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RED HILL VALLEY PARKWAY INQUIRY

Oral Submissions on Participation and Funding

HELD ON: Friday, January 10, 2020

HELD AT: Hamilton City Hall
Council Chambers
71 Main St. W.
Hamilton, Ontario

HELD BEFORE:
Mr. Justice Herman J. Wilton-Siegel - Commissioner

1 APPEARANCES:

| | | |
|----|------------------------|----------------------------|
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| 3 | Andrew C. Lewis | |
| 4 | Emily C. Lawrence | |
| 5 | Hailey Bruckner | |
| 6 | Shawna Leclair | |
| 7 | | |
| 8 | Eli Lederman | For the City of Hamilton |
| 9 | Delna Contractor | |
| 10 | | |
| 11 | Heather McIvor | For Her Majesty the Queen |
| 12 | | in Right of Ontario |
| 13 | | |
| 14 | Jennifer McAleer | For Dufferin Construction |
| 15 | Chris Buck | Company |
| 16 | | |
| 17 | Jennifer Roberts | For Golder Associates Ltd. |
| 18 | | |
| 19 | Mirle B. Chandrashekar | On his own behalf |
| 20 | | |
| 21 | Malcolm Hodgskiss | On his own behalf |
| 22 | | |
| 23 | H. Bruce Hillyer | For Jodi Gawrylash |
| 24 | | |
| 25 | Dermot Nolan | For Belinda Marazzato |

1 APPEARANCES: (Cont'd)

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3 Robert Hooper For Grosso Hooper Law and

4 Matt Moloci Scarfone Hawkins

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1 --- Upon commencing at 10:07 a.m.

2 OPENING REMARKS BY MR. CENTA:

3 Good morning, Commissioner. My name is
4 Rob Centa. I am lead Commission counsel on the Red
5 Hill Valley Parkway Inquiry.

6 I would like to open this hearing on
7 participation and for your recommendation on funding by
8 acknowledging that the City of Hamilton is situated
9 upon the traditional territories of the Erie, Neutral,
10 Huron-Wendat, Haudenosaunee and Mississaugas. This
11 land is covered by the Dish With One Spoon Wampum Belt
12 Covenant, which was an agreement between the
13 Haudenosaunee and Anishinaabek to share and care for
14 the resources around the Great Lakes.

15 We further acknowledge that this land
16 is covered by the Between the Lakes Purchase, 1792,
17 between the Crown and the Mississaugas of the Credit
18 First Nation.

19 I would like to welcome you all to this
20 hearing. I am pleased to advise that this hearing is
21 being carried live on Cable 14 and will be livestreamed
22 and made available on demand via the Cable 14 website.

23 To open today's proceedings, I'd like
24 to give a little bit of background on the Inquiry and
25 what brings us together today.

1 The Honourable Mr. Justice Herman J.
2 Wilton-Siegel was appointed to preside over this
3 Inquiry in May of 2019.

4 In early 2019, the City Council of the
5 City of Hamilton received information regarding a 2013
6 friction report related to the Red Hill Valley Parkway,
7 and on April 24th, 2019, City Council passed a
8 resolution pursuant to section 274 of The Municipal Act
9 which requested the Chief Justice of Ontario to appoint
10 a Superior Court judge to investigate matters related
11 to the disclosure of this friction report. That
12 resolution contained the terms of reference that would
13 guide this Inquiry's work.

14 First, the Inquiry is to determine the
15 facts relating to 24 questions posed by City Council
16 which fall into five general categories:

17 First, issues around the friction
18 testing conducted in late 2013 on the Red Hill Valley
19 Parkway and the Lincoln M. Alexander Parkway and the
20 subsequent report based on that testing, including who
21 was involved in or received the report, why it was not
22 provided to City Council or the public, the
23 circumstances surrounding its coming to light in 2019,
24 2018, I'm sorry, the steps taken at that time, and the
25 ramifications, if any, arising from the report not

1 having been disclosed.

2 Second, issues around the Ontario
3 Ministry of Transportation friction testing on the RHVP
4 in 2007, including whether or not the testing supported
5 or rebutted the 2013 friction test results, who
6 received the results, why the results were not provided
7 to City Council or made available to the public, and
8 the ramifications, if any, arising from the Ministry
9 testing not having been disclosed.

10 Third, whether the City or the Ministry
11 of Transportation conducted any other friction tests,
12 asphalt assessments, or general road safety reviews or
13 assessments of the RHVP, and whether these supported or
14 rebutted the 2007 and 2013 friction testing results.

15 Fourth, what are the standards in
16 Ontario, if any, respecting acceptable friction levels
17 and how do the test results conducted on the RHVP
18 compare with those standards?

19 Fifth, to what extent do factors other
20 than friction, including driver behaviour, lighting,
21 and weather conditions contribute to motor vehicle
22 accidents on the RHVP as compared to the impact of
23 friction levels.

24 The second part of this Inquiry's
25 mandate is to make recommendations regarding the

1 matters just mentioned that appear to be in the public
2 interest and, in particular, in the interests of good
3 government of the City of Hamilton and in the interests
4 of road safety, particularly insofar as it relates to
5 the Red Hill Valley Parkway, and it is in respect of
6 those matters that we come together today to hear
7 submissions relating to applications to participate.

8 On October 30th, 2019, the Inquiry
9 invited applications to participate and seek funding in
10 the Inquiry, and on that date, the Inquiry published
11 rules regarding such applications.

12 In particular, Rule 14 describes that
13 when determining whether an applicant should be granted
14 the right to participate in some or all parts of the
15 Inquiry, the Commissioner may consider if an applicant:

16 (a) has a substantial and direct
17 interest in the subject-matter of the Inquiry, and the
18 subject-matter of the Inquiry are the matters I just
19 described as arising from the terms of reference;

20 (b) is the applicant uniquely situated
21 to offer information or assistance to the Inquiry or
22 whether the applicant shares a common interest or
23 perspective with other applicants;

24 (c) is the applicant likely to be
25 notified of a possible finding of misconduct by the

1 Inquiry;

2 (d) would the applicant's
3 participation assist the conduct of the Inquiry and
4 would contribute to the openness and fairness of the
5 Inquiry.

6 As of the November 29th, 2019 deadline
7 to receive applications, nine individuals or entities
8 filed applications to participate in the Inquiry.

9 On December 10th, 2019, Commissioner,
10 you issued a decision and reasons on the publication of
11 the applications to participate, and in paragraph 5 of
12 that decision, you stated that, having reviewed the
13 applications, you felt the Inquiry would benefit from
14 receiving oral submissions from all nine applicants.
15 That decision also set time limits on the oral
16 submissions to be delivered by the applicants, and
17 established the order for those submissions which we
18 will follow today.

19 I ask that, in turn, when it is time to
20 make submissions on behalf of the applicant, that
21 counsel come to this podium and make your submissions
22 from here. I will be inviting parties to come up or
23 applicants to come up in turn.

24 And, Commissioner, unless there are any
25 preliminary matters, I will turn the hearing over to

1 you.

2 OPENING COMMENTS BY THE COMMISSIONER:

3 Thank you, Mr. Centa. First of all,
4 welcome and good morning to everyone. I guess I'm
5 going to be looking to my left as much as to my right
6 at this point.

7 I have three preliminary comments to
8 make and then we'll proceed directly into the
9 submissions.

10 The first is, I want to say I
11 appreciate the attendance of all of the applicants
12 here. I concluded after reading the applications that
13 oral submissions would certainly assist, with the
14 opportunity to ask some questions, certainly assist me
15 as the Commissioner, but I also hope that perhaps it
16 will help the applicants understand the context in
17 which the decisions to be made will be made.

18 Secondly, each of you have been given
19 an allotted period of time. I would ask that you keep
20 to that period of time. I would also say you don't
21 necessarily have to use all of it, but in any event, be
22 attentive to the time, particularly as I will probably
23 have some questions as well.

24 And third, I will not be rendering any
25 particular decision today with respect to any of the

1 applications. I'll be issuing an order with written
2 reasons subsequently, which will take a few weeks.

3 So with that said, I'll ask Mr. Centa
4 to have the first applicant proceed to the podium.

5 MR. CENTA: If we could invite counsel
6 for the City of Hamilton.

7 SUBMISSIONS BY MR. LEDERMAN:

8 Good morning, Commissioner. My name is
9 Eli Lederman, and I, along with my colleague, Ms. Delna
10 Contractor, we are counsel to the City of Hamilton.

11 On behalf of the City, we seek standing
12 to participate in this Inquiry and I intend to focus my
13 submissions on three points as to why standing ought to
14 be granted to the City.

15 First, the City has a substantial and
16 direct interest in the subject-matter of the Inquiry.
17 Second, the City's participation will assist in the
18 work of the Inquiry, and thirdly, the City, its
19 participation will contribute to the openness and
20 fairness of this Inquiry.

21 Let me first address the substantial
22 and direct interest:

23 As you know, the City of Hamilton
24 passed a resolution on April 24, 2019, asking that this
25 judicial inquiry be appointed to investigate the facts

1 surrounding, among other issues, concerns that the
2 Tradewind Report, dated November 20, 2013, was not
3 disclosed to the public or to City Council.

4 The City has a direct and substantial
5 interest in these facts and to ensure that the issues
6 listed in the terms of reference are fully
7 investigated, and so that in the event that there are
8 any recommendations to the City's by-laws, policies or
9 procedures, that the City participate and be aware of
10 any such recommendations if they are identified.

11 It also has a substantial and direct
12 interest in these matters as they relate to the good
13 governance of the municipality, and it's in that
14 respect that the direct and substantial interest of the
15 City in this Inquiry is clearly present.

16 The second issue is with respect to the
17 City providing essential assistance to the work of this
18 Inquiry. The City has considerable evidence central to
19 many of the issues set out in the terms of reference,
20 and this includes both a significant volume of
21 documents, hundreds of thousands of them, and direct
22 evidence from a number of City employees who are
23 directly involved in the matters at issue in this
24 Inquiry. The City has created at this point a database
25 containing hundreds of thousands of documents and, as

1 you may know, has already produced a good volume of
2 those documents as part of this process.

3 So let me deal with the third point,
4 which is that the City's participation in the Inquiry
5 will contribute to the openness and fairness of this
6 Inquiry. The City has been co-operating with
7 Commission counsel to ensure that the Commissioner has
8 the information necessary to investigate the issues
9 identified by the City Council in the terms of
10 reference, and the City is fully committed to ensuring
11 transparency and accountability in this process, and
12 these were key factors behind City Council's decision
13 to request this Inquiry in the first place. Its
14 participation in the Inquiry will further contribute to
15 the openness and fairness of this process.

16 The City is, therefore, requesting,
17 Commissioner, full standing at the Inquiry, so that it
18 may access the database of relevant documents, comment
19 on any background materials or written evidence
20 prepared by the Commission, propose individuals to be
21 interviewed or to appear as witnesses at the public
22 hearing, to examine witnesses at the hearing, and to
23 make oral and written submissions to the Commissioner
24 at the conclusion of the hearing.

25 Those are my submissions, Commissioner.

1 THE COMMISSIONER: Thank you, Mr.
2 Lederman. I also have your written application. I
3 don't have any questions, any further questions of the
4 City at this time.

5 MR. LEDERMAN: Thank you.

6 MR. CENTA: Counsel for the Province of
7 Ontario.

8 SUBMISSIONS BY MS. MCIVOR:

9 Good morning, Commissioner. My name is
10 Heather McIvor and I am counsel with the Ministry of
11 the Attorney General. I'm here today on behalf of the
12 Province, being Her Majesty the Queen in Right of
13 Ontario.

