

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Wednesday, October 26, 2022 at 9:33 a.m.

VOLUME 76

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INDEX

	PAGE
AFFIRMED: COUNCILLOR JEAN-PAUL DANKO	14397
EXAMINATION BY MS. HENDRIE	14397
EXAMINATION BY MR. BOURRIER	14510
AFFIRMED: COUNCILLOR TOM JACKSON	14514
EXAMINATION BY MS. BRUCKNER	14514

1 Arbitration Place Virtual

2 --- Upon resuming on Wednesday, October 26, 2022

3 at 9:33 a.m.

4 MS. HENDRIE: Good morning,

5 Commissioner. Our first witness today is

6 Jean-Paul Danko. If we could have the court

7 reporter affirm Mr. Danko.

8 AFFIRMED: COUNCILLOR JEAN-PAUL DANKO

9 EXAMINATION BY MS. HENDRIE:

10 Q. Good morning, Councillor

11 Danko.

12 A. Good morning.

13 Q. I would like to start

14 this morning with some questions about your

15 professional background. I understand you're the

16 incumbent counsellor for Ward 8?

17 A. Yes.

18 Q. And you were first

19 elected in October 2018?

20 A. Correct.

21 Q. And recently re-elected

22 as Ward 8 councillor?

23 A. Yes.

24 Q. And so, your first term,

25 you were elected in October of 2018, but your term

1 would have started in December 2018. Is that
2 correct?

3 A. Correct, December 3.

4 Q. What part of Hamilton
5 does Ward 8 include?

6 A. Ward 8 is the west
7 central mountain, so between Upper Wellington and
8 Garth from the escarpment to the hydro corridor
9 just past Rymal Road.

10 Q. And am I correct that the
11 LINC runs through Ward 8?

12 A. Yes.

13 Q. But just the LINC, not
14 the Red Hill?

15 A. Correct, just the portion
16 of the LINC between Upper Wellington and Garth.

17 Q. Turning to your
18 educational background, I understand that you have
19 a degree in civil engineering. Is that correct?

20 A. Yes.

21 Q. And where did you go to
22 school?

23 A. I'm a graduate of
24 McMaster University.

25 Q. And when did you

1 graduate?

2 A. 2001.

3 Q. Are you a licensed

4 professional engineer?

5 A. Yes.

6 Q. Are you still in your

7 capacity as a councillor?

8 A. Yes. I'm still a

9 licensed professional engineer in the Province of

10 Ontario.

11 Q. And I understand that you

12 worked as an engineer in the private sector prior

13 to being elected as a city councillor. Is that

14 correct?

15 A. Correct.

16 Q. Can you tell us a little

17 bit about your professional background? Where did

18 you work, from what time to what time and what

19 were your roles?

20 A. Sure. I was a consulting

21 engineer working in consulting right after I

22 graduated in 2001 up until I was elected in 2018

23 for an engineering consulting firm called Ellis

24 Engineering based out of St. Catharines.

25 Q. And did you work anywhere

1 else besides Ellis?

2 A. While I was still a
3 student, I was employed by Dufferin Construction,
4 so I worked probably about a year in total between
5 summers and I did an eight-month internship there,
6 so I worked as a quality control technician at
7 Dufferin Construction.

8 Q. And in your private
9 sector career, what sort of work did you do?

10 A. Well, I was a quality
11 control technician at Dufferin Construction. I
12 was running the lab, testing, sample testing for
13 aggregates, for hot mix asphalt. I also did field
14 testing for hot mix asphalt while I was at
15 Dufferin Construction and also concrete.

16 When I moved over to
17 consulting engineering, my specialty is structural
18 design, so I'm a bridge engineer. I design and
19 manage the construction of mainly bridges and
20 other heavy civil projects in the public sector.
21 Most of our jobs were public sector for clients
22 such as the MTO, the Region of Niagara, various
23 municipalities throughout Ontario.

24 So, my primary role was as a
25 structural designer, but I also wrote the contract

1 documents for various projects, so I'm very
2 familiar with, you know, MTO contract documents,
3 the Ontario Provincial Standards, as well as
4 municipal contracts, so probably in total I've
5 written hundreds of contract documents for
6 hundreds of millions of dollars' worth of
7 construction work.

8 I've also managed those
9 projects, so that was -- Ellis Engineering is a
10 very small consulting firm, so we all had multiple
11 roles. When I left there I was the senior project
12 manager, so I was in charge of the overall
13 management of construction of various projects,
14 mainly bridge jobs.

15 In terms of roads and asphalt,
16 I wouldn't say I'm an expert on geometric design
17 or asphalt, but it was part of, in my professional
18 capacity, designing the approaches for various
19 bridges, which would also include road safety
20 measures as they relate to, you know, the bridge
21 or the structure.

22 Q. Okay. Thank you. That
23 was going to be my question. You mentioned that
24 you worked on bridges and heavy civil work. So,
25 road, like, was your work in your prior experience

1 working with roads in relation to those projects,
2 not as, sort of, as a primary focus?

3 A. Correct. So, roads
4 wouldn't -- just strictly designing a road
5 wouldn't be the focus of any of the contracts that
6 I've worked on, but every bridge has a road
7 involved somewhere, so in relation to the
8 structure we would also design the road.

9 Q. Okay. Thank you. And
10 you mentioned some of your experience working in
11 hot mix labs and doing asphalt testing while you
12 were at Dufferin. Did you have any experience in
13 relation to pavement design or designing different
14 types of surface courses or asphalts?

15 A. Not specifically to
16 pavement, but design, more in the making sure that
17 the pavement that is designed meets the job mix
18 formulas, so in the quality control side.

19 Q. Okay. And are you
20 familiar or did you have any familiarity with the
21 standards governing or applicable to roadways like
22 the Red Hill Valley Parkway and the LINC?

23 A. In general, yes. I'm not
24 sure specifically what standards the Red Hill and
25 the LINC were designed to, but as it relates to

1 Ontario provincial standards, you know, Marshall
2 testing, MTO standards for asphalt, yes.

3 Q. And the inquiry has
4 received documents that suggest there was some
5 consulting work that you did for the City of
6 Hamilton while you were employed by Ellis. Is
7 that correct?

8 A. Correct.

9 Q. Did you do any work
10 related to either the Red Hill or the LINC?

11 A. No.

12 Q. I understand that you
13 joined the public works committee when you were
14 elected in 2018. Is that right?

15 A. Correct.

16 Q. And membership on
17 standing committees, is that voluntary?

18 A. Yes.

19 Q. In your case, why did you
20 volunteer to join the public works committee?

21 A. It's part of my personal
22 interest. Obviously, you know, having a career in
23 the industry, I have a, you know, personal
24 connection to the kind of work that is
25 specifically related to the public works

1 committee. And I also thought that because of my
2 professional background as a structural engineer,
3 working in the industry for a number of years,
4 that I would have, you know, some insight into
5 public works projects that would be valuable for
6 the constituents that I represent.

7 Q. So, most of my questions
8 today are going to focus on the time, sort of,
9 between when you were elected in late 2018 and
10 when the Tradewind report was disclosed to the
11 public on February 6, 2018, so it's a relatively
12 brief window that covers, sort of, the first few
13 months of your time in office.

14 So, before we get into those
15 specific questions, I just have some general
16 questions about your experiences and your
17 knowledge of the Red Hill more generally, sort of,
18 in that time period before you learned about the
19 Tradewind report.

20 So, we talked before about how
21 the LINC runs through Ward 8. Did you take or do
22 you take a particular interest in matters related
23 to the LINC as a result of it running through your
24 ward, sort of, compared to councillors who perhaps
25 the LINC doesn't run through their ward?

1 A. Not in particular.

2 Q. Okay. What about the Red
3 Hill?

4 A. No.

5 Q. Prior to joining council,
6 were you aware of any issues related to safety on
7 the Red Hill Valley Parkway?

8 A. So, in general, I was
9 aware of, you know, some collisions that had
10 occurred. I know there was a couple fatal
11 collisions which are, you know, always a tragedy,
12 but nothing that stood out to me. I mean, there
13 are tragedies on every roadway on a regular basis,
14 so there was nothing that stood out to me that,
15 you know, really piqued my interest.

16 Q. Okay. And when you say
17 you were familiar, was that through the media that
18 you learned of those fatalities and those
19 accidents?

20 A. Yes.

21 Q. Okay. Had you heard
22 about any media reports related to safety or
23 driving conditions on the Red Hill Valley Parkway?

24 A. No.

25 Q. Did you drive on the Red

1 Hill Valley Parkway --

2 A. Yes.

3 Q. -- as a representative of
4 Hamilton?

5 A. Yes.

6 Q. Did you ever have any
7 concerns arising from your own driving
8 experiences?

9 A. No.

10 Q. Okay. And had you heard
11 about any anecdotal concerns related to the Red
12 Hill from others, the public or people that you
13 knew in the community?

14 A. No.

15 Q. Okay. I understand that
16 when you took over as Ward 8 councillor, you took
17 over from Councillor Whitehead. He was the Ward 8
18 councillor before you?

19 A. Correct.

20 Q. And, as I understand it,
21 he was also a member of the public works committee
22 during his term?

23 A. I'm not sure.

24 Q. Okay. When you assumed
25 the role of Ward 8 councillor, did you receive any

1 briefings or do you have any transition
2 discussions with Councillor Whitehead?

3 A. No. There was no
4 transition whatsoever.

5 Q. Okay. So, he didn't tell
6 you about any of the work that he had been doing
7 or the issues that Ward 8 constituents had raised
8 with him?

9 A. Nothing.

10 Q. Okay. And, as part of
11 your transition, we understand that there were a
12 number of orientation session that were held for
13 new councillors at the start and, I guess, more
14 broadly just for the new council at the start of
15 the term. Is that correct?

16 A. Yes.

17 Q. Okay. And I'm sure
18 you're aware of some of these things today, but
19 sort of casting your mind back to that time before
20 early 2019 when the Tradewind report came to
21 light, were you aware of the public works
22 committee's work over time as it relates to the
23 Red Hill, including investigations in 2013 on a
24 portion of the Red Hill, safety studies done in
25 2015 and other studies done by the public works

1 committee related to speeding and lighting?

2 A. So, at the time I was
3 elected, I wasn't aware of any of that.

4 Q. Okay. And as part of
5 your orientation to council and to the public
6 works committee, were those things brought to your
7 attention?

8 A. I don't believe so.

9 Q. There were also a number
10 of -- in relation to some of those studies I just
11 mentioned, there were also a number of Red Hill
12 Valley Parkway related items on the outstanding
13 business list. Was that something that you were
14 made aware of at the time that you joined the PWC?

15 A. No.

16 Q. But that wasn't part of
17 the orientation?

18 A. No.

19 Q. From when you started as
20 a councillor in December 2018 until early
21 February 2019 prior to the public release of the
22 Tradewind report, did your office, either you or
23 your constituency staff, receive any complaints or
24 concerns from the public about the Red Hill Valley
25 Parkway?

1 A. I don't recall receiving
2 anything about specific to Red Hill in that
3 timeframe.

4 Q. Okay. Sort of as a more
5 general question, when your office does receive
6 complaints or concerns or enquiries from
7 constituents, do you have a process for logging
8 those?

9 A. So, I have an executive
10 assistant who one of her responsibilities is to
11 log and follow up with any correspondence that
12 comes through the office, so she has her own
13 systems for doing that, for tracking, you know,
14 what goes in and what comes out.

15 Q. Okay. But to your
16 knowledge, she didn't receive any or there weren't
17 any complaints that she logged related to the Red
18 Hill Valley Parkway in those first few months of
19 your time in office?

20 A. There was nothing that
21 she made me aware of.

22 Q. Okay. So, I'm going to
23 move now to some more general questions, this time
24 about how you prepare for council and committee
25 meetings. So, I appreciate that my questions

1 cover a four-year period, so if they changed
2 between, sort of, when you started in 2018 and
3 early 2019 and now, just let me know.

4 So, in general, what are your
5 practices when preparing for committee and council
6 meetings in terms of looking at the agenda
7 package, staff reports and documents that you
8 receive as part of the agenda package?

9 A. So, at that time when we
10 were still in the office, agendas are released a
11 week before the meeting, so my executive assistant
12 would print out in hard copy the agendas,
13 including all the reports for every specific
14 meeting. They would be in a binder that would be
15 set in my office, and then I would review each
16 report as I needed to in order to prepare for the
17 meeting.

18 Q. And when you say as you
19 needed to, was that, sort of -- did you review
20 everything or did you pick and choose?

21 A. I do review everything,
22 but my level of, you know, review varies depending
23 on the issue.

24 Q. Okay. And how do you
25 identify which issues sort of look more deeply at

1 or with more detail versus those that you might,
2 for example, skim or take a more high-level
3 review?

4 A. Obviously, you know,
5 there are issues that are relatively routine that
6 aren't going to involve a lot of debate. In those
7 cases I would review the executive summary, I
8 would know what my vote was going to be or maybe I
9 was just receiving the item, so I would be aware
10 of what was in the report, but not, you know,
11 spending time reading the entire report, just the
12 executive summary. On issues that were more
13 contentious or would, you know, had a strong
14 position or I knew that were going to involve, you
15 know, a deeper level of discussion, I would review
16 those reports in detail, the entire thing.

17 Q. Okay. And when you say
18 the reports, that's staff reports?

19 A. Correct.

20 Q. In your experience, is it
21 common or does it happen that you'll receive
22 consultant reports in addition to staff reports?

23 A. I would say that's
24 relatively uncommon. Usually it's just the staff
25 report.

1 Q. In instances where a
2 consultant report is provided to council, did you
3 typically read that or does it sort of, as you
4 said, vary depending on what the issue is?

5 A. It depends on the
6 consultant report. You know, as a councillor, we
7 rely on staff to interpret, you know, their work
8 with consultants and present that in a way that is
9 understandable by councillors. You know, we're
10 not experts in every field, so, for example, if
11 there's a consultant report from a public health
12 study or something like that, I might skim it, but
13 I wouldn't pretend that I would be able to
14 understand it, so I would be relying on the staff
15 report in that case.

16 Q. In your experience on
17 council, is it common for councillors to meet or
18 sort of speak with city staff outside of formal
19 committee and council meetings?

20 A. Yes. Councillors do meet
21 with staff on a regular basis.

22 Q. Do you?

23 A. Yes.

24 Q. And are these typically
25 face-to-face meetings, phone calls, e-mails, all

1 of the above?

2 A. Well, you know, back at
3 the 2019, they were usually face-to-face meetings
4 at the councillor's office or a phone call. Now
5 they, you know, it would be a Webex.

6 Q. Okay. Fair enough.
7 COVID has changed a lot of our typical practices.
8 Okay. So, I'm going to turn now to a January 23,
9 2019 council meeting, but I just have a
10 process-related question before we come to that
11 meeting.

12 So, my understanding is that
13 council is a ratifying body, so things will
14 typically go to a standing committee and then they
15 go to council, so GIC or public works and then
16 flow through that committee to council. Is that
17 right?

18 A. Correct.

19 Q. Okay. And in your
20 experience, is it common for an issue to go -- is
21 it uncommon for an issue to go directly to
22 council?

23 A. Yes. Best practice would
24 be to go to a committee first.

25 Q. Okay. And was that

1 something -- sorry. You said best practice. Why
2 is that? Just because council is a ratifying
3 body?

4 A. Correct. So, debate or
5 detailed discussion on any topic should happen at
6 the committee level. Once that discussion and,
7 you know, direction is set, then it bumps up to
8 council. Council is the final decision, so you
9 should never have a new issue at the council
10 meeting where you're making a final decision,
11 ideally.

12 Q. Okay. And when you say
13 best practice, is that something that you
14 appreciated sort of early in your tenure,
15 January 2019, or is that something you've sort of
16 come to appreciate over the last four years?

17 A. I guess that's something
18 I've learned over my course of the term, but, you
19 know, I think that's always been my understanding
20 of what the best practice was, has been.

21 Q. Okay. Thank you.
22 Registrar, can we call up HAM62634, both images,
23 please.

24 So, Councillor Danko, just
25 while this is coming up, I'll be calling up

1 documents and our overview document as well, so
2 the registrar can call portions out of the
3 documents, so if you need us to zoom in or zoom
4 out at any time, just let us know. We can control
5 that. And just to, sort of, do a little tech
6 test, can you see all of the videos of myself,
7 Ms. Talebi, Mr. Commissioner and the document?

8 A. I have got the two pages
9 of the document, I can read it fine, and I can see
10 all of your video.

11 Q. Okay. Perfect. So,
12 these are the closed session minutes of the
13 January -- of a January 23, 2019 counsel meeting,
14 so this is the in-camera session and it indicates
15 that the meeting or the closed session ran from
16 9:43 until 10:45.

17 And you'll see in the list of
18 councillors present that you are listed as one of
19 the councillors present. And in item I, it says:

20 "Potential litigation
21 update. Nicole Auty
22 addressed council and
23 provided a verbal update
24 respecting the potential
25 litigation update."

1 And she presented report
2 LS19007. So, I'll take you to that report in a
3 moment, but before I do, what do you recall about
4 attending this meeting on January 23?

5 A. I'm listed as present, so
6 I know I was there. There were, I believe, three
7 meetings in short succession in that timeframe. I
8 think it was January 23, February 6 and then a
9 couple weeks later. So, I have trouble at this
10 point differentiating between those meetings. One
11 of them went to 4:00 in the morning. I know that.
12 So, my recollection, you know, separating out what
13 happened at a specific meeting is a little tricky,
14 whereas I kind of remember them all as a group.

15 Q. Okay. So, I think that
16 meeting that ran until sort of 4:00 in the
17 morning, that was the council meeting on
18 February 13, which came after --

19 A. Okay.

20 Q. -- the -- so, that was
21 the council meeting after public disclosure of the
22 Tradewind report.

23 This meeting, I'll describe it
24 as the meeting where council received a heads-up
25 about the Tradewind report, so why don't I take

1 you to Ms. Auty's report, the legal services
2 report, and see if that assists in, sort of,
3 orienting our discussion.

4 Registrar, if we could call up
5 HAM62921 at images 1 and 2.

6 So, this is Ms. Auty's report.

7 And, Registrar, if we could
8 call up the executive summary section. Sorry,
9 it's the bottom of image 1 and the top of image 2.
10 Sorry. Thank you.

11 And, Councillor Danko, I'll
12 just give you a moment to review this.

13 A. Okay.

14 Q. So, do you recall
15 Ms. Auty presenting this report or giving a
16 presentation related to this topic at the
17 January 23 meeting?

18 A. Not specifically at that
19 meeting, but I do recall that there was, you know,
20 a presentation on the Tradewind report and
21 discussion about the potential litigation.

22 Q. Okay. And, sorry, I
23 should have asked this question.

24 Registrar, can you close this
25 call out for a moment.

1 Do you recall, looking at this
2 report now, did the councillors receive this
3 report in advance of the January 23 meeting or was
4 this something that would have been provided just
5 once you either entered into the closed session or
6 at the start of the council meeting?

7 A. I don't recall if we
8 received it in advance, but that would be best
9 practice that we would receive this with our
10 agendas.

11 Q. Okay. So, in the
12 executive summary there's a reference to an FOI
13 request and that there's the potential for
14 litigation arising from release of City records
15 relating to friction testing on the Red Hill
16 Valley Parkway as a result of the FOI request.

17 Prior to January 23, were you
18 aware of the existence of an FOI request related
19 to friction testing on the Red Hill Valley
20 Parkway?

21 A. No.

22 Q. So, this report and this
23 update from staff would have been the first time
24 you learned about the FOI request?

25 A. Yes.

1 Q. There are references, and
2 you mentioned this earlier, to potential liability
3 or potential litigation that might result from the
4 FOI release. What did Ms. Auty or staff tell you
5 about potential litigation that might result from
6 the release of the friction testing results?

7 A. From what I recall, there
8 was a number of active litigations against the
9 City in regards to Red Hill and some of the
10 collisions that occurred, and this information in
11 the report that is discussed could have
12 implications towards the City's ability to defend
13 ourselves in those claims. That's my recollection
14 of the discussion.

15 Q. Registrar, if we can keep
16 up image 2 and also call up image 3. Thank you.

17 So, you'll see, Councillor
18 Danko, there's a Historical Background section and
19 that section includes a brief historical
20 background related to the construction of the Red
21 Hill Valley Parkway, Mr. McGuire's appointment as
22 director of engineering services and that he
23 became aware of a draft report, Tradewind report,
24 in late September 2018. There's also some
25 information about the receipt of the FOI and

1 Mr. McGuire's decision to stop exploring hot
2 in-place recycling for the Red Hill Valley Parkway
3 repaving as a result of the Tradewind report.

4 So, recognizing that you were
5 at this point about a month and a half into your
6 or just over a month and a half into your time as
7 councillor, was all of this information in the
8 historical background section new information for
9 you?

10 A. Yes.

11 Q. Okay. Prior to receiving
12 this report and the update from staff at the
13 meeting, were you aware of any friction testing
14 that had been performed on the Red Hill Valley
15 Parkway?

16 A. No.

17 Q. So, not aware of any
18 friction testing results at any time?

19 A. I'm not aware of anybody
20 that's ever done friction testing in the Province
21 of Ontario.

22 Q. Okay. And there's a
23 reference to the Tradewind report in the fourth
24 paragraph underneath historical background. Was
25 that a name that you had heard before this meeting

1 or was this also something that was new to you?

2 A. I'm sorry, which name?

3 Q. Tradewind.

4 A. As a company, no.

5 Q. Okay. So, I take it,
6 then, you hadn't heard about the Tradewind report
7 before this meeting?

8 A. No, I had not.

9 Q. The Red Hill Valley
10 Parkway, we know that the Red Hill Valley Parkway
11 was scheduled for repaving in the spring or summer
12 of 2019. Were you aware that the Red Hill was
13 going to be repaved or was this something that you
14 also learned about at this meeting?

