

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Thursday, November 3, 2022 at 10:15 a.m.

VOLUME 80

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Heather McIvor	For Province of Ontario
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1 Arbitration Place Virtual

2 --- Upon recommencing on November 3, 2022

3 at 10:15 a.m.

4 MS. LIE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning. Mr. Boghosian as well.

8 MS. LIE: Commissioner, before
9 we get to our next witness, there is one document
10 I want to introduce as an exhibit. RHV0001034 is
11 the affidavit of Sherrie Charter, which was
12 affirmed on November 1st, 2022. Ms. Charter is a
13 senior project coordinator with Golder. Ms.
14 Charter's affidavit details how and when Golder
15 billed the City for friction testing performed by
16 Tradewind on the RHVP and addresses subsequent
17 invoices and pre-bills issued to the City that
18 included Tradewind's work as a disbursement.

19 Commission counsel previously
20 provided copies of Ms. Charter's affidavit to
21 counsel for the participants. Counsel for the
22 participants have advised that they will not be
23 cross-examining on the affidavit.

24 With that, Registrar, I would
25 ask that we please mark RHV0001034 as Exhibit 214.

1 THE REGISTRAR: Noted,
2 counsel. Thank you.

3 EXHIBIT NO. 214: Affidavit of
4 Sherrie Charter affirmed on
5 November 1st, 2022

6 JUSTICE WILTON-SIEGEL: I'm
7 sorry, Mr. Registrar, what exhibit number that?

8 THE REGISTRAR:
9 Mr. Commissioner, it's Exhibit No. 214.

10 JUSTICE WILTON-SIEGEL: 214.
11 Okay, thanks.

12 THE REGISTRAR: You're
13 welcome.

14 MS. LIE: Thank you.
15 Commissioner, our next witness is Dave Boghosian.
16 I would ask that we have Mr. Boghosian affirmed.

17 AFFIRMED: DAVID BOGHOSIAN

18 EXAMINATION BY MS. LIE

19 Q. Good morning,
20 Mr. Boghosian.

21 A. Good morning.

22 Q. I understand that you are
23 the managing partner at Boghosian and Allen LLP?

24 A. Yes.

25 Q. You were called to the

1 bar in 1988?

2 A. Yes.

3 Q. So by my math, you've
4 been practicing law for 34 years?

5 A. Sounds about right.

6 Q. What areas of law do
7 practice in?

8 A. My primary area of
9 practice is municipal law, and within that
10 municipal liability, defending claims against
11 public authorities.

12 Q. And in that role, I take
13 you regularly act for municipalities and their
14 insurers?

15 A. I do, yes.

16 Q. So prior to December
17 of 2018, were you engaged by the City of Hamilton
18 regarding any issues regarding the Red Hill Valley
19 Parkway?

20 A. Not to do with the Red
21 Hill, no.

22 Q. We will come to the
23 nature of your retainer with the City with respect
24 to the Red Hill Valley Parkway in a moment, but
25 just generally, in the course of your retainer on

1 that issue who did you consider your client to be?

2 A. The Red Hill retainer?

3 Q. That's correct.

4 A. December 2018. Nicole
5 Auty.

6 Q. So you considered your
7 client to be Ms. Auty, the City solicitor?

8 A. Well, acting on behalf of
9 City of Hamilton but she was my point person, yes.

10 JUSTICE WILTON-SIEGEL: I
11 wonder whether others are having the same problem.
12 I'm finding Mr. Boghosian's level a little low.
13 It's a little harder to hear.

14 MS. CONTRACTOR: I am too.
15 Mr. Boghosian, is there a volume issue?

16 THE WITNESS: I don't think
17 so.

18 MS. CONTRACTOR: Do you have
19 headphones or a mic, Mr. Boghosian, that you could
20 use?

21 THE WITNESS: No.

22 MS. CONTRACTOR: Commission
23 counsel, are you able to turn up the volume your
24 end? I expect you've done that already.

25 THE WITNESS: It may be

1 better, I have two laptops and maybe I can log in
2 on my other, newer one, if you want me to do that.
3 It probably will help with the volume.

4 MS. LIE: So we've turned up
5 the volume on our end. We can make out what
6 you're saying.

7 Commissioner, would you like
8 Mr. Boghosian to try a different --

9 JUSTICE WILTON-SIEGEL: Well,
10 I think if everyone is having the same problem,
11 perhaps we should take a five-minute break and ask
12 Mr. Boghosian to log in on his other computer and
13 see whether the volume is higher.

14 MS. LIE: Thank you.

15 (DISCUSSION OFF THE RECORD)

16 BY MS. LIE:

17 Q. Mr. Boghosian, before
18 that break you were saying that you considered
19 your client to be Ms. Auty acting on behalf of the
20 City; is that correct?

21 A. Yes.

22 Q. So your client would have
23 been City of Hamilton but you were taking
24 instructions from Ms. Auty; is that fair?

25 A. Yes.

1 Q. And Ms. Auty was the
2 primary point of contact for you?

3 A. Yes.

4 Q. Registrar, could we pull
5 up overview document 9A, pages 156 and 157.

6 So, Mr. Boghosian, I'm just
7 going to take you to paragraph 371, and there is
8 reference to an e-mail dated November 20th, 2018,
9 from Ms. Auty to Mr. Sabo and Mr. McLennan. You
10 are not copied on this e-mail but I'll just give
11 you a moment to read it.

12 A. I've read it.

13 Q. You are referenced in the
14 e-mail. I'm just wondering if by November 20th,
15 2018, Ms. Auty or anyone else at the City had
16 reached out to you regarding the Red Hill Valley
17 Parkway matter?

18 A. No.

19 Q. Registrar, if you could
20 go to page 158. I'll take you to paragraph 375.
21 Registrar, maybe we can call that out for
22 Mr. Boghosian.

23 You'll see here this is a
24 series of e-mail exchanges on November 21st, 2018,
25 between Mr. Sabo and Mr. McLennan, again you are

1 not copied.

2 A. Okay.

3 Q. And I take it by this
4 point, November the 21st, you still not been
5 contacted by anyone at the City about this matter?
6 Sorry, did you say no?

7 A. I said no.

8 Q. Thank you. And by this
9 time, were you involved in any claims involving
10 collisions on the Red Hill Valley Parkway?

11 A. No.

12 Q. Registrar, could you go
13 to page 211 of overview document 9A.

14 If you have a look at
15 paragraph 494, you'll see there is an e-mail --
16 reference to an e-mail from Ms. Auty to you on
17 December 7, 2018 under the subject line
18 "assistance"?

19 A. Yes.

20 Q. I'll give you an
21 opportunity to review paragraph 494 and 495.

22 A. Okay. I've read them.

23 Q. Thank you. The e-mail
24 from Ms. Auty on December 7, 2018, is that the
25 first contact that you had from anyone at the City

1 about the Red Hill Valley Parkway matter?

2 A. Yes.

3 Q. Before this e-mail were
4 you familiar with Ms. Auty?

5 A. Yes.

6 Q. From other matters for
7 the City or from where?

8 A. Dating back prior to her
9 employment with the City, I had done work for her
10 in St. Catharines. I knew her professionally as
11 part of the municipal law bar in Ontario. And I
12 had met her at conferences and seminars.

13 Q. And you had mentioned
14 that you were not acting for the City of Hamilton
15 in respect of any collisions on the RHVP. Were
16 you acting for the City for any other matters at
17 that time?

18 A. Yes. I was acting for
19 the City through its risk -- insurance and risk
20 management department, not for Ms. Auty at that
21 time.

22 Q. But nothing related to
23 collisions on the Red Hill Valley Parkway?

24 A. No, no.

25 Q. So we see here that a

1 call is arranged for later that day on
2 December 7th, 2018. We're going get to the call
3 in a moment. But before the call, did you have
4 any further correspondence with Ms. Auty or anyone
5 else at the City?

6 A. No.

7 Q. So we do have notes of a
8 call from you on December 7th, 2018, but before I
9 get to the notes, do you have a recollection of
10 the call?

11 A. Yes, I do.

12 Q. What do you recall from
13 the call?

14 A. I recall that there was
15 an FOI request that had been made to the City
16 asking for friction testing reports regarding the
17 Red Hill. They suspected, although it was
18 anonymous, that it had come from a Hamilton
19 Spectator reporter. There was a concern because,
20 as I understood it, there had been a previous FOI
21 request and there had been certain reports about
22 friction testing that had not been disclosed that
23 were possibly within the ambit of the earlier
24 request and there was a concern about that.

25 There was a concern that

1 production of these reports could affect liability
2 of the City with respect to actions that had been
3 brought to do with the condition of the Red Hill.
4 I believe there were four outstanding at that time
5 according what I was told, and they wanted
6 assistance in determining whether these documents
7 had been produced as part of the FOI request,
8 needed to be produced, and what impact that might
9 have on liability both with respect to the
10 existing actions and others going forward.

11 There had been mention of Gary
12 Moore and that he had commissioned the friction
13 testing and then had not disclosed the reports of
14 that testing, and the gist I got from the call was
15 that no one had been aware, up until very recently
16 prior to that time that these reports existed and
17 that they had been discovered by Gordon McGuire
18 who had recently taken over Mr. Moore's position
19 on his retirement.

20 Q. Do you recall what they
21 told you were the results of the friction testing
22 are reports?

23 A. I think the focus was on
24 Tradewind report, that it had showed that friction
25 testing had showed levels that were below a UK

1 standard, and I believe there's even reference at
2 that time that that UK standard was not recognized
3 in Canada.

4 Q. Do you recall if on that
5 call there was any discussion about whether or not
6 counsel was aware of this, and if not, whether
7 counsel should be informed?

8 A. There was no discussion
9 one way or the other about that.

10 Q. Do you recall if they
11 told you how Mr. McGuire had discovered the
12 report?

13 A. I don't know if this is
14 in my notes, but I have a recollection of him
15 literally finding it in a desk drawer.

16 Q. And you would have gotten
17 that information presumably from Ms. Auty?

18 A. Yeah. Well, in that
19 call. I don't know if it was Ms. MacNeil or
20 Ms. Auty, but during that call.

21 Q. And do you recall what
22 the tone of the call was, how -- or Ms. Auty and
23 Ms. MacNeil, did they express concern?

24 A. Nothing out of the
25 ordinary. I mean, Ms. Auty -- it was a very -- I

1 think being City solicitor of Hamilton is a fairly
2 stressful position, and prior engagements where I
3 dealt with her, I could sense that in her tone and
4 that was the same at that call. But nothing I
5 would say specific to this issue.

6 Q. Was there a sense of
7 urgency, in terms of getting your opinion?

8 A. I know that my notes have
9 a date written down, December 19th. I think that
10 was the -- that I think was a due date for
11 whatever I was being asked to do.

12 Q. Why don't we go to --
13 actually, I guess before we get to the notes, do
14 you remember anything else just sitting here today
15 about the call?

16 A. I don't remember anyone
17 conveying a sense of urgency. There's a due date
18 that's not particularly tight, given the call on
19 December 7th, so there was no sense of urgency
20 communicated to me.

21 Q. So Registrar, if we could
22 pull up HAM64341. If we could also pull up next
23 to this document, HAM64359.

24 Mr. Boghosian, here we have
25 your handwritten notes on the left and a

1 transcription of those notes on the right. So you
2 can use whichever one that you're comfortable
3 with.

4 Before we get into the notes,
5 could you just describe your note-taking practice
6 back in December of 2018.

7 A. I don't understand the
8 question. I do my best to capture the essence of
9 the matters discussed on the call. Generally, if
10 I'm initiating a call, I'll make some sort of
11 agenda or talking points where I set out the
12 things I want to make sure I cover. This was a
13 call I was receiving, so I had no idea of the
14 content so I'm just trying to take notes that will
15 help me understand what I'm being asked to do.

16 Q. And did you typically
17 record things that are said by you or by others or
18 both?

19 A. It depends on the
20 circumstances. If I'm initiating a call and I
21 have talking points, I typically won't rerecord
22 what I've got in my talking notes. Generally, if
23 I make a comment that I think is significant, I
24 will record that in my notes if it's not in the
25 talking points or the agenda.

1 In this call, I wasn't doing
2 very much talking at all. I was listening and
3 absorbing information I was receiving to
4 understand the nature of the assignment she was
5 giving me.

6 Q. So on this call, I take
7 it it was Ms. Auty and Byrdena MacNeil?

8 A. Yes.

9 Q. Was there anyone else?

10 A. No.

11 Q. Were you familiar with
12 Ms. MacNeil prior to this call?

13 A. I had met her and spoken
14 to her but I hadn't really -- I didn't really know
15 her or have any dealings with her in the past.

16 Q. In terms of meeting and
17 speaking with her, was that in some other context,
18 not in the context of the Red Hill Valley?

19 A. Right.

20 Q. That was just as part of
21 the municipal law bar; is that fair?

22 A. Yeah.

23 Q. And what did you
24 understand Ms. MacNeil's role to be?

25 A. I think she was assisting

1 Nicole on this file.

2 Q. In the notes, you'll see
3 there's a reference to the FOI request, anonymous,
4 and then it says Gord McGuire, director of public
5 works, FOI request for friction testing results
6 and general testing. Said testing was
7 inconclusive. Where it says testing was
8 inconclusive, who conveyed that or where did you
9 get that information from?

10 A. It would have all been
11 coming from Nicole or Byrdena because I had none
12 of this information before this call.

13 Q. Okay. And it said but
14 draft report re friction testing is part of
15 another Golder report. So what do you recall
16 about how the Tradewind report fit into the Golder
17 report?

18 A. During this call I don't
19 know that I knew that. I think she's telling me
20 that Golder had subcontracted out friction testing
21 to Tradewind.

22 Q. And there's reference to
23 the January 14 draft report. I take it that's a
24 reference to the Golder report?

25 A. I assume so.

1 Q. And then where it says
2 based on a UK methodology, no stance for it in
3 Ontario; what were you told about the Tradewind
4 results and the methodology used?

5 A. Well, I don't know where
6 word methodology came from, if that was something
7 Nicole used. Again, I haven't seen these reports
8 at this point. I'm absorbing information. I
9 would have been recording what I was told. What I
10 understand now is different than what I would
11 interpret that last note on this page to say. But
12 whatever methodology they were applying with
13 respect to friction testing was not recognized in
14 Ontario is what I take from my note.

15 Q. Okay. And you said that
16 what you understand now is different than what's
17 in the last note on your handwritten notes and
18 what do you mean by that?

19 A. Well, I would use the
20 word "standard" as opposed to "methodology," that
21 the UK standard of 40 is not recognized as a
22 concerning standard in Ontario or Canada.

23 Q. I see. Okay. So the
24 difference is the use of the word methodology?

25 A. Yeah. I don't think

1 that's the right word.

2 Q. And then there's a
3 reference to Moore. Is that decided to do
4 testing? What does the dec'd mean?

5 A. Sorry, where are we
6 looking?

7 Q. Sorry, Registrar, if you
8 can go to --

9 A. I'm sorry, I find -- feel
10 more comfortable looking at my own notes and not
11 the --

12 Q. Fair enough.

13 A. I'm looking at my notes.

14 Q. Fair enough. Registrar,
15 if you could go to image 2 on the document, the
16 handwritten document. At the very top there.

17 A. Okay. So Moore I know is
18 Gary Moore, decided to do friction testing. The
19 LINC, Lincoln Alexander Parkway testing on par.
20 Red Hill Valley testing quite a bit worse,
21 especially in wet conditions and at higher speeds.

22 Q. Okay. And did they -- do
23 you recall if Ms. Auty or Ms. MacNeil told you
24 anything else about Mr. Moore's decision to do
25 testing?

1 A. No.

2 Q. Do you recall anything
3 else about the -- what they conveyed to you on the
4 call about the Tradewind results, apart from what
5 you just read?

6 A. No, the sense I got was
7 there was a feeling that Gary Moore had perhaps
8 buried the friction testing reports. That was the
9 sense I was getting.

10 Q. Because that's what they
11 said to you?

12 A. I don't think they used
13 those words. It's just the impression I was
14 getting.

15 Q. Do you remember the words
16 that they did use?

17 A. No. Nothing is blunt as
18 the word I just used but -- just the general sense
19 was that....

20 Q. And then there's a
21 reference to CIMA 2015. I think it has additional
22 safety performance review of Red Hill Valley
23 Parkway?

24 A. Yes.

25 Q. More accidents on Red

1 Hill than on the LINC, 65 percent more in wet
2 weather and which was far more skewed than the
3 LINC toward wet weather.

4 So --

5 A. Recommended friction
6 testing. Right.

7 Q. And so what discussions
8 did you have with Ms. Auty and Ms. MacNeil about
9 the 2015 CIMA recommendations?

10 A. I don't remember anything
11 beyond my note.

12 Q. And so it refers to
13 recommended friction testing, so I take it that
14 that is something that Ms. Auty and -- or
15 Ms. MacNeil conveyed to you, that CIMA recommended
16 friction testing?

17 A. Yes.

18 Q. Do you recall if they
19 told you if CIMA had seen the Tradewind results?

20 A. No, no.

21 Q. No, you don't recall or
22 no, they did not tell you?

23 A. That topic never came up.

24 Q. So the topic of whether
25 or not CIMA had the Tradewind results never came

1 up on this call?

2 A. No.

3 Q. Was there any discussion
4 about sharing the Tradewind results with CIMA on
5 this call?

6 A. No.

7 Q. Registrar, if you could
8 go to the next image in the handwritten notes.
9 Thank you. And so the next note is hot in-place
10 technology. What is that referring to?

11 A. Well, I know it's a form
12 of resurfacing of a road using the crushed up
13 aspects of the existing road -- the existing
14 pavement. Using the existing pavement to
15 resurface.

16 Q. And then there's a note
17 underneath it that says Gord decided to do a
18 complete resurfacing in spring of 2019?

19 A. Yes.

20 Q. And so what did they say
21 to you about the resurfacing?

22 A. Nothing. I don't recall
23 anything beyond what I see here.

24 Q. Do you recall if they
25 told you why Mr. McGuire had decided to go ahead

1 with the resurfacing?

2 A. No.

3 Q. And then in between those
4 two notes it says "2017 another CIMA rep." Is
5 that recommended safety measures?

6 A. I don't know what that
7 refers to. I realize the date not right. They
8 would have had the draft CIMA roadside safety
9 assessment report which did have safety
10 recommendations. That could be what that
11 references to.

12 Q. I see. Okay. So that
13 could be referring to the draft roadside safety
14 report?

15 A. Yeah.

16 Q. But sitting here today
17 you're not sure?

18 A. I'm not.

19 Q. Sitting here today, do
20 you have a memory of what "2017 another CIMA rep"
21 could be referring to?

22 A. Well, another CIMA rep
23 means report, but I don't know what it means and I
24 don't know what the relevance of the date is.

25 Q. Do you recall Ms. Auty or

1 Ms. MacNeil telling you that CIMA was in the
2 process of doing another safety assessment?

3 A. No, I don't have that
4 recollection. In fact, I don't think I was told
5 that they were still involved with the road. So I
6 just don't know what that reference is and what
7 that date is.

8 Q. So we understand that you
9 later receive a draft of CIMA's roadside safety
10 assessment after you speak with Mr. Malone. Is
11 your recollection that you only learned about the
12 roadside safety assessment from Mr. Malone?

13 A. I believe so. I think --
14 my recollection is that I found out when I spoke
15 to Brian on December 11th.

16 Q. Okay. So the next note
17 says four current files on the Red Hill,
18 215 million, and is that referring to the four
19 active claims that you mentioned earlier?

20 A. Yes.

21 Q. Did you get any other
22 information about these files from Ms. Auty or
23 Ms. MacNeil?

24 A. No.

25 Q. Did you have any

1 discussions with anyone else at the City about the
2 four active files at this time?

3 A. Not at this time.

4 Q. And did you have
5 discussion anyone at the City about these files at
6 some other time?

7 A. Yes, I did. In January
8 I -- again, I'm dealing with the City's risk and
9 insurance department personnel on other files, and
10 both with Diana Swaby, who was a claims
11 administrator, I believe was her title, and John
12 McLellan who was manager of that section. In
13 separate conversations, it came up that I had been
14 retained on this and just a bit of banter back and
15 forth about it, but nothing -- I mean, Diana, I
16 think had given me a very brief profile of one of
17 those cases but it wasn't really part of my
18 mandate, it was a passing conversation because
19 they knew I had been retained on this.

20 Q. And so as part of your
21 mandate, did you ever receive any further
22 information about the files on the Red Hill, the
23 four current (skipped audio) on the Red Hill?

24 A. No.

25 Q. And I take it you weren't

1 asked to provide an opinion on the impact of the
2 release of the Tradewind report on those specific
3 matters?

4 A. No, not on any specific
5 matter.

6 Q. There's a note that says
7 issues, and then it says one MFIPPA/FOI request.
8 Registrar, if we could go to the next image on the
9 transcription, please. And then it says no GRDS
10 to refuse rel of documents. What is that
11 referring to?

