Clark, JP Danko. And then at 5:00 it  
4 says:

5 "Councillor Jackson, where's  
6 Gary?"

7 And then at 5:05:

8 "Councillor Merulla -- "  
9 That's you."

10 " -- wants to know why this  
11 was withheld. Trust issue."

12 Do you recall what your  
13 questions were at about 5:05 at this meeting in  
14 respect of wants to know why this was withheld,  
15 trust issue?

16 A. If you're going to go  
17 based on my recollection, that to me would suggest  
18 I trusted Gary without hesitation. I always have.  
19 I thought he was always a straight shooter with  
20 us. Didn't agree with him all the time, but I  
21 always respected him.

22 So, when that was thrown out  
23 there as a -- it kind of -- that, I recall  
24 thinking, okay, wait a minute. If indeed these  
25 allegations might be accurate, then yes, it's

1 hurtful. But my issue was let's find out the  
2 facts first. There's going to be a huge trust  
3 issue because not dissimilar to what I spoke about  
4 earlier, how I responded to that constituent is  
5 based on my blind trust in cases when it comes to  
6 issues of engineering with professionals like  
7 Mr. Moore. So, even a percentage of that trust  
8 being diminished to me is an issue, and that's  
9 probably where I went with that.

10 Q. Registrar, this document  
11 on the right-hand side, RHV1004, needs to be  
12 marked the next exhibit, which I believe is  
13 Exhibit 202. Is that right?

14 THE REGISTRAR: Noted,  
15 counsel. Thank you. Yes, it's Exhibit 202.

16 EXHIBIT NO. 202: Transcript  
17 of Mr. McGuire's handwritten  
18 notes from the February 6 GIC  
19 meeting, RHV1004.

20 MS. LAWRENCE: Thank you.

21 BY MS. LAWRENCE:

22 Q. Registrar, you can close  
23 this down and if you can go into HAM12843, please.

24 This is the Tradewind report.  
25 Do you recall receiving a copy of this report at

1 the meeting?

2 A. I know I did, but I don't  
3 remember when I received it.

4 Q. Okay. Registrar, can you  
5 go to image 8, please. Sorry, as colourful as  
6 this chart is, this is not what I wanted to take  
7 you to. Image 5, please. I think it might be  
8 that time of the day. Mr. Merulla, apologies, and  
9 apologies, Registrar. Image 4, please.

10 A. No worries.

11 Q. Can you bring up the next  
12 page as well, please. Sorry, I asked for  
13 image 14.

14 Commissioner, apologies.  
15 Mr. Merulla, apologies. Can you go back --

16 A. I'm actually fascinated  
17 by trying to read this as it comes up.

18 Q. Registrar, could you go  
19 back to 12 and 13, please. There we go.  
20 Registrar, could you bring up the full three  
21 paragraphs on the right-hand side, please.

22 Sorry, it took us a while to  
23 get there, Mr. Merulla. This is the last page of  
24 text of the Tradewind report. Do you recall  
25 reviewing this during that six-hour closed session



1 meeting?

2 A. I don't specifically  
3 recall, but I normally start from the conclusions  
4 of every report and I work my way back, so yes, I  
5 would say I read it.

6 Q. Okay. So, you'll see in  
7 the second paragraph it says:

8 "The overall friction averages  
9 as measured by the grip tester  
10 in designated lanes on  
11 sections of the Red Hill were  
12 below or well below the same  
13 UK investigatory level 2."

14 And then you can contrast that  
15 with the paragraph above, which says:

16 "The LINC were comparable to  
17 or above the relevant UK  
18 investigatory level."

19 It goes on in that second  
20 paragraph to say:

21 "In addition to the overall  
22 low average grip numbers,  
23 there are some localized  
24 sections with quite low  
25 friction values."

1                   And has a recommendation for a  
2   more detailed investigation be conducted and  
3   possible remedial action be considered to enhance  
4   the surface texture and friction characteristics.  
5   Do you recall specifically being taken to this  
6   language, this below or well below the UK  
7   investigatory standard?

8                   A.    No.

9                   Q.    And were you aware from  
10  the information that staff did provide the  
11  distinction between the LINC and its friction  
12  values and the Red Hill and its friction values?

13                  A.    Not that I recall.

14                  Q.    Okay.  Registrar, could  
15  you close this down and go to HAM54395.  Thank  
16  you.  And can you go to image 1 and 2.

17                  Mr. Merulla, this is the slide  
18  deck that I asked you about before and you said  
19  you didn't remember the slide deck.  Is that  
20  right?

21                  A.    I don't remember the  
22  slide deck, but I'm sure it happened.  We've seen,  
23  I've seen, tens of thousands of slide decks.

