

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Wednesday, February 22, 2023 at 9:30 a.m.

VOLUME 85

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1 Arbitration Place Virtual

2 --- Upon resuming on Wednesday, February 22, 2023

3 at 9:35 a.m.

4 MS. LAWRENCE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning.

8 MS. LAWRENCE: Maybe you can
9 just give me a second to ensure that my tech
10 issues are resolved. Seems good.

11 I think we can get started. I
12 don't know if we're live or not.

13 JUSTICE WILTON-SIEGEL: I
14 believe we're live.

15 MS. LAWRENCE: Great. We have
16 one witness today. It's Janice Baker, who is our
17 next witness, and I understand that she is in the
18 waiting room. I would ask the Registrar to let
19 her in, please. Good morning, Ms. Baker.

20 THE WITNESS: Good morning.

21 MS. LAWRENCE: Commissioner,
22 Ms. Baker has not yet been sworn and I ask that
23 the court reporter do that at this time.

24 AFFIRMED: JANICE BAKER;

25 EXAMINATION BY MS. LAWRENCE:

1 MS. LAWRENCE: Good morning.
2 Commissioner, may I proceed?

3 JUSTICE WILTON-SIEGEL: Yes,
4 please do.

5 BY MS. LAWRENCE:

6 Q. Welcome, Ms. Baker. You
7 prepared an expert opinion report for the inquiry
8 in November of 2022; is that right?

9 A. Yes, it is.

10 Q. Registrar, could you
11 bring up document EXP193, please. Ms. Baker, can
12 you see that document on your screen?

13 A. Yes, I can.

14 Q. Great. If you have any
15 issue with any of the documents that we put up on
16 the screen in terms of size or scrolling up and
17 down just let us know and the Registrar can
18 adjust.

19 A. Okay.

20 Q. This is a fairly lengthy
21 document. It contains your covering letter and
22 then your report. It also contains your CV, and
23 some assumed facts that commission counsel
24 provided to you, and I would ask that this made
25 the next exhibit, please.

1 THE REGISTRAR: Noted.

2 JUSTICE WILTON-SIEGEL: What
3 number is that, Mr. Registrar?

4 THE REGISTRAR: Exhibit 229
5 (sic).

6 JUSTICE WILTON-SIEGEL: Thank
7 you.

8 EXHIBIT NO. 230: Document
9 dated November 17, 2022; 42
10 pages

11 BY MS. LAWRENCE:

12 Q. Ms. Baker, before we get
13 into the details of your opinion I'm going to take
14 you to your CV. Registrar, can you go to image 24
15 of this document, please. And this is your CV?

16 A. Yes, it is.

17 Q. We redacted your personal
18 contact information at the top, but this is the
19 document you provided to commission counsel?

20 A. Yes, it is.

21 Q. So just even on this
22 first page, it's clear that you have worked in
23 municipal government for decades; is that right?

24 A. Yes, 35 years.

25 Q. Before I get into your

1 lengthy career I'm going to go to your education.
2 And that's at the bottom of image 26 please,
3 Registrar. Can you call out the bottom part of
4 this document under education. There we go. Just
5 so it's a little bit bigger for you, Ms. Baker.
6 And we can do that any time you need a little
7 assistance with the size of the font.

8 I see that you have a bachelor
9 of commerce degree with a major in accounting and
10 finance; is that right?

11 A. That's correct.

12 Q. And a chartered
13 professional accountant since 1982?

14 A. That is correct.

15 Q. And more recently, in
16 2019 you did a directors education program at the
17 Rotman School of Business?

18 A. Yes, correct.

19 Q. Registrar, you can close
20 this, and if you can go back to image 24, please.
21 So right at the top of your CV it indicates that
22 you are currently the chief administrative officer
23 in the Region of Peel; is that right?

24 A. Yes, it is.

25 Q. And you've held that role

1 since 2020?

2 A. Correct.

3 Q. At a high level what does
4 your role as chief administrative officer for the
5 Region of Peel entail?

6 A. Thank you. The CAO is
7 the single employee of the council of the Region
8 of Peel, and as such, you're responsible for the
9 oversight of the organization, establishment of
10 strategy for the municipality, setting of policy
11 for a wide range of areas whether it's human
12 resources, finance, broad strategic objectives
13 around the services that the region provides.

14 You are, along with your
15 leadership team and the professional staff in the
16 organization, the advisors to council on issues
17 that come before them that they are responsible
18 for making decisions with respect to services and
19 other priorities for the municipality. We manage
20 the infrastructure that the municipality owns and
21 operates, provide frontline services in a broad
22 range of areas. So in the case of the region,
23 it's primarily housing, health, public works, and
24 we run a number of provincial programs such as
25 ambulance and emergency response.

1 So in broad terms, you lead
2 the organization, you certainly support the
3 organization in terms of delivering on its
4 objectives. And you are an advisor to council on
5 the issues where they are looking to the
6 administration to help them do their job, which is
7 make decisions on behalf of the citizens of the
8 Region of Peel.

9 Q. Thank you. Prior to this
10 role in the Region of Peel you worked for the City
11 of Mississauga your CV indicates?

12 A. Yes.

13 Q. And I see you held
14 successive roles in the City of Mississauga
15 starting in May 1999; is that right?

16 A. Correct.

17 Q. So you were first
18 commissioner of corporate services and treasurer
19 for about five years, then the acting City manager
20 and CAO for a brief period of time, and then the
21 City manager at CAO from January 2005 to May 2020?

22 A. That's correct.

23 Q. Recognizing that was a
24 city role versus your role in the Region of Peel,
25 was the City manager and CAO role in Mississauga

1 similar in terms of your overall responsibilities
2 to the role that you currently hold in peel?

3 A. Yes, it would have been
4 very similar. The basket of service that the two
5 municipalities delivers is somewhat different, but
6 nonetheless, the role would have been virtually
7 the same in terms of its responsibilities and
8 accountabilities.

9 Q. Thank you. Registrar,
10 could you go to the next image, please. Your CV
11 also indicates that you've worked for two other
12 municipalities, the City of St. Johns in the 80s
13 into the 90s, and then the City of Oshawa in
14 the -- from 1995 to 1999; is that right?

15 A. Correct.

16 Q. And you held successive
17 leadership roles at the -- looks like they are
18 commissioners but as the director role; is that
19 right?

20 A. In St. Johns, yes, my
21 ultimate role was director of finance and city
22 treasurer as you see there, and then in Oshawa I
23 held a number of commissioner roles.

24 Q. And that included for a
25 brief period of time the acting commissioner of

1 public works?

2 A. That's correct. There
3 was a reorganization underway and the City manager
4 at the time asked me to step into that role while
5 we were looking to make some structural changes.

6 Q. And thereafter you had
7 the commissioner of operational services role
8 which had responsibility for roads and parks
9 maintenance, recreation programs and facilities,
10 and solid waste collection; is that right?

11 A. Yes, so that was post the
12 reorganization and I took over that consolidated
13 set of services for the City for a brief time.

14 Q. Looking at the bottom of
15 this page, you've listed a number of awards that
16 you've received, most recently the Vanier medal
17 from the Institute of Public Administration of
18 Canada, and that you indicate was the first time
19 the award was given to municipal official. At a
20 very high level, the Institute of Public
21 Administration of Canada, what is the nature of
22 that organization?

23 A. The Institute of Public
24 Administration of Canada is an organization that
25 focuses on career development, training, skills

1 development, setting codes of conduct, really
2 looking at supporting senior public officials at
3 all levels of government, federal, provincial, and
4 municipal. You know, learn about current best
5 practices, and they do training for public
6 officials, they hold an annual conference, they
7 create networking opportunities, all with a view
8 to building the skills and expertise of those in
9 public service to be able to perform at their
10 best. And the Vanier medal, as you've noted, is
11 their highest award that they give on an annual
12 basis.

13 Q. Registrar, can you go to
14 the next image, please. Thank you. Just stopping
15 there, a matter of housekeeping. I understand
16 that this report should actually be Exhibit 230.
17 I think there was a numbering error earlier.
18 Registrar, can you just confirm that?

19 THE REGISTRAR: I confirm,
20 Ms. Lawrence, it's 230 instead of 229.

21 BY MS. LAWRENCE:

22 Q. Thank you. Turning to
23 your board and community service, we're not going
24 to go through all of them. They are many. In my
25 review of these it appears that you've served on a

1 number of different boards, some of which arise
2 out of the various roles that you have held; is
3 that right?

4 A. Yes, that's correct.

5 Q. And others appear to be
6 education and development associations for
7 municipal administrators. Is that also correct?

8 A. Yes, including the
9 National Association in Canada for Municipal
10 Administrators, the Canadian association, I was on
11 their board and president -- served as president
12 in 2017 I believe it was.

13 Q. Thank you. In those --
14 that latter group of organizations including the
15 Canadian municipal administrators, in those roles
16 you were able to discuss and interact with other
17 municipal senior officials; is that right?

18 A. Yes. In fact, it's one
19 of the prime benefits of being a member of an
20 association is the ability to connect and network
21 with your peers right across Canada.

22 Q. Thank you. And did that
23 include the sharing and brainstorming of best
24 practices within municipal governance?

25 A. Absolutely. In fact, one

1 of the programs that we had at the Canadian
2 Association of Municipal Administrators was an
3 annual awards program that across a number areas
4 had municipalities submit annually initiatives and
5 programs that they had developed for purposes of
6 showing innovation or best practices, and then
7 those who received the awards, their material
8 would be available on the website for any and all
9 members to access.

10 Q. Thank you. So given your
11 education and your very lengthy career in
12 municipal government and your interactions with
13 many other officials in other municipal
14 governments, do you feel well positioned to today
15 to give Commissioner evidence about municipal
16 corporate governance?

17 A. I believe so. I've been,
18 as you've noted in the field, for a very, very
19 long time with senior roles in large organizations
20 and I can hopefully share the benefit of my
21 experience with the commission.

22 Q. Thank you. In giving
23 your testimony today can you commit to providing
24 evidence that's fair, objective and non-partisan
25 and relating only to matters that are within your

1 expertise?

2 A. Yes, I certainly can.

3 Q. And you understand that
4 this duty prevails over any other obligation that
5 you might owe to commission counsel who have
6 retained you and that your role today is really to
7 assist the Commissioner in his work of addressing
8 terms of reference; is that right?

9 A. Yes, correct.

10 Q. So you were given some
11 facts to assume in Exhibit 230. Those start at
12 Exhibit 28. Registrar, could you take us to
13 Exhibit 28, please. Pardon me. Image 28 is what
14 I meant to say.

15 So you'll see this is the
16 beginning of the commission counsel's letter to
17 you that encloses your questions, themes, and some
18 assumed facts. Registrar, can you go to the next
19 image, please. Thank you.

20 I'm not going to take you
21 through each of these pages, but just for a bit of
22 overview, you were asked to assume some facts and
23 you were given some references to the commission's
24 overview document. I don't know if there's any on
25 this particular page, but you recall throughout

1 the assumed fact there's some references?

2 A. Yes, I do.

3 Q. And you reviewed those
4 pinpoint references in the overview document in
5 order to assess your opinion today?

6 A. Yes, I did.

7 Q. More recently you were
8 provided with some City policies and some
9 consultant reports that are all relevant to this
10 inquiry and its work?

11 A. Yes, I was.

12 Q. So other than the
13 documents and the assumed facts that we've
14 provided to you, you haven't reviewed the totality
15 of the overview documents in preparation for
16 today; is that right?

17 A. That's correct. I looked
18 at the material that was provided to me only.

19 Q. And you haven't listened
20 to the evidence in the public hearings or reviewed
21 the transcripts from that evidence?

22 A. I have not.

23 Q. And you understand that
24 your role really is to assist the Commissioner,
25 who is actually the person who is going to make

1 findings of fact?

2 A. Correct.

3 Q. Great. So I'm going to
4 turn now to your opinion. Registrar, could you go
5 to image 2 of this document, please. So this is
6 really where your opinion starts. And commission
7 counsel asked you a number of questions. I'm not
8 going to go through each of the questions point by
9 point, but I just wanted to give you a sense of
10 where we'll go. We're going to start with best
11 practices around setting the roles and
12 responsibility of staff.

13 So first I have some general
14 questions about role clarity and role
15 responsibility within large municipalities. In
16 your report -- Registrar, can you bring up the
17 next page as well. Thank you.

18 In your report at the bottom
19 of image 2 you say large municipalities by their
20 nature can be complex and untidy, which is a
21 helpful way to put it I think. And the next page
22 you say culture is very important for
23 organizational effectiveness. You talk about
24 culture of cooperation and transparency throughout
25 your report.

1 Can you speak more about why
2 it is important to develop a culture of
3 cooperation and transparency within large, untidy
4 municipalities.

5 A. Yes, thank you. My
6 reference to I think the untidiness of
7 municipalities is that municipalities deliver a
8 wide range of services, many of whom don't have on
9 a daily basis the need to interact. So if you're
10 in the fire department you may never speak to the
11 person who is providing recreation programs and
12 teaching kids to swim.

13 So there is really a need for
14 the organization to develop a strategy and plans
15 to bring the organization together from a cultural
16 perspective. And what I mean by that is you want
17 the organization to be aligned on strategy, what
18 is important to us in building this community.
19 You want the organization to be aligned on its
20 values and you want the organization to be aligned
21 on the behaviours that you would expect from
22 senior leaders, staff.

23 So talking about the values of
24 the organization, how you want the staff to work
25 together regardless of whether they do that on a

1 day-to-day basis or whether they do it on a more
2 in frequent basis. The values of teamwork, of
3 collaboration, of really behaving -- I always use
4 the expression we are one team. And in order to
5 do that within a municipal structure, which again
6 does not necessarily bring people together on a
7 regular basis, you -- first of all, you need to
8 articulate what those expectations are. And you
9 can do that in a variety of ways, certainly in
10 performance documents that the staff use to manage
11 and measure both their deliverables but also their
12 competencies and behaviours. You can do it
13 through learning and development opportunities.
14 You can do it through team meetings.

15 There are a wide range of
16 tools that organizations can use to bring it
17 together, but ultimately what you really want is
18 to have clear expectations and a clear
19 understanding of the organizational culture and
20 the behaviours you that expect from those who work
21 for the municipality.

22 Q. Turning to individuals or
23 departments that do work more closely together
24 than say the firefighter and the swim instructor,
25 but divisions that are not -- that have their own

1 role and responsibility but may have some overlap
2 or at least some similarity in terms of what they
3 are doing, how can department leaders ensure that
4 it is clear who is going to do what so that
5 nothing gets -- there is not confusion or gaps or
6 overlap?

7 A. I think again there are
8 probably a variety of things that need to be in
9 place. It would be the responsibility of the
10 departmental leader to look at those who report to
11 that position and really have articulated clearly
12 the roles and responsibilities of each of their
13 direct reports and then in turn the staff who
14 report to a director level position and front
15 line.

16 And typically that would be
17 done either within the leadership team or with the
18 assistance of an outside advisor or human
19 resources to really look at the structure and
20 understand all of the roles and responsibilities
21 that are within the scope of the department and
22 then spell out clearly who is responsible for
23 discharging those. That can be done in a variety
24 of ways. I think if you look at municipalities
25 and in particular the role of public works, every

1 municipality has responsibility generally for
2 various public works whether it's roads, water,
3 wastewater, so there certainly is a lot of
4 evidence and information out there around how
5 others have organized and set about aligning those
6 roles and responsibilities.

7 But it needs to be clear,
8 everything has to be covered. There needs also to
9 be -- or there needs to be conversations about,
10 you know, how you're going to resolve those areas
11 where there is overlap because it's almost
12 inevitable that the person who is responsible for
13 the capital maintenance of assets and those who
14 are responsible for the daily operations need to
15 consult with each other occasionally and maybe
16 even often to talk about their respective roles,
17 but make sure that information and knowledge is
18 being shared back and forth.

19 But ultimately it's the
20 departmental leader who has the primary role in
21 assessing and documenting and then sharing that
22 understand with everyone. The performance
23 documents of staff would reflect the roles and
24 responsibilities that have been assigned to them,
25 work plans would in a similar fashion be laid out

1 in a way that would make it clear who is the
2 person most responsible for delivering on a
3 particular work item.

4 Q. Thank you, Ms. Baker.

5 I'm going to ask you to slow down just a little.
6 The Commissioner is taking handwritten notes so to
7 save his hand from cramping if you can slow down
8 just a little.

9 A. It's my Newfoundland
10 heritage. I talk fast.

11 Q. You mentioned work plans
12 at the end of your last answer. How are work
13 plans a useful way to keep municipalities and in
14 particular public works departments within
15 municipalities on track in terms of goals and
16 agenda items?

17 A. So a work plan is
18 essentially a document that captures immediate and
19 possibly even short and medium term projects, work
20 items, operational maintenance, responsibilities
21 for a team of people. So those plans would be
22 really the way of operationalizing the
23 responsibilities that have been assigned to
24 respective staff in an organization and in a
25 department.

1 The work plans also can be
2 used to provide status updates on progress. They
3 can be used to identify challenges, you know, we
4 have a target finishing project X but we're
5 running into problems, we need to have a
6 discussion or we need to bring that to the
7 attention of our supervisors or leaders in the
8 department. So they really are a tool that gives
9 you a view of all of the various projects, issues,
10 work items that are under way at a point in time
11 or potentially are planned for later in the year
12 or subsequent years, and then you manage to those.
13 They really are a tool that can allow you to keep
14 a finger on the pulse of what's happening,
15 identify problems and issues that may arise, and
16 understand the progress that you're making, are we
17 hitting targets, are we ahead, behind. They
18 really can be very, very useful both from a
19 management perspective but also from a
20 communications perspective.

21 Q. Thank you. You mentioned
22 that work plans are one way to keep track of
23 projects. When there are projects that overlap
24 with different departments or divisions within
25 departments, what's the best practice to ensure

1 that a project is well managed?

2 A. In my experience when you
3 have a project that crosses departmental or
4 division alliance you can establish a steering
5 committee or at least an oversight committee that
6 has representatives, the appropriate
7 representatives on the team from the different
8 divisions or departments that are involved and
9 have shared responsibility for that project.

10 And through tools like a
11 project charter or a document that, you know,
12 speaks to the scope of the project, sets out the
13 roles and responsibilities, you can establish how
14 that team will work together, how frequently would
15 they meet, what would be the items that would be
16 on their agenda. It wouldn't likely be the intent
17 of a steering committee to deal with the
18 day-to-day operational issues of the project, that
19 should be the role of the project manager, but
20 certainly to receive updates, to resolve
21 disagreements, or provide priority if it is
22 unclear around how something should be resolved,
23 or what is more important, is it more important
24 that we do A or that we do B, what's the
25 sequencing of these things, et cetera.

