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Arbitration Place Virtual

1  
2 --- Upon commencing on Tuesday, July 7, 2020,  
3 at 10:01 a.m.

4 OPENING REMARKS BY MR. CENTA:

5 MR. CENTA: Good morning,  
6 Commissioner and members of the public. My name is  
7 Rob Centa, and I am lead Commission Counsel on the  
8 Red Hill Valley Parkway Inquiry which was called by  
9 the City of Hamilton. We are here today to receive  
10 updates from the parties -- from the participants  
11 regarding document production.

12 Before we begin this morning, I  
13 would like to open this hearing by acknowledging  
14 that the City of Hamilton that called this Inquiry  
15 is situated upon the traditional territories of the  
16 Erie, Neutral, Huron-Wendat, Haudenosaunee and  
17 Mississaugas. The land of Hamilton is covered by  
18 the Dish With One Spoon Wampum Belt Covenant, which  
19 was an agreement between the Haudenosaunee and the  
20 Anishinaabek to share and care for the resources  
21 around the Great Lakes, and we further acknowledge  
22 that the land in which Hamilton sits is covered by  
23 the Between the Lakes Purchase, 1792, between the  
24 Crown and the Mississaugas of the Credit First  
25 Nation.

1 I'm speaking to you remotely today  
2 this morning from my home, which is on the  
3 traditional land of the Huron-Wendat, the Seneca,  
4 and most recently, the Mississaugas of the Credit  
5 River. Today, this meeting place is still the home  
6 to many Indigenous people from across Turtle  
7 Island, and I'm grateful to have the opportunity to  
8 work on this land.

9 I'd like to welcome counsel for  
10 the participants in the Inquiry to this virtual  
11 hearing this morning. Because of the ongoing  
12 COVID-19 pandemic, we have convened today's hearing  
13 remotely using the Zoom technology. All of the  
14 counsel for the participants can see and hear the  
15 Commissioner and all other counsel. All of whom  
16 are appearing remotely from each other. I expect  
17 that this will all go smoothly. But if any counsel  
18 wishes to speak at any particular time or if  
19 there's a technological problem, please raise your  
20 hand or send a message through the chat feature,  
21 and we will try to solve that problem.

22 The technological backbone for  
23 today's hearing is being provided by Arbitration  
24 Place, and they have ensured that the hearing today  
25 is being live-streamed on YouTube so that members

1 of the public may observe today's public hearing  
2 via a link that is found on the Inquiry website.

3                   Within a few days I understand  
4 this hearing will be available for viewing on the  
5 Inquiry's website at [www.rhvpi.ca](http://www.rhvpi.ca), and a transcript  
6 of today's submissions will also be available on  
7 the website.

8                   To provide some background to  
9 today's proceeding and to remind participants and  
10 members of the public where we've come from, I want  
11 to start out by reminding people that the  
12 Honourable Mr. Justice Herman J. Wilton-Siegel was  
13 appointed to preside over this Inquiry in May of  
14 2019.

15                   The City Council of the City of  
16 Hamilton received information regarding a 2013  
17 friction report related to the Red Hill Valley  
18 Parkway, and on April 24, 2019, Hamilton City  
19 Council passed a resolution pursuant to section 274  
20 of the Municipal Act, 2001, requesting that the  
21 Chief Justice of Ontario appoint a Superior Court  
22 judge to investigate matters related to the  
23 disclosure of the friction report. That resolution  
24 contained the Terms of Reference that would guide  
25 the Inquiry's work.

1                   The Terms of Reference require the  
2 Inquiry to determine the facts relating to 24  
3 questions posed by City Council which fall into  
4 five general categories as described on the  
5 website.

6                   The second part of the Inquiry's  
7 mandate is to make recommendations regarding the  
8 matters mentioned that appear to be in the public  
9 interest and, in particular, the interests of good  
10 government of the City of Hamilton and in the  
11 interests of road safety, particularly insofar as  
12 it relates to the Red Hill Valley Parkway.

13                   I'd like to quickly review the  
14 principal activities of the Inquiry since it was  
15 established. On October 30, 2019, the Inquiry  
16 invited applicants to participate and seek funding  
17 in the Inquiry and published rules regarding such  
18 applications.

19                   On January 10, 2020, the  
20 Commissioner received oral submissions from all  
21 nine applicants, and on February 12, 2020, the  
22 Commissioner released his decision and reasons  
23 concerning participation and funding in the  
24 Inquiry.