12 A. I think Nicole is asking
13 me to review the FOI request and determine and
14 verify whether there was any grounds not to
15 disclose the Tradewind and Golder reports.

16 Q. And did they have an
17 opinion on whether or not they believed that the
18 Tradewind and Golder reports needed to be
19 disclosed?

20 A. I can't recall. I have
21 no independent recollection.

22 Q. And then at point
23 number 2 it says "impact of liability. What
24 prompted studies? High number of accidents,
25 474 accidents." What's that note referring to?

1 A. Well, I see that in the
2 transcription it's sort of -- you've put what
3 prompted studies right under number 2, impact of
4 liability, whereas there's no linkage in my actual
5 note. So I don't think those two things are
6 related.

7 Q. I see, okay.

8 A. I don't think they are
9 related. Impact on liability, that was another
10 thing they wanted me to look at. Impact on
11 liability of the release of -- or the content and
12 the release of the Tradewind and Golder reports.
13 And then I don't know why -- it looks like I asked
14 that question, what prompted studies. And that
15 response was high number accidents, 474 accidents.

16 Q. I see. And just,
17 Mr. Boghosian, just so you know, the transcription
18 of the note was provided by counsel for the City.
19 We didn't prepare the transcription. But that's
20 helpful in terms of clarifying how the bullet --

21 A. I was asked to look at it
22 and I guess I didn't appreciate it until now, how
23 it's been made to appear. I don't think those two
24 have anything to do with each other.

25 Q. Right. Okay. So

1 (skipped audio) issues, it appears that -- so
2 where you list issues 1 and 2, 1 is MFIPPA/FOI
3 request, 2 is impact of liability. Are these
4 issues that you're being asked to look into?

5 A. Yes.

6 Q. And then there's the note
7 that you just described. It was a question by you
8 about what prompted the studies and I take it
9 you're referring to -- when you say studies, what
10 is that referring to?

11 A. The friction testing.

12 Q. So what prompted the
13 Tradewind testing you mean?

14 A. And Golder. What
15 prompted the studies, like what prompted the
16 friction testing.

17 Q. Okay. And the response
18 from Ms. Auty and Ms. MacNeil is the high number
19 of accidents, 474?

20 A. I don't have an
21 independent recollection but that appears to be
22 what my notes are saying.

23 Q. And then there's a note
24 that says -- actually, Registrar, if we could go
25 to next image on the handwritten note.

1 The next note says "signage -
2 slippery in winter +"?

3 A. Yeah. And then there's
4 a -- yeah, signage, slippery in winter.

5 Q. And then if you go down
6 another four lines it says "told them signage
7 should"?

8 A. I don't know what that
9 means.

10 Q. So do you recall having a
11 discussion about signage on the call?

12 A. There was some discussion
13 about signage.

14 Q. Do you recall what that
15 was?

16 A. Not beyond the notes, no.

17 Q. Do you recall if there
18 was a discussion of any other types of safety
19 measures on this call?

20 A. No.

21 Q. You don't recall or there
22 were no discussions?

23 A. I don't recall, and I
24 doubt there were because I would have made a note
25 of it.

1 Q. And then it says "wants
2 me to look at the reports." And then at the very
3 bottom it said "four reps." I take it that's four
4 reports?

5 A. Yes.

6 Q. Did they tell you what
7 the four reports were on this call?

8 A. I don't know if they did
9 or not. They said they would be sending four
10 reports. I can infer three of them from my notes:
11 the Tradewind report, the Golder 2017 report and
12 the 2015 CIMA report.

13 Q. You said Golder 2017
14 report. Do you mean Golder 2014?

15 A. Sorry, Golder 2014.

16 Q. Okay. But sitting here
17 today, you don't recall if on the call they told
18 you what the fourth one was?

19 A. I don't recall them
20 specifying which reports they were sending me.

21 Q. Do you recall if they
22 told you if Golder had done some additional
23 pavement evaluation in December of 2017?

24 A. I don't recall if that
25 was mentioned on this call.

1 Q. And there's a note that
2 says "draft letter to CIMA"?

3 A. Yeah.

4 Q. What is that referring
5 to?

6 A. I have no idea.

7 Q. Do you recall any
8 discussion about somebody drafting a letter to
9 CIMA?

10 A. No.

11 Q. Was there any discussion
12 on this call about anybody reaching out the CIMA?

13 A. No. Oh, there was.
14 There was a discussion on my part, because as soon
15 as I start hearing about 2015 CIMA report, I know
16 Brian Malone is the principal of their traffic
17 engineering department. I work with Brian all the
18 time and I mused in this call about reaching out
19 to him to get some background and suggesting that
20 I give him a call to better understand the issues
21 once I have reviewed the reports, and they were
22 fine with that.

23 Q. In the context of that
24 discussion, did you talk about sharing with
25 Mr. Malone the results of the Tradewind report?

1 A. I never had that
2 discussion during this call with Nicole and
3 Byrdena.

4 Q. So on this call, the
5 thinking was that you mused about reaching out to
6 Mr. Malone just to get some background
7 information?

8 A. Yeah.

9 Q. Was there any discussion
10 or consideration given to having you reach out to
11 Golder for a similar purpose?

12 A. No.

13 Q. Is there a reason why you
14 wouldn't want to reach out to Golder for
15 background information?

16 A. Like I said, I know Brian
17 well. I don't really know anybody doing this type
18 of work at Golder. It was really from a technical
19 background standpoint, and I know I could pick up
20 the phone and call Brian because we have many
21 active things on the go together at any given
22 point in time.

23 Q. It is because you had a
24 pre-existing relationship with Mr. Malone?

25 A. Exactly.

1 Q. Okay. So we've gone over
2 your notes in some detail and you did describe
3 your recollection of the call earlier this
4 morning. Is there anything else that you recall
5 from this December 7th call with Ms. Auty and
6 Ms. MacNeil that you haven't already told you?

7 A. No, not that I can
8 recall.

9 Q. And so coming out of the
10 December 7th call, from your perspective, what
11 were your next steps? What were your action
12 items?

13 A. Look at the FOI request
14 to see if it was broad enough to encompass these
15 reports, review the reports, and come up with a
16 liability assessment, in the course of which I
17 reached out to Brian to get some technical
18 background assistance.

19 Q. And I think you had
20 testified that the December 19th note, that that
21 was the deadline that was given to you to provide
22 your draft opinion?

23 A. It's something that would
24 invariably come up, what's the time frame, like
25 when do you want this by so I can plan. That's

1 the only reason I can think of for that date being
2 there. Do I have an independent recollection of
3 them saying we want something by December 19th,
4 no, I don't.

5 Q. Okay. And you can't
6 think of December 19th as a date being important
7 in the context of anything else?

8 A. No.

9 Q. Registrar, you can take
10 down these notes, and if you could pull up
11 overview document 9A, page 214.

12 So, Mr. Boghosian, I'll take
13 you to paragraph 498. Perhaps you could call that
14 out for Mr. Boghosian. There's a reference to an
15 e-mail from Ms. MacNeil to Mr. McGuire on
16 December 7, 2018. So this is on the day that you
17 speak with Ms. Auty and Ms. MacNeil. They are not
18 copied on this e-mail but I'll give you an
19 opportunity to review it.

20 A. I've read it.

21 Q. So you'll see that
22 Ms. MacNeil says to Mr. McGuire "can you please
23 send me something that explains the current scope
24 of work that CIMA is undertaking for which we are
25 going to be adding/updating them on the Tradewind

1 friction testing results? I will need to
2 reference it in the retainer letter that I am
3 drafting."

4 I think you answered this, but
5 just with the benefit of this e-mail, do you
6 recall having any discussion about adding or
7 updating CIMA on the Tradewind friction testing
8 results on that December 7, 2018 call?

9 A. No, I don't.

10 Q. Coming out of the
11 December 7, 2018 call, did you have any view or
12 understanding about who would be adding or
13 updating CIMA on the Tradewind results?

14 A. Not at that time, no.

15 Q. I think you had testified
16 that that just didn't come up?

17 A. I don't have a
18 recollection of that coming up at all. And I
19 would have made a note if I had been directed to
20 bring CIMA up to speed on the Tradewind report.
21 That would have been an action item.

22 Q. Okay. And so was it your
23 understanding from the December 7th call that you
24 were going to be the one updating CIMA on the
25 Tradewind friction testing results?

1 A. No, I didn't have that
2 understanding whatsoever. And I don't even know
3 who this retainer letter that Ms. MacNeil was
4 apparently drafting was to go to.

5 Q. I think that's fair. It
6 just says retainer letter. It could be a retainer
7 for you, it could be a retainer for CIMA, it could
8 be something else. Okay.

9 Did Ms. MacNeil or Ms. Auty
10 ever refer to retaining CIMA on the December 7th,
11 2018 call?

12 A. No.

13 Q. So if Ms. MacNeil was
14 referring to your retainer letter, do you have any
15 understanding of why she might be under the
16 impression that updating/adding CIMA on the
17 Tradewind friction testing results would be part
18 of your retainer?

19 A. No, and I never got any
20 such retainer letter.

21 Q. Okay. Registrar, if we
22 could pull up HAM64323. If you could go to
23 image 4.

24 So here is an e-mail from
25 Ms. Auty to you dated Friday, December 7th, 2018,

1 at 3:18 p.m. I'll give you an opportunity to
2 review the e-mail.

3 A. Okay. I've read it.

4 Q. I take it that this
5 e-mail was sent to you after you had the call with
6 Ms. MacNeil and Ms. Auty?

7 A. Yes.

8 Q. And she says in
9 paragraph 2:

10 "This issue came forward in
11 part due to a new director,
12 Gord McGuire, taking over in
13 the summer of this year and in
14 part due to media inquiries
15 and recent FOI request. It
16 was through the latter process
17 that this came to my
18 attention."

19 Do you recall if Ms. Auty
20 and/or Ms. MacNeil said anything else about media
21 inquiries on the call with you that day?

22 A. No, just what I have
23 already explained, the FOI request.

24 Q. Actually, just on the
25 December 7, 2018 call, I think you testified

1 earlier that your recollection was that there was
2 a previous FOI request that was made where the
3 Tradewind report was not disclosed?

4 A. I have a recollection of
5 a discussion of that during that call, yes.
6 Whether it's accurate or not -- and I'm not saying
7 my recollection is not accurate. I do recall this
8 very clearly. Whether the underlying fact is true
9 or not, I don't know and I now understand it
10 wasn't true, but I was led to believe that there
11 had been previous -- a previous FOI request that
12 the Tradewind report would have been within the
13 scope of and it had not been produced.

14 Q. And that information came
15 from Ms. Auty and/or Ms. MacNeil on the December 7
16 call?

17 A. That's what I understand
18 they were saying, yes.

19 Q. And so you'll see
20 Ms. Auty says "I am looking for your advice on the
21 following. 1, a general risk/liability assessment
22 including any thoughts on the FOI request. 2, how
23 to approach obtaining CIMA consultant input on
24 whether interim measures are needed to protect
25 safety before the resurfacing is completed in

1 June 2019". Then it says "litigation privilege"
2 in brackets. And media and council information.

3 So in point number 2, was that
4 something that was discussed on the call on
5 December 7, 2018?

6 A. No.

7 Q. Actually let me just --
8 sorry for going backwards. So point number 1 says
9 "a general risk/liability assessment, including
10 any thoughts on the FOI request." What was your
11 understanding of what she was seeking about the
12 FOI request?

13 A. Two things. Whether
14 these friction reports needed to be disclosed or
15 was there any way not to. And the second was, I
16 think that was a due diligence exercise because I
17 do think their preliminary view was that it had to
18 be disclosed, but they wanted an outside opinion
19 to go through carefully the exceptions to
20 disclosure for due diligence and have an outside
21 opinion, and also how the FOI request response
22 would impact liability.

23 Q. And when you say the
24 reports -- friction reports, you're referring, I
25 take it, to the Tradewind report and the 2014

1 Golder report?

2 A. Yes.

3 Q. So in point number 2,
4 what was your understanding of what Ms. Auty was
5 asking you to do in point number 2?

6 A. I think it's pretty
7 self-explanatory.

8 Q. Okay. So your
9 understanding was that Ms. Auty was asking you for
10 advice on how to approach obtaining CIMA
11 consultant input on whether interim measures are
12 needed to protect safety before the resurfacing is
13 completed in June 2019?

14 A. Yes.

15 Q. When it says litigation
16 privilege, was litigation privilege discussed on
17 the December 7, 2018 call?

18 A. No. Nothing about number
19 2 was discussed whatsoever in that December 7th
20 call.

21 Q. Okay. So what's --

22 A. Or number 3 for that
23 matter.

24 Q. Okay. So only point
25 number 1 was discussed on the December 7th call?

1 A. Yeah.

2 Q. So what was your
3 understanding of what Ms. Auty was referring to
4 when she says litigation privilege in question
5 marks -- question mark in brackets?

6 A. I inferred that she was
7 trying to find a way that we could get this
8 information without it having to be disclosed in
9 the litigation, underlying litigation.

10 Q. So you're inferring that
11 Ms. Auty was trying to find a way to approach
12 obtaining CIMA consultant input on whether interim
13 measures are needed to protect safety in a way
14 that would not be subject to disclosure in the
15 underlying litigation?

16 A. That was my
17 interpretation.

18 Q. When you say "underlying
19 litigation," I take it that's the four claims we
20 talked about?

21 A. Yes.

22 Q. Okay. With respect to
23 media and council information, did you have any
24 understanding of what she was referring to here?
25 I think you testified that that was not discussed

1 on the December 7th call.

2 A. It wasn't. From previous
3 retainers by her and others, I inferred that that
4 meant that any press releases that might be sent
5 out, vetting reports to council that might be
6 prepared, but I had no specifics.

7 Q. I think you testified
8 this morning that on the December 7 call, there
9 was no discussion about reporting to council?

10 A. No.

11 Q. And then she says:

12 "I will be forwarding you the
13 reports the City has to date
14 on this issue and the FOI
15 request. I look forward to
16 speaking to you on Tuesday.
17 Can you please let me know
18 what time, and I will ask my
19 admin to book us a time and
20 generally look on Tuesday. I
21 will also send you the FOI
22 request." (As read)

23 She refers to looking forward
24 to speaking to you on Tuesday, which is
25 December 11th, 2018. Had you made arrangements to

1 speak with Ms. Auty again so quickly on the
2 December 7th call?

3 A. I don't have an
4 independent recollection of that. It appears so,
5 but I can't tell you.

6 Q. Do you have a
7 recollection of what the plan was that you were --
8 what were you supposed to do between December 7th
9 and December 11th?

10 A. I don't remember.

11 Q. Registrar, if we could
12 pull up HAM61809. Here, Mr. Boghosian, we have an
13 e-mail from Ms. Auty to you on December 7th, 2018,
14 3:23 p.m. The attachment is FOI request.
15 Registrar, if we can pull up HAM61810 next to it.
16 Thank you.

17 Mr. Boghosian, I take it you
18 did receive the FOI request from Ms. Auty on
19 December 7th, 2018?

20 A. Yes.

21 Q. Registrar, these
22 documents are not yet exhibits, so I would ask
23 that we mark HAM61809 as Exhibit 215.

24 EXHIBIT NO. 215: One-page
25 e-mail dated 12/7/2018;

1 HAM61809.

2 MS. LAWRENCE: And HAM61810

3 as Exhibit 216.

4 EXHIBIT NO. 216: Request for
5 Access to Municipal Records
6 Information Sheet; HAM61810.

7 THE REGISTRAR: Noted,
8 Counsel. Thank you.

9 BY MS. LIE:

10 Q. Thank you. Registrar, if
11 you could now pull up HAM64320. Thank you.

12 So, Mr. Boghosian, at the
13 bottom of the first page and following into the
14 second page, you'll see an e-mail from Ms. Auty to
15 you on Friday, December 7th, 2018, 3:21 p.m., and
16 it's forwarding, you'll see part 1 of 6 of the
17 Golder report.

18 A. Yes.

19 Q. I take it you received
20 the Golder report on December 7th, 2018?

21 A. Yes.

22 Q. Is it your recollection
23 that you received all parts of the report?

24 A. I believe so.

25 Q. Registrar, if we could

1 pull up overview document 9A, page 215. And 216.

2 So, Mr. Boghosian, you'll see
3 at paragraph 505, there's an e-mail from Ms.
4 MacNeil to Ms. Auty on December 7th under the
5 subject line "RHVP reports for outside counsel's
6 review." It attaches three reports. There's the
7 Tradewind report, the 2015 CIMA report, and an
8 e-mail chain from November 28, 2018, which
9 included an e-mail from Dr. Uzarowski to Mr.
10 McGuire?

11 A. Okay.

12 Q. So this is an e-mail from
13 Ms. MacNeil to Ms. Auty attaching these three
14 reports. We don't actually have an e-mail to you
15 attaching the three reports, which are the
16 Tradewind report, the 2015 CIMA report, and the
17 November 28, 2018 e-mail. But I take it you did
18 receive those documents?

19 A. I did.

20 Q. Do you recall if you
21 received them on December 7th, 2018?

22 A. I believe so.

23 Q. Registrar, if you could
24 pull up HAM61865. Mr. Boghosian, this is the
25 November 28, 2018 e-mail that was referenced in

1 the e-mail from Ms. MacNeil. Registrar, if you
2 could also put up image 2 next to it.

3 A. Okay, I've read it.

4 Q. Do you recall if you
5 received this version of this e-mail from Ms.
6 Auty?

7 A. I remember seeing this
8 e-mail. I don't know how I got it.

9 Q. So the e-mail at image 1
10 on the left screen, it's actually cut off. The
11 e-mail actually -- the original e-mail actually
12 has some further points, and I'm just wondering if
13 this is the version that you recall receiving?

14 A. I would have to go into
15 my file. I can't tell you.

16 Q. So you don't -- I mean,
17 we don't have a copy of the actual document you
18 received, so I'm not sure going back into your
19 file will help, unless you have it somewhere.

20 A. I can't -- well, of
21 course I would have it, but I don't -- sitting
22 here, I can't tell you if I got more than what
23 you're showing on the screen or not.

24 Q. That's fine. Registrar,
25 if we could pull up HAM62499. And if we could

1 also pull up HAM62500 next to it. Thank you.

2 Mr. Boghosian, on the left
3 there is an e-mail from Ms. Auty to you dated
4 December 7th, 2018, 4:32 p.m. It says, "David,
5 can you please take a look at this and fill in the
6 hourly rate info for me, please, and I can send
7 you a final copy." And then on the right there's
8 a copy of the draft retainer letter.

9 Then if you look at the draft
10 retainer letter, you'll see "This letter is to
11 confirm your retainer by the City of Hamilton with
12 respect to the representation of the City in the
13 matter relating to reports regarding the friction
14 on the Red Hill Valley Expressway, and in
15 particular," and there are four points listed
16 there.

17 A. Yes.

18 Q. So point number 3, the
19 language is very similar, though not identical, to
20 the language we just looked at from Ms. Auty's
21 earlier e-mail. But she's written "including
22 retaining the expert if necessary," and so did you
23 have any understanding of what Ms. Auty was asking
24 you to do in point number 3?

25 A. I don't even know if I

1 noticed at the time that last clause that she
2 added. And there was no discussion about that.

3 Q. Right. On the
4 December 7th call, you mean?

5 A. Right.

6 Q. Okay. But I think you
7 testified that from the December 7th e-mail that
8 she sent to you, you were inferring that she was
9 asking for your advice on how to approach
10 obtaining CIMA consultant input on whether interim
11 measures are needed to protect safety before the
12 resurfacing is completed in June 2019 in a way
13 that would protect the opinion from disclosure?

14 A. How to go about it,
15 right. Not necessarily doing it, but just how one
16 might do it.

17 Q. How one might do it to
18 prevent access to the opinion from having to be
19 disclosed?

20 A. In the underlying pieces
21 of litigation.

22 Q. Okay. Your understanding
23 was that you were being asked for advice on how to
24 do it, not to actually do it in terms of obtaining
25 the CIMA consultant input?

1 A. Right.

2 Q. I take it that before
3 this draft retainer letter is sent to you, you
4 didn't have any discussions with Ms. Auty about
5 you possibly retaining CIMA?

6 A. No.

7 MS. LIE: Registrar, before we
8 leave this document, if we could mark HAM62499 as
9 the next exhibit, which is 217. Thank you.

10 THE REGISTRAR: Noted,
11 counsel. Thank you.

12 EXHIBIT NO. 217: One-page
13 e-mail dated 12/7/2018;
14 HAM62499.

15 BY MS. LIE:

16 Q. Registrar, if we could
17 pull up HAM64323. If you could pull up images 2
18 and 3, please.

19 We'll start with the e-mail at
20 the bottom of image 3, which is the image on the
21 right. You'll see there is an e-mail from you,
22 Mr. Boghosian, to Ms. Auty. This is on
23 December 10th, 2018. Actually, Registrar, maybe
24 we can pull up images 3 and 4 next to each other,
25 just so we can see how the chain goes. Thank you.