1 I mean, I think it's important
2 based on everything that I've said to now, you
3 know, these are living, breathing projects. They
4 require ongoing communication typically, ongoing
5 management, and sometimes, you know, an
6 intervention or a decision would have to be made
7 by someone senior in a role because there's a
8 disagreement that can't be resolved at the
9 operational level. So it is a dynamic process,
10 but nonetheless one that still can be structured
11 to -- keep the project and the team on track.

12 Q. Thank you. So you
13 mentioned both charters and steering committees
14 and I'm just going to delve a little deeper into
15 both of those.

16 Registrar, could you bring up
17 a document that was provided to you. It's called
18 City of Hamilton Public Works Project Management
19 Manual. Thank you. You can actually pull up the
20 next image as well, please.

21 So this document does not yet
22 have a doc ID and it has not been introduced,
23 Commissioner, through a City staff member, but
24 commission counsel does anticipate it will be and
25 we have provided on that anticipation to

1 Ms. Baker.

2 Ms. Baker, you had a chance to
3 look at this public works project management
4 manual in your preparation for today; is that
5 right?

6 A. Yes, I did.

7 Q. And you'll see just
8 looking at the table of contents this manual
9 really deals with project management. And you'll
10 see project integration management, the fourth
11 line down, is developing a project charter, and
12 then it goes through a number of aspects of
13 project management that should be considered, and
14 then it in ends closing the project.

15 So just if we can go down,
16 Registrar, if you can pull up the page 6,
17 please -- or image 6, please.

18 So here in this -- this is
19 project work specific for the City of Hamilton, so
20 reference to what is a project. And it has some
21 criteria to decide whether a project requires a
22 project chart and actually is a project, and the
23 criteria here are that it is the creation of
24 unique product, service or result, that knowledge
25 is broadly shared including across divisions, that

1 there are some time criteria that is relevant,
2 there is resource criteria including choosing
3 between different resources that may be limited or
4 funded by capital or operating budget, or the
5 outcomes are uncertain including having some
6 political sensitivity or being public facing.

7 And so in those circumstances,
8 this manual suggests having a project charter
9 because, as you say, projects are -- here it says
10 projects are human events, which I think
11 corresponds to say what you said about projects
12 being living and breathing.

13 In your view what is the
14 benefit of having a project charter when you have
15 a circumstance where knowledge is broadly shared
16 in order to create clarity around who is going to
17 be doing what in the context of the project?

18 A. I mean, first of all, the
19 benefit of a project charter is you write
20 everything down, and to the extent that you've
21 documented the goals and objectives of the
22 project, the tools and resources that will be used
23 to deliver that project, you know, the people who
24 touch the project, so what are their roles and
25 responsibilities, those can be anything from

1 someone who is directly involved in leading or
2 delivering an element of the project to those who
3 simply need to be kept informed.

4 But it becomes a reference
5 document for those within the project, but quite
6 frankly, through transparency, even those who are
7 not directly associated with the project to be
8 able to understand the scope of the project, how
9 it's going to be delivered, who is going to
10 deliver it and what the desired outcomes will be,
11 and as I said, the resources and tools that you
12 would need in order to successfully deliver the
13 project.

14 So it really becomes your -- a
15 key document in keeping track. You know, as I
16 keep -- I think I've said this earlier, one of the
17 things that you really need to be able to do in a
18 complex organization is be able to keep track and
19 be able to check in on progress of initiatives or
20 projects, so the project charter says out how that
21 will be done and becomes a key communication tool.

22 Q. Thank you. Registrar,
23 can you go to image 17, please. So this is an
24 appendix in the same document. It has a project
25 roles and responsibilities and it lists -- this is

1 really one of I think two -- a page and a half of
2 the different roles and responsibilities of people
3 involved.

4 Registrar, can you bring up
5 the next image just so it's clear.

6 Ms. Baker, you said earlier
7 that the day-to-day responsibility of a project
8 may fall with a project manager but that having a
9 steering committee may be helpful where there are
10 higher level decisions that need to be made. I'm
11 paraphrasing your evidence but I hope I've
12 captured it.

13 In this roles and
14 responsibilities they list a member called a
15 project champion is often the general manager,
16 director or manager, and they are the ones that
17 deal with funding, approvals, approving
18 deliverables, approving changes to the project
19 charter, and basically it appears being an
20 advocate for the project outside the project team.
21 Is that a fair summary of the project champion?

22 A. Yes, as I see it they are
23 correct.

24 Q. Do you always need a
25 steering committee to be -- to provide oversight

1 to a project that is subject to a project charter,
2 or are there circumstances where a project
3 champion sitting with one individual is an
4 appropriate organizational structure?

5 A. I think for every
6 project -- and it depends on scale and scope. So
7 clearly the larger a project the more likely it is
8 that you would need a steering committee. In my
9 experience, steering committee can consist of
10 someone who would be a project champion, but if
11 there are significant financial implications you
12 might need your CFO or if there are significant
13 legal implications you might bring in your
14 solicitor or a representative.

15 So I think it can be project
16 specific and but certainly I think it is a best
17 practice where you have a significant or complex
18 project, I think to have those -- a steering
19 committee of senior people who can make decisions
20 quickly, who can come together and discuss and
21 then align around a decision or a solution, it
22 certainly facilitates communication. And, you
23 know, steering committees can meet on a regular
24 basis if they need to, or they can be ad hoc. It
25 doesn't mean that you have to feed that structure

1 daily, weekly or monthly, you know, they can
2 certainly come together as needed.

3 So I think it does depend on
4 the nature of the project, but the bigger the
5 project, the more complex the project, the more I
6 think a steering committee can be helpful.

7 Q. Thank you. Just before
8 we leave this document, in terms of having a
9 project charter that guides a project, has that
10 been good practice in municipal government for a
11 number of years before now or is this a relatively
12 new organizational approach?

13 A. In my experience,
14 municipalities have been pursuing good project
15 management practices certainly for the last 10 to
16 15 years. I think there are organizations like
17 the project management institute or -- sorry if
18 they've name incorrect, but there is a body of
19 knowledge, expertise and experience that I think
20 municipalities look to, because municipalities
21 tend to do a lot of projects, not just in public
22 works, but across all of the spectrum of the
23 services that they deliver, and so having the
24 access to an inventory of best practices is
25 something that I think has become the norm within

1 municipalities and certainly for the last decade
2 in particular. As I look at this document I think
3 this has likely benefitted from having access to
4 some of that material that is made available
5 through that group.

6 MS. LAWRENCE: Thank you.
7 Registrar, can we mark this the next exhibit,
8 please.

9 THE REGISTRAR: 231. Noted.

10 EXHIBIT NO. 231: City of
11 Hamilton Public Works Project
12 Management Manual, December
13 2022

14 BY MS. LAWRENCE:

15 Q. Returning now to the
16 concept of a steering committee. Registrar, could
17 you close this and can you go to another document
18 that's been provided to you but does not have a
19 doc ID. It's City of Hamilton Parkway and
20 Management Committee Terms of Reference. If you
21 can pull up the next image as well too.

22 So the inquiry has seen
23 various versions of this document, but this one is
24 dated April 2022, and you'll see that it is a
25 parkway management committee that provides

1 leadership on the safe and efficient operation and
2 maintenance of the LINC and the Red Hill. That's
3 right at the top of the mandate. And that the PMC
4 shall provide input and guidance to staff and
5 council on policies, projects, programs relating
6 to the operation and maintenance of those
7 roadways.

8 And then on the second page
9 you'll see the staff representation includes the
10 general manager's office, the chief road
11 official's office, engineering services,
12 transportation operation and maintenance,
13 environmental services including forestry, and the
14 water division.

15 Is this an example in your
16 opinion of a steering committee for a project,
17 being the efficient and safe operation of the LINC
18 and the Red Hill?

19 A. It does. Based on my
20 reading of it that's what I would typically expect
21 to see in a steering committee structure and
22 mandate.

23 Q. Thank you. Registrar,
24 can you close this down and go back to Ms. Baker's
25 opinion which is -- report, pardon me, which is

1 EXP193. I left that document too quickly.

2 Could you make that document
3 the next exhibit, the parkway -- I want to make
4 sure I have the name right -- Parkway Management
5 Committee Terms of Reference April 2022.

6 THE REGISTRAR: 232.

7 EXHIBIT NO. 232: Parkway
8 Management Committee Terms of
9 Reference, April 2022.

10 BY MS. LAWRENCE:

11 Q. Registrar, could you go
12 to image 4 and 5 of this document, please. So
13 you'll see at the bottom -- this is your report,
14 Ms. Baker. At the bottom of your report on
15 image 4 you say it appears from the assumed facts
16 that the Red Hill became a high profile issue over
17 time. There was political interest, concerns
18 expressed about the parkway (audio skipped)
19 committees, by members of the public and by the
20 media. High profile issues such as the Red Hill
21 issue receive attention at all levels of
22 leadership up to City manager.

23 So I'm just going to stop
24 there and ask a question that's not related to
25 steering committees, although that's what we're

1 talking about right now. Generally in your
2 opinion does the City manager have a direct and
3 specific responsibility for public safety within
4 the municipality?

5 A. I think an overarching
6 responsibility to ensure that matters of public
7 safety are being addressed in a timely manner I
8 would say would be a discussion that would happen
9 regularly between the City manager and the
10 department head responsible. I can think of one
11 example during my time in Mississauga, I won't get
12 into the details of it, but, you know, an area
13 where we were experiencing significant and
14 frequent flooding in a neighbourhood. In that
15 case I did seek regular updates from the public
16 works commissioner on the progress we were making
17 on that issue, and I think that, as CAO, you know
18 councillors will approach you as the leader of an
19 organization to ask what are we doing about this.

20 You know, often, I mean,
21 there's some political urgency because in all
22 likelihood they are getting complaints from the
23 residents who are affected or they are hearing in
24 this case from the general public about concerns
25 And they want to understand that those concerns

1 are being addressed, given some level of urgency
2 if it is a public safety issue, and that the CAO
3 is keeping an eye on the progress that's being
4 made.

5 So that is something that I
6 would expect in the normal course of dealing with
7 an issue that has received some political
8 attention for sure.

9 Q. On the next image you
10 say:

11 "The creation of a steering
12 committee of directors to
13 manage the Red Hill issues
14 would, in my opinion, have
15 helped to resolve some of the
16 challenges that staff had
17 getting information,
18 understanding what was
19 happening and determining who
20 was responsible for what.
21 This could have been in place
22 as early as 2013 when
23 councillors raised issues with
24 the Red Hill by motion."
25 So just stopping there. Are

1 steering committees useful for issues that don't
2 have a time-based project with a particular
3 outcome but, rather, more the sort of political
4 sensitivity or public scrutiny that you are
5 referencing in that first paragraph on image 5?

6 A. I think so. And whether
7 you call it a steering committee or whether it's
8 just a collaboration of leaders that comes
9 together on a regular basis, because, you know,
10 you have different groups that are touching an
11 issue in different ways and again to share
12 information to resolve differences or
13 disagreements that may be happening, those could
14 be brought to the attention of that group.

15 I mean, it is really all about
16 the values of collaboration, team work,
17 transparency, communication, that's really what
18 you are trying to develop and foster. And in my
19 opinion, any time you do that and you have a group
20 that comes together that has a shared interest in
21 resolving a problem, it is best practice that
22 these are -- this group communicates, shares work
23 plans, resolves conflict or disagreement and
24 really aligns to get to a solution to the problem
25 in an effective and coordinated fashion.

1 Q. Thank you. And whether
2 there's a steering committee or not, does the
3 ultimate responsibility for projects fall to the
4 general manager of public works?

5 A. I mean, the department
6 head is ultimately responsible for the broader
7 delivery of results across the entire spectrum of
8 responsibilities that they have been given to
9 ensure operations are running effectively,
10 services are delivered, and issues and problems
11 are resolved or projects are completed on time and
12 have achieved the desired result.

13 Q. Recognizing that
14 assessments of public safety or remediation of
15 public safety issues will be at a technical level
16 with technical staff, what's the role of the
17 general manager within a public works department
18 to have oversight over public safety generally?

19 A. I would think that --
20 again scale and scope matters, you know, fixing
21 potholes is one thing. If you have a major asset
22 that has drawn some attention and there's some
23 concern that there may be significant safety
24 issues, I think that rises to the level where it
25 would become an issue that any general manager

1 would wish to be updated on regularly.

2 My practice as a CAO I had
3 biweekly update meetings with my direct reports,
4 the commissioners, and encouraged them to do the
5 same with their direct reports. So there should
6 be regular and ongoing conversations about how are
7 we doing, and in particular issues that are
8 current, topical and of concern should be on those
9 agendas so that the general manager can understand
10 what's being done. Those conversations can be
11 about do we have the right resources, whether it's
12 expertise or capacity, to be able to get the
13 information or do the technical analysis that's
14 required to reach a solution.

15 So these are all discussions
16 that I would expect in a scenario such as this
17 would be happening on a fairly regular basis.

18 Q. Thank you. I'm going to
19 move now to information sharing between City staff
20 or amongst City staff. At a very, very high
21 level, municipalities have legislative
22 responsibilities to maintain records created by
23 the municipality; is that right?

24 A. Yes.

25 Q. And as a result there

1 needs to be document retention and document
2 control processes and policies in place to be able
3 to meet those requirements?

4 A. That's correct.

5 Q. And would you expect that
6 recordkeeping would be required in the same
7 legislative framework for staff reports or
8 consultant reports, you know, things that are
9 prepared by either staff or consultants as part of
10 the work municipality?

11 A. Yes, municipalities as a
12 level of government are subject to legislation
13 that speak to the need for recordkeeping and
14 record retention, and quite frankly that's very
15 broad. That can range to everything from e-mails
16 and correspondence through to technical or staff
17 reports, really any document that is -- comes into
18 the possession of the municipality that pertains
19 to the services it delivers and the work that it
20 does is generally considered to be a record that
21 then has to be properly stored, managed, and
22 available should, for example, a request be made
23 through -- municipalities are subject to the
24 municipal Freedom of Information and Protection of
25 Privacy Act. You can get requests for documents

1 under that legislation.

2 So ensuring that documents are
3 properly managed, stored and then available should
4 a request be received is something that
5 municipalities have really as a core part of their
6 document management systems.

7 Q. When it comes to storing
8 and then sharing information as between divisions
9 within the City, and we can I think talk
10 specifically about the public works department,
11 regarding a specific project or a specific matter,
12 what's the best practice to have a repository
13 information all in one place, or is that a best
14 practice or if not, what is the best practice?

15 A. Yeah, it is, and of
16 course in today's world and for the last number of
17 years those practices have been facilitated
18 through document sharing tools such as SharePoint,
19 a place where electronic documents, because quite
20 frankly these days pretty much everything is
21 electronic -- electronic documents are stored,
22 they can be managed. Multiple staff, if you're
23 looking at a team coming together to work on a
24 particular report or needing to access a
25 particular document, they can see it, in some

1 cases they can edit it if they have been given
2 permission to do so.

3 So it really -- collaboration
4 tools are certainly now a best practice and I
5 would suggest becoming a norm for municipalities
6 in how to manage documents and how to have those
7 documents accessible to various stakeholders and
8 staff that need to see them or work with them.

9 Q. The City of Hamilton has
10 put in place a policy that deals with tracking and
11 retaining consultant reports, that is, from third
12 party consultants.

13 Registrar, could you call up
14 City of Hamilton consultant report tracking and
15 retention divisional procedure, please.

16 Ms. Baker, you've had a chance
17 to review this in preparation for your evidence
18 today?

19 A. Yes.

20 Q. So I don't forget, can
21 you make this the next exhibit, please, Registrar.

22 MS. LAWRENCE: Exhibit 233.

23 EXHIBIT NO. 233: Consultant

24 Reports Tracking and

25 Retention, May 2021

1 BY MS. LAWRENCE:

2 Q. Thank you.

3 So I'm going to summarize this
4 policy rather than go through it, but you'll see
5 just the purpose is to establish a process for
6 tracking and retaining consultant reports. And
7 throughout the procedure, and perhaps we'll
8 actually go to image 3, please, various levels of
9 team member have responsibility from director to
10 manager, and then we're now on the sort of next
11 level down, superintendent or senior project
12 manager and project manager. Registrar, can you
13 bring up the next image at the same time, please.

14 So you'll see the project
15 manager reviews a final consultant report. This
16 is under 4.4. The project manager will advise if
17 the consultant report contains an imminent risk to
18 human health or safety and follow up with the
19 consultant to understand the risks and seek
20 recommendations if that's the case, and bring it
21 to the senior project manager superintendent and
22 to the continuous improvement manager if that
23 circumstance exists.

24 And as well for all reports
25 they will prepare a report summary form that

1 contains the recommendations and then track the
2 recommendations that exist and that are
3 implemented within this form.

4 And the senior project manager
5 continuous improvement actually has the repository
6 of the summary forms that contain the tracking of
7 consultant reports. That is my very broad summary
8 of this procedure.

9 But turning sort of more to
10 the substance rather than the words in the
11 procedure, is it common in your experience to have
12 a particular policy that deals with tracking of
13 consultant reports?

14 A. It is not common in my
15 experience, no. I mean, generally municipalities
16 have bylaws and policies that relate to the
17 management of all documents. Project charters
18 will in themselves, if a consultant's report or
19 consultant's engagement is part of the project,
20 you know, will talk about where those documents
21 are going to be housed and who has access to them.

22 In looking through this, it
23 was certainly quite detailed and seemed to be very
24 targeted because the imminent risk to human health
25 or safety was kind a criteria that said if it's

1 this you take these steps, if it isn't you stop is
2 what I saw -- I think there was a chart that was
3 included at some point somewhere.

4 So I wouldn't say this is
5 normal or, you know, something that I've seen. I
6 mean municipalities will often in response to
7 something that may have gone wrong overreact or
8 take steps to decide that can't happen again.
9 This feels a little bit like that to me. But I
10 suppose there's no inherent harm in it. It feels
11 very procedurally heavy, but if it works it works.
12 I wouldn't necessarily classify it as a best
13 practice.

14 Q. In terms of having a
15 repository where all of the consultant reports and
16 the recommendations that are contained in those
17 reports are noted, and where the -- to the extent
18 that there is some imminent risk to human health
19 and safety is also noted within that repository,
20 but really just focusing on having a repository
21 that has all consultant reports, is that -- can
22 you see the benefit of that for municipality even
23 if it's not a best practice?

24 A. I can see the benefit it.
25 I mean, consultant reports, again depending on the

1 nature of the engagement and public interest in
2 it -- you know, I say in my opinion. I mean are a
3 number of reasons why a municipality can hire a
4 consultant and some of it may strictly have to do
5 with internal practices. How do you design
6 offices effectively. You know, we're looking at
7 human resource policies. But those that have a
8 public interest are typically more transparent.
9 Often municipalities will have them on their
10 website, for example, as part of reports to
11 council if in fact the report goes forward in
12 that -- as appended to a staff report, for
13 example.