24                  Q.    Fair enough.

25                  A.    I don't remember this

1 one.

2 Q. Registrar, can you go to  
3 image 4, please.

4 Mr. McKinnon went through a  
5 bunch of, sort of, different themes based on the  
6 reconstructed timeline, so you'll see who staff  
7 was at the various times, SMA and what that means,  
8 MTO, asphalt testing, council reports over time,  
9 safety upgrades over time, media coverage over  
10 time and recent staff actions. Do you remember at  
11 least at a high level being taken through each of  
12 these topics?

13 A. Yes. That was his norm.  
14 That's how he functioned. That's correct. I  
15 don't remember him doing it, but that's how he  
16 delivered all of his reports.

17 Q. Fair enough. Do you  
18 recall under Media Coverage that Mr. McKinnon  
19 explained that Mr. Moore had said that there were  
20 inconclusive testing results, had made that  
21 comment to the media in the past? Do you remember  
22 that?

23 A. Yeah. The media  
24 comments. I don't remember him saying it in the  
25 meeting, though.

1 Q. At the meeting on  
2 January 25?

3 A. I don't remember him  
4 saying it there. I remember hearing that through  
5 a third party outside of the City.

6 Q. Okay. Before this  
7 meeting or after this meeting?

8 A. I don't know. See,  
9 that's the other thing. It could have been  
10 before, it could have been after. When did that  
11 e-mail come in from the public?

12 Q. I'm sorry?

13 A. The e-mail from the  
14 public refers to the inconclusive data, so the  
15 date of that, that would indicate to me that I  
16 knew at that time, so it probably happened before.

17 Q. Okay. The date of that  
18 e-mail was September 28, 2018.

19 A. And the date of this  
20 meeting?

21 Q. February 6, 2019.

22 A. Okay. Yeah, so I would  
23 have known.

24 Q. Okay. Could you lift  
25 your microphone up a little bit?

1                   A.     Sorry.  I said I would  
2     have known.

3                   Q.     Registrar, can you go to  
4     HAM61922, please.

5                   This is the legal services  
6     report that was delivered on February 6.

7                   Registrar, could you bring up  
8     images 2 and 3, please.

9                   Under Analysis and Rationale,  
10    you'll see at the top, Registrar, could you pull  
11    out the three paragraphs that are under that  
12    heading on the right-hand side.  I'm sorry,  
13    Registrar.  If you could close that out, I need  
14    everything right under Analysis and Rationale for  
15    Recommendation.  Thank you.  Perfect.  Thanks.

16                  You see in the second  
17    paragraph it describes various CIMA reports over  
18    time and it says:

19                   "The focus of recommendations  
20                   had been on changing driver  
21                   behaviour that is believed to  
22                   be a major source of ongoing  
23                   collision rates."

24                  Did the information that you  
25    received at this meeting change your understanding

1 of the source of ongoing collision rates?

2 A. I can't remember that.

3 Q. Okay. Do you recall  
4 being advised that there was a high proportion of  
5 wet weather collisions on the Red Hill?

6 A. Yes.

7 Q. And at this meeting  
8 connecting that to friction?

9 A. I don't know. I can't  
10 remember. No, I can't remember that.

11 Q. Okay. Sitting here  
12 today, do you understand that there is a  
13 relationship between friction and slipperiness on  
14 the roadway --

15 A. Yes, of course.

16 Q. -- at least conceptually?

17 A. Yes.

18 Q. And do you understand any  
19 relationship between wet weather collisions and  
20 friction?

21 A. Yes, of course.

22 Q. Okay. But you don't  
23 remember whether staff made that connection for  
24 you at this meeting?

25 A. I can't remember that,

1 no.

2 Q. Okay. Registrar, could  
3 you close this and have image 3 and 4 up, please.  
4 Actually, Registrar, you can take this down. Can  
5 you go to HAM12842, please. You can bring up the  
6 next image as well, too, please.

7 Mr. Merulla, do you recall  
8 receive a copy of this memoranda from CIMA on  
9 February 4?

10 A. No.

11 Q. No?

12 A. I think received it, but  
13 I don't remember receiving it.

14 Q. Okay. CIMA goes through  
15 three questions that they identified were asked of  
16 them after reviewing the Golder report, the  
17 Tradewind report and then being asked to look back  
18 at their past recommendations. You'll see  
19 question one is:

20 "In light of the information  
21 in the 2014 Golder report, are  
22 any changes needed to  
23 recommendations?"

24 A. I remember this.

25 Q. You remember this?

1 A. Yeah.

2 Q. This provides some  
3 comfort for you about the current safety of the  
4 road?

5 A. I would say so, yes,  
6 absolutely.

7 Q. Registrar, could you  
8 close this and can you call out two documents.  
9 The first is HAM54395, and the next is HAM12841.  
10 On the left-hand image, could you go to image 44,  
11 please.