1 So on the right, you'll see
2 the e-mail that we had already looked at from
3 Ms. Auty to you on December 7th, and then your
4 response is on the left on December 10th, 2018, at
5 10:29 a.m. I'll give you an opportunity to review
6 that e-mail.

7 A. Okay.

8 Q. I take it that between
9 December -- (skipped audio) your e-mail on
10 December 10th and Ms. Auty's e-mail from
11 December 7th in that afternoon, did you have any
12 further -- did you have any communications with
13 Ms. Auty in that intervening period?

14 A. No.

15 Q. In the second paragraph
16 of your e-mail, Mr. Boghosian, you say, "I thought
17 over the weekend about the issue of how to obtain
18 an opinion from CIMA regarding interim safety
19 measures regarding the condition of the RHVE
20 pending resurfacing in June of 2019. I think the
21 only way we could prevent access to any
22 correspondence they send conferring their opinion
23 is if I contact them and obtain their advice and
24 then communicate it to you as part of my retainer
25 letter."

1 So I take it that this was you
2 responding to point 2 of Ms. Auty's December 7th
3 e-mail?

4 A. Yes.

5 Q. When you refer to "the
6 only way we could prevent access to any
7 correspondence," what were you referring to there,
8 prevent access by who?

9 A. I already answered that
10 question, twice.

11 Q. And so that's prevent
12 access in the underlying litigation?

13 A. You got it.

14 Q. So was there any
15 discussion about having the lawyers who were
16 retained on those matters obtain the opinion from
17 CIMA as opposed to you?

18 A. No.

19 Q. Was prevent access also
20 in reference to preventing access in respect of
21 any FOI request that might be made?

22 A. That wasn't my thinking.
23 That wasn't what I understood the concern to be.

24 Q. Your understanding was
25 that the concern was about production in the four

1 claims that were active at the time?

2 A. Litigation privilege.

3 Q. Right. And you're
4 inferring that just from the two words "litigation
5 privilege" from Ms. Auty's e-mail?

6 A. Heard nothing to suggest
7 that there was any effort to shield anything from
8 CIMA from anyone else.

9 Q. So the thinking from your
10 perspective is that if you obtain the opinion from
11 CIMA and convey it to the City as part of your
12 opinion letter, that will serve the purpose of
13 protecting that opinion from disclosure?

14 A. In the underlying
15 litigation, that was what I was suggesting, yes.

16 Q. And then you say:
17 "Let me know if you want to
18 proceed in that fashion. I
19 note that I use CIMA in my
20 cases all the time, so have a
21 good working relationship with
22 them, and hopefully we could
23 expedite the provision of
24 their opinion."

25 So here I take it you're

1 suggesting that you go off and get the opinion
2 from CIMA.

3 A. Yes.

4 Q. And then you say:

5 "I will be reviewing the
6 material you sent over last
7 time in preparation for
8 discussion about it with you
9 tomorrow."

10 I take it by this time, you've
11 received the four reports.

12 A. Yeah. Yes.

13 MS. LIE: Commissioner, it's
14 about 11:30. This might be a good time to take
15 the morning break.

16 JUSTICE WILTON-SIEGEL: That's
17 fine. Let's take a 15-minute break. We'll return
18 at quarter to 12.

19 --- Recess taken at 11:29 a.m.

20 --- Upon resuming at 11:45 a.m.

21 BY MS. LIE:

22 Q. Registrar, if we could
23 put up the document that we were just looking at,
24 HAM64323. There you go. You have it. If you
25 could put up images 2 and 3.

1 So, Mr. Boghosian, we went
2 through the e-mail that you sent to Ms. Auty on
3 December 10th, 2018, but you'll see on the screen
4 on the right, on December 11th, 2018, this is on
5 the Tuesday morning now, Ms. Auty responds,
6 "David, I agree with your approach below. I will
7 send you the contact info, but I believe the name
8 mentioned as our contact is Dave Malone." And
9 then you respond that same morning, you say, "I
10 think it's Brian Malone."

11 So what was your understanding
12 of what Ms. Auty was agreeing to?

13 A. Me reaching out to Brian,
14 in addition to what I had already proposed to
15 reach out to him for, to ask him about interim
16 safety measures in light of the Tradewind and
17 Golder reports.

18 Q. So your understanding was
19 that she was asking you to provide Mr. Malone with
20 the Tradewind results of the report?

21 A. I'm sorry?

22 Q. Was it your understanding
23 that she was agreeing to have you provide --

24 A. No.

25 Q. No? Okay. So you

1 testified that your understanding was that she was
2 agreeing to having you reach out to Brian, in
3 addition to what you had already proposed, to ask
4 him about interim safety measures in light of the
5 Tradewind and Golder reports?

6 A. Well, asking him about
7 interim safety measures regarding the condition of
8 the Red Hill pending resurfacing in June 2019.

9 Q. But not in light of the
10 Tradewind report?

11 A. No, that wasn't her
12 direction to me.

13 Q. So was it your
14 understanding that you would be obtaining an
15 opinion from CIMA about interim safety measures
16 without referencing the Tradewind report?

17 A. I'm just saying she
18 didn't give me any direction one way or the other
19 about that. I know I did ask Brian when I spoke
20 to him on the 11th whether he had had those
21 reports, and when he said he did not, I summarized
22 them, and the gist of it was that they didn't
23 affect his opinion.

24 Q. We're going to get to the
25 call with Mr. Malone. So your understanding --

1 you didn't believe that Ms. Auty was -- asking you
2 to provide Mr. Malone with the Tradewind report?

3 A. No. Yes, that's fair.

4 Q. You did understand that
5 she was asking you to get an opinion from
6 Mr. Malone about interim safety measures, pending
7 the resurfacing of the road?

8 A. That's what I understood
9 she was asking.

10 Q. Did you ultimately get an
11 opinion from Mr. Malone about interim safety
12 measures, pending the resurfacing of the road in
13 December of 2018?

14 A. Yes, I believe I did.

15 Q. We'll get to that and
16 your call with Mr. Malone, but before we go there,
17 Registrar, if we could pull up overview document
18 9A, page 220.

19 You'll see at paragraphs 520
20 and -- 520 to 522, there's an e-mail exchange
21 between -- there's first an e-mail from Mr.
22 McGuire to Mr. Malone, and then an e-mail exchange
23 between Mr. McGuire and Ms. MacNeil. You're not
24 copied on these e-mails. I'll just give you an
25 opportunity to review those paragraphs.

1 A. Okay, I've read them.

2 Q. Did you have any
3 discussions with Ms. Auty or Ms. MacNeil by this
4 time about whether public works staff should or
5 should not be contacting CIMA regarding --

6 A. No.

7 Q. No?

8 A. No.

9 Q. So were you aware at the
10 time that public works staff had reached out to
11 Ms. MacNeil to ask about contacting CIMA
12 confidentially?

13 A. No.

14 Q. I take it you don't have
15 any -- you didn't have any knowledge of what was
16 set out in the e-mail exchange that is contained
17 in paragraphs 520 to 522?

18 A. I did not.

19 Q. So you had proposed to
20 Ms. Auty that you obtain the opinion from CIMA and
21 convey it to the City as part of your opinion
22 letter to try to preserve litigation privilege.
23 Did you have any discussions about how any other
24 communications with CIMA should flow between the
25 City and CIMA?

1 A. No.

2 Q. Did you have any
3 understanding at this time, this is December
4 of 2018, about whether or not public works staff
5 had provided the Tradewind report to CIMA?

6 A. Not before I spoke to
7 Brian.

8 Q. I take it that before you
9 spoke to Mr. Malone, you didn't have any
10 discussions with public works staff?

11 A. No.

12 Q. Just before we get to --
13 before I just leave the December 7th call. From
14 your notes on the December 7th call and from your
15 evidence, it sounds like there was some discussion
16 about the safety recommendations that CIMA had
17 made in 2015. Was there any discussion about
18 whether or not Golder had made any recommendations
19 to the City up until that point?

20 A. No.

21 Q. Registrar, if we could
22 pull up overview document 9A, pages 221 and 222.
23 The next two pages actually. Sorry.

24 You'll see at paragraph 526,
25 this is December 10th, 2018. Ms. MacNeil

1 exchanged some e-mails with Ms. Auty, Mr. Sabo,
2 and Mr. McLennan about Mr. McGuire's upcoming
3 meeting with audit services. Mr. Boghosian,
4 you're not copied on these e-mails. Were you
5 aware that there was a request made by audit
6 services to Mr. McGuire?

7 A. No.

8 Q. I take it you weren't
9 consulted by the City for advice on how to respond
10 audit to services?

11 A. No.

12 Q. On page 222, in the sixth
13 paragraph, you'll see there's an e-mail from
14 Ms. MacNeil and the paragraph starts "also."
15 Perhaps we could call that out.

16 A. Yes, I see it.

17 Q. So you'll see that here
18 there's a reference to a potential conflict of
19 interest on the part of CIMA. Did anybody discuss
20 this issue with you at all?

21 A. No.

22 Q. In December of 2018, did
23 you have any discussions about whether or not the
24 City should be retaining a consultant other than
25 CIMA regarding getting -- (skipped audio)

1 A. What's the timeframe?

2 Q. December 2018.

3 A. No.

4 Q. You can take this down,
5 Registrar. Thank you.

6 A. I was not aware that his
7 wife worked for the City of Hamilton or that any
8 of these concerns existed. Nor was it mentioned
9 at any time in my presence.

10 Q. Thank you. And you're
11 referring to Mr. Malone and the potential conflict
12 of interest issue, just for the record?

13 A. Yes.

14 Q. Registrar, you can take
15 down this document. Mr. Boghosian, we're going to
16 now talk about the December 11, 2018 call that you
17 had with Mr. Malone. Do you recall how that call
18 came about? Did you just pick up the phone and
19 call Brian?

20 A. I picked up the phone and
21 called Brian.

22 Q. Did you get the sense
23 from Mr. Malone about whether or not he was
24 expecting to hear from you on this matter?

25 A. No, I did not get the

1 sense he was expecting my call.

2 Q. Was there anyone else on
3 the call?

4 A. No.

5 Q. So before the December
6 11th, 2018 call, had you had any discussions with
7 Mr. Malone about any issues relating to the Red
8 Hill Valley Parkway?

9 A. No.

10 Q. So going into this call,
11 from your perspective, what was the purpose?

12 A. To make sure I understood
13 what the issues were and to determine if he felt
14 any interim safety measures were needed pending
15 the June 2019 resurfacing.

16 Q. Going into the call, were
17 you planning on raising the Tradewind results with
18 Mr. Malone?

19 A. Yeah, I would have in --
20 the unfortunate thing is whenever, as I said
21 earlier, I initiate a call, certainly of this
22 nature, where there's going to be more than just
23 one thing discussed, I'll make an agenda or point
24 notes of what I want to discuss and what I want to
25 ask. Unfortunately, although I have a clear

1 recollection of doing that in this case, those
2 notes -- the agenda thing which would normally be
3 clipped to the back of my notes of the call,
4 apparently were not, so we don't have that.

5 Q. But going into the call,
6 you were planning on sharing the Tradewind results
7 with Mr. Malone?

8 A. Verbally, yes.

9 Q. Why verbally and not in
10 writing?

11 A. It was -- they are very
12 straightforward. They did 280 test locations.
13 They got a range of coefficient of friction
14 values. They purported to apply that to a UK
15 standard, and they found it -- them to be
16 deficient. It's not that complicated.

17 Q. Is there -- apart from
18 the fact that you didn't think it was necessary,
19 was there any other reason why you wouldn't want
20 to share the actual report with Mr. Malone?

21 A. No.

22 Q. Do you recall how long
23 the call lasted, roughly?

24 A. I would have to check my
25 dockets. I can't tell you off the top of my head.

1 Q. Is it -- just roughly, is
2 it like ten-minute call, are we thinking, or like
3 an hour?

4 A. It was at least a half an
5 hour and probably at least -- you know, in the
6 order of half an hour to 45 minutes.

7 Q. Before the call, had you
8 reviewed the four reports that had been provided
9 to you?

10 A. Yes.

11 Q. Sitting here today, do
12 you have a memory of the call with Mr. Malone on
13 December 11, 2018?

14 A. I do.

15 Q. What is your
16 recollection?

17 A. My recollection is
18 telling him I'd been retained by city legal. I
19 explained the FOI request, the fact that there
20 were these reports that had not been disclosed in
21 response to an earlier FOI request that maybe
22 should have been. I told him the names of the
23 reports and who had prepared them and who had done
24 the testing. I summarized the results of the
25 Tradewind report and Golder's findings, and asked

1 him if he had seen those reports. He had not. I
2 told him I had reviewed his 2015 report, and
3 pointed out, you know, the list of
4 recommendations, and I asked him if in light of --
5 if these friction testing reports changed anything
6 or suggested anything further was supposed to be
7 done, needed to be done. He said no. I mean, it
8 was apparent to me anyway that he was complete --
9 CIMA was completely on top of the friction -- the
10 wet surface friction issue.

11 So, you know, to me, the
12 Tradewind and Golder testing added nothing. He
13 had already figured out through analysis,
14 deduction, from collision history, the very same
15 thing in a probably more compelling manner than
16 some random friction tests. And he said no, that
17 if they implemented what he had recommended in the
18 2015 report, it's a safe road.

19 Then I started going through
20 the recommendations to figure out what -- oh, and
21 I found out, and I'm pretty sure that it was the
22 first time I found out, he was in the midst --
23 they were in the midst of the roadside safety
24 assessment, so they were still working on the
25 highway.

1 And I started going through
2 what's your understanding of whether each of these
3 things had been fully or partially completed. And
4 I asked him to send me a copy of the -- because he
5 told me that there was a draft report on the
6 roadside safety assessment that had been given to
7 the City November, I think, of the previous month.
8 I asked him if he could send me a copy. I thought
9 he said he would. Apparently he asked the City
10 for permission first. I don't recall him saying,
11 oh, I need to get the City's permission, but I
12 eventually got it. And it contains the same
13 recommendations as the 2015 report, in part. And
14 that was the -- that's the extent of my
15 recollection of the call.

16 Q. Thank you. I just have a
17 few questions arising from that answer. You
18 mentioned that you gave the names of who prepared
19 the friction reports to Mr. Malone. Do you recall
20 saying to Mr. Malone that it was Tradewind?

21 A. Yeah.

22 Q. Do you recall saying to
23 Mr. Malone that Golder --

24 A. Yeah.

25 Q. -- okay.

1 A. Like, I literally had the
2 reports in front of me as I'm talking to him.

3 Q. Mr. Malone said that he
4 hadn't seen the reports, but did he say if he knew
5 that there had been friction testing done?

6 A. No, I think he said he
7 wasn't aware of any friction testing having been
8 done.

9 Q. You testified that -- so
10 you had the -- I take it you had the Tradewind
11 report in front of you. Did you also have the
12 Golder report in front of you? You're nodding, so
13 I take it that's yes?

14 A. Yes, I did.

15 Q. So let me just take you
16 to the Tradewind report for a moment. Registrar,
17 that is HAM61866. This of course is the Tradewind
18 report. Registrar, if you could go to images 3
19 and 4.

20 Here we have the friction
21 measurement results, and on the left page, which
22 is image 3, the first few paragraphs deal with the
23 test results for the LINC. Do you recall if you
24 told Mr. Malone about the results for the LINC and
25 how they compared?

1 A. No.

2 Q. You don't recall or you
3 didn't --

4 A. No, I don't recall
5 mentioning anything about the testing on the LINC.

6 Q. So at the last paragraph
7 on image 3, starting there, that's where we get
8 into the results for the Red Hill Valley Parkway.
9 It goes on for a number of paragraphs.

10 Do you recall what information
11 you gave to Mr. Malone on that call from this
12 report?

13 A. I just said that there
14 were results at a number of locations that fell
15 below this threshold of 40, which I understood to
16 be equivalent to our .4 that we would use here in
17 Ontario, in Canada. And I would have indicated
18 that Tradewind had identified this as a concern
19 and that it was below a level of investigation
20 under this UK standard.

21 Q. So you said that the
22 results fell below a threshold of 40, and then you
23 said that's understood to be 0.4 in Ontario.
24 Where did you get that information from? Is that
25 something you conveyed to Mr. Malone or he

1 conveyed to you?

2 A. I think we were on the
3 same page.

4 Q. So going into this call,
5 your understanding was that the threshold of 40
6 was understood to be 0.4 in Ontario?

7 A. That's what I understood,
8 yes.

9 Q. And where did you get
10 that understanding?

11 A. I'm not sure, sitting
12 here today.

13 Q. Is that just from your
14 general knowledge, or would that have been from
15 somebody from the City telling you that?

16 A. No, it would have been
17 from my own knowledge.

18 Q. So you had some
19 independent knowledge about how friction testing
20 results might compare in Ontario and in the UK?

21 A. Yeah, the numbers are --
22 all these numbers are consistent with our zero to
23 1 scale except multiplied by 100.

24 Q. So the difference between
25 the Ontario scale and the UK scale is that you

1 just multiply by 100 to get to the UK number?

2 A. That was my assumption at
3 the time.

4 Q. Sitting here today, you
5 can't tell us where you got that information from?

6 A. No, I can't.

7 Q. What is the Ontario scale
8 that you're referring to?

9 A. I don't know if it has a
10 technical name. I would say coefficient of
11 friction scale.

12 Q. And --

13 A. Like, if you used a drag
14 sled, for example, went out on a road with a drag
15 sled and did a measurement for the road friction,
16 you would get a value somewhere between zero and 1
17 and that would be our coefficient of friction
18 scale.

19 Q. You knew that from your
20 other experience in friction and pavement; is that
21 fair?

22 A. Yes.

23 Q. So when you read the
24 Tradewind report, did you have some understanding
25 or conclusion about whether or not what Tradewind

1 was saying was correct?

2 A. I didn't have any -- I
3 read what they were saying and I saw the numbers.
4 I'm not sure I understand the question. I asked
5 Brian what he thought of this testing, and there
6 was a concern to him.

7 Q. So Tradewind had
8 identified the friction test results as being a
9 concern because they fell below this UK
10 investigatory standard, but I'm understanding from
11 you that actually you had some knowledge in
12 December of 2018 that suggested that that might
13 not actually be below an Ontario standard; is that
14 fair?

15 A. No, I didn't -- this is
16 one of the reasons I'm calling Brian for his
17 technical input. So I did not agree or disagree
18 with what Tradewind was saying. I was just
19 trying -- one of the things I wanted to understand
20 from Brian is did this concern him, you know, what
21 did this mean. But going into the call I
22 assumed -- for example, 38 on this UK scale would
23 be equivalent to our .38.

24 Q. On the call with Mr.
25 Malone, I think you testified that the results

1 fell below the threshold of 40 at various points.

2 Did you give him more specific information about

3 how many values?

4 A. Sorry, what values?

5 Q. So you testified that you

6 told Mr. Malone that the results at various points

7 on the Red Hill Valley Parkway fell below the

8 threshold of 40, and I'm just wondering if you

9 went into any further detail about that. Did you

10 get into the level of the detail, for example,

11 that's set out on page 4 of the Tradewind report?

12 A. I don't know which page

13 is page 4.

14 Q. The one on the right.

15 A. The one on the right.

16 Q. Yeah, because you'll see

17 that the Tradewind report gets into some detail

18 about --

19 A. Yeah, no, I think I gave

20 him some -- ranging from the mid to high 30s. I

21 think I would have gotten into that level of

22 detail.

23 Q. But not the level of

24 detail, I take it, of specific parts of the Red

25 Hill Valley and where those friction values fell?

1 A. No.

2 Q. Registrar, if you can go
3 to next page, on this document. Just to be
4 complete, Mr. Boghosian, I just wanted to show you
5 the rest of the friction measurement results
6 section of the Tradewind report.

7 A. Okay.

8 Q. So having read the rest
9 of the results, does that refresh your memory any
10 further about the level of detail that you got
11 into with Mr. Malone?

12 A. No.

13 Q. Registrar, if you can go
14 to image 13. This is the conclusions and
15 recommendations section of the Tradewind report.
16 You'll see the second paragraph is the conclusion
17 about the Red Hill Valley Parkway?

18 A. Yes.

19 Q. Did you give this
20 information that's set out in the paragraph to
21 Mr. Malone?

22 A. I can't remember.

23 Q. Do you recall if you told
24 Mr. Malone that -- do you recall using the words
25 "below" or "well below" the UK investigatory

1 level?