14 So in my experience the use of
15 consultants is common in municipalities and having
16 the reports that they generate be readily
17 available and accessible is common and I would
18 suggest a fairly standard practice.

19 Q. You spoke earlier about
20 work plans. How would you see this kind of
21 tracking of -- specifically of consultant reports
22 that have been received and the recommendations
23 contained therein as it relates to the work plan
24 tracking of the work of the municipality that you
25 talked about earlier?

1 A. I would see if there are
2 recommendations coming out of the consultant's
3 report for specific actions to be taken,
4 specifically in respect of human health and
5 safety. And I mean, in this case if we're talking
6 about imminent, we would be talking about
7 something that would rise to the level of urgency,
8 then that would had been integrated into a work
9 plan of the division responsible for delivering on
10 that safety measure and -- but subject to the same
11 kind of oversight and tracking and, you know,
12 communication standards that I spoke about
13 earlier.

14 I don't believe segregating
15 the recommendation -- the source of the
16 recommendations in respect of work plans really
17 shouldn't matter a great deal. If the
18 recommendation has -- of a consultant been
19 accepted or if it's the recommendation of an
20 internal expert, those should be integrated into a
21 consolidated work plan and managed in that way.

22 Q. You mentioned earlier the
23 culture or the accessibility of consultant reports
24 for those who should be able to look at them, and
25 so would you agree that the sort of tracking

1 process may make that accessibility easier?

2 A. Yes. I think again to --
3 you know, there's certainly nothing inherently
4 wrong with keeping track of where the source of a
5 work plan item came from and then being able to
6 refer back to that source document if that becomes
7 important. So, you know, there are ways of doing
8 that, but again in my view in an integrated
9 fashion.

10 Q. Absent having policy that
11 specifically speaks to the tracking of all
12 consultant reports and the tracking specifically
13 of consultant reports that contain imminent risk
14 to human health or safety, so absent formal policy
15 that have that, would you expect that there would
16 be a culture of developing repositories of this
17 kind of information to be shared amongst staff?

18 A. Absolutely. It's -- you
19 know, again that goes -- circles right back to the
20 earlier conversation about culture. It would feed
21 into the conversation about steering committees or
22 ad hoc committees coming together, transparency,
23 accountability, follow up, teamwork,
24 collaboration, I mean, these are principles that
25 should apply to everything that the team is doing

1 and that the municipality is working on.

2 So the use of a consultant --
3 I mean, in my opinion, you know, consultants are a
4 tool. They can be hired if you don't have
5 expertise internally to do certain work, or if the
6 capacity is not there; staff could do it if they
7 had the time or the tools. And so you bring in a
8 consultant to backstop a gap that you see in your
9 resourcing or your expertise, but then that really
10 just gets integrated into the -- the work of the
11 consultant and the recommendations that they
12 deliver really come into a more integrated
13 team-based approach to solving a problem.

14 I think the comment I made
15 earlier, the source of the recommendations is less
16 important than having those recommendations fed
17 into a work plan system, an accountability system,
18 you know, that they are communicated within and
19 among the people who have a role to play in
20 delivering on that recommendation or just need to
21 be aware that work is under way and being done.
22 They may not have a role in discharging the
23 responsibility, but it would be helpful for them
24 to understand the status of what's happening if
25 they have a different role in respect of an asset

1 or a service.

2 Q. Where there is not an
3 existing culture or where there is going to be
4 communication up to those -- the people you were
5 just talking about who may not have a role but
6 have sort of a need to be kept in the loop, or
7 where there are other gaps in the existing culture
8 about transparency and collaboration, are
9 procedures like this one that expressly provide
10 some requirements for staff useful to help develop
11 that culture?

12 A. Yeah, it's a tool. It
13 certainly makes the expectations clear, and I
14 think you can evolve ultimately from, okay,
15 remember this policy that dealt with this very
16 specific issue, we now want to grow that so that
17 we're working through all issues in the same way.

18 So I think again it's you do
19 what you feel is necessary at the time but it
20 should be in service of a broader objective, I
21 believe, if again you want to evolve to a best
22 practice organization.

23 Q. Thank you. Absent a
24 policy like this, in your opinion do City staff
25 have an obligation to escalate reports that

1 contain imminent risk to human health or safety?

2 A. In my view yes,
3 absolutely. You know, the responsibility for
4 public safety and ensuring that no harm comes to a
5 member of the public that can be prevented is
6 really one of the first principles that a
7 municipal government operates under. Whether
8 you're looking at a budget or whether you're
9 looking at the services that are delivered or
10 you're looking at an assessment of infrastructure,
11 in any case where a risk has been identified that
12 may pose a threat to public health and safety,
13 that is job one. And those should be brought --
14 there should be systems to escalate those and --
15 but in the absence of that, you know, staff should
16 talk to their supervisor and ensure that that
17 information is passed on and ultimately hopefully
18 acted on.

19 Q. Thank you. Registrar,
20 can you pull up City of Hamilton Sharing of
21 Consultant Reports With Identified Imminent Risk
22 to Human Health or Safety. That is not the one
23 I'm looking for. It is a document that is titled
24 that but it was more -- not provided at the same
25 time. That is it. Thank you, Registrar, for

1 identifying two similarly named documents.

2 So this, Ms. Baker, is a
3 document from January 2022 you see at the top in
4 the issue date. It is a process for communicating
5 risks and it sets out the responsibilities.

6 Registrar, can we mark this as
7 the next exhibit, please.

8 THE REGISTRAR: Exhibit 234
9 noted.

10 EXHIBIT NO. 234: Sharing of
11 Consultant Reports with
12 Identified Imminent Risks to
13 Health or Human Safety,
14 January 2022

15 BY MS. LAWRENCE:

16 Q. Thank you. And if you
17 can go to image 3, please.

18 Ms. Baker -- Registrar, can
19 you actually make the chart on this page a little
20 bit bigger by calling out the gray box. Exactly.
21 Thank you.

22 Ms. Baker, you said there
23 should be processes to escalate where there's
24 issues with -- where a report advises of imminent
25 risk to human health or safety. Leaving aside how

1 you would define imminent risk to human health or
2 safety, is this the kind of approach that you
3 would expect in terms of escalation?

4 A. Yes, I mean, it speaks to
5 who should tell whom and then, you know, a
6 succession of reports. I mean, the one comment I
7 would make is I don't think it matters whether an
8 imminent risk -- interesting word -- but imminent
9 risk comes from a consultant report or something
10 that staff may discover in their daily inspection
11 routines, for example, I think the steps would be
12 the same but this speaks specifically to
13 consultant reports. So as a general rule, I think
14 if you are concerned about a particular issue that
15 it may create a risk to public safety I think this
16 would be the kind of communication channels that
17 you would pursue.

18 Q. Thank you. Looking at
19 the last box before end:

20 "City manager and general
21 manager to communicate the
22 risk to council
23 appropriately," and there's a
24 star, "and promptly."
25 And then it says the star:

1 "Communication modes include
2 but are not limited to
3 e-mails, press releases or
4 information updates."

5 And I won't take you to it in
6 your report, but do you mention in your report
7 that you don't need to wait for a staff report,
8 there are various ways that the City manager and
9 general manager may contact council to advise them
10 based on the imminence or the urgency; is that
11 fair?

12 A. That is fair. I think if
13 it is something that must be disclosed and acted
14 on immediately then you would want to share that
15 information. You can follow-up later a formal
16 report to council, but I often use e-mails as a
17 way of sharing information with council that I
18 believe is needs to be shared in a timely manner,
19 and, you know, not necessarily wait for the
20 formality of producing a report for a council or
21 committee meeting.

22 Q. Thank you. Registrar,
23 you can close that.

24 So as we spoke at the
25 beginning of your testimony, you have not reviewed

1 or been watching all of the evidence of this
2 inquiry. We've provided you with some assumed
3 faces. So turning to some of the assumed facts
4 that speak to some questions that you dealt in
5 your report, the Tradewind report is a report that
6 we provided to you, and in 2019 the director of
7 roads and traffic reached out to two of his
8 subordinates, the manager in traffic operations
9 and the superintendent in traffic operations, to
10 confirm whether his staff had seen a copy of
11 Tradewind report. And Mr. Ferguson, who was the
12 superintendent, and Mr. Martin, who was the
13 manager, responded to Mr. Soldo, who is the
14 director of roads and traffic.

15 Mr. Soldo replied that he had
16 not seen the report, that he asked Mr. Moore for
17 it previously and never received a response.
18 Mr. White also confirmed he had never seen the
19 report despite asking for it several times.
20 Mr. White also testified that there was a
21 continuing theme of people asking for the results
22 of the friction testing and having no results.

23 So again these are just
24 assumed facts for you, but assuming those facts
25 and assuming that Mr. Moore had received a copy of

1 the Tradewind report, which was a friction testing
2 report in January 2014, so five years before,
3 would it be appropriate for a member of City staff
4 to refuse to provide or to redact before providing
5 information that's requested from one of their
6 colleagues?

7 A. I think as I said in my
8 opinion, I can really only think of a couple of
9 circumstances for redacting information. You
10 know, the obligations that municipalities have
11 under IMFIPA not to disclose private information,
12 which now having seen the Tradewind report, I
13 don't believe applies here.

14 Secondly, there may -- a
15 matter may have been in camera before council
16 which clearly heightens its confidentiality, and
17 in that case it isn't necessarily that staff can't
18 see it, they just need to be made aware of the
19 heightened requirements for confidentiality.
20 Municipal staff generally sign a confidentiality
21 pledge or agreement when they come to work with a
22 municipality saying I withhold all the information
23 that I receive in confidence as necessary.

24 And I think in the third case
25 it would be if it related to legal advice.

1 So I really can't think of a
2 circumstance beyond those where staff would be
3 denied a copy of a consultants report or something
4 that they felt was important to their role.

5 Now, you know, people are
6 curious. So curiosity isn't a justification for
7 requesting a report, but assuming that the
8 individuals requesting the report had a reason to
9 see the report and understand the recommendations
10 within it, it should have been provided in my
11 opinion.

12 Q. What about in
13 circumstances where the City staff member holding
14 the report has concerns about its reliability or
15 its usefulness?

16 A. Yeah. So those should be
17 taken up with the consultant. But ultimately at
18 the end of the day when you engage a consultant,
19 especially in a field where you are asking them to
20 bring their technical expertise to the table,
21 that's the reason that you've engaged them, you
22 know, a -- if the consultant stands behind the
23 information that they have provided, the analysis
24 that they have done and the recommendations that
25 they have made, then the report really stands on

1 its own.

2 So, you know, the way to deal
3 with that would be I'm sharing this report with
4 you but I just want to make you aware, you know, I
5 have some questions about the recommendations that
6 have been made in this area, so I'm concerned or
7 I'm not convinced or, you know, so I would ask
8 you -- you can read it but I would ask you not to
9 act on it, or just use it for information. I
10 mean, that's part and parcel of the collaboration
11 between colleagues that shares not just the
12 material but the context and any concerns that
13 might arise as a result of the work.

14 Q. In what circumstances, if
15 any, should City staff escalate concerns if they
16 have an ability to obtain information from a
17 colleague?

18 A. I think if they feel that
19 the information is important to them and that not
20 it or not being -- having that knowledge is
21 impacting their ability to be able to perform in
22 their role, then I think they should escalate that
23 to their supervisor formally, either in an update
24 meeting or through an e-mail, you know,
25 articulating the steps that they have taken. And

1 certainly they should take steps to try and
2 resolve the disagreement with the individual
3 but -- or assuming that that has been unsuccessful
4 they can outline the steps that they have taken
5 and, you know, why they need -- they feel that
6 having that material is important and then
7 explicitly ask their supervisor to intervene their
8 behalf.

9 Q. Thank you. As a general
10 principle are City staff required to provide
11 accurate and comprehensive information to council?

12 A. Absolutely, that is a
13 core principle and requirement for every public
14 servant. You know, the principle of fearless
15 advice and diligent implementation is -- speaks to
16 you are a trusted advisor for council. They
17 expect that you will bring your best advice based
18 on your professional credentials and the work and
19 due diligence that you've done to the table and
20 then they can rely on that advice. Council can
21 disagree. Council has the right to make its own
22 decisions, but they certainly expect their public
23 administration to be thoughtful, honest, speak
24 truth to power and complete and thorough in the
25 advice that are provided to them.

1 Q. If City staff become
2 aware that staff have concealed -- other staff
3 have concealed or withheld information or there's
4 information that council simply didn't receive
5 over time, what obligations if any flow from that
6 awareness?

7 A. I think again escalation.
8 And I will tell you, I mean, this has been -- this
9 is an issue that does arise, you know, where --
10 aren't we taught when we're young not to snitch on
11 people. So escalation is something that has to be
12 built as part of the cultural conversation that we
13 had earlier, the principles that it's safe to come
14 forward and raise a concern if you have one even
15 if raising that concern may reflect badly on a
16 colleague, that there won't be reprisals for
17 raising concern. So not providing fulsome
18 information to council, or worse, providing
19 inaccurate information to council, honest mistakes
20 happen, but a resistance to do that is certainly a
21 challenge from my perspective. I would think that
22 any staff who become aware of that would raise it
23 again with their direct supervisor and push it up
24 the hierarchy.

25 Q. And would you expect that

1 the senior staff to whom these kind of issues are
2 reported would -- in order to encourage that
3 culture of transparency, would take certain steps
4 to reinforce the benefits of escalation?

5 A. Absolutely. I think
6 again it is something that you need to talk about
7 in your staff meetings with your team leaders
8 through training and development materials. You
9 really need to set the table that look, we're all
10 in this together and, you know, mistakes can
11 happen, and if you become aware of something, you
12 know, you need to address it. You can't just turn
13 away from it, especially if it's important, or,
14 you know, if elected officials are acting on
15 information that may have been provided to them
16 that was incorrect, as soon as senior leadership
17 becomes aware of that they need to take steps to
18 correct the record. And again, that could be a
19 circumstance where an e-mail, you know, my
20 apologies, it has come to my attention you were
21 told this, it isn't correct, we will provide
22 council with a follow up report to tell you what
23 happened and what the corrected information is.

24 But I think that's really
25 important. It's part of the trust that you have

1 to build between elected officials, the public
2 administration, and then within the public
3 administration that, you know, we understand that
4 mistakes or problems -- mistakes can happen or
5 problems can arise, but as a mature organization
6 we need to deal with those once we become aware of
7 them.

8 Q. Your comment on this
9 point, do they extend to circumstances where a
10 staff member becomes aware that there's been some
11 misrepresentation or miscommunication with members
12 of the public or the media?

13 A. I think any time that a
14 staff member is aware that a member of the public
15 council -- I mean, again the reputation of the
16 municipality will be harmed if that misinformation
17 is not corrected in a timely manner and in a
18 proactive manner. You know, we've all seen
19 examples in the public service or the public realm
20 where information may have been withheld or
21 somebody knew that this wasn't right but didn't do
22 anything about it. It just -- it just amplifies
23 the issue and it sets an unfortunate tone that the
24 administration can't be trusted to disclose errors
25 or mistakes, or worst case scenario, you know, a

1 deliberate attempt to misrepresent information.
2 So it is in my opinion critically important that
3 once the organization at any level is aware that
4 there's a problem, that needs to be escalated and
5 addressed.

6 MS. LAWRENCE: Thank you.

7 Commissioner, I see we're just
8 a few minutes past 11:00 o'clock, and I believe
9 for this week our plan is to take our morning
10 break at 11:00 o'clock so I propose we do that and
11 come back at 11:15.

12 JUSTICE WILTON-SIEGEL: Okay.

13 Let's stand adjourned until 11:15.

14 MS. LAWRENCE: Thank you.

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

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

17 MS. LAWRENCE: Commissioner,
18 we're back on. May I proceed?

19 JUSTICE WILTON-SIEGEL: Yes,
20 please proceed.

21 BY MS. LAWRENCE:

22 Q. Ms. Baker, I'm now going
23 to turn to some of the more specific details
24 relevant to the inquiry and the facts that have
25 come out in the public hearings.

1 First in terms of consultants
2 and their retainer and the scope of their
3 retainer. So there's a number of reports that the
4 inquiry has received prepared by consultants
5 retained by the City between 2013 and 2019,
6 including the 2013 CIMA report, the 2014 Golder
7 report which appended the Tradewind report, and
8 the 2015 CIMA report. There are others but those
9 are a few which we provided to you.

10 Generally and not specific to
11 those reports, how should the scope of a
12 consultant be established?

13 A. I think generally the
14 subject matter experts or the vision or work group
15 that are requiring the services of the consultant,
16 plus municipal procurement staff, in some cases
17 depending on the complexity staff from legal may
18 be involved, but I think primarily the first two
19 would come together to develop a request for
20 proposals and a scope of work for the consultant,
21 would spell out the requirements that the
22 municipality has, what are we seeking, what are
23 the deliverables, if there are any timelines or
24 urgency with respect to the engagement which may
25 be the case when you're looking at issues of

1 public safety, for example.

2 And then a scope -- a request
3 for proposals would be issued to which various
4 parties would respond. Those proposals would be
5 reviewed, assessed, and a consultant selected from
6 among the proponents that would be both, you know,
7 the one that the assessment panel feels has the
8 best -- brings the best skills and expertise and
9 qualifications to the table and can meet the
10 requirements, then a contract would be executed
11 between the municipality and the consultant for
12 the work.

13 There is a process, and I'm
14 not sure if I mentioned it in my opinion, I mean,
15 you can sole source to a consultant if they have
16 maybe experience with the City or particular
17 expertise. Typically those would have to go to
18 council for approval. It's unusual for staff to
19 be delegated the authority to sole source. So
20 that's a slightly different process.

21 Q. Thank you. Registrar,
22 could you bring up Ms. Baker's report which is
23 EXP193, please. If you go to page 34 -- pardon
24 me, image 34. Can you bring up the next image as
25 well, please.

1 So, Ms. Baker, you will see at
2 the bottom of the image on the left-hand side in
3 the assumed facts that commission counsel provided
4 to you there's a reference to the 2013 CIMA
5 report, and in particular there was a motion from
6 public works committee that led to CIMA being
7 retained, which specifically directed staff to
8 investigate lighting on the Red Hill in the
9 vicinity of the Mud/Stone Church interchanges.
10 And CIMA's proposal included an assessment of
11 lighting on the mainline in that study area, and
12 it appears during the course of the retainer and
13 after, CIMA had assessed whether illumination was
14 warranted on the mainline. CIMA received
15 information from Mr. Moore, who was not part of
16 the team assigned to this project, there was no
17 project charter, and CIMA understood that the --
18 an environmental assessment prohibited lighting on
19 the mainline based on information received from
20 Mr. Moore and possibly other staff.

21 And just jumping down, the EA
22 did not prohibit lighting on the mainline,
23 although it's probable that a new EA would be
24 required to install full illumination. Despite
25 the scope set out in CIMA's proposal and the work

1 CIMA had done, CIMA excluded consideration of the
2 mainline -- illumination on the mainline in its
3 report as out of scope and CIMA and the City did
4 not document this fact, the fact of the change in
5 scope, or its rationale.