15 A. I don't recall
16 specifically. I know in around that timeframe was
17 when we were advised that it was scheduled for
18 repaving.

19 Q. Okay. So, in the second
20 or the fourth paragraph under Historical
21 Background on the page that's on the left side, it
22 says:

23 "In June of 2018, Gord
24 McGuire was appointed
25 director of engineering

1 services. As part of his
2 orientation into that
3 role, he reviewed the
4 status of the work being
5 proposed on the RHVE, and
6 in late September 2018
7 became aware of a draft
8 report, Tradewind report,
9 that included friction
10 testing done in 2013."

11 Do you recall at this meeting
12 if any further information was provided to council
13 about how Mr. McGuire became aware of the
14 Tradewind report?

15 A. No.

16 Q. Okay. And what was your
17 understanding at that time of how Mr. McGuire
18 became aware of the Tradewind report?

19 A. My understanding is that
20 he was reviewing some files or documents as it
21 related to taking over his new position and
22 discovered this report on, you know, a storage
23 somewhere, you know, on a digital format.

24 Q. And was that your
25 understanding from what staff advised at the

1 meeting?

2 A. I believe so, yes.

3 Q. Registrar, if we can call
4 up images 3 and 4 of this document. Thank you.
5 Can we call out the section underneath Analysis
6 and Rationale for Recommendation, all the way down
7 to the bottom of the page. Perfect. Thank you.

8 So, Councillor Danko, I'll
9 just give you a moment to review this section.

10 A. Okay.

11 Q. You'll see there in the
12 first paragraph it summarizes some of the
13 information and the findings in the report about
14 the friction numbers on the Red Hill. To your
15 recollection, was council provided any additional
16 information about the Tradewind report, its
17 findings, any of the recommendations or
18 conclusions in the report at this meeting on
19 January 23, aside from this summary in this
20 paragraph.

21 A. So, again, you know,
22 lumping these three meetings together, at some
23 point in that timeframe we did have a discussion
24 about what the findings were, what they meant and
25 what the consequences were.

1 Q. Okay, but you can't
2 remember specifically which of those three
3 meetings it was?

4 A. As part of the discussion
5 in that group of meetings, that's what happened,
6 but I don't recall specifically if it was at this
7 meeting or the next meeting.

8 Q. Okay. Was a copy of the
9 Tradewind report provided to council at the
10 meeting on January 23 or just this summary?

11 A. I don't recall if we
12 actually had the report. Again, in that timeframe
13 we did receive it.

14 Q. Okay. Do you recall when
15 you received it or how you received it or from
16 who?

17 A. No.

18 Q. Did you receive it as a
19 hard copy?

20 A. I don't recall, but the
21 practice at the time would be it would be appended
22 to an agenda, so if it was part of the meeting
23 agenda, then I would have received it with the
24 agenda package.

25 Q. But you don't have a

1 specific recollection of receiving it as part of
2 the agenda package?

3 A. No.

4 Q. And you're not able to
5 identify which of the meetings you received it at?

6 A. No.

7 Q. Okay. The second
8 paragraph says:

9 "The concern is that
10 Tradewind report was not
11 shared with other city
12 staff at the time."

13 What did you understand
14 staff's concern as it's reflected here to be about
15 the Tradewind report not being shared with other
16 city staff?

17 A. As the report also
18 states, there was a number of media attention on
19 the safety of the Red Hill and the FOI request, so
20 staff's concern, if I recall, was mainly around
21 the legal implications of publication of that
22 report, so how that would impact the City's, you
23 know, liability from claims that are already in
24 progress.

25 Q. Okay. So, you said

1 staff's concern was around the legal implications
2 of publication. Do you recall if staff conveyed
3 or expressed any concern about the safety of the
4 road or the findings of the Tradewind report?

5 A. No. I mean, the
6 Tradewind report is referencing UK standards,
7 which, you know, is essentially meaningless to
8 Canadian road.

9 Q. And what do you base that
10 view on?

11 A. That's based on my
12 20 years working in the industry and prior to this
13 I had never heard of anybody ever doing friction
14 testing on a road or a highway.

15 Q. Okay. As a new
16 councillor, did you have any views or concerns
17 about the fact that the report hadn't been shared
18 internally amongst city staff?

19 A. I think my interpretation
20 is probably a little bit different than some of my
21 colleagues. You know, because of my background in
22 working in the industry again, I wasn't concerned
23 that the report wasn't circulated. My
24 understanding was that the staff that commissioned
25 the report would have reviewed it and taken any

1 action that they deemed necessary at the time, so
2 the fact that it wasn't shared with council, you
3 know, wasn't really a concern for me.

4 Q. Okay. But what about the
5 fact that, as is reflected here, that it wasn't
6 shared with other city staff, did that concern
7 you?

8 A. Not particularly. I
9 mean, staff receive thousands of consulting
10 reports on a regular basis, so the fact that one
11 wasn't circulated around, again, it didn't raise a
12 particular red flag at the time.

13 Q. Okay. And you said you
14 think your interpretation was perhaps a little bit
15 different from some of your council colleagues.
16 How do you recall or what's your recollection of
17 how your council colleagues reacted to the news
18 that city staff conveyed at this meeting about the
19 existence of the Tradewind report and the fact
20 that it hadn't been shared with other city staff?

21 A. Well, I think there was
22 two lenses with which councillors were, you know,
23 reviewing what we were being presented with. So,
24 one was, from a technical perspective, is the road
25 safe? Is there any problems with the Red Hill

1 Valley Parkway? Is staff acting appropriately?
2 And then the other lens is the public perception
3 lens from a political perspective, and I think a
4 lot of my colleagues were more focused on the
5 political perspective rather than the public
6 safety perspective.

7 Q. Okay. And what do you
8 mean by the political perspective? Can you just
9 elaborate on that a little bit more for us?

10 A. Well, a number of
11 councillors were involved with the construction of
12 the Red Hill. It was a relatively contentious
13 project just to be built, so there was, you know,
14 some long-standing history that a number of
15 councillors have with that roadway. And also, you
16 know, the idea that council was hiding something
17 or council was, you know, directing something to
18 be hidden, it would impact the public's perception
19 of our municipal council as an effective
20 government, so obviously there's a political
21 perspective to that in how this is interpreted
22 publicly.

23 Q. Do you recall who those
24 councillors were?

25 A. Not specifically. I

1 mean, it's the councillors that had been
2 long-standing incumbents that were involved with
3 the roadway either through its approval, through
4 its construction, or that have some specific
5 interest in it.

6 Q. When Mayor Eisenberger
7 testified, he described that there was frustration
8 and dismay at the meeting. Does that align with
9 your recollection of the tone or reaction at this
10 meeting?

11 A. I do remember there was a
12 number of, again, those long-standing councillors
13 that have a special interest in the parkway being
14 frustrated that there was something that could
15 potentially be released that would have political
16 implications.

17 Q. Okay. And so, you
18 mentioned that there was the two lenses. There
19 was one, the, sort of, political lens, and also
20 there was the technical perspective, is the road
21 safe? And, appreciating that you don't
22 necessarily have a recollection of all of the
23 different meetings distinctive from one another,
24 do you recall if there was discussion about
25 whether or not the road was safe at this meeting

1 on January 23?

2 A. No, not specifically at
3 this meeting. I mean obviously in that group of
4 meetings that was a big part of the discussion,
5 but not specifically at this meeting, as I recall.

6 Q. Okay. So, you know that
7 it happened, but you just can't pinpoint
8 specifically it was at this meeting or it was at
9 the February 6 meeting?

10 A. Right.

11 Q. Okay. In the last
12 paragraph there it says:

13 "In addition, the
14 Tradewind report and its
15 content on friction
16 testing have not been
17 consistently addressed in
18 the media and now that
19 staff are aware of the
20 report and have
21 identified it as a
22 responsive record to the
23 FOI request, its release
24 may also have some
25 reputational impact on

1 the City and wide media
2 coverage."

3 What did you understand or
4 what did staff convey to you about what that
5 reputational impact might be?

6 A. So, again, to my previous
7 answer that there had been media coverage of
8 safety on the Red Hill, you know, coverage of a
9 number of lawsuits that are in progress and the
10 fact that this is -- would have to be released
11 under the FOI request, so I think staff were just
12 advising again, you know, because this report is
13 directly relevant to those, that it would
14 potentially impact the City's reputation and,
15 again, you know, through that political lens by
16 extension, the reputation of councillors who were
17 involved.

18 Q. Okay. Thank you.
19 Registrar, can we close this call out down,
20 please, and if we could call out the section under
21 Next Steps on the right page.

22 So, in Next Steps, it says:
23 "Corporate communications
24 staff are preparing a
25 communications plan in

1 the event the FOI request
2 leads to release of
3 information in advance of
4 the PW report scheduled
5 to come before council on
6 February 4, 2019. The
7 public report will update
8 council on the status of
9 various projects
10 associated with the Red
11 Hill Valley Parkway.
12 There will also be an
13 in-camera report to
14 further identify the
15 risks associated with the
16 RHVE and the release of
17 the Tradewind report."

18 Those risks there, to your
19 knowledge, is that reputational and the liability
20 risks that we talked about earlier, or were there
21 other risks?

22 A. Correct. We were
23 strictly talking about legal risks to the City
24 through the report, again, because of the ongoing
25 litigation. We're not talking about safety risks.

1 Q. Okay. At this stage, did
2 you have any concern about safety risks?

3 A. No, none whatsoever.

4 Q. And so, it references an
5 upcoming presentation or that the public works
6 reports would be brought before council on
7 February 4 and then there would be a further
8 in-camera report. And, as we know, ultimately the
9 public works reports and the in-camera report
10 happened together at the February 6 GIC.

11 So, just sort of, if you're
12 able to, casting your mind back to that January 23
13 meeting, what was your understanding of what the
14 next steps would be in terms of when and where
15 staff would bring this issue back to council?

16 A. I don't recall
17 specifically, but if that's what was approved that
18 is in the report as next steps, my expectation
19 would be that it would be at the February 4 public
20 works meeting.

21 Q. Do you recall if there
22 was any discussion at this meeting on January 23
23 among staff and council about where these issues
24 should be brought back next, or was this just --

25 A. I don't recall

1 specifically, but that does happen from time to
2 time where a very important report is going to a
3 standing committee, like public works or planning,
4 where not all councillors sit on those committees
5 and, you know, sometimes there is a discussion
6 that, oh, this should go to general issues, which
7 is all council, instead one of those standing
8 committees.

9 Q. Okay. And from your
10 perspective, was there any urgency in having staff
11 report back on this issue? You know, was this
12 something you wanted to -- like, you perceived
13 either an urgency from councillors or from staff
14 about coming back before council?

15 A. Well, obviously it was,
16 you know, a very significant issue for the City,
17 so we would expect that it would be dealt with in
18 as timely a manner as possible.

19 Q. Okay. And what, if any,
20 direction, to the best of your recollection, do
21 you recall council providing to staff in terms of
22 next steps coming out of this meeting, either work
23 that was to be done between the January 23 meeting
24 when they came back before council or any
25 information that council was looking for staff to

1 bring back?

2 A. I don't recall
3 specifically from this meeting if this was any
4 additional direction besides, you know, approving
5 what was recommended as next steps.

6 Q. Okay. And was this,
7 what's reflected up here on the screen, when you
8 say recommended as next steps or approved, what
9 was recommended next steps, is that what you're
10 referring to?

11 A. Yeah, although that's not
12 a specific direction. I think that's just more
13 staff's suggestion. So, sometimes in-camera
14 reports, there is specific direction, this is what
15 we're approving. I don't believe that is what's
16 written here.

17 Q. Okay. Do you have a
18 recollection of what was approved?

19 A. No, not specifically.
20 Again, you know, all these meetings kind of merge
21 together.

22 Q. Okay. I understand,
23 so -- Registrar, we can close this call out.

24 And so, I asked you before
25 about your recollection of whether councillors

1 received this report as a hard copy or if this was
2 provided at the meeting. I understand that
3 sometimes materials will be taken back from
4 councillors at the end of a council or committee
5 meeting, particularly if it's a closed session.
6 Is that right?

7 A. Correct. Typically --
8 again, this has changed somewhat when we've gone
9 online, but typically when we were in person and
10 we had hard copies, we would hand those back to
11 the clerk at the end of the meeting and I believe
12 they would then be destroyed.

13 Q. Was that for all reports
14 or just reports that were received in camera?

15 A. That's just for in-camera
16 reports.

17 Q. Okay. Do you have a
18 specific recollection of whether this report,
19 LS19007, was given back to the clerks after the
20 meeting or did you hold on to a copy?

21 A. I don't recall, but that
22 would have been the practice at the time.

23 Q. Okay. So, you don't have
24 a specific recollection, but that best practice
25 was to provide the report back to the clerks?

1 A. Correct.

2 Q. Okay. And just to
3 confirm, is your recollection that you didn't
4 receive a copy of the Tradewind report at this
5 meeting on January 23 or you can't recall either
6 way?

7 A. I don't recall. Again,
8 in that timeframe, I did receive the report, but I
9 don't know if it was at this meeting specifically.

10 Q. And when you say this
11 timeframe, is that sometime between January 23 and
12 February 6? Like, is that what you're referring
13 to when you say the timeframe?

14 A. That's the span of those
15 three meetings, from the end of January to
16 mid-February.

17 Q. Okay. And aside from
18 this report, LS19007, and perhaps possibly the
19 Tradewind report, do you recall if you received
20 any other materials from staff at this meeting?

21 A. No.

22 Q. And recognizing that you
23 don't have a specific recollection of receiving
24 the Tradewind report -- Registrar, we can close
25 this document out.

1 Councillor Danko, recognizing
2 that you don't have a specific recollection of
3 receiving the Tradewind report, what do you think
4 you did upon receiving the report?

5 A. I believe at some point I
6 received both the Golder report and the Tradewind
7 report, which was appended to that report, at
8 which time I would have reviewed them, made any
9 notes that I needed to, and any questions that
10 came up, I would have addressed with staff.

11 Q. So, you recall receiving
12 the Golder report and also the Tradewind report?

13 A. I don't recall
14 specifically, but I believe they were both
15 distributed together.

16 Q. So you received, to the
17 best of your recollection, both of those
18 documents. Recognizing that the Tradewind report
19 is appended to the Golder report, your
20 recollection is that you received those together
21 or did you receive them at different times?

22 A. I really don't recall
23 specifically, but at some point I did receive both
24 of them.

25 Q. Okay. Registrar, can we

1 call up overview document 9A, pages 357 and 358,
2 and if we could call out paragraph 854, which
3 carries over on both pages. Thank you.

4 So, Councillor Danko, there
5 was a telephone call between Nicole Auty, Ron
6 Sabo, who is another one of the City's legal
7 council, and David Boghosian, who is the City's
8 external legal counsel on January 30, 2019, so
9 about a week after the January 23 council meeting.
10 Mr. Boghosian prepared notes from this call, which
11 are -- the transcription of his notes are
12 excerpted here. And I'll just give you a moment
13 to review the call out here and let me know when
14 you're finished.

15 A. Okay.

16 Q. So, I interpret these
17 notes as a reflection of some of what was
18 discussed at the council meeting the week before.
19 Obviously you weren't a part of this phone call
20 between Ms. Auty, Mr. Boghosian and Mr. Sabo, but
21 as you can see there are a number of references to
22 council, so I just want to ask you about those to
23 see if that perhaps assists in refreshing your
24 memory about what may have been discussed at the
25 January 23 meeting or sometime between January 23

1 and January 30.

2 So, the second line down in
3 Mr. Boghosian's notes, it says:

4 "Council - quite
5 concerned about
6 situation."

7 And we touched on this
8 earlier, but for my benefit, do you recall was
9 council quite concerned?

10 A. Yes, of course. But I
11 think, to clarify the situation, meaning the legal
12 situation, not the safety situation.

13 Q. So, you recall that
14 council was concerned, was quite concerned, and
15 that concern was related to the legal situation?

16 A. Yes.

17 Q. Okay. And then jumping
18 down a few boxes, the second box from the bottom,
19 it says:

20 "Council concerned re
21 Gary Moore's
22 judge/honesty/
23 trustworthiness with them
24 in the past."

25 Do you recall what, if any,

1 concerns had been raised at the January 23 meeting
2 about Mr. Moore?

3 A. So, I never worked with
4 Gary Moore. I never met him at that point, so I
5 had no, you know, judgment about his professional
6 credentials or, you know, his personality.
7 However, at that meeting I do recall there was
8 some discussion about his personal approach to how
9 he did his job and some concerns raised by, you
10 know, again some of the councillors that had been
11 involved with the Red Hill Valley Parkway for a
12 number of years about Gary Moore's -- how he did
13 his job, not necessarily, you know, his
14 professional -- you know, how well he did his job
15 or, you know, his personality.

16 Q. Okay. And do you recall
17 what information council was given by staff about
18 Mr. Moore and his involvement at the meeting on
19 January 23?

20 A. I believe there was some
21 discussion that he was still employed by the City
22 in the LRT office at the time, which I think was,
23 at some point, again, I'm not sure if it was this
24 meeting or subsequent meetings, but at some point
25 there was some concern about his ongoing

1 employment, you know, in the LRT office while this
2 was happening at the same time.

3 Q. Okay. And what do you
4 recall, if anything, was council told about any
5 connection that Mr. Moore had to the Tradewind
6 report and the issues that were being brought
7 before council?

8 A. Again, I don't recall if
9 it was specifically at this meeting or subsequent
10 meetings, but my understanding was Gary Moore was,
11 you know, the person that reviewed it and was
12 responsible for any action that needed to be taken
13 at the time.

14 Q. Any action that needed to
15 be taken with respect to the Tradewind report and
16 its findings?

17 A. Yes.

18 Q. Okay. Thank you. So,
19 now going to the box above that, it says:

20 "Council wants to
21 know -- "

22 Then there's one, two, three,
23 but there's actually just only two items listed
24 there. So, the first question says:

25 "Council wants to know if

1 Brian Malone/CIMA had the
2 Tradewind report."

3 Do you recall council asking
4 or wanting to know whether Mr. Malone or CIMA had
5 the Tradewind report?

6 A. So, again, you know, not
7 specifically at which meeting, but I do recall
8 that CIMA as a consulting engineering firm had
9 done some safety reviews of the Red Hill in
10 response to previous concerns about safety and had
11 done some reports and recommendations, so there
12 was discussion just to make sure, to double check,
13 that if CIMA -- did they know about the Tradewind
14 report, did they have any concerns about friction
15 and would that have changed any of their
16 recommendations? So, at some point there was, you
17 know, discussion to go back to CIMA and make sure
18 that they had all the information and to see if
19 there's anything else that we needed to do to make
20 sure that the road continued to be safe.

21 Q. And you said that you
22 recall CIMA receiving some information that CIMA
23 had done safety reviews on the Red Hill. Would
24 that have been new information to you at the
25 January 23 meeting or in and around this time?

1 Like, was that something that you had appreciated
2 before the January 23 meeting?

3 A. No. That would have been
4 new information to me, but again, I don't know
5 specifically which meeting.

6 Q. Okay. And the second
7 question:

8 "Is there anything else
9 CIMA thinks needs to be
10 done to address safety
11 (slipperiness) as interim
12 measures pending
13 repaving?"

14 What do you recall about that
15 question, if anything?

16 A. So, again, at the time,
17 there was a lot of concern raised by the public
18 about the safety of the Red Hill Valley Parkway,
19 and then, you know, the release of this report
20 through the FOI potentially, again, you know,
21 increasing those concerns and the perception of
22 the road by some in the public that it wasn't
23 safe, so council, I believe, you know, wanted to
24 make sure that we had done everything that we
25 could possibly do to make sure that the road is

1 safe and remains as safe as it can be.

2 Q. Okay. And the
3 slipperiness there, do you recall any discussion
4 about the Red Hill being slippery or people have
5 concerns that the Red Hill was slippery?

6 A. I recall there is some
7 general perceptions from members of the public
8 that the Red Hill can be perceived as being
9 slippery. I don't recall any discussion or that
10 opinion being shared by either our staff or any of
11 the consultants that had worked on it.

12 Q. Do you recall if any
13 information was given to council at the January 23
14 meeting about steps that had been taken or
15 considered by staff as potential interim measures
16 to address RHVP safety or slipperiness?

17 A. At some point we did
18 receive a fairly lengthy review of work that had
19 been done, recommendations, what had been done,
20 what was still outstanding. I don't believe it
21 was at this meeting. I think it was at the next
22 one, but again --

23 Q. I think you're right, so
24 we'll come to that. And in terms of the
25 directions and the next steps, we talked about

1 this a little bit when we were looking at
2 Ms. Auty's report, do the questions here or the
3 items listed under "council wants to know," do you
4 recall if those were directions that council
5 provided to staff or more questions that were
6 given to staff?

7 A. I don't recall if that
8 was specific direction. A lot of the times staff
9 will take, you know -- will summarize some of the
10 discussion and then, you know, kind of interpret
11 it themselves of here is what council really, you
12 know, needs to know, and then they will bring that
13 forward at the future report. So, I don't recall
14 specifically if that was direction that council
15 said or this was staff's interpretation of what
16 council wanted to know. Either could have been.

17 Q. Okay. Do you recall if
18 there were any other questions that council had
19 for staff, sort of, any other information that
20 council wanted staff to gather or report back on?

21 A. My recollection is most
22 of the discussion was around, again, the legal
23 implications of releasing the report and what that
24 would mean, you know, from a political
25 perspective.

1 Q. Thank you, Registrar. We
2 can close this call out down and if we can call up
3 HAM54317 at images 1 and 2.

4 So, Councillor Danko, you'll
5 see that this is an e-mail, it starts with an
6 e-mail, that you sent to Mike Zegarac on
7 January 29 in the evening on that day, and the
8 subject line is "Technical questions re: Red
9 Hill, Private." And in your e-mail you write at
10 the top there:

11 "A few questions that
12 come to mind regarding
13 the technical aspects of
14 the Red Hill asphalt
15 discussion."