2 A. Yes.

3 Q. What was Mr. Malone's
4 reaction to that?

5 A. That the UK standard had
6 no application in Ontario. It's not in my notes,
7 and I don't have a strong recollection, but I
8 think he referred to some other standard, maybe
9 the TAC standard for the design of highways, and
10 he pointed out that the minimum acceptable
11 coefficient friction level was lower,
12 significantly lower than the UK standard. And the
13 general impression I got is, he's already figured
14 out that there's a wet road friction problem on
15 the Red Hill, and he didn't seem at all concerned
16 about these friction testing values.

17 Q. So you testified about
18 how the UK standard -- the UK numbers, you
19 multiplied by a 100 to get to the Ontario numbers.

20 A. No, you would divide.

21 Q. Right. Sorry. Yes. You
22 divide by 100. You're correct. Did you talk to
23 Mr. Malone about how these values would fair on
24 the Ontario standard?

25 A. I can't remember that

1 conversation with that detail, but I felt like we
2 were on the same page, in my understanding. Like,
3 I can't express it in more detail because I don't
4 have that detailed a recollection, but my sense
5 was that I was -- that my assumption had been
6 correct.

7 Q. Your assumption being
8 what?

9 A. What I just said. That
10 the UK standard was equivalent to our coefficient
11 of friction standard divided by 100.

12 Q. How did that fair in
13 terms of whether that was acceptable or not in
14 Ontario?

15 A. He just said that we
16 don't have -- there is no such friction standard
17 in Ontario, and that the TAC design standards for
18 new roads was lower.

19 Q. Lower than?

20 A. Than 40. Than the UK
21 standard that he was applying, or that Tradewind
22 was applying.

23 Q. Mr. Boghosian, I know you
24 do have notes of this call, and you also
25 summarized your call with Mr. Malone in your draft

1 opinion letter, so why don't we put up those
2 documents side-by-side. So, Registrar, if we
3 could pull up HAM64344. And HAM62512, image 7.

4 A. Yeah, you know, there's
5 other parts of the report other than this page
6 that reflects my conversation with Mr. Malone.

7 Q. Just in your notes, there
8 is a reference to the LINC opened 1997, RHVP
9 opened 2007, curvy. And then it talks about Phase
10 1, Greenhill to Dartnall, October 13, and it says
11 "I don't have this." What's that referring to?

12 A. Brian's telling me he had
13 done a prior report from -- in October 2013 about
14 a specific segment of the Red Hill between
15 Greenhill and Dartnall, and I was noting to myself
16 I didn't have this. I only have the Phase 2, 2015
17 report.

18 Q. Did he mention to you
19 that in the October 2013 report -- did he give you
20 any further information about the October 2013
21 report?

22 A. No.

23 Q. And then there's
24 reference to Phase 2. And then underneath that it
25 says, "really high proportion of wet road

1 crashes," and then I think it says "coefficient of
2 friction issues, no industry standard re pavement
3 friction." I take it that's what Mr. Malone is
4 conveying to you?

5 A. Yeah, I have conveyed to
6 him the Tradewind findings, and he's saying, well,
7 there is no industry standard in Canada or
8 Ontario for pavement friction.

9 Q. If you could go to the
10 next page in the handwritten notes, Registrar.
11 And then it says "PSV less than 30 problematic."
12 What's that referring to?

13 A. Polished stone value. I
14 think I'm conveying to him the results of the
15 Golder polished stone value testing, which had
16 come out in at 45, and he was like, well, that's
17 fine. If it's below 30, it's a problem.

18 Q. So this polished stone
19 value number, I take it, comes from the
20 December 2017 Golder testing?

21 A. I believe so.

22 Q. And that information was
23 contained in the November 2018 e-mail that you
24 received as part of the four reports?

25 A. Right.

1 Q. Okay. So do you recall
2 telling Mr. Malone that there was testing done by
3 Golder in December of 2017?

4 A. I believe so.

5 Q. What did you tell him
6 about that testing?

7 A. I believe I told him that
8 they had gotten a value of 45, and Brian conveyed
9 that that's okay because it would only be a
10 problem if it was under 30.

11 Q. Was he aware that Golder
12 had done this further testing?

13 A. No, I don't think he was
14 aware of the Tradewind or the Golder testing. In
15 fact, he said he was not aware. He wasn't aware
16 of that having been done.

17 Q. Both of them, the
18 Tradewind in 2013 and the Golder testing in 2017?

19 A. Correct.

20 Q. Did he ask for copies of
21 the reports that those tests generated?

22 A. I don't think so because
23 I didn't send them to him until much later.

24 Q. In your handwritten note
25 it says "stone mastic asphalt." And what is the

1 word next to that? The transcription says
2 "theoretically."

3 A. That's what I would say
4 it says.

5 Q. I take it there was some
6 discussion about SMA on this call?

7 A. Yes. Just judging,
8 theoretically, I think he was saying it actually
9 starts with a lower co-coefficient of friction at
10 the beginning and it improves with age. Anyway.

11 Q. So you recall him telling
12 you that, it was supposed to improve with age?

13 A. Theoretically.

14 Q. And did you talk about
15 whether or not it had, in fact, improved with age?

16 A. No.

17 Q. But in the context of
18 when you shared the Tradewind results with
19 Mr. Malone, did this idea that the friction values
20 should have improved theoretically come up in that
21 context?

22 A. No.

23 Q. And then we see a list
24 of -- I take it these are recommendations from the
25 CIMA 2015 report?

1 A. Yes.

2 Q. You went through each of
3 the recommendations with Mr. Malone and talked
4 about his understanding of whether or not they had
5 been implemented?

6 A. That's right.

7 Q. We see that also in your
8 draft opinion, which sets out fully implemented,
9 partially implemented.

10 Registrar, if we can go to the
11 next page in the handwritten notes. And the next
12 page in the -- there you go. I'm just trying to
13 find this in your handwritten note. There's a
14 note that says "paved friction testing" question
15 mark.

16 A. Sorry, where are we?

17 Q. I'm looking at the
18 transcription. Actually, sorry. Registrar, if
19 you could back to image 2 on the handwritten
20 notes. There it is.

21 So the second line from the
22 bottom in your handwritten note, there's a
23 question mark and it says "paved friction
24 testing," and then you'll see in your draft
25 opinion letter, near the top it says

1 "implementation unknown, pavement friction
2 testing."

3 A. Yes.

4 Q. Do you recall -- what do
5 you recall about the discussion about whether or
6 not the recommendation for pavement friction
7 testing had been implemented?

8 A. He was telling me he
9 wasn't aware of it having been done.

10 Q. Was it your understanding
11 that the 2017 Golder testing was intended to be an
12 implementation of this recommendation?

13 A. I don't have that level
14 of detail of recollection. I'm recording what
15 Brian understands from his knowledge and -- I
16 don't know.

17 Q. Registrar, if you can go
18 to next page in the handwritten note. In the
19 draft opinion, Mr. Boghosian, in the second full
20 paragraph on page 8, it says, "When asked to rank
21 in order of greatest contribution to the
22 inordinate number of wet road cashes, Mr. Malone
23 advised as follows," and he then gives four
24 contributing factors, starting with slipperiness
25 of the road surface.

1 A. Yes.

2 Q. Do you recall that
3 Mr. Malone did rank slipperiness of the road
4 surface as the greatest contributing factor to the
5 inordinate number of wet road crashes on this
6 call?

7 A. Without a doubt. You see
8 the arrow after number 4?

9 Q. Yes.

10 A. He gives me a list, and
11 then I added afterwards, and that arrow is going
12 from what I've said in number 4. He puts this at
13 the top. So that's why, even though he had listed
14 it last, I put it at the top.

15 Q. Did he give you any
16 further context for why he reached that
17 conclusion, that slipperiness of the road surface
18 was the greatest contributing factor?

19 A. No.

20 Q. You testified earlier
21 that when you shared the Tradewind results with
22 Mr. Malone, it didn't really change anything in
23 terms of Mr. Malone's analysis because I think you
24 said he had already reached the same conclusion?

25 A. Yes.

1 Q. So what do you mean by
2 that? What conclusion are you referring to?

3 A. That there was a
4 coefficient of friction problem with the Red Hill,
5 especially in wet road conditions.

6 Q. What was your
7 understanding of how he had reached that
8 conclusion, if he didn't have the friction testing
9 results?

10 A. Well, it's apparent from
11 his 2015 report. It's not like he's just suddenly
12 blurting out, in my call with him, oh,
13 slipperiness of the road surface when wet is a
14 factor. It's all over his 2015 report. All of
15 his recommendations -- if you look at the
16 recommendations from his 2015 report, they all
17 relate to mitigation of low coefficient of
18 friction in wet weather. That's what they're all
19 about.

20 So he's all over the
21 coefficient friction problem in wet weather. It's
22 obvious from his 2015 report what he says in terms
23 of the factors. He doesn't maybe rank
24 slipperiness of the road surface in that report
25 the way he did with me on the call, but it's

1 certainly there as one of the listed factors. And
2 when you look at his recommendations, they're all
3 about mitigating a slippery when wet road
4 situation. To give additional guidance to
5 motorists, to alert them to be extra cautious in
6 wet weather driving conditions.

7 Q. I take it that your
8 understanding is that he came to that conclusion
9 that slipperiness of the road surface was the
10 greatest contributing factor based on his analysis
11 of the number of wet road collisions?

12 A. I don't know how he
13 came -- you would have to ask Mr. Malone. I can't
14 say how he puts this at the top. I'm just saying
15 what he told me during this conversation.

16 Q. I think you testified
17 that you don't recall if he gave you any further
18 context for how he reached this ranking?

19 A. No.

20 Q. Then -- well, you see in
21 the -- actually on page 8 of your draft opinion,
22 in the first full paragraph, you say that, "for
23 the purpose of the follow-up median barrier study,
24 for which CIMA was retained this year." I take it
25 that's referring to the roadside safety assessment

1 that you learned about?

2 A. Yes.

3 Q. What was your
4 understanding of the scope of the roadside safety
5 assessment?

6 A. Well, I know roadside
7 safety is to do with the clear zone, to do with
8 guard rails and barriers. I mean, I think he may
9 have also been asked to look at illumination. I
10 can't remember now, but it has to do with not the
11 actual road surface itself. Off the travelled
12 portion of the road, guard rails, clear zones,
13 demarking barriers and guard rails.

14 Q. Is that just from your
15 understanding of what roadside safety means, based
16 on your many years of experience in this area, or
17 is that something that Mr. Malone conveyed to you
18 about what he was doing?

19 A. I think he did rhyme off
20 some of the things that we're looking at during
21 that conversation because there had been a lot of
22 guard rail and median impacts in these collisions,
23 wet weather collisions, so they were looking at
24 that. I do think he mentioned that. I don't have
25 like a detailed recollection, but I think he

1 rhymed off some of the things that we're looking
2 at during that assessment, but I know what a
3 roadside assessment is from experience, as you've
4 mentioned, and I subsequently got his draft
5 report, which, you know, confirmed my assumptions.

6 Q. I take it you understood
7 that what Mr. Malone was doing on the roadside
8 safety assessment was not the same thing as what
9 it did in 2015, in terms of providing more general
10 safety recommendations?

11 A. Well, they do comment in
12 the draft report about the wet whether collision
13 history and the concern about that in particular
14 locations, especially the northbound strip near
15 the near King Street interchange; southbound, the
16 tree interchange ramps, sets of interchange ramps
17 that he identifies.

18 Q. Okay, but the roadside
19 safety assessment though, I take it, is a more --
20 is it fair to say more narrow scope than what Mr.
21 Malone and CIMA did in 2015?

22 A. Well, it might normally
23 be, but reading the actual report, there's a lot
24 in there about updating -- you know, based on the
25 updated collision history, what's going on with

1 collisions on the road and recommendations
2 stemming from that.

3 Q. So typically, a roadside
4 safety assessment might be more narrow in scope,
5 but because you -- you did receive a copy of the
6 draft roadside safety assessment. From your
7 perspective, it was broader than just roadside
8 safety; is that --

9 A. Yes.

10 Q. In your notes --
11 actually, sorry, before I move on to SMA. In the
12 first full paragraph on page 8, you say:

13 "Despite the implementation of
14 some of the recommendations
15 made by CIMA, there was no
16 significant change in
17 collision history or the
18 tendency of collisions to be
19 occurring inordinately in
20 curves during wet road surface
21 conditions."

22 I take it Mr. Malone is saying
23 to you that, yes, a number of things were
24 implemented, but it actually hasn't made things
25 better on the road?

1 A. I believe that's what he
2 said, yes.

3 Q. So you testified earlier
4 that he told you that there were no additional
5 interim safety measures that would be required,
6 but did you have a conversation about potential
7 measures? Because it sounds like the current
8 recommendation -- the implementation of what's
9 already been done hasn't improved things. So was
10 there a discussion about what else can be done?

11 A. I think I've answered
12 this question. He indicated that if the City
13 implemented, and I reference this later in the
14 report, if the City implementations his 2015
15 recommendations, the road is reasonably safe.

16 Just looking at the ones that
17 haven't been implemented -- Registrar, if you
18 could go back to image 7 of the opinion. It looks
19 like, to his knowledge at least as he's conveying
20 it to you, there are a number of measures that
21 have been fully implemented. In terms of what's
22 been partially implemented, there's slippery when
23 wet signs that were not placed at 1 kilometre
24 intervals.

25 Then if you go to image 8,

1 Registrar. Merge signs and guardrail end
2 treatments were partially implemented, and not
3 implemented are rain-activated flashing lights on
4 slippery when wet signs in high collision areas
5 and speed feedback signs.

6 Mr. Malone is saying, well, if
7 the City goes off and fully implements those few
8 items, that's all that needs to be done, in terms
9 of safety measures?

10 A. Yeah, and he reiterated
11 that very opinion in our June -- January 29th big
12 group teleconference.

13 Q. In your notes, you'll see
14 at the bottom of this page that there's reference
15 to stone mastic asphalt, or SMA. I think it
16 says --

17 A. Aggregate.

18 Q. -- "aggregate larger,
19 less fines and small stones"; is that right?

20 A. Yes.

21 Q. If you could go to image
22 4, Registrar. Sorry, of the handwritten notes.
23 And then there's some further notes about SMA.
24 Registrar, if you could go to image 8 on the draft
25 opinion. At the bottom of page 8 in your draft

1 opinion, there's a discussion about SMA. I take
2 it that that information is all conveyed from
3 Mr. Malone to you about SMA?

4 A. Yes.

5 Q. Registrar, if you could
6 go to the next page in the handwritten notes,
7 please. Here there's a handwritten note,
8 Mr. Boghosian, where you say "Gary Moore involved
9 in DES and develop of the RHVP"?

10 A. Yes.

11 Q. DES, I take it that's
12 design?

13 A. Yeah.

14 Q. So this is something
15 Mr. Malone is conveying to you?

16 A. Yes.

17 Q. It says, "very
18 strong-willed individual, refused to accept road
19 might be the problem." And then it says, "very
20 def'ive about" --

21 A. "Re condition."

22 Q. Re condition. Okay. So
23 what's that referring to?

24 A. Well, I do recall more
25 about what Brian said about this at the time. The

1 word "very def'ive" is, without a doubt in mind,
2 defensive, and what Brian conveyed was that Gary
3 kept wanting to blame speeding for the elevated
4 accident history or collision rates, rather than
5 the condition of the road, and that was context of
6 him saying he was very defensive regarding its
7 condition, that he wanted to blame drivers and not
8 the road.

9 Q. Did he give you some
10 context about in what context he was blaming
11 drivers? Was that in discussions with CIMA?

12 A. I don't know. I didn't
13 delve any further.

14 Q. So did Mr. Malone talk
15 about what information he had previously provided
16 to Mr. Moore about the wet weather collision
17 issue?

18 A. I'm sorry, say that
19 again.

20 Q. Did Mr. Malone give you
21 any further information about what discussions he
22 may have had with Mr. Moore about the wet weather
23 collisions and the contributing factors?

24 A. Well, he had Mr. Malone's
25 2015 report, which addresses those very things.

1 Q. Right, but in terms of
2 the feedback that Mr. Malone got from Mr. Moore?

3 A. In the context of what I
4 just said, I have no idea what the relative timing
5 was of whenever Brian formed the impression that
6 Gary was blaming drivers for speeding and not the
7 road and his delivery of his report. I just
8 didn't get into that level of detail.

9 Q. So Mr. Malone testified
10 earlier this weekend, and he believed -- his
11 evidence is that he believes that he may have said
12 that Mr. Moore was very definitive regarding the
13 condition of the road. I just wanted to put that
14 out to you. Is it possible that --

15 A. No.

16 Q. -- Mr. Malone said
17 definitive --

18 A. Absolutely -- I would say
19 absolutely not because I remember distinctly it
20 was in the context of blaming drivers for speeding
21 versus the condition of the road, and whether
22 Brian used the word defensive or I inferred it
23 from the explanation, my note definitely intends
24 to mean defensive.

25 Q. Okay. So it's possible

1 Mr. Malone may not have used the word defensive,
2 but you made note defensive because that was
3 certainly the impression that you got from the
4 conversation?

5 A. Yes.

6 Q. Sorry, Registrar, could
7 you go back to image 1 of the handwritten note.
8 Sorry to go backwards, Mr. Boghosian, but I
9 realize I forgot something. The very first note
10 here, it says "lighting." Do you recall what
11 discussions you had with Mr. Malone about
12 lighting?

13 A. That he was in the course
14 of or had completed an illumination study of the
15 Red Hill, but I don't have any more specifics.

16 Q. So you don't recall if he
17 gave you any further information about what that
18 study was finding?

19 A. No, but I recall writing
20 somewhere, maybe in one of the reports, either the
21 draft or the final, that he had recommended
22 against illumination along the Red Hill.

23 Q. Where did you get that
24 information from? Was it from Mr. Malone telling
25 you that on the call?

1 A. I don't know. I don't
2 know if it was there or if it may have been in his
3 draft November 2018 report.

4 Q. Because, just on that, in
5 the 2015 CIMA report, there is a recommendation
6 with respect to continuous illumination that's
7 considered to be a long-term recommendation. Does
8 that ring a bell to you?

9 A. No. No, I didn't review
10 the 2015 report in recent days, so I don't
11 remember.

12 Q. But in terms of the note
13 in your draft report that said that there was no
14 recommendation for lighting, your recollection is
15 that either Mr. Malone told you that on
16 December 11 or it was from you reading the draft
17 roadside safety assessment?

18 A. Must have been.

19 Q. Did you talk to
20 Mr. Malone about -- against speed enforcement on
21 this call, do you recall?

22 A. I would have to look
23 at -- could we flip to page 7 of the --

24 Q. The draft opinion?

25 A. Yeah, fully implemented

1 enhanced speed enforcement. So yes, we did talk
2 about it.

3 Q. Just in the context of
4 it's already been implemented, not that there
5 would be additional speed enforcement required?

6 A. Well, I take it to mean
7 he was under the impression that it was happening.

8 Q. We've spent some time
9 discussing the call that you had with Mr. Malone
10 on December 11th. Is there anything else apart
11 from what we've already covered that you remember
12 from this call?

13 A. No.

14 Q. While we're on the draft
15 opinion, so you do set out your summary of the
16 call with Mr. Malone at pages 7 through 9 of the
17 draft opinion. In that summary, there's no
18 reference to you sharing the Tradewind results
19 with Mr. Malone or Mr. Malone saying that no
20 additional safety measures are required, but you
21 did mention earlier that there are other parts of
22 your report that refer to the call?

23 A. Well, I believe there are
24 references in the report. In subsequent notes,
25 there are things that I'll point, in my mind, to

1 those definitely having been discussed. It's
2 unfortunate that I likely didn't replicate notes
3 about the points I had made before I called him
4 that I wanted to discuss with him. There may have
5 even been some notes of things he said on that
6 sheet.

7 It's unfortunate I didn't save
8 it, but without a doubt, what I've said about to
9 the extent I disclosed the content or the gist of
10 the Tradewind report and the Golder report, that
11 absolutely happened on December 11, 2018.

12 Q. I think you testified
13 that you -- coming out of this call, then, I take
14 it that you felt like you had enough information
15 about whether or not CIMA had an opinion on
16 whether interim safety measures were required?

17 A. I came out of the call
18 with the understanding from Mr. Malone that if the
19 measures set out in his 2015 report were
20 implemented by the City, that we would have a
21 safe -- a reasonably safe road.

22 Q. What does "reasonably
23 safe" mean?

24 A. Well, it's a standard of
25 care in Ontario. I mean, not perfect but

1 reasonably safe.

2 Q. So when you say
3 reasonably safe, it's meeting the standard of care
4 in Ontario?

5 A. Yeah.

6 Q. So were there any next
7 steps for Mr. Malone coming out of the call? Did
8 you feel you had gotten everything you needed?

9 A. I had asked him for his
10 draft roadside safety assessment report, which he
11 sent me eventually. Nothing else that I can
12 recall.