12 So, you'll see in the slides  
13 that the staff recommended a media release  
14 following council on February 13. So, February 13  
15 would have been the council ratification, council  
16 meeting after this GIC and the media release was  
17 recommended to follow after that. And that is not  
18 what happened, we know from the press release,  
19 which is on the other side.

20 Registrar, you can close down  
21 the left-hand side and if you can bring up image 1  
22 and image 2 of the right-hand side, please.

23 You said earlier that you  
24 wanted to talk about the apology that staff  
25 provided. You'll see this is the press release



1 and the first line is in respect of the staff  
2 apology. What happened at the meeting that led to  
3 the press release being put out a week before  
4 staff's recommendation?

5 A. Okay. So, getting back  
6 to the City and its crisis of misinformation, you  
7 will note that this press release clearly  
8 indicates that on behalf of the City of Hamilton,  
9 that staff is actually apologizing to council and  
10 the general public. It's not council apologizing  
11 to anyone. We're the victims in all this and  
12 staff admittedly came public and stated that.  
13 That whole narrative was changed as council  
14 apologized, so literally that narrative lives to  
15 this moment and people voted yesterday for or  
16 against someone with that misinformation being  
17 part of the equation, which is really a sad state  
18 of affairs.

19 So, your question, I'm sorry?

20 Q. My question was: What  
21 happened at the meeting that led to the press  
22 release being put out a week before staff's  
23 recommended press release date?

24 A. Okay. I don't remember  
25 exactly, but based on my speculation being part of

1 this, it would have been to try to, again,  
2 mitigate the misinformation by being proactive on  
3 the information so that incrementally we could  
4 steer the public towards the truth of it rather  
5 than the fiction that people create.

6 Q. Okay. And do you recall  
7 did council seek an apology from staff or did  
8 staff offer an apology to council?

9 A. No. That my contribution  
10 to this, because my argument was, again, that  
11 council, when everything is great, it's everybody  
12 else's contribution, but when everything goes  
13 awry, it's council's fault. And it really is an  
14 unsustainable democratic scenario to be in and  
15 this kind of stuff has to stop, but we don't have  
16 an honest media any longer and, because of it, it  
17 just gets amplified to a point where democracy is  
18 at a point where 30 percent or lower are attending  
19 elections.

20 Q. Thank you. So, I do  
21 really want to encourage you to listen to my  
22 questions and answer my questions specifically,  
23 especially because I'm going a little long and we  
24 would like to get you out of here as soon as  
25 possible.

1                   A.    Oh, I like being here, so  
2    I don't mind.

3                   Q.    Registrar, could you  
4    close this and go to HAM64331.  If you can call up  
5    image 1 and 2.

6                   This is a document that spans  
7    over a number of images.  I'm just putting up the  
8    first two so you can see it.  Mr. Boghosian was at  
9    the February 6 meeting.  Do you recall if you  
10   received a copy of this opinion letter from  
11   Mr. Boghosian?

12                  A.    I know that he was in  
13   attendance.  I know that I was in attendance, so I  
14   would say I would have, but I don't remember.

15                  Q.    So, he presented at the  
16   meeting?  I was asking if you actually received a  
17   copy of this written document.

18                  A.    I think he was in  
19   attendance.

20                  Q.    He was, yes.

21                  A.    Yes.  I don't remember  
22   receiving it, though.

23                  Q.    Okay.  Registrar, can you  
24   go to image 8, please, and can you call out the  
25   paragraph, "When asked to rank."

1                                   This is Mr. Boghosian  
2   including a discussion he had with Mr. Malone, who  
3   works at CIMA, and Mr. Malone advised  
4   Mr. Boghosian that when asked to rank in order of  
5   greatest contribution to the inordinate number of  
6   wet road crashes, Mr. Malone advised that  
7   slipperiness of the road was first, speed, curves  
8   and proximity of on/off-ramps in that ranking.

9                                   Did any staff convey to you a  
10   ranking like this in terms of the contributors to  
11   wet road crashes?

12                                  A.    You know, it sounds  
13   similar to what I used as my regular response.

14                                  Q.    It does, but I'm asking  
15   if staff ever told you?

16                                  A.    I don't know, but it  
17   looks like they did because it just seems  
18   coincidental that I'm using that language. Right?

19                                  Q.    Okay. Registrar, could  
20   you go to HAM1621, please. Can you bring up the  
21   next image as well.

22                                  Mr. Merulla, this is  
23   February 13, so this would have been at council  
24   and this is a motion that has a number of  
25   whereases, two pages full of whereas statements.