6 So just stopping there and
7 recognizing we're in a circumstance where there
8 was no project charter, how and when, if at all,
9 should a consultant's report be modified during
10 the course of a project.

11 A. Typically a consultant
12 will be given a designated project lead or again
13 person most responsible that they would interact
14 with, and they may interact with other staff in
15 the organization as well for purposes of gathering
16 information or understanding background, history,
17 or picking staffs' brains, if you will, but
18 generally they would have somebody designated as
19 the engagement manager and that is the person that
20 the consultant would look to for guidance, you
21 know, resolve differences.

22 But again, you know, and in
23 this instance in particular because you have a
24 consultant that is retained for specific expertise
25 in an area, conversations can happen throughout

1 the engagement about the scope of the work being
2 done, but generally the consultant should only
3 take direction from the engagement manager.

4 So I find it unusual that the
5 consultant would take direction from a member of
6 staff who didn't appear to be part of the
7 engagement or part of the engagement team or
8 certainly the head of the engagement or the
9 project. And yes, you can have discussions
10 between and among staff and the consultants about,
11 you know, whether or not this piece of work is in
12 scope, out of scope. There can be minor
13 adjustments along the way. But in general, the
14 consultant should deliver on the scope of work
15 that was given to them, assuming one was. But a
16 scope of work would be given to them in the
17 beginning. They should work to that and identify
18 to staff if they have received new information
19 that has in some way changed or amended their
20 understanding of the scope or the work that they
21 have done, that should all be disclosed. There
22 should be conversations about that, and then an
23 agreement between the consultant and the
24 engagement manager on whether or not this work
25 should be included in the report or not included

1 in the report, again based on the agreed on scope
2 that was created at the beginning of the
3 engagement.

4 So, you know, disclosure,
5 transparency, conversations back and forth. I
6 think, depending on the nature of a consulting
7 engagement, you know, you would see more of that
8 back and forth on a I'm going to say a strategic
9 issue, you know, can you give me a culture plan or
10 help me build a culture plan, as compared to
11 something that was very tactical and very specific
12 such as can you evaluate lighting on a piece of
13 roadway. So it's certainly something that, you
14 know, would need to be documented and clarified in
15 terms of what is to be included in the final
16 report. You know, to have the consultant simply
17 bring something on the basis of information they
18 received from one of the parties as opposed to the
19 engagement manager is unusual in my opinion.

20 Q. Thank you. In what
21 circumstances would it be appropriate to update
22 council about limitations to completing work that
23 they have directed in the course of a consultant
24 engagement?

25 A. Yeah, and there certainly

1 is some sensitivity to a consultant engagement
2 that has come about as a direct result of a
3 request from council, and I think at that point to
4 some degree council becomes the client and staff
5 are really delivering on council's behalf.

6 So if there was a broad
7 understanding based on the discussions at council
8 about the scope and then subsequently staff
9 through discussions with the consultant determined
10 that there were limitations to delivering that
11 scope or the scope was -- needed to change in some
12 material fashion as a result of advancing the
13 work, I think as soon as staff become aware of
14 those circumstances they would have an obligation
15 to report back to council and clarify, you know,
16 council, you asked for this, we are going to
17 deliver most of that, however there's a piece that
18 we can't deliver to you, here's why, and explain
19 any amendments or changes, particularly reductions
20 to scope. I think reductions to scope are
21 actually much more sensitive than, you know, if
22 you broaden the scope and then went back to
23 council and said oh, by the way, while we were
24 doing this we also did this. So I think that may
25 be less sensitive, but reducing scope, they need

1 to be informed and have an opportunity to have a
2 discussion about that.

3 Q. Moving to the preparation
4 of consultant reports, at what stage in the
5 drafting of a consultant report would it be
6 appropriate for City staff to provide edits or of
7 comments?

8 A. I think consultants can
9 work with staff to ensure that the report that
10 they have written is clear. I would tell you not
11 every consultant is a great writer and so
12 sometimes they need help making the report, the
13 background, the recommendations clear. Staff can
14 certainly, you know, help them with context. And,
15 you know, if a report is overly technical they
16 might request, for example, that the consultant
17 put together an executive summary or something
18 that would help people of non-technical
19 individuals understand and be able to use the
20 report itself.

21 So I think that these are
22 normal interactions that you would see between
23 staff and a consultant as a report is being
24 finalized.

25 The question was asked earlier

1 about I'm not sure about -- you know, as a staff
2 person maybe not being sure about a
3 recommendation, you know, if there are any
4 disagreements those should be aired; however, at
5 the end of the day the consultant's report in my
6 opinion is the consultant's report. It stands on
7 its own. It should not -- the substance should
8 not be edited unless the consultant completely
9 concurs. If staff have made an observation or a
10 criticism of a report and the consultant looks at
11 it and says you know what, you're right, I'm going
12 change that, that's fine. However, the
13 consultants themselves need to stand behind the
14 report so they shouldn't be simply removing things
15 or editing things if -- you know, they need to be
16 able to defend the product that they have produced
17 at the end of the day.

18 Q. If there is a
19 disagreement about a recommendation and if it's
20 aired, as you say, but that disagreement remains,
21 should the staff report identify that disagreement
22 as between staff and the consultant?

23 A. I think -- I don't think
24 if you -- if staff had got some technical
25 expertise and some experience and grounding in the

1 issues that are subject to disagreement I see
2 nothing wrong with staff advising council that,
3 you know, we're not sure about this or we have
4 concerns or we have experience that would suggest
5 that maybe something -- this shouldn't be done
6 or -- I mean, these are all things that are
7 appropriate. However, there's no -- you don't mix
8 the two. The consultants' report stands on its
9 own and then staff can make their own -- give
10 their own advice and guidance to council if they
11 have that concern.

12 Q. Do consultants' reports
13 have to be provided to committee or to council
14 along with staff reports or is it acceptable to
15 summarize --

16 A. I think it's -- I think
17 it is acceptable to summarize. I mean, I've seen
18 technical reports that run hundreds of pages and,
19 you know, those are very difficult to provide to
20 lay people in most cases. So there's nothing
21 inherently wrong with summarizing the results of a
22 consultant's work and the recommendations arising
23 from that. I think a best practice would to be
24 ask the consultant to do that, to have them
25 prepare a shorter, less technical document that

1 could be appended to a staff report.

2 Having said that, I've also
3 seen, you know, requests from members of council
4 for the full report even though it was staffs'
5 judgment that it didn't need to be provided. And
6 if council wants it, they can have it, but very
7 often I think council is quite happy to rely on a
8 summarized version and then staff's view and
9 recommend takings on rising out of the consultant
10 engagement.

11 Q. Are there any
12 circumstances in which it's appropriate to not
13 address a consultant recommendation in a staff
14 report because it had not received -- the
15 recommendation had not received buy-in or approval
16 from an individual staff member or from a
17 division?

18 A. No, in my view the
19 consultant's report stands on its own. If the
20 consultant is making that recommendation in its
21 final report then that is the technical expertise
22 and advice that you have engaged them for and that
23 you've paid for.

24 So then those -- any
25 disagreements or concerns about the

1 recommendation -- you know, recommendations might
2 require significant budgetary investment or there
3 might be other reasons why it's not a
4 recommendation that could be implemented easily.
5 All of that context or those concerns and
6 background should be itemized in the staff report,
7 and if staff is going to be recommend that one of
8 the consultant's recommendations not be
9 implemented they can make their case for that and
10 recommend that to council. Ultimately council
11 will make that decision.

12 Q. Thank you. Registrar,
13 can you call up the consultant's report tracking
14 and retention divisional procedure again, please.
15 Thank you. If you can go to image 6, please.

16 So this is in turquoise, or
17 some of it, because changes were made to the
18 previous released version of this document. So
19 this is the document I took you to earlier.
20 There's a reference in this document to validating
21 external reports, and you'll see it says:

22 "Where staff received a
23 consultant report from a group
24 external to the teon division
25 where the health and safety

1 risks are identified, they
2 will review the information to
3 assess the risk and forward
4 them to be appropriate
5 individuals responsible for
6 the scope of work identified."

7 (As read)

8 So this is when you had
9 different divisions who had responsibility and a
10 consultant report has identified something that
11 really falls within the scope of work and
12 responsibility of another individual or division.
13 And this is very specific you'll see to where
14 there's a health and safety risk identified. It
15 goes on to say:

16 "If the risk has been
17 confirmed as valid then the
18 staff member responsible for
19 the scope of work will follow
20 the consultant report
21 procedure."

22 So you bring in that other
23 group.

24 "And if the risk is brought
25 forward from an external group

1 and deemed not applicable,"
2 that is the risk is not
3 applicable, "the staff should
4 present and confirm their
5 findings to the next senior
6 staff members including the
7 manager at division level."

8 So if the other division says
9 that is not an applicable risk, then the staff who
10 has received the consultant report tells their
11 manager or director.

12 So you were not speaking in
13 your last bit of evidence about this particular
14 issue around risk or around escalation, but is
15 this one way, albeit perhaps a bit of a
16 complicated way, but one way to ensure that there
17 is discussion about any disputes or disagreements
18 as between divisions when dealing with consultant
19 report?

20 A. It is a way. My sense is
21 you can avoid getting to this issue of presenting
22 what sounds like a finalized consultant report to
23 an external group, I presume external to mean
24 another part of the City's organization. You
25 know, coming back to the best practices of if you

1 have an engagement terms of reference or a project
2 charter for the consulting engagement, if there
3 are other themes or other parts of the
4 organization that have an interest in the project,
5 you know, they could have a representative that
6 would be either consulted as needed or sit on the
7 project team, because ultimately you would want to
8 have -- I mean, I spoke earlier about within a
9 municipality speaking with one voice. Well, part
10 of creating that one voice is having these -- the
11 stakeholders, the parties at the table as the work
12 is unfolding and being done, and then as such,
13 when the consultant report is finalized, these
14 perspectives should have been and would have been
15 taken into consideration during the development of
16 the report itself.

17 So it is a way, but I would
18 suggest a better way might to be ensure that
19 collaboration and representation happens as the
20 project is being completed so that these kinds of
21 issues and challenges can be uncovered earlier and
22 then hopefully resolved as part of the process.

23 Q. Thank you. And just for
24 clarity, there's nothing about the approach that
25 you just set out that is something that is sort of

1 a new approach within project management. This is
2 something that would have been applicable back to
3 2013?

4 A. I believe so. I mean, in
5 my view collaboration across the organization and
6 effectiveness in project management are all
7 principles that municipalities have had and
8 certainly should have at the core of the work that
9 they have been doing for years and years, so I
10 don't think it's new or would have been
11 unavailable or unknown at the time.

12 Q. Thank you. Registrar,
13 you can take this down. If you can go to
14 HAM41871.

15 THE REGISTRAR: Repeat the
16 number, please.

17 MS. LAWRENCE: Of course.
18 HAM41871. This is the 2013 CIMA report.

19 BY MS. LAWRENCE:

20 Q. And, Ms. Baker, you've
21 had a chance to receive and review this document
22 in preparation for today?

23 A. I did.

24 Q. Thank you. Registrar,
25 can you go to images 3 and 4, please. So this is

1 the executive summary from this work, and I'm
2 drawing your attention to it because I'm going to
3 have questions about prioritization and time
4 frames for consultant recommendations.

5 Registrar, could you call out
6 the bottom half of image 4, please. Sorry, I
7 misspoke. I think that's image 3. The other
8 side, the right-hand side, so where it says each
9 of the tables have a recommendation for timing.
10 Perfect. Thank you.

11 So you'll see in 2013 CIMA
12 provided in its executive summary a reference to
13 tables that follow through the report which have
14 short term, medium term and long term timing
15 recommendations. So short term is zero to five
16 years, medium term is five to 10 years, and long
17 term is 10 plus years. And then this goes on, and
18 we're going to come back to that later point
19 shortly.

20 There's also a reference in
21 the executive summary to what the City has
22 indicated it would do in terms of the sequencing
23 of the recommendations. So signage first,
24 pavement markings as wells and then illumination
25 recommendations after the implementation of other

1 countermeasures.

2 So in fact -- actually maybe
3 I'll take that second part first just so we can
4 deal with it. In your opinion is it appropriate
5 for a consultant report to reference how the City
6 intends to sequence the recommendations contained
7 within the consultant report?

8 A. My expectation is that
9 would be in the staff report. I find it unusual
10 for a consultant's report to talk about
11 implementation of recommendations or sequencing.
12 That really is within the purview and
13 responsibility of the City. So the section, in my
14 view, would more appropriately belong in a
15 covering report from staff that would talk about
16 the consultant's recommendation.

17 Q. Thank you. So turning
18 now the first part of this callout, which is the
19 short term, medium term, and long term. In your
20 experience how useful is the prioritization of
21 short term being zero to five years within
22 municipal planning?

23 A. Certainly in my
24 experience short term is more typically within one
25 to two years. Short term is -- suggests these are

1 things that need to be done quickly. It might be
2 because there is low-hanging fruit, you know,
3 things that are relatively inexpensive or easy to
4 do but could have an impact. And then you kind of
5 build from there. You've got the real easy, you
6 know, things that are maybe a bit more
7 challenging, need a little bit more time, but
8 still are -- have a high impact and therefore it
9 would be important to do them more quickly.

10 So when I looked at this, zero
11 to five years from a planning horizon in a
12 municipality, we have annual budgets, often
13 forecasts that take you out -- most municipalities
14 don't forecast beyond three years. So if I'm
15 looking at a zero to five-year timeframe as short
16 term it could actually -- it could actually sit
17 outside the typical what I would consider to be
18 the short term planning horizon for a
19 municipality. So I would more typically think
20 short term would be zero to two, maybe zero to
21 three, but I would be more likely to say zero to
22 two.

23 Sorry, just building on that,
24 medium three to five, and longer term, you know,
25 five years plus. If you're dealing with in this

1 case a piece of infrastructure, there is ongoing
2 work and maintenance and other improvements that
3 may be part of the regular maintenance cycle that
4 are happening every year, you could integrate some
5 of these improvements into that work plan, for
6 example.

7 But it is helpful to have at
8 least a prioritization to say do these first,
9 these you can wait a little longer, and these, you
10 know, maybe the next time you do a major capital
11 upgrade you can consider doing the remainder.
12 That's how I would interpret these types of
13 recommendations.

14 Ten years in an infrastructure
15 planning cycle is relatively useless. Most
16 municipalities have a ten-year capital plan;
17 however, the reality is anything beyond two to
18 three years is a forecast as opposed to a detailed
19 planning document.

20 Q. Registrar, you can close
21 that down, thank you. You can close it back, take
22 this document down as well.

23 In the CIMA 2015 report there
24 was that same identification of short term, medium
25 and long term in terms of time horizon.

1 Registrar, could you bring up
2 HAM702, please. If you can go to image -- I think
3 it's page 50, I think it's image 66. Image 59.
4 Apologies. It's definitely not this one. Let me
5 find it. This is -- the ongoing struggle between
6 page numbers and image numbers. I think it's 57.
7 Apologies.

8 So this is a summary table in
9 the 2015 CIMA report which you were also provided
10 with and reviewed in advance of today. You're
11 nodding. Just for the court reporter.

12 A. Yes.

13 Q. So this is a summary
14 table that sets out the countermeasures and the
15 estimated cost of those countermeasures and then
16 the timeline. So again you don't have that same
17 reference to what short term or long term here
18 means in this report, but you'll see that CIMA
19 included a number of short term options, some of
20 which are quite relatively inexpensive, you know,
21 under \$10,000, and some are quite expensive, 120
22 and -- 270 -- pardon me -- 47.

23 In this document friction
24 testing, which is three up from the short term
25 total, is listed as a short term option, and in

1 the staff information, the staff report that
2 followed, the staff listed this as a medium term
3 option but medium term being to two to five years.
4 Registrar, perhaps we can just have up that, so if
5 you can leave this up and that if you can bring
6 up -- thank you. HAM24702. Thank you.

7 So, Ms. Baker, this is really
8 just to orient you to some of the reports that
9 those involved in the inquiry have seen many, many
10 times. So in this, this is the appendix B and a
11 staff report, and I can certainly advise you that
12 there was an appendix A that has short-term
13 options, zero to two years, and those include a
14 number of the short-term options that are on the
15 summary table on the left. But one of them is
16 conducting pavement friction testing, and that's
17 as a medium-term option, two to five years.

18 So recognizing the CIMA 2015
19 report doesn't actually specify what short-term
20 means, if it means zero to five as it did in the
21 2013 report, the medium term here, staff has done
22 what I think you would view as the medium term, as
23 you just said, the two to five years.

24 A. Hm-hmm.

25 Q. So here are my questions.

1 Mr. Ferguson as he was preparing this staff report
2 asked CIMA to change CIMA's -- I'm using the word
3 that Mr. Ferguson used -- layout to reflect this
4 separation of short term, medium term and long
5 term in which medium term included friction
6 testing. And CIMA declined to do that. In the
7 final version of their report, conduct pavement
8 friction testing was listed as short-term.

9 So my first question is, there
10 seems to have been no discussion except for the
11 e-mails back and forth requesting a change and
12 then CIMA providing the final report that did not
13 include that requested change. What's the best
14 practices as between staff and consultants to
15 clarify the timeframes that consultants may be
16 referring to and to clarify the request for any
17 changes to those timelines?

18 A. I think for the benefit
19 of the reader of the report, for example, which
20 might be council or other staff, you know, to the
21 degree that you can provide greater precision. So
22 if we look back to the 2013 report which talked
23 about short-term as being zero to five, at least
24 that's a bit more specific, you know, may have
25 issues with whether that defines short-term, but

1 these are all things that it's important to
2 clarify because, you know, you start to create
3 some confusion.

4 I think most people, you know,
5 most reasonable people would think of short term
6 as within the next year or two, and I think
7 that's, you know, generally the way short term
8 would be viewed in a municipality.

9 And the medium term, as I've
10 noted, yeah, two to five years, I think that's --
11 you know, probably a generally accepted standard
12 for medium term. Again, this is one of these
13 areas where if you have a disagreement between or
14 a difference of opinion, I guess -- you know, I
15 think CIMA's report could have been improved by
16 defining short term, long term, but nonetheless,
17 if there was an understanding of that being sooner
18 than the two to five years, then I think it would
19 have been incumbent on staff when this report or
20 the results of this engagement went forward to
21 council to once again point out, you know, we
22 are -- we're recommending something that is
23 slightly different from a timing perspective than
24 the consultant and here's why.

25 I mean, consultant reports are

1 by their very nature advisory. You know, a
2 consultant is not a decision-making authority,
3 they are an advisory tool, and so there is nothing
4 inherently wrong with staff suggesting to council
5 some slight differences. You know, material
6 differences may be -- you know, can be a bit more
7 challenging, but timing is something that is
8 really within to some degree the purview of staff
9 to manage.