13 Q. Did you contemplate
14 retaining him, formally, to provide a more formal
15 opinion about interim safety measures?

16 A. Not at this time.

17 Q. You mentioned that
18 Mr. Malone told you that he didn't have the
19 Tradewind results when you provided them to him.
20 Did he mention to you having received some
21 friction testing results from Mr. McGuire in
22 August or September of that year?

23 A. No.

24 Q. I take it after you spoke
25 with Mr. Malone -- and it looks like this call was

1 at 12:30 p.m. on December 11th, 2018?

2 A. Yes.

3 Q. Do you recall having a
4 subsequent call with Ms. Auty and Mr. Sabo that
5 day?

6 A. I don't.

7 Q. We don't have any notes
8 from a call on December 11th from you, but we do
9 have some notes from Ms. Auty and Mr. Sabo. So
10 I'm just going to put them up on the screen, in
11 case it assists with your recollection of having
12 that call. Registrar, if we could pull up
13 HAM64364. And next to it if we could pull up
14 HAM64366.

15 Mr. Boghosian, just for your
16 reference, the notes on the left are the notes of
17 Ms. Auty, and the notes on the right are the notes
18 of Mr. Sabo.

19 A. There it is. "Spoke to
20 Brian for 45 minutes." That's approximately my
21 recollection. See, "no change in interim
22 recommendation in 2015."

23 So after putting these
24 friction test reports to him, that's what he said.
25 Is there more than one page of the right-hand

1 notes?

2 Q. I believe that there is,
3 yes. Registrar, if you can go to the next page.

4 THE REGISTRAR: Mr. Boghosian,
5 Counsel, this is the Registrar. There is one more
6 page if you would like to see it for the
7 right-hand side.

8 THE WITNESS: I've read both
9 sets of notes.

10 BY MS. LIE:

11 Q. Before we get into the
12 notes, did you have any dealings with Mr. Sabo
13 before December 11, 2018?

14 A. I dealt with Ron on other
15 matters. Yes, I actively had a matter with him at
16 that time unrelated to the Red Hill.

17 Q. But with respect to the
18 Red Hill, was this your first time having any
19 communications with Mr. Sabo on the Red Hill?

20 A. I believe so.

21 Q. Having reviewed these
22 notes, does that assist with refreshing your
23 memory about a call with Ms. Auty and Mr. Sabo on
24 December 11th, 2018?

25 A. It looks like I had a

1 call and I debriefed them on my discussion with
2 Mr. Malone.

3 Q. Okay, but do you remember
4 it, or you're just basing that on reading the
5 notes?

6 A. I don't have an
7 independent recollection of this call.

8 Q. Do you recall telling Mr.
9 Sabo and Ms. Auty about Mr. Malone's ranking of
10 the contributing factors to wet weather
11 collisions? There's a note in Ms. Auty's -- about
12 that.

13 A. Yeah.

14 Q. But do you remember
15 telling them that it was a ranking?

16 A. I don't recall telling
17 them in a conversation on this date. I remember
18 Brian telling me and I remember putting it in my
19 report. I don't have a specific recollection of
20 this call.

21 Q. I know you've said you
22 don't have a specific recollection. I'm just
23 going to ask one more question. Where it says --
24 in Ms. Auty's note, it says -- near about like
25 nine lines down, it says "friction testing?"

1 Done." Do you recall talking to them about
2 friction testing and whether or not that was
3 actually done?

4 A. I don't recall anything
5 about this call. I'm sorry.

6 Q. No, that's fine.

7 A. I don't have a
8 recollection.

9 Q. Okay. At the bottom of
10 Mr. Sabo's notes, it says, "Brian isn't an expert
11 in materials." Is that something that you were
12 aware of? Or that Mr. Malone had conveyed to you
13 on the December 11th call? And if it helps, you
14 can also go to the next page in the notes on the
15 right.

16 A. Okay. I certainly would
17 think that of the three of us, I would have the
18 most -- I don't know where Nicole were. Ron would
19 possibly know whether Brian had a background in
20 materials. So that had to come from me, and it
21 possibly had been communicated by Brian in this
22 December 11, 2018, where he prefaced the whole
23 discussion of SMA on, well, this isn't my area of
24 expertise, but here's what I think I know.

25 Q. So your recollection is

1 in the context of discussion about SMA, he gave
2 you that caveat?

3 A. I believe so.

4 Q. There's a reference at
5 the bottom of Ms. Auty's notes that says "Thursday
6 12/1 p.m." Do you recall if you had set up a
7 further time for discussion?

8 A. No.

9 Q. Earlier we had seen the
10 December 19th date in your December 7th, 2018
11 notes. Do you recall there ever being a further
12 discussion about timing about when you would get
13 back to the City with your opinion?

14 A. No. Well, getting -- I
15 mean -- no. Like, finalizing it when we were
16 getting close to the council meetings, yes, I
17 remember that I was told I needed to finalize it
18 because it would be done for that purpose and --
19 but I don't recall anything before that point in
20 time.

21 Q. Do you recall if you told
22 Ms. Auty and Mr. Sabo that you had shared the
23 Tradewind results?

24 A. No. During this call,
25 no.

1 Q. Following this call, what
2 were the next steps from your perspective?

3 A. I can't remember. I
4 don't remember this call. My next step was to get
5 Brian's roadside safety assessment draft report,
6 incorporate that into the report which was -- was
7 in progress at that point in draft, and continue
8 to work on my conclusions and recommendations.

9 MS. LIE: Commissioner. I
10 think this would be a good time for the lunch
11 break.

12 JUSTICE WILTON-SIEGEL: I
13 think so too. Let's take a break till 2:15.

14 --- Recess taken at 1:03 p.m.

15 --- Upon resuming at 2:15 p.m.

16 BY MS. LIE:

17 Q. Registrar, can we pull up
18 overview document 9A, page 241. Mr. Boghosian,
19 you'll see at paragraph 566 there's an e-mail
20 exchange between Mr. McGuire and Ms. MacNeil on
21 December 12th, 2018, regarding arranging a call
22 with Mr. Malone. You're not copied on this
23 e-mail?

24 A. No.

25 Q. Were you aware of any

1 direction from legal services to public works
2 staff not to contact CIMA?

3 A. No.

4 Q. Had you had any
5 discussions at all about who should be contacting
6 CIMA by this point?

7 A. No.

8 Q. So I know that you had
9 a -- Ms. MacNeil was on the call on December 7,
10 2018. Had you had any discussions or
11 communications with Ms. MacNeil since then?

12 A. I don't believe so.

13 Q. Do you recall if you had
14 any discussions or communications with Ms. MacNeil
15 after December 7th at all?

16 A. No, I don't believe so.

17 Q. Registrar, if you could
18 go to page 250 of the overview document.

19 So, Mr. Boghosian, you'll see
20 at paragraph 591, there's a transcription of a
21 voice mail message that Mr. Soldo received from
22 Mr. Malone. You're not copied on this, but you
23 can just have a look at it.

24 A. Okay, I see the e-mail.

25 Q. The last line refers to

1 Gord confirming that he can provide the lighting
2 report. Did you have discussions with Mr. Malone
3 about you getting a copy of the lighting report?

4 A. Sorry, did I discuss with
5 Mr. Malone getting a copy of the lighting report?

6 Q. Yes.

7 A. I don't think so.

8 Q. I take it you never
9 received the lighting study?

10 A. I don't believe so.

11 Q. Other than your e-mails
12 with Mr. Malone to obtain the roadside safety
13 assessment, did you have any other discussions or
14 communications with Mr. Malone in December of 2018
15 after that December 11th call?

16 A. No.

17 Q. So, Registrar, if you
18 could pull up HAM62512. Here we have your draft
19 opinion that you provide to Ms. Auty on
20 December 13th. On pages 1 and 2 you've set out
21 what documents you've reviewed, and it looks like
22 you've reviewed seven documents. On page 2, under
23 "Six Year Performance Review of RHVP by Golder
24 Associates dated January 2014," I take it you did
25 review the Golder report?

1 A. Yes.

2 Q. And this is a summary of
3 it. The Golder report refers to some friction
4 numbers that were measured in 2007. Do you recall
5 any discussions with anyone about testing that was
6 conducted by the MTO in 2007?

7 A. I don't recall. I mean,
8 I have a vague recollection of being apprised of
9 it. I don't know at what point, and I don't have
10 any details.

11 Q. But I take it you never
12 received the MTO 2007 numbers?

13 A. No.

14 Q. To your knowledge, you
15 weren't asked to do anything with -- about the MTO
16 friction testing?

17 A. No.

18 Q. Registrar, if you could
19 go to page 5 of this document. So under section
20 4, the e-mail from Golder to the City dated
21 November 28, 2018, it says:

22 "The author points out that
23 the testing was carried out in
24 January 2018 and was presented
25 to the City in March of 2018,

1 which the new director of
2 works, Gord McGuire, was
3 apparently unaware of".

4 Where did you get that
5 information about the fact that Mr. McGuire was
6 unaware of the testing?

7 A. I don't know, at this
8 point.

9 Q. I mean, you had spoken
10 with Ms. Auty and Ms. MacNeil, but you hadn't had
11 any discussions with anyone else at the City?

12 A. No.

13 Q. Fair to assume that it
14 likely came from Ms. Auty or Ms. MacNeil on the
15 December 7th call?

16 A. I don't know.

17 Q. Registrar, if you could
18 pull up pages 5 and 6 together.

19 Under number 5, it refers to
20 the RHVP and LINC collision countermeasures,
21 undated, and it refers to appendix A is a report
22 of PW18008. I take it you were provided with some
23 information from public works about
24 (indiscernible) measures had been implemented?

25 A. I was definitely provided

1 with it. I obviously summarized it. I am trying
2 to recall if I requested this or -- did I request
3 this be done or it had been already done.

4 Q. You mean requested
5 appendix A or --

6 A. Requested that the City
7 provide its position on what of CIMA's 2015 report
8 recommendations had and had not been implemented.

9 Q. So you don't recall,
10 sitting here today, how is it that you came to
11 obtain appendix A?

12 A. Correct.

13 Q. Okay. And --

14 A. Well, the only way would
15 have been whether -- either Nicole, Ron Sabo, or
16 possibly Byrdena. I don't think she was involved
17 after -- you know, after that first call, but it
18 would have come from one of them. It didn't come
19 to me from works.

20 Q. Right. And you know
21 what, to be fair, Mr. Boghosian, there is an
22 e-mail I think that we have of Ms. Auty forwarding
23 that information to you. It came from Ms. Auty,
24 but I guess -- is your evidence that you're not
25 sure if you asked for it or how that request came

1 about?

2 A. I do know at one point I
3 asked her to find out from works what their
4 position was as to what had been implemented and
5 what had not been with respect to the CIMA 2015
6 report recommendations.

7 Q. Okay. So that likely
8 would have occurred in December of 2018?

9 A. Yes.

10 Q. You get the appendix A
11 likely in response to that request?

12 A. I believe so.

13 Q. At the top of page 6,
14 you'll see it says:

15 "The report also notes that
16 pavement friction testing was
17 carried out; however, we are
18 unaware of any pavement
19 friction testing since 2013."

20 A. Okay, I see that.

21 Q. At this point, I take it
22 you are aware that Golder had done some additional
23 testing in 2017?

24 A. Yes.

25 Q. So what was, I guess,

1 your understanding of the scope of Golder's 2017
2 testing?

3 A. Well, I know the polished
4 stone value, and then the pendulum tests were
5 carried out, I believe, in 2017. I mean, I didn't
6 re-review the engineers' reports in preparation
7 for today.

8 Q. I'm just -- because where
9 it says "we are unaware of any pavement friction
10 testing since 2013," I'm just wondering if the
11 2017 Golder testing would have qualified in your
12 mind as pavement friction testing?

13 A. I'm not sure, sitting
14 here today.

15 Q. Registrar, if you could
16 pull up 6 and 7, images 6 and 7.

17 A. I mean, just one heading
18 back, I summarized the Golder 2018 memo, which
19 sets out the testing to the extent they carried it
20 out.

21 Q. And then at pages 6 and
22 going into the beginning of 7, there's a summary
23 of the RHVP road safety assessment, the draft that
24 you received. Do you recall if you had any
25 discussions with Ms. Auty about the scope of the

1 roadside safety assessment?

2 A. No.

3 Q. You don't recall or you
4 didn't have any discussions?

5 A. Recall.

6 Q. Did you ever get a copy
7 of the final roadside safety assessment once it
8 was done? This would have been in January
9 of 2019.

10 A. I don't believe so.

11 Q. Based on your
12 understanding of the roadside safety assessment
13 that CIMA was preparing, did you have any
14 expectation or understanding about whether or not
15 CIMA would be addressing the results from the
16 Tradewind report as part of the roadside safety
17 assessment?

18 A. No, I did not have an
19 understanding that they would be. This report
20 predates Mr. Malone's knowledge of the Tradewind
21 friction testing results.

22 Q. Right, the draft. But in
23 terms of -- because the final had yet to be
24 delivered, and so I was just wondering if you had
25 any belief or understanding of whether or not

1 Mr. Malone would be addressing the Tradewind
2 results in the final report?

3 A. No, and I don't think it
4 would be within the mandate of the roadside safety
5 assessment to do so.

6 Q. Registrar, if you could
7 go to image 9. No, sorry, image 10. Sorry, --
8 image 9. My apologies. Maybe we can put 9 and 10
9 together.

10 On page 9, under "Significant
11 Findings From Experts' Evaluations of the RHVP",
12 you'll see in the second paragraph you say:

13 "The 2015 CIMA report
14 identified a significant
15 accident history, particularly
16 with wet road conditions;
17 however, appeared to primarily
18 attribute this problem to
19 excessive speed."

20 So I think you testified
21 before lunch today that your impression from the
22 2015 CIMA report was that the road surface was the
23 primary contributing factor, even if it wasn't
24 listed as such in the 2015 CIMA report.

25 A. Well, I don't know if --

1 I can't speak for Mr. Malone. What I reported
2 about what he said during our call on December 11,
3 2018, is accurate. What I'm reporting here is
4 what he said in a report from several years
5 earlier, where he apparently had a different view.
6 You would have to ask Mr. Malone why there's a
7 discrepancy. I'm just reporting what I've read
8 and been told.

9 Q. I had thought your
10 earlier evidence was that-- from your reading of
11 the 2015 CIMA report, you had also understood that
12 --

13 A. No. I didn't say that.
14 I certainly did not say that.

15 Q. Okay. Well, I mean, the
16 record is what it is. So your evidence is that
17 your review of the 2015 CIMA report indicates that
18 CIMA appeared to primarily attribute the wet
19 weather collisions to excessive speed, that's in
20 2015, but on the call on December 11th,
21 Mr. Malone said that the greatest contributing
22 factor was the road surface?

23 A. Yes.

24 Q. On page 10, you'll see in
25 the second paragraph under "The City's Response to

1 the Experts' Findings and Recommendations":

2 "In our opinion, the friction
3 testing in 2013 provide no
4 basis, in and of itself, for
5 any action to be taken, partly
6 because Golder made no
7 recommendation to the City
8 about addressing the issue".

9 Just on that, were you ever
10 advised that Golder had, in fact, provided a
11 recommendation for microsurfacing to the City in
12 its 2014 draft report to address the low friction
13 issue?

14 A. Well, I had the 2014
15 report.

16 Q. Right. And in the 2014
17 report, do you recall that Golder had made a
18 recommendation for microsurfacing to address the
19 low friction issue?

20 A. No, I would not agree
21 that they did it to address the low friction
22 issue. They said we'll do it to address the
23 cracking issue. Oh, and incidentally, it might
24 have some positive benefit for friction. That's
25 how I read that report.

1 Q. I see. Okay. So when
2 you say that it made no recommendations to the
3 City about addressing the issues, it was about the
4 specific low friction issue there were no
5 recommendations?

6 A. No specific
7 recommendations to that. Almost as an
8 afterthought they said, oh, and by the way, by
9 doing this for the cracking problem, you know, you
10 might improve friction.

11 Q. Did you have any
12 discussions with anyone at the City about any
13 recommendation that Golder made in 2014?

14 A. No.

15 Q. And then it goes on to
16 say:

17 "And also because the 40
18 friction number apparently has
19 no basis in industry standards
20 recognized in Ontario per our
21 conversation with Brian
22 Malone."

23 I think that you covered that
24 issue before the break, right, in terms of your
25 conversation with Mr. Malone.

1 A. Yes.

2 Q. Did you ever talk to
3 Mr. Malone about any rehabilitation or road
4 surfacing measures that might be taken?

5 A. The road was about to be
6 resurfaced in a few months, like at the next
7 available opportunity, so why would I be
8 discussing something like that with Mr. Malone?

9 Q. Because it might be an
10 interim safety measure?

11 A. Do you know how much it
12 costs to do things like that? That's many, many
13 tens of millions of dollars, and they are about to
14 spend a couple hundred million dollars to
15 resurface --

16 JUSTICE WILTON-SIEGEL: Okay.
17 Mr. Boghosian, I understand that your frustrated
18 with the speed with which we're proceeding through
19 these questions, but this isn't really a forum for
20 engaging in discussion with counsel. I would
21 appreciate it if -- I think we'll all move more
22 quickly if you just restrict your answers to the
23 questions that are specifically put to you. Okay.

24 THE WITNESS: Thank you. The
25 answer is no.

1 JUSTICE WILTON-SIEGEL: I

2 think that's the right answer in the
3 circumstances.

4 BY MS. LIE:

5 Q. Registrar, if you could
6 go back to image 1. In the very first paragraph,
7 where you talk about what you're doing in your
8 opinion, at the very end of the sentence, you say:

9 "And the interim steps to
10 address safety of users of the
11 RHVP prior to the resurfacing
12 of the highway expected to
13 commence in June 2019."

14 Did you consider that your
15 draft opinion did provide the City with advice or
16 your opinion on the interim steps to address
17 safety of users, pending the resurfacing?

18 A. Yes.

19 Q. In your draft opinion, I
20 think we touched on this a little bit earlier,
21 there is no explicit reference to the fact that
22 you have provided Mr. Malone with the Tradewind
23 results and his views on whether or not that
24 affected his opinion on interim safety. I'm just
25 wondering if there is any reason why that is not

1 set out clearly in the draft opinion?

2 A. Well, I do reference that
3 the 40 standard -- UK standard had no application,
4 and I reference Mr. Malone as having advised that.
5 So there's a reference to it.

6 Q. There is that reference.
7 I think we just looked at it on page 10. But
8 there's no explicit statement that says, I told
9 Mr. Malone about the Tradewind results and it
10 didn't affect any recommendations for interim
11 safety?

12 A. I believe that you're
13 right, that it's not explicitly set out that way
14 in this report.

15 Q. Is there any reason why
16 it's not?

17 A. Because in my view, and I
18 guess I haven't made this clear enough yet, the
19 Tradewind report added nothing in -- you know,
20 given the content of the 2015 CIMA report,
21 Mr. Malone was all over the coefficient of
22 friction issue in wet driving conditions in
23 particular, and to me, he was all over the issue,
24 and he acknowledged that the road surface
25 condition was the major contributor to the high

1 collision rate.

2 So, you know, it becomes
3 irrelevant in terms of the actual issue in my
4 view. And I think Brian was of the same view.
5 That's the sense I had, that friction testing was
6 rather irrelevant given findings he made in 2015
7 and recommendation he made based on those
8 findings.

9 Q. Did you ever convey that
10 to anyone at the City, that you and Mr. Malone
11 considered the Tradewind results to add nothing to
12 this analysis?

13 A. I think I kind of refer
14 to it when I say that the 40 standard has no
15 application in Ontario and is therefore
16 irrelevant. I would have to go back through my
17 notes to see if there was a mention of that to
18 Nicole. Possibly it might have happened in the
19 conversation I had with her on December 11th after
20 I talked to Mr. Malone.

21 Q. We had gone over that
22 before lunch. I think we had shown you -- you
23 don't have notes of that call, so we showed you
24 the notes of Ms. Auty and Mr. Sabo, and I think
25 your evidence was that you don't remember that

1 call at all.

2 A. That's true.

3 Q. So sitting here today,
4 you don't have a memory of conveying that the
5 Tradewind report added nothing to the analysis,
6 with the exception of what we've described in the
7 draft opinion at page 10?

8 A. I believe that's correct.

9 Q. You send your draft
10 opinion to Ms. Auty on December 13th, 2018. Did
11 you have any understanding of who she would be
12 sharing your draft opinion with?

13 A. No.

14 Q. Did you have any
15 discussions with Ms. Auty about what public works
16 was doing at the time, with respect to the Red
17 Hill in December of 2018?

18 A. I believe that they
19 compiled a list of what they had and hadn't done,
20 based on the 2015 CIMA recommendations. I have a
21 vague recollection that they were going out to do
22 a few more things that hadn't been done, but
23 beyond that, nothing. And again, this would all
24 be either learned at the January 30th call where
25 works was involved or through Nicole.