1 A. Oh, I kind of remember  
2 this.

3 Q. And then, Registrar, can  
4 you go to the next image.

5 There we go, so there's the  
6 resolutions. It's to make public some CIMA  
7 reports, to have a public education campaign about  
8 the risk of speeding and to report back on a  
9 provincial auditor general investigation.

10 A. Right.

11 Q. Do you remember making  
12 this motion?

13 A. Vividly.

14 Q. I understand it's not  
15 common to bring a motion directly to council. Is  
16 that right?

17 A. No, that's not true.

18 Q. It's not true?

19 A. I've done it many, many  
20 times.

21 Q. Okay. I mean, council as  
22 compared to public works committee or GIC?

23 A. I've done it. Honestly,  
24 if I want to get more attention, I always do it at  
25 council. That's --

1 Q. Fair enough. I see. I  
2 can tell you, and I won't take you to it, but it  
3 does appear that the Spectator is asking for the  
4 disclosure of additional information, in  
5 particular, the CIMA reports.

6 Do you recall what the purpose  
7 was of this motion?

8 A. Clearly. So, as I  
9 mentioned earlier, we have scattered narratives  
10 throughout the City. So, today, because reporters  
11 are using social media as an assignment editor,  
12 it's like you have to put blinders on these  
13 reporters because they get distracted so easily.  
14 So, because the issue was so hot, I needed to  
15 literally put blinders on them to try to have them  
16 focus in on every single measure we, as an elected  
17 body, went over and above and never took no as an  
18 answer from staff to ensure that not only were we  
19 focusing in on the actual safety issues, but also  
20 the perceived safety issues, which I had earlier  
21 stated is as important as the actual safety  
22 issues. So, what this is is a synopsis of all the  
23 work we did politically in the face of the public  
24 demands and our staff saying everything is fine.

25 Q. Thank you.

1 A. You're welcome.

2 Q. Do you recall that  
3 members of council generally supported the issue  
4 of providing reports made by CIMA to be made  
5 public? Do you understand that that had  
6 widespread support?

7 A. I'm sorry, can you repeat  
8 that again?

9 Q. Do you recall whether  
10 your motion to disclose the past CIMA reports had  
11 widespread support?

12 A. Oh, it did, but only to  
13 make a political point, not to actually try to  
14 increase awareness surrounding the content of that  
15 report because nobody, unless you're an engineer,  
16 could really decipher what it meant.

17 Q. Thank you.

18 Commissioner, I did not intend  
19 to go so long in this afternoon. We're hitting  
20 the afternoon break and I would like to take a  
21 moment to look at my notes and also speak to  
22 counsel to organize the rest of our day. I would  
23 suggest that we take a ten-minute break.

24 JUSTICE WILTON-SIEGEL: That's  
25 fine. We'll take a ten-minute break and we'll

1 return at 25 past 3:00.

2 --- Recess taken at 3:14 p.m.

3 --- Upon resuming at 3:26 p.m.

4 MS. LAWRENCE: Commissioner,  
5 may I proceed?

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

8 MS. LAWRENCE: Thank you.  
9 Before the break we were looking at HAM1621 and I  
10 understand that that needs to be marked as an  
11 exhibit. I think we're at 203.

12 THE REGISTRAR: Noted,  
13 counsel. Thank you.

14 EXHIBIT NO. 203: City of  
15 Hamilton motion dated February  
16 13, 2019, HAM1621.

17 MS. LAWRENCE: Thank you. And  
18 with that, Commissioner, those are my questions  
19 and I understand that no counsel or that all  
20 counsel have no questions for Mr. Merulla.

21 JUSTICE WILTON-SIEGEL: None  
22 of the counsel have questions?

23 MS. LAWRENCE: No.

24 JUSTICE WILTON-SIEGEL: Okay.

25 Then, Mr. Merulla, you are excused. Thank you for



1 attending at the inquiry.

2 THE WITNESS: Many thanks for  
3 having me, folks. Have a great evening. Thank  
4 you.

5 JUSTICE WILTON-SIEGEL: And,  
6 counsel, I understand that the decision has been  
7 made, and this represents Mr. Danko's preference,  
8 that he be released from this afternoon and that  
9 we will examine him commencing at 9:30 tomorrow  
10 morning. Is that correct, Mr. Mishra?

11 MR. MISHRA: That is correct.

12 JUSTICE WILTON-SIEGEL: Okay.  
13 Then we'll stand adjourned until 9:30 tomorrow  
14 morning. Thank you. Have a good evening.

15 --- Whereupon the proceedings adjourned at  
16 3:27 p.m. until Wednesday, October 25, 2022  
17 at 9:30 a.m.

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