10 If the consultant feels
11 there's urgency to a recommendation, they
12 certainly should convey that. You know, this gets
13 back to the earlier conversation about imminent
14 risk to health and safety. That's -- the
15 consultant really needs to highlight something
16 that they feel is, you know, a response to an
17 imminent risk.

18 Conducting testing, you know,
19 there probably is some rationale for flexibility
20 and when you choose to do that. If the consultant
21 felt that that was urgent, then they certainly had
22 an obligation to point out that they believe that
23 that was something that needed to be done sooner.

24 Q. Thank you. Registrar,
25 you can close these.

1 I would like to turn now to
2 the Tradewind report, which is a report appended
3 to the Golder report which Tradewind prepared,
4 provided to Golder, and Golder along with its
5 report provided to Mr. Gary Moore of the City in
6 January of 2014.

7 You were asked to assume for
8 the purposes of your opinion that the Tradewind
9 report contained findings of friction value on the
10 Red Hill that were below or well below the
11 investigatory standard from the United Kingdom in
12 contrast to the LINC, which was above the same
13 investigatory standard. And that the draft 2014
14 Golder report recommended rutting and
15 microsurfacing to remedy the friction values on
16 the Red Hill and other surface cracking on the Red
17 Hill that Golder had identified.

18 Neither Mr. Moore nor any
19 other staff, City staff -- pardon me, member of
20 City staff sought a final report, a final draft of
21 the Tradewind report or the Golder report which
22 had a draft stamp on it. No staff member advanced
23 the Tradewind report or the Golder report to a
24 committee or to council until February 2019.

25 At a high level, when is it

1 necessary to disclose consultant findings or
2 recommendations to council?

3 A. You know, I think a
4 general principle would be, and we are talking
5 here about matters of health and safety, if
6 something is brought to the attention of staff
7 that would suggest or indicate that there is a
8 problem with a particular piece of infrastructure
9 or something that has an element of risk to public
10 safety, I think that rises to the level of
11 something that council needs to be made aware of.
12 Because it may require budget adjustments. It may
13 require capital investment. It may require short
14 term funding outside of the budget which only
15 council can typically approve. So all of these
16 reasons would be reasons to bring it forward, but
17 also from the perspective of transparency.

18 We've learned something
19 that's important and we need to consider how we
20 act on that information, and so we're making
21 council aware and we will bring you
22 recommendations as to how we intend to follow up.

23 Q. You have said in the
24 course of your evidence that municipalities retain
25 consultants for lots of different things and have

1 lots of different consultants' reports that are
2 received, and I hear from your evidence that not
3 all consultant findings or recommendation need to
4 go to council or through committee; is that right?

5 A. That's correct. And
6 again, I come back to, you know, you might retain
7 a consultant to look at an organizational process,
8 you know, how do we improve our recruiting
9 process, it's taking too long to hire people,
10 or -- these are all administrative processes and
11 work that really is under the purview of the CAO
12 and department heads. You would not typically
13 bring that to council. You might refer to it in a
14 budget request to say, you know, we're asking for
15 resources because. But generally these are things
16 that fall under the responsibility of the City
17 manager.

18 I think when you get into
19 asset management, infrastructure, and again health
20 and safety, that elevates the recommendations, and
21 in my view any matters pertaining to the health
22 and safety of the public that are material need to
23 be escalated to council so that they can become
24 aware of them, but also so that they have the
25 assurance that these issues are being managed and

1 resolved in, you know, an appropriate timeframe.

2 Q. Absent any specific
3 governance or corporate policy, who is responsible
4 for determining whether a consultant's findings or
5 recommendations or their reports containing those
6 recommendations should be presented to council?

7 A. I think it would
8 typically be staff. Again, a recommendation of
9 the nature that suggests a risk to health and
10 safety, I think that a director or general manager
11 position would make the determination is this
12 material. Because if it's not material, then, you
13 know, staff can just deal with it, but to the
14 degree that they determine that this is a material
15 issue or, you know, we have findings or
16 recommendations here that would suggest that we
17 need to follow up on those, then I think it would
18 be staff that would decide to bring that forward.

19 Q. So when you say "staff,"
20 you mean --

21 A. The director or general
22 manager, yeah. I mean, typically it's the general
23 manager that signs off on council reports,
24 sometimes the CAO does, but in general it would be
25 the general manager, and so it would be through

1 that channel that a report would go forward to
2 council. So it would need to be escalated to the
3 senior officials in the department.

4 Q. I think your evidence
5 assumes that the report would have been received
6 from some project manager level and then escalated
7 up to the director for decision-making; is that
8 right?

9 A. Yes. In best practice,
10 this consulting engagement would have been managed
11 in the way that we spoke of earlier. You would
12 have a team. You would have an engagement
13 manager. They would be working with the
14 consultant to complete the work. The report would
15 then be distributed to the various parties who had
16 an interest in viewing it. So having it sit with
17 just one individual, you know, certainly is not in
18 keeping with best practice as I understand it.

19 Q. Where staff have any
20 concerns or questions about the validity or the
21 usefulness of the findings or the recommendations
22 in a consultant report, how quickly would you
23 expect staff to determine what next steps would
24 occur?

25 A. I mean, presumably there

1 was -- you know, there was a work plan that
2 anticipated that an engagement would be completed
3 by a certain -- in a certain window. You would be
4 doing your best to meet that target. And so these
5 are typically things that are happening in real
6 time as an engagement is reaching the stage of
7 final report or final draft report.

8 So I would expect, you know,
9 these kinds of follow-ups to be done in a timely
10 manner, having regard for the project timeline or
11 the schedule that's been established for
12 completion of the work. And there may be minor
13 delays, but I think in general it would be to meet
14 the schedule that was originally laid out when the
15 consultant engagement was launched.

16 Q. Can you tell me a little
17 bit about the best practices for closing out a
18 consultant retainer?

19 A. Yep. I mean, you may go
20 through a number of drafts of a report, again
21 depending on the nature of the engagement.
22 However, you will reach a point of agreement
23 between the City and the consultant that this is
24 the final report. You know, we've provided you
25 with our input. You've responded to them either

1 by accepting the suggestions we've made or saying
2 no, my report stands on its own. And then the
3 consultant would issue a final report. That would
4 typically be delivered to the person who is the
5 engagement manager and then circulated to, you
6 know, the various parties who would need to see
7 that report. Earlier drafts may also have been
8 circulated to -- you know, in the process of
9 finalizing and getting to a final product.

10 But there is typically a one
11 document that is issued -- in fact, the consultant
12 signs off to say this is -- you know, I've
13 completed the engagement. The City would attest
14 to the fact that the work has been completed, the
15 report would be issued, and then the consultant
16 would receive final payment.

17 Q. Once that final report is
18 in the hands of the City -- the appropriate City
19 staff, would it be stored and archived in the
20 manner that we spoke about before, in an
21 accessible way and in a way that reflects the
22 legislative requirements of record management?

23 A. It should be, yes.

24 Q. Where there is a report
25 that doesn't have a strict timeline or a work plan

1 which deadlines around it, how promptly would it
2 be a best practice for staff to consider the
3 recommendations in consultant reports and decide
4 whether or how to implement those recommendations?

5 A. You know, I think
6 obviously the fact of engaging the consultant and
7 having the work done would suggest that there's an
8 element of priority to the work. Consultants are
9 not inexpensive and you've invested in acquiring
10 their time and expertise, and presumably you would
11 first look for guidance from the consultant's
12 report itself in terms of urgency, timing, because
13 again I'm coming at this from the context that
14 we're dealing with an issue that appears to have
15 elements of public safety. I think that elevates
16 the obligations that staff would have to consider
17 and act on the recommendations that have been
18 provided to them, and certainly to address any
19 issues that are presented by the consultant as
20 urgent.

21 You would consider, as I
22 mentioned earlier, low-hanging fruit, are there
23 things that we could do quickly and maybe not
24 terribly expensive within our operating budget
25 even that would have an impact, and then are there

1 recommendations that we either need to integrate
2 into our next budget cycle, or, you know, there's
3 some more significant consideration that has to be
4 taken in order to move forward. Is there a
5 capital project or work that's happening that, you
6 know, would facilitate bringing these actions
7 forward. I mean, there's a lot of moving parts in
8 managing major infrastructure, and I think the
9 more significant and costly the recommendation,
10 the more time staff would require to consider how
11 and when to bring it forward for implementation.

12 Q. Thank you. The inquiry
13 has received evidence and heard from staff that on
14 at least two occasions staff from traffic
15 operations and engineering updated public works
16 committee -- the public works committee and
17 therefore council that the recommendation from
18 CIMA to do friction testing had been completed,
19 and so there's -- staff, pardon me -- an
20 information update and a staff report, both of
21 which list friction testing as completed.

22 The inquiry has heard from
23 staff in traffic operations and engineering who
24 offered those reports that they relied on
25 Mr. Moore's statements that testing had been

1 completed. What steps should be taken to ensure
2 the accuracy of a staff report that's being
3 submitted to council or a committee?

4 A. I mean, responsibility
5 for accuracy rests with the drafter. It is not
6 unusual for a staff member who might be drafting a
7 report to rely on the assertions particularly of a
8 senior manager, director in an organization, to,
9 you know, write into the report the information
10 that's been provided to them, and then I think it
11 would be kind of -- I say trust, but verified, you
12 know, do you have any reason to think that there's
13 something that's not right here or doesn't feel
14 right, or, gee, I want to do additional follow-up.
15 I think in general if a director-level position is
16 telling the drafter of a report that something has
17 been done, you know, I think it would be unusual
18 for that to be challenged.

19 So staff, you know, would
20 trust that the information that they're being
21 given is accurate and that they can rely on it. I
22 mean, this comes back to the principle of culture,
23 we're all on the same team and we're all working
24 together to do -- to give our best advice and
25 recommendations to council, and, you know, you

1 would not necessarily take it any further than
2 that.

3 Q. Thank you. So the trust
4 and verify approach. If there was -- if a staff
5 member did have concerns that something seemed to
6 not be adding up or that there was some concerns
7 about gaps or the information that they were
8 receiving, what would be the steps to try to
9 address those concerns?

10 A. Yeah, you could go back
11 to the individual who provided you with the
12 information and say, you know, can you tell me
13 more. I have some questions, here they are. And
14 see what comes back. If you're still not
15 comfortable, then I think you're back to the
16 conversations that we've had about escalating,
17 pushing it up the hierarchy. You may want to talk
18 to your own director and say, look, can you just,
19 you know, check into this for me because here are
20 some reasons why I'm not feeling as comfortable as
21 I need to be in order to sign off on the report.
22 Because remembering that most staff reports for
23 council are signed by a department head, but they
24 are most often drafted by someone, you know, at a
25 manager or below level in the organization that

1 has the knowledge and capability to draft the
2 report, but it is the director or general manager
3 at the end of the day who has the responsibility
4 to sign off, and if there are concerns, those
5 certainly should be brought to their attention
6 before they do sign the report.

7 Q. Registrar, could you
8 bring up EXP193 and go to image 36, please. Thank
9 you. Can you call out the final paragraph on this
10 page, please.

11 This is from the assumed
12 facts, Ms. Baker. In 2016, Mr. Ferguson, who
13 again is in traffic operations and engineering, he
14 is a superintendent. So not at a manager level.
15 He sent an e-mail to a local community group,
16 copying the public works committee and the mayor,
17 which stated that friction testing recommended in
18 the 2015 report would be completed by engineering
19 services in 2016.

20 And just as a matter of a
21 little bit more background for you on this, the
22 local community group reviewed the 2015 CIMA
23 report that listed friction testing as a short
24 term measure and the staff report which listed
25 friction testing as a medium-term measure, asked

1 public works committee and the mayor -- actually
2 asked council to reassess that timing, and in
3 response, about two months later, Mr. Ferguson
4 sent this e-mail that said the friction testing
5 recommended in the 2015 CIMA report would be
6 completed by engineering services in 2016.
7 Mr. Moore was copied on the e-mail, and he replied
8 to Mr. Ferguson, "perfect."

9 There is no evidence that
10 friction testing was contemplated or performed on
11 the Red Hill in 2016 after that e-mail was sent.
12 And Mr. Ferguson did not advise the local
13 community group, the public works committee, or
14 mayor that this friction testing hadn't been
15 completed in 2016, although it's -- Mr. Ferguson's
16 own state of knowledge about whether it had been
17 completed or not may have not -- he may have not
18 known either way.

19 So I provided you with a
20 little additional information than what is in the
21 assumed facts, just to make clear that this
22 commitment to do friction testing by engineering
23 services was not part of an outstanding business
24 list item or part of a staff report. It was in
25 response to a community group that was reviewing

1 the staff report about the 2015 CIMA report.

2 My first question is, is there
3 a best practice on how this type of commitment
4 flowing outside of a staff report or flowing
5 outside of an outstanding business list item
6 should be documented as a staff commitment?

7 A. Yeah. I think it may
8 have been a better approach to have engineering
9 services, who apparently were responsible for
10 completing the work, be the ones to make the
11 commitment. I mean, I always caution staff making
12 commitments on behalf of others in the
13 organization when they -- while they are making
14 the commitment, they, it would appear in this case
15 in particular, don't have control of the outcome.
16 And you know informal or e-mails to local
17 community groups, I mean, are an important piece
18 of communication, so I think as opposed to sending
19 it out and then -- and, you know, to have
20 Mr. Moore respond, maybe a draft of this would
21 have been circulated to Mr. Moore or the
22 engineering services division so that they could
23 have eyes on it and put in the appropriate words.

24 I mean. The lack of follow-on
25 on the commitment I think is a different problem.

1 But certainly the communication, you know, it
2 is -- I think it's one thing -- you always want to
3 be cautious when you're making commitments to the
4 public that everyone who needs to see and
5 understand that commitment is involved in the
6 crafting of the message. It just comes back to
7 everybody needing to be on the same page, some due
8 diligence being applied to, you know, the crafting
9 and delivery of that message to ensure that all
10 the parties who were mentioned in it had an
11 opportunity to review it before it went out.

12 Q. Staff who make
13 commitments on their own behalf of things they can
14 control, is it your opinion that they then have a
15 commitment to follow through on the commitment
16 that they have made?

17 A. Sorry, could you just ask
18 that question again.

19 Q. Sure. Of course I can.
20 So taking it out of the circumstance here where
21 Mr. Ferguson has made a commitment on behalf of
22 engineering services, in a circumstance where a
23 staff makes a commitment to do something over
24 which they actually have control about the
25 outcome, is it your opinion that they then have a

1 commitment to actually follow through on the
2 commitment that they have made?

3 A. Clearly, yes. You know,
4 when you are communicating with the public and
5 particularly a public group that has -- a group
6 that has taken an interest in a particular issue,
7 I think, you know, a commitment that's made in a
8 piece of correspondence like this would have the
9 same weight as a commitment that was made in a
10 council report or through any other documentation
11 that's created and provided.

12 So I would think at that point
13 there would be an obligation then to either
14 complete the work or to come back at some point,
15 if there were circumstances that did not allow
16 that work to be completed, to follow up and say,
17 you know, I told you we were doing this,
18 unfortunately for these reasons it's been delayed
19 or deferred or we can no longer do it. You know,
20 you've established a relationship and a commitment
21 with this group that you need to manage going
22 forward.

23 Q. Registrar, you can close
24 this callout. Turning to a different topic, and
25 that's information sharing with councillors.

1 In your opinion is it
2 appropriate for staff to share or disclose draft
3 or in-progress consultant reports to individual
4 council members.

5 A. No. You know, managing
6 the council-staff relationship is something that
7 is vitally, critically important in maintaining
8 the trust of council. You know, sharing draft
9 reports with individual members of council -- and
10 I think at this point I would state that, you
11 know, the authority and the responsibility for
12 decision-making and acting on behalf of the
13 municipality rests with council, not individual
14 councillors. So you want to avoid at all costs
15 the perception that staff reports have been vetted
16 politically or that, you know, staff's
17 recommendations are somehow influenced by a
18 political agenda.

19 So in my view those staff
20 reports should be insulated from any political
21 interference and/or the perception of political
22 interference, and staff reports and
23 recommendations should be provided to all of
24 council at the same time to ensure that there can
25 be no question of there being some influence

1 brought to bear by a member of council ahead of
2 the full of council seeing the report.

3 Q. Thank you. I think your
4 answer was directed primarily at draft staff
5 reports; is that right?

6 A. Yes.

7 Q. That was going to be my
8 next question, but the question that I had asked
9 was actually --

10 A. I'm sorry.

11 Q. No, it's fine. It was
12 about draft consultant reports. Is your answer
13 the same for draft consultant reports?

14 A. I think, you know, as
15 long as the principles of no interference are
16 followed. I mean, again, draft consultant reports
17 are subject to change. In my view, council should
18 only see final reports. You know, when a
19 consultant is still contemplating the final
20 recommendations or advice that they are giving,
21 then in my view there should not be any
22 involvement.

23 You know, the one exception or
24 area -- and again, I referenced an issue that I
25 dealt with in my career that was somewhere similar

1 to this one in terms of flooding -- if you have
2 something that's quite localized.

3 So in that particular example,
4 it was a neighbourhood within a ward. The ward
5 councillor was very concerned, so in that case the
6 consultant was brought out to public meetings
7 prior to the report being issued. I think that's
8 a different standard.

9 If you're looking at a -- in
10 this case a piece of infrastructure and issues
11 that have city-wide, community-wide, council-wide
12 interest, then involving or having individual
13 councillors see material or be part of discussions
14 prior to the whole of council receiving the report
15 in my view is a problem and should avoided.

16 Q. Is that the case even if
17 it is the councillors who actually brought motions
18 that lead to the work of the consultant or staff?
19 There's nothing different or enhanced about
20 dealing with councillors who bring the initial
21 issue to staff?

22 A. If it's been brought
23 through a committee, which I believe is the case,
24 I think the best practice is that the report
25 should go back to all of committee or council so

1 that all members of council can see them and get
2 the information at the same time. You know,
3 council might at that stage be prepared to allow a
4 subset of council or a committee to interact with
5 staff and seek additional information or meetings,
6 but at least it's done with the knowledge of the
7 full council.

8 I mean, I have always in my
9 time as CAO really very, very -- been very guarded
10 about having information go to individual members
11 of council before all of council sees it, and I
12 think there are just some -- it's a practice to be
13 avoided and only exercised in very exceptional
14 circumstances for issues that are clearly local
15 and clearly of concern to one member of council
16 because it's only in their ward that the issue
17 exists.

18 I think then there's some
19 latitude for some meetings and discussions ahead
20 of time. Staff still should be presenting their
21 recommendations and their advice free from
22 political interference, and if they are making
23 recommendations, they need to be able to defend
24 those. You cannot stand in front a council
25 meeting and say, the councillor asked me to do

1 this. If you can't defend it, then it shouldn't
2 be in the report.