1 Q. Okay, but in December
2 of 2018, you didn't have any understanding of what
3 public works was doing on the Red Hill?

4 A. I believe that's correct.

5 Q. We know that your
6 recommendations, as set out in your draft opinion,
7 is that the City should go off and implement all
8 of the CIMA recommendations from its 2015 report
9 to the extent they aren't already fully
10 implemented.

11 A. Yes.

12 Q. Did you have any
13 discussions with Ms. Auty about ensuring that that
14 was done?

15 A. Yes. Well, I think it
16 was clear that I had asked works to determine what
17 had and had not been done and to do the things
18 that were yet to be done, to the extent they could
19 be done at that point.

20 Q. That's clear from your
21 opinion. Do you remember having a call with her
22 or a discussion about that?

23 A. I have a general
24 recollection of having that conversation. I don't
25 have a specific recollection of when that was.

1 Q. So do you recall having
2 any conversation with Ms. Auty after December 11
3 until the end of the year?

4 A. No.

5 Q. Registrar, if we could
6 pull up overview document 9A, page 256. If you
7 could call up the note that says "call with
8 David." Thanks.

9 Mr. Boghosian, just for your
10 context, this is a transcription of a note from
11 Ms. Auty. It is undated, but I just thought I
12 would show this to you in case it triggers any
13 memory for you about when you may have had a
14 further discussion with Ms. Auty and about what.

15 A. It's not refreshing my
16 memory.

17 Q. Do you recall receiving
18 comments from Ms. Auty about your draft opinion?

19 A. No.

20 Q. You don't recall or it
21 didn't happen?

22 A. I don't believe it
23 happened. I certainly don't recall any comments
24 that she made.

25 Q. So from your

1 perspective -- this is December 13th. You sent
2 over your draft opinion. Going into the holidays,
3 into the new year, where did things stand from
4 your perspective? Was there anything else for you
5 to do?

6 A. I think I was just
7 waiting to hear back with comments on my draft
8 report.

9 Q. You don't recall ever
10 hearing back, except, I guess much later on, when
11 you're told to finalize your report; is that fair?

12 A. Yes.

13 Q. Did you have any
14 understanding of what Ms. Auty was doing with your
15 draft report during this time?

16 A. No.

17 Q. Registrar, could we pull
18 up HAM64342. Then if we could also put up next to
19 it HAM64361.

20 Mr. Boghosian, here are some
21 notes from January 8th, 2019. These are your
22 handwritten notes and the transcription next to
23 it.

24 Before the January 8th, 2019
25 call, do you recall having any discussions with

1 Ms. Auty leading up to this call, apart from
2 scheduling the call?

3 A. From December 13th to
4 this date?

5 Q. Correct.

6 A. I don't have a
7 recollection of any other calls or communications
8 with her.

9 Q. So do you remember the
10 January 8th, 2019 call with Ms. Auty?

11 A. Vaguely.

12 Q. What do you remember
13 about the call?

14 A. I don't have a
15 recollection beyond what's in these notes.

16 Q. Do you recall if anyone
17 else was on the call? Was Mr. Sabo there?

18 A. I don't recall that.

19 Q. I know you said that you
20 don't have any recollection beyond what's set out
21 here, but do you recall what the purpose of the
22 call was?

23 A. I don't.

24 Q. There's a reference to a
25 GIC meeting on January 16th. Do you recall having

1 discussions with Ms. Auty at this point about any
2 report to council?

3 A. No, not that I was to be
4 involved in.

5 Q. Had you had any
6 discussions about how the report to council would
7 go?

8 A. No.

9 Q. Just immediately above
10 that note it says, "Further testing listed been
11 done, but no one knew about it." Do you recall
12 what that might be referring to?

13 A. I'm not sure what that
14 testing is referring to.

15 Q. Where it says "Gary's
16 concern top down cracking"?

17 A. Yes.

18 Q. Do you recall what that
19 was referring to?

20 A. Well, Golder's 2014
21 report had identified top down cracking as an
22 issue.

23 Q. This is something that
24 Ms. Auty was conveying to you?

25 A. She must have been. I

1 never spoke to Gary. I have no idea what his
2 concern was.

3 Q. And then "cover greater
4 than dollar on experts"?

5 A. I don't know.

6 Q. And then there's
7 reference to "stand in UK." Do you recall having
8 any discussion about the UK standard on this call?

9 A. I don't.

10 Q. There's also a reference
11 to the 2017 Golder friction testing. It says
12 "referenced in November 18 staff report." Do you
13 recall if Ms. Auty told you at this time that they
14 had received a draft report from Golder from the
15 2017 testing?

16 A. Well, she's telling me
17 what it says, I believe. I'm not sure if I had
18 the 2017 Golder report at this point.

19 Q. So we know that you had
20 the November 28, 2018 e-mail, and so that was
21 going to be my question. We know that you
22 received the December 2018 report from Golder on
23 January 30th, 2019. I'm just wondering if you
24 recall receiving it any earlier than that?

25 A. I don't recall.

1 Q. Do you recall any
2 discussion about what the third pendulum test was?

3 A. Yeah, I think I just
4 forget the word "inconclusive."

5 Q. So that would have been
6 something that --

7 A. Or "unreliable." I'm
8 sorry?

9 Q. That would have been
10 something Ms. Auty was conveying to you, that the
11 third pendulum test was unreliable?

12 A. Inconclusive.

13 Q. Inconclusive. Okay.

14 A. When I got the report, I
15 would have used -- I do have a recollection of
16 that word being used. When I got the report, I
17 thought the word unreliable would have been more
18 accurate to describe the pendulum test because of
19 the weather conditions at the time.

20 Q. Okay, but this is based
21 on your knowledge now having seen the report, not
22 necessarily back in January of 2019?

23 A. Exactly.

24 Q. So the draft report from
25 Golder, from its 2017 testing, recommended

1 carrying out shot blasting and skidabrading. Did
2 you have any discussions with anyone at the City
3 about that recommendation?

4 A. No.

5 Q. Did you talk to Ms. Auty
6 at this point, this is January 8th, 2019, about
7 sharing the results -- the draft Golder report
8 from its December 2017 testing with CIMA?

9 A. No.

10 Q. There's a reference to a
11 November 2018 staff report. Do you know what
12 report that's referring to?

13 A. No.

14 Q. Registrar, could we pull
15 up HAM64376. So, Mr. Boghosian, this is a note
16 from Mr. Sabo dated January 8th, 2019. I think
17 you had testified that you couldn't remember if
18 Mr. Sabo was on the call. I'll just let you have
19 a chance to review it.

20 Do you recall if there was any
21 discussion about whether the road was safe on
22 January 8th, 2019?

23 A. No.

24 Q. You don't recall or there
25 was no discussion?

1 A. I don't recall.

2 Q. On the January 8th, 2019
3 call, did you talk -- do you recall if you talked
4 to Ms. Auty about your draft opinion and any
5 comments she might have?

6 A. If she had made some
7 substantive comments, I would have noted them and
8 they're not noted, so I would say that did not
9 come up.

10 Q. So Ms. Auty testified at
11 the inquiry in October that on the January 8th,
12 2019 call, she had a discussion with you regarding
13 the ranking that you had set out in your draft
14 opinion about how Mr. Malone had ranked the
15 contributing factors to wet weather collisions.
16 Do you recall talking to Ms. Auty about that
17 issue?

18 A. No, not at that time.

19 Q. Did you ever have a
20 discussion with Ms. Auty about that specific
21 issue, the ranking?

22 A. I don't have a specific
23 recollection. I have a vague recollection of
24 seeing reference to that in notes. It may have
25 been just the call right after I had spoken to

1 Brian on December 11th.

2 Q. So Ms. Auty's evidence
3 was that on January 8th, 2019, you clarified to
4 her that CIMA had not, in fact, given the ranking
5 that was set out in your draft opinion about
6 contributing factors?

7 A. I don't recall that, and
8 I don't believe that to be the case.

9 Q. Because your evidence
10 earlier today was that CIMA -- Mr. Malone did
11 provide a ranking, right?

12 A. At the very minimum, he
13 specifically said that item number 4 on that list
14 was at the top. And I never said anything
15 otherwise.

16 Q. You don't recall any
17 discussions that could have given Ms. Auty the
18 impression that it was not a ranked list of
19 contributing factors?

20 A. The only thing I might
21 have said is that for certain, the one I rank
22 first was what he said was first, and that the
23 other three he didn't necessarily order after
24 that, because that may have been the case, but
25 certainly with respect to the number one ranked

1 issue, my note was clear, my independent
2 recollection of that is clear, and I never told
3 anybody otherwise.

4 Q. When you say that it's
5 possible that you could have referred to the other
6 three as not being ranked as among them, do you
7 recall that conversation with Ms. Auty, or are you
8 just thinking that's it's possible that may have
9 been because that's true?

10 A. It's possible that
11 that -- I may have said something about that.

12 Q. Okay. The inquiry's
13 records indicate that on January 8th, 2019, Mr.
14 Sabo shared your draft opinion with Mr. McLennan,
15 and ultimately I think Ms. Swaby got a copy as
16 well. Did you have any discussions with Mr.
17 McLennan or Ms. Swaby at all about your draft
18 opinion?

19 A. No, not about the
20 opinion.

21 Q. Just about what you had
22 described earlier this morning?

23 A. Yeah.

24 Q. Did you have any
25 discussions with Mr. Sabo or anyone else at the

1 City about contacting the insurer and when the
2 insurer should be advised?

3 A. I have a vague
4 recollection of talking to John McLennan about
5 that. Maybe when I spoke to him in the one
6 conversation that I recall having with him about
7 the whole Red Hill matter where he was talking
8 about having to do a report to the insurer about
9 the Tradewind report and the possible consequences
10 for existing and future litigation. I did not
11 have a call -- a discussion like that with Nicole
12 or Ron.

13 Q. So what did you say to
14 Mr. McLennan in that context?

15 A. I probably just agreed
16 with him that, yes, he better put them on notice
17 as soon as possible.

18 Q. Did you have any
19 involvement in the decision on the timing of the
20 disclosure of the Tradewind report to council?
21 Sorry, did you give an answer?

22 A. I said no.

23 Q. Okay. I did not hear
24 that. Did you have any involvement or any
25 discussions about the timing of the release of

1 documents to the FOI office?

2 A. No.

3 Q. Registrar, if we could
4 pull up overview document 9A, page 325. At
5 paragraph 757 and 758, you'll see that there are
6 some e-mails about a draft.

7 This is the draft report that
8 Ms. Auty was going to make to council, draft
9 report LS19007. I'll just give you an opportunity
10 to review those two paragraphs?

11 A. 757 and 758?

12 Q. That's correct.

13 A. Okay.

14 Q. In the first paragraph of
15 your e-mail, there's a reference to the UK
16 friction standard, which we've covered off this
17 morning. And then it says:

18 "I think this point somewhat
19 mitigates the failure to
20 disclose the Tradewind report,
21 and should be included in any
22 press release that is issued
23 for the same reason."

24 Did you consider the role of
25 the litigation report to mitigate the failure to

1 disclose the Tradewind report?

2 A. I don't understand the
3 question. Litigation report?

4 Q. What did you mean by
5 "mitigates the failure"?

6 A. The fact that it is
7 somewhat irrelevant, or applying a standard that's
8 not recognized here renders it relatively
9 unimportant.

10 Q. Other than your review of
11 the draft report and providing comments, did you
12 have any other involvement in the preparation for
13 the January 23rd, 2019 council meeting?

14 A. I don't think so.

15 Q. Did you have any
16 discussions about what to provide to council on
17 January 23rd, 2019?

18 A. I don't think so.

19 Q. So you didn't have any
20 discussions with Ms. Auty about whether the actual
21 Tradewind report should be given to council?

22 A. I don't recall that at
23 all.

24 Q. Do you recall any
25 discussions about whether council should be told

1 about other reports at this time?

2 A. No.

3 Q. Did you believe that your
4 draft opinion would be provide to council on
5 January 23rd, 2019?

6 A. No.

7 Q. And why is that?

8 A. It was draft.

9 Q. I take it you were just
10 waiting for comments from Ms. Auty before
11 finalizing?

12 A. Well, I did receive some
13 additional information after submitting my draft
14 report that I added to the content of the report
15 before it was finalized.

16 Q. Right. And that
17 additional information is the January 30th,
18 February 1st discussions with --

19 A. I think there's at least
20 one or two documents that I got subsequent that I
21 summarize as well.

22 Q. Okay. We'll get to that
23 final opinion. By January 23rd, 2019, though,
24 what were you waiting for before finalizing the
25 report -- the opinion?

1 A. I was waiting for the go
2 ahead from Nicole and/or Ron to provide it to them
3 in final.

4 Q. To your knowledge, and
5 this is right before the January 23rd, 2019
6 council meeting, as of January 23rd, do you know
7 if -- who Ms. Auty had shared the draft opinion
8 with?

9 A. No.

10 Q. So the January 23rd, 2019
11 council meeting, did you attend that meeting?

12 A. No.

13 Q. Registrar, if you could
14 pull up HAM62539. If you could pull up the next
15 image as well. You'll see here, on the second
16 page at the very bottom, this is January 28, 2019,
17 there's an e-mail from Ms. Auty to you, subject
18 "call on the RHVE."

19 A. Yeah.

20 Q. She says, "I have some
21 follow-up and further advice." So between
22 January 23rd and this e-mail on January 28th, had
23 you had any discussions with anyone at the City
24 about the RHVP matter?

25 A. I don't believe so.

1 Q. I understand that you had
2 a call with Ms. Auty and Mr. Sabo on January 30th,
3 2019?

4 A. Yes.

5 Q. Do you recall that?

6 A. I remember the big
7 conversation. I remember the big group
8 teleconference, not so much the shorter one in
9 advance of it.

10 Q. So, Registrar, if we
11 could pull up HAM64363, and also HAM64343.

12 Mr. Boghosian, these are your
13 notes from January 30th, 2019, 10:30 a.m., and I
14 take it that apart from the e-mail exchange
15 setting up this call, you didn't have any
16 discussions with anyone at the City about the RHVP
17 matter between January 23rd and this date?

18 A. No.

19 Q. So this call is the first
20 time you're learning about what happened at
21 January 23rd City council meeting?

22 A. Yes.

23 Q. You have your notes here.
24 Can you just tell us what you remember from the
25 January 30th -- the earlier call, the one with Ms.

1 Auty and Mr. Sabo?

2 A. Sorry, do I remember the
3 call? I remember the points here. I certainly
4 remember that last point.

5 Q. When you say "last
6 point," which point is that?

7 A. The last dash point at
8 the bottom of that first page.

9 Q. Of the handwritten notes.
10 Okay. It says, "Council concerned re Gary Moore's
11 judge/honesty/trustworthiness with them in the
12 past"?

13 A. Yes.

14 Q. Tell us about that note.

15 A. I just remember Nicole
16 saying that and being somewhat surprised.

17 Q. And what did Ms. Auty
18 say, apart from what's set out here?

19 A. That was it.

20 Q. Why were you surprised?

21 A. Those are pretty strong
22 words.

23 Q. Did she tell you why?
24 Why council was concerned?

25 A. No.

1 Q. In the notes it says,
2 "Council quite concerned about situation, haven't
3 given the Tradewind report." Did you know if
4 council was going to receive the Tradewind report
5 at the January 23rd meeting?

6 A. I'm interpreting my note
7 as that they had not yet given council the
8 Tradewind report, so obviously it hadn't been
9 given to them on January 23rd because I'm being
10 told this on January 30th.

11 Q. Right, but before January
12 23rd, did you know if that was the plan, that they
13 would or would not be provided with it?

14 A. No.

15 Q. Okay. So what did they
16 tell you about what council wants to know?

17 A. I don't have an
18 independent recollection between the points that
19 follow "council wants to know."

20 Q. Do you recall if --

21 A. Like, it does sound a bit
22 bizarre that council wants to know if they have
23 the Tradewind report, yet the note is saying that
24 council doesn't even have the Tradewind report.
25 So I'm not sure what all that means.

1 Q. Just in terms of context,
2 council was advised on January 23rd of the
3 existence of the Tradewind report, and I think
4 that there's a summary of it in the litigation
5 report that Ms. Auty provided. It sounds like
6 here council is asking if Mr. Malone and CIMA had
7 the Tradewind report.

8 A. Okay.

9 Q. Do you recall telling Ms.
10 Auty or Mr. Sabo that you had, in fact, given the
11 Tradewind results, maybe not the report, but the
12 results to Mr. Malone on December 11?

13 A. No, because I hadn't.
14 Oh, sorry, I gave him a verbal. I certainly
15 didn't give the report. Yes.

16 Q. Yes.

17 A. But I think -- yeah. I
18 don't know if it did at this point. I'm taking in
19 information that she's giving me.

20 Q. Do you recall if at any
21 point from December 11th until the January 30th
22 you told Ms. Auty or anyone else at the City that
23 you had given Tradewind results verbally to
24 Mr. Malone?

25 A. After December 11, I

1 don't recall.

2 Q. I think your evidence was
3 that you didn't remember on the December 11th call
4 if you had shared that as well?

5 A. I would have to go back
6 and review my notes from that call.

7 Q. But that's the call where
8 you don't have your notes. We only have Ms. Auty
9 and Mr. Sabo's notes, and I think your evidence
10 was that you have no recollection of the call,
11 even with the benefit of those notes. Does that
12 --

13 A. That is true.

14 Q. So apart from what's set
15 out here, you don't have any further recollection
16 of this earlier January 30th call?

17 A. No.

18 Q. It says, "They will call
19 again at 3 p.m." in your note. Do you recall what
20 the 3 p.m. call was going to be?

21 A. With the larger group,
22 works people, legal, myself, and Brian Malone.

23 Q. Registrar, if we could
24 pull up overview document 9A, page 359.

25 Mr. Boghosian, at

1 paragraph 856, there's reference to a 3:00 o'clock
2 call on January 30th. It involves a number of
3 city employees. You're not listed. I just wanted
4 to give you this as context.

5 A. Okay.

6 Q. I think our understanding
7 is that the bigger call that you've been talking
8 about with Mr. Malone takes place at 4:30. So I'm
9 just wondering if you remember having another call
10 between the call with Ms. Auty and Mr. Sabo that
11 we just talked about and the larger call with
12 Mr. Malone and everybody else?

13 A. No, I don't remember
14 three calls that day. No.

15 Q. Thank you.

16 MS. LIE: Commissioner, I
17 think this might be a good time to take the
18 afternoon break.

19 JUSTICE WILTON-SIEGEL: Okay.
20 Let's take a 15-minute break. Is it appropriate
21 for counsel to meet as well to determine how much
22 time is required?

23 MS. LIE: Yes.

24 JUSTICE WILTON-SIEGEL: So we
25 can do that in a separate breakout room.

1 MS. LIE: Thank you.

2 JUSTICE WILTON-SIEGEL: We'll

3 stand adjourned, Mr. Boghosian, until 3:30.

4 --- Recess taken at 3:15 p.m.

5 --- Upon resuming at 3:30 p.m.

6 BY MS. LIE:

7 Q. Mr. Boghosian, just
8 before we get to the bigger call on January 30th,
9 2019, can you just tell us if your understanding
10 of why you were becoming involved again in all of
11 this -- why were you involved in getting the
12 opinion from Mr. Malone?

13 A. I don't know. It wasn't
14 explicitly discussed.

15 Q. The litigation privilege
16 issue that we had talked about earlier this
17 morning, do you know if that may have been the
18 rationale for involving you at this point?

19 A. I don't know.

20 Q. So the bigger call on
21 January 30th, 2019, you do have notes of that
22 call, so we'll pull them up. Registrar, could you
23 pull up HAM64362, and also HAM64345.

24 So, Mr. Boghosian, it sounds
25 like there were many people on this call,

1 including yourself, Mr. Malone, a number of people
2 from public works, as well as Ms. Auty, Mr. Sabo.
3 Was this your first direct communication with
4 public works staff, regarding the Red Hill Valley
5 Parkway matter?

6 A. Yes. Well, I had had the
7 e-mail communication with Gord McGuire. This is
8 the first verbal communication.

9 Q. What was the e-mail
10 communication with Gord McGuire?

11 A. We went through that.

12 Q. Oh, regarding the --
13 sorry, the litigation report?

14 A. Yes.

15 Q. Got it. In January. Do
16 you recall this larger call?

17 A. Yes.

18 Q. Tell us what you remember
19 about the call.

20 A. I think it was to have a
21 round table discussion about the safety of Red
22 Hill and what, if any, additional steps should be
23 taken as interim measures pending the repaving.
24 That was the main thrust of the meeting.

25 Q. Tell us what you remember

1 from this meeting?

2 A. I would need to go
3 through my notes, but generally it was consistent
4 with what Brian had told me in our call on
5 December 11, 2018. That is, if they implemented
6 the recommendations from its 2015 report, he felt
7 the road was reasonably safe.