14 As set out in its written application,
15 the Province is seeking full participation rights
16 throughout this Inquiry, and it takes the position that
17 it has a substantial and direct interest in its
18 subject-matter and also that it can provide assistance
19 throughout the Inquiry process.

20 I'll go into more detail in this
21 momentarily, but just by way of clarification, the
22 Province as a legal entity includes the Ontario
23 Ministry of Transportation. It would also include any
24 other provincial ministry or office that may be shown
25 to have an involvement in the Inquiry's subject-matter,

1 and as well, it would include current and former public
2 servants with the Province who may be called upon to
3 provide information or evidence to the extent that that
4 information relates to their duties as public servants.

5 As we know, this is a municipal
6 inquiry. It's been constituted to canvass matters
7 within the municipality's bailiwick. However, the
8 Province has been expressly named in the terms of
9 reference and it's contemplated that the Province has
10 pertinent information about some of those matters.

11 To the extent that that is the case,
12 the Province would like to ensure that there's a
13 comprehensive record before you, and it has an interest
14 in ensuring that those materials are presented to you
15 in a thorough and accurate and fair manner.

16 In our submission, there are three
17 overarching categories of matters for which the
18 Province has either a direct and substantial interest,
19 or might be able to assist in the conduct of the
20 Inquiry, or both, the first of which concerns questions
21 that have been posed that must be answered about
22 matters that appear to primarily or exclusively concern
23 the Province, the second are the questions that must be
24 answered about general topics that the Province may
25 have certain expertise or experience with, and third,

1 the Province expects that it would be able to
2 constructively contribute to the Inquiry conduct
3 generally.

4 In terms of the first two categories,
5 these flow directly from the terms of reference, and
6 specifically, they're set out at paragraphs
7 2(a)(xvi)-(xxi), and with the exception of the very
8 last paragraph, these questions pertain to what has
9 been described in the terms of reference as the MTO
10 report, the 2007 MTO report.

11 These types of reports are essentially
12 printouts from the MTO friction truck when it is
13 operated on a section of a roadway, and so with respect
14 to that report, again, the Province is interested in
15 ensuring that all relevant information is before you.

16 It's expected that the Province would
17 be able to speak to matters such as who requested the
18 report, why the Province agreed to conduct the test,
19 considering this was a municipal roadway, what the
20 tests involved, and who, ultimately, received a copy of
21 the report, essentially all matters starting with the
22 receipt of the request and ending with its final
23 response to the request.

24 And then we have the last paragraph
25 that I referenced, which is 2(a)(xxi), and this is

1 where, Commissioner, you have been asked one final
2 question concerning the Province specifically, and that
3 is whether MTO, Ministry of Transportation, requested,
4 directed or conducted any other testing on the Parkway,
5 and again, this is something that the Province would be
6 uniquely situated to address, to answer and, of course,
7 to the extent that any such testing occurred, provide
8 information, produce a fulsome record, and ensure that
9 it's presented in a thorough and accurate manner.

10 Now, in terms of the second category
11 that I mentioned at the outset, the Province also
12 expects that if called upon, it could contribute in the
13 areas of subjects concerning general questions about
14 roadways in Ontario.

15 So, for instance, the terms of
16 reference pose whether there are friction standards in
17 Ontario generally. If so, what are the acceptable
18 levels? What's available to the public in terms of
19 those standards? Obviously, the Province is an entity
20 that deals with those standards in the context of
21 provincial roadways and, therefore, it would likely
22 have relevant views on these topics that it would be
23 willing to share in furtherance of the Inquiry.

24 And then finally, beyond the four
25 corners of the terms of reference, the Province submits

1 that it could contribute to the conduct of the Inquiry,
2 including at the investigatory or pre-hearing stages,
3 with a view to achieving efficiencies throughout, so,
4 for instance, by suggesting witnesses who may be able
5 to speak to matters involving the Province.

6 Where it possesses documents, it would
7 be willing to and has started, you know, collecting
8 documents and producing documents in a manner that is
9 comprehensive and aligned with the Inquiry's
10 parameters. Where it can provide information or
11 arrange for interviews that may potentially narrow the
12 topics that proceed to the oral hearing stage, it's
13 certainly something that it would be willing to
14 participate in, and finally, if there are
15 jurisdictional issues that arise concerning what may be
16 within the provincial purview versus the municipal
17 purview or any practical issues, the Province would be
18 willing to provide information in that regard.

19 So given its interests in the
20 subject-matter and given that it anticipates that it
21 would be of assistance throughout the Inquiry process,
22 we are requesting full participation rights for
23 Ontario, and to that end, the Province is requesting
24 full access to a database of all relevant documents.
25 To the extent that the Province's interests are engaged

1 or may potentially be engaged, it's requesting the
2 ability to comment on background materials or written
3 evidence, suggest individuals to be interviewed or to
4 be introduced as witnesses, the ability to examine
5 witnesses, and the ability to provide oral and written
6 submissions.

7 We also expect that this would not
8 result in any unnecessary duplication throughout the
9 Inquiry process as we haven't identified any common
10 interests between the Province and the other applicants
11 and, of course, the Province is committed to providing
12 ongoing assistance to the Commissioner and to
13 Commission counsel throughout the term of the Inquiry.

14 So to conclude, we submit that the
15 Province should be provided with participatory rights
16 throughout the Inquiry, particularly because the
17 Province is uniquely situated to offer certain types of
18 information and assistance. The Province expects that
19 it may be able to offer assistance throughout the
20 Inquiry, and the Province's participation as an entity
21 that's been expressly named in the terms of reference
22 we submit would contribute to the openness and fairness
23 of the Inquiry generally.

24 So subject to any questions, those are
25 the Province's submissions.

1 THE COMMISSIONER: Thank you. I have
2 only two factual questions. The first is, you
3 mentioned the possibility of other ministries
4 potentially being involved in addition to the Ministry
5 of Transportation. At this stage, have you identified
6 any particular ministries to which that might apply?

7 MS. MCIVOR: We have not, no. At this
8 stage, it does seem that the Ministry of Transportation
9 would be the ministry that's primarily or exclusively
10 involved.

11 THE COMMISSIONER: Secondly, as you can
12 be -- I'm sure you are well aware, the documentation
13 assembly and review process is critical to this.

14 MS. MCIVOR: Right.

15 THE COMMISSIONER: We're anxious to be
16 doing that in detail as quickly, as efficiently as
17 possible. Do you have any timelines for the
18 Ministry's --

19 MS. MCIVOR: We do have timelines. We
20 expect, actually, our first set of disclosure to be
21 delivered today, if it was not delivered yesterday, and
22 we are continuing with the document collection process
23 which will require engaging IT vendors, so we've been
24 working to that end and we expect to continue on with
25 that and appreciate that time is of the essence.

1 THE COMMISSIONER: Thank you. I have
2 no other questions.

3 MR. CENTA: Counsel for Dufferin
4 Construction.

5 SUBMISSIONS BY MS. MCALEER:

6 MS. MCALEER: Good morning, Mr.
7 Commissioner. My name is Jennifer McAleer, and I'm
8 here this morning on behalf of Dufferin Construction
9 Company, which is a division of CRH Canada Group Inc.
10 I am joined by Chris Buck, who is senior counsel at
11 Dufferin.

12 And as you will know from our
13 application for participant standing, we are seeking
14 full participant standing based on the fact that
15 Dufferin has a substantial and direct interest in the
16 subject-matter of the Inquiry, our participation would
17 further the conduct of the Inquiry, and our
18 participation would contribute, we believe, to the
19 openness and the fairness and the transparency of the
20 Inquiry.

21 With respect to Dufferin's substantial
22 and direct interest, we are not named in the terms of
23 reference, but Dufferin, then a division of St.
24 Lawrence Cement, built the relevant section of the Red
25 Hill Valley Parkway between 2006 and 2007. The work

1 was awarded to Dufferin after a public tender process
2 run by the City of Hamilton Public Works Department.

3 The tender was known in the industry as
4 a "bid-build" which required the bidders to provide
5 unit pricing for the materials specified in the tender
6 documents. The contract was awarded to Dufferin in
7 July of 2006, and there was substantial completion of
8 the project in November of 2007.

9 Our submission is that we can assist
10 with the interests of the Inquiry because Dufferin can
11 assist you to fulfill your mandate, in particular based
12 on its involvement in the project and its knowledge of
13 the industry, both at that time and currently.

14 In particular, we can assist with your
15 factual finding about the bid-build process, the manner
16 in which the Parkway was constructed, the materials
17 that were used and why those materials were used, and
18 the standards of the day, and Dufferin is uniquely
19 positioned to provide the factual information on these
20 issues, again given its direct involvement and its role
21 as a significant player in the industry.

22 With respect to the openness and
23 fairness of this Inquiry, we do appreciate that this is
24 a public inquiry and that your mandate comes from the
25 terms of reference. We understand you are not sitting

1 in an adjudicative role, but as an investigatory
2 function. We appreciate that this is not an
3 adversarial process, but you are very interested in
4 finding a strong, factual foundation upon which to base
5 your systemic recommendations.

6 And our intention is to assist your
7 Commission counsel and to work closely with your team
8 in order to assist with the collection of relevant
9 documents, to assist with the factual finding process.
10 We anticipate that your Commission counsel may want to
11 interview people from Dufferin. We understand your
12 Commission counsel may seek document production from
13 Dufferin, and we look forward, if we are granted
14 participant standing, to working with your Commission
15 counsel team in its preparation and review of the
16 overview reports and expert reports. We appreciate
17 your team will be taking the lead on that, but to the
18 extent to which we can provide any assistance, we are
19 happy to do so.

20 And again, I must stress that we
21 appreciate that what you need and what you're looking
22 for from the participants is assistance to make a
23 strong, factual basis upon which to base your systemic
24 recommendations.

25 Like the two parties who made

1 submissions before me, we are also requesting full
2 participant standing. We are also requesting access to
3 the database, the opportunity to recommend materials,
4 to provide evidence, to suggest people that your
5 Commission counsel may want to interview, to
6 participate in the hearings.

7 I anticipate that if we are granted
8 participant standing, we will not be here for all of
9 the public hearings as there are issues that are not
10 particularly of interest to Dufferin, and which we do
11 not think we would be able to assist the Commission
12 with, but certainly, I look forward to working closely
13 with your Commission counsel to identify the times
14 during the public hearings where it would be of
15 assistance to you and your team to have us here, and
16 we'll be here for those portions of the public
17 hearings, but certainly, we wouldn't want you to infer
18 anything if we are not here for all of the public
19 hearings, Mr. Commissioner.

20 So those are my submissions, unless you
21 have any questions.

22 THE COMMISSIONER: I should ask whether
23 Mr. Buck wants to say anything further?

24 MR. BUCK: I have nothing to add, no.

25 THE COMMISSIONER: Okay. I only have a

1 couple of questions. First of all, Dufferin's
2 involvement, was it limited to the construction of the
3 project or has it had any subsequent involvement with
4 the Parkway?

5 MS. MCALEER: No, our understanding was
6 limited to the construction of the Parkway and has had
7 no direct involvement with the Parkway since
8 construction finished in 2007.

9 Right. Mr. Buck was just telling me
10 there may have been some warranty construction work at
11 some point, but it was all related to the construction
12 of the Parkway.

13 THE COMMISSIONER: So the issues, for
14 example, with respect to the Tradewinds Report are not
15 issues in which Dufferin would be involved.

16 MS. MCALEER: No, we don't anticipate
17 so.

18 THE COMMISSIONER: And the same is
19 essentially true of the Ministry of Transportation of
20 Ontario testing?

21 MS. MCALEER: That's right. To the
22 extent the question is directed as to whether or not we
23 were aware of that testing or provided the reports, my
24 understanding is that we were not. I think we can
25 assist the Commission with respect to the fact that the

1 asphalt, as I understand it, that was used in the
2 project was specified in the tender documents and
3 that's why it was used on the project.