25                   He granted four entities the right

1 to participate in the Inquiry: The City of  
2 Hamilton, Her Majesty the Queen in Right of  
3 Ontario, Dufferin Construction Company, and Golder  
4 Associates Ltd. And counsel for all of those  
5 participants are present on the call today.

6                   Since that time Commission Counsel  
7 have consulted with the participants regarding the  
8 rules the Commission would adopt for the Inquiry.  
9 Those rules of procedure were published on June 25  
10 and are available on the Inquiry's website.

11                   The rules cover topics including  
12 the investigation phase of the Inquiry;  
13 participants' obligations to preserve and produce  
14 documents to the Inquiry, including a doc -- a  
15 comprehensive document delivery protocol;  
16 procedures for determining claims of legal  
17 privilege; the creation and maintenance of the  
18 Inquiry's document database; the creation by  
19 Commission Counsel of documents that identify the  
20 core or background facts for use at the hearing;  
21 the interview process; disclosure of proposed  
22 evidence prior to the public hearings; and,  
23 finally, rules for the conduct of the public  
24 hearings themselves.

25                   Since the Inquiry was called,

1 Commission Counsel have been working with the  
2 participants to identify and collect relevant  
3 documents. We have also been working with entities  
4 that, while not participants, are anticipated to  
5 possess relevant documents for the work of the  
6 Inquiry.

7                   The Inquiry has issued summonses  
8 requiring recipients to deliver up to the Inquiry  
9 all documents covered by the summons. To date we  
10 have received over 74,000 documents. These  
11 documents are being loaded into a database to  
12 permit Commission Counsel to review and share these  
13 productions with the other participants. We've  
14 started our review of these documents and have  
15 worked with participants and others where we've  
16 identified gaps and omissions.

17                   Document production is not  
18 complete at this time. We are continuing to  
19 receive documents from participants and others, and  
20 one of the purposes of the hearing today is to  
21 receive updates from the participants on the status  
22 of their document production efforts.

23                   The Commission needs to obtain the  
24 documents in order to take the next steps in the  
25 Inquiry. Once doc -- once complete document

1 production has been made, we can conduct a  
2 comprehensive review of the documents to determine  
3 if there are gaps, omissions, or additional  
4 searches to be completed, to review the documents  
5 to obtain an understanding of the events at issue,  
6 to prepare and interview persons of interest and  
7 potential witnesses for the public hearing stage,  
8 to draft the documents that will identify the core  
9 or background facts for use at the hearing and to  
10 provide the documents and data to our experts so  
11 that they may prepare their expert reports and to  
12 get ready for the public hearing phase.

13                   Given the pandemic and the state  
14 of productions to the Commission, Commission  
15 Counsel is currently targeting the first quarter of  
16 2021 for the commencement of the public hearing  
17 phase of the Inquiry.

18                   To talk briefly about the public  
19 hearing phase, the Inquiry is mandated to conduct  
20 public hearings, and we intend to do so in a way  
21 that is efficient, cost-effective, and safe.

22                   It is too early to know what  
23 public health authorities will be recommending for  
24 public gatherings in early 2021. For that reason  
25 Commission Counsel is exploring with counsel for



1                   In addition, the Commissioner set  
2 out in his decision that he intended to provide a  
3 forum in each individuals who have been personally  
4 affected by particular accidents on the Parkway  
5 will be consulted as part of its work, even if  
6 reconstruction of any particular accident is  
7 unlikely to fall within the Terms of Reference.

8                   This forum is intended to provide  
9 any person who was directly or indirectly affected  
10 by accidents on the Parkway with the opportunity to  
11 provide documents and to schedule interview --  
12 individual and private discussions with the  
13 Inquiry's counsel team. The Inquiry intends the  
14 forum to be a mix of in-person and telephone  
15 conversations with interested persons with a view  
16 to obtaining a fuller appreciation of the impact of  
17 particular accidents on the residents of Hamilton.

18                   After the public hearing in  
19 February, the Commissioner's counsel began to  
20 develop a process to convene that forum which was  
21 anticipated to take place in the spring and summer  
22 of 2020. However, the Inquiry delayed the  
23 commencement of this forum as a result of the  
24 public health measures put in place as a result of  
25 the COVID-19 pandemic.

1                   We will now proceed with this  
2 forum in the fall of 2020, and in the coming weeks  
3 the Inquiry will invite interested persons to let  
4 us know of their interest in contributing to the  
5 work of the Inquiry through this forum.

6                   In order to maintain appropriate  
7 social distancing, the Inquiry team will meet with  
8 interested persons by telephone and  
9 videoconference, and we'll be releasing further  
10 information about this opportunity on the RHVPI  
11 website in the coming weeks.