8 Q. Do you recall if on this
9 call there was discussion about the Tradewind
10 report results?

11 A. Without referring to my
12 notes, I don't have a recollection off the top of
13 my head.

14 Q. You can have a look at
15 your notes then.

16 A. Okay, I've read the first
17 page.

18 Q. Registrar, if you can go
19 to image 2 on the handwritten notes.

20 A. Is there another page?

21 Q. Yeah, there's one more
22 page. There you go.

23 THE REGISTRAR: Sorry,
24 counsel, there is actually one more page.

25 BY MS. LIE:

1 Q. There you go.

2 A. Okay. Okay.

3 Q. Do you recall if there
4 was discussion of the Tradewind results on this
5 call?

6 A. I think on page 2 there's
7 a note that suggests to me -- the third last dash
8 but the last one (ph) is blank, but doesn't think
9 the friction testing will change his opinion.
10 That is a reference to the Tradewind report and
11 possibly also the Golder testing, and by change
12 his opinion, about safety measures pending the
13 resurfacing.

14 Q. Do you recall if on this
15 call Mr. Malone indicated that he had already had
16 the Tradewind results through you, verbally?

17 A. He already had the actual
18 report by this date.

19 Q. By the time of the call,
20 I don't believe he did, because I think you send
21 him the Tradewind report shortly thereafter.

22 A. Okay, if you're sure
23 about that. What did I send him on January 29th?

24 Q. You sent him an e-mail on
25 January 30th.

1 A. Okay. After 4:40 p.m.?

2 This call took place at 4:40 p.m.

3 MS. HALE: Maybe it might make
4 sense to bring up the e-mail.

5 BY MS. LIE:

6 Q. Let me just pull it up.

7 Let me just get that doc ID for you. HAM54347.

8 Here it is. So the e-mail is on the bottom half
9 of the page, January 30th, 2019, 8:47 p.m.

10 A. Okay.

11 Q. Does that refresh your
12 memory about whether or not Mr. Malone had the
13 Tradewind report at the time of the call, at 4:40?

14 A. If there isn't a previous
15 e-mail of me sending it to him, then he would not
16 have had the reports at that time.

17 Q. Do you recall if he said
18 that he had received the results at least you from
19 verbally by that point, on the call?

20 A. Well, I know there was no
21 shock when he was told about the Tradewind and
22 Golder results. I had definitely spoken to him
23 about them in December.

24 Q. And on January 30th, 2019
25 call, you don't recall him saying, oh, I had no

1 idea --

2 A. Exactly. Absolutely not.

3 Q. Sorry, Registrar, can you
4 pull up the notes again. That is HAM64362 and
5 HAM64345.

6 Do you recall Mr. Malone
7 saying that he thought maybe greater police speed
8 enforcement would be required, on this call?

9 A. That's what I wrote down.

10 Q. Okay. So Mr. Malone
11 would have conveyed that greater speed enforcement
12 could be an interim measure?

13 A. He had already indicated
14 that in his 2015 report, and he had indicated to
15 me on our call on December 11th that he had
16 observed that that was in fact happening.

17 Q. So was your understanding
18 that it was -- when he says greater police speed
19 enforcement is also needed, is that greater than
20 what was actually happening at the time?

21 A. Brian was generally
22 opposed to reducing the speed limit, which I quite
23 frankly, based on my experience, concurred with,
24 and I think he was talking about alternatives to
25 reducing the speed, which the public works staff

1 were very gun-ho about, and I think that in turn
2 was coming from council. They wanted to show some
3 big movement or change, regardless of whether from
4 a traffic engineering standpoint it would have
5 been effective.

6 Q. So your recollection is
7 that Mr. Malone raised potentially greater police
8 enforcement in response to that issue being raised
9 by public works?

10 A. That's my recollection.

11 Q. And then it says "road is
12 not unsafe but is less safe than comparable urban
13 parkways." I take it that's something Mr. Malone
14 conveyed on the call?

15 A. Yes.

16 Q. If you could go to the
17 next page of the handwritten notes, Registrar. So
18 here, at the top of the page, there are three
19 numbered items and then where it said number one,
20 which is in the middle, it says "stress it's wet
21 road issue," and then there's an arrow to the left
22 that says "he won't do that, skated by the issue."

23 Do you recall asking
24 Mr. Malone to stress that it's a wet road issue?

25 A. Yes.

1 Q. What was Mr. Malone's
2 response?

3 A. He won't do that, skated
4 by the issue.

5 Q. Did he say why?

6 A. No.

7 Q. Why did you suggest --
8 was it your suggestion -- the stress that it's a
9 wet road issue?

10 A. I believe so.

11 Q. Why did you make that
12 suggestion?

13 A. Because from his analyses
14 in the 2015 and the draft 2018 reports that, based
15 on the collision analysis, that seemed to be --
16 that was the case.

17 Q. Was there any discussion
18 about the Golder 2017 testing on this call?

19 A. In other words, just to
20 be clear, my recollection of his reports was that
21 the increased accident incidents compared to other
22 comparable roads was almost exclusively a wet road
23 phenomenon.

24 Q. That's from your reading
25 of his reports but he was not prepared to say

1 that; is that fair?

2 A. That's right.

3 Q. Was there any discussion
4 of the Golder 2017 test results on this call?

5 A. Well, on the first page I
6 think we've seen a reference to it and I think it
7 was discussed.

8 Q. Do you recall if he had
9 already seen that report or was aware of the
10 conclusions by the time of this call?

11 A. I believe that's one of
12 the things we had discussed in the December 11,
13 2018 call but he hadn't seen the reports yet.

14 Q. Again, he didn't express
15 surprise, he didn't say, oh, I didn't know there
16 was this testing?

17 A. No.

18 Q. Apart from what's set out
19 in these notes, do you have any other recollection
20 of the January 30th call with everybody? Did you
21 say no?

22 A. I'm thinking, I'm sorry.

23 Q. Take your time.

24 A. No, I think the notes
25 capture the main points that were discussed.

1 Q. We looked at the e-mail
2 that you sent to Mr. Malone attaching the
3 Tradewind report and the 2017 Golder report. Did
4 you have any discussions with Ms. Auty about who
5 should be providing this information to
6 Mr. Malone?

7 A. I think there was a
8 discussion that it should come through me.

9 Q. Why was that?

10 A. Possibly for privilege
11 issue.

12 Q. So the purpose of coming
13 through counsel as opposed to public works was to
14 try to protect the communications with privilege?

15 A. I think so.

16 Q. So you sent Mr. Malone
17 copies of the Tradewind report and the Golder
18 2017 report on January 30th. To your knowledge,
19 was that the first time Mr. Malone received a copy
20 of those reports?

21 A. From me, I'm not aware
22 that anyone else sent them, but from me,
23 certainly.

24 Q. So we know there was
25 another call on February 1st, 2019. We don't have

1 notes from you but you do summarize it in your
2 final opinion letter, so we'll pull up that.
3 Registrar, HAM64331. Images 9 and 10.

4 You'll see on 9, going into
5 the top of page 10, there's a summary of a call on
6 February 1st, 2019. I'll give you a chance to
7 review those paragraphs. Do you recall the
8 February 21 call?

9 A. Yes, I remember him
10 discussing those points.

11 Q. What was the purpose of
12 having the February 1st call?

13 A. To get a verbal report
14 from him on interim safety measures.

15 Q. In the fourth bullet
16 point where it refers to the friction levels it
17 says, in the second sentence:

18 "Applying the industry
19 accepted friction chart as
20 well as attack geometric
21 design guidelines, friction
22 levels -- that met accepted
23 design guidelines and that
24 were at a level that warranted
25 investigation but not

1 immediate intervention." (As
2 read)

3 Apart from what is stated
4 here, has Mr. Malone said anything else about the
5 standards?

6 A. Well, I think there were
7 two issues with the Tradewind reliance in the UK
8 standards. One was -- and I'm pretty sure it came
9 out of this call, one was that we just don't apply
10 that standard, in fact, it's different than the
11 standard applied in North America for newly
12 designed roads, which is a lower standard that all
13 those friction readings would have felt, would
14 have exceeded.

15 But he also felt that they
16 used the wrong table. From the UK document or
17 guidance in that -- they applied a chart
18 applicable to a different kind of road and had
19 they applied the correct chart that would be
20 applicable to a road like the Red Hill, they
21 wouldn't have found that there was -- it reached
22 the level of investigation.

23 Q. That was something that
24 Mr. Malone conveyed to the group on February 1st?

25 A. Yes.

1 Q. Were there any
2 discussions about any recommendations that were
3 made by Golder, with respect to the road surface?

4 A. I don't believe so.

5 Q. So apart from what you
6 set out in these bullet points, is there anything
7 else you recall from the February 1st call?

8 A. Other than what I just
9 said about the Tradewind report, no.

10 Q. So we know that shortly
11 thereafter, Ms. Auty does ask you to finalize your
12 opinion letter, do you recall, and I guess this is
13 the final opinion letter that we're looking at.
14 So we know you've included the February 1st call
15 summary here, in terms of finalizing your opinion,
16 was there any other aspects that you felt like you
17 needed to do in order to provide the final opinion
18 to Ms. Auty?

19 A. Well, I haven't compared
20 this version against the draft, I do recall I got
21 one or two additional things that were not in the
22 original draft that I summarized in the final.
23 I'm just-- off the top of my head, without
24 reviewing it, I'm not sure what those are but I
25 believe there were.

1 Q. Okay. Just give me a
2 moment. We do have in the overview document, a
3 summary of the changes, so why don't going go to
4 that.

5 Registrar, if you could go to
6 overview document 9A, page 423 and 424.
7 Paragraph 985 and 986 sets out the comparison or
8 the changes between draft opinion and the final.

9 A. What does page 425 say?
10 Okay, I don't know who reviewed my reports to
11 determine this. I haven't done this, so I'm not
12 prepared to comment whether this is accurate or
13 not.

14 Q. So your recollection
15 though is that you did provide some additional
16 information in the February 4th final opinion
17 about documents that you had reviewed?

18 A. I thought there were one
19 or two additional documents that I summarized in
20 the final report that I didn't have time -- didn't
21 have at the time I did the draft report.

22 Q. So what document would
23 you have received? That would be --

24 A. I don't know, I would
25 have to review and contrast the reports.

1 Q. Why don't we go to
2 HAM64331. You could pull up images 1 and 2.

3 A. I'm satisfied if I just
4 look at the documents that I reviewed, the list.

5 Q. Okay. So were there
6 additional documents that you received that you
7 summarized in your final opinion?

8 A. This is my final opinion
9 that you're looking at.

10 Q. Right, and I thought your
11 evidence was that you recalled --

12 A. I now need to see the
13 list from the December 13th draft.

14 Q. Okay.

15 A. To compare it. That's
16 what I was getting at.

17 Q. Registrar, don't pull
18 down the document. If you could pull up HAM62512.

19 A. I wrote down a list of
20 the items. If I could see the next page. It
21 appears to be the same list.

22 Q. Right. And so, I think
23 you did receive an additional document because you
24 received the Golder 2017 report; is that right?
25 Since the draft report?

1 A. Yeah, that's probably
2 what I was thinking about.

3 Q. Looks like you didn't
4 actually include that in your final opinion.

5 A. Right. The 2018 draft
6 Golder report? Is that what you're referring to?

7 Q. Yeah. The one that
8 refers to the 2017 --

9 A. It's listed. Is that not
10 it under number 4?

11 Q. That's November 28, 2018
12 e-mail that we looked that, the one that
13 summarizes some of the results.

14 A. Okay.

15 Q. So there was a subsequent
16 draft report from Golder that was dated December
17 of 2018, which I understand you received
18 January 30th, 2019. You forward it to Mr.
19 Malone. That's the report I'm referring to. Is
20 that the report you were thinking of when you
21 mentioned there might have been another --

22 A. Yeah.

23 Q. But It looks like you
24 received it, I take it you reviewed it at the
25 time?

1 A. I would have.

2 Q. But you didn't actually
3 summarize it in the final opinion?

4 A. If you say I didn't, I
5 didn't.

6 Q. Give me one moment. I'm
7 trying to short circuit this.

8 Registrar, if we could pull up
9 overview document 9A, page 422 and 423. You'll
10 see at paragraph 980, there's an e-mail Ms. Auty
11 to you on February 4th, asking to speak in the
12 morning to review the presentation and next drafts
13 of various documents. I just want to give that
14 you to for context.

15 A. Okay.

16 Q. Registrar, if you could
17 go to page 434. At paragraph 1014, there's a
18 transcription of a note from Mr. Sabo on
19 February 5th, 2019?

20 A. Okay.

21 Q. Do you recall having a
22 call with Mr. Sabo and Ms. Auty on February 5th,
23 2019?

24 A. In this timeframe, I
25 remember speaking to Nicole about the council

1 meeting of February 6th. These notes that
2 Mr. Sabo has made do not jog my memory as to any
3 conversation about these things.

4 Q. So you don't recall any
5 conversations where there is a discussion about
6 the Tradewind report and it being inaccurate or
7 misleading?

8 A. No. I don't know even
9 know if that's what TW means, I don't remember
10 that.

11 Q. There's a note that says
12 "concern with reducing speed, could have done that
13 any time, red flag." Do you recall any
14 discussions about the reduction of the speed limit
15 recommendation that public works was putting
16 forward, February 6th?

17 A. Not this point, no. My
18 sense was that the speed reduction was all coming
19 from council and public works is just hopping on
20 board, whereas from a traffic engineering safety
21 review, it might even be counterproductive to
22 reduce the speed at that point.

23 Q. Your understanding was
24 that the reduction in speed limit was something
25 council wanted to do?

1 A. I recall references to
2 that during the January 30th discussion.

3 Q. But this is something
4 council wanted to do but Mr. Malone did not
5 recommend it.

6 A. Public works had jumped
7 on board and Malone was cautioning against it,
8 that you can't change behaviour when people have
9 been driving this road for how many years would it
10 have been by then. Over 10, 12, and you have a
11 problem with potentially high discrepancies in
12 speeds of vehicles, which is not safe.

13 A. And that's something that
14 came up in the February 1st call?

15 A. It did.

16 Q. Do you recall that there
17 were some e-mails between you and Mr. Malone about
18 removing the paragraphs about the speed limit from
19 Mr. Malone's draft report?

20 A. I remember Ms. Auty
21 asking me to ask Brian to do that, yes.

22 Q. This didn't come from
23 you, that was Ms. Auty's direction?

24 A. Correct.

25 Q. In terms of the

1 February 6, 2019 GIC meeting, did you have any
2 involvement in deciding what information,
3 including which reports were going to council on
4 that day?

5 A. No.

6 Q. Did you know if your
7 final opinion was being provided to council?

8 A. I know I spoke on -- my
9 opinion at the council, but whether they actually
10 had a copy or whether they were going to have an
11 in-camera, I wasn't aware. Sitting here today, I
12 don't recall if they had my report or not, in the
13 in-camera session.

14 Q. Registrar, could you pull
15 up overview document 10A, page 5 and 6. So you'll
16 see at paragraph 10, there's an e-mail from Ms.
17 Auty to you on February 6, 2019 attaching from
18 draft motions. At paragraph 11 there's an excerpt
19 of the draft motions.

20 I'll just have you look at
21 draft motion number one, which is that the city
22 solicitor be directed to engage an independent
23 third party engineering consultant.

24 A. Okay.

25 Q. And then Registrar, if

1 you could go to to page 7, paragraphs 13 and 14
2 you'll see that there's an exchange where you say
3 I thought you had decided not get an independent
4 third part engineering review for the time being.

5 A. Yeah.

6 Q. I'm just wondering, did
7 you have discussions with Ms. Auty about whether
8 or not the city should be getting an independent
9 third party engineering review?

10 A. Yes.

11 Q. What were those
12 discussions and when did they take place, was it
13 in January, 2019?

14 A. It was late January or
15 early February.

16 Q. I take it that the
17 decision was made not to do that for the time
18 being?

19 A. I don't recall, sitting
20 here today, if this motion presented was to
21 council or not. I didn't think it was a good
22 idea. Firstly, by the time you could engage
23 another engineer and have any kind of worthwhile
24 investigation carried out, it would be May or
25 June 2019 and the road would be all set to be

1 resurfaced, so it didn't make sense to me. In a
2 couple of months, few months before the
3 resurfacing that this take place, given how long
4 it would take to get another engineer up to speed
5 and do a proper investigation and then implement
6 any recommendations.

7 Q. So now just turning to
8 the February 6, 2020 GIC meeting. Do you recall
9 that meeting?

10 A. Yes.

11 Q. Were you there for both
12 the public and the in camera sessions?

13 A. I don't know if I got
14 there at the very beginning. I think I was given
15 a rough timeframe of when the part I was
16 interested in would start, but I believe I did get
17 there in time to see part of the public session.

18 BY MS. LIE:

19 Q. What was your role at the
20 meeting? Tell me about what you remember about
21 what you said and did at the meeting.

22 A. I had speaking points and
23 I don't think I was able to produce them to the
24 commission but I think Dan McKinnon provided more
25 of the engineering background, the works

1 background and I provided the legal analysis of
2 their implications of the issue.

3 Q. Do you recall telling
4 council -- talking to council about Mr. Malone's
5 recommendation about interim safety measures?

6 A. Yes.

7 Q. Do you recall telling
8 council that you had previously provided
9 Mr. Malone with the Tradewind results, even before
10 the memo that Mr. Malone recently provided on
11 February 4, 2019?

12 A. I had, in fact, done so.
13 So probably -- I don't have an independent
14 recollection of that but wouldn't sound
15 surprising.

16 Q. Registrar, can you pull
17 up HAM64370. Mr. Boghosian, these are Mr. Sabo's
18 notes of the February 6 meeting. They are quite
19 long, we're not going to go through all of them.
20 I just wanted to give you that context.

21 Registrar, can we turn to
22 images 13 and 14. So near the bottom of image 13,
23 you'll see where it says "Legal, Nicole plus
24 David" and it says "David" and then there are some
25 notes.

1 A. Yeah.

2 Q. There's a note that says
3 "CIMA only recently saw a number, so hadn't been
4 commented on before." Do you recall saying
5 something like that to council, or anybody saying
6 that to council?

7 A. No.

8 Q. Over on page 14, which is
9 the page on the right. You'll see near the middle
10 of the page it says:

11 "Hard to counter conclusion.
12 This is a problem when wet.
13 CIMA made rec's long list in
14 November 2015. Serious wet
15 road." Then it says:
16 "David made sure to downplay
17 TW or Q them."

18 Do you recall stressing to
19 council that this was a wet weather issue?

20 A. I think I was just
21 stating the facts from CIMA's collision analysis.
22 I don't know, maybe Ron is speculating that
23 because there was a lot of stuff about wet roads
24 that maybe I was trying to downplay the Tradewind
25 report, but I don't believe that was the case. I

1 was stating facts on a document I regarded as
2 reliable.

3 Q. I think you testified
4 earlier that your view was that the Tradewind
5 report wasn't actually that important in the grand
6 scheme of things. Did you convey that view to
7 council?

8 A. I don't know if I did. I
9 think I mainly promoted the fact that Mr. Malone
10 was irrespective of not having the Tradewind
11 report had already figured out through another
12 approach that there was a coefficient of friction
13 problem on this road predominantly related to what
14 road conditions and he had recommended safety
15 measures to address that.

16 Q. About five bullets down
17 after page 7 it says, "David's recollection was no
18 rec of surface agreement."

19 Do you recall saying anything
20 to council about whether there were
21 recommendations made with respect to the surface
22 treatment?

23 A. I think that may have
24 been a response a question from one of the
25 counsellors or the mayor.

1 Q. And do you recall saying
2 that your recollection was there was no
3 recommendation for surface treatment?

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

5 Q. Do you remember telling
6 council that Mr. Malone had ranked slipperiness of
7 the road surface as the greatest contributing
8 factor to wet road collisions?

9 A. I don't know. It was in
10 my report. It would make sense that I did but I
11 can't remember the exact content of my
12 presentation.

13 Q. Registrar, if you could
14 pull up overview document 10A, page 108.
15 Paragraph 266 and 267 is a reference to an e-mail
16 exchange about Mr. Soldo wanting to contact CIMA
17 regarding new friction data from the MTO.

18 There's a response from you
19 that says that Mr. Soldo should deal with CIMA
20 directly about this new friction data. I take it
21 you didn't have any concerns with Mr. Soldo
22 reaching out to CIMA directly because by this time
23 there was no potential privilege issues you wanted
24 to preserve?

25 A. Exactly. I think counsel

1 had already made the decision to release the
2 treatment report, the CIMA memo, all of it.

3 Q. Did you have any further
4 involvement in the review that Mr. Soldo was
5 talking about here, about the new friction data?