4 So we may be able to assist the
5 Commission with its fact-finding process related to
6 that part of the Inquiry, but certainly, with respect
7 to the Tradewinds Report or the subsequent testing by
8 the Ministry of Transport, we were not involved and had
9 no knowledge of that.

10 THE COMMISSIONER: So a natural
11 question would be whether you need access to the entire
12 database or only to the part that relates to Dufferin's
13 involvement?

14 MS. MCALEER: Well, I think it would
15 depend on how the database is structured, and I would
16 certainly be open to having discussions with your
17 Commission counsel about what the database looks like
18 and how it's going to be divided and whether or not
19 that is possible. If it is, then certainly, that would
20 be fine with us. I wouldn't want to create more work
21 for Commission counsel by trying to structure it in
22 such a way as to limit our access.

23 THE COMMISSIONER: Okay. Thank you. I
24 don't have any other questions.

25 MS. MCALEER: Thank you, Mr.

1 Commissioner.

2 MR. CENTA: Counsel for Golder.

3 THE COMMISSIONER: Excuse me, Counsel.

4 Just bear with me for 30 seconds.

5 MS. ROBERTS: Of course.

6 THE COMMISSIONER: Okay. Thank you.

7 SUBMISSIONS BY MS. ROBERTS:

8 Your Honour, I am counsel for Golder.

9 I'm here today with Dr. --

10 THE COMMISSIONER: Could I get your
11 name?

12 MS. ROBERTS: Jennifer Roberts.

13 THE COMMISSIONER: Thank you.

14 MS. ROBERTS: I'm here today with
15 Dr. Ludomir Uzarowski and Dr. Graeme Skinner, two of
16 the principals of Golder Associates, and first of all,
17 thank you for the opportunity to make our submissions
18 today for Golder in this Inquiry for funding and legal
19 representation.

20 Our written submissions were provided
21 on November 29 which outlined a chronology of Golder's
22 involvement in the Red Hill Valley Parkway, which we
23 track closely with what we could corroborate through
24 the documentary record. I will not repeat our written
25 submissions, but I want to highlight a number of

1 aspects.

2 First of all, Golder is unique. It is
3 a Canadian-owned, employee-owned, engineering,
4 environmental science consulting firm. Among its
5 specialist fields, Golder has significant expertise in
6 pavement design and materials testing, and anecdotally,
7 it is probable that Golder had some role in most of the
8 highways constructed in Ontario in the last six years.

9 Our principal witness will be Dr.
10 Ludomir Uzarowski, who is a pavement and material
11 specialist. We have produced his résumé and, frankly,
12 it would take me the 20 minutes allotted to review it
13 with you.

14 I am anticipating, Your Honour, that we
15 will all know way more about pavement construction at
16 the end of this Inquiry than we possibly thought
17 possible.

18 THE COMMISSIONER: I can only agree.

19 MS. ROBERTS: Golder's involvement in
20 the Red Hill Valley Parkway goes back to 2005. Golder
21 prepared a feasibility study for the use of a perpetual
22 pavement design, and the report acknowledged at that
23 point that the -- it involved a higher initial cost for
24 perpetual pavement, but considered the advantages of
25 greater endurance and lower maintenance costs.

1 The design ultimately chosen by
2 Hamilton for use in the Red Hill Valley Parkway was for
3 a perpetual pavement design incorporating a premium
4 surface course of stone mastic asphalt. Again, stone
5 mastic asphalt was a more expensive choice for a
6 surface course, but offered significant advantages in
7 resistance to rutting, durability, flexibility and
8 resistance to fatigue.

9 The pavement design was the subject of
10 extensive consultation and, ultimately, the recipient
11 of an award by the Consulting Engineers of Ontario in
12 2009. The application of the pavement design in a
13 municipal setting was considered class-leading.

14 Golder was subsequently retained in
15 2013 by Hamilton to evaluate the performance of the Red
16 Hill Valley Parkway and investigate surface cracking,
17 and in response to reports from police in September of
18 2013, which were relayed through Hamilton, Golder was
19 asked to include an evaluation of the frictional
20 characteristics, and this is the context in which
21 Golder retained Tradewind Scientific to perform
22 friction testing.

23 Golder's report entitled "Red Hill
24 Valley Parkway - Performance Review after Six Years in
25 Service" enclosed the Tradewind Report, which is at the

1 heart of this Inquiry.

2 Golder's report records that Golder
3 considered that the friction number values on the Red
4 Hill Valley Parkway were relatively low. It
5 recommended the surface course stone mastic asphalt be
6 milled and new surface course mix placed, and also
7 recommended that the remaining areas -- that the
8 existing cracks in the surface course be rooted and
9 sealed and a single layer of microsurfacing applied,
10 which would address the issue of the relatively low
11 friction number.

12 Subsequent to the issuance of these
13 reports, Golder provided advice to Hamilton proposing
14 alternate methods to improve the frictional quality of
15 the pavement.

16 The terms of reference are framed as
17 though the friction findings in the Tradewind Report
18 were the sole instance in which advice was provided to
19 Hamilton in relation to the frictional quality of the
20 pavement and how it could be improved, and forgive us
21 for challenging the assumptions in the terms of
22 reference, but we don't agree.

23 It will be Golder's evidence that there
24 were successive subsequent discussions with Hamilton
25 about the friction testing results and advice given as

1 to how frictional quality of the surface could be
2 improved.

3 We submit, therefore, that Golder is
4 uniquely situated to offer information and assistance
5 to the Inquiry in addressing the design and
6 construction of the Red Hill Valley Parkway pavement
7 and the application of the stone asphalt, mastic
8 asphalt, the standards of engineering practice in
9 relation to friction testing, friction standards, as
10 well as the evaluation of the friction testing
11 findings, what testing was done by Golder in relation
12 to friction, and what advice was given to Hamilton and
13 when as a result.

14 And in referring back to the categories
15 that you identified, in our view, Golder's evidence
16 would be relevant to one, two, three and four. We
17 anticipate that in answering material numbers of
18 questions raised in the terms of reference, Golder's
19 evidence will be of unique importance in assisting the
20 conduct of the Inquiry. In particular, Golder has
21 key-man witness with knowledge of the events and advice
22 given, and a documentary record corroborating that
23 witness evidence.

24 Having initiated the Inquiry into the
25 events in which Golder played a role, Golder's interest

1 is in a forthright, truthful, and complete disclosure
2 of the facts, and I am completely confident in offering
3 that Golder's involvement will contribute to the
4 openness and fairness of the Inquiry.

5 Golder's substantial and direct
6 interest in this Inquiry is in establishing the quality
7 of the work it provided and the integrity of the advice
8 it gave to the City of Hamilton in relation to the Red
9 Hill Valley Parkway.

10 Subject to your questions, Your Honour,
11 in relation to our submission that it would be
12 appropriate to grant full participation, those are my
13 submissions.

14 THE COMMISSIONER: I have a couple of
15 questions. First, a rather straightforward one: I
16 know that Golder has already provided documentation --

17 MS. ROBERTS: Yes.

18 THE COMMISSIONER: -- to the Commission
19 counsel. Are we to expect any more or is that your
20 understanding of the entirety of the documentation?

21 MS. ROBERTS: So as with most processes
22 of digging through and finding documents that go back,
23 in this case, to 2005, there will be further documents.
24 We've been -- in co-ordination with Commission counsel,
25 we've produced the key documents that we know about.

1 We've made further searches of archive materials and I
2 anticipate there will be more. I think you can safely
3 assume that you've got the core documents, but as is
4 usually the case, there's always bits and pieces that
5 one can find if you keep digging.

6 THE COMMISSIONER: All right.

7 MS. ROBERTS: And I will co-ordinate
8 with Commission counsel as we find more materials.

9 THE COMMISSIONER: Sure. The second
10 questions or second category of questions, which are
11 perhaps more difficult, relate to your request for
12 funding.

13 MS. ROBERTS: Yes. So I have
14 submissions on funding. I wanted to see if you had
15 questions on participation.

16 THE COMMISSIONER: Okay.

17 MS. ROBERTS: Part two.

18 THE COMMISSIONER: No, I don't have --
19 correct. Move past to part two. I don't have any
20 further questions.

21 MS. ROBERTS: Okay. Then I will -- on
22 my more difficult submission, as you point out, on
23 funding -- and let me be forthright in acknowledging at
24 the outset that this application is not a tidy fit
25 within the test for funding, I'm not going to pretend

1 otherwise, and this is not a circumstance of
2 impecuniosity in which Golder could not have counsel
3 participate without funding. Instead, this is an
4 application in the category of an extraordinary and
5 unforeseen expense for which Golder could not possibly
6 have budgeted.

7 And I recognize in making these
8 submissions that the examples of funding in municipal
9 inquiries are generally for individuals and not for
10 corporations, and Golder is an awkward fit in these
11 categories. It is 100 percent employee-owned,
12 ownership is widely distributed, and profit and loss
13 are maintained locally.

14 In this case, the present funding for
15 legal representation comes at the expense of 20
16 partners in the geotechnical group retained by the City
17 of Hamilton. These are the individuals who are exposed
18 to the cost of this proceeding and which has a direct
19 and financial impact on them personally.

20 In making the submission for funding,
21 Golder's -- we see Golder's evidence as likely key to
22 portions of the terms of reference, and effective
23 participation will facilitate the Inquiry objective of
24 efficiency, but require significant costs. How onerous
25 that is really depends on how much participation the

1 Commission sees as necessary, but, you know, when I
2 look at the terms of inquiry, I can't see it other than
3 significant.

4 At present, the work in investigating
5 the background to this Inquiry, reviewing documents and
6 interviewing witnesses has resulted in accumulated
7 legal fees of about \$50,000. That does not count the
8 hundreds of consultant hours invested by Dr. Uzarowski
9 in finding records, explaining what happened, when and
10 why.

11 We have already met with Commission
12 counsel and we have produced Golder's records. We've
13 already taken material steps to assist the efficiency
14 of the Commission's investigation and will continue to
15 do so. Depending on the scope of the participation
16 required by the Inquiry and the length of the hearings,
17 the cost could be well into the range of \$200,000.
18 That is material.

19 There are two public entities who are
20 primary participants, and if Golder is requested to
21 participate to the same extent as publicly-funded
22 entities, and it seems likely, that raises questions of
23 fairness in maintaining an even playing field of
24 participants, and we submit that it would be an
25 unreasonable result to expect a level of participation

1 without some level of funding. Otherwise, the public
2 is funding some of the parties, but one who has a
3 primary role to play in uncovering the evidence
4 necessary to answer questions raised is not.

5 Put another way, absent some
6 contribution of funding, you are asking 20 partners of
7 Golder's geotechnical group to subsidize the
8 fact-finding of this Inquiry and we submit that such an
9 outcome is neither reasonable nor fair.

10 Golder's standard terms include an
11 indemnity which roughly states that the client shall
12 indemnify, defend, indemnify and save harmless Golder
13 from losses, expenses arising from acts, errors or
14 omissions of the client. These terms are included in
15 the proposal for the five-year condition evaluation of
16 the Red Hill Valley Parkway, dated March 1, 2013, which
17 is the investigation which ultimately included the
18 Tradewind Report. Hamilton did not revise or alter the
19 terms, but simply e-mailed back a one-page purchase
20 order accepting the proposal.

21 Golder respectfully submits that
22 Hamilton is in any event bound to indemnify Golder for
23 the legal expense of participating in this Inquiry and
24 for all of the reasons expressed, we submit that that
25 is a reasonable and fair outcome.