12                   Commissioner, before I call on the  
13 participants to the Inquiry to provide you with an  
14 update, I understand that you would like to say a  
15 few words.

16 OPENING COMMENTS BY THE COMMISSIONER:

17                   THE COMMISSIONER: All right.  
18 Thank you, Mr. Centa. And, as mentioned, before  
19 hearing from the participants, I have a few  
20 comments of my own.

21                   First, I want to thank all of the  
22 participants and their counsel for facilitating  
23 this hearing remotely. As Mr. Centa has already  
24 stated, until the public health authorities can  
25 assure us, can assure all of us, that it is safe to

1 proceed with physical hearings, we intend to  
2 explore the most efficient virtual platform in  
3 order that the Inquiry can continue to proceed as  
4 quickly as possible.

5                                 Second, again as Mr. Centa has  
6 mentioned, I called this hearing to receive an  
7 update but also to attempt to set firm deadlines  
8 for the delivery of the remaining documentation  
9 from participants.

10                                I was appointed in May of 2019,  
11 over 14 months ago. My mandate is to investigate a  
12 large number of issues delineated by Hamilton City  
13 Council in the Terms of Reference, and I intend to  
14 do so, and I'm attempting to do so, in as timely  
15 and cost-effective a manner as is possible in the  
16 circumstances.

17                                However, as I indicated to  
18 representatives of the City at the time shortly  
19 after my appointment and at the public hearing and  
20 on other occasions, the final cost of the hearing  
21 is highly dependent on the duration, and it is,  
22 therefore, imperative that firm deadlines be  
23 established for the delivery of the remaining  
24 documentation in the relatively near future in  
25 order that we can allow the Inquiry's team and its

1 technical experts to continue their work.

2 Third, in parallel with the  
3 process of documentary production to date, we have  
4 attempted to progress the work of the Inquiry in  
5 areas where this is feasible. In particular,  
6 technical experts have been engaged to provide the  
7 necessary background in the areas of engineering --  
8 the -- to the engineering and road safety aspects  
9 of the issues to be addressed by the Inquiry, and  
10 preliminary reports have been received.

11 In addition, as Mr. Centa has  
12 indicated, a process has been formulated to receive  
13 input from parties who have been affected by  
14 accidents on the Parkway.

15 However, we have reached a stage  
16 where making significant further progress requires  
17 receipt of a complete set of the relevant  
18 documentation.

19 Further, the experience of other  
20 public inquiries has been that receipt of the  
21 documentation from the principal participants  
22 inevitably reveals other documentation that must be  
23 obtained and reviewed which necessarily lengthens  
24 the documentary production process.

25 All of this is necessary before

1 Commission Counsel will be in a position to  
2 complete their review and to prepare an overview  
3 for the purposes of proceeding to the next stage of  
4 this Inquiry, which is the interviewing of  
5 witnesses. This reality means that it is all the  
6 more important to establish firm deadlines for  
7 completion of the documentary production process.

8                                 With that I will now ask Mr. Centa  
9 to manage the order of presentations in this  
10 hearing.

11                                 MR. CENTA: Thank you,  
12 Commissioner.

13                                 First, I would like to call on  
14 counsel for the City of Hamilton, Eli Lederman and  
15 Delna Contractor, who I believe is with Mr.  
16 Lederman but just off camera.

17 SUBMISSIONS BY MR. LEDERMAN:

18                                 MR. LEDERMAN: Thank you, Mr.  
19 Centa. And good morning, Commissioner.

20                                 As counsel for the City of  
21 Hamilton, let me address you to provide an update  
22 with respect to the status of the documentary  
23 production from the City and, secondly, to give you  
24 a sense of our anticipated timelines for the  
25 completion of that process.

1                                   As you may know, the City of  
2 Hamilton has expended considerable resources  
3 towards collecting and reviewing relevant documents  
4 and producing them to Commission so that the  
5 Commission can do the work of the Inquiry.

6                                   This has included collecting  
7 documents from approximately a hundred custodians  
8 of current and former City employees. It has  
9 involved the collection of documents from the  
10 City's network drives, hard-copy documents and  
11 obtaining and extracting information from  
12 ProjectWise, which is the document management  
13 system used in the Public Works Department.

14                                  That search process has resulted  
15 in collecting over three million documents, which  
16 we have then put through our electronic search  
17 protocols to narrow the documents down. It has  
18 resulted in the production to date of just over  
19 50,500 relevant documents, which we have produced  
20 in eight tranches as they have become available  
21 during the course of the Inquiry.