16 And there are 11 questions and
17 some comments or answers below each of the 11
18 questions. And we can call up parts or all of the
19 e-mail if that helps, but some more general
20 questions first before I take you to some of the
21 specific questions that you have asked in this
22 e-mail.

23 Do you recall what prompted
24 you to send this e-mail to Mr. Zegarac?

25 A. So, I believe at that

1 point I likely had reviewed the Tradewind report,
2 so I think that this e-mail was a response in
3 order to summarize some of the questions that I
4 had on the report and the ongoing discussions on
5 Red Hill so that staff could prepare for the
6 subsequent meeting where this would be discussed
7 in detail.

8 Q. Okay. So, do you have
9 anything specific that makes you think you had
10 received the Tradewind report at this time or is
11 that, sort of, based on just looking at the
12 questions here?

13 A. Some of the questions,
14 you know, are specific to friction and how it
15 related, so, again, I know at some point in there
16 I did receive the Tradewind report. It's likely
17 that that prompted this e-mail.

18 Q. Okay. I think this
19 e-mail -- I don't think that council had received
20 the agenda package by this point, so I don't know
21 if that assists in, sort of, orienting you, but I
22 don't believe at this point council had received
23 the agenda package for what eventually became the
24 February 6 meeting.

25 So, Mr. Zegarac, when we

1 testified, he testified that he recalls attending
2 a meeting with you and Dan McKinnon, the general
3 manager of public works at the time, and that your
4 e-mail here followed that meeting that the three
5 of you had. Do you have any recollection of
6 attending a meeting with Mr. McKinnon and
7 Mr. Zegarac around this time?

8 A. I don't recall General
9 Manager Zegarac being part of the discussions. I
10 mean, he may have been there, but not being a
11 technical expert on it, he might not have
12 participated, you know, which triggers my memory
13 of him being there. But I do recall discussions
14 with General Manager McKinnon about, you know, the
15 Red Hill and the technical aspects.

16 Q. Okay. So, you do recall
17 a discussion with Mr. McKinnon?

18 A. Yes.

19 Q. Okay. And in case it
20 assists, at the time of this e-mail, Mr. Zegarac
21 was the interim city manager at that point in
22 time, so he wasn't in his general manager
23 capacity?

24 A. Correct.

25 Q. Do you recall how the

1 meeting that you participated in with Mr. McKinnon
2 came about? Was that something you initiated?
3 Did staff?

4 A. I'm not sure how it was
5 initiated. I don't recall.

6 Q. What do you recall about
7 the discussion at that meeting?

8 A. I don't recall, you know,
9 that meeting specifically, but, you know,
10 obviously some of the, you know, questions here
11 would have been in relation to what was discussed.

12 Q. Okay. And Mr. Zegarac's
13 evidence was that you drafted both the questions
14 here and also the answers or comments below. Is
15 that your recollection?

16 A. Yes.

17 Q. Okay. And looking at
18 these 11 questions, do you recall how you -- were
19 these things that you took it upon yourself to
20 draft and also same with the commentary or were
21 these, you know, questions that had been discussed
22 at a meeting? Like, how do these questions here
23 come to be?

24 A. These are my specific
25 questions that I drafted myself, so this wasn't in

1 relation to, you know, any council discussion or,
2 you know, other discussions with others. This is
3 specifically my questions for staff as it relates
4 to, you know, the ongoing issues.

5 Q. And when you say your
6 questions for staff, were these questions that you
7 expected staff to answer and Mr. Zegarac to circle
8 back with, sort of, additional information beyond
9 what you've written in your comments, or, sort of,
10 what did you envision for these questions?

11 A. No. These questions are
12 just intended to assist staff with preparing for
13 the next meeting. So, I believe we were already
14 scheduled to have another meeting the following
15 week, so this would help staff prepare for some of
16 the questions that I might then ask in the session
17 with the remainder of council.

18 Q. Okay. And the answers or
19 the comments below, what was the purpose or your
20 thinking behind including those in this e-mail?

21 A. So, that was, again, just
22 to assist staff to understand what I was thinking
23 in terms of the issues. You know, again, having
24 the background on some of these, you know, working
25 in the industry and having the background that I

1 do, I was trying to assist staff to, you know,
2 provide them with what my insight was so that, in
3 the meeting, if I asked that question, I might be
4 following up with some of that insight that is
5 provided here.

6 Q. Okay. And your questions
7 from my review, they seem quite technical, which I
8 think you said they were in part based on your
9 background and your experience in the industry.
10 How did you identify the topics or the questions
11 here as areas to raise with staff? Like, what did
12 you base your answers and your comments on and
13 your questions?

14 A. So, you know, the
15 meetings that we have been discussing were
16 primarily focused on, you know, the legal part.
17 But on the technical part of, you know, is the
18 road safe, is there a friction problem, that's
19 what I was basing this on, kind of, focusing in on
20 the technical aspects. So, this is just based on
21 the information that I would have had at the time
22 and my experience, you know, building roads and
23 bridges in the Province of Ontario.

24 Q. Okay. And on that, the
25 technical piece, January 23, there was the legal

1 presentation from Ms. Auty. Had you received any
2 technical briefings or any, sort of, technical --
3 was there any technical discussion at that meeting
4 or had the discussion up to this point really been
5 focused on the legal implications?

6 A. It was mainly focused on
7 the legal implications, but obviously everything
8 goes back to a report that is focused on friction.

9 Q. Right. Okay. And you
10 said that this was based on the information that
11 you would have had at the time. Do you recall
12 what reports or documents you had at the time when
13 you prepared this?

14 A. Again, I'm not sure if I
15 would have had the Tradewind report at the time or
16 not. If the agenda wasn't released at the time
17 that I wrote this e-mail, it's likely I didn't
18 because I believe I got it through an agenda.
19 But, again, this is based on, you know,
20 discussions about what was in the report and my
21 experience.

22 Q. Did you do any
23 independent research before you prepared the
24 questions? Were you looking at any of the
25 documents? Sort of leaving aside whatever

1 information you may have received from staff, was
2 there anything you did independently?

3 A. I have the TAC manual in
4 my office, so I use that as my primary reference.

5 Q. Okay. I won't take you
6 through all of your questions, there's quite a
7 number of them, but there's a few that I would
8 like to ask you about.

9 So, Registrar, can you call up
10 the question and the answer under number 1,
11 please.

12 So, your question was:

13 "What requirements were
14 used for the original
15 design of the road?"

16 You say:

17 "I suspect the 1999
18 edition of the
19 Transportation
20 Association of Canada
21 (TAC) Geometric Design
22 Guide for Canadian Roads,
23 which also references
24 AASHTO requirements from
25 time to time, no UK

1 standards would have been
2 used."

3 What did you base your answer
4 or your comments that no UK standards would have
5 been used for the original design of the road on?

6 A. So, that's based on my
7 experience working in the industry with the TAC
8 manual designing roads and road safety for nearly
9 20 years, and also writing contract documents
10 myself, I've never seen a UK standard used ever.

11 Q. Okay. Did you do any
12 research or take any steps to learn more about the
13 UK standards or any UK standards before you
14 prepared this question or the answer, I suppose?

15 A. No. That's based on my
16 experience.

17 Q. Okay. Thank you.
18 Registrar, can we close this call out down and
19 open up question number 4 and the answer below
20 question number 4.

21 So, this question says:

22 "A number of friction
23 tests were done on the
24 Red Hill asphalt (MTO,
25 City at different times).

1 in the January 23 legal report that Ms. Auty
2 provided, but you don't have any insight of where
3 you learned about the MTO testing or who you
4 learned about it from?

5 A. There might have been a
6 comment at the meeting that, oh, the MTO has also
7 done testing, but no, I don't specifically
8 remember.

9 Q. Okay. And what was your
10 understanding when it says:

11 "A number of friction
12 tests were done."

13 And it says:

14 "(City at different
15 times)."

16 What was your understanding of
17 how many times the City had done friction testing
18 or what the history of friction testing done by
19 the City had been?

20 A. I would have had just a
21 really cursory acknowledge that they had done
22 friction testing. Again, that's what's raised
23 this whole issue.

24 Q. I suppose I should have
25 asked you this perhaps when we were talking about

1 that January 23 meeting, but do you recall if you
2 made any notes or if you were writing things down,
3 particularly if you gave the legal report back?
4 Like, how were you remembering the things that
5 were discussed at the meeting? Do they just stick
6 in your mind or...

7 A. I do occasionally make
8 notes. I don't believe I have notes for that
9 meeting, so it would have just been by memory.

10 Q. Okay. Thank you.
11 Registrar, can we close this call out down and
12 call out the question and the answer at number 10.

13 And your question at number 10
14 is:

15 "Tie back relevance of
16 coefficient of asphalt
17 friction to the design
18 domain concept."

19 I'll give you a moment to
20 review your answer here.

21 A. Okay.

22 Q. How did you develop your
23 answer to this question? What was this based on?

24 A. So, this is based on my
25 work as a professional engineer designing road

1 geometry. The TAC manual is the standard for
2 design of Canadian roadways and it uses a clear
3 zone concept that has a number of factors that are
4 within the design domain. So, there's a, you
5 know, envelope that each road is designed to and
6 most of the design values that a designer would
7 take are based on tables, so I don't really recall
8 friction ever, you know, factoring into the design
9 heavily.

10 On most of the design tables
11 there is a range of values that you can select, so
12 you can pick, you know, the minimum radius for a
13 curve or the maximum radius. You can pick the
14 minimum clear zone distance or the maximum. You
15 can pick the minimum guide rail length, you know,
16 for a set design speed or a number of other
17 factors.

18 So, once you've completed your
19 design, the roadway falls in design envelope that
20 is -- you know, so it's designed to function with
21 a specific design speed under normal operating
22 conditions, so I think that's what I'm referring
23 to here; friction being something that is really
24 not that important to the geometric design.

25 Q. Okay. But as you say

1 here, friction is an important factor that affects
2 the safety of the road. That was your
3 understanding?

4 A. Well, friction is baked
5 into a lot of the factors that a designer would
6 use, so yeah, obviously it's part of the inherent
7 value of the material, so it is important. But in
8 terms of the actual design, the work that a
9 designer would do, it's baked into the values that
10 you would choose through the manuals.

11 Q. Okay. Thank you,
12 Registrar. We can close this call out down and if
13 we could call out question 11 and the answer below
14 that and all the way to the end of the e-mail,
15 actually, would be great. Perfect. Thank you.

16 So, here in number 11, you
17 say:

18 "Comment on safety in
19 terms of collision data
20 and danger of correlating
21 asphalt friction to an
22 increase in collisions."

23 What information, if anything,
24 had staff conveyed to council about the
25 relationship or correlation between friction and

1 friction testing results and collision rates
2 specifically on the Red Hill Valley Parkway?

3 A. I don't recall if staff
4 had necessarily correlated asphalt friction to
5 increasing collisions. I think that was a
6 correlation that's been made, you know, by the
7 public in their perception of the safety on the
8 road and also by, you know, some councillors.
9 That's kind of, you know, a layman's
10 interpretation. It's an easy conclusion to jump
11 to that there is a collision, so there must be
12 something wrong with the road. So, I think that's
13 my interpretation here, that in terms of the
14 collision data, it's not necessarily related to
15 friction and we need to be careful in jumping to
16 that conclusion from a technical perspective.

17 Q. Okay. Thank you. At the
18 end of your e-mail you say:

19 "Finally, as discussed, I
20 think that the legal and
21 political considerations
22 are quite different than
23 the technical facts and
24 should be discussed
25 separately, if possible."

1 What did you mean by this?

2 A. I think that falls on,
3 you know, what we've been discussing here today,
4 that the technical facts, talking about how the
5 road was designed, is it safe, how does friction
6 impact the safety, is very different than the
7 legal and the political considerations of a report
8 that is under an FOI request. So, I was focusing
9 in and, you know, not having the exposure to the
10 political considerations, being a new councillor
11 and also having the technical background, that was
12 my focus, just making sure that we were doing
13 everything as a city that we could to make sure
14 that the road was safe. And I think that is also
15 related to what I'm saying here, that we design as
16 engineers for the 85th percentile.

17 From a technical perspective,
18 it's really important to understand that it's not
19 possible to design a roadway that is 100 percent
20 safe for everybody and I don't think that that's
21 really appreciated by the general public. I mean,
22 again, you know, any collision or fatality is a
23 tragedy for everybody involved, but the reality is
24 that there's always going to be, you know, that
25 15th percentile that will operate a motor vehicle

1 in a way that it's impossible to have a road that
2 is 100 percent safe for them. You know, somebody
3 that's driving at 100 kilometres an hour is moving
4 about 25 metres a second, so if they look down for
5 two seconds to look at their phone, they're
6 travelling about 50 metres, so to ask an engineer
7 to design a road that people can just randomly
8 close their eyes while they're driving 50 metres
9 and make that be 100 percent safe is impossible,
10 but I don't think that that is necessarily shared
11 by the political perception.

12 Q. Okay. And so, when you
13 say should be discussed separately, did you mean
14 sort of just as distinct discussions or were you
15 meaning, like, two separate meetings where one
16 would focus on the legal and political
17 considerations and then one would be, sort of,
18 focused on the technical aspects?

19 A. No. I was meaning our
20 discussion and how this was structured, so not
21 that it would be in two separate meetings, but
22 just that we separate out, you know, the technical
23 safety aspects versus the legal and the political
24 aspects, because they are two separate issues.

25 Q. Okay. And where it says

1 "as discussed," is that something that you recall
2 discussing with Mr. Zegarac prior to sending this
3 e-mail?

4 A. I don't recall, but that
5 would have been likely something that we talked
6 about, you know, in the meeting that we had prior
7 to this.

8 Q. Okay. Thank you.
9 Registrar, we can close this call out.

10 And in terms of -- do you
11 recall you'll see there that Mr. Zegarac in the
12 e-mail responds to you and says:

13 "Thanks, Councillor.
14 Very helpful. Staff
15 discussed a number of
16 distinct discussions as
17 you discussed below."

18 Do you recall if you received
19 any response or additional information or answers
20 to your questions from staff between the time you
21 sent this e-mail on January 28 and before the next
22 meeting of the GIC on February 6?

23 A. I don't believe that I
24 did.

25 Q. Okay. Thank you,

1 Registrar. We can close this document down and if
2 we could call up overview document 9A, pages 378
3 and 379, and if we can call out paragraph 376 for
4 now. Sorry, 876. Thank you.

5 So, you'll see here there was
6 a meeting with staff and Mr. Moore on January 31,
7 2019 and in advance of this meeting staff compiled
8 a list of questions that would be asked to
9 Mr. Moore. And you'll see here that Ms. Auty sent
10 an e-mail to Mr. Boghosian with that list of
11 questions. You're not copied on this e-mail,
12 Councillor Danko. And you'll see here she says:

13 "Mike Zegarac is meeting
14 with Gary Moore tomorrow
15 to follow up on some
16 discussions and council
17 questions. I've drafted
18 a series of questions.
19 Do you have any concerns
20 with the meeting taking
21 place and, if not, do you
22 have any comments or
23 additions to the
24 questions?"

25 So Ms. Auty's e-mail here

1 references council questions. Do you have any
2 insight into what the council questions that
3 Ms. Auty refers to?

4 A. No.

5 Q. Do you recall council
6 raising any questions about Mr. Moore or any
7 questions for Mr. Moore at any point between the
8 January 23 meeting and this e-mail on January 30?

9 A. No.

10 Q. Okay. Thank you,
11 Registrar. Can we close this call out down.

12 And you'll see, Councillor
13 Danko, in paragraph 878 Ms. Auty sent the same
14 document, the same list of questions, to
15 Mr. Zegarac as well.

16 And, Registrar, perhaps it's a
17 bit small on my end. If we could call up
18 paragraph 878.

19 In the second paragraph there
20 it says:

21 "I would not get into the
22 technical questions that
23 Councillor Danko
24 suggested at this point,
25 but those may be good to

1 put to CIMA/Brian

2 Malone."

3 When you sent your questions
4 to Mr. Zegarac, I know you said that they were
5 questions for staff at a future meeting, did you
6 anticipate that those questions would be for
7 Mr. Moore or staff more generally?

8 A. No. Those were just
9 questions that had arised to me that I was posing
10 to staff. I wasn't aware or had no intention of
11 how staff would then take that away and, you know,
12 follow up.

13 Q. Okay. And that included
14 follow up either with Mr. Moore or CIMA or Brian
15 Malone, as Ms. Auty suggests here?

16 A. Yes.

17 Q. Okay. Thank you.
18 Registrar, we can close that out and if we could
19 go to pages 349 and 350 of this overview document.
20 Thank you. And can we call out paragraph 826,
21 which is on both pages. Thank you.

22 So, Councillor Danko, I hope
23 you can see this. I know the underlining makes it
24 a little challenging to read. So, this is an
25 e-mail exchange between Mayor Eisenberger and

1 earlier, it wouldn't be unusual for an issue that
2 has, you know, ramifications for all of council to
3 go to a GIC rather than a special standing
4 committee or a standing committee.

5 Q. Right. And that's
6 because all councillors are part of GIC, whereas
7 not all councillors are part of public works?

8 A. Correct.

9 Q. Okay. And do you recall
10 if there was any discussion in your meeting with
11 staff about where the report should be brought or
12 what the timing of bringing the reports?

13 A. No. And, you know, this
14 timeframe is like a month into my tenure as
15 councillor, so I was really new to procedures, so
16 that wouldn't be something that I would have ever
17 brought up.

18 Q. Fair enough. And you'll
19 see Mr. Zegarac's e-mail says in the last sentence
20 of that larger paragraph:

21 "We also discussed the
22 following as to how to
23 proceed. The councillors
24 discussed a public motion
25 directing the work

1 below."

2 And then there are three items
3 listed. The first, employee considerations,
4 council relationship with director/public/media;
5 number two, technical/engineering safety; and 3,
6 communication plan with external support.

7 Were these topics that you had
8 discussed at your meeting with staff?

9 A. No.

10 Q. Leaving aside that
11 meeting, do you have any recollection of
12 participating in any meetings or any conversations
13 in which the work described in Mr. Zegarac's
14 e-mail was discussed?

15 A. No.

16 Q. Did you have any
17 knowledge or insight into this potential work that
18 staff were considering in late January 2019?

19 A. Sorry, could you just
20 repeat that real quick?

21 Q. Sure. Did you have any
22 knowledge or insight into this potential work that
23 your council colleagues were discussing with staff
24 at this time?

25 A. No.

1 Q. Okay. Did these look
2 like to you, based on your recollection of that
3 January 23 meeting, appreciating that you don't
4 have a very specific recollection, do these look
5 like things that were discussed at the meeting?

6 A. They're likely general
7 themes that were discussed at the meeting, but I
8 think this is more specific than, you know, the
9 discussion that I recall.

10 Q. Okay. Okay. Thank you.
11 Registrar, we can close this document.

12 And, Commissioner, I see I've
13 taken us one minute past our usual morning break.
14 It's 11:01 and I'm about to move on to a different
15 topic.

16 A. I was just going to ask
17 if I can go get another coffee.

18 JUSTICE WILTON-SIEGEL: You
19 can. I think I'll get one myself. We'll adjourn
20 until 11:15.

21 --- Recess taken at 11:01 a.m.

22 --- Upon resuming at 11:16 a.m.

23 MS. HENDRIE: Thank you,
24 Mr. Commissioner. May I proceed?

25 JUSTICE WILTON-SIEGEL: Yes,

1 please proceed.

2 BY MS. HENDRIE:

3 Q. Registrar, if we could
4 call up HAM62635.

5 So, Councillor Danko, we're
6 going to turn now to the GIC meeting on
7 February 6. So, these are the closed session
8 minutes from the February 6 GIC and you'll see on
9 the page on the right-hand side it says, "Time in,
10 4:18 p.m., time out, 10:06 p.m.," so this wasn't
11 the early session that ran into the early morning,
12 but you were in closed session for six hours. And
13 you are listed there as one of the councillors
14 that present at this meeting.

15 So, generally you told us
16 before that you can't specifically recall what was
17 discussed at each meeting necessarily, but casting
18 your mind back to this meeting where there was an
19 update from audit, there was an update from legal
20 and also from public works, what do you recall
21 about this meeting on February 6?

22 A. I believe this is the
23 meeting where we got into more details about
24 specifically what was in the reports, what that
25 meant, how that's been interpreted by staff and

1 what the legal repercussions might be.

2 Q. Okay. So, you recall
3 that there was more details provided at this
4 meeting on February 6 than what you had received
5 on January 23?

6 A. Yes. My recollection is
7 the January 23 meeting was kind of the
8 introduction that there was this report and here
9 is some general information, and then this was the
10 followup that really had the bulk of the
11 discussion.

12 Q. In terms of the tone of
13 this meeting compared to the January 23 meeting,
14 do you recall what the tone was at February 6 and
15 if and how it differed from the tone at
16 January 23?

17 A. Not in particular.
18 Again, I remember them all, kind of, as a group,
19 but they were all, you know, fairly intense.

20 Q. Okay. What do you mean
21 by that?

22 A. It was a very serious
23 issue with a number of -- you know, that affected
24 individual councillors and staff, so it was, you
25 know, very serious discussions.

1 Q. When you say it affected
2 individual councillors and staff, what do you mean
3 by that? I'm just not sure I follow.

4 A. So, again, earlier we
5 talked about the difference between the technical
6 discussion and the legal and political discussion,
7 so I'm referring, you know, to the political side
8 of it.

9 Q. Okay. And how do you
10 recall your council colleagues reacting to the
11 information and the greater detail provided by
12 staff at this meeting, sort of, if you could give
13 that answer in reference to how you reacted as
14 well?