1 We recognize that you will want
2 affidavit evidence of financial resources, and we are
3 prepared to provide that to the Commission on a
4 confidential basis, and our billing rates are
5 relatively modest in the commercial world, reflecting
6 long-term relationships with our engineering clients
7 and their insurers. We do not multi-team, we use
8 juniors modestly, and it's my usual practice to provide
9 budgets. When we have a better sense of the
10 involvement, I'd be happy to provide a budget for
11 anticipated expense.

12 We respectfully request your
13 recommendation to Hamilton that it provide funding for
14 the legal expense of Golder's participation in this
15 Inquiry, should you choose to grant participation.

16 Those are my submissions.

17 THE COMMISSIONER: Thank you. I think
18 I have to ask at least this one question: As you say,
19 my, if you like, terms of reference with respect to
20 funding are set out in Rule 14.

21 MS. ROBERTS: Yes.

22 THE COMMISSIONER: And it's not clear
23 to me that you fall within Rule 14. I think you more
24 or less acknowledge that.

25 MS. ROBERTS: I do.

1 THE COMMISSIONER: If you separate the
2 question of the indemnity and focus only on Rule 14,
3 what do you see as the strongest basis for your
4 position that you're entitled to funding?

5 MS. ROBERTS: I think on a point of
6 fairness is really the fundamental basis on which I
7 rest up my submissions, that this would, in fact, if
8 participation has the scope that I anticipate that it
9 will probably require, that it will be exceedingly
10 onerous to require 20 individuals in a geotechnical
11 group to fund it.

12 And I think it's a very important
13 point, Your Honour. Although Golder is a corporation,
14 the way it's structured, there are 20 individuals who
15 are actually footing the bill, and we are prepared to
16 provide documents in support of the financial ability
17 to pay. I'd prefer to do that -- well, we require that
18 that be done in a confidential setting as is
19 appropriate, and I think that there are instances in
20 which associations, and I'm thinking particularly in a
21 couple of Ontario inquiries, where the standard was not
22 impecuniosity, but, in fact, the category of
23 extraordinary and unforeseen expense, which this would
24 fit perfectly.

25 THE COMMISSIONER: Turning to the

1 indemnity --

2 MS. ROBERTS: Yes.

3 THE COMMISSIONER: -- you rely on the
4 indemnity, but in effect, I'm not being argumentative,
5 I'm just asking you to respond, are you not in effect
6 asking me to make a legal determination with respect to
7 your right that is properly made elsewhere at another
8 time?

9 MS. ROBERTS: So in fairness to counsel
10 for Hamilton, I provided that agreement to him
11 yesterday.

12 THE COMMISSIONER: Yes.

13 MS. ROBERTS: And I have not had the
14 chance to canvass his position. In this hearing, I
15 don't think that you can -- I can, in fairness, ask you
16 to make that finding, so I'm not. I would describe
17 that as more corroborating and encouraging, is what
18 that argument is, and I would need to take up with Mr.
19 Lederman what his position is in response to the
20 indemnity. My experience with them is, and no doubt
21 yours echos it, is that while you often see them,
22 they're harder to make stick.

23 THE COMMISSIONER: On the other hand,
24 it is customary for consultants to seek indemnities.

25 MS. ROBERTS: It is. The indemnities

1 often go both ways.

2 THE COMMISSIONER: Right.

3 MS. ROBERTS: And in this case, there
4 is an indemnity in favour of Golder, and I think, if I
5 might repeat this submission, I think that I would say
6 two points which are key here:

7 One is that this should be no surprise
8 to Hamilton that this request has been made, that there
9 is a decent contractual argument that it is obliged to
10 indemnify Golder for this legal expense, and
11 most foremost -- first and foremost, it is a fair
12 outcome here that Golder's involvement be indemnified
13 by Hamilton.

14 THE COMMISSIONER: And so again, not
15 meaning to be argumentative, but are you not really
16 asking me to put the cart before the horse?

17 MS. ROBERTS: I'm sorry?

18 THE COMMISSIONER: Shouldn't this issue
19 really be resolved before, as a separate matter, this
20 Commission addresses your request for funding?

21 MS. ROBERTS: So that's a good point
22 and I, as I said, I raised this with Commission, sorry,
23 with counsel for Hamilton yesterday, and if it were an
24 appropriate outcome that we tabled this issue and I go
25 back to Hamilton and discuss the application of

1 indemnity, that that would be something that I'm sure
2 we can do. I think that, as you pointed out, that
3 there are parallel issues, but that the application for
4 funding still stands on a supported basis, as I've
5 said. There is, in addition, a contractual argument.

6 THE COMMISSIONER: The other question
7 which always arises with respect to indemnities, or I'm
8 sorry, now I'm sliding into indemnity, with respect to
9 funding matters like this --

10 MS. ROBERTS: Yes.

11 THE COMMISSIONER: -- is the question
12 of a subsequent, the potential for a subsequent
13 determination of misconduct or negligence or something
14 of that order which, in effect, is being pre-judged in
15 this context where we're talking about a consulting
16 arrangement as opposed to a third party situation.

17 MS. ROBERTS: I'm not sure I'm
18 following you.

19 THE COMMISSIONER: Well, if the result
20 of the investigation were to be a finding that Golders
21 was in some way responsible for the failure of this
22 report to be properly brought to the attention of
23 individuals within the City, and I'm not suggesting for
24 a moment that we have any evidence anywhere in that
25 direction at this point --

1 MS. ROBERTS: I can go through that
2 evidence.

3 THE COMMISSIONER: Well, this is not
4 the format for --

5 MS. ROBERTS: Exactly.

6 THE COMMISSIONER: -- for addressing
7 that evidence. If the report were to make such a
8 finding, it would be arguable that Golders would not
9 properly have received funding in the first place.

10 MS. ROBERTS: Under the indemnity, do
11 you mean?

12 THE COMMISSIONER: No. I'm setting
13 aside the indemnity altogether, just in terms of the
14 principle. One thing to say that you've contributed to
15 the Inquiry. It's another to say there's been a
16 finding that you contributed to the problem in the
17 first place.

18 MS. ROBERTS: If I thought that there
19 was a remote chance that there could be a finding of
20 fault, that there were evidence that were at issue, I
21 would not be making this submission.

22 THE COMMISSIONER: And lastly, you were
23 using a number, as I recall, of about 200,000?

24 MS. ROBERTS: That's my guess.

25 THE COMMISSIONER: Okay. I don't have

1 any other questions. Mr. Centa?

2 MR. CENTA: No questions.

3 THE COMMISSIONER: Thank you very much.

4 MS. ROBERTS: Thank you.

5 THE COMMISSIONER: The last applicant
6 is Mr., before the break, is Mr. Chandrashekar. I'm
7 told that Mr. Chandrashekar has submitted his
8 application, but has also advised Commission counsel
9 that he does not wish to make any oral submissions
10 today. If that remains the case, then I will rely
11 entirely on his written submissions.

12 Ah. I retract everything I said, Mr.
13 Chandrashekar.

14 SUBMISSIONS BY MR. CHANDRASHEKAR:

15 Thank you, Your Honour. It's a
16 pleasure to be here and listen to all the applicants.
17 They had their own view defending themselves.

18 However, my point, I represent the
19 whole taxpayers. With that one, Your Honour, I have a
20 simple question: In your mandate, nepotism is
21 included? If so, I have lots to say.

22 THE COMMISSIONER: I'm sorry, if what
23 is included?

24 MR. CHANDRASHEKAR: Nepotism is
25 included in your mandate?

1 THE COMMISSIONER: Nepotism. Nepotism
2 is not included in the mandate.

3 MR. CHANDRASHEKAR: Not included?

4 THE COMMISSIONER: No, it is not, sir.

5 MR. CHANDRASHEKAR: Oh, then my points
6 have all been shattered because you're here to fix the
7 system uniform. Across the city, the system is broken.
8 You are in a position to fix the system more uniform
9 and accountability. Why I say that one, I will give
10 you simple example.

11 THE COMMISSIONER: You might give this
12 to the Registrar.

13 I'm going to show this to Commission
14 counsel, and I'll give you a couple of minutes to
15 explain, but then we better return to the question of
16 how this relates to the terms of reference.

17 MR. CHANDRASHEKAR: You are in a
18 position now, broken system, to establish uniformity
19 and consistency and accountability across the city. If
20 you ask one person, you get a different answer. If you
21 ask the other person, you get a different answer, and
22 taxpayers can't go on do this. I'm spending my own
23 money to fight this one, and you have 25, over 25
24 percent of the children, Iran, undernourished. Here we
25 are spending millions of dollars. This is my problem.

1 THE COMMISSIONER: Okay. So Mr.
2 Chandrashekar, I understand that these are important
3 issues. For your part, you have to understand what the
4 limits of my authority or jurisdiction in this public
5 inquiry are, okay?

6 Now, as you've heard from the other
7 applicants, there are terms of reference, 24 questions.
8 I don't know whether you've had a chance to read those.

9 MR. CHANDRASHEKAR: I read everything,
10 Your Honour. All I'm doing: Consolidate everything,
11 amalgamate to the one system.

12 THE COMMISSIONER: Right.

13 MR. CHANDRASHEKAR: That's what, in my
14 humble opinion, your mandate. You are in a position to
15 establish that uniformity.

16 THE COMMISSIONER: And I appreciate
17 that you read them that way. I have to say that I
18 think they are a great deal more specific.

19 MR. CHANDRASHEKAR: Yes.

20 THE COMMISSIONER: And, unfortunately,
21 in terms of your issues, the Inquiry does not, or as
22 Commissioner, I do not have the authority to amend or
23 revise the terms of reference. I have to go with what
24 the City Council has passed as the terms of reference.

25 So if you feel that an issue like this

1 should be addressed, either in this Inquiry or in
2 another inquiry, the proper place to start has to be
3 city councillors and the City Council.

4 MR. CHANDRASHEKAR: Your Honour, I
5 appreciate that one. In your report, if you highlight
6 that one, I will be glad to do. I, God willing, I'm
7 okay, but there are poor people that just can't afford
8 to pay the rent.

9 THE COMMISSIONER: Right.

10 MR. CHANDRASHEKAR: Here, we're having
11 exuberant stuff. Two major, senior employees give two
12 different answers.

13 THE COMMISSIONER: Okay.

14 MR. CHANDRASHEKAR: And they're in the
15 City. That's where my problem is.

16 THE COMMISSIONER: I appreciate --

17 MR. CHANDRASHEKAR: Furthermore, when I
18 say "nepotism", same council member goes to the Police
19 Board and he got his sister working up there, and do
20 that. This is all nepotism, in my opinion.

21 THE COMMISSIONER: Okay.

22 MR. CHANDRASHEKAR: Not only my
23 opinion. My daughter consulted a lawyer. She give me
24 those thing. So, Your Honour, you're in a position to
25 fix this broken system. That's all I'm asking.

1 THE COMMISSIONER: Okay. Thank you
2 very much for your application.

3 MR. CHANDRASHEKAR: Thank you. I
4 highlight it. Thank you.

5 THE COMMISSIONER: Thank you, Mr.
6 Chandrashekar. I think that takes us to the break
7 which will be 15 minutes.

8 MR. CENTA: Commissioner, it's now
9 11:10. If I could suggest that we break until 11:25
10 and then return to hear submissions from the remaining
11 applicants.

12 THE COMMISSIONER: Okay. Thank you.

13 --- Recess at 11:10 a.m.

14 --- Upon resuming at 11:28 a.m.

15 MR. HODGSKISS: Good morning.

16 THE COMMISSIONER: Sorry, Mr.
17 Hodgskiss.

18 I wanted to say, first of all, good
19 morning, and secondly, I want you to be aware that I
20 have read in detail your application. I understand
21 that you want 15 minutes and we're happy to give you
22 the 15 minutes, we ask you to keep to that, but I would
23 ask that in the course of your submission, you indicate
24 which paragraphs of the terms of reference you believe
25 your submissions and your application relate to.