22                                  That leads us to what is  
23 remaining, and that is that there is a portion of  
24 documents from the ProjectWise data management  
25 system that is still to be delivered. That process

1 of obtaining or extracting that information from  
2 ProjectWise, we've encountered some technical  
3 difficulties because even though we were able to  
4 get the data, it didn't also capture the metadata,  
5 and so that required the retention and engagement  
6 of a third party service provider to assist in  
7 writing code or script in order to extract that  
8 data and transferred into our system so that we  
9 could produce it in a usable format.

10 We're at a stage now,  
11 Commissioner, where it turns out we've been able to  
12 extract that data, and it has resulted in a  
13 production set that is less than 10,000. We are  
14 completing our review of that data and have the  
15 firm view that that remaining data can be produced  
16 to the Commission by Monday, this coming Monday,  
17 July the 13th. When we do that, that will, by and  
18 large, complete the documentary production engaged  
19 in by the City.

20 At that time, we will also provide  
21 Commission Counsel with our list of privileged  
22 documents just so that it's clear that any  
23 documents over which solicitor-client privilege or  
24 litigation privilege has been asserted. That will  
25 be produced at the same time.

1                                   Let me just make a final comment  
2 about the City's production efforts: The process  
3 has been a lengthy one in large measure because of  
4 the volume of data that has been collected. It's  
5 also been lengthy in the sense that the Terms of  
6 Reference do call upon 24 broad questions, and the  
7 request of the documents resulted in approximately  
8 50 different categories of documents so that I'm  
9 sure -- making sure that we obtained all documents  
10 that were responsive to the Terms of Reference.  
11 But, at the same time, we wanted to take the care  
12 to ensure that the review process and such that we  
13 were only producing documents that were truly  
14 relevant so that it doesn't result in creating a  
15 database of documents for the Inquiry that contains  
16 extraneous or irrelevant information.

17                                   The City remains committed to this  
18 Inquiry and ensuring that it moves forward in a  
19 transparent fashion and in an expeditious and cost-  
20 effective way as well, and so we are hopeful that  
21 we can complete this stage of the Inquiry. As I  
22 said, the City's efforts in terms of its  
23 documentary production is expected to be complete  
24 by Monday, this coming Monday, July the 13th.

25                                   Those are my submissions,

1 Commissioner. If you have any questions, I'm happy  
2 to answer them.

3 THE COMMISSIONER: Okay. Well,  
4 thank you for the update, Mr. Lederman. I  
5 appreciate that it's a large task not assisted by  
6 the pandemic. But it was the City that called this  
7 Inquiry, and it was the -- therefore, the City's  
8 obligation and our expectation it would deploy the  
9 necessary resources to deliver the documentation in  
10 its possession in a timely fashion.

11 I appreciate what you -- you've  
12 now said you expect to be able to deliver the  
13 remaining documentation by this following Monday,  
14 and we look forward to having that happen. I do  
15 think though that I have to say that, given where  
16 we are today, that I'm disappointed that more than  
17 14 months after the commencement of the Inquiry  
18 we're still in a position where there's  
19 documentation to be delivered at some point in the  
20 relatively near future.

21 That said, it -- according to you,  
22 it is a relatively near future, and I think it's  
23 important that we just get on with the task as  
24 quickly as possible.

25 What we do expect from the City

1 from this point forward is attentiveness to the  
2 next stage, which inevitably will be the request  
3 for additional documentation to the extent that  
4 Commission Counsel reveals that there may be some  
5 that your review hasn't yet identified.

6 MR. LEDERMAN: So you want of  
7 course any additional requests, and we remain  
8 committed to doing it in a timely way, absolutely,  
9 Mr. Commissioner.

10 THE COMMISSIONER: Okay.

11 MR. CENTA: Thank you very much,  
12 Mr. Lederman.

13 MR. LEDERMAN: Thank you,  
14 everyone.

15 MR. CENTA: Counsel for the  
16 Province of Ontario, Heather McIvor and Colin  
17 Bourrier. I don't know who's going to be speaking.  
18 Is it Ms. McIvor?

19 SUBMISSIONS BY MS. MCIVOR:

20 MS. MCIVOR: It is, yes.

21 Good morning, Commissioner.

22 THE COMMISSIONER: Good morning.

23 MS. MCIVOR: As Mr. Centa noted,  
24 I'm here today representing Ontario, and I'd like  
25 to take you through Ontario's production efforts to

1 date, what remains outstanding and anticipated  
2 timelines for completion of our production efforts.