3 Q. Thank you. Registrar,
4 could you bring up the document entitled "City of
5 Hamilton Council-Staff Relationship." Could you
6 bring up the next image as well, please.

7 So this is the council-staff
8 relationship policy, which you'll see was last --
9 at the top, last reviewed April 2021. And,
10 Registrar, I would like you to make this -- if we
11 can make this the next exhibit. Exhibit 235,
12 please.

13 MS. LAWRENCE: Noted.

14 EXHIBIT NO. 235: Document
15 entitled "City of Hamilton
16 Council-Staff Relationship"
17 April 2021

18 BY MS. LAWRENCE:

19 Q. This is a policy from the
20 office of City manager that deals with staff and
21 members of council, and you'll see -- Registrar,
22 you can pull this out -- number 2 on the
23 right-hand side. If you can pull up where it says
24 number 2. Yes. Perfect. Thank you.

25 "Council and staff are

1 committed to accountability
2 and transparency among council
3 and staff." And the
4 commentary says:
5 "Staff will ensure that all
6 council members are provided
7 with the same information on
8 matters of general concern or
9 matters that will be discussed
10 at a meeting of council or
11 committee of council, and
12 council and staff will
13 maintain transparency in
14 decision-making and ensure
15 proper consideration of
16 confidential matters."

17 And I take it that that
18 reflects the practices that you have put in place
19 where you have -- the municipalities where you
20 have worked with your own staff in dealing with
21 council; is that right?

22 A. Yes, I think you would
23 find that that's a principle that would be common
24 across most, if not all, municipalities.

25 Q. And is this an obligation

1 on staff and on council but on staff that existed
2 before 2021? I'm using 2021 because that's when
3 this policy was last reviewed.

4 A. In my opinion this has
5 always been a best practice because this is at the
6 very core of the independence of the professional
7 public service, and that, you know, the public
8 service needs to deliver its advice and
9 recommendations independent of political
10 interference or political influence, and, you
11 know, then you serve council, not individual
12 members of council.

13 So those reports should go to
14 the body through the clerk's office, and at that
15 point they become public and subject to discussion
16 and debate at a council meeting and council will
17 make a decision if it's a report that requires
18 that.

19 So in my view this is a
20 principle that has been around since the dawn of
21 government, to be honest, and I think we talked
22 about the Institute of Public Administration of
23 Canada earlier. You know, these would be the
24 kinds of principles and values that you would see
25 espoused by those kinds of organizations through

1 their own codes of conduct and best practices
2 advice.

3 Q. Thank you very much, Ms.
4 Baker.

5 MS. LAWRENCE: Commissioner, I
6 see the time is 12:30, just past 12:30. I expect
7 I'm going to wrap up, and I'm wondering if you
8 would prefer me to take a very brief break just to
9 look at my notes and ensure I'm done, or if it may
10 make sense to take a bit of an early lunch. I can
11 confer with other counsel. The City of Hamilton
12 is the only participant who intends to examine
13 Ms. Baker, and we can set our schedule for when we
14 come back from a slightly earlier lunch.

15 JUSTICE WILTON-SIEGEL: I
16 think perhaps the latter course of action makes
17 more sense. Why don't we take lunch now, it's
18 12:30, we'll return at quarter to 2, and in the
19 meantime, Ms. Lawrence, you can set the schedule
20 for this afternoon for us.

21 MS. LAWRENCE: Thank you, that
22 sounds great, thanks very much.

23 --- Recess taken at 12:33 p.m.

24 --- Upon resuming at 1:46 p.m.

25 MS. LAWRENCE: Commissioner, I

1 was able to speak to counsel over the lunch break,
2 and I can advise for the schedule for this
3 afternoon, we will finish up with Ms. Baker,
4 Mr. Chen expects to be about half an hour, and
5 then we'll move to our next witness, we'll
6 probably take a brief break in between, somewhere
7 around 2:15 to 2:30, and I expect we'll be
8 finishing before 4:30 today.

9 JUSTICE WILTON-SIEGEL: Thank
10 you.

11 MS. LAWRENCE: Thank you.
12 Ms. Baker, I don't have any further questions for
13 you. Thank you very much for your time and
14 attention today.

15 THE WITNESS: Thank you.

16 JUSTICE WILTON-SIEGEL: So,
17 Ms. Lawrence, I understand that Mr. Chen has
18 questions for Ms. Baker.

19 MS. LAWRENCE: That's right.

20 JUSTICE WILTON-SIEGEL: Over
21 you to you, Mr. Chen.

22 CROSS-EXAMINATION BY MR. CHEN:

23 Q. Thank you,
24 Mr. Commissioner.

25 Good afternoon, Ms. Baker. I

1 am one of the lawyers for the City of Hamilton and
2 I just have a couple of questions for you.

3 So earlier today you provided
4 some very insightful commentary and as well as in
5 your report on safety and risk to human health,
6 and specifically you also talked about
7 responsibility for public safety, and I think you
8 had mentioned no harm to the public as kind of a,
9 if I can call it, guiding principle.

10 So just putting that together
11 on identifying a safety issue, is it fair to say
12 that a safety issue can be a circumstance where
13 some issue will likely impact human health? Is
14 that a fair summary?

15 A. Yes. I think that's a
16 fair summary, yes.

17 Q. I'm of course referring
18 to impacting human health in a negative way. And
19 you're shrugging meaning yes, I take it?

20 A. Yes, sorry. I forget
21 that I need to respond. Yeah, I think we're
22 talking about risks to health, although of course,
23 you know, municipalities also have a role in
24 promoting good health, but I think in this case
25 we're talking about risks to public health and

1 safety, yes.

2 Q. When staff are assessing
3 whether something is a safety issue on the
4 definition we just discussed, the staff assessment
5 would include what likelihood an issue will
6 negatively impact human health?

7 A. Yes. I think they would
8 look at a range of factors to make that
9 assessment, so the likelihood, you know, the
10 nature of the risk, et cetera.

11 Q. In doing that assessment,
12 I take it it could be quite obvious in some cases
13 as to whether an issue will likely impact human
14 health?

15 A. Yeah, I mean, some
16 things, you know, clearly. You know, a
17 physical -- you know, physical damage that -- you
18 know, a light pole that could fall on a car. I
19 mean, there are things that are obvious on their
20 face, and then there are others where, you know, a
21 deeper assessment or expert opinion or other work
22 may need to be done to both understand the
23 likelihood and the nature of the risks. So there
24 is certainly a wide range of risks that staff can
25 assess.

1 Q. Certainly. And you're
2 getting ahead of me, but that is the direction
3 that I intend on going. And just to bring it back
4 to situations when it's quite obvious. In those
5 cases, I take it you would agree that staff should
6 act promptly and devote the necessary resources to
7 address that issue, correct?

8 A. Of course. You know,
9 imminence, and certainly that word has come up in
10 the context of today, you know, something that is
11 imminent and obvious, yeah, you would not expect
12 staff to do anything other than act. Assuming
13 they have the resources and the capacity to do so.
14 So, you know, if it's something that needs to be
15 repaired immediately and they have the means to do
16 so, they should proceed to do that. There may be
17 a need for some communication that something is
18 happening, but in general you would expect them to
19 act expeditiously to make the necessary repairs.

20 Q. I think you may have used
21 the word spectrum, or that's how I see it.

22 A. Operating, I think I
23 said, yes, yeah.

24 Q. So on that spectrum,
25 there would also be situations where it's not

1 likely that an issue will negatively impact human
2 health, or an easier decision, I put it?

3 A. I mean, risk assessment
4 by its nature says you look at a risk and you
5 determine if the likelihood of that risk or the
6 consequences are low, medium or high. I mean,
7 that is a typical practice that would be used in
8 risk assessment, and in general those of us who
9 work in this space, you know, you focus most of
10 your attention on your medium to high risks. You
11 focus less attention typically on low risk. It
12 doesn't mean you ignore them, but certainly you
13 want to deal with and put your resources, time and
14 energy into your medium to high risk first.

15 Q. And so I think what
16 you're describing is kind of what my next question
17 is getting at. Staff are engaging in a balancing
18 exercise of the low, immediate or high risk,
19 what's the resources available and whatever other
20 priorities there may be?

21 A. Well, I think the two are
22 separate. I mean, your risk assessment isn't
23 necessarily coloured by do I have the resources
24 or, you know, the means at my disposal to deal
25 with the risk. I think identifying the risk,

1 assessing it, and then coming to a conclusion if
2 it's a medium or a high risk or low risk is one
3 step. Then it is a risk that I need to mitigate,
4 and if it is, do I have the necessary tools,
5 resources, budget, whatever, to do so, or do I
6 need to make a budget request, do I need to hire
7 expertise. I mean, these are all things that are
8 looked at in the mitigation stage, not necessarily
9 the identification stage or the assessment stage.

10 Q. But that's kind of the
11 process, though, you have the identification
12 stage, and then I think you call it the mitigation
13 stage?

14 A. Yes.

15 Q. In your response you
16 talked about I think hiring third parties or
17 seeking assistance or consultation from
18 consultants; is that right?

19 A. Yes, yeah, I did.

20 Q. I take it that's normal
21 when staff don't have the necessary expertise in
22 making assessments related to safety, for example?

23 A. Yes, I mean, everybody is
24 aware that there are sometimes -- there's
25 sometimes a need for external resources, either --

1 I think the two examples I gave would be you don't
2 have the expertise or you don't have the capacity,
3 and in those cases it is typical to backstop those
4 kinds of gaps with consulting resources or
5 temporary resources.

6 Q. One of the I'll call it
7 principles you've talked about today or terms
8 you've used is clarity. I take it you would
9 expect clarity from your consultant in terms of a
10 what they're recommending?

11 A. Yes, I think you need
12 them to both, you know, do the work and the
13 diligence required to make the recommendations,
14 and then the report needs to be clear and
15 understandable to the user. And not necessarily
16 the expert user, depending on the nature of the
17 engagement. You know, if the report is being
18 released publicly, it should be understandable to
19 council and to a lay person as well.

20 Q. So when you're engaged
21 with the consultant, and just taking it back to
22 the start, you would expect them to clearly
23 identify the issues that the consultant believes
24 would likely impact human health?

25 A. I think when you are

1 engaging a consultant to -- for their expertise in
2 looking at risks to public safety, you know, as it
3 pertains to a piece of infrastructure, for
4 example, yes, I think the more clear that the
5 consultant can be on the technical reasons for
6 their recommendation but also the urgency or, you
7 know, timing of when they believe certain actions
8 should be taken in order to mitigate the risk that
9 has been identified, I think that is
10 extraordinarily helpful to both staff and to the
11 council and the public.

12 Q. And would it assist if
13 the consultant also identified what would happen
14 if the recommendations were not implemented or
15 moved forward on?

16 A. I think that's part of
17 the -- you know, the overall value of the report.
18 I mean urgency or, you know, being adamant, I
19 guess, if I can use that word, that something must
20 be done as opposed to a recommendation that would
21 improve the situation, but, you know, you may have
22 some flexibility in timing. I think that's
23 important, but if a consultant who is an expert in
24 an area believes that if something isn't done, you
25 know, it could lead to more harm or more frequent

1 harm or harm that could be avoided, then I think
2 they do have, in my opinion, a professional
3 obligation to point that out.

4 Q. That would certainly help
5 with the City's understanding of the seriousness
6 of the issue?

7 A. I think it would help. I
8 also think that in the course of completing the
9 work, you know, these are typically conversations
10 that might happen between staff and a consultant
11 because it's also incumbent on staff to make the
12 inquiry if the information isn't provided, you
13 know, how urgent is this. These are the kinds of
14 questions I think -- questions of clarity can also
15 come from staff if the consultant hasn't provided
16 that in their draft materials or -- well, yes, in
17 their draft materials.

18 Q. I've looked back at the
19 transcript and I couldn't find it, but I recall
20 that you had mentioned that you've invested
21 resources and time into the -- into working with
22 the consultant, engaging the consultant. Was that
23 a point that you made or am I misstating?

24 A. I'm not clear. I mean,
25 in my view, you know, there is dialogue that would

1 be happening in the course of a consulting
2 assignment between the consultant and staff. I
3 believe I mentioned that earlier. That's what I
4 recall.

5 Q. But is it fair to say
6 that City staff can rely on the consultants to
7 identify those issues that would likely impact
8 human health? You're obviously getting the report
9 for a reason.

10 A. Yeah, I mean, I think
11 when I talked about engaging a consultant, you
12 know, there is a terms of reference or a request
13 for proposals that would go out that would specify
14 the nature of the engagement but also the
15 expertise that the City is looking for, and in the
16 course of the responses, you know, those -- that
17 expertise would be assessed, and presumably the
18 City would have confidence then that the
19 consultant that they have engaged has that
20 expertise, and as a result of that advice and
21 recommendations that are made, would have value
22 and certainly could be relied on by the staff as
23 advice that they should move forward, utilize, and
24 presumably implement.

25 Q. Thank you. Just as an

1 example, if a consultant recommends that the City
2 could consider implementing a countermeasure or to
3 take some action, I take it staff can rely on that
4 conclusion, the way it's phrased?

5 A. Well, you used the word
6 "could." So could implies discretion, you know,
7 and that's where I think it is -- it's important,
8 because, you know, the nature of consulting
9 engagements is -- varies, but in a circumstance
10 where you're relying or looking to expertise, and
11 again I think the stakes are higher when you're
12 talking about an issue that might impact public
13 safety, I think it's incumbent on the consultant
14 to identify those things that they believe are
15 important for mitigation versus things that might
16 be a good idea, but, you know, they are not
17 necessarily recommending. I mean, there are lots
18 of things that you can do.

19 I go back to I believe in one
20 of the reports, and I apologize, I think it was
21 the 2015 report, there was a cost-benefit analysis
22 that was done on some of the recommendations.
23 That's extremely helpful to be able to assess how
24 important or how urgent, you know, it is to move
25 forward because if you've got something that's low

1 cost/high benefit, that -- I calling it the
2 low-hanging fruit, but -- so I think again
3 clarity, but conversations also will happen
4 between staff and the consultant, and I think
5 that's where clarity can come with respect to how
6 critical is it we do something versus, you know,
7 something that's a good idea, but, you know,
8 you're not necessarily recommending it as a
9 measure that must be taken.

10 Q. Right. And so you used
11 the word must, and I don't think we need to go to
12 your report, but one of the things you say is:

13 "Helping staff and council
14 understand what the consultant
15 feels the City must do versus
16 things that are helpful but
17 discretionary is always useful
18 to ensure a municipality's
19 time, effort, and resources
20 are assigned to the right
21 priorities."

22 A. Yes.

23 Q. That summarizes, in
24 effect, I think our conversation.

25 A. It does, I believe, yes.

1 MR. CHEN: Mr. Commissioner,
2 if I can just have five minutes to consult with my
3 colleagues?

4 JUSTICE WILTON-SIEGEL: Yes,
5 by all means. Do you want stay on the line or do
6 you want to just -- we'll adjourn for five
7 minutes?

8 MR. CHEN: If we can adjourn
9 for -- if I can impose and adjourn for 10?

10 JUSTICE WILTON-SIEGEL: We're
11 now in a negotiation, Mr. Chen?

12 MR. CHEN: We are not in a
13 negotiation. I'm leaving it to you.

14 JUSTICE WILTON-SIEGEL: Let's
15 take a 10-minute break. We'll return -- I'll give
16 you an extra couple on top of that. We'll say
17 2:15 as an even quarter.

18 MR. CHEN: This is a good day.
19 Thank you, Mr. Commissioner.

20 --- Recess taken at 2:04 p.m.

21 --- Upon resuming at 2:16 p.m.

22 MR. CHEN: No further
23 questions, Mr. Commissioner.

24 JUSTICE WILTON-SIEGEL: Thank
25 you very much, Mr. Chen.

1 Well, then, first of all, I
2 don't think, Ms. Lawrence, you have any further
3 questions, would that be right?

4 MS. LAWRENCE: I don't.

5 JUSTICE WILTON-SIEGEL: Ms.
6 Baker, thank you very much. We appreciate the
7 time that you put in both in preparing your report
8 and in preparing for and attending today to give
9 your testimony. It's been very helpful to the
10 inquiry.

11 THE WITNESS: Thank you, Your
12 Honour.

13 JUSTICE WILTON-SIEGEL: And
14 you're excused, if you want to sign off now.
15 Enjoy the rest of the day.

16 The rest of us, I believe
17 perhaps a few minutes is required in order to set
18 up Mr. Baaj; is that correct?

19 MS. JENNIFER ROBERTS: Yes,
20 Commissioner, if I might your indulgence just for
21 five minutes so I can connect. I understand that
22 Dr. Baaj is in the waiting room. I think we're
23 ready to go, but I just want to have an
24 opportunity to connect with him, make sure he's
25 comfortable.

1 JUSTICE WILTON-SIEGEL: Well,
2 I gave Mr. Chen 10 minutes, so I'll give you the
3 same if you like. We'll return at 2:30.

4 MS. JENNIFER ROBERTS:
5 Perfect. Thank you, Commissioner.

6 --- Recess taken at 2:18 p.m.

7 --- Upon resuming at 2:31 p.m.

8 MR. LEWIS: Commissioner, we
9 have Dr. Hassan Baaj here today, who of course you
10 granted leave for him to be examined, to file a
11 report and be examined, and Ms. Roberts is going
12 to lead his evidence in-chief.

13 JUSTICE WILTON-SIEGEL:
14 Perhaps he should first be sworn in, Mr. Lewis.

15 MR. LEWIS: Yes, he should.

16 HASSAN BAAJ; affirmed;

17 EXAMINATION BY MS. JENNIFER ROBERTS:

18 MS. JENNIFER ROBERTS:

19 Commissioner, may I begin?

20 JUSTICE WILTON-SIEGEL: Yes,
21 please do.

22 MS. JENNIFER ROBERTS: Thank
23 you. With your indulgence, I would like to begin
24 with a housekeeping matter.

25 I have two corrections to make

1 to this report that Dr. Baaj can confirm. The
2 first one is in the report, page 12, which I think
3 will be image 13, there's a reference to footnote
4 3 on that page and that should be corrected to
5 footnote 5. The Registrar is putting it up.

6 So, Registrar, if you go to
7 page 12, I think that's image 13. Yes,
8 petrographic number. You'll see two-thirds of the
9 way down there's a sentence that begins "according
10 to H and et al., the PN typically ranges from 100
11 to 1,000." There is a footnote which should be
12 footnote 5.

13 JUSTICE WILTON-SIEGEL:

14 Hm-hmm.

15 MS. JENNIFER ROBERTS: Thank
16 you. Similarly, on page 22. Registrar, that
17 should be image 23, I think. This one may be more
18 obvious. In the paragraph section 3.2,
19 "comparison with 1992 data," the last sentence in
20 that paragraph which begins "this explains the
21 difference between PSV," small numbers, "1992 and
22 PSV 2007," that reference should be 2008.