1 SUBMISSIONS BY MR. HODGSKISS:

2 Okay. I have to say from the beginning
3 I believe that my submission here today relates to all
4 terms of reference and the mandate of the Inquiry, and
5 I hope I can leave it at that.

6 At the last moment, I want to offer
7 what I realize is what's called a dirt sandwich. I
8 want to say something good before I have a few bad
9 things to say.

10 Here in Hamilton, the poorest among us
11 can enjoy a standard of living not available to the
12 wealthiest royalty of a hundred years ago, and it is a
13 great place to raise a family and to age successfully,
14 which is what it claims to be, and so I think we can
15 all give ourselves a pat on the back for that.

16 Now to my submission:

17 Bid-rigging could explain why Hamilton
18 taxes are higher than anywhere while services are
19 lower, and bid-rigging could explain why slippery clay
20 shale was used on the Red Hill Valley Parkway instead
21 of gravel, shale which would shrink, disintegrate into
22 clay dust and absorb road grease over time, shale which
23 could then form a shale/clay oil emulsion when dampened
24 or wetted slightly by river valley condensation. This
25 clay/shale oil emulsion could be worse than black ice

1 while occurring even on rainless summer days.

2 My application to participate was
3 beyond this Inquiry's mandate and terms of reference,
4 so I've narrowed it down a lot. I've narrowed it down
5 to just two words: Me too. Everyone has heard of the
6 "Me Too" movement. The essence of "Me Too" may inform
7 all aspects of this Inquiry's terms of reference and
8 its mandate in two ways:

9 First, "Me Too" means that the Red Hill
10 Valley tragedy is not just an isolated incident. A
11 case in point is the Westdale Bridges Project. Just
12 like the Red Hill Valley Parkway, the Westdale Bridges
13 Project was built by the world's largest construction
14 company, Holcim Global, pretending to be a smaller,
15 local company called Dufferin Construction.

16 Over a similar time period, the
17 Westdale Bridges Project also involved almost all the
18 same city councillors and department heads, and most of
19 the same provincial government counterparts and
20 ministries as the Red Hill Valley Parkway Project.

21 Lastly, the City of Hamilton made
22 sort-of-secret, deliberate decisions that were known to
23 be definitely harmful to anyone and deadly to some,
24 decisions that would have -- could dramatically profit
25 the world's largest construction company, Holcim

1 Global, pretending to be Dufferin Construction, while
2 seriously harming or even killing those living close to
3 the work, decisions directly pushed by a top-ranking,
4 former Dufferin executive on council. This was
5 bid-rigging by secretly liquidating safety rights into
6 a contract windfall for a bribe-paying company.

7 Another Hamilton mega-project that fits
8 as a "Me Too" is the LINC. The Lincoln Alexander
9 Expressway was also built by the world's largest
10 construction company, Holcim Global, pretending to be
11 Dufferin Construction. In this case, the City was
12 ordered to pay an undisclosed amount of damages, over
13 one million dollars, for bid-rigging the contract in
14 favour of Holcim Global, pretending to be Dufferin
15 Construction.

16 Holcim Global, pretending to be
17 Dufferin, appears to have had a coercive monopoly in
18 Hamilton Region for decades. They have been the main
19 contractor on almost every major project in Hamilton
20 Region for decades.

21 The second way "Me Too" can inform all
22 aspects of this Inquiry's mandate and terms of
23 reference is pattern recognition. "Me Too", by
24 recognizing larger patterns of repeat offences, can
25 prove wrongdoing or criminality more readily than a

1 single, isolated offence can.

2 My own personal "Me Too" incident was
3 being demographically targeted to have my personal
4 safety rights secretly liquidated into a \$20-million
5 profit windfall for Holcim Global, pretending to be
6 Dufferin Construction.

7 From 2009 until now, the Westdale
8 Bridges "Me Too" includes bid-rigging, several counts
9 of negligence, environmental fraud, corruption,
10 bribery, fraud, intimidation, harassment, five
11 attempted murders or sham attempted murders, permanent
12 injuries, and related death.

13 I have to digress briefly here. A lot
14 of people think Sewergate is a smoke screen for
15 something else. Sewergate may really be a smoke screen
16 or a spin to scapegoat the City under renewed public
17 outrage while the real culprit, Holcim Global,
18 pretending to be Dufferin, pulls off a boilerplate
19 defence.

20 A boilerplate defence is when the repo
21 man enters a house, only to find it totally vacant with
22 even the furnace gone and only the boilerplate
23 remaining. The boilerplate defence is half done
24 because CRH has standing at this Inquiry and everyone
25 knows that CRH is far less culpable than Holcim Global,

1 pretending to be Dufferin Construction.

2 The spin of public outrage is, first,
3 the missing friction report, then Sewergate, now the
4 Westdale Bridges scam. Don't fall for it. The real
5 culprit is Holcim Global. The spin is that the
6 Westdale Bridges were secretly entirely demolished and
7 remanufactured in place to a brand new condition
8 without public notification.

9 While the bridges continued in regular
10 public use from 2010 to 2013, it was known that there
11 was danger of collapse, like the bridge collapse in
12 Minneapolis the year before with over 100 killed. So
13 for years, all the people in Hamilton were regularly
14 using all these bridges that could have fallen down at
15 any time, but insiders already know this revelation of
16 mine and set up Sewergate to be a diversionary spin to
17 scapegoat the City while the culprit, Holcim Global,
18 pretending to be Dufferin, gets away with the cash.
19 Don't fall for it.

20 Returning now to my own "Me Too" at the
21 Westdale Bridges Project was that its illegal
22 non-notification facilitated individual safety rights
23 to be secretly liquidated into the bargain of the
24 contract, producing an estimated \$20-million profit
25 windfall for Holcim Global, pretending to be Dufferin

1 Construction, and insiders.

2 They knew for certain that demolition
3 sounds would be amplified by the bridge structure
4 itself, and amplified by several kilometres of massive,
5 bare, overhead steel undergirding the bridges. They
6 knew that the bridge demolition would definitely,
7 absolutely be harmful to anyone exposed to it and
8 possibly even lethal to some. That's why their own
9 workers were forbidden to go under the bridges even
10 with the best ear protection at these times, while I
11 was left to die at NR1, noise receptor one.

12 They secretly granted a negligent,
13 unlimited exemption without deliberation or discussion.
14 Ambushed, the bombardment triggered the hair-trigger
15 startle response of post-traumatic stress disorder, and
16 without realizing it, I began hallucinating for months
17 and years of sleep deprivation. I would go to sleep
18 flinching to the sounds of demolition and wake up
19 flinching to the sounds of construction. My income
20 fell permanently by 61 percent, I was bankrupted, and
21 all my relationships collapsed. It was known that I
22 was hurt and the necessities of life were withheld, and
23 pleas for evacuation were repeatedly refused to sustain
24 the negligent, bid-rigged operation and its illegal
25 profits.

1 With more than a hundred times less
2 sound bombardment, Sarnia council repeatedly,
3 resolutely and successfully forbid the very same
4 unlimited exemption request altogether.

5 I was aware that the former regional
6 manager of Dufferin was unlawfully chairing the Police
7 Services Board, so in 2017 and 2018, I shifted my focus
8 to seek an RCMP or OPP investigation of City Hall, and
9 this was the likely motivation for the missing friction
10 report to surface internally, to avoid charges from
11 being caught concealing it during a police
12 investigation.

13 I also believe the tire truck spill of
14 November 2018, while the report was still undisclosed
15 to the public, at ground zero on the Red Hill Valley
16 Parkway may have been staged as a pretext to treat the
17 worst parts of the Red Hill Valley Parkway to stop it
18 from continuing to shed disintegrating shale dust.

19 At the Massey Lectures of 1993,
20 Heilbroner concluded that megacorporations control
21 about half the world's economic revenue, but they're
22 not subject to any regulatory jurisdiction. I would
23 suggest that Holcim Global is a case in point.

24 So about funding, Quebec's Charbonneau
25 Commission into organized crime and bid-rigging in

1 Montreal established a special anti-corruption police
2 force, and all this has cost \$175 million to-date, but
3 it has gained \$575 million in fines and penalties, over
4 400 criminal charges have been laid, and over 100
5 criminal convictions have been secured.

6 Hamilton is just a suburb of Montreal
7 with most of the same corporations and organized crime
8 operating here still undetected. Holcim Global,
9 pretending to be Dufferin, could be a bigger offender
10 than SNC-Lavalin, Bombardier or Boeing, all of which
11 face losses in the billions of dollars.

12 I was bankrupted by criminal negligence
13 and have spent everything I have to pursue it. It's
14 unreasonable, unwise and a false economy to starve me
15 out. I call not for adequate resources, but for ample
16 or even generous resources for this massive work.

17 That's all I have to say.

18 THE COMMISSIONER: Okay. Thank you. I
19 don't have any further questions.

20 MR. CENTA: Counsel for Jodi Gawrylash.

21 SUBMISSIONS BY MR. HILLYER:

22 Good morning, Mr. Commissioner. My
23 name is Bruce Hillyer. I'm an attorney in Burlington
24 and I'm appearing on behalf of my client Jodi Gawrylash
25 seeking standing in these proceedings.

1 My client is a single, 42-year-old
2 woman who was catastrophically injured in a car
3 accident, a single-car rollover accident at the King
4 Street off-ramp from the Red Hill Valley Parkway.
5 Sadly, she has no memory of the incident, and she and
6 her family are anxious to learn how and if the
7 recently-disclosed information about the surface
8 conditions of the Red Hill Parkway may help explain how
9 this accident changed her life forever.

10 I should add that as a Hamilton
11 taxpayer, she and her family share the public's concern
12 which has no doubt prompted this Inquiry, and they hope
13 that the result of this Inquiry might enhance public
14 safety in and around the Hamilton area, particularly
15 with respect to roads.

16 With respect to the application for
17 funding, at the request of Commission counsel, I have
18 spent a fair bit of time with other counsel, Mr. Hooper
19 and Mr. Nolan, discussing how we can best avoid any
20 duplication, unnecessary participation, and in that
21 regard, we jointly put together a presentation proposal
22 with respect to funding, which is detailed and I expect
23 Mr. Hooper will share that with you in a subsequent
24 presentation.

25 That's all I have to say at this point.

1 THE COMMISSIONER: So let me just be
2 clear:

3 First of all, obviously, one has a
4 great deal of sympathy for your client's condition, and
5 I said yesterday at the public hearing, I should make
6 it clear again today, you appreciate that this will not
7 be an exercise in reconstructing particular accidents.

8 We're looking -- the issues that we
9 address are as you heard earlier defined by the terms
10 of reference, and they effectively require that we look
11 at issues of the road condition and road safety at a
12 more general level, and with that in mind, we'll be
13 getting expert evidence to assist the Commission, as
14 well as evidence from the professional firms involved
15 with respect to the characteristics of the asphalt, the
16 conditions that can or cannot arise over time with
17 respect to the asphalt, and the extent to which those
18 conditions as reflected in the friction levels can
19 contribute to accidents, together with or perhaps in
20 addition to other factors that have caused accidents on
21 the roadway.

22 Having said that, as a result, we're
23 not looking specifically at any particular incident,
24 including the one involving your client, but when I
25 look at the one involving your client, it was December

1 30 -- December of 2011 anyway.