3 Most of our efforts so far have  
4 related to the electronic collection of potentially  
5 relevant materials, and in order to carry out those  
6 electronic searches, we engaged assistance from a  
7 unit of the Ministry -- can you hear me? Yes,  
8 okay.

9 THE COMMISSIONER: We can now.

10 MS. MCIVOR: You can, okay. So I  
11 was just explaining that in order to conduct the  
12 electronic searches, we've engaged assistance from  
13 a unit called Infrastructure Technology Services,  
14 who is the program area for the Ontario Public  
15 Service that is able to access and retrieve  
16 archives and electronically stored records.

17 So, in matters like this, it's  
18 particularly important because many of the  
19 custodians that have been flagged as potentially  
20 having relevant materials are no longer employees  
21 of ours, or perhaps they've switched positions  
22 within the OPS and no longer have access to those  
23 records.

24 So we've engaged ITS.  
25 Unfortunately, on the ITS end, their capabilities

1 are limited in that there's no screening, there's  
2 no other assessments that is done with the  
3 materials that are retrieved. So, to that end,  
4 we've engaged a vendor to help with the screening  
5 of the records that have been retrieved by ITS.

6 So the vendor has provided those  
7 results in whole without any screening or sorting  
8 on our end, and then they have been performing the  
9 keyword and other types of searches. As soon as we  
10 get those materials back, we will be screening  
11 them, and we will be providing them to the  
12 Commission.

13 But in terms of where we are at  
14 today, we've made two requests to ITS that covers  
15 the records of I believe 16 custodians. The  
16 results of the first request have been received.  
17 They have been delivered to the vendor, and they  
18 are currently still with the vendor. We've been  
19 told that the process is complete, and the vendor  
20 is in the process of exporting all of the results  
21 back to us.

22 There have been some difficulties  
23 with the remote transfer of the documents, such a  
24 large volume. But we do expect to have those  
25 materials in hand electronically this week.

1                   In terms of the document numbers  
2 for that search, we have also been informed by the  
3 vendor that there's over 9,000 that came back with  
4 keyword hits, and so as soon as those are  
5 transferred, we will be focusing our attention on  
6 screening for matters of privilege, and then we'll  
7 be delivering those productions to you. We  
8 anticipate by the end of July is still in a -- a  
9 workable deadline.

10                   With respect to the second ITS  
11 pull, we are still waiting for the results from  
12 ITS. However, we, again, have been told that the  
13 retrieval is complete, and we are simply waiting  
14 for the remote transition of materials to us, which  
15 has been a bit problematic. But we expect that  
16 those issues will be resolved sooner rather than  
17 later, and then once, you know, those materials are  
18 in the hands of our law clerk, they'll be sent to  
19 the vendor, and the same process will apply.

20                   In terms of numbers, we... of  
21 course we don't know what will be screened in, you  
22 know, as a result of the vendor's efforts. But  
23 we've been told that the ITS pool of documents is  
24 about four times the size of the initial ITS pool.  
25 So we expect that it will be a somewhat bigger

1 undertaking and that we will be getting back higher  
2 volume of materials from the vendor when they have  
3 finished their screening.

4 In terms of timing, factoring in  
5 the vendor requirements and sort of estimating, you  
6 know, the volume of documents that will need to be  
7 screened, we're hoping to get that tranche out to  
8 you in the fall.

9 I should note as well that it may  
10 be necessary to arrange for additional keyword  
11 searches of these groups of materials pulled by  
12 ITS. We're in the process of discussing additional  
13 searches with Commission Counsel. So that may lead  
14 to further tranches of productions being sent to  
15 you or Commission Counsel. We're just in the  
16 process and are actively discussing proposals with  
17 our clients and trying to understand what would  
18 best achieve what Commission Counsel are looking  
19 for.

20 And, finally, I should -- I should  
21 mention, you know, while these electronic searches  
22 have been happening, we have been working with  
23 Ministry clients to conduct manual searches.  
24 Again, there aren't many custodians around that are  
25 engaged by the Terms of Reference regarding

1 Ministry of Transportation. But we have been  
2 taking steps to look through emails, look through  
3 physical files, do that kind of searching.

4                   We did deliver some productions in  
5 January, and those productions were the result of  
6 manual searching. We anticipate that those records  
7 will be fairly duplicative with what comes from our  
8 ITS and vendor efforts, and in fact, we are sending  
9 all of our manual documents over to the vendor for  
10 deduplication and whatnot. But we do continue to  
11 pursue those avenues as well just to ensure that we  
12 are covering as much ground as we possibly can.