23 BY MS. JENNIFER ROBERTS:

24 Q. Dr. Baaj, have I
25 explained these corrections correctly?

1 A. Absolutely. Yeah, I do
2 confirm that.

3 Q. Thank you. Registrar,
4 you can take that callout down, please. Take the
5 whole report off. I see that we're being asked to
6 put Dr. Baaj's full name on the screen. Dr. Baaj,
7 are you able to do that?

8 A. I may be able to do that.
9 Rename, yeah.

10 Q. If you could just do a
11 dash and say expert for Golder. I think that
12 might be helpful as well. Thank you. I hadn't
13 noticed that before.

14 Dr. Baaj, I just want to begin
15 with an acknowledgement of your duty expert as an
16 witness. You understand that your duty to this
17 inquiry is to provide your evidence that is fair,
18 objective, and non-partisan. You understand that?

19 A. Yes, I do understand
20 that.

21 Q. And you understand that
22 that duty to the inquiry prevails over any other
23 obligations that you may have?

24 A. Yes.

25 Q. Thank you. I'm going to

1 go to your CV first. Registrar, that is Golder
2 7519. I think it's been marked as Exhibit 225.
3 Can you please go to the third image, Registrar.

4 Dr. Baaj, you're a professor
5 at the University of Waterloo?

6 A. Yes.

7 Q. And you are the chair in
8 sustainable pavement and engineering, civil and
9 environmental engineering?

10 A. Yes, I am.

11 Q. And the director of the
12 Centre for Pavement and Transportation Technology,
13 University of Waterloo?

14 A. Yes.

15 Q. I don't intend to go
16 through your CV in a great deal of detail because
17 that would take a long time, but what I want to do
18 is focus on a number of areas, particularly your
19 experience in relation to aggregates and asphalt
20 mixes. So I want to focus, I think, on your
21 experience in industry.

22 Can you tell us about your
23 experience in relation to the selection, testing,
24 and qualification of aggregates for use in asphalt
25 mixes?

1 A. Yes. So, yeah, I
2 completed my PhD in 2002, and even during my PhD I
3 was involved -- well, my PhD focused on the
4 behaviour of asphalt mixes, so that -- and my
5 masters as well. And then I worked for National
6 Research Council for one year, as both Dr. Hiddle
7 and Dr. Dante joined Sintra, which is a division
8 of Colas Canada, as a research engineer, and then
9 I got requisitions, and at this capacity I was
10 involved with technical services of the company,
11 including working with different regions of the
12 company on mix designs and selecting materials,
13 and that includes, for sure, aggregates.
14 And that was for about five years, and -- like, I
15 also worked temporarily at a school in Montreal
16 called École de Technologie Supérieure where we
17 worked on asphalt mixes, and specifically that was
18 about 21 years ago.

19 After that -- well, during
20 this period I gained a lot of experience with
21 asphalt mix design and materials used in asphalt
22 mixes. After that, I moved back to France where I
23 did my PhD. I worked for Lafarge at the Lafarge
24 Research Centre, which is the corporate research
25 facility for Lafarge. Lafarge at that time was

1 aggregates, so including projects on, like,
2 selecting aggregates, the study of impact of
3 aggregates on asphalt mixes.

4 So yeah, this is in summary
5 the experience I had on aggregates throughout the
6 last -- my 25 years I think, almost, of
7 involvement with asphalt mixes and materials
8 engineering.

9 Q. Just one question, you
10 mentioned, you reference Sintra. It's in your CV.

11 A. Yes.

12 Q. It's on -- Registrar, can
13 you go to the next page, page 3, the next image.
14 Back to the beginning. Its reference associate
15 director RD, technical division, scientific
16 coordinator. What is Sintra?

17 A. Sintra is an asphalt
18 materials producer and paving company located in
19 the province of Quebec. They have different -- at
20 that time they used to have around 55 asphalt
21 plants throughout the province, and I'm not sure
22 now, but it was at the time the biggest asphalt
23 company in the province. And Sintra is part of
24 Colas, which is one of the world leaders in road
25 construction, so it's a French company. Yep.

1 Q. Thank you. I think you
2 said that when you were with Lafarge in France
3 that you were involved in the development of
4 mechanisms to improve aggregate for use in
5 asphalt. Did you have any involvement in
6 reviewing the geology of quarries?

7 A. My team, my team had. So
8 in the previous page, in the image number 2, I
9 mentioned -- it mentions my role as group leader,
10 research group leader of the particulates group,
11 and in that group we work on everything related
12 to, like, particulates, including for sure
13 aggregates but from smaller, fine aggregates and
14 cement particles to the rocks and geology.

15 So we had several research
16 projects, and my involvement in the geological --
17 the ones focusing on the geology was as a group
18 leader but not as a project manager, because it
19 takes a geologist to do this work. But I was
20 involved as a group leader in these projects, and
21 I'm very well aware of these projects, yes.

22 Q. You mentioned it, but
23 that included also a review of the different
24 methodologies for producing aggregate. Can you
25 just briefly address that and the importance of

1 different methodologies being used to produce
2 aggregate?

3 A. Sure. Well, quarry
4 materials are produced from aggregates, and if we
5 focus on the ones that are obtained by breaking
6 down, simplify the rocks to smaller size, so the
7 way how we break down the aggregates, the way how
8 we -- the processes and different type of
9 equipment, like jaw crushers for example,
10 (indiscernible) pressures, et cetera, the sequence
11 and the type of equipment we use will influence
12 the quality of the aggregates that we get at the
13 end.

14 My team was working with
15 different quarries within the company in different
16 countries on finding solutions and investigating
17 ways to improving the quality of the aggregates,
18 including for sure the skid resistance -- or not
19 skid resistance. I would say the microtexture of
20 the aggregates as a way to improve the skid
21 resistance and improve the polishing resistance of
22 these aggregates for the time.

23 Q. And we've not asked you
24 to provide an opinion in relation to friction, but
25 as part of your research, and I think this is

1 where you're going, you were involved in studies
2 of the role of aggregates to provide good skid
3 resistance in asphalt mixes?

4 A. Absolutely, absolutely.

5 So I worked on different projects where we
6 investigated -- so there are two aspects here.
7 One is working on the aggregates and examining the
8 microtexture and finding better ways for
9 quantification of the potential skid resistance or
10 polishing resistance. So we used different type
11 of equipment, like laser scanners, we used
12 microscopes to study the roughness of aggregates,
13 but we also used PSV, which is one of the tests
14 that -- like, we're talking about here in the
15 report, but comparing PSV on asphalt bind -- like,
16 to what we get from in asphalt mixes and using
17 different methods.

18 In particular, my focus was
19 how to improve or incorporate recycled materials
20 with virgin aggregates without impacting the skid
21 resistance or the final pavements.

22 Q. Thank you. You've
23 alluded to it, but among those testing procedures,
24 and I'll come back to this, but that included
25 PSV. Did it also include CPP?

1 A. No, I don't have -- I
2 never used CPP because CPP is only used in Quebec,
3 and the only equipment is at MTQ. So we didn't
4 have this equipment.

5 Q. You've alluded to it in
6 your experience in working with asphalt mixes.
7 Did that include working with stone mastic asphalt
8 mixes?

9 A. Oh, absolutely, yes.
10 Well, stone asphalt -- it's a mini-stone mix
11 asphalt or -- it's stone mastic asphalt of Germany
12 is a very old mix actually, and there are
13 different mixes even that don't have this name,
14 but they are very similar in terms of mix design.
15 So even during my PhD and after, I worked with
16 different French mixes that are very similar to
17 cement. But my first work on SMA was in 2002, so
18 21 years ago. That was with MTQ in Quebec,
19 Ministry of Transportation in Quebec, and we
20 studied SMA -- one of the SMAs used on Highway 20
21 in Quebec, and my role was working on the mix to
22 evaluate its performance, like fatigue and
23 rotting. And I have a few publications from that
24 time. Like, the first was one in 2003.

25 And then I used SMA in

1 different projects, including projects that
2 incorporate recycled materials, recycled shingles
3 actually, and that was also with MTQ at the time
4 that I was with Sintra. And even with Lafarge
5 later, I worked on SMA, one of my projects
6 included SMA.

7 So I used it a lot in research
8 and at least three times in real-life projects.

9 Q. Perhaps it's obvious, but
10 in 2007 would you have described SMA asphalt as
11 experimental?

12 A. No. In 2007 -- well, as
13 I said earlier, this stone mastic asphalt was
14 created back in the 60s in Germany, and there's a
15 lot of experience with this mix in Europe and
16 worldwide. It arrived to North America I think
17 sometimes in the 80s, and MTO started using it I
18 think in 1990, and this mix is very well known.
19 It's not an experimental mix. When it becomes
20 experimental is when we added something new to it,
21 or I don't know -- a recycled material or a
22 different fibre, et cetera, but the one that was
23 used in 2007 and the one that is standardized in
24 Ontario is not an experimental mix. Or wasn't in
25 2007, yes.

1 Q. Thank you. Do you have a
2 view as to the appropriateness of using SMA on a
3 road such as the Red Hill Valley Parkway?

4 A. Like, I think that the
5 SMA is by far one of the best asphalt mixes that I
6 work with, and it's a mix that is very liquid for
7 use on, like, highly trafficked highways, like in
8 all layers, surface and the other layers, and I
9 believe that it's not only a liquid, I think it
10 was by choice for this highway.

11 Q. Dr. Baaj, I want to go to
12 your report. Registrar, if you can take down this
13 document and go to Golder 7517. I think that
14 that's Exhibit 224. Thank you.

15 So, Dr. Baaj, much of your
16 report addresses the testing of the aggregate
17 supplied by Dufferin in 2007, and you reviewed the
18 various tests that were provided by Dufferin so
19 the aggregate met the specifications required for
20 the project. And Dr. Flintsch in his examination
21 earlier has agreed with you that the aggregate met
22 the requirements. So I don't propose to go
23 through all of the evaluation that you've done
24 here, but I do want to touch on some of it.

25 First let me address the

1 point, the aggregate proposed by Dufferin for use
2 in the Red Hill was an aggregate from the
3 Demix-Varennnes quarry. It was not a designated
4 source materials in 2007, although it was so
5 designated by the MTO in 2009. Would the fact
6 that the Varennnes-Demix aggregate was not on the
7 DSM list be a reason to refuse to accept it for
8 use on the Red Hill paving project?

9 A. From a technical point of
10 view or from, like, a standardization point of
11 view? Because --

12 Q. Both ways.

13 A. Yeah, exactly. My answer
14 would be no both ways, actually. Like, it's not a
15 reason to reject them. The first is that from a
16 technical point of view, like as an engineer if I
17 have a new material and I need to evaluate if the
18 material meets the requirements and that I think
19 was done properly, from the standards of point of
20 view, the standards in 2007 did not require that
21 the material used in SMA or any of other mixes,
22 applications to be part of the DSM.

23 Q. Would it have caused you
24 doubt about the suitability of the aggregate? And
25 maybe you've answered that, but let me just ask it

1 directly.

2 A. No, that's a good
3 question. I think my answer would be no because
4 this is a material that comes from a different
5 province, so there is no reason to include it in
6 that list if it wasn't used before in Ontario. So
7 it's very normal when you have a new material -- I
8 think the MTO does all the time when they have a
9 new material that is like a manmade material
10 that's produced elsewhere that we start producing
11 in Ontario, or an actual material like aggregates
12 that is transported from another province to be
13 used in a project, I think the right thing is to
14 evaluate it before saying yes or no. So for me,
15 it's like no, I don't think that was a problem at
16 all.

17 MS. JENNIFER ROBERTS: Thank
18 you. I see commission counsel has come up.

19 MR. LEWIS: Yeah, maybe I
20 missed it in Dr. Baaj's report what he was just
21 talking about, and if I did, I apologize, but if
22 it's not in his report -- Commissioner, if you
23 find it helpful, then that's fine, but I do think
24 we should --

25 MS. JENNIFER ROBERTS: Just

1 for clarity, it is in the report.

2 MR. LEWIS: Then I missed it.

3 Thank you.

4 BY MS. JENNIFER ROBERTS:

5 Q. Thank you. Is there a
6 consequence -- you can put this a number of
7 different ways. Is there a consequence to the
8 fact that the aggregate was not on the DSM list in
9 2007? Like, what has to happen when you get a new
10 aggregate?

11 A. So, like, again from a
12 technical point of view, I won't talk about for
13 MTO, but from a technical point of view, I would
14 evaluate the aggregates and see if they meet the
15 requirements, and then if they are acceptable for
16 the project, because in that specific case I think
17 there are specifications that are required. If
18 the aggregate meets the requirements, so it should
19 be used.

20 Q. So that is then you would
21 like to -- my language might be accurate, but then
22 Dufferin has to qualify the aggregate as
23 appropriate and meeting the specification and that
24 has to be reviewed. Do I have that right?

25 A. I don't work for MTO, for

1 the municipalities --

2 Q. No, no, I'm talking -- go
3 ahead.

4 A. -- but yes, that's what
5 was done actually, so I believe that this is the
6 right thing to do. Like, again, from a technical
7 point of view, for me the DSM is just a list that
8 includes the material that are approved. If a
9 material that is not on the DSM meets the
10 requirements, and at that time there was nothing
11 that prevented using the aggregates in that
12 situation.

13 Q. Let's go forward. I want
14 to address the testing of the aggregate which
15 assesses its qualities to resist polishing. You
16 said that in 2007 a test like a PSV testing wasn't
17 required for the provincial standards, but
18 nonetheless, amongst the data sheet that Dufferin
19 provided there was a testing for resistance to
20 polishing. Perhaps we can go to it.

21 Registrar, can you please go
22 to appendix 1 of this report on page 28, which I
23 think is image 29. Oh, dear. Registrar, can you
24 make this a bit larger? Dr. Baaj, can you just
25 identify what this is.

1 A. So this is the data sheet
2 that was provided by Demix in 2007 for the coarse
3 aggregates used in the Red Hill Valley project,
4 SMA.

5 Q. Way down at the bottom
6 there's -- second last line item is "polishing by
7 protection coefficient"?

8 A. Yes.

9 Q. What is that?

10 A. So this is the test used
11 in Quebec in lieu of the PSV that we use in
12 Ontario and some other jurisdictions. So the
13 polishing by projection is a test that is used to
14 evaluate the potential of the aggregate to resist
15 polishing over time.

16 Q. Can you briefly explain
17 what that testing is?

18 A. Yeah, for sure. So the
19 original test -- and this test actually I think
20 was inspired from a test used in France that is
21 also called -- has a similar name, an equipment
22 called Grab (ph) in French, and these tests, we
23 subject the aggregates to artificial polishing or
24 accelerated polishing in the lab by projecting a
25 powder or an emery or like aluminium side powder

1 and water on the aggregates for about 45 minutes,
2 is good, 20 some cycles, and this way the
3 aggregates get polished in the lab, and after that
4 these aggregates would be tested using the average
5 pendulum that is the same one used with the -- for
6 the PSV to determine their, like, potential skid
7 resistance.

8 And it's always compared to a
9 reference aggregate, so a reference number
10 actually from perfect aggregates, and that gives a
11 value and this value is in this case 0.49 percent.
12 Typically it's 0.3, 0.55 would be the limestone,
13 and it can go up higher than that. So this number
14 here is -- the number reported here is 0.49, which
15 is the test result.

16 Q. Can you tell me whether
17 that is good or bad or acceptable or not, .49?

18 A. Well, it is acceptable,
19 and the minimum used in the standards, the norms
20 in Quebec is 0.45. That is used for high
21 traffic -- high traffic highways in most of the
22 province.

23 Q. Thank you. Registrar,
24 you can take down that callout, please.

25 Now we've heard in the course

1 of the last -- we've heard a lot about polished
2 stone value testing. And as I understand it, that
3 is the test used by the MTO to address aggregates
4 and their ability to resist polishing.

5 A. Hm-hmm, yes.

6 Q. Registrar, so you can
7 take down this appendix and actually go to the one
8 prior on page 20 -- sorry, further on, page 29.
9 Thank you. I'll go to this in a second, Dr. Baaj.

10 Can you explain briefly the
11 PSV testing, what that is.

12 A. The PSV testing is
13 similar to the CPP in the sense that when we
14 have -- when the aggregate is a candidate to be
15 used in the surface mix, we place these aggregates
16 in trays and these trays are placed on a wheel, on
17 the outer side of the wheel, and then using two
18 types of powders or emery that is injected, this
19 wheel will be -- will start rotating, and there is
20 another rubber wheel that will start polishing the
21 aggregates with the emery being inserted at that
22 time, and we simulate again several years of in
23 service use of the aggregates.

24 So the target is to polish the
25 aggregate to an advanced stage similar to the

1 projection that I explained earlier, and then
2 these aggregates are tested using the pitch
3 pendulum compared to a standard aggregate, and
4 then it gives us a number.

5 In this case the number is
6 reported here in this table, it's 52. And --
7 yeah. So I don't know if I need to -- if it's not
8 clear, I can elaborate.

9 Q. Thank you. So let me
10 just ask the question. So both tests, the CPP and
11 the PSV, are there to evaluate an aggregate's
12 resistance to polishing. Is it possible to
13 correlate the PSV and the CPP test?

14 A. So I was unable to find
15 any correlation between the CPP used in Quebec and
16 the PSV, probably MTQ did that, but I haven't seen
17 any published data. However, in my reports I
18 talked about the original CPP test, if you wish,
19 which is slightly different but similar used in
20 France and in figure -- trying to find this.

21 Q. Figure 6. Registrar,
22 let's go to it. It's figure 6 of your report,
23 page 15, image 60.

24 A. Yes exactly. Thank you.

25 Q. I think this is the

1 figure.

2 A. Yes.

3 Q. Figure 5?

4 A. It's not this one, it's
5 next page. Exactly. So this one shows a
6 correlation from very good -- actually, but the
7 reference is here, by CBC, which is the main
8 research lab on pavements and bridges in France.
9 So in this research they compare PSV to RPA, and
10 RPA is the value obtained from the projection test
11 used in France, which is similar to the CPP, and
12 here we see that we have an excellent correlation
13 between these PSV and RPA value.

14 So I would expect that the
15 CPP -- because the concept of the RPA and CPP is
16 very similar, I would expect to have also a good
17 relationship between the two. I mean PSV and RPA,
18 and for sure RPA and CPP.

19 Q. You had physical
20 mechanical test results of the testing conducted
21 by the MTO, and we were just there.

22 Registrar, I'm going to ask
23 you to go back to appendix 2, page 29, image 30.
24 Next one. Appendix 2. Thank you.

25 Let me ask, what is this?

1 A. So this are the test
2 results obtained by MTO on aggregate sample -- two
3 aggregate samples, one fine and one course, sent
4 by Demix Aggregates which -- from the Varennes
5 Quarry in 2008. So that was part of the process
6 of evaluating that appropriateness of these
7 aggregates to be added to the DSM in Ontario.