6 A. No.

7 Q. Thank you, Mr. Boghosian
8 for your patience. Those are my questions. I
9 understand that that counsel for Golder has some
10 questions.

11 JUSTICE WILTON-SIEGEL: Please
12 proceed, Ms. Roberts. How long do you anticipate
13 you are going to be?

14 MS. JENNIFER ROBERTS: I think
15 15 minutes, and I recognize we don't have a lot of
16 time so I will try and keep this brief.

17 JUSTICE WILTON-SIEGEL: Thank
18 you.

19 EXAMINATION BY MS. JENNIFER ROBERTS:

20 Q. I'm counsel for Golder
21 and I did have a number of questions and, as I
22 said, I will try and be brief here.

23 I would like to go to your
24 draft opinion, and that's HAM62512. Registrar, if
25 you could please call that up. Is there an echo?

1 Okay. You were taken to this by commission
2 counsel. I would like, please, to look at image
3 2, summary of the Golder report. Thank you.

4 You summarize in the second
5 paragraph that Golder notes that friction values
6 should be at least 40 to be considered adequate.

7 Do you see that? Perhaps, Reg --

8 A. Yes, I do see it.

9 Q. You could please call out
10 the middle paragraph. It's come up a number of
11 times. Then there's a parenthesis saying, "Golder
12 does not indicate where this number comes from."
13 And then you refer to -- and then you refer to the
14 value of 48.

15 You don't contact Golder and
16 ask on what basis Golder reached the findings that
17 the friction should be at least 40 to be
18 considered adequate.

19 A. No, I did not.

20 Q. But if you wanted to know
21 you'll agree with me you could have?

22 A. I chose to contact Brian
23 Malone, who I had a personal relationship with, a
24 professional pre-existing relationship with.

25 Q. Registrar, you can take

1 relatively low.

2 A. No, I did not.

3 Q. Lots of discussions about
4 your client suggesting to you or saying to you
5 that the friction testing was inconclusive. But
6 here, sir, you've got a pavement materials
7 consultant who has found friction to be relatively
8 low and you don't record that.

9 A. Well, the numbers speak
10 for themselves. I don't know who wrote this
11 report. I know it's in draft. It wasn't signed,
12 the version I have. And I take it the only
13 version that ever existed it's not sealed. I
14 don't know who's done the first draft of this.
15 It's sent to the City and what kind of
16 professional engineering review has been made.

17 So I reported the numbers,
18 which I assumed would reflect accurate testing,
19 but the characterizations I had no confidence in,
20 given it's a draft, unsigned, unsealed report.

21 Q. Let's -- Registrar, can
22 we go forward two pages to the signing lines. I
23 suggest to you, sir, in fact you do know who the
24 authors are, although I agree with you it's not
25 signed. You've got three here. Dr. Henderson,

1 Dr. Uzarowski and Rabiah Rizvi.

2 A. But it's not (skipped
3 audio), Ms. Roberts. It's not signed or sealed.

4 Q. No, it's not, that's
5 right. But you do know --

6 (speaker overlap)

7 A. -- professional opinion.

8 Q. But your statement was
9 you don't know who the opinion came from, and I'm
10 suggesting to you that in fact you do because it
11 the signing lines are there.

12 A. Well, I don't have any
13 confidence that this report was drafted by any of
14 these people. Who made that characterization?
15 Anyway, relatively low is hardly a scientific
16 standard. It's not like they are quoting from
17 some industry bible. Relatively low is a
18 characterization. I reported the numbers and the
19 threshold and really it speaks for itself.

20 Q. Well, it's a
21 characterization, sir, by a pavement and materials
22 technology engineer, as you can see from that
23 signing line.

24 Let me say. If you were of
25 the view that there was some ambiguity here you

1 didn't go back to your client and ask for
2 clarification, did you? Say, look, you've got two
3 different -- you've got people saying it's
4 inconclusive and you've got a finding that
5 friction is relatively low from your pavement and
6 materials engineer. Can we go back and ask for
7 clarification. You didn't do that, sir, did you?

8 A. What I do know, Ms.
9 Roberts, is the coefficient of friction scale is
10 not a bell curve, it's a linear relationship. In
11 other words, the relationship between say the
12 number 39 to 40 is a one-fortieth difference. The
13 difference between 35 and 40 is a one-eighth
14 difference. In other words, it's linear. It's
15 not like a bell curve where 40 is exponentially
16 higher than 34. It's a linear scale.

17 Q. So you consider that you
18 could assess the numbers that you were reviewing
19 and provide your opinion as to what that meant?

20 A. That's what I'm saying,
21 especially in the face of an unsigned, unsealed
22 draft report who knows authored it.

23 Q. Okay. Can we please --
24 if you could please keep the 2981 and go back to
25 HAM62512. Let's go to the last paragraph in Mr.

1 Boghosian's opinion, analysis and recommendation.

2 Can you call that out?

3 You've got a number of
4 extracts from the Golder report. Apparently you
5 do consider this reliable, sir. That Golder notes
6 that it was originally designed to accommodate
7 30,000 ADTs and grew to approximately 90,000 by
8 year 50 and there was a dramatic increase.

9 And you notice -- you observe
10 and record Golder's observations about two
11 separate flooding events. That's as far as you go
12 in your summary of the analysis and
13 recommendations.

14 Can we please, Registrar, take
15 down that callout and go to 9 of the Golder report
16 which is 2981, image 9. It shouldn't be, but
17 okay. It's page 7. There we go.

18 You capture the findings in
19 relation to the separate flooding events and the
20 numbers of average annual daily traffic that's in
21 the first paragraph of the Golder report.
22 Registrar, go to the next page.

23 There are recommendations here
24 in relation to the treatment of -- the remedial
25 treatment of the Red Hill Valley Parkway.

1 Registrar, if you can please
2 call out the paragraph beginning "in order to
3 remedy the longitudinal top down cracking."
4 There we go.

5 Golder provides
6 recommendations in relation to the remediation
7 here, and they address the top down cracking. Do
8 you see that in the first sentences?

9 "Suggest recommending that the
10 SMA be milled and paved in
11 selected locations."

12 And go onto providing route
13 and seal. And then in the second paragraph here
14 Golder says:

15 "Following the routing and
16 ceiling it is recommended that
17 a single layer of
18 microsurfacing be applied by
19 carrying out the mill and
20 overlay where required and
21 applying microsurfacing. The
22 issue of relatively low FN on
23 the Red Hill Valley Parkway
24 would also be addressed."

25 And then it goes on. Do you

1 see that?

2 A. I do.

3 Q. That recommendation is
4 not captured in your report, sir.

5 A. This recommendation is
6 directed to longitudinal top down cracking, and as
7 I read this report it says, oh, incidentally as an
8 added bonus if you did this it might help you with
9 the friction issue. And keep in mind I'm doing
10 this at a point where we're looking at a
11 resurfacing within five or six months when I first
12 get the assignment.

13 We're looking at interim
14 safety measures, and this is hardly an interim
15 safety measure. This is a major capital
16 expenditure to apply this microsurfacing. We're
17 talking tens of millions of dollars, if not more,
18 in the face of a \$200 million resurfacing that is
19 just around the corner.

20 So this wasn't really
21 responsive to the interim safety measure issue
22 because it is not an interim safety measure. It's
23 a final safety -- ultimate safety measure.

24 Q. My point, sir, is it's a
25 recommendation, it's included in the Golder report

1 and you make the decision not to include it in
2 your summary of the Golder report. That's true,
3 sir?

4 A. I think I gave it the
5 importance that Golder, your client, itself gave
6 it which through it in as an afterthought.

7 Q. I put it to you, sir,
8 that it's not an afterthought, that there are two
9 things being achieved with microsurfacing; the
10 mill and overlay for the surface condition and
11 addressing the relatively low friction. That's
12 what it says, sir.

13 A. What I articulated is how
14 I read it at the time in this draft, unsigned,
15 unsealed report.

16 Q. And are you qualified to
17 make a determination as to what microsurfacing
18 actually does.

19 A. Well, I know in
20 experience what it does and I know the cost, so
21 yes.

22 Q. You're making a decision
23 not to include it in without talking to your
24 client about it based on your understanding of
25 microsurfacing. Is that what I am to understand

1 here?

2 A. I think the totality of
3 my answers express what I did and did not include
4 from the Golder report.

5 Q. Thank you. Registrar you
6 can take down this callout. Can you please go to
7 image 9 of Hamilton 62512, and Registrar I'm going
8 to go back and forth between these two documents.

9 You discuss microsurfacing at
10 the top of page 9. Sorry. You discuss SMA at the
11 top of page 9 and address first early age friction
12 issues. And then you go on and describe SMA.

13 I think you say because of the
14 large aggregates, however, SMA holds much more
15 water on the road that does not drain away than
16 conventional asphalt because the water sits in
17 pockets between large aggregates creating
18 microponds.

19 This theory was expressed you
20 to by Mr. Malone?

21 A. I don't know about
22 theory. He expressed that to me.

23 Q. But you've already said
24 that Mr. Malone qualified his advice by saying he
25 was not a pavement engineer. I will ask the

1 question. Did you take any steps to verify that
2 this in fact was a characteristic of stone mastic
3 asphalt?

4 A. No, I relied on
5 Mr. Malone to say this is outside my area of
6 expertise if in fact that was the case.

7 Q. Well, he did acknowledge
8 that, and my question to you is once he
9 acknowledged it was not his expertise did you go
10 further and try to verify this theory of
11 microponding?

12 A. Okay. Ms. Roberts, it
13 was irrelevant to this report. Keep in mind, the
14 road was to be resurfaced in five or six months.
15 I'm just providing some background information
16 that really isn't material to my assignment or the
17 city's interest.

18 Q. So the answer is no?

19 A. I guess the answer is no.

20 Q. Can we please go to image
21 10 of Mr. Boghosian's opinion. Can you go to the
22 next page Mr. Malone's opinion. You were taken to
23 this. Registrar, can you call out page 11, the
24 entire page?

25 I've got the wrong reference.

1 Forgive me for a second. I do need
2 Mr. Boghosian's opinion, page 10. Can we just see
3 page 10 for a minute. Take down Golder 2981.
4 It's hard to see both of them.

5 You write -- and you were
6 taken to this. You write in the second paragraph
7 after part B, and Registrar perhaps you can call
8 it out "in our opinion" and you write:

9 "In our opinion the friction
10 testing of 2013 provided no
11 basis in and of itself for any
12 action to be taken partly
13 because Golder made no
14 recommendations to the City
15 (skipped audio) issue and also
16 because the 40 friction number
17 apparently has no basis in
18 industry standards recognized
19 in Ontario."

20 So we may have addressed this
21 in part, but when you write that Golder made no
22 recommendations about what it considered to be the
23 relatively low friction numbers, that's not true,
24 there is a recommendation.

25 A. I disagree with you.

1 I've already given my evidence on that.

2 Q. Registrar you can take
3 down that callout, please. Can we please look at
4 page 11.

5 The top of this page you
6 write:

7 "Well it's -- tempting high
8 friction -- to suggest the
9 City out to have at least
10 resurfaced portions of the Red
11 Hill identified by CIMA as
12 being high risk areas for wet
13 road collisions to provide
14 more slip resistance," and you
15 identify particular locations,
16 "no consultant made any such
17 recommendation." (As read)

18 I'm going to suggest to you
19 that in fact consultants did expressly make that
20 recommendation, Golder did, in 2014.

21 A. I disagree with you for
22 the reasons I've already given and I have no
23 further evidence to give on that.

24 Q. You make a reference in
25 here to -- yes, you say:

1 "No consultant made any such
2 recommendation in our view.
3 It was reasonable to attempt
4 less costly measures as
5 recommended by CIMA before
6 considering such a costly
7 option."

8 I take it the more costly
9 option is the microsurfacing?

10 A. Yes. It would've been
11 tens and tens of millions of dollars.

12 Q. In consideration of less
13 costly measures, were you aware there are methods
14 to improve service friction by using shot
15 blasting?

16 A. Yes.

17 Q. Were you aware --

18 A. That wasn't recommended.

19 Q. Not in this report.

20 You're saying because it wasn't recommended in
21 this report you didn't know about it?

22 A. No, I knew about it. I'm
23 talking about what consultants have recommended in
24 the particular case of the Red Hill that had not
25 been recommended.

1 Q. When you say that it had
2 not been recommended because you're relying on the
3 Golder 2014 report, and it's not recommend
4 expressly in that report. Do I have --

5 A. -- wasn't recommended in
6 anything I had reviewed.

7 Q. Thank you.

8 A. You're saying I shouldn't
9 be playing traffic engineering expert or, you
10 know, materials expert. I'm going by what I
11 fairly believe the consultants are saying.

12 Q. I would like, please,
13 Registrar, to go to the final version of
14 Mr. Boghosian's opinion, that's Hamilton 64331 at
15 image 12, please.

16 You identify here in D --
17 Registrar, can you please call out the bottom half
18 of that page. You identify here potential claims
19 for contribution indemnity by the City. In the
20 first paragraph you suggest that the MSA -- I take
21 it that means SMA, does it not?

22 A. Yes.

23 Q. You suggest that may, in
24 hindsight, have been inappropriate. I take it
25 this finding as to whether it's appropriate or not

1 is based on Mr. Malone's advice to you that the
2 surface is prone to microponding and I think he
3 described it also as being experimental. Based on
4 that -- sorry on those statements from Mr. Malone.

5 A. My information is coming
6 from Mr. Malone, yes.

7 Q. So I take it when you --
8 and Dr. Uzarowski, he's the Golder Associates
9 pavement and materials engineer who has authored
10 the report that I've taken you to, the 2014 Golder
11 report. It's his testimony -- it was his sense in
12 dealing with the City in 2018 is early 2019 that
13 the City was trying figure out a way to blame
14 Golder.

15 I take it when up wrote this
16 opinion you were considering as part of your
17 liability strategy whether Hamilton would have a
18 potential claim for contribution indemnity against
19 Golder?

20 A. I didn't even know that
21 Golder recommended the SMA asphalt. This is the
22 first I've actually ever herd of this. So I had
23 no idea who I was pointing a figure at. If I had
24 known it was Golder I would have put -- if there
25 were any consultants I would have put someone

1 should look into Golder --

2 Q. (Speaker overlap)

3 A. No, I didn't know at the
4 time and this is the first I'm hearing about it,
5 that it's Golder, and I never heard anyone at the
6 City point any finger at Golder.

7 Q. Thank you, sir, those are
8 my questions.

9 JUSTICE WILTON-SIEGEL: Thank
10 you. It's my understanding that the MTO that's no
11 questions. Is that correct, Ms. McIvor?

12 MS. MCIVOR: That is correct,
13 Mr. Commissioner. Thank you.

14 JUSTICE WILTON-SIEGEL: That
15 leaves Ms. Contractor for the City.

16 MS. CONTRACTOR: I just have a
17 handful questions for you.

18 EXAMINATION BY MS. CONTRACTOR:

19 Q. Mr. Registrar could we
20 please go to HAM62512, image 9.

21 Mr. Boghosian, while
22 discussing your draft opinion, specifically
23 page 9, commission counsel asked you to confirm
24 whether your review of the 2015 CIMA report
25 indicated that CIMA appeared to primarily

1 attribute the wet weather collisions to excessive
2 speed in that report, and then on the December
3 11th call Mr. Malone said the contributing factor
4 was the road surface, and you confirmed that.

5 I just want to take you to the
6 page of your draft which you actually summarize
7 the 2015 CIMA report. Could we pull out page 4,
8 please, The first three paragraphs including the
9 bullets.

10 This is the summary of the
11 2015 CIMA report that you provide in your draft
12 opinion, Mr. Boghosian, and you'll see the second
13 paragraph starting with the authors, you say:

14 "The authors conclude that a
15 combination of high speed and
16 wet surface are the primary
17 contributing factors to the
18 excessive numbers of collision
19 on the Red Hill especially in
20 the areas of interchanges
21 where small radius horizontal
22 curves are present."

23 Now that you've been taken to
24 this summary does that change your answer to the
25 question as to whether your review of the 2015

1 CIMA report indicated that CIMA appeared to
2 primarily attribute the wet weather collisions and
3 that it wasn't until the December 11th call during
4 which they raised the wet weather -- sorry -- the
5 road surface as a contributor.

6 A. No, CIMA's obviously
7 identifying the coefficient of friction of the
8 road as being one -- one of three very significant
9 factors.

10 Q. I'm looking at the second
11 paragraph where it says "the authors conclude the
12 combination of high speed and wet surface are the
13 primary contributing factors." Was that your
14 understanding of what the 2015 CIMA report
15 concluded as to the primary contributors of
16 collisions on the Red Hill?

17 A. Yes.

18 Q. Could we please go back
19 to image 9, Mr. Registrar.

20 Mr. Boghosian, this session
21 here under issues is where three issues are listed
22 and prior to this section there's the background
23 facts section where you summarize each of the
24 reports you've been taken through. I'm not going
25 to take you through.

1 You'll see under the issues
2 heading it states, "you have asked us to comment
3 on the following issues" and then you list those
4 three points. Who does the "you" refer to here?

5 A. Ms. Auty.

6 Q. So here you're listing
7 the three issues Ms. Auty has asked you to comment
8 on?

9 A. Yes.

10 Q. And you go on in your
11 opinion to provide your opinion on those issues
12 and the remaining sections, correct?

13 A. Yes.

14 Q. Mr. Commissioner, I'm
15 just going need a moment to check my notes,
16 please. Thank you, Mr. Boghosian, those are my
17 questions.

18 JUSTICE WILTON-SIEGEL: Okay.
19 Ms. Lie, do you have any follow-up?

20 MS. LIE: We do not have any
21 follow-up questions.

22 JUSTICE WILTON-SIEGEL:
23 Mr. Boghosian, thank you very much. It's been a
24 long day. Thank you for attending and you're
25 excused, you can sign off now.

1 THE WITNESS: Thank you very
2 much. Have a good evening.

3 Now, I understand there may be
4 one or two procedural matters to address before we
5 adjourn; is that correct?

6 MS. LIE: Correct. I'm going
7 to turn it over to Ms. Lawrence now to deal with
8 those.

9 MS. LAWRENCE: I do have two
10 housekeeping matters. The first I would like to
11 introduce a document as an exhibit, it's an
12 affidavit of Chris McCafferty which was affirmed
13 November 2nd, 2022. Mr. McCafferty is a senior
14 project manager the design section of engineering
15 services, and he held that position from 2007 to
16 2016.

17 His affidavit details that he
18 became aware of the Tradewind report -- pardon
19 me -- when he became aware of the Tradewind report
20 and whether he ever received requests from other
21 City staff for friction tests or reports on the
22 Red Hill prior to 2019.

23 Commission counsel has
24 previously provided copies of Mr. McCafferty's
25 affidavit to counsel for the participants and

1 counsel for the participants have advised they
2 will not be cross-examining on the affidavit, and
3 as such I would like to mark this affidavit. The
4 document is RVH1035, and I would like to mark it
5 as Exhibit 218, please.

6 THE REGISTRAR: Noted. Thank
7 you, Counsel.

8 EXHIBIT NO. 218: Affidavit of
9 Chris McCafferty affirmed
10 November 2nd, 2022; RVH1035

11 MS. LAWRENCE: The second
12 housekeeping matter is the close of Phase 1 of the
13 public hearings.

14 Today is our last scheduled
15 day of public hearings in this phase of the
16 inquiry. It is possible we may to have schedule
17 one or more additional hearing days in this phase
18 during the remainder of this month as the
19 investigation wraps up. Any additional dates or
20 witnesses will be announced on the inquiry's
21 website.

22 Subject to those possible
23 additional dates, the inquiry will be moving to
24 Phase 2 of the public works hearings which will
25 focus on evidence from experts to assist you in

1 making findings and recommendations in your final
2 report.

3 We anticipate that Phase 2
4 will be relatively brief compared to Phase 1 and
5 may run from one to three weeks. It will be live
6 streamed in the same manner as Phase 1.

7 Thereafter participants will
8 have an opportunity make written and oral closing
9 submissions to you which will be posted and live
10 streamed. There will be a pause before starting
11 Phase 2. A pause between the fact phase and the
12 expert and recommendation phase is common in
13 public inquiries, as it allows commission counsel
14 and other participants to review and exchange
15 expert information based on the evidence heard in
16 Phase 1.

17 Commission counsel expects an
18 information about next steps including timing of
19 Phase 2 and the timing of the closing submissions
20 will be posted to the inquiry website in the
21 coming weeks.

22 JUSTICE WILTON-SIEGEL: Well,
23 thank you very much. If there is nothing further
24 from any of the participants counsel we will
25 conclude with that. Accordingly, the public

1 hearings are now adjourned until the next
2 scheduled hearing dates which will be scheduled by
3 the participants. Thank you very much. Have a
4 good evening.

5 --- Whereupon the proceedings were adjourned
6 at 4:49 p.m.

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