13                   I think that -- I think that is  
14 essentially where we're at. I know that you wanted  
15 to hear about potential obstacles. My colleague,  
16 Colin, is prepared to speak -- to speak to those if  
17 you'd like detail. But I think I sort of alluded  
18 to it in my... as I was making submissions in terms  
19 of the remote capabilities have posed issues for us  
20 in terms of delay on both ends, and it's been a bit  
21 of trial and error.

22                   But we're hopeful that, you know,  
23 there's going to be no other significant delays  
24 caused by that, and, otherwise, we just need to pin  
25 down the numbers of documents that we're working

1 with in order to ensure that, you know, the  
2 timelines we've set out, and certainly we know for  
3 the July tranche, they're... you know, they're...  
4 we're -- we seem to be on track for that. But for  
5 the next batch that comes back from the vendor,  
6 we'll have to assess the number of documents at  
7 that time and probably provide a more firm estimate  
8 then.

9 THE COMMISSIONER: I'm less  
10 interested in the obstacles than figuring out how  
11 we move the timetable forward, if at all possible.  
12 I'm not sure from your description whether the  
13 second batch or tranche relates to a particular  
14 time frame or set of issues or whether it covers  
15 all the issues in the same way that the first  
16 tranche does. Do you have any sense of that?

17 MS. MCIVOR: It primarily covers  
18 additional custodians, although there are some  
19 custodians whose records were searched in the  
20 initial -- in the initial search who will also be  
21 included for other time periods in the second  
22 search. So we --

23 THE COMMISSIONER: I see.

24 MS. MCIVOR: But perhaps when we  
25 receive those files back from the vendor, you know,

1 we can... we can make efforts to divide the results  
2 and get you the screened documents in smaller  
3 tranches so that we can sort of, you know, speed up  
4 that process.

5 THE COMMISSIONER: Well, I'm sure  
6 that would certainly help the process. I suppose  
7 as well knowing something of the custodians  
8 involved and their relationship to the matter or to  
9 the issues would probably be helpful. I leave that  
10 to Mr. Centa. But it may be that we can anticipate  
11 that the documentation from some will be much more  
12 significant than others and focus on those. Is  
13 that feasible?

14 MS. MCIVOR: I think that's fair  
15 and I -- although our first set of records that are  
16 coming to you at the end of July are expected to be  
17 smaller in number, I do think that they are going  
18 to be, by and large, the more relevant group. They  
19 were the custodians that were immediately  
20 identified and the time periods that were  
21 immediately identified. So we do feel that most of  
22 the key documents will be in that group.

23 The second... the second ITS  
24 expands to other individuals more on the periphery,  
25 who may have relevant records and may not have

1 relevant records, and, you know, longer time  
2 periods had to be searched just to ensure that  
3 there were not conversations or communications  
4 happening, you know, just to check that off.

5 But certainly the first tranche of  
6 documents will be, in my opinion, likely the more  
7 relevant documents.

8 THE COMMISSIONER: I was rather  
9 hoping you might say that.

10 Mr. Centa, do you have anything to  
11 add to this or --

12 MR. CENTA: I don't.

13 THE COMMISSIONER: -- to  
14 contribute?

15 MR. CENTA: I don't. We've been  
16 working closely with Ms. McIvor and her team to try  
17 and extract the documents, and based on my  
18 understanding of the custodians involved, I share  
19 Ms. McIvor's view that the pending tranche of  
20 documents that they anticipate delivering in July  
21 are likely to be the most relevant custodians with  
22 the most relevant documents for the work.

23 So we're continuing to work  
24 closely with the Province, as with all  
25 participants, to smooth out the document search

1 process, the collection process and to facilitate  
2 production.

3 THE COMMISSIONER: Okay. Well,  
4 thank you for that, Ms. McIvor. I think we'd  
5 proceed then on the basis that by the end of July  
6 we should have substantially all of the principal  
7 documentation that will allow a complete review.  
8 We need to see the rest as quickly as it's  
9 available, and I'll leave you to work with  
10 Commission Counsel on that.

11 There may be ways of, as you say,  
12 breaking it down into smaller tranches. That will  
13 help them as well so that we don't have to wait  
14 until sometime in September or October before we  
15 can say that the documentation is sufficiently  
16 complete that Counsel can start doing their work in  
17 a more thorough way.