2 MR. HILLYER: Correct, December 3rd.

3 THE COMMISSIONER: December 3. So

4 that predates --

5 MR. HILLYER: Tradewinds.

6 THE COMMISSIONER: -- the Tradewinds

7 report. It post-dates the 2007 initial friction

8 testing done by the Ministry of Transport, but it

9 limits, as I see it, the extent to which your client

10 really has an interest in the evidence that will arise.

11 MR. HILLYER: Correct. And, in fact,

12 that's -- we've had those discussions with co-counsel.

13 That's the area that I'm prepared to focus on and

14 assist if I can.

15 THE COMMISSIONER: Which is really what

16 the MTO report in 2007 may or may not have said about

17 the condition of the road in 2011. Is that a fair way

18 of putting it?

19 MR. HILLYER: Correct, and plus who did

20 what with that report, who got it, who saw it.

21 THE COMMISSIONER: The second question

22 is in terms of evidence, and there is nothing wrong with

23 this, but as I read your application, your client doesn't

24 really have any specific evidence to propose or to

25 introduce.

1 MR. HILLYER: Not from herself
2 directly, no.

3 THE COMMISSIONER: All right.

4 MR. HILLYER: She has no memory.

5 THE COMMISSIONER: So I can well
6 understand that your client has an interest in the
7 evidence that's produced, but does it go beyond the
8 ability to make submissions after all of the evidence
9 has been introduced?

10 MR. HILLYER: Can you rephrase that?

11 THE COMMISSIONER: Does your client
12 have an interest in this Inquiry which goes beyond
13 having a right to make submissions at the end of the
14 public hearings, based on the evidence that has been
15 introduced at those hearings?

16 MR. HILLYER: I wouldn't think so. I
17 think her interests are just finding out why, what
18 happened, is to find out if there's an explanation for
19 why, why her accident occurred.

20 As a side issue, her father is a
21 retired employee of the City. He has an interest that
22 I guess we're not -- we needn't concern ourselves with,
23 but they are interested in the whole issue from a
24 policy point of view, being a taxpayer of the City as
25 well.

1 THE COMMISSIONER: Well, and that's why
2 we're having the Inquiry.

3 MR. HILLYER: Right.

4 THE COMMISSIONER: And we have
5 Commission counsel who are there to ensure that the
6 issue of the MTO report, what it says about the road
7 conditions at that time, and what happened to it,
8 that all of those facts are before the Court, and so
9 I'm asking whether you really need to have, whether
10 your client really needs to be a participant in the
11 public hearings when that evidence is introduced as
12 opposed to having the right, as I say, at the end to
13 make submissions with respect to the facts as they were
14 before the Court and the implications for that.

15 MR. HILLYER: I guess in terms of
16 having a priority, her priority is to find out as best
17 as she can, with my assistance, as much as she can
18 about the road surface conditions. I think
19 secondarily, at the moment, I could well anticipate not
20 needing to make any representations at the end of the
21 day. It's just a desire on her behalf, given her
22 confidence in me, to have me play a role in getting to
23 the truth of it.

24 THE COMMISSIONER: But what exactly is
25 the role that you see yourself playing?

1 MR. HILLYER: I guess I've done a fair
2 bit of recent investigation since this news came out
3 about the condition of the roadway. I haven't yet
4 completed it. I'm on a fast learning curve, but I
5 would like to use the information I have to assist the
6 Commission, through my lawyer skills I guess, in making
7 sure that you get all the necessary information.

8 I mean, I appreciate there's a lot of
9 counsel involved and we all think we're good. Some of
10 us think we're a little better than others and some of
11 us have more of a skill at certain things, and that's
12 why I want to participate on her behalf.

13 THE COMMISSIONER: All of which is
14 fair. If we didn't think we were better than the next
15 person, probably we should be in a different line of
16 work.

17 MR. HILLYER: That's right.

18 THE COMMISSIONER: But I just want to
19 go back to exactly -- and I'm not trying to
20 cross-examine you. I'm simply trying to understand to
21 what extent you can be helpful because I understand
22 that's the context --

23 MR. HILLYER: I was cross-examined in
24 the Goudge Inquiry, so I've had the experience.

25 THE COMMISSIONER: All right. Well,

1 your client doesn't have any evidence as such to
2 provide the Inquiry.

3 MR. HILLYER: She is unable to give
4 viva voce evidence as to what happened.

5 THE COMMISSIONER: Which is
6 unfortunate, but --

7 MR. HILLYER: Yes.

8 THE COMMISSIONER: But there's no other
9 evidence beyond that either that's available to assist
10 the Inquiry. When you say you want to make sure that
11 all the necessary evidence and information is before
12 the Inquiry, what are you thinking of beyond what is
13 naturally going to come out from the other parties
14 whose participation --

15 MR. HILLYER: She's involved in
16 litigation with the City.

17 THE COMMISSIONER: Right.

18 MR. HILLYER: And there are certain
19 productions that have been made to-date, and I expect
20 there will be additional productions that I will demand
21 as a result of what I've been learning recently, and so
22 I suppose to that extent, if some -- if I come across
23 something that isn't covered in the productions that
24 the Commission is able to get, I'd want to make it
25 available if I thought it would be of help to the

1 Commission. That's sort of the narrow focus I have on
2 this.

3 THE COMMISSIONER: Narrow focus, but
4 there's no particular reason why you can't do that
5 without having full participation rights in this
6 Inquiry.

7 MR. HILLYER: True. I don't need full
8 participation.

9 THE COMMISSIONER: Or having any
10 participation rights as such.

11 MR. HILLYER: Well, if I don't
12 participate, how can I share what I learned with the
13 Commission?

14 THE COMMISSIONER: Through Commission
15 counsel.

16 MR. HILLYER: Or other counsel.

17 THE COMMISSIONER: Or other counsel,
18 making sure that whatever productions you feel should
19 be before the Inquiry are, in fact, before the Inquiry.

20 MR. HILLYER: If that's what I'm left
21 to do, that's what I'll have to do.

22 THE COMMISSIONER: I'm not saying
23 that's where it's going necessarily, but I'm exploring
24 the nature of the participation that you seek, given
25 your client's objective. Okay.

1 MR. HILLYER: Okay.

2 THE COMMISSIONER: Thank you.

3 MR. HILLYER: Okay.

4 MR. CENTA: Counsel for Belinda
5 Marazzato.

6 SUBMISSIONS BY MR. NOLAN:

7 Good morning, Commissioner. My name is
8 Dermot Nolan. I am counsel for the applicant Belinda
9 Marazzato, who is also present here with us today.
10 Belinda is the mother of Olivia Smosarski who was
11 killed on the Red Hill Valley Parkway on May 5th, 2015.

12 Olivia was a passenger in a car driven
13 by her friend Jordan Hastings, who, for reasons
14 tragically still unknown, suddenly lost control of her
15 car and, as a result, her car crossed over the median
16 and crashed in a horrific collision head on with a car
17 going in the opposite direction. Both Olivia and
18 Jordan died in the crash, and the single question that
19 has haunted my client ever since is, "Why did my
20 daughter die?"

21 That is not the question for this
22 Inquiry, but it is difficult to imagine anyone who
23 could have a more substantial and direct interest in
24 the subject-matter of this Inquiry than she has, if its
25 findings can help her find the answer to that awful

1 question, and it is difficult to imagine anyone more
2 uniquely situated to and motivated, motivated perhaps
3 more than anything, to help you in your task if that is
4 the case.

5 Now, many of the questions that you
6 have been asked to try to answer in your terms of
7 reference bear directly on that question, and make it
8 very likely that that is the case.

9 For example, question (x):

10 "Were users of the [Red Hill Valley
11 Parkway] put at risk as a result of the failure to
12 disclose the [2013] Report's findings?"

13 And questions (xii) and (xx):

14 "Did the failure to disclose the [2013
15 and 2007 Reports], or the information and
16 recommendations contained therein, contribute to
17 accidents, injuries or fatalities on the [Parkway]
18 since January, 2014?"

19 And question (xxiv):

20 "To what extent do other factors,
21 including, but not limited to, driver behaviour,
22 lighting and weather conditions, contribute to motor
23 vehicle accidents when compared to the impact of
24 friction levels on motor vehicle accidents on the
25 [Parkway]?"

1 Now, if Olivia and Jordan were put at
2 risk or their deaths were contributed to by the failure
3 to disclose these reports, both of which were in hand
4 years before this crash, that is of the most profound
5 importance to their families as members of the public
6 who have suffered the most devastating consequences
7 possible from that possible failure.

8 And the importance of this particular
9 crash to the matters referred to in section 274 of the
10 Municipal Act pursuant to which, of course, this
11 Inquiry is being conducted, is underscored by the
12 motion which was adopted by the City's Public Works
13 Committee two weeks after this crash on May 21st, 2015,
14 which specifically refers to the deaths of Olivia and
15 Jordan, and called for an investigation of additional
16 safety measures for the Parkway.

17 Now, that motion was adopted by City
18 Council on May 27th, 2015, when it was still in the
19 dark about the existence of the 2007 and 2013 reports
20 which are the subject of your inquiry.

21 Now, in their case, that is the
22 families of Olivia and Jordan, the tragedy was
23 compounded by the vagaries of our insurance laws which
24 sometimes result in the gross anomaly of bereaved suing
25 the bereaved in order for the victims of tragedy to

1 access available third party insurance protection.
2 That structure left Belinda in a legal position that
3 was adverse to that of her friends with whom she shared
4 a common loss, and she had no recourse but to take the
5 painful step in February 2017 of suing Jordan's estate
6 and Jordan's father as the only avenue by which she
7 might recover from their automobile insurer some
8 measure of compensation for her immeasurable loss. Our
9 firm was privileged to represent her in that
10 litigation.

11 Now, their insurer vigorously fought
12 that claim and categorically denied that Jordan was
13 responsible in any way for the crash. Among other
14 things, they said that the crash was caused, and I
15 quote from the Statement of Defence that they filed in
16 that litigation, "...by the road conditions over which
17 Jordan had no control, which were completely unforeseen
18 to her and that it was an inevitable accident."

19 If I may just have a moment.

20 In September 2018, following a
21 mediation, Belinda and her family settled their claims
22 with the insurer based on compromises which they made
23 because of the uncertainty about what caused the crash.
24 It was only after that settlement that the reports
25 which are the subject of this Inquiry came to light,

1 and their contents suggest some answers to that
2 uncertainty, and they suggest that the insurer's
3 contentions about the causes of the crash may not have
4 been too far off the mark.

5 Now, as you know, and as Mr. Hillyer
6 has told you, following discussions with your
7 Commission counsel, the standing and funding we are
8 requesting is part of a joint proposal made with Mr.
9 Hillyer on behalf of his client and Mr. Hooper and Mr.
10 Moloci on behalf of their group of clients in order to
11 ensure that unnecessary cost and duplication is
12 avoided.

13 I must tell you that Jordan's family is
14 part of the group which Mr. Hooper will be speaking to
15 you about. My client has asked our firm to continue to
16 represent her in this matter. Although their lawsuit
17 has ended, it is appropriate, we submit, that she and
18 Jordan's family have the benefit of their independent
19 counsel of choice, especially in light of the adverse
20 legal relationship which that litigation created.

21 I have worked with all of the firms
22 with whom we have developed this joint proposal. I
23 know them well, and I am confident that the
24 collaborative model that we are proposing will work to
25 ensure that the interests of the public, the

1 Commission, and our respective clients will be served
2 well, economically and responsibly.

3 Now, my client, Ms. Marazzato, would be
4 grateful if you would permit her to introduce herself
5 to you and make a very brief comment in the time that
6 we might have left.

7 THE COMMISSIONER: I would be happy to
8 do that, but before we do so, Mr. Nolan, I want to put
9 some questions to you that are rather similar to the
10 ones that I put to Mr. Hillyer. Does your client have
11 any evidence that she is proposing be put before the
12 Inquiry?