15 A. Well, again, not
16 specifically recalling if it was this meeting, but
17 there was obviously quite a bit of animosity and
18 concern from various councillors about, you know,
19 how this would impact the public perception of
20 council as a whole and also the reputation of the
21 City.

22 Q. Okay. When Mayor
23 Eisenberger testified, he described the tone as
24 there being frustration and anger and
25 disappointment. Do you recall that?

1 A. Among some councillors,
2 yes.

3 Q. Okay. Were those the
4 long-standing councillors that you talked about
5 earlier?

6 A. Yes, those councillors
7 that would have had, you know, direct involvement
8 with the approval, the construction and specific
9 interest in Red Hill.

10 Q. Okay. And was there any
11 frustration or anger or disappointment on your
12 part?

13 A. I was surprised and
14 somewhat disappointed with some of the, you know,
15 attitudes from councillors that seemed more
16 concerned about the reputation of council than
17 actually addressing the problems, you know, if
18 there were problems, with the road itself and
19 making sure that, as a city, we were protected
20 from litigation. So, I was a little bit
21 frustrated that for some councillors it seemed
22 more personal.

23 Q. Okay. So, before we
24 talked about the two lenses. I understand your
25 answer as saying perhaps some of your council

1 colleagues were focused on the public perception
2 whereas you were focused on the more technical is
3 the road safe or are there issues that we need to
4 be addressing and your frustration was, sort of,
5 the disconnect between the lens that your
6 colleagues were focused on and what you were
7 focused on. Is that fair?

8 A. Yes.

9 Q. Okay. Registrar, we can
10 close this document out and if we can call up
11 HAM62132.

12 I know these are handwritten
13 notes that Mr. McGuire prepared at the GIC meeting
14 and there's a reference about two-thirds of the
15 way down the page.

16 Registrar, if we could call
17 that out.

18 It says, "JP Danko," and then
19 there's an arrow. It says:

20 "Newest CIMA report,
21 field friction
22 relevance."

23 Are you able to shed any light
24 on what you said that led to this note or what you
25 interpret this note to mean, recognizing it's

1 Mr. McGuire's note, not yours?

2 A. I believe some of the
3 discussions and my concern at the time was that
4 council was going to request additional current
5 field friction testing, so I was trying to, in
6 some of the questions I asked, make sure that, you
7 know, everybody understood the consequences that
8 could happen if we were to do that. That didn't
9 end up being a direction that was taken.

10 Q. When you say the
11 consequences that could happen, what do you mean
12 by that?

13 A. Well, the risk is when
14 you're doing a test that has no standard, you are
15 then responsible for the results of that test.
16 But if there's no standard, there's also no
17 approved treatment. So, there's a huge risk that
18 if we were to do current testing and we found, you
19 know, that there was, you know, a friction value
20 that was marginal or as was already discovered
21 that was inconclusive, then there would be a
22 responsibility to, you know, in response to a
23 safety concern, then there would be a
24 responsibility to do something about it, and there
25 was no action that we could take, you know, to

1 rectify that situation. So, there would be a huge
2 liability risk for us to do that.

3 Q. And so, your
4 understanding at this point in time or at the time
5 of this meeting in February 2019 was that there
6 was no friction standard in Ontario?

7 A. There is no friction
8 standard in Ontario.

9 Q. We looked before at the
10 technical questions that you e-mail to
11 Mr. Zegarac. Do you recall if you asked those
12 questions to staff at the meeting?

13 A. Not specifically. You
14 know, I might have asked something along the
15 lines, but I don't believe that I went through the
16 list and asked those, you know, specific questions
17 because other councillors might have asked them or
18 it might not have been relevant to the discussion.

19 Q. Okay. Thank you.
20 Registrar, we can close this document down and
21 call up the slides from the in-camera
22 presentation. So, that's HAM61920 and if we could
23 call up images 1 and 2.

24 So, Councillor Danko, this is
25 the slide presentation that staff presented and

1 you'll see here on the right-hand side there's
2 four presenters listed: Mr. McKinnon for the
3 timeline and technical concerns, Mr. Brown for the
4 roads audit update, Ms. Auty for the legal
5 considerations and Mr. Hertel for the
6 communications strategy.

7 Do you recall receiving the
8 presentations from public works staff, audit,
9 legal and communications?

10 A. Yes.

11 Q. Registrar, if we could go
12 ahead to image 4 of this document.

13 This is from Mr. McKinnon's
14 section of the presentation and his slides
15 indicate that the presentation included a
16 reconstructed timeline by theme and there are
17 seven themes listed here. And then below that
18 there's assessment and recommendations from CIMA.

19 Do you recall receiving
20 information about the themes that are listed here?

21 A. Yes.

22 Q. And we talked before
23 about the technical aspects of the discussion that
24 you wanted there to be, sort of, distinction
25 between the technical aspects of the discussion

1 and the legal aspects of the discussion. Is that
2 your recollection of what did end up happening on
3 February 6, that there was distinct discussions?

4 A. I don't recall
5 specifically, but in the presentation they are
6 broken up into separate sections.

7 Q. And this would have been
8 the first time that you received, sort of, that
9 technical background and briefing on the technical
10 aspects of this issue?

11 A. Yes.

12 Q. Okay. Two of the themes
13 that are listed here are council reports and
14 directions and safety upgrades. We know that
15 there were also a number of, I think three, public
16 works reports that were given to council at this
17 meeting. Do you recall if this meeting was the
18 first time that you learned about the various
19 studies that council had directed in relation to
20 Red Hill Valley Parkway beginning, sort of,
21 January 2013?

22 A. Yes.

23 Q. Okay. So, this would
24 have been sort of your first -- you were sort of
25 being caught up on the work that had been done

1 over the six years prior?

2 A. Yeah.

3 Q. And what were your views
4 on the safety of the Red Hill Valley Parkway as a
5 result of receiving information about the work
6 that had been done to date on the road and also
7 the information in the Tradewind report about the
8 friction values on the road?

9 A. I had no concerns
10 whatsoever with the safety of the road, and
11 looking at the work that had been done through our
12 staff, I had full confidence that anything that
13 needed to be updated over time, as there is always
14 ongoing work on roadways as they, you know, change
15 the use, they change driver behaviour over time,
16 so I was fully confident that anything that needed
17 to be done had been done.

18 Q. Okay. And did you have
19 any concerns in relation to the friction values on
20 the road, recognizing that report had only come to
21 staff's attention in 2018?

22 A. I had none whatsoever.

23 Q. Okay. Registrar, if we
24 can go to image 17 of this document.

25 So, this is still in

1 Mr. McKinnon's sections of the slides and it says:

2 "Reconstructed timeline,
3 recent staff action."

4 And in the top box there,
5 August/September 2018:

6 "Gord McGuire becomes
7 aware of an e-mail
8 leading to the 2013 RHVE
9 evaluation report from
10 Golders with attached
11 2013 Tradewind report on
12 friction testing."

13 And then there's two other
14 bullets there. Do you recall if at this meeting
15 there was any additional information provided to
16 council about how Mr. McGuire became aware of the
17 Tradewind report or where he learned about it?
18 This is a fairly high-level summary.

19 A. There may have been
20 questions, again, but the level of the answer that
21 I received at some point, you know, in those
22 meetings was just that Mr. McGuire was moving into
23 his role, he was reviewing documents that he
24 needed and it was located on an electronic device
25 somewhere.

1 Q. Okay. And so, there's
2 reference to Mr. McGuire notifying Mr. McKinnon
3 about the testing results and that as a result
4 they made a decision to stop pursuing the hot
5 in-place recycling technology. Do you recall if
6 there was any other information that council
7 received or asked about in terms of what had been
8 done by staff between August or September 2018 and
9 the time it was ultimately brought to council, of
10 what steps staff had taken in that intervening six
11 months?

12 A. Do you mean in relation
13 to resurfacing or do you mean in relation to
14 safety upgrades?

15 Q. Safety upgrades.

16 A. I don't recall
17 specifically if there was anything done in that
18 timeframe, but I know there was, you know, ongoing
19 review on safety upgrades for the whole period of
20 time that the Red Hill Valley Parkway has been
21 open.

22 Q. Okay. And anything in
23 relation to any work that they had done in
24 understanding or interpreting the results of the
25 Tradewind report or seeking any second opinions,

1 anything like that?

2 A. Again, I believe there is
3 some discussion with CIMA that was -- I can't
4 remember exactly when they were brought in, but
5 they did offer an opinion, you know, review of
6 their past work and then an update.

7 Q. We'll come to that
8 report. Did you have any concerns -- it says that
9 Mr. McGuire became aware of the e-mail and the
10 Tradewind report in August or September 2018, and
11 we know that, as we've talked about, there was the
12 initial, sort of, heads-up meeting on January 23
13 and then this meeting on February 6. Did you have
14 any concerns or any views on the time it took
15 staff to ultimately come to council with this
16 information?

17 A. I didn't have any
18 specific concerns, but, you know, as an elected
19 official I do have an overall concern about the
20 perception of the City and council as a whole as
21 an effective governing body. So, that was the
22 extent of my concerns, is just that, you know,
23 from a perception standpoint, from a public
24 perception standpoint, it wasn't ideal to sit on
25 that report for that long; nothing as it relates

1 to safety.

2 Q. Okay. And when you say
3 "to sit on that report for that long," do you mean
4 between when it was received in 2014 or do you
5 mean between when staff ultimately found it or
6 located it and then brought it forward to council?

7 A. I mean just the fact that
8 it was received in 2014 and perhaps misfiled or
9 not kept, you know, in a place that would have
10 been as obvious as perhaps it should have been.

11 Q. Registrar, can we call up
12 image 8 of these slides and also on the other page
13 call up HAM12843.

14 So, you'll see here on the
15 left there's a slide summarizing the Tradewind
16 report and the friction testing. And then on the
17 right side we've got the actual Tradewind report.
18 So, I take it the Tradewind report is familiar to
19 you, you've seen it before?

20 A. Yes.

21 Q. Okay. And we've touched
22 on this a little bit before. Do you recall if --
23 so, you had the Tradewind report by the time you
24 got to this February 6 meeting?

25 A. I believe so.

1 Q. And so, you'll see here
2 that there is a summary in the left-hand side of
3 the Tradewind testing and the findings of the
4 Tradewind report. And on the left side, the
5 second bullet down, it says:

6 "Friction averages
7 measured on the RHVP were
8 below or well below the
9 same UK investigatory
10 level."

11 And recommended that a more
12 detailed investigation be conducted and possible
13 remedial action be considered to enhance the
14 surface texture and friction characteristics.

15 Do you recall receiving that
16 information from staff at the meeting on
17 February 6?

18 A. Yes.

19 Q. Okay. Registrar, can we
20 go to image 12 of HAM12843. Image 13, sorry.

21 So, this is the actual
22 Conclusions and Recommendations section of the
23 Tradewind report and it has a little bit more
24 detailed information about the findings and
25 recommendations from Tradewind.

1 So, Registrar, perhaps we can
2 call out the second paragraph there. Thanks.

3 So, you'll see it says:

4 "It should be noted that
5 in addition to the
6 overall low average grip
7 number levels on this
8 facility, there are some
9 localized sections with
10 quite low friction values
11 reaching 27 to 30 in
12 several areas."

13 Do you recall if you received
14 information that there were overall -- sorry,
15 localized sections with quite low friction values?
16 Was that something that staff communicated?

17 A. I believe that was part
18 of the general discussion, yeah.

19 Q. Okay. Did you have any
20 concerns about there being sections of the Red
21 Hill Valley Parkway with quite low friction
22 values?

23 A. No, because, as I stated,
24 this entire investigation is essentially
25 irrelevant because there is no standard, so I

1 don't know what they're referring to as low values
2 based on something that's not an acceptable
3 standard in Ontario.

4 Q. Did you have any concerns
5 in the Tradewind report there's discussion about
6 the different friction values or different
7 friction levels between the Red Hill Valley
8 Parkway and the LINC? Did you have any concerns
9 in relation to the different levels on the two
10 facilities?

11 A. No, because the friction
12 values that you would choose as a designer are
13 based on, you know, is it asphalt, is it concrete,
14 is it a gravel roadway? And they're already, as
15 we discussed earlier, incorporated into the design
16 values that you would choose. So, if there was an
17 immediate safety standard, the consultant would
18 recommend immediate action to be taken to repave
19 those areas, which they did not.

20 This, to me, working in
21 consulting for, you know, again, nearly 20 years,
22 this would be a standard reply that a consultant
23 would give when they have an inconclusive
24 conclusion, so you're always going to recommend
25 further evaluation if you're not really sure

1 because that basically covers you, for example, if
2 there's a \$25 million investigation after the
3 fact, because you can always say, well, I did
4 recommend additional investigation.

5 Q. I don't see Tradewind as
6 saying that they had an inconclusive conclusion,
7 but that was how you interpreted their report,
8 their findings?

9 A. Yes.

10 Q. Okay. Thank you. We can
11 close that down. Registrar, if we can call up
12 HAM61922 at images 1 and 2.

13 So, this is the legal services
14 report that was presented to council at the GIC on
15 February 6. What do you recall about Ms. Auty's
16 section of the presentation?

17 A. There was general
18 discussion about, again, the ongoing lawsuits that
19 are filed against the City, the ongoing litigation
20 and what the implications might be if we
21 unilaterally released documentation instead of it
22 being required to be released through the FOI
23 process.

24 Q. Now, Registrar, can we
25 call up image 3 of this document. Thank you.

1 So, you'll see here -- can we
2 actually call out the entire Analysis and
3 Rationale for Recommendations section and make it
4 a little easier for all of us to read. Thank you.

5 So, this is the Analysis and
6 Rationale for Recommendations section of
7 Ms. Auty's report, and in the second paragraph it
8 describes the various CIMA reports over time and
9 says:

10 "The focus of
11 recommendations has been
12 on changing driver
13 behaviour that is
14 believed to be a major
15 source of ongoing
16 collision rates."

17 At this meeting, at this time,
18 recognizing that you were receiving information
19 about the CIMA studies and the work done on the
20 Red Hill over time at this meeting, what was your
21 understanding about the sources or contributing
22 factors to collisions on the Red Hill?

23 A. My understanding is is
24 the majority of the collisions involved excessive
25 speeding, distracted driving or impaired driving,

1 so that would be driver behaviour.

2 Q. Do you recall if staff
3 advised or conveyed any information about the role
4 of friction and friction levels on the Red Hill
5 Valley Parkway to collisions and the collision
6 rate?

7 A. No.

8 Q. Were you aware or told
9 about a high proportion of wet weather collisions
10 on the Red Hill Valley Parkway?

11 A. Yes. I believe there was
12 a -- some of the collision statistics that did
13 indicate in specific locations there was, you
14 know, a higher than usual proportion of wet
15 weather collisions.

16 Q. Okay. So you were aware
17 of that, but no connection in your mind between
18 the friction levels and the higher proportion of
19 wet weather collisions?

20 A. No, because, as discussed
21 earlier, the roadway is designed within the, you
22 know, design domain within a performance envelope,
23 so in wet weather, the roadway is, by definition,
24 less forgiving, so it's understandable that there
25 would be higher collisions in wet weather.

1 Q. We may have touched on
2 this before, but you'll see in the first paragraph
3 it talks about the release of the Tradewind report
4 through the FOI and how that might lead to media
5 coverage. And then it says:

6 "Expected media coverage
7 would affect the City's
8 interest in road
9 safety/injury
10 prevention."

11 And then there's some content
12 that's been redacted for privilege. And so,
13 obviously without getting into the privileged
14 information, what do you recall about the
15 explanation that staff gave for why media coverage
16 might affect the City's interest in road safety
17 and injury prevention? Like, what was the
18 connection there?

19 A. I believe it was because
20 we were doing ongoing, you know, safety
21 improvements, that there is a risk that the public
22 and therefore, you know, through the litigations
23 would link that to a perception that there was a
24 safety issue when, in fact, we were just making,
25 you know, ongoing improvements as recommended by

1 our consultants.

2 Q. So, the concern was more
3 about the perception of road safety as opposed to
4 the actual road safety?

5 A. I think the concern was
6 about how the perception would be reported in the
7 media and then that would be used as part of the
8 litigation against the City.

9 Q. Okay. And you'll see in
10 the bottom there there's the three questions
11 listed. It says:

12 "In order to advise
13 council regarding the
14 impact of these earlier
15 friction testing results
16 being considered
17 inconclusive and not
18 being shared more
19 broadly, CIMA was
20 provided 2013 and 2017
21 friction testing reports
22 and was asked the
23 following three
24 questions."

25 And then the questions are

1 listed below. And I'll take you to CIMA's report
2 in a moment, but just looking at these three
3 questions here, what role, if any, did council
4 have in identifying or setting out the questions
5 that were given to CIMA?

6 A. I'm not sure if council
7 had any role in that or if that was staff that
8 posed those questions to CIMA. I don't recall.

9 Q. Okay. Registrar, can we
10 call up HAM12842. Perfect. Thank you.

11 So, this is CIMA's memo that
12 council received on February 4. And you'll see
13 only two of the three questions are on this page,
14 but they did provide answers to all three
15 questions.

16 And do you recall at the time
17 you reviewed CIMA's memo what your understanding
18 was of what CIMA's findings and recommendations
19 about the 2014 Golder and Tradewind reports were?

20 A. So, my understanding is
21 that when CIMA wrote their earlier safety reports,
22 that they weren't -- they didn't have access to
23 the Tradewind findings, so when they went back and
24 reviewed, I think there was some minor updates
25 that they recommended, but essentially that the

1 roadway was safe as it was operating at the time.

2 Q. So, I take it, then, that
3 finding, that conclusion by CIMA provided you some
4 comfort with respect to safety of the road?

5 A. Well, it further
6 confirmed. I mean, we already knew at that point
7 that road was safe, but this just adds additional
8 confirmation.

9 Q. And how did you already
10 know that the road was safe?

11 A. If it wasn't safe, our
12 staff would have taken immediate action.

13 Q. And do you recall staff
14 providing some sort of confirmation or update,
15 sort of leaving aside CIMA's memo, that the road
16 was safe? Was that an assurance that staff
17 provided?

18 A. I don't recall staff said
19 it in that, you know, as succinctly as that, but
20 that's certainly my impression, that staff, you
21 know, had no concerns about the safety beyond what
22 was recommended by the consultants to ongoing
23 improvements over the lifespan of the road.

24 Q. Okay. Registrar, we can
25 close this document down.

1 And one of the motions, I'm
2 happy to take you to it if you would like, but we
3 know that one of the motions that followed the
4 closed section was a reduction of the speed limit
5 on a portion of the RHVP and at that time it was
6 the Greenhill interchange to the QEW. You're
7 nodding. I take it that's familiar to you? You
8 remember that recommendation?

9 A. Yes.

10 Q. And I understand now the
11 speed limit has actually been changed across the
12 entire Red Hill Valley Parkway to 80 kilometres?

13 A. Yes.

14 Q. Okay. At the time, back
15 in February 2019, what rationale did staff provide
16 for the reduced speed just for that section of the
17 Red Hill?

18 A. The discussion was on the
19 influence of speed on safety and that, again,
20 driver behaviour, primarily speed, is by far the
21 biggest factor in roadway safety. In particular,
22 the Red Hill Valley Parkway is bordered on both
23 ends by a 400-series highway, which is, you know,
24 100 and -- actually, now it's 110, but was a
25 100-kilometres-an-hour operating speed, so which

1 would have been designed to a much higher design
2 speed than the Red Hill Valley Parkway, but the
3 perception of drivers coming on to Red Hill would
4 be similar to what they experience on a 400-series
5 highway, which, therefore, encourages higher rates
6 of speed.

7 So, that was part of my
8 understanding anyway of the recommendations of why
9 it was necessary to particularly lower that to 80,
10 to have a bigger differentiation between, you
11 know, the 400-series highway and Red Hill, which
12 is not a 400-series highway and was never designed
13 to those standards.

14 Q. Notwithstanding that at
15 that time only a portion of the Red Hill was
16 reduced?

17 A. Correct.

18 Q. Okay. And so, in your
19 mind, was the speed limit reduction an important
20 component or step in order to address any concerns
21 on the Red Hill Valley Parkway?

22 A. So, again, my
23 understanding is the collision history is directly
24 related to ongoing excessive speeding; therefore,
25 you know, reducing the speed limit at areas where

1 we had indication of a collision history would be
2 the most appropriate course of action.

3 Q. Okay. So, you understood
4 that speeding was a primary, if not the primary,
5 factor contributing to collisions?

6 A. Yes.

7 Q. Okay. Registrar, if we
8 can call up HAM61920 at image 44. Do you need me
9 to repeat the doc ID, Registrar? Awesome. Thank
10 you. And on the other side, could we call up
11 HAM12841. Okay.

12 So, this is, on the left-hand
13 side, that's a slide from the staff presentation
14 and it talks about the recommended communications
15 strategy. It says that media release and fact
16 sheet, staff were proposing or recommending that
17 that be issued immediately following the
18 February 13 council meeting, so that would have
19 been the council meeting that followed the GIC a
20 week later. But as we know from the press release
21 that we see on the right-hand side that was sent
22 out in the evening on February 6, that ultimately
23 the press release did happen after the GIC and
24 that it was also read aloud by Mr. Zegarac at the
25 reopening of the public session.

1 What happened at the meeting,
2 to your recollection, that led to the press
3 release being put out a week before staff's
4 recommendation?

5 A. At the time, there was
6 intense media scrutiny over, you know, the Red
7 Hill Valley Parkway, the report, what information
8 the City had released, what we haven't released,
9 and it was council's desire to release what we
10 could right away because at the time we were
11 meeting in closed session for a number of hours,
12 so we knew that as soon as we came out of closed
13 session, there would immediately be questions
14 about what you were talking about, and we felt
15 that by delaying the release, it would just, you
16 know, feed into that perception that we weren't
17 being, you know, as transparent as we could be.