18 MS. MCIVOR: Of course,  
19 understood.

20 THE COMMISSIONER: Okay.

21 MS. MCIVOR: And we'll certainly  
22 work with Commission Counsel on that.

23 THE COMMISSIONER: We very much  
24 appreciate that. Okay.

25 MS. MCIVOR: Thank you.

1 THE COMMISSIONER: Mr. Centa.

2 MR. CENTA: Thank you, Ms. McIvor.

3 Counsel for Dufferin, Jennifer  
4 McAleer and Rachel Laurion. I believe Ms. McAleer  
5 will be speaking.

6 SUBMISSIONS BY MS. MCALEER:

7 MS. MCALEER: Good morning,  
8 Commissioner. As Mr. Centa --

9 THE COMMISSIONER: Good morning.

10 MS. MCALEER: Good morning. As  
11 Mr. Centa indicated, Ms. Laurion and I are  
12 appearing this morning on behalf of Dufferin.

13 To date Dufferin has produced  
14 approximately 2,500 documents to your Commission  
15 Counsel team. Those documents consist of both of  
16 hard-copy documents that we have retrieved and also  
17 some electronic documents, in particular electronic  
18 documents related to lab testing.

19 We've also produced documents that  
20 were in the possession of our law firm because we  
21 have a long history with Dufferin, and we were able  
22 to search our own records in order to identify any  
23 documents that related to this project that were  
24 not privileged, and we've produced those.

25 The date range that we've

1 produced, we have documents that go back as far as  
2 January of 2000. But, as you would expect, most of  
3 the documents fall within the more narrower time  
4 frame of 2005 to 2007.

5 We've also produced to your  
6 Commission Counsel our document retention policies.  
7 As the Commissioner is aware, the events at issue  
8 are somewhat historic in nature. We're going back  
9 about 14, 15 years. So there are documents that we  
10 no longer have in the possession of Dufferin, and  
11 we've explained to your Commission Counsel what  
12 those documents are. We've provided particulars of  
13 those documents, and we've provided the document  
14 retention policies that governed during the  
15 different periods of time.

16 In addition, back in August of  
17 2019, when we first heard from your Commission  
18 Counsel team, we sent out document preservation  
19 notices to the people that we've identified or I  
20 should say the document identified as key  
21 custodians at the time. Their documents that they  
22 have -- had any have been produced.

23 Since we've received documents and  
24 reviewed them though, we have been able to identify  
25 additional individuals who may not be key personnel

1 but may in fact have documents. So we are  
2 contacting all of those people in order to ensure  
3 that they don't have any additional documents, and  
4 obviously if they do, we'll produce them.

5 I would expect that that process,  
6 that we need probably another two weeks to complete  
7 that, Commissioner. So I'm asking for your  
8 indulgence until July 24th -- that's a little bit  
9 more than two weeks -- but just to reach out to  
10 those people to make sure that they don't have any  
11 documents that haven't already been produced.

12 There are also three people that  
13 we've identified who no longer work for Dufferin.  
14 So internally Dufferin has gotten access to their  
15 email, and somebody is going through those  
16 searching them appropriately to make sure that  
17 there are no documents. We'll also contact those  
18 individuals just to make sure that they don't have  
19 any documents in their personal records, although I  
20 don't anticipate that's the case.

21 So, again, just to complete that  
22 portion of it, we're requesting until July 24th  
23 just to make sure that there are no other  
24 documents.

25 We have had some challenges with

1 respect to email, and I now have a detailed  
2 description of the different email systems that  
3 Dufferin has used, and I will be able to provide  
4 that to your Commission Counsel team today and  
5 certainly welcome any follow-up questions they have  
6 about the email and the fact that we've had some  
7 challenges locating emails.

8 THE COMMISSIONER: Okay.

9 MS. MCALEER: So that's my very  
10 quick summary, but I welcome any questions.

11 THE COMMISSIONER: Well, do I take  
12 it from all of this that by July 24th you expect  
13 that you will have delivered everything that is  
14 reasonably within your possession?

15 MS. MCALEER: That's correct,  
16 Commissioner.

17 THE COMMISSIONER: Then that would  
18 be fine. That would be certainly in line with what  
19 we're lining up with the Province on. So we look  
20 forward to receiving it, but it means that by the  
21 end of July we should be in a position to move  
22 forward more than we've been doing to this point.

23 MS. MCALEER: And just so your --

24 THE COMMISSIONER: So thank you.

25 MS. MCALEER: Sorry, Commissioner.

1 THE COMMISSIONER: No, go ahead.

2 MS. MCALEER: Just so you and your  
3 team -- just so you and your team understand, I  
4 actually don't anticipate that there will be a  
5 large volume --

6 THE COMMISSIONER: Yes.

7 MS. MCALEER: -- of forthcoming  
8 documents. If anything, it's a handful of  
9 documents but just closing off some loose ends.