13 MR. NOLAN: I expect that she will
14 have, Commissioner.

15 THE COMMISSIONER: Of what nature?

16 MR. NOLAN: One can only imagine the
17 ferocity with which the mother of a daughter who has
18 been killed would dig to find whatever information she
19 could about what happened, and my client will tell you
20 in a moment that from the beginning, it was her belief
21 that the roadway conditions had caused this collision,
22 and that she asked everyone she could about the events
23 of the night in question, the activities of the girls
24 that were killed, the --

25 THE COMMISSIONER: Well --

1 MR. NOLAN: Other explanations that
2 there might be for the --

3 THE COMMISSIONER: We are getting into
4 timing considerations.

5 MR. NOLAN: Yes.

6 THE COMMISSIONER: I want to be a
7 little bit more focused. First of all, I have the
8 utmost amount of sympathy for your client.

9 MR. NOLAN: Thank you.

10 THE COMMISSIONER: I can't imagine as a
11 parent having anything worse happen.

12 MR. NOLAN: Exactly.

13 THE COMMISSIONER: I understand that.

14 MR. NOLAN: Yes.

15 THE COMMISSIONER: But this is not an
16 exercise in reconstructing that accident.

17 MR. NOLAN: I understand that.

18 THE COMMISSIONER: This will not be an
19 exercise in reconstructing that.

20 MR. NOLAN: I completely understand
21 that, Commissioner.

22 THE COMMISSIONER: And I have to use
23 the word, although I don't mean it in a pejorative
24 sense, anecdotal evidence around what happened that day
25 and that night is not the kind of evidence that this

1 Inquiry will be relying on when it addresses the
2 questions that you have quite properly identified as
3 related to your client's interests.

4 MR. NOLAN: Well, so, Commissioner, we
5 don't know how the evidence and inquiry, the
6 questions --

7 THE COMMISSIONER: You're absolutely
8 right.

9 MR. NOLAN: We don't know how this is
10 going to unfold.

11 THE COMMISSIONER: But we do know that
12 this is not an exercise in discovery.

13 MR. NOLAN: I'm not sure I understand
14 that.

15 THE COMMISSIONER: Well, this is not an
16 exercise which is intended to focus on the cause of any
17 particular accident.

18 MR. NOLAN: I appreciate that.

19 THE COMMISSIONER: It may be --

20 MR. NOLAN: I submit conversely,
21 Commissioner, that it is an exercise that might be
22 assisted by looking at particular accidents and the
23 events that occurred in terms of determining whether
24 the public was put at risk by information that might
25 otherwise have been available and resulted in

1 corrective action that might have avoided that kind of
2 incident.

3 So when you say that the Commission
4 will not be interested in anecdotal evidence, I
5 appreciate that, as a general rule, that should be the
6 case, but I would respectfully submit that there may be
7 anecdotal types of evidence that will assist the
8 Commission.

9 THE COMMISSIONER: Okay. So I thank
10 you for that response. We are running up against the
11 time limit, and I do want to hear from your client.

12 MR. NOLAN: Thank you.

13 MS. MARAZZATO: Thank you.

14 THE COMMISSIONER: And, Ms. Marazzato,
15 before you speak, I do want to reiterate directly what
16 I said to your counsel, which is I have the utmost
17 sympathy for your position. I can only say as a parent
18 myself of a daughter that I can't imagine a worse
19 situation.

20 SUBMISSIONS BY MS. MARAZZATO:

21 Thank you. Good afternoon,
22 Commissioner. I would just like you to know how
23 important the work you will be doing is, not only for
24 me and my family, but every family who travels the Red
25 Hill and, ultimately, the roadways throughout the

1 Province.

2 Olivia was second of my four children.
3 She was bold, bright and beautiful and fun, with a
4 smile that could light up a room. Everyone who knew
5 her would also attest to her compassion. She felt
6 deeply. She was a staunch supporter of the underdog
7 and a fierce protector of those she loved and sometimes
8 those she barely knew. Olivia would want me to
9 participate in this Inquiry. In fact, she would
10 insist. I owe this to her.

11 The morning after the accident, I went
12 to the scene. I had a deep and unshakeable knowledge
13 that this road was not safe. From everything I
14 learned, from every desperate question I asked and the
15 answer I was given, all roads led to something in the
16 Red Hill conditions that caused this tragedy, but I had
17 nothing to prove it.

18 I was horrified to find out years later
19 that two reports which identified problems with the
20 road long before that night were never disclosed or
21 acted upon. To think that had they been, we might
22 still have our daughters torments me.

23 I would be grateful for the privilege
24 in participating in the hearing through my lawyer and
25 for funding, without which I would be unable to afford

1 to do so.

2 As parents, we want to protect our
3 children. That is our job. A beautiful friendship has
4 emerged for Jordan's mom, Tamra, and me. Brought
5 together by trauma and tragedy, we are forever haunted
6 that we could not protect our daughters. We owe it to
7 Jordan and Olivia to help you protect other people's
8 children. Thank you.

9 THE COMMISSIONER: Thank you. Okay. I
10 have nothing further. Thank you.

11 MR. CENTA: Counsel from Grosso Hooper
12 and Scarfone Hawkins.

13 SUBMISSIONS BY MR. HOOPER:

14 Good afternoon, Mr. Commissioner. It's
15 my privilege on behalf of many of the citizens of this
16 City to be before you to ask for full participation,
17 standing and funding.

18 The application before you, I'm going
19 to try to hit on six topics in my 20 minutes. So I've
20 done the math. It's just over three minutes, so if you
21 have to slow me down, feel free to do so.

22 The things I'd like to talk to you
23 about today, Mr. Commissioner, is the framework of our
24 application, which may cause you some pause; the issue
25 of standing itself and full participation; funding, or

1 a recommendation at least for funding to the City of
2 Hamilton within the parameters of Appendix F to the
3 resolution; a tiny bit about some things that may be
4 helpful from the Walkerton decision when it relates to
5 citizens and the public participating with counsel in
6 an inquiry such as this; I'll also, as my colleagues
7 indicated, I'll talk about the collaboration and
8 co-operative model that we put forward to Commission
9 counsel that may be of assistance to you in making your
10 decision; and I'll have a brief conclusion for you.

11 With respect to the framework of our
12 application, it is framed in the names of Grosso Hooper
13 Law and Scarfone Hawkins. I don't want you to be
14 misled by the fact that we would really be the
15 applicants, and if that's an error for the Commission,
16 I apologize, but in truth, the application is for
17 approximately somewhere between 200 and 250 members of
18 the public who have had car crashes on the Red Hill
19 Valley Parkway between its opening and when the reports
20 were disclosed.

21 Candidly, Mr. Commissioner, I have
22 those people in my cachet because I am counsel for the
23 proposed class action lawsuit, but I do not stand
24 before you here today for those people because we're on
25 some investigation for the class action lawsuit. Like

1 my colleagues before me, those people want to know the
2 five "W"s, including when, why, where, how, all of
3 those things.

4 THE COMMISSIONER: Let me just
5 understand.

6 MR. HOOPER: Yes.

7 THE COMMISSIONER: Who is the
8 applicant? Who are the applicants?

9 MR. HOOPER: So in the official
10 application, Mr. Commissioner, the names are Grosso
11 Hooper Law and Scarfone Hawkins. Having said that,
12 when I get further in, the applicant can be any member.
13 I can give you an appendix of the 200-and-some-odd
14 people who would be applicants before you, a group
15 which I'm going to call the Concerned Hamilton
16 Citizens, the people who were in crashes. I can give
17 it any label.

18 I believe in the Walkerton Inquiry, it
19 ended up being the Walkerton Concerned Citizens
20 Coalition. They were an unincorporated association,
21 that approximately 500 people banded together. They
22 were given standing with counsel and funding.

23 THE COMMISSIONER: Have these -- it's
24 250 people?

25 MR. HOOPER: It moves every day, so I'm

1 going to say over 200, less than 250.

2 THE COMMISSIONER: And have they banded
3 together --

4 MR. HOOPER: Have they banded --

5 THE COMMISSIONER: -- to appoint you in
6 this capacity?

7 MR. HOOPER: I can't say to you that
8 I've spoken to every one of them personally, but --

9 THE COMMISSIONER: Have 200 of them
10 banded together and engaged you in this capacity as
11 opposed to your capacity as class action counsel?

12 MR. HOOPER: I don't want to engage in
13 a game of semantics, but have I asked each and every
14 one of them, absolutely not, but in the process of
15 gathering those people, that would have been one of the
16 proposed pieces of information we gained from them. So
17 do I have a written contract? Try not to be too legal
18 about it, but do I have a written document from each
19 one of them? No, but in the process of them being
20 proposed in the other arm of --

21 THE COMMISSIONER: But you gathered
22 them together for purposes of the class action
23 lawsuit --

24 MR. HOOPER: Right.

25 THE COMMISSIONER: -- being commenced,

1 but that's -- it's at a very preliminary stage.

2 MR. HOOPER: All of these --

3 THE COMMISSIONER: You've not gathered
4 them together for the purposes of this Inquiry.

5 MR. HOOPER: With respect, I disagree.
6 I have not made a public cry or a call for the people
7 to come for the specific reason of the Red Hill Valley
8 Parkway, but maybe I'm not making my point very clear,
9 but my point is that when those people have come for
10 the other reason, the part and parcel of the interview
11 process is the Inquiry.

12 In fact, if I was candid, I can give
13 you anecdotally that most people want to know more
14 about the Inquiry than they do want to know about the
15 potential class action lawsuit that's been issued, but
16 not certified.

17 So I think the blunt answer is no, they
18 haven't banded together in a room, nor have they signed
19 a document, but I can undertake to you standing here
20 today that they all, if you gave me that task, I would
21 have it done very quickly. I have no doubt in my mind
22 that that is at the forefront of most of the people who
23 have been interviewed by my office, that they want to
24 know the answers to these questions that are in the 24
25 questions that are in the resolution of the City of

1 Hamilton.

2 THE COMMISSIONER: I'm going to ask you
3 a question. You don't have to answer it at this point,
4 but you can answer it at some point: Would you be
5 prepared to choose between being class action counsel
6 and being counsel to what you are trying to analogize
7 to the Walkerton Inquiry, a group of concerned
8 citizens?

9 MR. HOOPER: Given that I don't stand
10 as one before you, although I'm the one talking, I
11 wouldn't be prepared to answer that question at this
12 time, but I certainly would be able to provide
13 something to you in writing in a very short period of
14 time.

15 THE COMMISSIONER: Okay.

16 MR. HOOPER: So if I may, our position
17 is that we're simply the agent or the representative of
18 a coalition of people that were harmed on the Parkway
19 in some fashion, and that fashion is a car crash of
20 some variety. Whether it was a single-car crash, a
21 multi-car crash, something happened to them. I've
22 indicated to you that there's approximately 200 to 250
23 of those people.

24 To give you some idea, one of those
25 people is Corrine Klassen. She was in a single-car

1 crash, significantly impaired, can't work. She was
2 blamed for the accident. She no longer can travel, and
3 has lost her business.

4 You've heard about the Hastings family.
5 There's the Sholer family whose son was killed. There
6 are many others. I could give you an appendix of many
7 of those stories.

8 And I'm going to digress for a second
9 because I know some of the questions that you've asked
10 my colleagues that one of the interesting parts of
11 having that collective wisdom of those people that
12 perhaps a single person can't offer and Commission
13 counsel may be not able to offer to you is that I have
14 the research, I have the stories of all of those
15 people, and I can tell you some statistical analysis
16 and systemic things that have happened to those people
17 as a result of having a wide body of participants that
18 I have the information.