18 Q. Okay. And you'll see in
19 the press release it standards with saying:

20 "On behalf of the City of
21 Hamilton, staff
22 apologized to council and
23 the general public for
24 how this matter has come
25 to their attention."

1 Do you have any understanding
2 or insight into how that apology came to be
3 included in the press release?

4 A. My recollection was that
5 the acting city manager was ordered to apologize
6 to council.

7 Q. Do you recall who ordered
8 the acting city manager to apologize?

9 A. That was by council.

10 Q. By council. And from
11 your perspective, why did council want an apology
12 or why did council direct an apology?

13 A. So, again, there was, you
14 know, intense media scrutiny over the action that
15 the City had taken, what council's role was, and I
16 believe this was an attempt by some on council in
17 order to -- you know, again, we talked about the
18 difference between the technical aspects and the
19 political perception. This was an attempt by some
20 on council to distance themselves from the
21 political perception.

22 Q. Okay. And so, aside from
23 the direction or the order to include that
24 apology, was there any role that councillors had
25 in preparing or drafting any of the text that was

1 included in the press release, which I understand
2 was something that staff put together during a
3 break?

4 A. Yes. There was
5 discussion in camera of what specifically would be
6 included in the press release and some of the
7 wording.

8 Q. Okay. Did you have any
9 role?

10 A. I don't recall.

11 Q. Okay. And, Registrar, we
12 can close out the document on the left and if we
13 could call up both images of HAM12841. Perfect.

14 So, there are a number of
15 references to speeding in the press release which
16 suggest to me that speeding was an important part
17 of the message to the public. Is that fair?

18 A. Yes.

19 Q. And that was, I think
20 based on what we talked about earlier, that was
21 consistent with your understanding of the
22 contributing factors to collisions on the Red
23 Hill?

24 A. Yes.

25 Q. And we know that the

1 Tradewind report and the CIMA February 4 memo that
2 we looked at before were also released as
3 appendices to this press release. How did that
4 come to be? Was that at council's direction?

5 A. I don't recall
6 specifically, but I know there was a desire to
7 release as much documentation as we can to make
8 sure that, again, the perception was that we were
9 being as transparent as we could be.

10 Q. Okay. Registrar, we can
11 close this document down.

12 And, Councillor Danko, we
13 talked before when we were looking at the
14 Tradewind report, you spoke about some of your
15 concerns in relation to liability for doing
16 additional friction testing. How do you square
17 your concerns about liability if further testing
18 was done with the idea that the Tradewind report
19 was, sort of, irrelevant without an Ontario
20 standard?

21 A. My understanding is that
22 the initial friction testing was only done for
23 information purposes because we were using an
24 asphalt mix design that was new, it was, you know,
25 still kind of under review, so there was a

1 Registrar, can we call up
2 HAM64331. Thank you.

3 So, Councillor Danko, this is
4 a legal opinion that was prepared by David
5 Boghosian, who is the City's external legal
6 council on this issue, and you'll see it was sent
7 to Ms. Auty, the City solicitor. So, this is the
8 February 4 version. There was also an earlier
9 draft dated December 13.

10 Registrar, can we go to
11 image 8 of this document and if we could call out
12 the paragraph that starts with, "When asked to
13 rank," and the bullets below.

14 So, the opinion includes a
15 reference to a conversation that Mr. Boghosian had
16 with Brian Malone of CIMA in December 2018, so two
17 months before the issue was brought before
18 council. And you'll see here that there's a
19 ranking to the contributing factors to the wet
20 road crashes on the Red Hill, Mr. Malone's
21 ranking.

22 Do you recall if staff or
23 anyone advised you or councillors that Mr. Malone
24 had provided these comments and this ranking of
25 the contributions to the wet road crashes?

1 A. I believe the discussion
2 was that, you know, although he did provide it in
3 this format as a ranking, again, from a technical
4 design perspective, you have to consider all the
5 factors together. It's impossible to separate
6 them out and say, well, because of friction or
7 because of, you know, other factors, they have to
8 be all taken into consideration as part of the
9 design envelope.

10 Q. Okay. But were you
11 advised or aware that Mr. Malone had ranked
12 slipperiness of the road surface as the greatest
13 contributor to the inordinate number of wet road
14 crashes on the Red Hill?

15 A. I believe this was part
16 of either the discussion or the presentation, but
17 I don't believe it was presented as being, you
18 know, the most important factor.

19 Q. Okay. Thank you,
20 Registrar. We can close this document out and if
21 we could go to overview document 10A, images 82
22 and 83. Thank you.

23 So, at the council meeting
24 that started on February 13, and this was the late
25 night/early morning meeting that ran into

1 February 14, there was a direction from council to
2 staff to release two additional reports related to
3 the Red Hill Valley Parkway?

4 A. Mm-hmm.

5 Q. And, Registrar, perhaps
6 we can -- I'm straining my eyes a bit to see.
7 It's the third and fourth paragraph in the smaller
8 text underneath in paragraph 203. It starts with
9 the first report and the second report. Thank
10 you.

11 So, these paragraphs describe
12 the two reports, which were the 2018 roadside
13 safety assessment that CIMA did and the 2015 CIMA
14 report, safety study done in 2015?

15 A. Mm-hmm.

16 Q. Do you recall what the
17 discussion was or what led council to release
18 these additional reports on February 13?

19 A. I believe we were, again,
20 trying to make sure that all relevant information
21 was available publicly, as this was, at the time,
22 you know, an issue of intense public scrutiny, and
23 those CIMA reports in particular were important
24 just to show that there's been ongoing safety
25 improvements that have been made over the years.

1 Q. And was there any
2 explanation or did staff provide any information
3 about why these documents weren't provided to
4 council or recommended for release on February 6,
5 the week prior?

6 A. Well, I mean, why they
7 weren't provided to council specifically, you
8 know, again, we receive -- I mean we, the City,
9 receives thousands of consulting reports that have
10 to do with all kinds of different issues, so it
11 wouldn't be standard practice that council would
12 review highly technical reports of this nature.
13 But in the context of the overall discussion about
14 the safety of the Red Hill, obviously they're
15 quite relevant.

16 Q. Okay. Thank you,
17 Registrar. We can close this call out down and if
18 we can go to images 96 and 97.

19 So, you'll see in
20 paragraph 235 there was a motion circulated by
21 Councillor Merulla on February 13, so that was in
22 advance of the council meeting, and you replied
23 the same day. In paragraph 236, your response is
24 excerpted.

25 And, Registrar, if we can call

1 out the second and third paragraphs that are on
2 page 97.

3 So, you say here:

4 "With respect to RHVP, I
5 think we already have a
6 good idea of the failures
7 involved. Severe
8 mistakes were made and
9 they will be revealed."

10 Then you provide some
11 additional information about the question, being:

12 "How to make sure the
13 public is satisfied that
14 any investigation
15 undertaken is independent
16 and thorough."

17 In terms of the first sentence
18 there, what did you mean by the failures involved
19 and the mistakes that had been made?

20 A. So, at the time I believe
21 we were in discussions of what investigation we
22 were going to do, whether that was an internal
23 audit or an independent judicial inquiry, and my
24 experience with the Burgoyne Bridge investigation
25 was basically that, you know, it was a process

1 that really affected the Region of Niagara and all
2 their staff in an extremely negative way over
3 what, at the end of the inquiry or the
4 investigations, was that nothing was actually done
5 wrong.

6 So, that was my concern here,
7 that we enter into a process that, you know,
8 really questions the City's integrity and our
9 ability to make sure that we're operating in, you
10 know, an above-board way. And then all the focus
11 is on the investigation and then once the final
12 recommendations are made, everybody, you know,
13 forgets about it.

14 So, in my answers there, I
15 think this was a bit of hyperbole on my part. I
16 didn't, you know, particularly agree at the time
17 that there was mistakes made or failures or, you
18 know, what happened. Quite the opposite,
19 actually. But I was appealing to some of those
20 councillors who did share those views in relevance
21 to my concerns about launching into, you know, a
22 very expensive and lengthy investigation after the
23 fact.

24 Q. Okay. Just one moment.
25 Registrar, we can close that document out. Just

1 one moment.

2 Commissioner, those are all my
3 questions for Councillor Danko.

4 JUSTICE WILTON-SIEGEL: Okay.
5 Do any of the other counsel for the participants
6 have questions for Mr. Danko?

7 MS. HENDRIE: I understand
8 that counsel for Golder does not have any
9 questions and that counsel for the MTO might have
10 some brief questions.

11 JUSTICE WILTON-SIEGEL:
12 Mr. Bourrier?

13 MR. BOURRIER: I have a few
14 questions. May I proceed, Commissioner?

15 JUSTICE WILTON-SIEGEL: Yes,
16 please proceed.

17 EXAMINATION BY MR. BOURRIER:

18 Q. Hello, Mr. Danko. I'm
19 counsel for the MTO. I have a couple follow-up
20 questions for you regarding the evidence you gave
21 this morning on an e-mail exchange that you had
22 with Mike Zegarac dated January 28, 2019.

23 Mr. Registrar, can we please
24 call up HAM54317, please.

25 And, Mr. Danko, the questions

1 I have are regarding question number 4 in your
2 e-mail where you say that:

3 "A number of friction
4 tests were done on the
5 Red Hill asphalt."

6 And then you have in brackets:

7 "(MTO, City at different
8 times)."

9 What MTO friction tests are
10 you referring to in this e-mail?

11 A. My understanding is that
12 the MTO had done independent friction testing back
13 at the beginning after, you know, construction at
14 some point in there, in the first few years after
15 the road was built, and the purpose of that was to
16 gain information about the performance of the
17 surface mix that was used on the parkway.

18 Q. Okay. And do you
19 remember who told you about this initial testing
20 by MTO?

21 A. No, I don't.

22 Q. Do you remember when you
23 learned about the testing, what date or what
24 timeframe?

25 A. No. In the timeframe of

1 this entire discussion obviously.

2 Q. Right. So, the e-mail is
3 dated January 28. Is it fair to assume it's
4 around then or do you think it was long before
5 January that you learned about is that?

6 A. No. It was in that period
7 between January 23 and, you know, mid-February.

8 Q. Got it.

9 A. Prior to this e-mail
10 obviously.

11 Q. Right. Prior to the
12 e-mail. And I think you said this morning that
13 you don't remember discussing the MTO test results
14 with anyone. Do I have that correct?

15 A. Not what the specific
16 results of the test were; just that they had been
17 done and the purpose of them.

18 Q. Got it. Thank you very
19 much. Those are my questions.

20 JUSTICE WILTON-SIEGEL: Okay.
21 And, Ms. Talebi, does the City have any questions?

22 MS. TALEBI: We don't have any
23 questions for Councillor Danko. Thank you,
24 Mr. Commissioner.

25 JUSTICE WILTON-SIEGEL: Okay.

1 Ms. Hendrie, I assume you have no further
2 questions?

3 MS. HENDRIE: That's correct,
4 no further questions.

5 JUSTICE WILTON-SIEGEL: Okay.
6 Mr. Danko, thank you very much for appearing
7 today. We appreciate your testimony.

8 THE WITNESS: My pleasure.
9 Thank you.

10 JUSTICE WILTON-SIEGEL: And
11 you're excused and I think the rest of us, we
12 stand adjourned until the next witness, who is not
13 available, I understand, until 2:30. Is that
14 correct?

15 MS. HENDRIE: That's correct.
16 That's my understanding.

17 JUSTICE WILTON-SIEGEL: So
18 we'll stand adjourned until 2:30.

19 --- Luncheon recess taken at 12:07 p.m.

20 --- Upon resuming at 2:32 p.m.

21 JUSTICE WILTON-SIEGEL:
22 Ms. Bruckner? I'm having trouble hearing
23 Ms. Bruckner. Is everyone else having the same?

24 MS. BRUCKNER: Can you hear me
25 now?

1 JUSTICE WILTON-SIEGEL: I can
2 now, yes.

3 MS. BRUCKNER: Perfect.
4 Apologies. Good afternoon. Our second witness
5 today is Councillor Tom Jackson, who has yet to be
6 sworn.

7 AFFIRMED: COUNCILLOR TOM JACKSON

8 MS. BRUCKNER: Commissioner,
9 may I proceed?

10 JUSTICE WILTON-SIEGEL: Yes,
11 please do.

12 EXAMINATION BY MS. BRUCKNER:

13 Q. Thank you for joining us
14 today, Councillor Jackson. I'm going to start off
15 with a couple of questions about your background.
16 Could you tell me a bit about your educational
17 history?

18 A. Could I just be clear who
19 I'm speaking to, please?

20 Q. Yes. Hailey Bruckner.

21 A. Thank you, Counsel
22 Bruckner. Thank you. Nice to meet you virtually.

23 Q. You, too.

24 A. So, a little bit about my
25 background. Fortunate enough to be born and

1 raised here in Hamilton of Armenian ancestry.
2 Both parents and grandparents were fortunate to
3 leave, escape, the genocide of 1915, came to this
4 great country of Canada and I was schooled here
5 and graduated at McMaster University with a
6 four-year degree in, what else, political science,
7 and Russian language as a minor. And formerly
8 worked at Stelco in the production planning
9 department after graduating from university and
10 owned two Second Cup stores, Lime Ridge Mall,
11 James Street South. And for the last 30-plus
12 years I've been an honoured and privileged member
13 of city council.

14 Q. It's my understanding
15 that you have been the councillor for Ward 6 since
16 1989. Is that right?

17 A. That was the first full
18 year, elected in November of 1988.

19 Q. Okay.

20 A. That's correct.

21 Q. Can you tell me a little
22 bit about Ward 6? Where is it located?

23 A. Well, counsel, if you
24 haven't been up to Ward 6, happy to tell you, yes.
25 The geographic area coming down from Mountain Brow

1 Boulevard and Concession Street along the
2 escarpment, you come southwards on Upper Gage, it
3 does a zigzag along the LINC westward to Upper
4 Sherman, and then you go southward on Upper
5 Sherman to Rymal Road, another zigzag from Rymal
6 eastward over to Miles and then Miles Road South
7 to the hydro corridors. So, everything on that
8 zigzag line, everything eastward of that towards
9 Albion Falls and the Upper Red Hill Valley Parkway
10 is east mountain Ward 6, approximately 38 to
11 40,000 people.

12 Q. So, then I'm going to
13 repeat a bit what you just said, but it's my
14 understanding that Ward 6 includes the portion of
15 the Upper Red Hill Valley Parkway specifically?

16 A. It does, yes. Correct.

17 Q. During your time on
18 council, did you take a particular interest in the
19 Red Hill Valley Parkway due to its proximity to
20 your ward?

21 A. Actually, I've been an
22 extremely consistent strong vocal supporter of
23 building both the Red Hill Valley Parkway,
24 counsel, as well as the Lincoln Alexander Parkway
25 as well. About a third of the Lincoln Alexander

1 Parkway abuts my ward, and the top portion of the
2 Red Hill Valley Parkway is in my ward around the
3 Dartnall, Mud Street, Stone/Church interchanges,
4 but mostly I'm a very strong supporter just in
5 theory of getting both the Red Hill and the LINC
6 built for many, many reasons to benefit our
7 community.

8 Q. Okay. And when you say
9 build the Red Hill, are you referring to the 2007
10 construction and the talks leading up to that? I
11 know there were also subsequent discussions about
12 expanding the roadway and I just want to clarify
13 which one or if you're referencing both.

14 A. Oh, no. Just the opening
15 of the Red Hill Valley Parkway in 2007 and of
16 course the LINC was opened ten years earlier, in
17 1997, so referencing, finally, if you will,
18 getting the Red Hill Valley Parkway opened in
19 2007.

20 Q. Okay. It's my
21 understanding that you were a member of the public
22 works committee from about 2004. Is that correct?

23 A. Yes, the standing
24 committee of council, public works, correct.

25 Q. Okay. Are you still on

1 the public works committee?

2 A. I am, as this term of
3 council is ending, correct.

4 Q. Did you volunteer to join
5 the public works committee?

6 A. Oh, yes. Yes. We all
7 get a chance, members of council, after every
8 election to put our names forward on whatever
9 particular standing committees we wish to serve
10 on.

11 Q. Why did you want to serve
12 on the public works committee?

13 A. A lot of interesting
14 areas of public works for me and my constituents
15 in advocating and doing whatever I can to enhance
16 the life for my constituents of the east mountain.
17 A lot of it flows through public works, various
18 departments, parks, cemeteries, forestry, roads,
19 sidewalks, HSR, so a lot of different -- Hamilton
20 Water, a lot of different division, if you will,
21 report up through public works. Very important
22 department and very important committee.

23 Q. So, this may be going
24 back a bit in time to your interest for the
25 construction of the Red Hill, but it's my

1 understanding that you were also a member of the
2 parkway implementation committee for the Red Hill.
3 Do I have that right?

4 A. Yes. That was a little
5 subcommittee of public works committee, correct.

6 Q. Are you able to tell me a
7 little bit about what the purpose and function of
8 the parkway implementation committee was?

9 A. So, that was formed after
10 the Red Hill Valley Parkway was open because there
11 was primarily the Wards 4, 5 and 6 councillors,
12 the three of us were on it, and it was primarily
13 to assist the Wards 4 and 5 councillors
14 particularly with their constituents and
15 residents, Counsel Bruckner, who were abutting the
16 new road that was being constructed and built in
17 terms of noise, dust, issues such as that that
18 would immediately be impacting them during the
19 construction period and leading up to the opening
20 in 2007. So, that parkway implementation
21 subcommittee was formed to deal with more, I would
22 say, the nuisance stuff affecting quality of life
23 from a day-to-day and weekly standpoint, but our
24 subcommittee reported up to public works standing
25 committee and ultimately to city council.

1 Q. Okay. Registrar, could
2 you please pull up HAM32478.

3 So, Councillor Jackson, I'm
4 going to be pulling up some documents for you to
5 take a look at. To the extent that you need me to
6 zoom in on something or you need a further chance
7 to review something before you answer a question,
8 just let me know and we can assist with that.

9 A. Okay.

10 Q. Registrar, can I ask you
11 to pull out the paragraph under "paving" on the
12 first page and if you could just move the call out
13 down so we can still see the information at the
14 top of the information update, the to and from at
15 the very top of image 1?

16 So, Councillor Jackson, this
17 is an information update to the mayor and city
18 council which is sent by Chris Murray, who was, at
19 that point in time, so this is June 5, 2007, the
20 acting director of the Red Hill Valley Parkway
21 project?

22 A. Yes. This would have
23 been about six months before it was opened in fall
24 of 2007. Yes. Sorry, go ahead.

25 Q. That's absolutely fine.

1 Do you remember receiving this information update?

2 A. I don't remember
3 receiving the information update, but if it came
4 to public works -- or I don't remember receiving
5 it, but if it came to public works and was on the
6 record, then it was definitely then before us.

7 Q. So, there's a section in
8 this information update specific to the paving of
9 the Red Hill Valley Parkway and it says:

10 "In late May, paving work
11 on the mainline of the
12 parkway commenced.
13 Currently, this work is
14 being carried out on the
15 southbound lanes. The
16 interesting fact about
17 the paving work is that
18 it involves using
19 perpetual pavement, which
20 Hamilton is the first
21 municipality in Canada to
22 use. Perpetual pavement
23 is a richer, stronger
24 asphalt mix that is
25 designed to last

1 indefinitely and
2 eliminates bottom-up
3 cracking problems that
4 would require a total
5 reconstruction of a road
6 that is experienced in
7 other parts of the city."

8 And it goes on to say:

9 "Perpetual pavement can
10 withstand traffic loads
11 of up to 100,000 vehicles
12 per day, only costs less
13 than 1 percent of the
14 total Red Hill budgets
15 and is expected to save
16 the City \$1.6 million in
17 maintenance costs over
18 the next 50 years."

19 And then the last point there
20 is:

21 "As well, the surface
22 asphalt will be stone
23 mastic asphalt that will
24 improve skid resistance
25 and lower noise

1 generation."

2 And then there's a point about
3 the timing of the paving there. Did you
4 understand at the time of the Red Hill Valley
5 Parkway construction that the perpetual pavement
6 and SMA would be used on the Red Hill and that
7 this was, kind of, an innovative approach being
8 used by the City?

9 A. If I could put it in my
10 own words --

11 Q. Absolutely.

12 A. -- I don't remember the
13 perpetual pavement term, I don't remember the
14 stone mastic asphalt term, but I'll put it in my
15 own terms what I do recall, Counsel Bruckner, is
16 that the latest greatest asphalt approved by the
17 MTO was going to be used on building and
18 constructing our Red Hill Valley Parkway.

19 Q. And so, that term that
20 you just used, the latest greatest, is that
21 effectively what you were told or what you
22 understood --

23 A. Yeah. That was my
24 editorial comment from basically what I heard
25 about how it was going to be used to build the Red

1 Hill Valley Parkway. I just remember that it was
2 some novel asphalt and it was the latest greatest,
3 my own words, latest greatest asphalt to build the
4 road.

5 Q. Okay. Was the pavement
6 structure and asphalt type used on the Red Hill
7 Valley Parkway a decision that was within the
8 responsibility and authority of city staff or was
9 that something that council weighed in on?

10 A. I don't recall council
11 weighing in on that at all, Counsel Bruckner. Not
12 at all.

13 Q. Registrar, you can take
14 this down. Can you take us into HAM23128 at
15 image 2.

16 So, this is an e-mail chain
17 that's sent to you by Councillor Collins to you
18 and to Councillor Clark in November of 2016, 2012.
19 I'm sorry, I boggled that date a little.
20 November 26, 2012. Apologies. And after
21 receiving public complaints about the Red Hill
22 Valley Parkway, Councillor Collins brings a motion
23 to the public works committee on January 6, 2013
24 directing staff to investigate upgrading lighting
25 on the Red Hill Valley Parkway at the Mud-Stone

1 Church Road interchange, look at better signing
2 and lane markings and other initiatives and to
3 present a full costing of all options and
4 alternatives to council. And this leads to
5 something that we refer to as the 2013 CIMA
6 report, which is the safety study that's done by
7 CIMA in 2013.