10 THE COMMISSIONER: Dufferin's  
11 involvement was only at the stage of the design and  
12 construction, correct?

13 MS. MCALEER: That's right. And  
14 one thing I omitted is that Dufferin was involved  
15 certainly in the paving contract but have been  
16 previously involved in the grading work that had  
17 been done. So we've also identified to your  
18 Commission Counsel team that we have secured over  
19 13,000 documents related to the grading and related  
20 work, and we have those documents. We will  
21 continue to hold them.

22 We've provided some particulars of  
23 those documents to your Commission Counsel team,  
24 and we've advised them at any stage if you or your  
25 team determine that you are of the view those are

1 relevant that we will produce them if you want  
2 them.

3                               We have in fact reviewed them to a  
4 certain degree to pull out any information that  
5 might be related to the paving, and we've, again,  
6 produced a handful of documents. I think under 20  
7 but documents that were in that grading category of  
8 documents but which are relevant to the paving  
9 work.

10                              THE COMMISSIONER: Thank you.

11                              MS. MCALEER: Thank you.

12                              THE COMMISSIONER: Okay.

13                              MR. CENTA: Thank you, Ms.

14 McAleer.

15                              Finally, counsel for Golder,  
16 Jennifer Roberts.

17 SUBMISSIONS BY MS. ROBERTS:

18                              MS. ROBERTS: Good morning,  
19 Commissioner. Good morning, all.

20                              So let me just tell you where we  
21 are. Our first tranche of documents was produced  
22 on December 13, 2019. That contained what we --  
23 the documents from the six project files and  
24 documents that had been collected by the principal  
25 custodian.

1                   In response to correspondence in  
2 March of this year from Commission Counsel, we went  
3 back and did a further sweep to make sure that  
4 custodians had actually uploaded documents that  
5 they might have kept on their personal computers to  
6 the six project files and collected some additional  
7 documents.

8                   We went through archives, and a  
9 number of employees had left the firm. Images were  
10 taken of their computers on leaving. So we've done  
11 searches of all of those emails and collected some  
12 additional electronic records. Those went off to  
13 our document management team last week, and you  
14 should have them within the next few weeks.

15                   Additionally, we were able to  
16 locate some of the original project files, and  
17 notwithstanding Golder's document retention policy,  
18 seven years, we were able to locate some of the  
19 original project records. These were delivered to  
20 the Commission document management company Friday  
21 last.

22                   So, as far as I can see, we have  
23 identified the records that we believe are relevant  
24 to the Inquiry and if... and collected them and  
25 they are on their way to you, if not already with

1 you.

2 THE COMMISSIONER: Okay. Thank  
3 you, Ms. Roberts. I think, at Golder's end, the  
4 real pressure, if there will be any in the near  
5 future, will be to identify any documents that  
6 appear to be missing and in the possession of  
7 Golder's that becomes apparent after Commission  
8 review of the remaining documentation, and we  
9 simply ask that you be... you and Golder's be  
10 attentive to the need to respond to those requests  
11 as quickly as possible.

12 MS. ROBERTS: Of course.

13 THE COMMISSIONER: Yes.

14 MR. CENTA: Thank you,  
15 Commissioner. That concludes the submissions from  
16 the participants.

17 For completeness I wish to remind  
18 you that we are continuing to work with  
19 nonparticipant document custodians to obtain  
20 relevant documents from them. But as they are not  
21 formal participants in the hearing, they are not  
22 here today, and the Commission Counsel team remain  
23 grateful to counsel for all of the participants and  
24 the nonparticipant custodians for their ongoing  
25 efforts and hard work and their cooperation with

1 the Inquiry process.

2 That -- unless any other counsel  
3 have anything further, from my perspective, that  
4 concludes the hearing for today.

5 THE COMMISSIONER: Yes. And I  
6 would only add, in addition to my concern that we  
7 meet the deadlines that have been discussed today,  
8 my appreciation for all the hard work that all  
9 counsel on this telephone call have put in in  
10 connection with this documentary production  
11 process. Thank you.

12 MR. CENTA: So thank you to all  
13 counsel for participating today.

14 Thank you to our technology  
15 experts for making this process work as seamlessly  
16 as possible. We are very grateful for your hard  
17 work in making this virtual hearing a possibility.

18 Unless there's anything else,  
19 Commissioner, I think we're concluded for today.

20 THE COMMISSIONER: I think we're  
21 done.

22 MR. CENTA: Thank you very much,  
23 all.

24 THE COMMISSIONER: Thank you.  
25 --- Whereupon proceedings adjourned at 10:45 a.m.