8 Q. And I think maybe the
9 easiest place to look at this is where you've
10 summarized the MTO testing, which is in your
11 report at page 16.

12 Registrar, can we please go to
13 page 16, image 17. So you've got table 1, which
14 is the summary of this testing for the -- I think
15 it was the testing provided by Dufferin in
16 reference to the Quebec standards, and table 2 is
17 the testing provided -- testing provided of the
18 aggregate by the MTO in 2008.

19 You've got a note here, it's a
20 star at the bottom of table 2, requirements for
21 the highest traffic category, category E. What
22 does that mean?

23 A. Yeah. Category E is 30
24 million ESOLS, just -- I don't remember the -- so
25 it's part of the OPSS, like Ontario standards

1 1003. It's a category, traffic -- the highest
2 traffic category in Ontario for asphalt and
3 aggregate material selection and design, and it's
4 when the traffic is higher than 30 million
5 equivalent single axel loads over 20 years. And
6 that is a category that response to freeways,
7 major arterial roads with heavy truck traffic and
8 special applications such as truck and bus
9 climbing lanes or stopping areas.

10 Q. So it means that an
11 aggregate that meets these requirements would be
12 appropriate for use for their highest traffic,
13 high speed highways?

14 A. Yes.

15 Q. I want to stay focused on
16 the PSV testing. Dr. Flinsch in his testimony
17 described the PSV testing showing the terminal
18 polished state. I understand what he means by
19 that the state at which an aggregate will not
20 polish any further.

21 In your view, does PSV show
22 the terminal state of an aggregate?

23 A. Not necessarily. So the
24 test -- like it's intended to simulate polishing
25 on the aggregate, so within the PSV or the CPP,

1 both, they would try to polish the aggregates as
2 much as possible in the lab. We cannot do that
3 forever so we should stop at this at one point.

4 So if the aggregates that I
5 have are like excellent to start with, the
6 polishing in the lab would probably lead to 50,
7 60 percent of the polishing that would happen in
8 real life. If we're starting with limestone, for
9 example, maybe after ten minutes of polishing we
10 will reach the terminal state and we will polish
11 everything. So I wouldn't necessarily say that
12 it's always terminal state of polishing.

13 Q. That depends in part on
14 at least the aggregate. Is that what your --

15 A. Yeah, exactly.

16 Q. Staying with the table,
17 and you already referenced it. The table shows
18 polished stone value. It's the last entry on
19 table 2, PSV. And the results in 2008, and I
20 think you reference them, that's 52?

21 A. Yes.

22 Q. What does that test
23 indicate to you?

24 A. So 52 is higher than the
25 minimum required in Ontario and higher than the

1 minimum required in many other places actually,
2 and it indicates to me that the quality of the
3 aggregates is good for use when a skid resistance
4 is required or needed.

5 Q. Now, we focused on CPP
6 and PSV testing. Are there any other tests that
7 you've evaluated which would give an indication of
8 the aggregate's ability to resist polishing?

9 A. Yeah. So there are some,
10 as I said, test using research, as I said earlier,
11 microscope to evaluate the microstructure, laser
12 scanners, also some advanced tests that can be
13 used on asphalt mixes as well on aggregates. But
14 if I look at the test that we have here in the
15 table I would say that we have other numbers here
16 or other values that would help me understand
17 whether this -- the quality of the aggregates
18 would be good for this type of application.

19 For example, the petrographic
20 number, PN, which is I think the fifth value in
21 table 2. It's 100 here for this type of
22 aggregates. These value reflects the quality of
23 the aggregates, it's a test that is done by
24 geologists and they try to evaluate different
25 things like how clean the aggregates are, how good

1 the aggregates are, the minerology used in the
2 aggregates, scratching. Different things are
3 included in this number.

4 So this number indicates that
5 the quality of the aggregates is high, and 100 is
6 almost about the lowest that we can reach with
7 natural aggregates. Like, according to the
8 literature they have seen 90, but 100 is sort of
9 reported to be like at the -- one of the best
10 numbers.

11 There is also -- the very
12 first number, which is a Micro-Deval abrasion --
13 again this is a standard test used in Ontario and
14 Quebec and almost everywhere now -- and it's
15 called abrasion but it's actually attrition. So
16 the concept of the test is that we have a small
17 drum in which we put steel spheres, smaller steel
18 spheres than other test, like the (indiscernible),
19 and the drum starts rotating and then the
20 aggregates hit each other and they get hit by the
21 steel spheres and then the surface of the
22 aggregates gets -- with the impact we lose this
23 micro roughness will be certain impacted, and how
24 much we lose at the end of the test reflects
25 whether the aggregates are good or not to resist

1 attrition and abrasion. And in this case we have
2 2.7 percent and the minimum required is 10
3 percent. So it reflects that -- the aggregates --
4 the aggregate here has good resistance to
5 attrition as well.

6 Q. Forgive me for asking
7 what might be a rudimentary question, but is
8 attrition related to microtexture?

9 A. So -- somehow, because at
10 the end of the day what will happen during when we
11 open the road to traffic and the vehicle starts
12 damaging the asphalt and aggregate, there will be
13 some attrition that -- and this is what leads
14 polishing. It's somehow similar because if the
15 aggregate is strong and this micro roughness is
16 strong enough to resist the attrition it will be
17 most likely also resist the impacts caused by the
18 traffic better than another aggregates that has --
19 doesn't good have resistance or attrition.

20 Q. So if it's resistant --
21 if it's resistant to attrition it's more likely to
22 retain its microtexture? Do I have that right?

23 A. Yes.

24 Q. Thank you. So we have
25 here the CPP testing and the PSV testing as well

1 as the other laboratory results that you consider.
2 And we have your evidence with which Dr. Flintsch
3 agrees that show the aggregate was suitable for
4 the application and could've been expected to find
5 good skid resistance.

6 Is there anything in any of
7 this testing that would suggest to you that this
8 aggregate might be susceptible to undue polishing?

9 A. No.

10 Q. Obviously in 2007
11 Dr. Uzarowski wouldn't have had the MTO testing
12 that was done in 2008 but he had the data sheet
13 provided by Dufferin that you summarized in table
14 1 here. Were you provided these test results in
15 2007 would you have accepted the aggregate as
16 suitable and appropriate for the application
17 within the SMA mix?

18 A. Yeah, yeah, absolutely.

19 Q. You addressed this.
20 Dr. Flintsch in his report, in section 2.1, 2.5
21 addresses the 2017 PSV testing conducted by
22 Golder. This was testing of the aggregate that
23 had been in service on the Red Hill for 10 years
24 and was extracted from the asphalt. In your
25 experience is it usual to test aggregate that's

1 been in service?

2 A. No, not in this way. Not
3 with PSV for sure.

4 Q. And here it was done by
5 Golder for a particular purpose?

6 A. Yeah. So if we are
7 trying to evaluate the future use of the
8 aggregates, so we can conduct this type of test
9 which was done here, because we are projecting the
10 future. So the PSV doesn't tell me anything about
11 the aggregates now. It takes the aggregates and
12 polishes the aggregates to a certain level like --
13 we talked about that earlier, not necessarily
14 terminal but like in service, long term situation.

15 So by taking the aggregates
16 from the asphalt mix, modifying them through the
17 process of extraction, recovery, et cetera, and
18 taking them to the PSV test and running the PSV
19 test on them, what this would tell me is if I have
20 to reuse these aggregates how would they perform
21 later. That may be acceptable but not to tell me
22 if the aggregates have polished in the past.
23 That's another story.

24 Q. And indeed Golder was
25 using it to evaluate whether the aggregate could

1 be used in hot in-place recycling?

2 A. Yes.

3 Q. And Dr. Flintsch notes
4 that the PSV of the in-service aggregate -- and
5 they suggest a connection with what the virgin
6 state of the aggregate might have been. Do you
7 agree that the 2017 testing of the recovered
8 aggregate would have given you any indication of
9 what the virgin state might have been?

10 A. No, not at all.

11 Q. Dr. Flintsch then notes
12 that the friction on the Red Hill declined by
13 approximately 20 percent between 2008 and 2014.
14 He seems to draw a connection between the PSV
15 testing in 2017 and the decline in friction. In
16 your opinion, would the PSV testing of the
17 in-service aggregate tell you anything about
18 whether the aggregate had in fact polished?

19 A. No, not -- as I mentioned
20 before, the result and even the specifications in
21 the test standards says clearly that testing
22 recycled aggregates, or aggregates taken from
23 asphalt mixes, would lead to misleading
24 information. So the PSV obtained in 2017 would be
25 a misleading number. So I cannot use this one to

1 say hey, the aggregate polished or not.

2 And I repeat that again. The
3 PSV won't tell me what's the situation now. Will
4 tell me what the situation if I put this aggregate
5 again for another 10 years. So I cannot use it to
6 say what's happened in the past and connect it to
7 the virgin aggregates in any way.

8 Q. Just to cover off the
9 point. That doesn't tell you, it doesn't conclude
10 that the aggregate hasn't polished, but only that
11 this test doesn't tell you whether it did or not.

12 A. Any aggregate -- any
13 natural aggregate would polish for sure, that's a
14 fact. But when I take the aggregates and run the
15 PSV on them it doesn't tell me anything about the
16 past. So I cannot connect it to what happened
17 during -- I cannot connect it to the virgin
18 aggregates and I cannot use it to conclude whether
19 this aggregate polished over the last 10 years too
20 much or very little. Like, there's no connection.

21 Q. Thank you.

22 JUSTICE WILTON-SIEGEL: Can I
23 just interject for a second.

24 I think you're making a simple
25 statement, and that is that the only use that can

1 be made of this would be as a projection of what
2 this aggregate tested in 2017 might be like
3 10 years from now.

4 THE WITNESS: Yes, that's
5 correct.

6 MS. JENNIFER ROBERTS:
7 Commissioner, subject to any further questions
8 that you might have and obviously
9 cross-examination from counsel, I have no further
10 questions.

11 JUSTICE WILTON-SIEGEL: I have
12 no further questions.

13 Mr. Lewis? Do either of the
14 other counsel have questions for Dr. Baaj?

15 MR. LEWIS: When I last
16 checked other counsel did not, but I should
17 confirm that.

18 JUSTICE WILTON-SIEGEL: I'm
19 hearing silence. Mr. Chen?

20 MR. CHEN: No questions.

21 MR. BOURRIER: No questions
22 from us, Commissioner.

23 JUSTICE WILTON-SIEGEL:
24 Mr. Buck was on earlier, is he on?

25 MS. LAURION: No questions on

1 behalf of Dufferin.

2 JUSTICE WILTON-SIEGEL:

3 Mr. Lewis, do you have any questions?

4 MR. LEWIS: I just had a few
5 questions, not very many. Just one moment.

6 CROSS-EXAMINATION BY MR. LEWIS:

7 Q. Just a few questions,
8 Dr. Baaaj. The issues that you were disagreeing
9 with Dr. Flintsch on, and he testified on these as
10 well. But it was about the validity of using the
11 2017 PSV testing as you just described right now.
12 That was your first. And the other was about the
13 1992 PSV testing, which we don't need to deal
14 with, but we read your report and Dr. Flintsch
15 addressed that and that's fine.

16 Other than that, when you're
17 talking about the testing you have referred to
18 Dr. Flintsch having covered most aspects of skid
19 resistance and a comprehensive analysis of the
20 field testing. You don't take any issue with that
21 stuff, right?

22 A. I wouldn't say that. My
23 mandate was to comment on the testing, so in
24 general I think Dr. Flintsch did, like, great job
25 addressing different points. I would probably

1 disagree on certain things but I'm here to discuss
2 them. Yeah.

3 Q. And then as you said,
4 it's reasonable to expect some polishing during an
5 aggregate service life, right? They all do --
6 they all polish, right?

7 A. They all polish to a
8 certain point, yes.

9 Q. So at least
10 directionally, although you say you don't opine on
11 friction, but directionally you are saying at
12 least some cause in this instance of any reduction
13 in friction, whatever that is, it would've been
14 the effect of polishing. Not an inordinate
15 polishing, because as you said it's not -- the
16 aggregate itself isn't particularly susceptible or
17 unusually susceptible to it, but that's part of
18 it, is it not, or do you not opine on that at all?

19 A. So during the in-service
20 life of the pavement there are many factors that
21 would lead to a decrease of the -- or drop in the
22 skid resistance, and aggregate polishing is one of
23 them. So losing this microtexture over the time,
24 that would lead to a decrease in the skid
25 resistance and that is a normal process, but also

1 the macrotexture of the pavement itself, like --
2 and the traffic, this macrotexture would be
3 impacted and the higher the number of vehicles and
4 vehicles that we have, the road, the speed in
5 urban settings for sure, that would also lead to a
6 loss of that macrotexture and would also impact --
7 we can never quantify it as percentages because
8 it's different from a case to another. But it's
9 also a very important factor that we need to take
10 into account, the time of the testing and other
11 factors, and if we're analyzing a specific
12 situation there are so many other factors that
13 make (indiscernible).

14 Q. Right. But the
15 macrotexture results were -- you're not taking in
16 issue with that, or at least you weren't asked to
17 look at, fair?

18 A. I wasn't asked to comment
19 on the macrotexture and, yeah, it has been tested
20 here and there but we don't have a lot of data, I
21 don't think.

22 Q. You referred to -- and
23 this is why I'm asking the question about
24 friction. You stated in your report that -- and I
25 won't take you to it but it's image 26, page 25.

1 You indicated that:

2 "Dr. Flintsch considered the
3 drop in friction at 20 percent
4 over a six year period as
5 significant. I've examined
6 the literature on point and
7 found that this drop is within
8 the norm for paving projects,
9 with similar materials and
10 service labs."

11 I took Dr. Flintsch to that
12 reference in your report in his testimony on
13 Thursday on this exact question and the use of the
14 word "significant." And that's just a
15 characterization perhaps but -- and he said:

16 "It depends what you start
17 with. If you start with a
18 very high friction value then
19 if you drop 20 percent you
20 still have high friction, but
21 we have a friction like we had
22 that started with about 40
23 something, that being around
24 30, then being around 30, then
25 it's more critical than in

1 other cases. And again what
2 I'm saying it's relative, but
3 I do feel it is significant."

4 So the point being a
5 20 percent drop is more significant if you're
6 starting from a lower value, FN value, than a
7 higher one. Do you agree with that proposition?

8 A. Well, I think it's -- it
9 would be significant if we start with higher value
10 because the drop would be bigger, 20 percent from
11 a high value is bigger than 20 percent -- but I'm
12 not going to discuss that.

13 Q. I appreciate the math,
14 but there is a qualitative less of a difference in
15 the drop of say 60 to 50 than there is in a drop
16 from 40 to 30, correct?

17 A. Yes.

18 Q. You agree with that?

19 A. So like my comment there
20 is that to start with actually I found that in my
21 -- the reason why I contested this conclusion or
22 summation from Dr. Flintsch, actually, quite
23 respectfully is that it was just subjective to me.
24 Like, I didn't -- I didn't find anything to
25 support whether it's high or low. Like where is

1 the data, how we reached this conclusion.

2 So this is why I try to look
3 at the literature and find projects where we
4 studied the pavement friction over several years
5 and I actually found a few, very little, one using
6 that I mentioned, where it's clearly obviously we
7 found that a drop of more than 20 percent. But
8 the most important one that I found was actually
9 done by MTO over around, like 10 years on Highway
10 401 close to Milton. So like geographically it's
11 very close. The type of the aggregates that was
12 used is traprock that is very close to the one
13 used in there. They used SMA using the standard
14 mix designs that we have here.

15 So these projects for me I
16 found it very, like, comparable to the Red Hill
17 Valley Parkway, and this is why I looked at this
18 and I found that over nine years, like similar
19 period, the friction dropped by 26 percent and it
20 dropped from 46, I think, like -- I don't have the
21 exact numbers, I use the figure, from around 36 to
22 34. So we have similar numbers and we have
23 similar materials, similar -- traffic not very
24 different, like it's high traffic but four lanes,
25 higher speed, three lanes, sorry, in each

1 direction, versus two here.

2 So similarities very big and
3 MTO concluded that these numbers are within the
4 norm and they are within the acceptable range for
5 these type of aggregates, materials and highways.
6 So this is why I concluded that for Ontario
7 conditions a drop of 20 percent is within the
8 acceptable norm like here.

9 Q. You're talking about the
10 SMA project that was done in the mid-nineties and
11 there was a 10-year -- I believe that paper was
12 authored by, among others, Becca Lane at the MTO
13 is that the one you're --

14 A. Becca Lane and other
15 authors and Chris Raymond and others, I think. It
16 was published at the CTAA, Canadian Technical
17 Asphalt Association Conference, yes.

18 Q. That's in evidence. We
19 have that.

20 Last point is you -- just on
21 the reasons why you speak of the PSV from an
22 in-service aggregate test being inaccurate.

23 One of the points that you
24 raise is that the action and recovery methods will
25 leave asphalt cement on the aggregates which would

1 affect the results. That's one of the things you
2 talked about in your report.

3 A. Indeed. And we do a lot
4 of extraction and recovery in our labs and I see
5 these aggregates -- construction and we always
6 have some fines that come out from that process.
7 So -- and we use very strong solvents. So the
8 aggregates that we get at the end I cannot just go
9 and use them as aggregates or test them to tell me
10 how was the aggregates before.

11 Q. So would they not also --
12 if that's the case, would they not also be
13 inaccurate, the test results, for the purpose that
14 Golder was using it for, which was to evaluate for
15 hot in-place recycling or no?

16 A. So in my opinion that
17 would -- like the process would affect the
18 aggregates negatively so -- the way they did it,
19 they extracted the aggregates and tested them and
20 the number that the test would give would be lower
21 than the real PSV, expected PSV. So it's more in
22 a conservative way would lead -- it wouldn't lead
23 to an optimistic value that would lead to problems
24 later. It's the opposite actually in my opinion.

25 MR. LEWIS: I have no further

1 questions, Commissioner.

2 JUSTICE WILTON-SIEGEL: Then I
3 think we're finished. Dr. Baaj, thank you for
4 your report and for your time today appearing to
5 answer to give your testimony. You're excused.
6 We appreciate your testimony. It's very helpful
7 to the inquiry. You're excused for the rest of
8 the day.

9 THE WITNESS: Thank you very
10 much.

11 JUSTICE WILTON-SIEGEL: For
12 the rest of us, I think, Mr. Lewis, we stand
13 adjourned until 9:30 tomorrow morning; is that
14 correct?

15 MR. LEWIS: That's right.
16 Mr. Dewan Karim will be testifying tomorrow.

17 JUSTICE WILTON-SIEGEL: Then
18 have a good evening everyone.

19 --- Whereupon at 3:35 p.m. the proceedings were
20 adjourned until Thursday, February 23, 2023
21 at 9:30 a.m.

22

23

24

25