8 But before he brings this
9 motion, he sends this e-mail to you and Councillor
10 Clark and he references a draft motion and he
11 summarizes some of the complaints that he had been
12 receiving from his constituents around this time
13 period, in late 2012.

14 Just as a starting point, do
15 you know why Councillor Collins would have
16 signalled you and Councillor Clark out
17 specifically on this e-mail about the Red Hill
18 Valley Parkway?

19 A. Not speaking for him, but
20 I would imagine, again, myself, with the Ward 6
21 portion being at the top and there is a portion
22 off the Mud Street interchange that Councillor
23 Clark in Ward 9 would geographically abut the Red
24 Hill Valley Parkway. And so, again, not speaking
25 for Councillor Collins, but I would imagine he

1 wanted to bring this to our attention and maybe
2 get some feedback from us. And could I further
3 add, Ms. Bruckner?

4 Q. Of course.

5 A. If I might further add, I
6 also, after the road had opened, darkness, I
7 remember even for constituents of mine,
8 overwhelmingly 75, 80 percent of my Ward 6 were
9 strongly supportive of council in getting the Red
10 Hill Valley Parkway finally, finally built. And
11 even those who were supportive of the road, once
12 it was open, were using it after 2007, I remember
13 the general concern and comment was the darkness
14 of the road, saying, Tom, you know, the road just
15 seems extra dark at the time, and so I remember
16 myself. It wasn't just one or two constituents
17 saying that, it wasn't an avalanche of people, but
18 it was a significant number that I thought I would
19 bring that to staff's attention, and so I had
20 similar concerns. So, by the time Councillor
21 Collins had sent this around, I had already, in
22 the prior few years, raised the issue with staff
23 as well about darkness.

24 Q. Okay. So, you said that
25 at this point you were primarily receiving

1 concerns from your constituents about darkness on
2 the Red Hill Valley Parkway. At this point in
3 time, November of 2012, and kind of running into
4 the beginning of 2013, had you been receiving
5 complaints about any other aspect of the Red Hill
6 Valley Parkway from your constituents?

7 A. Yes, I had as well. Two
8 main things I received. Darkness, number one for
9 sure. And people would say, you know, Tom, the
10 road at times seems a bit slippery driving down
11 and everything. And, again, unlike the LINC
12 that's a horizontal east-west straight line, the
13 Red Hill of course is a contoured snaky-type of
14 unique design road from north to south, and so
15 different, if you will, driving aspects of this
16 unique curvy type of road. So, I primarily,
17 Counsel Bruckner, had received darkness as well as
18 potentially, Tom, it seems that, you know, it may
19 be slippery at times.

20 Q. When you received
21 complaints from your constituents, what would you
22 typically do, if anything, upon receiving them?

23 A. Typically with
24 constituent concerns, counsel, my practice has
25 always been, first of all, to respond between my

1 have safety concerns arising from the complaints
2 that you had been receiving from your constituents
3 about the Red Hill?

4 A. Other than, no, just
5 again about the darkness overall and again some
6 mentioning about potential slipperiness, but that
7 was just generally it in terms of, you know,
8 leaving it with me, forwarding it on to staff and
9 basically seeing if staff respond saying yes, we
10 could do this, we can't do that.

11 I remember on the darkness
12 issue, Counsel Bruckner, I remember distinctly
13 staff, and mostly I would have been dealing with
14 director Gary Moore overseeing the building of the
15 road, but from staff generally on the darkness
16 issue, I remember staff responding with where the
17 roadway was built in the valley, that we were
18 trying to avoid and prevent any habitat, fowl,
19 birds, deer, any other critters potentially, keep
20 them from crossing the road and, hence, not using
21 typical lighting on a roadway, so that would
22 prevent any unnecessary and unfortunate carnage on
23 the road from a habitat standpoint.

24 Q. Okay. Registrar, could
25 you take this down and take us into overview

1 document 6, image 8, paragraph 11, please.

2 So, this is the motion that
3 ends up being presented at the public works
4 committee and passed. And you'll see the motion
5 is:

6 "On a motion, staff were
7 directed to investigate
8 upgrading the lighting on
9 the Red Hill Valley
10 Parkway in the vicinity
11 of the Mud/Stone Church
12 Road interchanges."

13 Just for my reference, that
14 area in the vicinity of the Mud/Stone interchange,
15 is that in Ward 6?

16 A. That's a combination of
17 Ward 6 and Ward 9. If you came off the
18 interchanges going southbound, Counsel Bruckner,
19 you could split off into Mud or Stone Church and
20 that literally is the border and dividing line
21 between Wards 6 and 9.

22 Q. So, then it's about
23 investigating upgrading the lighting on the Red
24 Hill Valley Parkway in that area. At this point
25 in time, recognizing that you had some information

1 about the environmental concerns and the
2 construction of the Red Hill, did you have any
3 knowledge or understanding about whether lighting
4 could in fact be upgraded on the Red Hill?

5 A. I was hopeful. Let's put
6 it that way. I was hopeful. But, again, staff's
7 original response and when it was built and opened
8 in 2007, those were the reasons why lighting
9 wasn't provided at that time, primarily from an
10 environmental standpoint and the habitat
11 standpoint.

12 Q. When this motion was
13 passed, did you have any expectation about what
14 kind of information staff would provide back to
15 you about the ability to upgrade lighting on the
16 Red Hill?

17 A. No. I was just waiting
18 to see exactly if they could come back with
19 short-term solutions, mid-term, if they had some
20 immediate measures, see what the wide ranging
21 options potentially would be from traffic staff,
22 primarily from traffic staff in this standpoint,
23 but obviously probably collaborating working in
24 conjunction with engineering staff as well.

25 Q. Registrar, could you

1 review (attached). As
2 requested by Councillor
3 Collins, I have attached
4 a copy of the report for
5 your review and we have
6 offered a meeting with
7 Councillor Collins to
8 review how we will be
9 presenting the report to
10 council."

11 Do you recall this e-mail
12 exchange back and forth with Mr. Ferguson about
13 the draft 2013 CIMA report?

14 A. I don't recall it, but my
15 name is on it, so I'm not going to dispute it,
16 Counsel Bruckner.

17 Q. Okay. In your experience
18 during your time with council, how common was it
19 for staff to share draft consultant reports with
20 members of council before they were presented to a
21 standing committee?

22 A. I won't say how often. I
23 couldn't tell you how often, but I would say more
24 as an information and maybe a courtesy in advance
25 to have some preliminary discussion, especially if

1 it was impacting that particular geographic area
2 which would be in one's ward. I would have seen
3 it more as a courtesy and a for-information just
4 in advance so I wouldn't have been blindsided, if
5 you will, at the standing committee level when the
6 final report was part of the agenda.

7 Q. Okay. Aside from this
8 occasion where you were provided with a draft copy
9 of the 2013 CIMA report, do you recall other
10 occasions where you were given a draft consultant
11 report?

12 A. Now, you mean not just
13 specific to this subject?

14 Q. It can be specific to
15 this subject, but not the 2013 CIMA report.

16 A. No.

17 Q. You don't have to detail
18 it, just were there other occasions?

19 A. Again, my apologies,
20 Counsel Bruckner. Are you specifically saying
21 this or across the entire corporation of any
22 departments? My apologies.

23 Q. Across the corporation of
24 any department, aside from this instance, can you
25 recall any instances in which you were given a

1 draft consultant report?

2 A. I honestly could not
3 recall. It may have happened, but I'm not going
4 to say for sure. I honestly can't recall.

5 Q. Understood. Before you
6 received a copy of the draft 2016 consultant
7 report in this instance, had you approached staff
8 to advise them of your interest in that report?

9 A. No, not to my knowledge.
10 No.

11 Q. I ask just because the
12 second e-mail from the bottom of page 2 is
13 Mr. White speaking to Mr. Ferguson, and you're not
14 copied on this, but he says:

15 "Dave and Councillor
16 Collins, apparently
17 Councillors Clark and
18 Jackson have also
19 expressed interest in the
20 results of our traffic
21 safety audit on the Red
22 Hill Valley Parkway and
23 LINC."

24 But you don't recall
25 specifically approaching anyone on staff to advise

1 them of your interest?

2 A. I don't recall
3 specifically approaching anyone, but if it says
4 there in the e-mail and the minutes and the actual
5 wording of the e-mail if I did, then so be it. I
6 just remember again, Counsel Bruckner, expressing
7 concerns about the darkness of the roadway and
8 supporting the motion of directing staff to see
9 what they could come back with in terms of
10 possible measures to improve that.

11 Q. And so, at this point in
12 time, around September 2013, can you recall who on
13 city staff you made aware of your concerns about
14 the darkness on the roadway?

15 A. It would have been
16 through probably -- it would have been through
17 manager Martin White, it would have been through
18 superintendant Dave Ferguson, and even possibly as
19 well director Gary Moore of the overall project.
20 If I had those discussions, it would have been
21 probably been through those type of individuals.

22 Q. Okay. And why would
23 those three individuals have been the people that
24 you approach about the Red Hill?

25 A. Director Moore obviously

1 is the roads guru overseeing the project itself,
2 and anything typically involving traffic, traffic
3 safety measures, whether it was Red Hill or any
4 other street in my ward, I would have gone to
5 manager Martin White or superintendant Dave
6 Ferguson.

7 Q. And when you describe
8 Mr. Moore as the roads guru, is that due to his
9 involvement in the construction of the Red Hill
10 Valley Parkway?

11 A. So, let's just say,
12 again, that's my editorial term of a title, if you
13 will, Director Moore. I have known Director Moore
14 from regional days before amalgamation and since
15 amalgamation and I just found him to be an expert
16 and experience in building roads across our City
17 and our region. So, if you will, my editorial
18 dubbing him our roads guru.

19 Q. Okay. Registrar, can you
20 take us into HAM4303, please.

21 So, this is the actual copy of
22 the draft Red Hill Valley Parkway safety review
23 that you received in response to this e-mail
24 chain. Do you recall if, when you received this
25 draft report, you would have reviewed it?

1 A. I don't recall reviewing
2 it, to be honest, Counsel Bruckner. I don't
3 recall reviewing it. It probably would have been,
4 obviously, a multipage document, but I don't
5 recall reviewing it.

6 Q. Okay. Would it generally
7 have been your practice to review a consultant
8 report?

9 A. Not generally, no. I
10 typically, if there was any consultant reports
11 that were to be part and parcel of whatever the
12 staff reports would be to committee and council, I
13 would have relied on staff, if you will, in the
14 body of their report under background information,
15 relevant consultation as a subtitle, then
16 highlighting who they had consulted with,
17 stakeholders in the community, ward councillors,
18 various departments of the City, so I would have
19 just relied on that in the backgrounder of staff's
20 report. But in terms of this type of report, I
21 wouldn't have gone through it, no.

22 Q. Okay. Registrar, can you
23 take us to image 8 and 9 of this document, please.

24 A. Just to let you know,
25 Counsel Bruckner, on the right-hand page a little

1 bit of the wording is cut off because of the
2 pictures, but I'll presume if there's anything
3 there, you'll let me know.

4 Q. If you go to the view
5 options at the top of your screen, you should be
6 able to switch to gallery view and then you should
7 be able to see the full set of documents without
8 the pictures cutting it off.

9 A. Gallery view?

10 Q. Let's give it a try.

11 A. Okay. I don't see
12 gallery view, so let's stay with what's in front
13 of me right now and I'll just work my way through
14 it. No problem. Sorry.

15 Q. Okay. So, you'll see
16 that on the second image that we have up there
17 under the points -- Registrar, it's the first full
18 paragraph on image 2, if you can call that out for
19 us.

20 Councillor Jackson, are you
21 able to see that fully pulled out now?

22 A. Thank you, Kurtis. Much
23 better. Thank you.

24 Q. So, the report says here:

25 "Given the extensive

1 history of the parkway,
2 the unique geography that
3 it traverses, the many
4 design refinements and
5 assessments taken over
6 the years, the many
7 environmental agreements
8 and approvals required
9 and the urban expressway
10 nature of the design, it
11 was determined that a
12 review of the fundamental
13 roadway design geometry
14 of the roadway and
15 illumination throughout
16 the study area was beyond
17 the scope of this study."

18 Was that consistent with your
19 understanding of the purpose of Councillor
20 Collins' motion, that illumination throughout the
21 study area was not going to be looked at by the
22 consultant's report?

23 A. I don't remember seeing
24 this of course in the consultant's report as I
25 didn't work my way through that report; however,

1 this would tie in with why Councillor Collins did
2 what he did because of a number of us receiving
3 concerns and complaints about darkness and, hence,
4 directing staff to, from a council standpoint, to
5 look into it and see what measures could be
6 brought back to make the roadway safer from a
7 lighting standpoint.

8 Q. And so, this particular
9 section of the report indicates that illumination
10 is not actually going to be looked at by CIMA
11 throughout the entire scope of the study area. Is
12 that something that you had been advised of around
13 the drafting of this report or in the lead-up to
14 receiving the final version of it?

15 A. I don't recall that at
16 all.

17 Q. And so, in the e-mail
18 chain in which you received this copy of the draft
19 report, staff offered to meet with you to discuss
20 the draft report. Do you recall at all what
21 happened at that meeting or if it occurred?

22 A. I don't recall attending
23 that meeting, to be honest with you,
24 Counsel Bruckner. I don't recall attending that
25 meeting.

1 Q. Do you recall if you were
2 ever told in and around this time period, so
3 again, this is September of 2013, that the
4 environmental approval on the Red Hill Valley
5 Parkway prohibited continuous lighting of the Red
6 Hill?

7 A. Yes. That dovetails with
8 what I had said earlier, that the response I had
9 from staff was that for environmental concerns,
10 lighting could not be part of the Red Hill Valley
11 Parkway.

12 Q. Okay. Do you recall
13 which member of staff told you that?

14 A. Again, most of my
15 questions about the roadway would have been
16 directed through director Gary Moore if he had
17 asked his own staff, I'm not going to speak for
18 him, if he had asked for his own staff to possibly
19 come back with information that ultimately he
20 could have shared back with me, it could have been
21 just a verbal exchange as well, that's where I
22 would have started any of my line of questioning
23 in terms of anything to do with the roadway, the
24 parkway.

25 Q. Okay. And do you recall

1 if that discussion occurred in and around the
2 original construction of the Red Hill Valley
3 Parkway or if it's something that happened later,
4 closer to 2013, when you were discussing
5 complaints that you had received from constituents
6 about lighting?

7 A. So, it would have
8 definitely been after the parkway was opened and
9 the fall of 2007 up until when you showed me with
10 Councillor Collins' formal e-mail, including
11 Councillor Clark and I, so it would have been as
12 the parkway was open, as more and more people were
13 using it, over that period of five or six years is
14 when the darkness issue was being brought to my
15 attention by my constituents.

16 Q. Okay. And you think
17 that's around the time that you would have had
18 discussions with Mr. Moore in which he indicated
19 that EA prohibited lighting?

20 A. Yes, exactly. It would
21 have been within that five/six-year time period,
22 Counsel Bruckner. I couldn't tell you exactly
23 what month, what week, what year, but it would
24 have been as more and more people were using it,
25 the darkness issue was being brought to my

1 attention and I would have brought that to
2 Director Moore's attention and then he or staff
3 would have responded with what I've shared about
4 habitat and environmental concerns.

5 Q. Okay. Registrar, you can
6 take that down and if you can take us into RHV668,
7 please.

8 So, this is the information
9 report that is sent to the public works committee
10 with respect to the 2013 CIMA report, the draft of
11 which we were just looking at.

12 A. Mm-hmm.

13 Q. Do you recall receiving
14 this information report?

15 A. Yes, I recall receiving
16 this information report.

17 Q. Was it your standard
18 practice to review staff reports when you received
19 them?

20 A. Yes. So, what I did was
21 we typically, Counsel Bruckner, we got two types
22 of reports. We got information reports, we got
23 what I would call action reports with staff
24 recommendations, and so typically this would have
25 been part and parcel of agendas, when agendas are

1 printed, and it would have been at that time as we
2 get our agendas typically several days before the
3 standing committee meeting. And I'm one who
4 traditionally still likes my hard copies, so I
5 would have reviewed all the reports attached to
6 that agenda and this would have been attached to
7 it.

8 Q. Okay. And the 2013 CIMA
9 report, so that's the draft document that we were
10 just looking at, the final version of it wasn't
11 appended to this information report. Would you
12 generally expect to be provided with a consultant
13 report when you received a staff report
14 summarizing it?

15 A. No, not necessarily I
16 wouldn't have. I would have relied on staff
17 within the body of their information or full
18 report, recommendation-type report. I would have
19 relied on staff to tell me if they had any
20 reference to a consultants's report.

21 Q. And in your experience on
22 council, were consultant reports usually appended
23 to staff reports or was that a fairly rare
24 occurrence?

25 A. Yeah, I would say more of

1 a rare occurrence. I mean, if I could just --
2 maybe it's not a perfect analogy, but for example,
3 recently six months ago during budgets session
4 typically departments bring reports, for example,
5 tenure report on our fire and emergency medical
6 paramedic services as to where new facilities
7 should be built, operational dollars needed, how
8 much more equipment to buy, that type of document
9 of more of a capital nature and that would be a
10 part and parcel of what members of council would
11 receive. But in terms of actual consultant's type
12 of report, we wouldn't have received that -- my
13 recollection is we wouldn't have received that on
14 a regular basis.

15 Q. So, the first full
16 paragraph on image 2 -- Registrar, do you mind
17 just pulling out the first full paragraph there.
18 It's also the third up from the bottom. Sorry,
19 the third full paragraph. My apologies. One more
20 down. Yeah, that's it. Thank you.

21 So, you'll see there's an
22 entry in the information report that says:

23 "The report also reviewed
24 roadway lighting and
25 while the report did not

1 recommend the
2 installation of lighting
3 along the entire road
4 segment, the consultants
5 did report recommended
6 that the lighting be
7 installed on the
8 westbound Mud Street
9 on-ramp. The cost to
10 install roadway lighting
11 in this section is
12 initially estimated at
13 \$275,000. However, as
14 outlined under the
15 original Red Hill Valley
16 Parkway report, that was
17 approved by council prior
18 to construction of the
19 roadway. Roadway
20 lighting was not
21 recommended or
22 implemented as a result
23 of the environmental
24 concerns."

25 Do you recall if in connection

1 with this information council or the public works
2 committee was advised about the decision not to
3 investigate lighting throughout the entire study
4 area of the 2013 CIMA report?

5 A. I can't recall that,
6 Counsel Bruckner.

7 Q. That's fine. Registrar,
8 you can take this down and if you don't mind just
9 pulling out, actually, just the next paragraph up.
10 Sorry, I'm just slightly changing the focus.

11 A. Kurtis, could you just
12 make that a little smaller again, please, for me,
13 so that I'll see the whole thing? Thank you very
14 much. Much appreciated. Sorry, Counsel Bruckner.
15 Thank you.

16 Q. That's all right. If on
17 the break you want to try it out, I think that it
18 may also sometimes be labelled as side-by-side
19 view in the viewer to get it so that it doesn't
20 block off your screen.

21 A. Okay. Oh, yes, it does
22 have a side-by-side option. Okay. Thank you.
23 I'll do that during the break, then. Thank you.

24 Q. Perfect. So, you'll see
25 the very bottom of this paragraph here says:

1 "Staff will also review
2 further countermeasures
3 such as friction testing
4 with construction
5 engineering."

6 And then, Registrar, can you
7 take us over to the next page, image 3, which
8 should be Appendix A to this report.

9 And then you'll see that under
10 the appendix of short-term countermeasures, the
11 first one listed there is friction testing. What
12 did you understand that staff were going to do in
13 respect of the short-term friction testing
14 countermeasure given the representation of
15 friction testing here in this appendix and the
16 statement in the staff report about it being
17 further reviewed?

18 A. Typically that staff
19 would be taking some time in a short-term manner,
20 and short-term can be defined as weeks, months,
21 you know, maybe up to a year or two, but staff
22 would be taking -- they would be undergoing the
23 friction testing as well as part of these
24 short-term measures to potentially make the road
25 safer, along with the lighting and markings and

1 maybe additional signage as well.

2 Q. Okay. Do you recall if
3 in connection with this report or the presentation
4 at the public works committee about this report
5 there was any discussions about the basis for the
6 friction testing recommendation in the 2013 CIMA
7 report and where that came from?

8 A. I don't remember the
9 basis for it. No, I don't, Counsel Bruckner.
10 Sorry.

11 Q. Okay. At this point in
12 time, what was your understanding, if you had one,
13 about why friction testing was a short-term
14 recommendation that CIMA had made?

15 A. Well, again, based on, I
16 would presume I wasn't alone as a member of
17 council, but again speaking for myself, I
18 mentioned a little while ago in this hearing that
19 two issues were top of mind for me for my
20 constituents regarding the usage of the roadway,
21 and that was both darkness and potential
22 slipperiness of it as well. If enough complaints
23 were brought forward potentially about that, then
24 that could have been a reason why it was included
25 in the CIMA report or it could have been

1 internally generated through staff, but I can't
2 speak for staff.

3 Q. Okay. At this point in
4 time, had staff spoken to the public works
5 committee or you about wet weather collisions or
6 the patterns of wet weather collisions on the Red
7 Hill Valley Parkway?

8 A. Not to my knowledge, no.

9 Q. Okay. Registrar, you can
10 take that down and if you could please take us
11 understood OD 7, images 3 to 4, paragraph 4.