19 So one of your questions I anticipate
20 will be what evidence, if any, can I assist Commission
21 counsel with, and I think, although we're not
22 investing [sic] one specific accident, what I can tell
23 you is that you will hear from our group that there are
24 certain similarities. There are certain things that
25 all of the accidents have in common.

1 They can certainly agree with or refute
2 some of the statistical analysis that Commission
3 counsel may be looking at in police reports with
4 respect to dry roads, wet roads, those kind of things
5 that are -- I don't remember the exact number in the
6 resolution. It's towards the bottom. I think it's the
7 last one, number (xxiv). We have lots of evidence
8 about that, but not just about specific accidents, but
9 about more general positions and policies about what
10 happened to these people.

11 So we're asking you, obviously, to
12 either use your discretion to amend the application or
13 change it if you are -- you asked me the question that
14 I didn't directly answer of what, who is the applicant.
15 You could make Corrine Klassen the applicant. You
16 could make the Sholer family the applicant. You could
17 make any one of those people the applicant as it
18 relates and, again, if it's a misnomer, I apologize,
19 but we're -- really, we're here on behalf of those
20 people, not on behalf of a law firm specifically.

21 Now, as an aside, in the Walkerton
22 Inquiry, one of the counsel did get partial standing as
23 a law firm, I understand.

24 So let me move to standing: Looking at
25 the things in your decision of December the 10th, 2019,

1 which you've heard, and I'm not going to repeat the
2 five pillars that also come from the Public Inquiries
3 Act, but substantial and direct interest seems to be
4 the main cog of what you would like or the Inquiry must
5 hear about.

6 So some of the things, from our
7 perspective, all of our people certainly have direct
8 and substantial interest in the subject-matter. They
9 were hurt, they lost a loved one, they are financially
10 impaired by what happened on the Red Hill Valley
11 Parkway from 2006 when it opened to present.

12 All of them have information they can,
13 and evidence, they can offer, both as a layperson, but
14 also some of it technical. In some of those cases,
15 there's technical information that is only available to
16 us because they're our clients, people that we have in
17 our cachet, if you will. I can also tell you that in
18 some cases, there may be engineering evidence that we
19 may be able to share with Commission counsel from that
20 perspective.

21 One of the other factors is, should
22 they be advised of the outcome? Well, of course, these
23 are people who have lost loved ones, have been injured,
24 and on that pillar, it seems obvious.

25 I think that banding these people

1 together on the issue of standing allows us to be more
2 timely, more cost efficient, and assist Commission
3 counsel with the gathering of evidence. If we forget
4 for a moment about the public inquiry orally, but the
5 background that is being done by the team of Commission
6 counsel, the thought process that they have to, to what
7 degree they're directed, look at the individual
8 accidents, we would be an outlet for some of that work
9 because we've already done it, quite frankly.

10 And one of the uniquenesses of our
11 group, when I look at other public inquiries, which I
12 acknowledge are not binding on you, but have some
13 bearing --

14 THE COMMISSIONER: Sure. They're
15 instructive, no question.

16 MR. HOOPER: Yes, that we are -- I
17 stand here before you as the only collective group, if
18 you will, I use that term loosely at this point, but
19 the only collective group for citizens.

20 We heard from two citizens and we've
21 heard from two counsel as it relates to the citizens of
22 Hamilton, acknowledging that Commission counsel is here
23 for the public, and I understand the role of Commission
24 counsel, but having said that, it would be, in my
25 respectful submission, a very unusual inquiry to not

1 have a counsel with standing for a group of the members
2 of the public. In fact, I will probably stand
3 corrected, but in my brief review, that looked like
4 that would be a very unusual circumstance.

5 In fact, ironically, in most
6 commissions where there is something where the public
7 has been harmed, there are many public groups and it's
8 a competition as to who the public group will be that
9 arrives at the actual hearing, gets access to the
10 documents. It's unique in this situation that we are
11 the only big group, if I could use that word, who's
12 asking for standing and to participate.

13 So subject to the questions you may ask
14 me, we're going to ask for full standing, but it's a
15 little bit of a hollow ask because you already know
16 that the fifth point is a collaborative approach, and
17 so I will move away from what full standing means, but
18 it was in your decision under -- on page 4, enumerated
19 as "C", 16, and we would ask for standing as it relates
20 to those five issues, which is access to the database,
21 comment on the background materials, propose
22 individuals to be interviewed, which I've already
23 covered, examine witnesses, and make oral and written
24 submissions.

25 One of the questions you may ask me

1 about standing is, well, could it be full or partial.
2 Well, it was helpful: You have done a better job last
3 evening of setting out the -- squishing in, the 24
4 things, into five areas, being friction testing in
5 general, the MTO testing report, did the City do any
6 other testing, was there audits or other reviews, what
7 is the standards in Ontario, and what extent did other
8 factors play?

9 When I look at the group of people, it
10 is clear to me that all of those factors, without going
11 into the 24 factors, some more than others, as set out
12 by Mr. Nolan, are relevant to all of these people, and
13 they have information potentially to share on all of
14 those issues because the breadth of the people span
15 from before the MTO report to-date. There's no
16 question in my mind that those five headings are hit,
17 and I could go through many of the things in the 24
18 enumerated items in the resolution. I'll leave it to
19 what Mr. Nolan said and any questions.

20 Let me turn to the issue of funding.
21 First, I want to acknowledge, Mr. Commissioner, that
22 funding is on a recommended basis only. The second
23 acknowledgement I want to make is that I have looked
24 at, and my team's looked very carefully at Appendix F
25 to the resolution that sets out the discretion of the

1 City, and we're prepared to adhere to those things such
2 as use junior counsel when necessary, take a lower
3 hourly rate than we may be asking the public to pay in
4 private practice, and all of the other factors, but
5 those seem to be two main ones.

6 I guess the third one, probably most
7 important to you, Mr. Commissioner, would be that we
8 undertake not to duplicate any services, not to show up
9 at the Inquiry just because there's a seat for a bum to
10 sit in, but only to be there when relevant, and no
11 duplication and be efficient and co-operate, of course,
12 with Commission counsel which, again, will cut down on
13 the funding request.

14 I guess an anecdotal example would be
15 if Ms. X needs to be interviewed and Commission counsel
16 says they're interviewing them, there's no need for me
17 to interview them, so it's pretty simple, but we'll
18 adhere to all of those.

19 I have, anticipating the issue of
20 funding, I have spoken to members of my staff, but also
21 many members of the group of just over 200 to determine
22 whether they could fund, because I anticipate it's a
23 question that I should answer. I have no client who is
24 independently wealthy who can fund. I've spoken
25 specifically to several members that I've already

1 mentioned, the Hastings family, the Sholer family, the
2 Klassen family and many others, but those come to mind
3 since I've used their names, that cannot possibly fund
4 even a partial participation. They are everyday Janes
5 and Joes in the city of Hamilton or in the surrounding
6 area. Ms. Klassen actually lives in London.

7 THE COMMISSIONER: Would it be fair to
8 assume that the class action is proceeding on a
9 contingency fee basis?

10 MR. HOOPER: That would be a very good
11 presumption, and any disbursements are being funded not
12 by the proposed class.

13 So on that basis, we're asking that you
14 consider making a recommendation of funding that allows
15 us to review all of the materials, have preparation
16 time for the Inquiry, and active participation at the
17 Inquiry on a daily basis when appropriate.

18 I indicated that I would speak briefly
19 about the Walkerton Inquiry and, again, I don't want to
20 repeat myself, but it's not binding on you, but as I'm
21 sure you're well aware, there were four citizen groups,
22 loosely speaking, in that that asked for standing and
23 funding. In the end, they were called the Concerned
24 Walkerton Citizens, the Walkerton Community Foundation,
25 I've lost the third one, and the fourth one was

1 Siskinds who were there for a group of injured people.
2 Purportedly, they received partial standing.

3 But what was interesting in the
4 decision that I think is -- may be of assistance at
5 page 13 of the decision, repeating, The Honourable
6 Dennis O'Connor repeating himself as commissioner at
7 page 13 says, "As I have said above, the perspective of
8 the residents and those who have suffered must be
9 heard."

10 And, of course, that has to be read in
11 context, but I think if I circle back to my comments
12 about the uniqueness of standing here for the only
13 coalition or group, whatever word we use today, there
14 is no one else. There is no group called the
15 "Foundation" or any other group, and so the breadth of
16 the citizens, acknowledging the Inquiry's job about --
17 to deal with the public, is us, whatever you call "us",
18 but is us.

19 That brings me to my final point, which
20 is, at the urging of Commission counsel, Mr. Hillyer,
21 Mr. Nolan and myself were asked to look at a
22 co-operative or collaborative approach.

23 THE COMMISSIONER: Which I can tell you
24 I've read.

25 MR. HOOPER: Yes. And so I can tell

1 you that nothing has changed and we are still prepared
2 to adhere to that arrangement, and despite my first 18
3 minutes, I would urge you to consider that over simply
4 giving standing to and funding to just my application
5 or the application on behalf of the people. We would
6 certainly be happy to co-operate with Mr. Nolan and Mr.
7 Hillyer on the basis proposed to Commission counsel.

8 Subject to any questions, those are my
9 comments.

10 THE COMMISSIONER: Am I correct in
11 assuming that you have stood down the class action
12 pending the outcome of this Inquiry?

13 MR. HOOPER: Not officially. There
14 certainly has been -- in this jurisdiction, I think as
15 all jurisdictions, there is a class action judge
16 assigned to the jurisdiction. There has not been a
17 first meeting, so there is nothing happening at this
18 point.

19 THE COMMISSIONER: Let me ask you to
20 cast your mind forward. This will take about perhaps a
21 year.

22 MR. HOOPER: Yes.

23 THE COMMISSIONER: Are you anticipating
24 any action in respect of the class action during that
25 period of time?

1 MR. HOOPER: Without too much
2 assurance, I anticipate no, given that -- other than
3 more people joining the proposed class. There's not
4 been a first meeting with class action judiciary. So
5 if that happened in the spring, given the schedules, I
6 wouldn't see the certification process seeing a
7 courtroom soon, and in judicial terms or courtroom
8 terms, probably nine months to a year at the earliest,
9 given that we haven't even had a conversation. No
10 materials have been exchanged other than the issuance
11 of a claim. It hearkens back to most of the people now
12 are more concerned about the Red Hill Valley Parkway
13 Inquiry than they are whether there's a class action
14 moving forward.

15 THE COMMISSIONER: Or maybe they see
16 this as a way of getting the discovery part of the
17 class action conducted.

18 MR. HOOPER: I'm not sure I have a
19 client that's that sophisticated, but perhaps.

20 THE COMMISSIONER: Perhaps you do.

21 MR. HOOPER: I'd be lying to you if I
22 said it won't hurt. If I have more documents, that's
23 going to be helpful. Will they -- is it the be all and
24 end all, probably not, but certainly, I have to be
25 candid and say having some of the documents and

1 participating isn't going to hurt that angle for sure.

2 THE COMMISSIONER: Thank you. Those
3 are my questions.

4 MR. HOOPER: Thank you for the
5 opportunity.

6 THE COMMISSIONER: I appreciate your time
7 and your patience.

8 MR. CENTA: Commissioner, that
9 concludes all of the oral submissions from the
10 applicants for participation rights in the Red Hill
11 Valley Parkway Inquiry.

12 THE COMMISSIONER: Thank you all very
13 much, everyone.

14 --- Whereupon the proceedings adjourned at 12:37 p.m.

15
16 I HEREBY CERTIFY THE FOREGOING
17 to be a true and accurate
18 transcription of my shorthand notes
19 to the best of my skill and ability.

20
21 

22 Beverley Killen, CSR
23 Computer-Aided Transcription

24

25

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