12 So, on May 5, 2015, two young
13 women were killed in a crossover collision on the
14 Red Hill Valley Parkway. Do you recall that
15 collision?

16 A. I remember hearing about
17 it for sure. Extremely tragic, what occurred, and
18 I remember hearing about that, yes.

19 Q. Registrar, can you take
20 us to overview document 7, image 10, paragraph 29,
21 please.

22 So, Councillor Merulla brings
23 a motion to be heard at the May 21, 2015 public
24 works meeting and he wants to direct staff to
25 investigate additional safety measures on the Red

1 Hill Valley Parkway and LINC, such as additional
2 guide rails, lighting, lane markings and other
3 means to help prevent further fatal and serious
4 injuries after this collision occurs.

5 Do you recall if you supported
6 this motion?

7 A. Oh, yes, I strongly
8 supported this motion.

9 Q. And you'll see at the
10 bottom of the excerpt on this motion that staff
11 were directed to report to the public works
12 committee by December 7, 2015. Did you have any
13 expectations about how staff would go about
14 responding to this particular motion and, in
15 particular, if they would retain an expert?

16 A. No. Typically when
17 committee and council have approved a motion, it's
18 left with a senior management team in the
19 department in charge to pursue and to bring back
20 all the information and their best recommendations
21 to address the council direction. How they did
22 it, who they engage, we would leave that up to
23 senior management.

24 Q. Okay. Did you anticipate
25 that staff would come back to the public works

1 committee with a recommendations report further to
2 this motion?

3 A. Yes, I would. They may
4 have come -- typically, Counsel Bruckner, if it
5 was going to take them a little more time or given
6 that this was about a six-month, seven-month
7 period of time, typically staff, not just this,
8 may wish to bring an interim type of information
9 report just to give a status, work in progress,
10 what's occurring. But absolutely by the end of
11 this, for sure a full recommendation type of
12 report.

13 Q. Registrar, can you please
14 take us to overview document 7, image 73,
15 paragraph 231.

16 So, Councillor Merulla's
17 motion was passed at the May 21 public works
18 committee meeting, and this call out is jumping a
19 bit ahead in time.

20 A. Okay.

21 Q. And on December 7, 2015,
22 as requested in that motion, staff came back to
23 the public works committee to report. Do you
24 remember staff providing a report following
25 Councillor Merulla's motion in December of 2015?

1 A. If the minutes say that I
2 was there, then I was there and I do, yes.

3 Q. Registrar, you can take
4 this down and if you can pull up side by side
5 HAM56682 and HAM56684, please.

6 So, I'm just putting this up
7 side by side because the e-mail on the e-mail that
8 is pulled up there is a covering e-mail by which
9 Lauri Leduc circulates the 2015 CIMA report to
10 council, including yourself. I know it's a little
11 hard to read, but you are one of the recipients
12 listed up there.

13 A. Yes.

14 Q. And then the document
15 beside it is the attachment, which is the final
16 version of the 2015 CIMA report, which was
17 produced further to that motion.

18 Do you recall receiving the
19 2015 CIMA report prior to the December 15 public
20 works committee meeting?

21 A. I don't recall receiving
22 it, but if it was attached to the report from
23 staff, I'm not going to dispute it, Counsel
24 Bruckner.

25 Q. Okay. On receiving this

1 e-mail circulating the 2015 CIMA report, would you
2 have received the 2015 CIMA report?

3 A. I would have typically,
4 past practice, as I've said earlier as well, with
5 the other document, I would not have gone through
6 the report; however, I would have relied on
7 professional staff to ensure that whatever
8 recommendations they brought forth and if there
9 was recommendations that emerged from the CIMA
10 report that helped form their recommendations, I
11 would have relied on professional staff
12 accordingly.

13 Q. Okay. Registrar, you can
14 take this down and if you can take us into
15 HAM24700.

16 So, this is the recommendation
17 report that's prepared by staff for the
18 December 7, 2015 public works committee meeting.

19 A. Okay.

20 Q. Do you recall receiving
21 and reviewing this recommendation report?

22 A. Yes, I do.

23 Q. And so, in the staff
24 report, which is about the 2015 CIMA report that
25 we were looking at a minute ago, staff recommend

1 that the -- actually, Registrar, why don't you
2 pull out the recommendations there just so that
3 they're a little bit easier to see for Councillor
4 Jackson.

5 So, in this report staff
6 recommend that short-term options, safety options,
7 identified in Appendix A be implemented while
8 medium and long-term items, identified in Appendix
9 B, are deferred for review as part of the
10 assessment of the update of the transportation
11 master plan, and that's in connection with
12 consideration of the expansion or potential
13 expansion of the Red Hill Valley Parkway and LINC.

14 Do you recall those
15 recommendations, particularly around potentially
16 deferring some of the countermeasures?

17 A. I just remember there
18 were some short-term measures that staff felt that
19 they could, at a particular cost with the money
20 coming out of the red light camera reserve, that
21 they could move ahead with, and that there was
22 going to be medium long-term items that needed
23 further consideration. I don't necessarily
24 remember it being tied in with the TMP and I don't
25 necessarily remember it being tied in with the

1 expansion of the Red Hill/LINC, which, by the way,
2 I was always a strong supporter of and whether you
3 may have known the history or not, Counsel
4 Bruckner, both roads had been originally planned
5 and proposed to be a six-lane road, but based on
6 the politics of the day, based on the funding we
7 had available at the time, we at least got the two
8 roadways open with the four lanes they currently
9 are.

10 So, back to your question, I
11 don't remember it all being tied in with the
12 expansion or the TMP, but I do remember there were
13 things like maybe cat's eyes on the roadway and
14 things like that that could hopefully be done as
15 soon as possible.

16 Q. Registrar, can you please
17 take us into image 6 of this document.

18 So, you'll see there's a
19 paragraph there, the second paragraph under the
20 graph.

21 Registrar, do you mind pulling
22 that out for us starting with "currently."

23 So, there's a reference there
24 that says:

25 "Currently, public works

1 is updating the City wide
2 master TMP which would be
3 completed in 2016. Part
4 of this process is to
5 review the need for
6 additional lanes on both
7 the LINC and the Red Hill
8 due to the high volumes
9 and congestion at certain
10 times of the day. If
11 additional lanes are
12 identified, a median
13 barrier would be
14 required."

15 As of December 7, 2015, when
16 you were at the public works committee meeting and
17 this report was presented, was it your expectation
18 that you would receive the outcome of the
19 transportation master plan by 2016?

20 A. I guess it was a hopeful
21 expectation that we would receive it by then, yes.
22 Correct.

23 Q. Okay. And it was your
24 understanding that the TMP update would consider
25 the expansion of the Red Hill Valley Parkway and

1 LINC?

2 A. Yes, and also that I
3 believe at some point in time, I can't remember
4 when, but at some point in time during that term
5 of council there was an actual motion by one of my
6 colleagues, I believe it was the former Ward 9
7 councillor, Doug Conley, that got council on
8 record asking the province and putting us in a
9 position to expand both the Red Hill and the LINC
10 to six lanes.

11 Q. Okay. What was your
12 understanding as to the timing for possible
13 expansion of the Red Hill Valley Parkway and LINC?
14 For example, was it something that you thought
15 could reasonable happen within a couple years or
16 was it something that would be well down the line?

17 A. So, obviously as someone,
18 again, who was a strong supporter of building both
19 roads, wanted the original plan proposed for six
20 lanes, disappointed we only got the four lanes
21 open; however, was satisfied. Our ring roads, our
22 new ring road concept, was up and running in our
23 community for a variety of reasons, helping to
24 bring goods and services to our community, open up
25 the Red Hill business park, take heavy trucks off

1 points have not been resolved.

2 Q. Okay. Registrar, you can
3 take this down and if you can take us into image 3
4 of this document and if you can pull out the
5 second two paragraphs under the Red Hill Valley
6 Parkway heading. You can start there. You can do
7 the first full three if you would like.

8 So, Councillor Jackson, I'm
9 going to read out the paragraph in the middle
10 there.

11 A. Please.

12 Q. So, this is about the Red
13 Hill Valley Parkway and it says:

14 "A detailed review of the
15 collision incidents
16 identify that there is a
17 higher number of
18 collisions than would be
19 expected as a result of
20 high vehicle speeds in
21 combination with wet
22 weather conditions. The
23 majority of collision
24 incidents that are
25 occurring are in direct

1 relation to poor driving
2 behaviour."

3 When you reviewed this
4 recommendation report, did you rely on that
5 summary of CIMA's findings in the staff report in
6 terms of your understanding about what the primary
7 cause of collisions on the Red Hill Valley Parkway
8 was?

9 A. I didn't necessarily
10 recall reading this actual paragraph, but in
11 answers that were forthcoming from Director Moore
12 on behalf of staff was that the roadway basically
13 was safe and that it was more about driver
14 behaviour and not adjusting to inclement weather,
15 speed, distracted driving, things like that,
16 instead.

17 Q. Okay. So, you indicated
18 that Mr. Moore is the one who made those
19 statements to you. Do you recall how frequently
20 or when he made statements to that effect?

21 A. No. That would have
22 been -- I may be going a little bit fast-forward
23 here, but that would have been at the committee
24 meeting that we asked him if the roadway --
25 Sherman Merulla asked if the roadway was safe in a

1 public session.

2 Q. So, I'm actually just
3 about to take you to those comments.

4 A. Okay. Sorry, I'm a bit
5 ahead of myself there.

6 Q. No, absolutely. That's
7 perfectly fine. I'm going to ask you a couple
8 more questions and then I think that we will be
9 looking at those comments shortly, but those are
10 the ones that you're referencing in the answer
11 that you just gave?

12 A. Yes.

13 Q. Registrar, can you please
14 take us into HAM24702.

15 So, this is the Appendix B to
16 the recommendation report that we were looking at
17 which lists the medium and long-term safety
18 options and estimated costing for the LINC and the
19 Red Hill Valley Parkway. And you'll see that the
20 very first one under medium-term options, two to
21 five years, is conduct pavement friction testing,
22 with the amount being \$40,000 in cost.

23 Do you recall if you took
24 particular notice of that pavement friction
25 testing recommendation?

1 A. I can't say. I can't
2 recall if I took particular attention to that or
3 not, Counsel Bruckner.

4 Q. Did you make a connection
5 between the friction testing recommendation and
6 the statement that we were just looking at in the
7 staff report about there being a higher number of
8 collisions due to high vehicle speeds in
9 combination with wet weather conditions?

10 A. I didn't make necessarily
11 that correlation right away, no.

12 Q. Do you recall if staff
13 made that connection while presenting this report
14 to the public works committee?

15 A. I honestly cannot recall
16 if they did or didn't.

17 Q. Under long-term options,
18 which is the next little break in the chart down,
19 long-term options, six plus years, there were four
20 different options and two of them relate to the
21 Red Hill Valley Parkway and those are install
22 median barriers and install end-to-end
23 illumination. The staff report suggested that
24 medium and long-term options should be considered
25 with the expansion of the Red Hill Valley Parkway

1 or at least with the transportation master plan
2 update.

3 Did you have concerns about
4 staff's recommendation to defer the safety options
5 set out in Appendix B until the completion of the
6 transportation master plan?

7 A. I don't recall having any
8 concerns at that time, no. It was just on a road
9 map of things to do, both midterm and long-term,
10 so it definitely was on the radar, everyone was
11 aware of it and it was just a matter of studies
12 being completed, finding the money in the capital
13 budget as well to do the things that had been
14 highlighted here.

15 Q. Okay. Registrar, can you
16 leave this up and bring up on the other side of
17 the screen HAM56684 at image 57, please.

18 And so, what I just pulled up
19 is the section from the 2015 CIMA report that
20 lists the countermeasures and also includes
21 references to whether or not they're short-term or
22 long-term. And if you look at that chart, you'll
23 see that towards the very bottom -- Registrar, can
24 you pull out the conduct pavement friction testing
25 recommendation from the CIMA report. It's three

1 up from the -- yeah, there it is.

2 So, the conduct pavement
3 friction testing recommendation is listed as a
4 short-term recommendation in the 2015 CIMA report,
5 which doesn't include a year range for what it
6 means when it defines short-term. And then you'll
7 see back over on the other page, the staff report
8 that we were just looking at lists conduct
9 pavement friction testing as a medium-term option.

10 Were you aware that friction
11 testing was listed as a short-term option by CIMA,
12 but a medium-term option to be deferred pending
13 the consideration of the transportation master
14 plan by city staff?

15 A. I wasn't aware that CIMA
16 had put it as a short term. The fact that
17 staff -- that's the staff report you're showing me
18 there on the left, Counsel Bruckner, that they had
19 it as a medium-term option. As to the difference
20 there, I wouldn't have been aware of the CIMA
21 recommendation of short term. Again, I would have
22 relied more on professional staff's recommendation
23 of the medium-term option.

24 Q. Would you have expected
25 staff to identify in the staff report that they

1 had listed friction testing as a medium-term
2 option while CIMA had listed it as a short-term
3 option and provide some sort of explanation for
4 that?

5 A. That, looking back, would
6 have been a hope for. I don't believe that was
7 done. I don't recall that being done. But that
8 would have been a hope for if there was some
9 discrepancy to highlight the difference from
10 professional staff versus the consultant's
11 recommendation.

12 Q. In general, where city
13 staff are recommending something different than a
14 consultant had recommended, would you expect their
15 changes or their recommendations to be clear on
16 the face of the staff report?

17 A. I would expect so,
18 especially of something of a significant topic
19 and/or project that has had a lot of attention to
20 it, absolutely.

21 Q. And would you generally
22 expect staff to provide an explanation where their
23 professional recommendation differed from that of
24 the consultant?

25 A. Yes, I would hope so,

1 absolutely. But again, Counsel Bruckner, at the
2 end of the day I would be relying on my
3 professional staff and what they would ultimately
4 recommend.

5 Q. Understood. In
6 hindsight, and I think you may have answered this
7 question, but just for clarity, would you have
8 acted differently had you been aware that friction
9 testing was a short-term countermeasure in the
10 consultant reports but a medium-term one in the
11 recommendation report?

12 A. Probably would have
13 caused more robust discussion and debate and may
14 have actually then, pending, not speaking for any
15 of my colleagues on committee or council, but may
16 have actually caused a potential change or
17 alteration in terms of where that \$40,000 would
18 have ultimately landed. It would have at least
19 caused a more robust debate.

20 Q. Did you expect that you
21 would have agreed to staff's recommendation to
22 defer that particular medium-term option pending
23 the outcome of the transportation master plan?

24 A. I'm sorry, could you
25 repeat your question? I didn't understand that.

1 Q. Had you known that CIMA
2 had listed conducting friction testing as a
3 short-term measure, do you expect that you would
4 have agreed to staff's recommendation to defer
5 that safety option until the completion of the
6 transportation master plan?

7 A. Again, I would have
8 created a more robust discussion as to why the
9 professional consultant is recommending short
10 term, so more immediacy to it, if you will, versus
11 staff's recommendation to have it more mid-term
12 and tied into the TMP. All I can say is it would
13 probably have created a lot more discussion,
14 deliberation and debate before finally deciding
15 what was the best course of action ultimately for
16 council on behalf of the community.

17 Q. Understood.
18 Commissioner, I see that I've taken us a couple of
19 minutes past our regular 3:30 break and I'm about
20 to move on to another topic of discussion, so I
21 wonder if this might be a good time for the break.

22 JUSTICE WILTON-SIEGEL: Okay.
23 Let's take the usual 15-minute break and that
24 means we'll come back at ten to 4:00.
25 --- Recess taken at 3:35 p.m.

1 --- Upon resuming at 3:51 p.m.

2 MS. BRUCKNER: Commissioner,
3 may I proceed?

4 JUSTICE WILTON-SIEGEL: Yes,
5 please do.

6 MS. BRUCKNER: Thank you.

7 BY MS. BRUCKNER:

8 Q. Councillor Jackson,
9 before the break I had indicated that I was going
10 to take you to those comments by Mr. Moore.

11 Registrar, could you please
12 take us to overview document 7, image 74,
13 paragraph 233. And you can call out 233 all the
14 way down to 235.

15 So, this is a summary of a
16 recording of the December 7, 2015 public works
17 committee meeting:

18 "Councillor Merulla asked
19 Mr. Moore, who was also
20 present at the meeting,
21 to elaborate on the
22 quality of the asphalt
23 used, asking whether the
24 City used low-grade
25 asphalt in comparison to

1 that used by the MTO in
2 constructing the Red Hill
3 Valley Parkway.
4 Mr. Moore replied that
5 the City had used SMA in
6 the construction of the
7 Red Hill Valley Parkway,
8 which was the MTO's top
9 mix for high-speed
10 freeway-type roadways.
11 Mr. Moore informed public
12 works committee that the
13 MTO had performed the
14 initial friction testing
15 and received results at
16 or above what the MTO
17 typically expected from
18 high-grade friction
19 mixes. He also informed
20 the public works
21 committee that they had
22 performed subsequent
23 testing five years after,
24 in approximately 2012 to
25 2013, finding that the

1 road was holding up
2 exceptionally well. He
3 stated we have no
4 concerns about the
5 surface mix. When asked
6 by Councillor Merulla
7 whether the quality of
8 the Red Hill Valley
9 Parkway was no different
10 than any 400-series
11 highway, Mr. Moore
12 replied that the Red Hill
13 Valley Parkway was above
14 that grade."

15 And are those the comments
16 from Mr. Moore that you referenced earlier in your
17 testimony?

18 A. That's what I was getting
19 at, Counsel Bruckner, exactly, the reassurances
20 from Director Moore in that public session that
21 basically the Red Hill Valley Parkway was
22 operating very well and that there was no issue
23 with the road surface.

24 Q. So, I notice that
25 Councillor Merulla specifically directs this

1 question to Mr. Moore. In your experience, did
2 councillors often direct questions about the Red
3 Hill Valley Parkway to Mr. Moore?

4 A. Yes. Again, typically as
5 our road guru, my editorial, it would have been to
6 him. He reports up to a general manager, I
7 believe at that time. We've had three or four
8 over the time since amalgamation. I think Jerry
9 Davis, if memory serves me right, may have been
10 his general manager then. But most questions and
11 answers would have been through Director Moore.

12 Q. And is that due to his
13 involvement in the construction of the Red Hill?

14 A. Absolutely, and his
15 tremendous knowledge and expertise in building
16 roads across our city.

17 Q. Okay. Did you rely on
18 Mr. Moore's statements about the quality of the
19 asphalt on the Red Hill made at this meeting?

20 A. Absolutely, Counsel
21 Bruckner. I was more than relieved to hear it. I
22 mean, there had been tragedies, there had been
23 accidents, which were alarming. Deepest
24 sympathies and thoughts and prayers to the loved
25 ones of families who had perished on the roadway.

1 So, in light of all that, I was deeply relieved to
2 hear these public statements and provide the
3 assurances, at least council members, I'll speak
4 for myself, I don't think I was alone, required on
5 behalf of the constituents I represent and we
6 represent.

7 Q. With respect to
8 Mr. Moore's comment that the MTO had performed
9 initial friction testing and received results that
10 were at or above what the MTO typically expected,
11 prior to these comments from Mr. Moore, were you
12 aware that friction testing had been done on the
13 Red Hill Valley Parkway by the MTO?

14 A. No, I wasn't aware.

15 Q. And Mr. Moore then
16 advised the public works committee that subsequent
17 testing was done in 2012 and 2013 and that the
18 road was holding up exceptionally well. He said:

19 "We have no concerns
20 about the surface mix."

21 Did you understand from that
22 comment that he meant there were at least two sets
23 of friction testing completed on the Red Hill
24 Valley Parkway by this time?

25 A. No. I would not have

1 tweaked to that to make that connection at all,
2 Counsel Bruckner. Sorry, no.

3 Q. Okay. But did you accept
4 Mr. Moore's statements about the friction testing
5 and the results on the Red Hill Valley Parkway as
6 accurate at this point?

7 A. Absolutely. Our director
8 of engineering, the man who, through his
9 department, built so many roads in our community,
10 including the Lincoln Alexander Parkway, and
11 absolutely would have been satisfied and relieved
12 with his public statement.

13 Q. Did you rely on these
14 comments from Mr. Moore in your own thinking about
15 whether the road surface of the Red Hill Valley
16 Parkway might be contributing to collisions?

17 A. Yes. I would have relied
18 entirely on his public statement, exactly, that
19 there was no issues in terms of what the product
20 that was used and that the road was holding up
21 exceptionally well.

22 Q. So, you had indicated
23 that up to this point you had been receiving
24 concerns from your constituents about darkness and
25 potential slipperiness on the Red Hill. Did these

1 comments from Mr. Moore give you some comfort with
2 respect to those complaints?

3 A. Obviously the darkness
4 was a separate issue dealing more with traffic
5 staff, but from the potential slipperiness
6 standpoint, it definitely did. It gave the
7 comfort, raising the comfort level, that I
8 definitely needed.

9 Q. Did you feel that these
10 comments from Mr. Moore addressed those concerns
11 from your constituents about slipperiness on the
12 Red Hill?

13 A. Yes, I truly believe they
14 did.

15 Q. Coming out of this
16 meeting, then, did you have any concerns about the
17 road surface of the Red Hill Valley Parkway as a
18 contributing factor in collisions?

19 A. No, and in fact, Counsel
20 Bruckner, it was leading -- it put me back in the
21 direction of what, you know, word on the street
22 had been that -- and, again, with tremendous
23 sensitivity, sympathies and thoughtfulness towards
24 the families who had lost loved ones on the Red
25 Hill. But, again, word on the street was that,

1 you know, driver behaviour potentially was at
2 fault here, distracted driving, not adjusting to
3 inclement weather. We in fact lowered the speed
4 limit on the Red Hill from 90 to 80 to hopefully
5 help to have safer less speeding on the roadway,
6 greater police enforcement, hopefully no alcohol
7 consumption, but it was leading more towards the
8 aspect of driver behaviour was maybe more of a
9 factor then because of the assurances that we were
10 given at this public meeting at the standing
11 committee level from the director.

12 Q. And when you say the word
13 on the street about potentially poor driver
14 behaviour, is that information that was coming to
15 you through staff, through the media, through a
16 variety of sources?

17 A. Counsel Bruckner, it's a
18 term I use when whispers out in the community,
19 nothing formal, nothing official, nothing written,
20 but people talk and, you know, some of the talk
21 was that, you know, Tom, there's nothing wrong
22 with the road, you've had now public assurance
23 there isn't, the roadway is safe, the product used
24 was good and, you know what, maybe it now points
25 to driver behaviour instead unfortunately.

1 Q. Okay. Registrar, could
2 you please take us into HAM43374 at images 1
3 and 2.

4 So, this is an e-mail that is
5 sent by the Lakewood Beach Community Council on
6 December 9, 2015, so a couple of days after that
7 public works committee meeting where Mr. Moore
8 made his comments and the 2015 CIMA report was
9 presented. Just as a starting point, did you have
10 any familiarity with the Lakewood Beach Community
11 Council as of December 15?

12 A. Prior to that, I was
13 familiar with the Lakewood Beach Community
14 Council. They're, I'll call them, a very active
15 group in our community primarily, I believe,
16 located in the Stony Creek area. But I'm familiar
17 with their activism, if you will, in the community
18 on a variety of subjects.

19 Q. Do you recall receiving
20 this particular e-mail from them?

21 A. I actually recall
22 receiving the particular e-mail from them.

23 Q. Okay. So, you'll see in
24 the first e-mail that starts at the bottom of the
25 first image and carries over on to the second

1 image, they say in the second paragraph --

2 actually, they say at the very beginning:

3 "We're too late to have
4 this added as an agenda
5 item and are therefore
6 writing to you directly
7 requesting that you
8 consider adding one
9 recommendation from the
10 consultant's review to
11 the list of improvements.
12 Based on the Red Hill
13 Valley Parkway safety
14 review, the consultants
15 are recommending a
16 pavement friction test be
17 conducted at a cost of
18 \$40,000. This was not on
19 the short-term list of
20 recommendations from
21 staff; however, we feel
22 the cost benefit of
23 conducting this testing
24 would be money well spent
25 and is warranted based on

1 the Red Hill Valley
2 Parkway safety review
3 study results."

4 And then they cite some of the
5 study results. And then they go on to say:

6 "In addition, when
7 speaking to the public,
8 most state that the road
9 feels slippery on the Red
10 Hill. We have not heard
11 this about the LINC.

12 This is backed by the
13 fact that the majority of
14 comments on online media
15 articles following
16 collisions states that
17 the public feels that the
18 pavement might be a
19 contributing factor to
20 those collisions (in
21 addition to speed
22 obviously)."

23 So, just as a starting point,
24 the Lakewood Beach Community Council is asking for
25 pavement friction testing to be implemented as a

1 short-term recommendation, which is consistent
2 with the recommendation that was actually made in
3 the 2015 CIMA report.

4 Had you known that CIMA had
5 recommended friction testing as a short-term
6 countermeasure, do you think that that would have
7 had any impact on your assessment of this e-mail
8 from the Lakewood Beach Community Council?

9 A. So, Counsel Bruckner, I
10 definitely remember receiving it. The main reason
11 why I remember receiving this was my response to
12 it, and I remember clearly my response to Lakewood
13 Beach was because it was so soon after the
14 December 7 public works meeting where we had the
15 assurances from Director Moore that the road was
16 safe, product used was good -- sorry?

17 Q. I think the Commissioner
18 was just clearing his throat.

19 A. Okay. I thought somebody
20 was stopping me for some reason. Sorry. That the
21 product used was good, above MTO standards, et
22 cetera, so with the assurances of just a day or
23 two earlier --

24 MR. MISHRA: Councillor
25 Jackson, sorry to interrupt. I think we might

1 have just lost the Commissioner.

2 THE WITNESS: My apologies. I
3 will wait.

4 MR. MISHRA: I just didn't
5 want you to testify if Mr. Commissioner wasn't
6 there.

7 JUSTICE WILTON-SIEGEL: Thank
8 you, Mr. Mishra. I accidentally pushed the wrong
9 button.

10 THE WITNESS: You have no
11 idea, Commissioner, how often I've done that
12 during these two years of the pandemic. Anyway,
13 may I proceed, Counsel Bruckner?

14 BY MS. BRUCKNER:

15 Q. Please do.

16 A. Thank you. So, in light
17 of how recently, how soon after, a day or two, of
18 public works assurances by Director Moore, I
19 remember the response I gave to this group about
20 them wanting to see the \$40,000 moved up sooner in
21 spite of the CIMA report recommendation and our
22 staff saying mid-term instead. Because of the
23 assurances given, I remember the type of wording I
24 put in my response to them about their initial
25 e-mail. It wasn't just sent to me. It was sent

1 to a number of my colleagues. I can't remember if
2 it was all of council or whatever, but I was one
3 of the recipients and I remember saying with the
4 unfortunate occurrences and tragedies, it now
5 seemed like and word on the street was that
6 reckless, irresponsible driver behaviour was more
7 of a factor than anything else. And, hence, the
8 recommendations from city staff, I was going to
9 continue to support and possibly some additional
10 measures like photo radar equipment and/or greater
11 police enforcement. And as I noted in that
12 e-mail, at least make sure that their e-mail
13 correspondence is on the next meeting or a future
14 meeting for the record and for the minutes.

15 Q. So, then in that response
16 up above in the blue when you say -- Registrar, do
17 you mind just calling out the light blue e-mail
18 for us.

19 So, when you say:

20 "Thanks for your timely
21 suggestions. The facts
22 regarding the unfortunate
23 occurrences primarily
24 through careless,
25 reckless irresponsible

1 meeting on December 9, 2015. You moved to have
2 the Lakewood Beach Community Council's
3 correspondence received and then refer it to the
4 public works committee for further direction.

5 Again, was choosing to receive
6 that correspondence and refer it to the public
7 works committee something that you did further to
8 the comments that had been made about the asphalt
9 surface and the pavement --

10 A. Yes, because -- sorry,
11 Counsel Bruckner. Sorry.

12 Q. No, I was just going to
13 say at that public works committee that you had
14 attended?

15 A. I had made a commitment
16 in the e-mail to the Lakewood Beach group that I
17 would do this, and so I was following through on
18 that commitment and at least had their
19 correspondence and their opinion and thought at
20 the next public works committee meeting, first for
21 the official record and minutes and, second, in
22 case anyone wanted to raise the points that they
23 had in it.

24 Q. Okay. Registrar, you can
25 take this down and if you can please take us into

1 overview document 7, image 109, paragraph 343.

2 So, on January 28, 2016, you
3 e-mail Mr. Ferguson about the Lakewood Beach
4 Community Council's correspondence, which was on
5 the agenda at this point for the February 1, 2016
6 public works committee meeting, and you say:

7 "Dear Superintendant
8 Ferguson. You have had a
9 chance to look over and
10 review item 5.2, which
11 was the Lakewood Beach
12 Community Council's
13 correspondence. I had
14 suggested to this group
15 that when I refer this
16 correspondence from a
17 past city council meeting
18 to this public works
19 committee meeting that
20 even though a number of
21 their suggestions were
22 already being considered
23 by your department and on
24 your council-approved
25 to-do list with

1 approximately \$800,000, I
2 would still consult with
3 you to determine if their
4 correspondence had any
5 new suggestions that were
6 worthy of your review and
7 a possible report back to
8 the committee in the
9 future. Thoughts on what
10 I should do Monday. For
11 example, refer to you
12 other recommendations."

13 And then, Registrar, you can
14 take this down and the next paragraph down over on
15 to image 110.

16 You'll see that at 3:45

17 Mr. Ferguson replies:

18 "I believe as part of the
19 overall works, this is
20 already being covered
21 off, road friction
22 testing. I have copied
23 Director Moore for
24 clarification."

25 And then, Registrar, you can

1 take down this call out.

2 And then you'll see,

3 Councillor Jackson, you respond:

4 "Dear Superintendant
5 Ferguson. Thanks for the
6 prompt reply and
7 explanation. If Director
8 Moore concurs, then I
9 will move receiving the
10 correspondence only with
11 the caveat that staff
12 provide a written
13 response to the Lakewood
14 Beach Community Council
15 outlining and commenting
16 on their suggestions and
17 how staff are already or
18 will be implementing
19 these measures
20 accordingly. Thoughts?
21 Please confirm if this
22 procedure is in order."

23 And Mr. Ferguson responds that
24 he would concur with that direction. Just
25 stepping back for a moment, what does it mean that

1 you're going to move to receive correspondence
2 only?

3 A. So, that it's just for
4 the official record and for the minutes that the
5 correspondence from any individual, any citizen in
6 our community, in this case, the three individuals
7 that are the primary leaders of the LBCC, is there
8 officially for our records in perpetuity at City
9 Hall. That's what it means to receive the
10 correspondence only, because of what you had just
11 read out from the back and forth that
12 Superintendent Ferguson and I had and his
13 assurances that their suggestions had been or will
14 be covered off in the measures, traffic measures,
15 they were going to be implementing in the future.

16 Q. So, Mr. Ferguson had
17 copied Mr. Moore into this chain looking for his
18 commentary. Do you recall if Mr. Moore ever
19 responded to this e-mail chain?

20 A. I honestly do not recall.

21 Q. Okay. Do you recall if
22 you ever had any discussions with him independent
23 of this e-mail chain about the friction testing or
24 works that might be done on the Red Hill Valley
25 Parkway in connection with this?

1 A. I do not recall in
2 connection with this, no.

3 Q. Any discussions with him
4 about the Lakewood Beach Community Council's
5 request specifically?

6 A. No. I just remember
7 directly with Superintendant Ferguson.

8 Q. Registrar, could you
9 please take us to overview document 7, image 111,
10 paragraph 350, please, and you can call out 351 as
11 well. Thank you very much.

12 On February 16, 2016,
13 Mr. Ferguson writes to the Lakewood Beach
14 Community Council. He copies the mayor, the
15 public works committee, as well as a number of
16 members of city staff, including Mr. Mater and
17 Mr. Moore and he writes:

18 "The following
19 information is provided
20 with respect to your
21 e-mail dated December 9,
22 2015 to the mayor's
23 office and members of the
24 public works committee.
25 Your e-mail was

1 requesting that the
2 identified friction test
3 for the Red Hill Valley
4 Parkway be considered for
5 short-term testing
6 through support from
7 public works committee.
8 I am pleased to inform
9 you that this testing
10 will be completed by
11 engineering services in
12 2016. We are confident
13 that this testing along
14 with implementation of
15 the other short-term
16 recommendations as
17 outlined in the report
18 will assist in raising
19 awareness and educating
20 motorists as we work to
21 change driver behaviour
22 along the Red Hill Valley
23 Parkway and the LINC with
24 the ultimate goal to make
25 both roadways safer for

1 motorists."

2 Do you recall receiving or
3 being copied on this e-mail from Mr. Ferguson to
4 the Lakewood Beach Community Council?

5 A. I don't recall if I was
6 copied on that or not. If it shows somewhere on
7 your records I was, I won't dispute it, but I
8 don't recall.

9 Q. So, I believe you were as
10 a member of the public works committee. If you
11 like, I can take us to the document.

12 A. No. I will accept that,
13 Counsel Bruckner. If you have got that on record,
14 I won't dispute it.

15 Q. So, Mr. Ferguson says
16 that this was done through support from the public
17 works committee. Do you remember if, at the
18 public works committee meeting at which this
19 correspondence was received, there was any
20 discussion about the friction testing
21 recommendation or moving it up as a short-term
22 option?

23 A. I don't recall if that
24 was discussed there or not.

25 Q. Did you ever speak to

1 Mr. Moore about friction testing on the Red Hill
2 Valley Parkway in 2016?

3 A. I don't recall speaking
4 to him about it at all then, Counsel Bruckner.

5 Q. Okay. So, Mr. Moore
6 replies to this e-mail only to Mr. Ferguson and he
7 doesn't copy you or anyone else on the e-mail and
8 he says, "Perfect." Do you recall if it was your
9 understanding that there would be friction testing
10 conducted on the Red Hill Valley Parkway in 2016
11 from this e-mail or otherwise?

12 A. Based on what
13 Superintendent Ferguson said, that within the
14 short-term we are confident testing along with
15 implementation along with the short-term
16 recommendations there will be -- I didn't recall
17 whether it was friction testing or not, but it
18 points to friction testing, so when it was going
19 to be carried out or not, I wasn't absolutely
20 sure, Counsel Bruckner.

21 Q. Okay. Did you take this
22 e-mail at face value, then, when Mr. Ferguson says
23 that through support from the public works
24 committee, I'm pleased to inform you that this
25 testing will be completed by engineering services

1 in 2016?

2 A. Absolutely. Staff
3 putting that together such as that, I would accept
4 that, absolutely, as a commitment by staff.

5 Q. Okay. Would you have
6 relied on that representation in that e-mail?

7 A. Absolutely.

8 Q. Did you ever seek
9 confirmation from Mr. Moore or from another member
10 of city staff that this friction testing had been
11 completed?

12 A. I don't recall.

13 Q. Registrar, could you
14 please take us into overview document 7, image 177
15 at paragraph 516.

16 And so, on March 24, 2017, you
17 received an information update on the status of
18 the short-term safety improvements to be
19 implemented on the LINC and Red Hill, which were
20 approved further to that December 9, 2015 council
21 meeting.

22 Registrar, could you take us
23 into HAM25870 at image 3.

24 So, I'm just pulling up the
25 actual information update that you would have

1 received.

2 Can you pull up the first page
3 as well, HAM25870. Yes, if you can pull up
4 image 1 and 3 so we have them both up, just so
5 that you have the cover page as well as the
6 appendix.

7 So, this is the information
8 update that is sent to the mayor and members of
9 city council on March 24, 2017, and you'll see
10 that under Appendix B, which is the appendix that
11 sets out the medium and long-term recommendations
12 from the 2015 CIMA report, that conduct pavement
13 friction testing has been marked as completed.

14 Do you recall if you accepted
15 this statement that friction testing had been
16 completed on the Red Hill Valley Parkway at its
17 face value when you saw it in this information
18 update?

19 A. I would have just
20 accepted it at face value, Counsel Bruckner.

21 Q. Okay. And you would have
22 relied on the representation from staff that
23 friction testing had been completed on the Red
24 Hill?

25 A. Absolutely, and this

1 report happened to come from the manager, acting
2 director, of the traffic division, Martin White.

3 Q. You generally expect
4 staff to be accurate in information updates that
5 they're providing to council?

6 A. We have tremendous staff
7 in our corporation and I rely on them often and
8 regularly.

9 Q. So, you'll see that under
10 the long-term options there in Appendix B a couple
11 of them say "to be reviewed and considered during
12 resurfacing." When did you first learn that staff
13 wanted to repave the Red Hill Valley Parkway?

14 A. All I recall is that at
15 some point in time repaving was considered for the
16 Red Hill Valley Parkway and ultimately was carried
17 out sometime in 2019. And if memory serves me
18 right, Counsel Bruckner, it was roughly around a
19 \$6 million to \$8 million range of cost.

20 Q. Okay. Registrar, can you
21 take us back a little bit in time for a moment to
22 overview document 7 at image 13, paragraph 38.

23 I'm just stepping back in time
24 for a minute to see if I can refresh your memory a
25 bit. So, at the public works committee meeting on

1 May 21, 2015, Councillor Conley asked when future
2 paving would occur on the Red Hill Valley Parkway
3 and Mr. Moore answered that question and he said
4 that staff expected the first wholesale
5 resurfacing of the Red Hill Valley Parkway would
6 be in 14 or 16 years, in 2021, subject to
7 council's direction, and then he also said that
8 the repaving wasn't on the capital budget horizon
9 at the time of that meeting, so that's May 21,
10 2015.

11 Registrar, you can take that
12 down.

13 And so, returning to the
14 discussion of the March 2017 information update,
15 was it your understanding around that time that
16 the resurfacing of the Red Hill Valley Parkway was
17 still contemplated for 2021, or had the schedule
18 been moved up?

19 A. First of all, Counsel
20 Bruckner, I honestly don't recall that exchange,
21 that Q&A exchange, between Councillor Conley and
22 Director Moore, but thank you for putting that up
23 for my benefit. And secondly, all I remember was
24 that ultimately it was carried out in 2019. I
25 can't remember when a proposed range of time might

1 have been, but ultimately it was done in 2019.

2 Q. Okay. Do you recall if
3 you were ever provided with a rationale or a basis
4 for the resurfacing of the Red Hill?

5 A. The main reason I had
6 heard that I recall was that the projected volumes
7 on both the LINC and Red Hill when they opened was
8 something -- and I stand to be corrected --
9 somewhere around 40,000 vehicles a day. Both
10 roads have far exceeded those projections,
11 something around 70 to 80,000 vehicles a day. And
12 so, 12, 13 years later, primarily through wear and
13 tear, it was time to repave the Red Hill Valley
14 Parkway and that was the main reason I had thought
15 and I had recalled why it was carried out in 2019.

16 Q. To your knowledge, was
17 the repaving connected to concerns about
18 slipperiness on the Red Hill Valley Parkway?

19 A. I don't. I just remember
20 that it was carried out primarily through wear and
21 tear of the roadway and the far-exceeded
22 projections of volume of traffic and heavy truck
23 traffic that obviously is delivering goods and
24 services to our business parks along the way.

25 Q. Okay. So, over time,

1 there is a fair amount of Red Hill Valley
2 Parkway-related coverage in the Spectator and
3 other news outlets over the years, and members of
4 council are occasionally quoted in media articles
5 discussing safety concerns about the Red Hill
6 Valley Parkway.

7 How often did you personally
8 read or review the Spectator?

9 A. From time to time. Most
10 of my time is spent serving my community and the
11 City overall, so from time to time I will read it
12 but I can't say I read every article on every
13 page, nor I can't say honestly that I read it
14 daily, but I try to keep in touch obviously with
15 the news most affecting our municipality and my
16 own constituents.

17 Q. Okay. Did your staff
18 brief you on media coverage around the Red Hill
19 Valley Parkway?

20 A. No. My staff don't do
21 that. I relied totally on myself. My staff are
22 busy enough regularly serving the taxpayers of my
23 constituency.

24 Q. Registrar, could you
25 please take us to HAM52704.

1 So, this is a July 15, 2017
2 article by Nicole O'Reilly from the Hamilton
3 Spectator titled "Highway traffic tragedies: Why
4 are there so many crashes on the Red Hill?"

5 Registrar, can you take us
6 over to image 2 and pull out the last five
7 paragraphs. At the very bottom of the page, the
8 last five.

9 So, there are a couple of
10 paragraphs in this article that say:

11 "The RHVP was originally
12 paved with stone mastic
13 asphalt – a more
14 expensive mix that's
15 supposed to last longer.
16 It is known to be
17 slightly more slippery
18 (though still meeting
19 provincial standards) in
20 the first few months, but
21 typically has better
22 friction once the road is
23 worn down. Yet that 2015
24 engineering report found
25 crashes when the road is

1 wet are inexplicably
2 going up, not down, and
3 recommended the city
4 study friction. And the
5 city did test friction
6 later that year, The
7 Spectator has learned,
8 But the results were
9 never made public. There
10 is no official report,
11 Moore said, only an
12 informal chart sent in an
13 e-mail in December 2015.
14 The friction testing was
15 not fulsome and the
16 results were
17 'inconclusive,' he said.
18 But instead of doing
19 further testing, as was
20 recommended, the city has
21 decided to repave."

22 Do you recall if you reviewed
23 this particular article in the Spectator?

24 A. No, I don't. I would
25 have remembered the headline type of thing, but I

1 don't remember reading the article in its
2 entirety, no.

3 Q. Did anyone ever make
4 representations to you that there had only been an
5 informal chart on friction testing for the Red
6 Hill Valley Parkway?

7 A. No, absolutely not. No.

8 Q. Did anyone ever make
9 representations to you that friction testing from
10 the Red Hill Valley Parkway was not fulsome and
11 the results were inconclusive?

12 A. Not that I recall, no,
13 Counsel Bruckner.

14 Q. Okay. Registrar, you can
15 take this down, and then if you can take us into
16 overview document 7, image 180 to 181,
17 paragraph 523 and 524.

18 So, while the registrar is
19 pulling up those call outs, on April 4, 2017 the
20 mayor e-mailed Mr. McKinnon and Mr. Murray,
21 copying members of council, and raised concerns
22 about the visibility of the lane markers on the
23 Red Hill Valley Parkway. And later that day,
24 which is at 5:24, which the registrar is just
25 pulling up for us at the bottom there, you respond

1 to this e-mail from mayor and you say:

2 "Dear GM McKinnon. I
3 could not agree more with
4 the mayor on this
5 request. I drove the Red
6 Hill in the last 24 hours
7 too during the late
8 evening and it was
9 horrendous trying to
10 determine where the lane
11 markings were. Traffic
12 staff has attempted to
13 enhance the cat's eyes
14 markings and other
15 reflectors from time to
16 time, but unlike other
17 roadways I'm not sure why
18 this problem persists.
19 During a rainfall it's
20 even worse. I know the
21 hard working Ward 4 and 5
22 councillors have raised
23 this matter before the
24 public works committee,
25 too. I'll leave it in

1 that would seem to make sense. I guess if there's
2 nothing else, then, to be done today, we'll stand
3 adjourned until 9:30 tomorrow morning.

4 --- Whereupon the proceedings adjourned at
5 4:27 p.m. until Thursday, October 27, 2022 at
6 9:30 a.m.

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